



# Trustee Act 1925

## 1925 CHAPTER 19

### PART II

#### GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES.

##### *General Powers.*

#### **12 Power of trustees for sale to sell by auction, &c.**

- (1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.
- (2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way.
- (3) This section does not enable an express power to sell settled land to be exercised where the power is not vested in the tenant for life or statutory owner.

#### **13 Power to sell subject to depreciatory conditions.**

- (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.
- (2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that

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the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

- (3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.
- (4) This section applies to sales made before or after the commencement of this Act.

#### **14 Power of trustees to give receipts.**

- (1) The receipt in writing of a trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.
- (2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for—
  - (a) the proceeds of sale or other capital money arising under a disposition on trust for sale of land;
  - (b) capital money arising under the Settled Land Act, 1925.
- (3) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust.

#### **15 Power to compound liabilities.**

A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit—

- (a) accept any property, real or personal, before the time at which it is made transferable or payable; or
- (b) sever and apportion any blended trust funds or property; or
- (c) pay or allow any debt or claim on any evidence that he or they think sufficient; or
- (d) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed; or
- (e) allow any time of payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust ;

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith,

#### **16 Power to raise money by sale, mortgage, &c.**

- (1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they

shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession.

- (2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable purposes, or to trustees of a settlement for the purposes of the Settled Land Act, 1925, not being also the statutory owners.

**17 Protection to purchasers and mortgagees dealing with trustees.**

No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

**18 Devolution of powers or trusts.**

- (1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.
- (2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.
- (3) This section takes effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation.
- (4) In this section " personal representative " does not include an executor who has renounced or has not proved.

**19 Power to insure.**

- (1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding three fourth parts of the full value of the building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.
- (2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

**20 Application of insurance money where policy kept up under any trust, power or obligation.**

- (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust or to a settlement within the meaning of the Settled Land Act, 1925, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, or by

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- a tenant for life impeachable for waste, be capital money for the purposes of the trust or settlement, as the case may be.
- (2) If any such money is receivable by any person, other than the trustees of the trust or settlement, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees of the trust or settlement, or, if there are no trustees capable of giving a discharge therefor, into court.
- (3) Any such money—
- (a) if it was receivable in respect of settled land within the meaning of the Settled Land Act, 1925, or any building or works thereon, shall be deemed to be capital money arising under that Act from the settled land, and shall be invested or applied by the trustees, or, if in court, under the direction of the court, accordingly;
  - (b) if it was receivable in respect of personal chattels settled as heirlooms within the meaning of the Settled Land Act, 1925, shall be deemed to be capital money arising under that Act, and shall be applicable by the trustees, or, if in court, under the direction of the court, in like manner as provided by that Act with respect to money arising by a sale of chattels settled as heirlooms as aforesaid;
  - (c) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;
  - (d) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.
- (4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction or, the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust, and, in the case of money which is deemed to be capital money arising under the Settled Land Act, 1925, be subject to the provisions of that Act with respect to the application of capital money by the trustees of the settlement.
- (5) Nothing contained in this section prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statute or otherwise.
- (6) This section applies to policies effected either before or after the commencement of this Act, but only to money received after such commencement.

## **21 Deposit of documents for safe custody.**

Trustees may deposit any documents held by them relating to the trust, or to the trust property, with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

## **22 Reversionary interests, valuations and audit.**

(1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may—

- (a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;
- (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;
- (c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;
- (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release;

without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.

(2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission—

- (a) to place any distringas notice or apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived, payable or charged; or
- (b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested;

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken:

Provided that nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any statute, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust.

(4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right-reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

**23 Power to employ agents.**

- (1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a solicitor, banker, stockbroker, or other person, to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.
- (2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting insurances of, or managing or cultivating, or otherwise administering any property, real or personal, moveable or immovable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside the United Kingdom or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising thereby.
- (3) Without prejudice to such general power of appointing agents as aforesaid—
  - (a) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of, and to produce, a deed having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration;
  - (b) A trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the production of any such deed by the solicitor shall have the same statutory validity and effect as if the person appointing the solicitor had not been a trustee;
  - (c) A trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the banker or solicitor to have the custody of and to produce the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment:

Provided that nothing in this subsection shall exempt a trustee from any liability which he would have incurred if this Act and any enactment replaced by this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor, as the case may be, to pay or transfer the same to the

This subsection applies whether the money or valuable consideration or property was or is received before or after the commencement of this Act.

## **24 Power to concur with others.**

Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with- the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

## **25 Power to delegate trusts during absence abroad.**

- (1) A trustee intending to remain out of the United Kingdom for a period exceeding one month may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person (including a trust corporation) the execution or exercise during his absence from the United Kingdom of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person or persons:

Provided that a person being the only other co-trustee and not being a trust corporation shall not be appointed to be an attorney under this subsection.

- (2) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.
- (3) The power of attorney shall not come into operation unless and until the donor is out of the United Kingdom, and shall be revoked by his return.
- (4) The power of attorney shall be attested by at least one witness, and shall be filed at the Central Office within ten days after the execution thereof with a statutory declaration by the donor that he intends to remain out of the United Kingdom for a period exceeding one month from the date of such declaration, or from a date therein mentioned.
- (5) The execution of any such instrument and statutory declaration shall be verified in such manner as is required by statute in the case of powers of attorney filed at the Central Office.
- (6) If the power of attorney confers a power to dispose of or deal with land or a charge registered under the Land Registration Act, 1925, an office copy shall be filed at the land registry.
- (7) The statutory declaration aforesaid and a statutory declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of any person dealing with the donee.
- (8) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has become revoked by the act of the donor or by his death or otherwise, be as valid and effectual as if the donor were alive and of full capacity, and had himself done such act or executed such instrument, unless such person had actual notice that the power

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had never come into operation or of the revocation of the power before such act was done or instrument executed.

- (9) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer but not including the power of delegation conferred by this section.
- (10) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.
- (11) In this section " trustee" includes a tenant for life and a statutory owner.

*Indemnities.*

**26 Protection against liability in respect of rents and covenants.**

- (1) Where a personal representative or trustee liable as such for—
  - (a) any rent, covenant, or agreement reserved by or contained in any lease; or
  - (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rentcharge; or
  - (c) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs;

satisfies all liabilities under the lease or grant which may have accrued, or been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof and thereafter—

- (i) he may distribute the residuary real and personal estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the said lease or grant;
  - (ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent, claim under the said lease or grant.
- (2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.
- (3) In this section " lease " includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; " grant " applies to a grant whether the rent is created by



limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; " lessee " and " grantee " include persons respectively deriving title under them.

## **27 Protection by means of advertisements.**

- (1) With a view to the conveyance to or distribution among the persons entitled to any real or personal property, the trustees of a settlement or of a disposition on trust for sale or personal representatives, may give, notice by advertisement in the Gazette, and in a daily London newspaper, and also, if the property includes land not situated in London in a daily or weekly newspaper circulating in the district in which the land is situated, and such other like notices, including notices elsewhere than in England and Wales, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.
- (2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section—
  - (a) prejudices the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser, who may have received it; or
  - (b) frees the trustees or personal representatives from any obligation to make searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain.
- (3) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

## **28 Protection in regard to notice.**

A trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

## **29 Exoneration of trustees in respect of certain powers of attorney.**

A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability or bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying;

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Provided that—

- (a) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made;
- (b) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

### **30 Implied indemnity of trustees.**

- (1) A trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default.
- (2) A trustee may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers.

*Maintenance, Advancement and Protective Trusts.*

### **31 Power to apply income for maintenance and to accumulate surplus income during a minority.**

- (1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property—
  - (i) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education, or benefit, the whole or such part, if any, of the income of that property as may, in -all the circumstances, be reasonable, whether or not there is—
    - (a) any other fund applicable to the same purpose; or
    - (b) any person bound by law to provide for his maintenance or education;
 and
  - (ii) if such person on attaining the age of twenty-one years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) of this section to him, until he either attains a vested interest therein or dies, or until failure of his interest:

Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

- (2) During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by

investing the same and the resulting income thereof from time to time in authorised investments, and shall hold those accumulations as follows :—

- (i) If any such person—
  - (a) attains the age of twenty-one years, or marries under that age, and his interest in such income during his infancy or until his marriage is a vested interest; or
  - (b) on attaining the age of twenty-one years or on marriage under that age becomes entitled to the property from which such income arose in fee simple, absolute or determinable, or absolutely, or for an entailed interest;

the trustees shall hold the accumulations in trust for such person absolutely, but without prejudice to any provision with respect thereto contained in any settlement by him made under any statutory powers during his infancy, and so that the receipt of such person after marriage, and though still an infant, shall be a good discharge; and

- (ii) In any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes, and so that, if such property is settled land, such accumulations shall be held upon the same trusts as if the same were capital money arising therefrom ;

but the trustees may, at any time during the infancy of such person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

- (3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing in loco parentis to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be five pounds per centum per annum.
- (4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.
- (5) This section does not apply where the instrument, if any, under which the interest arises came into operation before the commencement of this Act.

### **32 Power of advancement.**

- (1) Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit, in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment or application may be made notwithstanding that the interest of such person is liable to be defeated by the exercise of a power of

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appointment or revocation, or to be diminished by the increase of the class to which he belongs :

Provided that—

- (a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property; and
  - (b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share; and
  - (c) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to such payment or application.
- (2) This section applies only where the trust property consists of money or securities or of property held upon trust for sale calling in and conversion, and such money or securities, or the proceeds of such sale calling in and conversion are not by statute or in equity considered as land, or applicable as capital money for the purposes of the Settled Land Act, 1925.
- (3) This section does not apply to trusts constituted or created before the commencement of this Act.

### **33 Protective trusts.**

- (1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called " the principal beneficiary ") for the period of his life or for any less period, then, during that period (in this section called the " trust period ") the said income shall, without prejudice to any prior interest, be held on the following trusts, namely:—
- (i) Upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;
  - (ii) If the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons (that is to say)—
    - (a) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any; or
    - (b) if there is no "wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be;

as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

- (2) This section does not apply to trusts coming into operation before the commencement of this Act, and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.
- (3) Nothing in this section operates to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside.