sides being duly created, it is necessary for the validity of the trust that it should be a lawful one. An unlawful trust is one which contravenes the policy of the law in any respect. Examples of such trusts are trusts for a corporation without licence, for a per­petuity, and for purposes subversive of morality, such as trusts for illegitimate children to be hereafter born. Superstitious uses (see Roman Catholic Church, vol. xx. p. 632) also fall under this head. There are also certain trusts which are avoided by statute under particular circumstances, such as settlements in fraud of creditors (see Bankruptcy, Settlement). The law cannot be evaded by attempting to constitute a secret trust for an unlawful purpose. If an estate be devised by words *prima facie* carrying the beneficial interest, with an understanding that the devisee will hold the estate in trust for such a purpose, he may be compelled to answer as to the secret trust, and on acknowledgment or proof of it there will be a resulting trust to the heir-at-law. In the case of an advowson suspected to be held for the benefit of a Roman Catholic patron, there is a special enactment to the same effect (see Quare Impedit). The rales of equity in charitable trusts (which include all those mentioned in the preamble to 43 Eliz. c. 4)@@1 are less strict than those adopted in private trusts. Charitable trusts must be lawful, *e.g.,* they must not contravene the Statutes of Mortmain ; but a wider latitude of construction is allowed in order to carry out the intentions of the founder, and they will not be allowed to fail for want or uncertainty of objects to be benefited. The court, applying the doctrine of *cy près,* will, on failure of the original ground of the charity, apply the funds as nearly as possible in the same manner. On this principle gifts originally made for purely charitable purposes have been extended to educational pur­poses. Further, trustees of a charity may act by a majority, but ordinary trustees cannot by the act of a majority (unless specially empowered so to do) bind a dissenting minority or the trust pro­perty. A trust estate is subject as far as possible to the rales of law applicable to a legal estate of a corresponding nature, in pur­suance of the maxim, “Equity follows the law.” Thus trust pro­perty is assets for payment of debts, may be taken in execution, passes to creditors in bankruptcy, and is subject to dower and curtesy, to the rules against perpetuities, and to the Statutes of Limitation. This assimilation of the legal and equitable estates has been produced partly by judicial decisions, partly by legisla­tion. A trust is extinguished, as it is created, either by act of a party or by operation of law. An example of the former mode of extinction is a release by deed, the general means of discharge of a trustee when the purposes of the trust have been accomplished. Extinction by operation of law takes place when there is a failure of the objects of the trust : *e.g.,* if the cestui que trust die intestate without heirs or next of kin, the trustee retains the property dis­charged of the trust if it be real estate, if it be personalty it falls to the crown. Equitable interests in real estate abroad are as a rule subject to the *lex loci rei sitæ,* and an English court has no jurisdiction to enforce a trust or settle a scheme for the administra­tion of a charity in a foreign country. An English court has, however, jurisdiction to administer the trusts of a will as to the whole real and personal estate of a testator, even though only a very small part of the estate, and that wholly personal, is in England. This was decided by the House of Lords in a well-known case in 1883.@@2

*Rights and Duties of the Trustee.—*The principal general properties of the office of trustee, as given by Mr Lewin, are these :—(1) A trustee having once accepted the trust cannot afterwards renounce. (2) He cannot delegate it. (3) In the case of co-trustees the office must be exercised by all the trustees jointly. (4) On the death of one trustee there is survivorship : that is, the trust will pass to the survivors or survivor. (5) One trustee shall not be liable for the acts of his co-trustee. (6) A trustee shall derive no personal benefit from the trusteeship. The office cannot be renounced or delegated, because it is one of personal confidence. It can, however, be resigned, and recent legislation, as has been already stated, lias given a retiring trustee large powers of appointing a successor. In the case of the death of a single or last surviving trustee of real estate, the trust estate by the Conveyancing Act, 1881, now devolves upon his personal representative instead of upon his heir or devisee. The liability of one trustee for the acts or defaults of another often raises very difficult questions. A difference is made between trustees and executors. An executor is liable for joining in a receipt *pro forma, as* it is not necessary for him to do so, one executor having authority to act without his co-executor ; a trustee can show that he only joined for conformity, and that another received the money. A trustee’s receipt in writing is, under the Conveyancing Act, 1881 (superseding Lord St Leonards’s Act of 1860), a sufficient discharge, and exonerates the person paying from seeing that the money paid is duly applied according to the trast. If one trustee be cognizant of a breach of trust committed by another, and conceal it or do not take active measures to protect the cestui que trust’s interests, he will be liable for the breach of trust. An indemnity clause is now implied by statute in every trust deed, but this does not protect a trustee against liability which would attach at law. A trustee, if he commit a breach of trust at the request of his cestui que trust, may secure himself by an indemnity, provided that the cestui que trust has been fully informed of the facts of the case, and is not under any disability to consent, such as infancy. The rule that a trustee is not to benefit by his office is subject to some ex­ceptions. He may do so if the instrument creating him trustee specially allows him remuneration, as is usually the case where a solicitor is appointed. Where the trust entirely fails, as has been said above, the trustee is indirectly remunerated by his right to retain the trust estate. The main duties of trustees are to place the trust property in a proper state of security, to keep it (if per­sonalty) in safe custody, and to properly invest and distribute it. A trustee must be careful not to place himself in a position where his interest might clash with his duty. As a rule he cannot safely purchase from his cestui que trust while the fiduciary relation exists between them. In all purchases with trust money he is bound to obtain the best price, unless where an Act of Parliament, like the Housing of the Working Classes Act, 1885, specially authorizes sale at an under value. Investments by trustees demand special notice. The general rale is that a trustee must take as much care of the trust property as of his own. He is, therefore, justified in following the usual course of business adopted by prudent men in making investments, *e.g.,* by employing a stock-broker in the ordinary way. At the same time he has not an uncontrolled power of investment, for (unless authorized by the instrument creating the trust) he cannot lend trust money on personal security or invest in shares of a private company. A trustee of shares may be liable as a beneficial owner, even though his name appears on the register of the company as a trustee. By recent legislation trust­ees, where not expressly forbidden by the instrument creating the trust, have either an absolute or qualified right to invest in certain securities. They have an absolute right to invest in real securities in the United Kingdom (but not on a second mortgage), in charges or mortgages under the Improvement of Land Act, 1864, in con­sols, exchequer bills, or any security the interest whereon is guar­anteed by parliament, in Bank of England, Bank of Ireland, East India, and Metropolitan Board of Works stock. They have a qualified power of investment (that is, an extension of powers already given in the instrument) in debentures or debenture stock of railway and other companies, and of corporations and local authorities under the Local Loans Act, 1875, in mortgage deben­tures under the Mortgage Debenture Acts of 1865 and 1870, and in securities of the Isle of Man Government. Trustees under the Settled Land Act, 1882, have somewhat larger powers as to railway stock. In many cases there are restrictions on investment in stock certificates payable to bearer, although in authorized securities. A power of varying investments is generally implied, though not expressly given by statute, as in Scotland. The duties of trustees in the distribution of trust funds have been made less onerous by the Trustee Relief Acts of 1847 and 1849, which enabled trustees or a majority of them to pay into the Bank of England to the account of the particular trust any moneys belonging to the trust, thus bringing the property within the jurisdiction of the court, from which it can only be obtained on petition. Similar powers were conferred upon trustees of charities by 18 and 19 Vict. c. 124. By more recent Acts (22 and 23 Vict. c. 35, 23 and 24 Vict. c. 38) application for advice may be made by a trustee to a judge of the Chancery Division on a petition or summons. The liability of a trustee to his cestui que trust on any claim for property held on an express trust or in respect of breach of such trust is not barred by any statute of limitations, 36 and 37 Vict. c. 66, s. 26 (2). The powers of trustees have lately been considerably extended by the Conveyancing Act, 1881, and the Settled Land Act, 1882, in other matters besides those that have been already noticed. One of the most important of the new powers is that of compounding, compromising, or abandoning claims relating to the trust. For the trustee in bankruptcy, see Bankruptcy. The trustee to pre­serve contingent remainders, at one time common in conveyancing, has ceased to be necessary (see Remainder, Term). A bare trustee is one to whose office no duties were originally attached, or who, though such duties were attached, would on the requisition of the cestui que trust be compellable to convey the estate to him or by his direction. The term is used in some Acts of Parliament, for instance the Vendor and Purchaser Act, 1874.@@3

*Rights and Duties of the Cestui que Trust.—*These may be to a great extent deduced from what has been already said as to the correlative duties and rights of the trustee. The cestui que trust has a general right to the due management of the trust property, to proper accounts, and to enjoyment of the profits. He can as a rule only act with the concurrence of the trustee, unless he seeks a remedy against the trustee himself. Thus the trustee must be a party to an action brought in respect of the trust estate, and must join in presenting a petition in bankruptcy on account of a debt

@@@1 See Charities, where the preamble of the statute is set out in full.

@@@2 Ewing *v.* Orr-Ewing, *Law Reports,* 9 Appeal Cases, 34.

@@@3 The phrase “bare trust" occurs as long ago as 1686, Nevil *v.* Saunders. 1 *Vernon's Rep.,* 415.