

- (d) where he may be fairly presumed to have received interest;
- (e) where the breach consists in failure to invest trust money and to accumulate the interest or dividend thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate ;
- (f) where the breach consists in the employment of trust property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate or for the net profits made by such employment.

(3) He is liable in case (a) to account for the interest actually received, and in cases (b), (c), and (d) to account for simple interest at the rate of six *per centum* per annum, unless the court otherwise directs.

#### Illustrations

- (a) A trustee improperly leaves trust property outstanding, and it is consequently lost ; he is liable to make good the property lost, but he is not liable to pay interest thereon.
- (b) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market price falls. B is answerable to C for the loss.
- (c) A trustee is guilty of unreasonable delay in investing trust money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay;
- (d) The duty of the trustee is to invest trust money in any of the securities mentioned in section 20. Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust money when the investment should have been made, and the intermediate dividends and interest thereon.
- (e) The instrument of trust directs the trustee to invest trust money either in any such securities or on mortgage of immovable property. The trustee does neither. He is liable for the principal money and interest.
- (f) The instrument of trust directs the trustee to invest trust money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable at the option of the beneficiary, to be charged either with the amount of the principal money and

compound interest, or with the amount of such securities as he might have purchased with the trust money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

- (g) Trust property is invested in one of the securities mentioned in section 20, clause (a), (c), or ((d). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.
- (h) The trust property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

**24.** A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust property cannot set off against his liability a gain which has accrued to another portion of the trust property through another and distinct breach of trust. No set-off allowed to trustee

**25.** Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor. Non-liability for predecessor's default.

**26.** (1) Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee : Non-liability for co-trustee's default.

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

- (a) where he has delivered trust property to his co-trustee without seeing to its proper application ;
- (b) where he allows his co-trustee to receive trust property and fails to make due inquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require ;
- (c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it, or does not within a reasonable time take proper steps to protect the beneficiary's interest.

Joining in receipt for conformity.

- (2) A co-trustee who joins in signing a receipt for trust property, if he proves, or if it otherwise appears that he has not received the same, is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

#### Illustration

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase money is lost, C may be compelled to make good the amount.

Several liability of co-trustees.

- 27.** (1) Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Contribution as between co-trustees.

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss, and if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

(2) Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

Non-liability of trustee paying without notice of transfer by beneficiary.

- 28.** When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

Liability of trustee where beneficiary's interest is forfeited to Government.

- 29.** When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

- 30.** Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds, and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person in whose hands any trust property may be placed, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor otherwise for involuntary losses.

Indemnity of trustees.

- 31.** If it appears to the court that a trustee is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Ordinance, 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.

Relief of trustee from consequences of breach of trust.

## CHAPTER IV

### OF THE RIGHTS AND POWERS OF TRUSTEES

- 32.** A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust property.

Right to title deed-

- 33.** (1) Every trustee may reimburse himself, or pay or discharge out of the trust property, all expenses properly incurred in or about the execution of the trust, or the realization, reservation, or benefit of the trust property, or the protection or support of the beneficiary.

Right to reimbursement of expenses

- (2) If he pays such expenses out of his own pocket, he has a first charge upon the trust property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of the court) shall be enforced only by prohibiting any disposition of the trust property without previous payment of such expenses and interest.

- (3) If the trust property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Right to be  
recouped for  
erroneous  
overpayment.

(4) Where a trustee has by mistake made an overpayment to the beneficiary, he may reimburse the trust property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such overpayment.

Right to  
indemnity from  
gainer by  
breach of trust.

**34.** (1) A person other than a trustee, or a transferee in good faith for consideration who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach, and where such person is a beneficiary, the trustee has a charge on his interest for such amount.

(2) Nothing in this section shall be deemed to entitle a trustee to be indemnified who has in committing the breach of trust, been guilty of fraud.

#### *Illustration*

The trustee of a family trust bona fide pays over a certain part of the trust moneys to a member of the family contrary to the terms of the instrument of trust, and the court orders the trustee to replace the money. He is entitled to be indemnified by the person to whom he has paid it.

Right to apply  
to court for  
opinion in  
management of  
trust property.

**35.** (1) Any trustee may, without instituting a suit, apply by petition to the court for its opinion, advice, or direction on any present questions respecting the management or administration of the trust property other than questions of detail, difficulty, or importance not proper, in the opinion of the court, for summary disposal.

(2) A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the court thinks fit.

(3) The trustee stating in good faith the facts in such petition, and acting upon the opinion, advice, or direction given by the court, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

(4) The costs of every application under this section shall be in the discretion of the court to which it is made.

Right to  
settlement of  
accounts.

**36.** When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the

trust property examined and settled ; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

**37.** In addition to the powers expressly conferred by this Ordinance and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realization, protection, or benefit of the trust property, and for the protection or support of a beneficiary who is not competent to contract. General authority of trustee

**38.** (1) Except with the permission of the court, and subject to any special statutory provision in that behalf, no trustee shall lease trust property for a term expiring at a date later than the end of ten years from the date of the execution of the lease, or if the date of the termination of the trust is ascertained, for a term expiring at a date later than the date of such termination, nor without reserving the best yearly rent that can be reasonably obtained. Power to lease.

(2) Any lease executed without the permission of the court for a term exceeding the limits authorized by this section shall be void to the extent to which it so exceeds the said limits.

**39.** Where the trustee is empowered to sell any trust property, he may sell the same, subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs. Power to sell in lots, and either by public auction or private contract.

**40.** (1) The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or terms of payment, or otherwise, in any conditions of sale or contract for sale, as he thinks fit ; and may also buy in the property or any part thereof at any sale by auction, and rescind »or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is' so rescinded, without being responsible to the beneficiary for any loss occasioned thereby : Power to sell under special conditions.

Provided he shall have acted in good faith and without negligence, Power to buy in and re-sell.

Time allowed for selling trust property.

(2) Where a trustee is directed to sell trust property or to invest trust money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

*Illustrations*

(a) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(b) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

Power to convey.

41. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

Power to vary investments.

42. (1) A trustee may, at his discretion, call in any trust property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature.

Power of court to authorize sale, exchange, &c., of trust property.

(2) When any immovable property is the subject-matter of any trust, the court may authorize any sale, exchange, mortgage, or other disposition of the property, which it considers to be in the interests of the objects of the trust.

(3) Nothing contained in subsection" (2) shall be deemed to derogate from the rights of a trustee under subsection (1).

Power to apply property of minors, &c., for their maintenance.

43. (1) Where any property is held by a trustee in trust for a minor, either for life or for any greater interest, and whether absolutely or contingently on his attaining the age of majority, or on the occurrence of any event before his attaining that age, the trustee may at his sole discretion pay to the minor's parent or guardian, if any, or otherwise apply for or towards the minor's maintenance, education, or benefit, the income of the property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the minor's maintenance or education or not.

(2) The trustee shall accumulate all the residue of the income in the way of compound interest by investing the same

and the resulting income thereof from time to time in securities in which he is by the instrument of trust, if any, or by section 20 of this Ordinance, authorized to invest trust money, and shall hold the accumulations for the benefit of the minor ; but so that the trustee may at any time, if he thinks fit, apply the accumulations, or any part thereof, as if the same were income arising in the then current year.

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

(4) Where the income of the trust property is insufficient for the minor's maintenance, or education, or marriage, or advancement in life, the trustee may, with the permission of the court, and not otherwise, apply the whole or any part of such property for or towards such maintenance, education, marriage, or advancement.

44. Any trustees or trustee may give a receipt in writing for any money, securities, or other movable property payable, transferable, or deliverable to them or him by reason, or in the exercise, of any trust or power ; and, in the absence of fraud, such receipt shall discharge the person paying, transferring, or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

45. (1) Two or more trustees acting together, or if there is only one trustee of the trust, such trustee may, if and as they or he shall think fit—

(a) accept any composition or any security for any debt or for any property claimed ;

(b) allow any time for payment of any debt ;

(c) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust ; and

(d) for any of those purposes enter into, give, execute, and do such agreements, instruments of

Power to give receipts.

Power to compound, &c.

composition or arrangement, releases, and other things as to them or him seem expedient, without being responsible for any loss occasioned by any act or thing so done by them or him in good faith and without negligence.

(2) The powers conferred by subsection (1) on two or more trustees acting together may be exercised by a sole acting trustee, when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof.

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

(4) Nothing in this section shall be deemed to affect the application of the law relating to the property of minors.

46. When an authority to deal with the trust property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

47. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the court by which the decree has been made, or, where an appeal against the decree is pending, of the Court of Appeal.

CHAPTER V

OF THE DISABILITIES OF TRUSTEES

48. A trustee who has accepted the trust cannot afterwards renounce it, except—

- (a) with the permission of the court ; or
- (b) if the beneficiary is competent to contract, with his consent; or
- (c) by virtue of a special power in the instrument of trust.

49. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless—

- (a) the instrument of trust so provides ; or
- (b) the delegation is in the regular course of business ; or
- (c) the delegation is necessary ; or
- (d) the beneficiary, being competent to contract, consents to the delegation ; or
- (e) the court so directs,

Explanation.—The appointment of an attorney or agent or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

Illustrations

- (a) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust property to D and E upon the trusts of A's will.
- (b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.
- (c) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents.

50. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides, or except when on good cause shown the court otherwise directs.

51. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by the court.

52. (1) In the absence of express directions to the contrary contained in the instrument of trust, or of a contract to the contrary entered into with the beneficiary, an order of court, or express statutory provision in that behalf, a trustee has no right to remuneration for his trouble, skill, and loss of time in executing the trust.

(2) Nothing in this section shall be deemed to prejudice the right of any resident trustee actually managing the daily administration of any religious foundation, in respect of which the remuneration of the trustee shall not have been settled under section 108, to such remuneration as has been in practice received :

Provided that such remuneration shall in no case exceed ten *per centum* of the gross income of the foundation.

Power to several trustees of whom one disclaims or dies.

Suspension of trustee's power by decree.

Trustee cannot renounce after acceptance.

Trustee cannot delegate.

Co-trustees cannot act singly.

Control of" discretionary power.

Trustee may not charge for services

Trustee may not use trust property for his own profit.

**53.** A trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust.

Trustee for sale or his agent may not buy.

**54.** No trustee whose duty it is to sell trust property, and no agent employed by such trustee for the purpose of the sale may, directly or indirectly, buy the same or any interest therein on his own account or as agent for a third person.

Trustee may not buy beneficiary's interest without permission.

**55.** No trustee, and no person who has recently ceased to be a trustee, may, without the permission of the court, buy or become mortgagee or lessee of the trust property or any part thereof ; and such permission shall not be given unless the proposed purchase, mortgage, or lease is manifestly for the advantage of the beneficiary,

Trustee for purchase.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for 'the beneficiary may buy it or any part thereof, or obtain a mortgage or lease of it or any part thereof for himself.

Co-trustees may not lend to one of themselves.

**56.** A trustee or co-trustee whose duty it is to invest trust money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust property, require the trustees to transfer it immediately to him.

(b) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B. who has attained his majority and is otherwise competent to contract. B may claim the Rs. 10,000.

(c) A transfers certain property to B and directs him to sell or invest it for the benefit of C, who is competent to contract, C may elect to take the property in its original character.

**59.** The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust property, the accounts of the trust property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

Right to inspect and take copies of instrument of trust, accounts, &c.

**60.** The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest.

Right to transfer beneficial interest.

**61.** When no trustees are appointed, or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the court until the appointment of a trustee or new trustee, or until the execution of the trust becomes practicable.

Right to sue for execution of trust.

**62.** Subject to the provisions of the instrument of trust, the beneficiary has a right to require that the trust property shall be properly protected and held and administered by proper persons and by a proper number of such persons. ,

Right to proper trustees.

*Explanation 1.*—The following are not proper persons within the meaning of this section:—  
\* An alien enemy ; a person having an interest inconsistent with that of the beneficiary : a person in insolvent circumstances ; a minor.

*Explanation 2.*—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

## CHAPTER VI

### OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY

Right to rents and profits.

**57.** The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust property.

Right to specific execution.

**58.** The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest.

Right to transfer of possession.

And, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract, and all of one mind, he or they may require the trustee to transfer the trust property to him or them, or to such person as he or they may direct.

#### Illustrations

(a) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains majority, and then to transfer

*Illustrations*

- (a) A. one of several beneficiaries, proves that B. the trustee, has improperly disposed of part of the trust property. or that the property is in danger from B's being in insolvent circumstances. or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust properly.
- (b) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime ; then A dies. C is entitled to have the property conveyed to A trustee for him.
- (c) A conveys certain property to four trustees. in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees,
- (d) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.
- (e) A. a trustee for B. refuses to act. or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

Right to  
compel to  
perform any act  
of duty

**63.** The beneficiary has a right to require that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

*Illustrations*

- (a) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so 10 be paid, A fails to pay the money in accordance with his contract- C may compel B on a proper indemnity to allow C to sue on the contract in B's name.
- (b) A is trustee of certain land. with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

Wrongful  
purchase by  
trustee.

**64.** (1) Where a trustee has wrongfully bought trust property, the beneficiary has a right to have the property declared subject to the trust, or re-transferred by the trustee if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase money paid by the trustee, with interest and such other expenses (if any) as he has properly incurred in the preservation of the property ; and the trustee or purchaser must—

- (a) account for the net profits of the property,
  - (b) be charged with an occupation rent if he has been in actual possession of the property, and
  - (c) allow the beneficiary to deduct a proportionate part of the purchase money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.
- (2) Nothing in this section—
- (a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or re-transferred, have contracted in good faith with the trustee or purchaser ; or
  - (b) entitles the beneficiary to have the property declared subject to the trust or re-transferred where he, being competent to contract, has himself, without duress or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

**65.** (1) Where trust property comes into the hands of a third person inconsistently with the trust, the beneficiary may institute a suit for a declaration that the property is comprised in the trust.

Following trust  
properly into  
the hands of  
third persons -  
into that into  
which it has  
been converted.

(2) Where the trustee has disposed of trust property, and the money or other property which he has received therefor can be traced in his hands or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust property.

*Illustrations*

- (a) A. a trustee for B of Rs. 10,000 wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.
- (b) A. a trustee, wrongfully purchases land in his own name. partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust money so misemployed,

**66.** (1) Nothing in section 65 entitles the beneficiary to any right in respect of property in the hands of—

Saving of rights  
of certain  
transferees.

- (a) a transferee in good faith for consideration without having notice of the trust, either when the purchase money was paid, or when the conveyance was executed ; or

- (b) ii transferee for consideration from such a transferee.

(2) A judgment-creditor of the trustee attaching and purchasing trust property is not a transferee for consideration within the meaning of this section.

(3) Nothing in section 65 applies to money or currency notes in the hands of a bona fide holder to whom they have passed in circulation, or to negotiable instruments in the hands of a bona fide holder for value, or shall be deemed to affect sections 22 and 23 of the Sale of Goods Ordinance, or the rights of any holder in good faith for consideration of any document of title which by law passes the ownership of goods to which it relates by endorsement or delivery, or the liability of a person to whom a debt or charge is transferred, or the right of a person who holds property under a title declared indefeasible by statute or of his successor in title.

Acquisition by trustee of trust property wrongfully converted-

**67.** Where a trustee wrongfully sells or otherwise transfers trust property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

Right in case of blended property.

**68.** Where the trustee wrongfully mingles the trust property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Wrongful employment by partner trustee of trust property for partnership purposes.

**69.** If a partner, being a trustee, wrongfully employs trust property in the business or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries unless he had notice of the breach of trust. The partners having such notice are jointly and severally liable for the breach of trust.

#### Illustrations

- (a) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding up the affairs of the partnership,

retains all the assets in the business. 1 may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

- (A) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

**70.** Where one of several beneficiaries being competent to contract—

Liability of beneficiary joining on breach of trust.

- (a) joins in committing a breach of trust ; or
- (b) knowingly obtains any advantage therefrom without the consent of the other beneficiaries ; or
- (c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries ; or
- (d) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

**71.** Every person to whom a beneficiary transfers his interests has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

Rights and liabilities of beneficiary's transferee.

## CHAPTER VII

### OF VACATING THE OFFICE OF TRUSTEE

**72.** The office of a trustee is vacated by his death or by his discharge from his office.

Office how vacated.

**73.** A trustee may be discharged from his office only as follows :—

Discharge of trustee.