

CHAPTER 84.

Of certain Rights, Liabilities and Duties of Executors, Administrators and Trustees.

SECTION	SECTION
1.—Executors may bring action for injuries to real estate of deceased. Action may be brought against executors for injuries done by deceased.	13.—Trustees, &c., may obtain opinion, advice, &c., of Supreme Court.
2.—Executors may distrain. Limitation.	14.—Construction of instruments of trust; incorporated clause.
4.—Trustees, &c., may invest trust moneys in Savings' Bank	15.—Investments by trustees, &c., in what securities.
5.—Power of Supreme Court in respect of trust moneys and investments.	16.—Trustees of renewable leases, their duties, &c.
6.—Power of Court where all trustees, &c., do not concur.	17.—Trusts for infants. Trustees may pay guardian, &c. Proviso.
7, 8, 9.—Exemption of Savings' Bank from liability. Indemnity.	18.—Receipts of trustees, sufficient discharge.
10.—Protection of trustees, &c., acting <i>bona fide</i> under power of Attorney.	19.—This chapter subject to express provisions of instruments, and to limitations.
11.—Leases of testator or intestate. Liability of executor, &c., under assignment of lease. Distribution of estate, &c.	20.—Chapter not to empower trustees except to same extent as instruments containing similar powers.
12.—Notice to creditors, distribution thereafter; protection of executor, &c.	21.—Rehearing by Supreme Court. Procedure.
25.—Supreme Court to make rules, &c.	22.—23.—Compensation to executors, &c.
	24.—Costs.
	25.—Executors, &c., may by leave of Court purchase estate.

1 An action may be maintained by the executors or administrators of any person deceased, for any injury to the real estate of such person, committed in his life-time, for which an action might have been maintained by such person, so as such injury shall have been committed within six months before the death of such deceased person, and provided such action shall be brought within one year after the death of such person; and damages when recovered shall be part of the personal estate of such person; and an action may be maintained against the executors or administrators of any person deceased, for any wrong committed by him in his life-time to another, in respect to his property real or personal, so as such injury shall have been committed within six months before such person's death, and so as such action shall be brought within six months after such executors or administrators shall have taken upon themselves the administration of the estate and effects of such person; and the damages to be recovered in such action shall be payable in like order of administration, as the simple contract debts of such persons.

2. The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will for the arrearages

of rent due to such lessor or landlord in his life-time, in like manner as such lessor or landlord might have done in his life-time.

3. Such arrearages may be distrained for after the end or determination of such term or lease at will, in the same manner as if such term or lease had not been ended or determined: Provided that such distress be made within the space of six months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due. All the powers and provisions of the law relating to distress for rent shall be applicable to distresses made under the provisions of this chapter.

4. All trustees, executors, administrators, or other persons, having in their hands any money belonging to any trust whatsoever, or the major part of them, shall be at liberty, on filing an affidavit, shortly describing the instrument creating the trust, according to the best of their knowledge and belief, to pay the same, with the consent of the Supreme Court, into the Newfoundland Savings' Bank, which is hereby required to receive the same, to the account of the Supreme Court in the matter of the particular trust, (describing the same by the names of the parties as accurately as may be, for the purpose of distinguishing it,) in trust, to attend the order of the said Court. And all trustees, executors, administrators, or other persons, having any government debentures, stock in any company, bank, or other public or private company or corporation, whether domestic or foreign, standing in their names or in the names of any deceased persons, of whom they shall be personal representatives on any trusts whatsoever, or the major part of them, shall be at liberty to transfer or deposit such debentures or stocks into or in the name of the Newfoundland Savings' Bank, with the consent of the said Court, and in every such case the receipt of the said bank for the moneys so paid, or in the case of debentures or stock, the certificate of the proper officer of transfer or deposit of such debentures or stock, shall be a sufficient discharge to such trustees or other persons for the money so paid, or the debentures or stocks, and so transferred or deposited.

5. Such orders as shall seem fit shall be made from time to time by the Supreme Court aforesaid, in respect of the trust moneys, stocks, or debentures, so paid in, transferred or deposited as aforesaid, and for the investment and payment of any such moneys, or of any dividends, interest or bonuses on any such debentures or stocks, and for the administration of any such trusts generally, upon a petition to be presented in a summary way to the said Court by such parties as to the Court shall appear to be competent and necessary in that behalf; and service of such petition shall be made upon such persons within or without this colony, as the Court shall see fit and direct; and every order made on such petition shall have authority and effect, and shall be enforced and subject to re hearing and appeal in the same manner as if the same had been made in a suit regularly instituted on the equity side of the said Court; and if it shall appear that any such trust funds cannot be safely distributed without the institu-

tion of one or more suits, the said Court may direct any such suit or suits to be instituted.

6. If, upon any petition presented to the said Court, it shall appear at the hearing thereof that the major part of such trustees, executors, or administrators, are desirous of transferring, paying, or delivering the said moneys, debentures or stocks, to the said Newfoundland Savings' Bank but that for any reason the concurrence of the other or others of them cannot be had, the Court may order and direct such transfer, payment or delivery to be made by the major part of such persons, without the concurrence of the other or others of them; and where any such moneys, debentures or stocks shall be deposited with any banker, broker, or other depository, the said Court may make such order for the payment or delivery of such moneys, debentures or stocks to the major part of such trustees, executors, or administrators, or other persons as aforesaid, for the purpose of being paid or delivered to the said Newfoundland Savings' Bank, as to the Court shall seem meet; and every transfer of any debenture or stocks, and every payment of money or delivery of securities in pursuance of any such order, shall be as valid and effectual as if the same had been made on the authority or by the act of all the persons entitled to the debenture or stock so transferred, or the moneys or securities so paid or delivered respectively, and shall fully protect and indemnify all persons acting in pursuance of such order.

7. In case of any order being made by the Supreme Court, by virtue of the preceding sections, for the transfer to, or deposit in, the Newfoundland Savings' Bank, by any trustees, executors, administrators or other persons, of any government debentures, stock in any water company, bank, or other public or private company or corporation, no liability or responsibility whatever shall attach to the said Newfoundland Savings' Bank in respect of the said debentures or stock, or in respect of the trusts to which the same may be subject.

8. No order shall be made by the Supreme Court, by virtue of the preceding sections, for the transfer or deposit of such debentures or stock under which order the said Newfoundland Savings' Bank may be compelled to assume any liability or responsibility whatever respecting the said debentures or stock, or in respect of the trusts to which the same may be subject.

9. In all cases when any order may be made by the Supreme Court under the preceding sections for the paying of any money into the Newfoundland Savings' Bank, or the transfer to, or deposit in, the said bank of any debentures or stock, or relating to any moneys paid, or debentures or stock transferred or deposited, or to the trust estate to which the same may belong, the said bank shall be paid and indemnified out of such trust estate for all costs and expenses reasonably incurred by the said bank in and about the same; and all such costs and expenses incurred by the said bank shall be taxed against such trust estate as costs between solicitor and client.

10. No trustee, executor or administrator, making any payment or doing any act, *bona fide*, under or in pursuance of any power of attorney, shall be liable for the moneys so paid, or the act so done, by reason that the person who gave the power of attorney was dead at the time of such payment or act, or had done some act to avoid the power, provided that the fact of the death, or of the doing or such act as last aforesaid, at the time of such payment, or act *bona fide* done as aforesaid by such trustee, executor or administrator, was not known to him. Provided always that nothing herein contained shall in any manner affect or prejudice the right of any persons entitled to the money against the person to whom such payment shall have been made, but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee, executor, or administrator, if the money had not been paid away under such power of attorney.

11. 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, shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereafter mentioned, and shall have 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 shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residue of the said 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 personal estate of the deceased to meet any future liability under the said lease or agreement for a lease, and the executor and 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.

12. Where an executor or administrator shall have given such or the like notices as in the opinion of the Supreme Court or a Judge thereof shall have been sufficient, for creditors and others to send in to the executors or administrators their claims against the estate of the testator or intestate, such 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 claim, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator, has then notice, and shall not be liable for the assets or any part thereof so distri-

buted to any person of whose claim such executor or administrator shall not have had notice at the time of the distribution of the said assets or part thereof, as the case may be; but nothing in the present chapter contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

13. Any trustee, executor or administrator shall be at liberty, without the institution of a suit, to apply by petition to the Supreme Court or a Judge thereof for the opinion, advice or direction of such Court or Judge on any question respecting the management or administration of the trust, property or assets of any testator or intestate, notice of such application, with copy of the said petition, to be served upon, or the hearing thereof to be attended by, all persons interested in such application, or such of them as the said Court or Judge shall think expedient; and the trustee, executor or administrator, acting upon the opinion, advice or direction given by such Court or Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor or administrator in the subject matter of the said application: provided nevertheless, that this chapter shall not extend to indemnify any trustee, executor or administrator, in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if such trustee, executor or administrator, shall have been guilty of any fraud, or wilful concealment or misrepresentation in obtaining such opinion, advice or direction.

14. Every deed, will or other instrument 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 trustee or trustees 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, neglects, receipts 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 stock, funds or securities, nor for any other loss unless the same happen through their own wilful 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.

15. When a trustee, executor or administrator shall not, by the instrument creating his trust, be expressly forbidden to invest any trust fund on landed securities, or in the stock or debentures of this colony, or of the Harbor Grace Water Company, or in the debentures or stock of the Dominion of Canada, or other British colony, such trustee, executor

or administrator may invest such trust fund on such securities, stock or debentures, and he shall not be liable on that account as for a breach of trust, provided that such investment shall in other respects be reasonable and proper, and, in case of landed securities, be first approved of by a Judge of the Supreme Court. Under like circumstance; a trustee, executor or administrator may call in any trust fund invested in securities other than those aforesaid, and invest the same in manner aforesaid in any of the securities above mentioned, and from time to time at discretion, vary such investments for others of the same nature: provided always that no such original investments as aforesaid shall be called in, and no such change of investment, as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person, unless on order of the Supreme Court first had and obtained after notice to such person.

16. Trustees of any leaseholds for lives or years, which are renewable from time to time, either under any covenant or contract, may, if they shall in their discretion think fit, and such trustees, if thereunto required by any person having any beneficial interest present, or future or contingent in such leaseholds, shall use their best endeavours to obtain from time to time a renewed lease of the same hereditaments on reasonable terms, and for that purpose such trustees may, from time to time, make or concur in making such surrender of the lease for the time being subsisting, and do all such other acts as shall be requisite in that behalf; but this section is not to apply to any lease where, by the terms of the instrument creating the trust, the person in possession for his life, or other limited interest, is entitled to enjoy the same without any obligation to renew the lease or to contribute to the expense of renewing the same.

17. 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, such trustees may, at their sole discretion, pay to the guardian (if any) of such infant, or otherwise 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 other 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 accumulations shall have arisen: Provided always that such trustees may, at any time, if it shall appear to them expedient, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

18. The receipts in writing of any trustee or trustees for any money payable to them or him, by reason or in the exercise of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof or from being answerable for any loss or misapplication thereof.

19. None of the powers or incidents hereby conferred or annexed to particular offices, estates or circumstances, shall take effect or be exercisable if it be declared in the deed, will, or other instrument creating such offices, estates, or circumstances, that they shall not take effect; and where there is no such declaration, then, if any variations or limitations of any of the powers or incidents hereby conferred or annexed are contained in such deed, will, or other instrument, such powers or incidents shall be exercisable, or shall take effect only subject to such variations or limitations.

20. Nothing in this chapter contained shall be deemed to empower any trustees or other persons to deal with or affect the estates or rights of any persons soever, except to the extent to which they might have dealt with or affected the estates or rights of such persons if the deed, will, or other instrument under which such trustees or other persons are empowered to act, had contained express powers for such trustees or other persons so as to deal with or affect such estates or rights.

21. Any person feeling himself aggrieved by the decision of a Judge in Chambers, or sitting alone in the Supreme Court, and proceeding under the provisions of this chapter, may have a re-hearing in manner provided by the ninth section of chapter fifty of these Consolidated Statutes, entitled "Of the Supreme Court and Procedure therein," upon applying for the same by petition to the Court or Judge within twenty days after the decision complained of shall have been pronounced, and upon notice to the other party or parties, upon such terms as to costs, as to payment into Court of any money, as to the doing or not doing of any particular act or acts, as to the giving of security for the performance of such judgment, order or decree, as such Court or Judge shall direct.

22. Executors, administrators, or trustees, may, if the Supreme Court or any Judge thereof shall see fit, be allowed, over and above all actual and necessary expenses, such compensation for their services as may appear to such Court or Judge to be just and reasonable; and the said Court or Judge may further apportion such compensation among the executors, administrators, or trustees, in such way as may appear just and proper, according to the labor bestowed or responsibility incurred by them respectively.

23. When any provision shall be made by any will for specific compensation to an executor, or the deed or other instrument creating the trust makes provision for compensation to the trustee, the same shall be

deemed a full satisfaction for his services in lieu of any compensation as mentioned in the foregoing section, or his share thereof, unless such executor or trustee shall, by a declaration under his hand, filed in the said Court, renounce all claim to such specific legacy or compensation so provided. Such declaration to be filed before probate or administration taken, or accepting the office of trustee.

24. Costs of all proceedings under this chapter shall be in the discretion of the Court or Judge, and shall be taxed as nearly as applicable according to the practice on the equity side of the said Supreme Court.

25. Executors, administrators, and trustees, may, by leave of a Judge of the Supreme Court, purchase the estate and effects of the testator or intestate, or trust property, or any part thereof, subject in all cases to such directions as such Judge may make in relation to such sale and all matters incident thereto: Provided that no such sale shall be valid until confirmed by order of a Judge.

26. The said Supreme Court shall have power to make all rules and regulations necessary and proper for carrying the provisions of this chapter into effect; and such rules and regulations shall be published in the *Royal Gazette* of this colony, and posted in the office of the Chief Clerk of the said Court, for at least one month before they shall come into operation.