

AUSTRALIAN CAPITAL TERRITORY.

No. 11 of 1944.

AN ORDINANCE

To amend the Trustee Act Amendment Act, 1902, of the State of New South Wales, in its application to the Territory.

BE it ordained by the Administrator of the Government of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seal of Government Acceptance Act 1909-1938* and the *Seal of Government (Administration) Act 1910-1940*, as follows:—

1. This Ordinance may be cited as the *Trustee Ordinance* short title. 1944.*

2. Section ten of the Trustee Act Amendment Act, 1902, of the State of New South Wales, in its application to the Territory is repealed and the following sections are inserted in its stead:—

“10.—(1.) Where any leasehold or freehold land is vested in a trustee for any infant, or in trust for any persons in succession, the Court may authorize the trustee to pay or apply capital money subject to the trust for any one or more of the following purposes, as to the Court seems fit, namely:—

Improvements
and repairs.

- (a) To effect repairs to any existing buildings, dams, fences or other erections upon the land;
- (b) To effect improvements of or upon the land, or to reconstruct enlarge or improve any existing buildings, dams, fences or other erections thereon;
- (c) To erect any new buildings, dams, fences or other erections upon the land;
- (d) To erect or join in erecting any give and take fence, that is to say, a fence part of which is on the land and part on adjoining land;
- (e) To restock the land with sheep, cattle, or horses;
- (f) To replace machinery or implements required for the land.

“(2.) The trustee may be so authorized where the Court, having due regard to the interest of all persons beneficially interested in the land, thinks that the proposed expenditure is expedient, although it may not be necessary for the purpose of the salvage of the property.

* Notified in the *Commonwealth Gazette* on 30th November, 1944.

“(3.) The amount of capital money that may be so expended shall be stated in the order authorizing the proposed expenditure.

“(4.) The Court may authorize the trustee, as to the Court seems fit—

- (a) to raise the amount by mortgage of the land, or by sale of a part thereof;
- (b) to raise the amount by mortgage or sale of any other real or personal property held upon the same trusts;
- (c) to pay the amount out of any moneys under the control of the trustee and held by him upon the same trusts;
- (d) to provide the amount partly in one and partly in another of those modes;
- (e) to provide a sinking fund out of income.

“(5.) Where the amount is authorized to be raised by mortgage the Court may give directions to the trustee how the principal and interest are to be paid.

“(6.) The Court may require such provision for a sinking fund as the Court thinks proper.

“(7.) The Court shall give such directions as appear necessary and proper, so as to throw upon the respective interests of the persons beneficially interested their proper proportion of the moneys to be expended.

“(8.) No purchaser or mortgagee paying or advancing money upon any sale or mortgage authorized by the Court under this section shall be required to see to the application of the purchase money or mortgage money, and the protection given by this sub-section shall extend to the Registrar of Titles or other person registering or certifying title.

“(9.) This section applies to trusts created either before or after the commencement of this section.

Improvements
and repairs
without
authority
of the Court.

“11.—(1.) Where any leasehold or freehold land is vested in a trustee for any infant or in trust for any persons in succession and in the opinion of the trustee it is expedient in the interests of all persons beneficially interested in the land to expend capital moneys subject to the trust for any one or more of the purposes specified in paragraphs (a) to (f) both inclusive of sub-section (1.) of section ten of this Act the trustee may, without the authority of the Court, expend on all or any of such purposes capital moneys subject to the trust not exceeding in all Five hundred pounds or one-third of the value of the land whichever is the less.

“(2.) Where in the opinion of the trustee it is expedient to exercise the power conferred by sub-section (1.) of this section he may without the authority of the Court exercise any of the powers specified in sub-section (4.) of section ten of this Act, and he shall throw upon the respective interests of the persons beneficially interested a proper proportion of the moneys so expended.

“(3.) Sub-section (8.) of section ten of this Act shall apply *mutatis mutandis* to any sale or mortgage made by a trustee in exercise of the powers conferred by this section.”.

Dated this twenty-ninth day of November, 1944.

W. DUGAN

Administrator.

By His Excellency's Command,

H. V. EVATT

for Minister of State for the Interior.