

UNEDITED

# *The Trustee Act*

*being*

Chapter 46 of *The Revised Statutes of Saskatchewan, 1909*  
(effective March 15, 1911).

FOR HISTORICAL REFERENCE ONLY

## **NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

# Table of Contents

SHORT TITLE	RIGHTS AND LIABILITIES OF EXECUTORS AND ADMINISTRATORS
1 Short title	30 Actions by executors and administrators for torts
INTERPRETATION	31 Actions against executors and administrators for torts
2 Interpretation	32 Damages in actions under two preceding sections
INVESTMENTS	33 Executors or administrators of a lessor may distrain for arrears
3 Trustees may invest trust moneys in certain securities	34 Such arrears of rent may be distrained for within six months after determination of the lease
4 Investments in terminable debentures in certain companies	35 Representatives of deceased joint contractors liable although the other joint contractors be living
5 Additional powers given/Proviso	36 Devisee in trust may raise money by sale or mortgage to satisfy charges notwithstanding want of express power in the will
6 When trustee not chargeable for lending on insufficient security	37 Power given by last section extended to survivors, devisees, etc.
7 Trustees lending more than authorised amount	38 Purchasers, etc., not bound to inquire as to exercise of powers
8 Liability in case of change of character of investment	39 Directions to sell, etc., may be exercised by executor when no other person is appointed to exercise same
RIGHTS AND LIABILITIES OF TRUSTEES	40 Administrator with will annexed may exercise power of sale given to the executor
9 Every trust instrument to be deemed to contain clause for the indemnity and reimbursement of the trustees	41 Or when no one named in the will to execute powers of sale, etc.
10 Appointment of new trustees	42 Executors, etc., may convey in pursuance of a contract for sale made by deceased
11 Retirement of trustee	43 Duties and liabilities of an executor and administrator acting under the powers of this Act
12 Vesting of trust property in new or continuing trustees without conveyance	44 Powers given by this Act to two or more to survive
PURCHASE AND SALE	45 In case of deficiency of assets debts to rank <i>pari passu</i>
13 Power of trustee for sale to sell by auction, etc.	46 If claim is rejected and notice given an action must be brought within a certain period
14 Power to sell subject to depreciatory conditions	47 As to liability of executor or administrator in respect of covenants, etc., in leases
15 Fee simple estates of bare trustees to vest in their personal representatives	48 As to liability of executor in respect of rents, etc., in conveyances on rent charges, etc.
16 Conveyances by married woman as bare trustee	SUMMARY APPLICATION TO COURT FOR ADVICE
17 Receipts of trustees to be effectual discharges	49 Trustee, etc., may apply for advice in management of trust property
VARIOUS POWERS AND LIABILITIES	ALLOWANCE TO TRUSTEES, ETC.
18 Appointment of agents by trustees for certain purposes	50 Allowance to trustees
19 Powers of trustees to insure trust property	51 Allowance to be made although the estate not before the court
20 Trustee committing breach of trust at instigation of beneficiary	52 Act to apply to existing as well as future trusts
21 Power of trustee to give receipts	53 Judges may order an allowance to be made to executor or administrator out of the estate for his trouble
22 Power for executors and trustees to compound, etc.	54 Where allowance fixed by the instrument
23 Powers of two or more trustees	55 Solicitor entitled to profit costs
24 Exoneration or trustees in respect of certain powers of attorney	LIMITATION OF ACTIONS
MAINTENANCE OF INFANTS	56 Application of statutes of limitations to certain actions against trustees
25 In case property held in trust for infant, trustees may apply income for maintenance of infant	JUDICIAL TRUSTEES
26 Property held in trust for infants may be sold by leave of a judge and proceeds thereof applied for maintenance and education of such infants/ Application and investment of moneys so realised	57 Power of the court on application to appoint judicial trustee
27 Distribution of assets under trust/Deeds for benefit of creditors or of the assets of a testator or intestate after notice given by trustee, assignee, executor or administrator	
PAYMENT INTO COURT BY TRUSTEES	
28 Payment into court by trustees	
29 Relief of trustees committing technical breach of trust	

## CHAPTER 46

### An Act respecting Trustees and Executors and the Administration of Estates

#### SHORT TITLE

##### Short title

**1** This Act may be cited as “*The Trustee Act.*”

1903 (2), c.11, s.1; R.S.S. 1909, c.46, s.1.

#### INTERPRETATION

##### Interpretation

**2** In this Act unless the context otherwise requires the expression “**trustee**” shall be deemed to include an executor or administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee and shall also include several joint trustees.

1903 (2), c.11, s.2; R.S.S. 1909, c.46, s.2.

#### INVESTMENTS

##### Trustees may invest trust moneys in certain securities

**3** Trustees having trust money in their hands which it is their duty or which it is in their discretion to invest at interest shall be at liberty at their discretion to invest the same in any stock, debentures or securities of the government of Canada or any of the provinces of Canada or any debentures or securities the payment of which is guaranteed by the government of Canada or of any province of Canada or in the debentures of any municipality or school district in Saskatchewan; or in securities which are a first charge on land held in fee simple provided that such investments are in other respects reasonable and proper and such trustees shall also be at liberty at their discretion to call in any trust funds invested in any other securities than as aforesaid and to invest the same in any such stock, debentures or securities aforesaid and also from time to time at their discretion to vary any such investments as aforesaid for others of the same nature; and any such moneys already invested in any such stock, debentures or securities as aforesaid shall be held and taken to have been lawfully and properly invested.

##### This section to apply to all trustees, etc.

(2) This section shall apply and extend to both present and future trustees.

1903 (2), c.11, s.3; R.S.S. 1909, c.46, s.3.

**Investments in terminable debentures in certain companies**

4 It shall be lawful for a trustee unless expressly forbidden by instrument, if any, creating the trust to deposit with or to invest any trust funds in his hands in terminable debentures or debenture stock of the hereinafter mentioned societies and companies provided that such deposit or investment is in other respects reasonable and proper and that the debentures are registered and are transferable only on the books of the society or company in his name as the trustee for the particular trust estate for which they are held in such debentures or debenture stock as aforesaid and that the deposit account in the company's ledger is in the name of the trustee for the particular trust estate for which it is held and the deposit, receipt or pass book is not transferable by indorsement or otherwise.

**Qualifications of such companies**

(2) Any incorporated society or company which has been or shall hereafter be authorised by any lawful authority to send money upon mortgages on real estate or for that purpose and other purposes such society or company having a capitalised, fixed, paid up and permanent stock not liable to be withdrawn therefrom amounting to at least \$400,000 and having a reserve fund amounting to not less than 25 per cent. of its paid up capital and its stock having a market value of not less than seven per cent. premium shall be a society or company within the meaning and intent of subsection (1) thereof.

**Power to vary investments**

(3) The trustees may from time to time vary any such investments

**Companies to which funds invested to be approved by Lieutenant Governor in Council**

(4) No deposits or investments shall be made under the authority of this Act with or in the debentures of any such society or company which has not obtained the order of the Lieutenant Governor in Council approving of deposits with or investments in the debentures thereof, and such approval shall not be granted to any society or company which does not appear to have kept strictly within its legal powers in relation to borrowing and investment.

**Revocation of Order in Council approving of investments**

(5) The Lieutenant Governor in Council if he deems it expedient may at any time revoke any Order in Council previously made approving of deposits with or investments in the debentures or debenture stock of any society or company and such revocation shall not affect the propriety of deposits or investments made before such revocation.

**Section to apply to all trustees**

(6) This section shall apply and extend to both present and future trustees.

1908-09, c.15, s.8; R.S.S. 1909, c.46, s.4.

**Additional powers given/Proviso**

**5** The powers hereby conferred are in addition to the powers conferred by the instrument, if any, creating the trust: Provided that nothing herein contained shall authorise any trustee to do anything which he is in express terms forbidden to do or to omit to do anything which he is in express terms directed to do by the instrument creating the trust.

1903 (2), c.11, s.4; R.S.S. 1909, c.46, s.5.

**When trustee not chargeable for lending on insufficient security**

**6** No trustee lending money upon the security of any property shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made provided that it appears to the court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere and that the amount of the loan does not exceed two-thirds of the value of the property as stated in the report and that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) This section shall apply to a loan upon any property on which the trustee can lawfully lend and to transfers of existing securities as well as to new securities and to investments made as well before as after the passing of this Act.

1903 (2), c.11, s.5; R.S.S. 1909, c.46, s.6.

**Trustees lending more than authorised amount**

**7** Where a trustee has improperly advanced trust money on a mortgage security which would at the time of the investment have been a proper investment in all respects for a less sum than was actually advanced thereon the security shall be deemed an authorised investment for such less sum and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2) This section shall apply to investments made as well before as after the passing of this Act.

1903 (2), c.11, s.6; R.S.S. 1909, c.46, s.7.

**Liability in case of change of character of investment**

**8** No trustee shall be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the instrument of trust or by the general law and this provision shall apply to cases arising before or after the passing of this Act.

1903 (2), c.11, s.7; R.S.S. 1909, c.46, s.8.

## RIGHTS AND LIABILITIES OF TRUSTEES

**Every trust instrument to be deemed to contain clause for the indemnity and reimbursement of the trustees**

**9** Every deed, will or other document creating a trust either expressly or by implication shall, without prejudice to the clauses actually contained therein be deemed to contain a clause in the words or to the effect following that is to say: "That the trustees or trustee for the time being of the said deed, will or other instrument shall be respectively chargeable only for such moneys, stocks, funds and securities as they shall respectively actually receive notwithstanding their respectively signing any receipt for the sake of conformity and shall be answerable and accountable only for their own acts, receipts, neglect or defaults and not for those of each other nor for any banker, broker or other person with whom any trust moneys or securities may be deposited; nor for the insufficiency or deficiency of any stocks, funds or securities nor for any other loss unless the same shall happen through their own wilful neglect or default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will or other instrument to reimburse themselves or himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will or other instrument."

1903 (2), c.11, s.8; R.S.S. 1909, c.46, s.9.

**Appointment of new trustees**

**10** Where a trustee, either original or substituted and whether appointed by the court or otherwise, dies or desires to be discharged from or refuses or becomes unfit or incapable to act in the trusts or powers in him reposed before the same have been fully discharged and performed it shall be lawful for the person or persons nominated for that purpose by the deed, will or other instrument creating the trust, if any, or if there be no such person or no such person able and willing to act then for the surviving or continuing trustees or trustee for the time being or the acting executors or executor or administrators or administrator of the last surviving and continuing trustee or for the last retiring trustee by writing to appoint any other person or persons to be a trustee or trustees in place of the trustee or trustees dying or desiring to be discharged or refusing or becoming unfit or incapable to act as aforesaid; and so often as any new trustee or trustees is or are so appointed as aforesaid all the trust property, if any, which for the time being is vested in the surviving or continuing trustees or trustee or in the heirs, executors or administrators of any trustees or trustee shall with all convenient speed be conveyed, assigned and transferred so that the same may be legally and effectually vested in such new trustee or trustees either solely or jointly with the surviving or continuing trustees or a surviving or continuing trustee as the case may require; and every new trustee to be appointed as aforesaid as well before as after such conveyance, assignment or transfer as aforesaid and also every trustee appointed by the court either before or after the passing of this Act 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.

- (2) On the appointment of a new trustee for the whole or any part of trust property:
- (a) The number of trustees may be increased; and
  - (b) A separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property and any existing trustee may be appointed or remain one of such separate set of trustees; or if only one trustee was originally appointed then one separate trustee may be so appointed for any such part of the trust property; and
  - (c) It shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and
  - (d) Any assurance or thing requisite for vesting the trust property or any part thereof jointly in the persons who are the trustees shall be executed or done.
- (3) Every new trustee so appointed as well before as after all the trust property becomes by law or by assurance or otherwise vested in him shall have the same powers, authorities and discretions and may in all respects act as if he has been originally appointed a trustee by the instrument, if any, creating the trust.
- (4) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the provisions of this section.
- (5) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the terms of that instrument and to any provisions therein contained.
- (6) This section applies to trusts created either before or after the passing of this Act.

1903 (2), c.11, s.9; R.S.S. 1909, c.46, s.10.

#### **Retirement of trustee**

**11** Where there are more than two trustees if one of them by deed 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 by deed consent to the discharge of the trustee and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust and shall by the deed be discharged therefrom under this Act without any new trustee being appointed in his place.

- (2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.
- (3) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the terms of that instrument and to any provisions therein contained.
- (4) This section applies to trusts created either before or after the passing of this Act.

1903 (2), c.11, s.10; R.S.S. 1909, c.46, s.11.

**Vesting of trust property in new or continuing trustees without conveyance**

**12** Where an instrument by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust or in any chattel so subject or the right to recover and receive any debt or other thing in action so subject shall vest in the persons who by virtue of such instrument become and are the trustees for performing the trust that declaration shall without any conveyance or assignment but subject to the provisions of any Act respecting the registration of titles to lands operate to vest in those persons as joint tenants and for the purposes of the trust that estate, interest or right.

(2) Where an instrument by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees that declaration shall without any conveyance or assignment but subject as aforesaid operate to vest in the continuing trustees alone as joint tenants and for the purposes of the trust, the estate, interest or right to which the declaration relates.

(3) This section does not extend to any share, stock, annuity or property only transferable in books kept by a company or other body or in manner prescribed by or under an Act of the Legislature of Saskatchewan.

(4) For the purposes of registration of an instrument the person or persons making the declaration shall be deemed the conveying party or parties and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

1903 (2), c.11, s.11; R.S.S. 1909, c.46, s.12.

**PURCHASE AND SALE****Power of trustee for sale to sell by auction, etc.**

**13** Where a trust for sale or a power of sale of property as 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 resell without being answerable for any loss.

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power and shall have effect subject to the terms of that instrument and to the provisions therein contained.

1903 (2), c.11, s.12; R.S.S. 1909, c.46, s.13.

**Power to sell subject to depreciatory conditions**

**14** 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 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 the ground aforesaid.

1903 (2), c.11, s.13; R.S.S. 1909, c.46, s.14.

**Fee simple estates of bare trustees to vest in their personal representatives**

**15** Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seized in fee simple such hereditaments shall vest in the legal personal representative from time to time of such trustee.

1903 (2), c.11, s.14; R.S.S. 1909, c.46, s.15.

**Conveyances by married woman as bare trustee**

**16** Where any freehold hereditament is vested in a married woman as bare trustee she may convey or surrender the same as if she were a *feme sole* and without her husband joining in the conveyance.

1903 (2), c.11, s.15; R.S.S. 1909, c.46, s.16.

**Receipts of trustees to be effectual discharges**

**17** The *bona fide* payment of any money to and the receipt thereof by any person to whom the same is payable upon any express or implied trust or for any limited purpose and such payment to and receipt by the survivors or survivor of two or more mortgagees or holders or the executors or administrators of such survivor or their or his assigns shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof unless the contrary is expressly declared by the instrument creating the trust or security,

1903 (2), c.11, s.16; R.S.S. 1909, c.46, s.17.

## VARIOUS POWERS AND LIABILITIES

**Appointment of agents by trustees for certain purposes**

**18** It shall be lawful for a trustee to appoint a solicitor to be his agent to receive and give a discharge for any money or any valuable consideration of property receivable by such trustee under the trust; and no trustee shall be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment:

Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this section had not been enacted in case of permitting such money, valuable consideration or property to remain in the hands or under the control of the solicitor for a period longer than is reasonably necessary to enable the solicitor to pay or transfer the same to the trustee.

(2) It shall be lawful for a trustee to appoint a chartered bank or solicitor to be his agent to receive and give a discharge for any money payable to such trustee under or by virtue of a policy of assurance or otherwise; and no trustee shall be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment:

Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this section had not been enacted in case he permits such money to remain in the hands or under the control of the bank or solicitor for a period longer than is reasonably necessary to enable him to pay the same to the trustee.

1903 (2), c.11, s.17; R.S.S. 1909, c.46, s.18.

**Powers of trustees to insure trust property**

**19** It shall be lawful for but not obligatory upon a trustee to 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 equal fourth parts of the full value of such building or property and to 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 entitled wholly or partly to such income.

(2) This section shall not apply to any building or property which a trustee is bound forthwith to convey absolutely to any *cestui que trust* upon being requested to do so.

1903 (2), c.11, s.18; R.S.S. 1909, c.46, s.19.

**Trustee committing breach of trust at instigation of beneficiary**

**20** Where a trustee has committed a breach of trust at the instigation or request or with the consent in writing of a beneficiary the court may if it thinks fit and notwithstanding that the beneficiary is a married woman entitled for her separate use whether with or without a restraint upon anticipation make such order as to the court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

1903 (2), c.11, s.19; R.S.S. 1909, c.46, s.20.

**Power of trustee to give receipts**

**21** The receipt in writing of any 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 for the same and shall effectually exonerate the person paying, transferring or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This section applied to trusts created either before or after the passing of this Act.

1903 (2), c.11, s.20; R.S.S. 1909, c.46, s.21.

**Power for executors and trustees to compound, etc.**

**22** A trustee or two or more trustees acting together or a sole acting trustee, where by the instrument, if any, creating the trust a sole trustee is authorised to execute the trusts and powers thereof may if and as he or they may think fit accept any composition or any security real or personal for any debt or for any property real or personal claimed and may allow any time for payment for any debt and may 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.

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3) This section applies to executorships, administratorships and trusts constituted or created either before or after the passing of this Act.

1903 (2), c.11, s.21; R.S.S. 1909, c.46, s.22.

**Powers of two or more trustees**

**23** Where a power or trust is given to or vested in two or more trustees jointly then unless the contrary is expressed in the instrument, if any, creating the power or trust the same may be exercised or performed by the survivor or survivors of them for the time being.

1903 (2), c.11, s.22; R.S.S. 1909, c.46, s.23.

**Exoneration of trustees in respect of certain powers of attorney**

**24** 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 payment or act the person who gave the power of attorney was dead or had done some act to avoid the power if this fact was not known to the trustee at the time of his so acting or paying.

(2) Nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made and 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.

1903 (2), c.11, s.23; R.S.S. 1909, c.46, s.24.

## MAINTENANCE OF INFANTS

**In case property held in trust for infant, trustees may apply income for maintenance of infant**

**25** In all cases where any property is held by trustees in trust for an infant either absolutely or contingently on his attaining the age of twenty-one years or on the occurrence of any event previously to his attaining that age it shall be lawful for such trustees at their sole discretion to pay to the guardians, if any, of such infant or otherwise to apply for or towards the maintenance or education of such infant the whole or any part of the income to which such infant may be entitled in respect of such property whether there be any fund applicable to the same purpose or any other person bound by law to provide for such maintenance or education or not; and such trustees shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in proper securities for the benefit of the person who shall ultimately become entitled to the property from which such accumulation shall have arisen:

Provided always that it shall be lawful for such trustees at any time if it shall appear to them expedient to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

1903 (2), c.11, s.24; R.S.S. 1909, c.46, s.25.

**Property held in trust for infants may be sold by leave or a judge and proceeds thereof applied for maintenance and education of such infants/Application and investment of moneys so realised**

**26** In all cases where any property either real or personal is held by trustees in trust for an infant either absolutely or contingently on his attaining the age of twenty-one years or on the occurrence of any event previously to his attaining that age and where the income arising from such property is insufficient for the maintenance and education of such infant it shall be lawful for such trustees by leave of a judge of the supreme court to be obtained in a summary manner to sell and dispose of any portion of such real or personal property and to pay to the guardians, if any, of such infant or otherwise to apply for or towards the maintenance or education of such infant the whole or any part of the money arising from such sale as aforesaid; and in the event of the whole of the money arising from any sale of the real or personal property as aforesaid not being immediately required for the maintenance and education of such infant then the said trustees shall invest the surplus moneys and the resulting income therefrom from time to time in proper securities and shall apply such moneys and the proceeds thereof from time to time for the education and maintenance of the said infant and shall hold all the residue of the moneys and interest thereon not required for the education and maintenance of such infant as aforesaid for the benefit of the person who shall ultimately become entitled to the property from which such moneys and interest have arisen.

1903 (2), c.11, s.25; R.S.S. 1909, c.46, s.26.

**Distribution of assets under trust/Deeds for benefit of creditors or of the assets of a testator or intestate after notice given by trustee, assignee, executor or administrator**

**27** Where a trustee or assignee acting under the trusts of a deed or assignment for the benefit of creditors generally or a particular class or classes of creditors where the creditors are not designated by name therein or an executor or an administrator has given such or the like notices as in the opinion of the court in which such trustee, assignee, executor or administrator is sought to be charged, would have been given by the supreme court in an action for the execution of the trusts of such deed or assignment or an administration suit, as the case may be, for creditors and others to send in to such trustee, assignee, executor or administrator their claims against the person for the benefit of the creditors of whom such deed or assignment is made or the estate of the testator or intestate, as the case may be, the trustee, assignee, executor or administrator shall at the expiration of the time named in the said notices or the last of the said notices for sending in such claims be at liberty to distribute the proceeds of the trust estate or the assets of the testator or intestate, as the case may be, or any part thereof amongst the parties entitled thereto having regard to the claims of which the trustee, assignee, executor or administrator has then notice and shall not be liable for the proceeds of the trust estate or assets, as the case may be, or any part thereof so distributed to any person of whose claim the trustee, assignee, executor or administrator had not notice at the time of the distribution thereof or a part thereof, as the case may be; but nothing in this Act contained shall prejudice the right of any creditor or claimant to follow the proceeds of the trust estate or assets, as the case may be, or any part thereof into the hands of the person or persons who may have received the same respectively.

1903 (2), c.11, s.26; R.S.S. 1909, c.46, s.27.

## PAYMENT INTO COURT BY TRUSTEES

**Payment into court by trustees**

**28** Trustees or the majority of trustees having in their hands or under their control money or securities belonging to a trust or to the estate of a deceased person may pay the same into the supreme court; and the same shall subject to the rules of court be dealt with according to the orders of the supreme court.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.

(3) Where any moneys or securities are vested in any persons as trustees and the majority are desirous of paying the same into court but the concurrence of the other or others cannot be obtained the supreme court may order the payment into court to be made by the majority without the concurrence of the other or others and where any such moneys or securities are deposited with any banker, broker or other depositary the court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into court and every transfer payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid or delivered.

1903 (2), c.11, s.27; R.S.S. 1909, c.46, s.28.

**Relief of trustees committing technical breach of trust**

**29** If in any proceeding affecting trustees or trust property it appears to the court that a trustee whether appointed by the court or by an instrument in writing or otherwise or that any person who in law may be held to be fiduciarily responsible as a trustee is or may be personally liable for any breach whether the transaction alleged or found to be a breach of trust occurred before or after the passing of this Act but has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach then the court may relieve the trustee either wholly or partly from personal liability for the same.

1903 (2), c.11, s.28; R.S.S. 1909, c.46, s.29.

**RIGHTS AND LIABILITIES OF EXECUTORS AND ADMINISTRATORS****Actions by executors and administrators for torts**

**30** The executors or administrators of any deceased person may maintain an action for all torts or injuries to the person or to the real or personal estate of the deceased except in cases of libel and slander 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; but such action shall be brought within one year after his decease.

1903 (2), c.11, s.29; R.S.S. 1909, c.46, s.30.

**Actions against executors and administrators for torts**

**31** In case any deceased person committed a wrong to another in respect of his person or of his real or personal property except in cases of libel and slander the person so wronged may maintain an action against the executors or administrators of the person who committed the wrong; but such action shall be brought within one year after the decease.

1903 (2), c.11, s.30; R.S.S. 1909, c.46, s.31.

**Damages in actions under two preceding sections**

**32** In estimating the damages in any action under either of the next preceding two sections the benefit, gain, profit or advantage which in consequence of or resulting from the wrong committed may have accrued to the estate of the person who committed the wrong shall be taken into consideration and shall form part or may constitute the whole of the damages to be recovered and whether or not any property or the proceeds of value of property belonging to the person bringing the action or to his estate has or have been appropriated by or added to the estate or moneys of the person who committed the wrong.

1903 (2), c.11, s.31; R.S.S. 1909, c.46, s.32.

**Executors or administrators of a lessor may distrain for arrears**

**33** The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will for the arrears of rent due to such lessor or landlord in his lifetime in like manner as such lessor or landlord might have done if living.

1903 (2), c.11, s.32; R.S.S. 1909, c.46, s.33.

**Such arrears of rent may be distrained for within six months after determination of the lease**

**34** Such arrears may be distrained for at any time within six months after the determination of the term or lease and during the continuance of the possession of the tenant from whom the arrears became due; and the law relating to distresses for rent shall be applicable to the distresses so made as aforesaid.

1903 (2), c.11, s.33; R.S.S. 1909, c.46, s.34.

**Representatives of deceased joint contractors liable although the other joint contractors be living**

**35** In case any one or more joint contractors, obligors or partners die the person interested in the contract, obligation or promise entered into by such joint contractors, obligors or partners may proceed by action against the representatives of the deceased contractor, obligor or partner in the same manner as if the contract, obligation or promise had been joint and several and this notwithstanding there may be another person liable under such contract, obligation or promise still living and an action pending against such person; but the property and effects of stockholders in chartered banks or the members of other incorporated companies shall not be liable to a greater extent than they would have been if this section had not been passed.

1903 (2), c.11, s.34; R.S.S. 1909, c.46, s.35.

**Devisee in trust may raise money by sale or mortgage to satisfy charges notwithstanding want of express power in the will**

**36** Where by any will coming into operation before or after the passing of this Act a testator charges his real estate or any specific portion thereof with the payment of his debts or with the payment of any legacy or other specific sum of money and devises the estate so charged to any trustee or trustees for the whole of his estate or interest therein and does not make any express provision for the raising of such debt, legacy or sum of money out of such estate the said trustee or trustees notwithstanding any trusts actually declared by the testator may raise such debt, legacy or money as aforesaid by a sale and absolute disposition by public auction or private contract of the said real estate or any part thereof or by a mortgage of the same or partly in one mode and partly in the other and a mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same think proper.

1903 (2), c.11, s.35; R.S.S. 1909, c.46, s.36.

**Power given by last section extended to survivors, devisees, etc.**

**37** The powers conferred by the next preceding section shall extend to all and every the person or persons in whom the estate devised is for the time being vested by survivorship, descent or devise or to any person or persons appointed under any power in the will or by the supreme court to succeed to the trusts created by the will as aforesaid.

1903 (2), c.11, s.16; R.S.S. 1909, c.46, s.37.

**Purchasers, etc., not bound to inquire as to exercise of powers**

**38** Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by the preceding two sections of this Act or any of them have been duly and correctly exercised by the person or persons acting in virtue thereof.

1903 (2), c.11, s.37; R.S.S. 1909, c.46, s.38.

**Directions to sell, etc., may be exercised by executor when no other person is appointed to exercise same**

**39** Where there is in any will or codicil of any deceased person whether such will has been made or such person has died before or after the passing of this Act any direction whether express or implied to sell, dispose of, appoint, mortgage, incumber or lease any real estate and no person is by the said will or some codicil thereto or otherwise by the testator appointed to execute and carry the same into effect the executor or executors, if any, named in such will or codicil shall and may execute and carry into effect every such direction to sell, dispose of, appoint, incumber or lease such real estate and any estate or interest therein in as full, large and ample a manner and with the same legal effect as if the executor or executors of the testator were appointed by the testator to execute and carry the same into effect.

1903 (2), c.11, s.38; R.S.S. 1909, c.46, s.39.

**Administrator with will annexed may exercise power of sale given to the executor**

**40** Where there is in any will or codicil thereto of any deceased person whether such will has been made or such person has died before or after the passing of this Act any power to any executor or executors in such will to sell, dispose of, appoint, mortgage, incumber or lease any real estate or any estate or interest therein whether such power is express or arises by implication and where from any cause letters of administration with such will annexed have been by a court of competent jurisdiction in Saskatchewan committed to any person and such person has given the required security such person shall and may exercise every such power and sell, dispose of, appoint, mortgage, incumber or lease such real estate and any estate or interest therein in as full, large and ample a manner and with the same legal effect for all purposes as the said executor or executors might have done.

1903 (2), c.11, s.39; R.S.S. 1909, c.46, s.40.

**Or when no one named in the will to execute powers of sale, etc.**

**41** Where there is in any will or codicil thereto of any deceased person whether such will has been made or such person has died before or after the passing of this Act any power to sell, dispose of, appoint, mortgage, incumber or lease any real estate or any estate or interest therein whether such power is express or arises by implication and no person is by the said will or some codicil thereto or otherwise by the testator appointed to execute such power and letters of administration with such will annexed have been by a court of competent jurisdiction in Saskatchewan committed to any person and such person has given the required security before mentioned such person shall and may exercise every such power and sell, dispose of, appoint, mortgage incumber or lease such real estate and any estate or interest therein in as full, large and ample a manner and with the same legal effect as if such last named person had been appointed by the testataor to execute such power.

1903 (2), c.11, s.40; R.S.S. 1909, c.46, s.41.

**Executors, etc., may convey in pursuance of a contract for sale made by deceased**

42 Where any person has entered into a contract in writing for the sale and conveyance of real estate or any estate or interest therein and such person has died intestate or without providing by will for the conveyance of such real estate or estate or interest therein to the person entitled or to become entitled to such conveyance under such contract then if the deceased would be liable to execute a conveyance were he alive the executor, administrator or administrator with the will annexed, as the case may be, of such deceased person shall make and give to the person entitled to the same a good and sufficient conveyance or conveyances of such estates and of such nature as the said deceased if living would be liable to give and such conveyances shall be as valid and effectual as if the deceased were alive at the time of the making thereof and had executed the same but shall not have any further validity.

1903 (2), c.11, s.41; R.S.S. 1909, c.46, s.42.

**Duties and liabilities of an executor and administrator acting under the powers of this Act**

43 Every executor, administrator and administrator with the will annexed shall as respects the additional powers vested in him by this Act and any money or assets by him received in consequence of the exercise of such powers be subject to all the liabilities and compellable to discharge all the duties of whatsoever kind which as respects the acts to be done by him under such powers would have been imposed upon an executor or other person appointed by the testator to execute the same or in case of there being no such executor or person would have been imposed by law or by any court or judge of competent jurisdiction in Saskatchewan.

1903 (2), c.11, s.42; R.S.S. 1909, c.46, s.43.

**Powers given by this Act to two or more to survive**

44 Where there are several executors, administrators or administrators with the will annexed and one or more of them die the powers hereby created shall vest in the survivor or survivors.

1903 (2), c.11, s.43; R.S.S. 1909, c.46, s.44.

**In case of deficiency of assets debts to rank *pari passu***

45 On the administration of the estate of a deceased person in case of the deficiency of assets, debts due to the Crown and to the executor or administrator of the deceased person and debts to others including therein respectively debts by judgment or order and other debts of record, debts by specialty, simple contract debts and such claims for damages as by Statute are payable in like order of administration as simple contract debts shall be paid *pari passu* and without any preference or priority of debts of one rank or nature over those of another; but nothing herein contained shall prejudice any lien existing during the lifetime of the debtor on any of his real or personal estate.

1903 (2), c.11, s.44; R.S.S. 1909, c.46, s.45.

**If claim is rejected and notice given an action must be brought within a certain period**

**46** In case the executor or administrator gives notice in writing referring to this section of his intention to avail himself thereof to any creditor or other person of whose claims against the estate he has notice or to the advocate or agent of such creditor or other person that he the executor or administrator rejects or disputes the claim it shall be the duty of the claimant to commence his action in respect of the claim within six months after the notice is given in case the debt or some part thereof is due at the time of the notice or within three months from the time the debt or some part thereof falls due if no part thereof is due at the time of the notice and in default the claim shall be forever barred.

(2) Unless such creditor or other person within ten days after the receipt of such notice notifies the executor or administrator that he withdraws his claim such executor or administrator may if he thinks fit apply to a judge of the supreme court for an originating summons calling upon such creditor or other person to establish his claim and upon the return of such summons the judge may allow or bar the claim or make such other order as to him may seem meet with or without costs against either party.

1903 (2), c.11, s.45; R.S.S. 1909, c.46, s.46.

**As to liability of executor or administrator in respect of covenants, etc., in leases**

**47** Where an executor or administrator liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered has satisfied all such liabilities under the said lease or agreement for a lease as have accrued due and been claimed up to the time of the assignment hereinafter mentioned and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised although the period for laying out the same may not have arrived and has assigned the lease or agreement for the lease to a purchaser thereof he shall be at liberty to distribute the residuary estate of the deceased to and among the parties entitled thereto respectively without appropriating any part or any further part, as the case may be, of the estate of the deceased to meet any future liability under the said lease or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not after having assigned the said lease or agreement for a lease and having where necessary set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said lease or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

1903 (2), c.11, s.46; R.S.S. 1909, c.46, s.47.

**As to liability of executor in respect of rents, etc., in conveyances on rent charges, etc.**

48 In like manner where an executor or administrator liable as such to the rent, covenants or agreements contained in any conveyance or rent-charge whether any such rent be by limitation of use, grant or reservation or agreement for such conveyance granted or assigned to or made and entered into with the testator or intestate whose estate is being administered has satisfied all such liabilities under the said conveyance or agreement for a conveyance as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed or agreed to be conveyed although the period for laying out the same may not have arrived and has conveyed such property or assigned the said agreement for such conveyance as aforesaid to a purchaser thereof he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto respectively without appropriating any part or any further part, as the case may be, of the estate of the deceased to meet any future liability under the said conveyance or agreement for a conveyance; and the executor or administrator so distributing the residuary estate shall not after having made or executed such conveyance or assignment and having where necessary set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance; but nothing herein contained shall prejudice the right of the grantor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.

1903 (2), c.11, s.47; R.S.S. 1909, c.46, s.48.

**SUMMARY APPLICATION TO COURT FOR ADVICE****Trustee, etc., may apply for advice in management of trust property**

49 Any trustee, guardian, executor or administrator shall be at liberty without the institution of an action to apply in court or in chambers in the manner prescribed by rules of court for the opinion, advice or direction of a judge of the supreme court on any question respecting the management or administration of the trust property or the assets of a testator or intestate.

(2) The trustee, guardian, executor or administrator acting upon the opinion, advice or direction given by the judge shall be deemed so far as regards his own responsibility to have discharged his duty as such trustee, guardian, executor or administrator in the subject matter of the said application; but this provision shall not extend to indemnify a trustee, executor or administrator in respect of any act done in accordance with such opinion, advice or direction as aforesaid if the trustee, executor or administrator has been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction.

1903 (2), c.11, s.48; R.S.S. 1909, c.46, s.49.

## ALLOWANCE TO TRUSTEES, ETC.

**Allowance to trustees**

**50** Any trustee under a deed, settlement or will, any executor or administrator, any guardian appointed by any court and any testamentary guardian or other trustee howsoever the trust is created shall be entitled to such fair and reasonable allowance for his care, pains and trouble and his time expended in and about the trust estate as may be allowed by the supreme court or a judge thereof or by any clerk thereof to whom the matter may be referred.

1903 (2), c.11, s.49; R.S.S. 1909, c.46, s.50.

**Allowance to be made although the estate not before the court**

**51** A judge of the supreme court may on application to him for the purpose settle the amount of such compensation although the trust estate is not before the court in any action.

1903 (2), c.11, s.50; R.S.S. 1909, c.46, s.51.

**Act to apply to existing as well as future trusts**

**52** Compensation may be allowed in the case of any trust heretofore created as well as in any to be hereafter created.

1903 (2), c.11, s.51; R.S.S. 1909, c.46, s.52.

**Judges may order an allowance to be made to executor or administrator out of the estate for his trouble**

**53** The judge may allow to the executor or trustee or administrator acting under a will or letters of administration a fair and reasonable allowance for his care, pains and trouble and his time expended in or about the executorship, trusteeship or administration of the estate and effects vested in him under the will or letters of administration and in administering, disposing of and arranging and settling the same and generally in arranging and settling the affairs of the estate and may make an order or orders from time to time therefor and the same shall be allowed to an executor, trustee or administrator in passing his accounts.

1903 (2), c.11, s.52; R.S.S. 1909, c.46, s.53.

**Where allowance fixed by the instrument**

**54** Nothing in the next preceding four sections shall apply to any case in which the allowance is fixed by the instrument creating the trust.

1903 (2), c.11, s.53; R.S.S. 1909, c.46, s.54.

**Solicitor entitled to profit costs**

**55** In addition to any allowance a trustee who is a solicitor shall also be entitled to profit costs for any professional work done in connection with the trust.

1903 (2), c.11, s.54; R.S.S. 1909, c.46, s.55.

## LIMITATION OF ACTIONS

### Application of statutes of limitations to certain actions against trustees

**56** In any action or other proceeding against a trustee or any person claiming through him except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy or is to recover trust property or the proceeds thereof still retained by the trustee or previously received by the trustee and converted to his use the following provisions shall apply:

- (a) The law relating to the limitation of actions shall apply in the like manner and to the like extent as it would in such action or other proceeding if the trustee or person claiming through him had not been a trustee or a person claiming through a trustee;
- (b) If the action or other proceeding is brought to recover money or other property and is one to which no law relating to the limitation of actions applies the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received; but so nevertheless that the Statute shall run against a married woman entitled in possession for her separate use whether with or without restraint upon anticipation but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.
- (2) No beneficiary as against whom there would be a good defence by virtue of this section shall derive any greater or any other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought the action or other proceeding and this section had been pleaded.
- (3) This section shall apply only to actions or other proceedings commenced after the twentieth day of November, 1903, and shall not deprive any executor or administrator of any right or defence to which he is entitled under any law relating to limitation of actions.

1903 (2), c.11, s.55; R.S.S. 1909, c.46, s.56.

## JUDICIAL TRUSTEES

### Power of the court on application to appoint judicial trustee

**57** Where application is made to the supreme court or a judge thereof by or on behalf of the person creating or intending to create a trust or by or on behalf of a trustee or beneficiary the court or judge may in its or his discretion appoint a person (in this Act called a judicial trustee) to be a trustee of said trust either jointly with any other person or as sole trustee and if sufficient cause is shown in place of all or any existing trustees.

- (2) The administration of the property of a deceased person whether a testator or intestate shall be a trust and the executor or administrator a trustee within the meaning of this section.

- (3) Any fit and proper person nominated for the purpose in the application may be appointed a judicial trustee and in the absence of such nomination or if the court or judge is not satisfied of the fitness of a person so nominated an official of the court or other competent person may be appointed and in any case a judicial trustee shall be subject to the control and supervision of the court as an officer thereof.
- (4) The court or judge may either on request or without request give to a judicial trustee any general or special directions in regard to the trust or the administration thereof.
- (5) There may be paid to a judicial trustee out of the trust property such remuneration not exceeding the prescribed limits as the court or judge may assign in each case and the remuneration so assigned to any judicial trustee shall save as the court or judge may for special reasons otherwise order cover all his work and personal outlay.
- (6) Once in every year the accounts of every trust of which a judicial trustee has been appointed shall be audited and a report thereon made to the court by the prescribed persons and in any case where the court or judge shall so direct an inquiry into the administration by a judicial trustee of any trust or into any dealing or transaction of a judicial trustee shall be made in the prescribed manner.

1903 (2), c.11, s.56; R.S.S. 1909, c.46, s.57.