

Bill No. 125 of 1941.

A BILL TO AMEND THE TRUSTEE ACT

NOTE.

This Bill amends sections 9, 10, 28 and 57 of *The Trustee Act* and adds to the Act two new sections 10*a* and 14*a*.

The new subsections (1) to (4) of section 9 restate everything contained in the former subsection (1), but clarify its meaning somewhat by dividing it into subsections and paragraphs. A trustee desiring to be discharged, after having commenced to act in the trust is now required to go before the Court, however. Here, after passing his accounts and having a new trustee approved by the Court and appointed in his stead, he may obtain an order discharging him from his trust obligations. Formerly a trustee could retire without the interim passing of accounts and could nominate some worthless person in his stead and there was a real danger of the trust assets being dissipated. This new procedure which is designed to remove this difficulty is found in the new subsection (2) of section 9.

In any case where there are at least three trustees, if one desires to be discharged and the other two consent, then the trustee desirous of being discharged may get an order from the Court discharging him if the Court is satisfied that it is proper to do so. In this case the Court may or may not require the passing of accounts or the appointment of a new trustee.

Section 10*a* enables the Court to appoint a new trustee or trustees in substitution for or in addition to existing trustees whenever it is found necessary or expedient to do so. If a trustee is convicted of an indictable offence or becomes bankrupt, and the trust deed has no express provision enabling someone to be substituted in his stead, the new section would enable the Court to make an order appointing a new trustee.

Section 14*a* enables the Court, by order, to confer upon the trustees powers which they have not been given in express terms in the trust deed, and which are not by law vested in them. Many trust agreements do not contain adequate provisions to take care of unforeseen situations which arise long after the trust has been created. It is in the interests of both trustees and beneficiaries that the

Court be enabled to confer additional powers on the trustees, either generally or in particular instances to facilitate the management or administration by them of properties in their control. An application to the Court for such an order may be made by the trustees or by persons beneficially interested under the trust.

Section 28 has been amended so as to do away with the right of an executor or administrator to recover damages for the loss of expectation of life in cases where the death of the deceased was caused by a tortious or negligent act on the part of some other person.

Where the death of a person is caused by the wrongful act of another, an action may be brought on behalf of his dependants to recover damages for the monetary loss sustained by them as a result of his death. In addition to this right of action, it has been held that there is a right to recover a sum as damages to compensate for the loss of expectation of life of the deceased. It is extremely difficult if not impossible to assess the value in money of the loss of expectation of life, and in New Zealand, Ontario and several other jurisdictions, the appropriate legislation has been amended to provide that damages for loss of expectation of life should not be recoverable. This and the other provisions of this amendment help to bring our Statute into line with such legislation.

Section 57 has been amended by adding thereto a new subsection (10) which gives power to the Official Guardian and the Administrator of Estates of the Mentally Incompetent jointly with the Deputy Provincial Treasurer to pay into the General Revenue Fund of the Province a limited portion of the interest earned by the Special Reserve Fund to be applied toward the cost of administration of the funds set up by this and the preceding section.

W. S. GRAY,
Acting Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 125 of 1941.

An Act to amend The Trustee Act.

(Assented to _____, 1941.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Trustee Act Amendment Act, 1941.*"

2. *The Trustee Act*, being chapter 220 of the Revised Statutes of Alberta, 1922, is hereby amended as to section 9,—

(a) by striking out subsection (1) thereof and by substituting therefor the following:

"9.—(1) Where a trustee dies or refuses to act or becomes incapable or unfit to act in the trusts or powers in him reposed, it shall be lawful for,—

"(a) the person or persons, if any, empowered to appoint new trustees by the deed, will or other instrument creating the trust; or, if there be no such person or no such person able and willing to act then for—

"(b) the surviving or continuing trustees or trustees for the time being; or

"(c) the executor or executors or the administrator or administrators of the last surviving and continuing trustee; or

"(d) the last retiring trustee,—

to appoint in writing any other person to be a trustee in place of the trustee dying or refusing to act or becoming incapable or unfit to act as aforesaid.

"(2) Where a trustee desires to be discharged from the trusts or powers in him reposed, after having commenced to act and before having fully discharged and performed the trusts and powers aforesaid,—

"(a) the said trustee may make application to the Supreme or District Court or to a judge thereof for an order passing the accounts of the trust to the date of the application and discharging him from his trust and appointing a new trustee in his stead;

“(b) the court or judge on the hearing of such application and after the passing of the accounts, may make an order discharging the applicant, and appointing as trustee any fit and proper person nominated for the purpose in the application, or if not satisfied of the fitness of the person so nominated, appointing an official of the Court or other competent person as trustee, whereupon the trustee desiring to be discharged shall be discharged from the trust.

“(3) As often as any new trustee is appointed as aforesaid, all the trust property, if any, which for the time being is vested in the surviving or continuing trustee or trustees or in the heirs, executors or administrators of any trustee or trustees, shall, with all convenient speed, be conveyed, assigned and transferred so that the same may be legally and effectually vested in such new trustee either solely or jointly with the surviving or continuing trustee or trustees, as the case may require.

“(4) Every new trustee appointed as aforesaid, as well before as after any conveyance, assignment or transfer as aforesaid, and every trustee appointed at any time by the Court, shall have the same powers, authorities and discretions and shall in all respects act as if he had originally been nominated a trustee by the deed, will or other instrument creating the trust.”

(b) by renumbering subsections (2), (3), (4), (5) and (6), as subsections (5), (6), (7), (8) and (9).

3. The said Act is further amended as to section 10 by striking out subsection (1) thereof and by substituting therefor the following:

“**10.**—(1) Where there are more than two trustees, if one of them declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees consent to the discharge of the trustee and to the vesting in the co-trustees of the trust property, then the trustee desirous of being discharged may make application to the Supreme or District Court or a judge thereof, and if it appears to the satisfaction of the Court or judge that it is fit and proper so to do, the Court or judge may order that the trustee be discharged from the trust without any new trustee being appointed in his place, provided, however, that the Court or judge may in any such case require the passing of accounts.”

4. The said Act is further amended by inserting therein immediately after section 10 the following new section:

"10a.—(1) The Supreme or District Court or a judge thereof, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, may make an order appointing a new trustee or new trustees, although there is no existing trustee, or either in substitution for or in addition to any existing trustee or trustees.

"In particular and without prejudice to the generality of the foregoing provision, the Court may make an order appointing a new trustee in substitution for a trustee who is convicted of an indictable offence, or is an insane or a mentally defective person, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved.

"(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

"(3) Nothing in this section gives power to appoint an executor or administrator."

5. The said Act is further amended by inserting therein immediately after section 14 the following new section:

"14a.—(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the Court or judge expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the Supreme or District Court or a judge thereof, may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the Court or judge may think fit and may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

"(2) The Court or judge may, from time to time, rescind or vary any order made under this section, or may make any new or further order.

"(3) An application to the Court or judge under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust."

6. The said Act is further amended as to section 28 by striking out the same and by substituting therefor the following:

"28.—(1) Except in cases of libel and slander, the executor or administrator of any deceased person may

maintain an action for all torts or injuries to the person or to the property of the deceased in the same manner and with the same rights and remedies as the deceased would, if living, have been entitled to do, and the damages when recovered shall form part of the personal estate of the deceased, provided that if death results from any such tort or injury no damages shall be allowed on account of any loss of the expectation of life.

“(2) Every such action shall be brought within one year after the death of the deceased person and not otherwise.

“(3) Nothing in this section shall derogate from any right conferred upon any person by *The Fatal Accidents Act.*”

7. The said Act is further amended as to section 57 by adding thereto the following new subsection:

“(10) Interest earned in respect of the securities held in the Special Reserve Fund shall be paid into and form part of the said Fund, provided that the Official Guardian and the Administrator of Estates of the Mentally Incompetent jointly with the Deputy Provincial Treasurer, out of the interest earned on the said Fund and received by them, may pay to the Provincial Treasurer to form part of the general revenue of the Province, a sum not exceeding one thousand dollars annually, to be applied toward the cost of administration of the Common Fund and of the Special Reserve Fund.”

8. This Act shall come into force on the day upon which it is assented to.

No. 125.

FIRST SESSION
NINTH LEGISLATURE
5 GEORGE VI
1941

BILL

An Act to amend The Trustee Act.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. ABERHART.

EDMONTON:
A. Shnitka, King's Printer
1941