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Chapter 160.

Testamentary Trustees and Voluntary Trusts.

Testamentary Trustees.

Sec. 1. Bonds of trustees. — Every testamentary trustee, except those hereinafter exempted, before entering on his duties shall give bond to the judge of probate for the county where the will is proved, with sufficient sureties resident in the state, or with a surety company authorized to do business in the state, as surety, in such sum as the judge prescribes, conditioned as follows:

I. That he will faithfully execute such trust according to the will of the testator so far as is consistent with law;

II. That he will make a true and perfect inventory of the real estate, goods and chattels, and rights and credits of such estate to be returned into the probate office at such time as the judge orders;

III. That he will render an account of the income and profits thereof and of his payments and expenses once in 3 years, and oftener if required by the judge;

IV. That at the expiration of such trust he will settle his accounts with the judge; pay and deliver over all balances, sums of money or other property that are due; and give possession of the other estate, with which he is entrusted, to the persons entitled thereto. (R. S. c. 147, § 1.)

Cross references. — See c. 59, § 96, re authority of trust companies to engage in business of issuing surety bonds; c. 60, § 219, re foreign insurance companies as sureties on bonds.

Executors and trustees require separate bonds.—The duties of executors and trustees are separate and distinct, and separate and distinct bonds must be given. The bonds given by executors will not protect the estate against the nonfeasance or misfeasance of the trustees, though they be the same individuals. Deering v. Adams, 37 Me. 264.

This section requires affirmatively that trustees under a will shall give the bond therein prescribed, and this duty is not made to depend upon their being notified or cited so to do. They should present themselves to give the bond required in such sum as may be ordered by the judge. Groton v. Ruggles, 17 Me. 137.

Applied in Stevens v. Burgess, 61 Me. 89.

Cited in Prescott v. Morse, 62 Me. 447; Huston v. Dodge, 111 Me. 246, 88 A. 888.

Sec. 2. Bonds not required.—In the following cases bonds shall not be required of such trustees, unless for special reasons the judge determines it to be necessary; but when no bond is required, they shall settle their account with the judge of probate annually:

I. When the testator has requested or directed that a bond should not be required or that a bond without sureties be accepted;

II. When all the parties interested in the trust fund, if of full age and legal capacity, in writing signify to the judge their request that a bond shall not be required. (R. S. c. 147, § 2.)

Cited in Groton v. Ruggles, 17 Me. 137; Jackson v. Thompson, 84 Me. 44, 24 A. 459.

Sec. 3. Trustee, neglecting to give bond; examination of bond. — Every person appointed a testamentary trustee, who neglects to give bond within the time allowed therefor by the judge, shall be considered to decline the trust. Whenever any trustee settles an account in probate court, unless such account is a final one, the judge of probate shall examine his bond and the same proceedings shall be had in relation thereto as are provided in section 25 of chapter 158 relating to bonds of guardians. (R. S. c. 147, § 3.)

Cross reference.—See c. 164, § 2, re new bond may be required when sureties are insufficient.

Stated in part in Groton v. Ruggles, 17 Me. 137; Deering v. Adams, 37 Me. 264.

Sec. 4. Nonresident testamentary trustee to appoint agent in state. —No person residing out of the state shall be appointed a testamentary trustee unless he shall have appointed an agent or attorney in the state. Such appointment shall be made in writing and shall give the name and address of the agent or attorney. Said written appointment shall be filed and recorded in the probate office for the county in which the principal is appointed, and by such appointment the subscriber shall agree that the service of any legal process against him as such testamentary trustee, or that the service of any such process against him in his individual capacity in any action founded upon or arising out of any of his acts or omissions as such testamentary trustee shall, if made on such agent, have like effect as if made on himself personally within the state, and such service shall have such effect. A testamentary trustee who after his appointment removes from and resides without the state shall so appoint an agent within 30 days after such removal. If an agent appointed under the provisions of this section dies or removes from the state before the final settlement of the accounts of his principal, another appointment shall be made, filed and recorded as above provided. The powers of an agent appointed under the provisions of this section shall not be revoked prior to the final settlement of the estate unless another appointment shall be made as herein provided. Neglect or refusal by a testamentary trustee to comply with any provision of this section shall be cause for removal. A testamentary trustee residing out of the state shall not appoint his cotrustee, residing in the state, as his agent. (R. S. c. 147, § 4.)

Sec. 5. Trustee may resign or be removed after notice.—Such trustee at his own request may be allowed to resign his trust when it seems proper to the judge; no person succeeding to such trust as executor or administrator of a former trustee is required to accept or retain it against his will; and when any trustee, appointed either by the testator or the judge, becomes insane or otherwise evidently unsuitable to discharge his trust, the judge, upon personal notice to him and all others interested, if they reside within the state, or by public notice if their residence is out of the state or unknown, may remove him and appoint another. (R. S. c. 147, § 5.)

Sec. 6. Power of trustee thus appointed.—Every trustee appointed by the judge shall have and exercise the same powers, rights and duties as sole or joint trustee as if he had been appointed by the testator, and the trust estate vests in him accordingly; and the judge may order such conveyances to be made by the former trustee or his representatives, or by the remaining trustees, as are proper to vest in the new trustee, solely or jointly, such estate and effects. (R. S. c. 147, § 6.)

Successor trustees take same powers as original trustees.—This section gives to the successor trustees the same powers, including matters of discretion, as were vested by the will in those originally appointed. Chase v. Davis, 65 Me. 102.

In absence of contrary provision of will. —The discretionary power given to the trustees named in a will vest in their successors under this section in the absence of any provision showing a different intention. Hichborn v. Bradbury, 111 Me. 519, 90 A. 325.

Cited in Roberts v. Stevens, 84 Me. 325, 24 A. 873.

Sec. 7. Bond.—Every trustee appointed by the judge shall, before entering on his duties, give bond as aforesaid; but the judge may dispense with the making and returning of an inventory by any substituted trustee when he thinks it unnecessary, and the condition of the bond shall be altered accordingly; but without such bond, accepted by the judge, no right or authority vests in such trustee. (R. S. c. 147, § 7.)

Sec. 8. Inventory and appraisal.—When a trustee is required to return an inventory, the estate and effects shall be appraised by disinterested appraisers appointed and sworn as in case of the estates of deceased persons. Only 1 appraiser may be appointed if in the opinion of the judge or register the nature of the property makes it desirable to do so; otherwise 3 appraisers shall be appointed. Warrants for inventories may be revoked by the judge for cause and new ones issued if deemed necessary. (R. S. c. 147, § 8.)

Sec. 9. Reference or compromise.—The judge after a hearing, public or personal notice of which shall have been given in accordance with order of court, may authorize any trustee to refer or compromise any claim or action either at law or in equity of whatsoever nature by or against the trust estate. Any such award or compromise, if found by the judge just and reasonable in its effect upon all persons who may then or at any time thereafter be or become interested in said trust estate, shall be valid and binding on such persons; provided, however, that where it shall appear that the interests of any persons under disability not represented by guardian or any future contingent interest may be affected, the court may appoint some suitable person or persons to represent such persons under disability or future interests. (R. S. c. 147, § 9. 1945, c. 73.)

Sec. 10. Courts may direct trust estates sold and moneys invested.—Any judge of probate having jurisdiction of the trust and the superior court in any county, or the supreme judicial court in equity, on application of the trustee or of any person interested in the trust estate, after such notice as the judge or court shall order, may authorize or require him to sell any real or personal estate held by him in trust and to invest the proceeds thereof, with any other trust moneys in his hands, in real estate, in policies of life or endowment insurance or annuity contracts issued by life insurance companies authorized to transact business in the state, on the life of any beneficiary of the trust or on the life of any person in whose life such beneficiary has an insurable interest, or in any other manner most for the interest of all concerned therein; and may give such further directions as the case requires for managing, investing and disposing of the trust fund, as will best effect the objects of the trust. (R. S. c. 147, § 10. 1947, c. 216. 1953, c. 74, § 2.)

Cross reference.—See c. 107, § 4, sub-§ X, re equity powers in determining construction of wills.

This section and § 11 are intended to confer powers not before possessed by the probate courts, but which might be highly useful for them to have. Littlefield v. Cole, 33 Me. 552.

Section authorizes judicial direction for disposition of trust property. — This section confers certain specific powers upon the supreme judicial court and upon the judges of probate, and authorizes them respectively to give such directions as the case may require for managing and disposing of the trust fund, subject to any provisions contained in the will. Littlefield v. Cole, 33 Me. 552.

And disposition of income therefrom.—A suit to obtain directions from the judge of probate, as to the proper disposition of the income of the testamentary estate in the hands of the trustee is a case contemplated by this section. If not provided for in this section, the power is clearly given in sect. 11. Littlefield v. Cole, 33 Me. 552.

It comprehends suit for construction of will and administration of trust thereunder.—A bill in equity seeking instructions as to the construction of a will and in relation to the administration of a trust created thereunder is maintainable under this section and section 11. Cady v. Tuttle, 127 Me. 104, 141 A. 188.

Consent cannot enlarge nor objection

limit the powers of the trustee. The law grants no power to the parties to alter the terms of the trust, and their agreement that it should be done does not relieve the court of decision within the meaning of this section. Porter v. Porter, 138 Me. 1, 20 A. (2d) 465.

When deviation from terms of trust permitted. — To warrant deviation from the terms of a trust under this section there must be shown emergency or exigency which menaces the trust estate and the beneficiary. Deviation can be granted only upon a showing of extreme hardship, of virtual necessity, of serious impairment of principal, or of inability to carry out the purposes of the trust. Porter v. Porter, 138 Me. 1, 20 A. (2d) 465.

The court will direct or permit the trustee to deviate from a term of the trust, if, owing to circumstances not known to the settler and not anticipated by him, compliance would defeat or substantially impair the accomplishment of the purposes of the trust; and in such case, if necessary to carry out the purposes of the trust, the court may direct or permit the trustee to do acts which are not authorized or are forbidden by the terms of the trust. Porter v. Porter, 138 Me. 1, 20 A. (2d) 465.

But deviation allowed only when clearly necessary.—While the power to modify the terms of a trust in certain circumstances is recognized under this section, the courts are slow to exercise it and will do so only when it clearly appears to be necessary. Porter v. Porter, 138 Me. 1, 20 A. (2d) 465.

And not merely for greater advantage of beneficiaries. — The court will not permit or direct the trustee, under this section, to deviate from the terms of the trust merely because such deviation would be more advantageous to the beneficiaries than a compliance with such direction. Porter v. Porter, 138 Me. 1, 20 A. (2d) 465.

Nor merely for more expedient administration.—A departure from the language of the instrument cannot be allowed under this section in order merely to conserve what the trustee and the beneficiaries and the court might think a more expedient administration of the trust estate than that outlined and directed by the creator of the trust. Porter v. Porter, 138 Me. 1, 20 A. (2d) 465.

Courts may authorize sale of part of trust corpus.—Where the income from the corpus of a testamentary trust is inadequate to accomplish the purpose of the testator, a bill may be maintained under this section and section 11 to sell a part of the corpus in order to effectuate the intention of the testator. See Elder v. Elder, 50 Me. 535.

Under this section and section 11 the court has power to authorize trustees of a testamentary trust to sell a part of the trust corpus in contravention of the express terms of the trust where changed conditions necessitate such action in order to effectuate the purpose of the testator in creating the trust. See Mann v. Mann, 122 Me. 468, 120 A. 541.

A provision of the trust against alienation affords no barrier to a proceeding under this section for authorization to sell unproductive trust property and invest the proceeds. Graney v. Connolly, 124 Me. 221, 126 A. 878.

Section provides for authorization of investments. — To relieve and protect the trustee in the choice of investments, the law in this state has provided by this section that he may call the cestuis que trust before the proper court, and have the proposed investments discussed and assented to by the parties, or authorized by the court. Mattocks v. Moulton, 84 Me. 545, 24 A. 1004.

Court will not allow estate to become intestate and avoid testator's intentions.— The courts are not given authority by this section to sanction a course of action by the trustee, even with the consent of all the beneficiaries, that will result in a portion of the testator's estate becoming intestate property and thus circumvent his clear intentions. Cady v. Tuttle, 127 Me. 104, 141 A. 188.

But in absence of testamentary restrictions, court may allow beneficiaries to assign interests. — Where a trust is created by a will and the testator has placed no restrictions upon the trustee in the investment of the funds or upon the beneficiaries' right of alienation, a court, under the terms of this section, may permit any of the beneficiaries to assign their interest in the trust fund without thwarting the will of the testator. Cady v. Tuttle, 127 Me. 104, 141 A. 188.

It will not direct matters within trustee's discretion.—Where a will provided that the trustee of a trust created thereunder should pay to the beneficiary such of the income from the trust estate as the beneficiary should require, the amount to be so paid is a matter within the discretion of the trustee, and the courts have no jurisdiction to direct what amount the trustee should pay. See Littlefield v. Cole, 33 Me. 552.

Interested persons within jurisdiction to be made parties to suits affecting their rights.—A general equity rule, applicable under this section and section 11, harmonizing with the principles of justice, requires that all persons interested in the object of the suit, and within the jurisdiction, and capable of being made parties, must be made such, else their rights will not be bound. This general rule was originally a rule of convenience; for the sake of convenience it has been relaxed to permit virtual representation where all interests are effectively protected. The question of convenience is one which rests largely in the discretion of the court, but subject to review for abuse of discretion. Chaplin, Appellant, 131 Me. 446, 163 A. 774.

Court instructions directed to co-trustees jointly.—The duties and liabilities of co-trustees are joint and not individual. They form, as it were, one collective trustee, and must execute the duties of their office in their joint capacity. Therefore, under this section, instructions by the court to the trustee of a single trust must be directed to them jointly. Chaplin, Appellant, 131 Me. 446, 163 A. 774.

Cited in Elder v. Elder, 50 Me. 535.

Sec. 11. Equity power as to trusts.—Either of said courts may hear and determine, in equity, all other matters relating to the trusts herein mentioned. (R. S. c. 147, § 11.)

Cross reference.—See c. 153, § 2, re jurisdiction in equity of courts of probate.

This section and § 10 give the courts named power to determine all matters relating to testamentary trustees. Elder v. Elder, 50 Me. 535.

This section gives the probate courts jurisdiction which they did not have before the statute in cases relating to trusts. Jordan v. Jordan's Trust Estate, 111 Me. 124, 88 A. 390.

It gives probate court concurrent jurisdiction with supreme judicial court as to testamentary trusts.—By the provisions of this section and section 13, the probate court has concurrent jurisdiction with the supreme judicial court in hearing and determining, in equity, all matters relating to testamentary trusts. The power is expressly conferred, and is without limitation. Littlefield v. Cole, 33 Me. 552.

Proceedings should be according to equity practice.—The proceedings under this section should be according to the equity practice of the supreme judicial court as far as it is applicable to the probate court. The bill, although addressed to the probate court, should be framed as prescribed by the equity rules; all parties having an interest in the subject matter should be made parties, and notice given to them according to the equity practice and not according to the probate practice. Jordan v. Jordan's Trust Estate, 111 Me. 124, 88 A. 390.

Section authorizes suit for construction of provision creating trust, etc.—A bill in equity brought by a trustee under a will may be maintained under this section for the purpose of obtaining a construction of a clause of the will creating the trust, and an authoritative declaration respecting the termination of the trust, and the manner in which it shall be executed in order to accomplish its purpose and protect the trustee in the disposal of the property in his hands. Page v. Marston, 94 Me. 342, 47 A. 529.

It affords remedy for disagreement between trustee and cotenants.—In case of disagreement between trustee and his cotenants, who own an undivided interest in the trust corpus, they may seek a remedy under this section or sec. 10. Cary v. Talbot, 120 Me. 427, 115 A. 166.

And equity court may accept settlement account of trustee appointed by probate court. — Although the plaintiff in a bill under this section was appointed trustee by the probate court and gave bond as such to that court, he may ask in his bill not only for a construction of the will and for directions in regard to the execution of the trust, but also for a settlement of his account as trustee; and if all persons interested are before the court as parties to the bill, it is advisable to allow the plaintiff to make a final settlement of his account in the equity court. Page v. Marston, 94 Me. 342, 47 A. 529; Eastern Maine General Hospital v. Harrison, 135 Me. 190, 193 A. 246.

Court can sanction only such procedure as may be legally taken under will. — As to a testamentary trust, a court of equity, under this section, can give its sanction only to such procedure as the trustee and the parties interested may legally take under the will as drawn. Cady v. Tuttle, 127 Me. 104, 141 A. 188.

But trust corpus may be sold despite testamentary prohibition.—A provision of the trust against alienation affords no barrier to a proceeding under this section for authorization to sell unproductive trust

property and invest the proceeds. Graney v. Connolly, 124 Me. 221, 126 A. 878.

Probate court is appropriate tribunal for appointment of trustees. — While the supreme judicial court may, under this section, and in proper cases will, assume jurisdiction to appoint testamentary trustees, the more appropriate tribunal is the probate court which has statute jurisdiction over testamentary trusts and trustees. And this is particularly true in a case where the probate court has already taken jurisdiction of the trust estate, by allowing the accounts of trustees, and so forth. Huston v. Dodge, 111 Me. 246, 88 A. 888.

Equity will not allow trust to fail for want of trustee; trustee appointed. — When, to carry out the clearly expressed intention of a testator, it is found that the organization named to administer a general charitable trust cannot accept the gift and execute the trust, it does not fail. A court of equity, under this section, has power to name a trustee to carry out the intent of a testator to provide the means to effectuate the desired end. Stevens v. Smith, 134 Me. 175, 183 A. 344.

And availability of remedy at law does not avoid equity jurisdiction over trusts.— The rule which limits courts of equity to cases where there is no adequate remedy at law, does not, speaking generally, apply to trusts, as there equity has a natural and primary office, superadded to any legal rights. Eastern Maine General Hospital v. Harrison, 135 Me. 190, 193 A. 246.

When court may terminate trust. — In case of passive trusts, courts may at any time decree their termination, or in case of active trusts when their purpose has been accomplished; or when all the beneficiaries shall release their rights thereunder and there is no good reason for its further continuance. Cady v. Tuttle, 127 Me. 104, 141 A. 188.

Cited in Mann v. Mann, 122 Me. 468, 120 A. 541.

Sec. 12. Suits on bonds of trustees.—Any bond given by a trustee may be put in suit by order of the judge of probate for the benefit of any person interested in the trust estate; and the proceedings in such suit shall be conducted in the manner prescribed with respect to bonds of administrators. (R. S. c. 147, § 12.)

When suit is brought under this section for the special use of anyone, the interest of that person must be established to maintain the action, because it is involved in the breach assigned. Miles v. Coombs, 120 Me. 453, 115 A. 249.

Sec. 13. Executors becoming trustees by operation of law.—The foregoing provisions are applicable to executors who by the provisions of a will become trustees by operation of law without express appointment; but they are not required to return another inventory. (R. S. c. 147, § 13.)

For a case concerning the subject of this section before its enactment, see Deering v. Adams, 37 Me. 264.

Cited in Elder v. Elder, 50 Me. 535; Huston v. Dodge, 111 Me. 246, 88 A. 888.

Sec. 14. Investment forming part of estate retained.—In the absence of instruction from the court or direction in the will, a testamentary trustee may retain as a part of the estate any investment which formed a part of the estate of a deceased person at the time of his death.

A guardian or conservator may likewise retain investments which formed part of the estate of his ward. Nothing herein contained shall relieve such fiduciary from the exercise of reasonable business judgment as to the supervision of such investments and the sale thereof when such judgment so requires. (R. S. c. 147, § 14.)

Voluntary Trusts.

Sec. 15. Trustee, appointment in case of voluntary trusts; bond; filing of inventory.—A person placing property for any purpose in the hands of a trustee or any person resident of the state having property in this state in his hands as trustee may, on petition to the judge of probate in the county where he resides, have the appointment of trustee confirmed by the judge. Where the trust property includes real estate situated in the state, the settlor of said trust or the trustee named in said trust may, on petition to the judge of probate in

any county where said real estate is situated, have the appointment of trustee confirmed by said judge. Said trustee shall file a bond, with sureties resident in the state, or with a surety company authorized to do business in the state, as surety, to be approved by the judge, for the fulfillment of said trust, according to the terms and conditions of the trust deed or declaration, unless the same be waived in the instrument creating said trust, and shall file inventory, and thereafterwards, at least once in 3 years, account to the said judge or his successor in office, after such public notice as said judge may order thereon. The provisions of section 24 are applicable to cases of voluntary trusts arising under this section. (R. S. c. 147, § 15. 1953, c. 241.)

Sec. 16. Trustee accountable to judge of probate.—The trustee shall file inventory and account to the judge in the same manner as testamentary trustees, unless excused or released therefrom by the person creating the trust or for whose benefit it was created; and at the termination of such trust, the money or property held by the trustee shall be paid or delivered to the person legally entitled thereto. (R. S. c. 147, § 16.)

Sec. 17. Remedies, if trustee fails to fulfill bond.—If said trustee at any time fails to fulfill the conditions of the trust or of his bond, parties interested have the same remedies, and like proceedings shall be had as in case of other probate bonds. (R. S. c. 147, § 17.)

Sec. 18. Fiduciary to exercise prudence.—In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically including but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended, which men of prudence, discretion and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, a fiduciary may retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase. (1945, c. 80. 1951, c. 24.)

For a consideration of what constituted proper investment by fiduciaries before this section was enacted, see Mattocks v. Moulton, 84 Me. 545, 24 A. 1004.

Sec. 19. Exception.—Nothing contained in the provisions of sections 18 to 21, inclusive, shall be construed as authorizing any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall be taken to mean any investment which is permitted by the terms of section 18. (1945, c. 80.)

Sec. 20. Power of court not restricted. — Nothing contained in the provisions of sections 18 to 21, inclusive, shall be construed as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property. (1945, c. 80.)

Sec. 21. Application of §§ 18-21.—The provisions of sections 18 to 21, inclusive, shall govern fiduciaries acting under wills, agreements, court orders and other instruments now existing or hereafter made. (1945, c. 80.)

Employee Trusts.

Sec. 22. Employee trusts; effect by rule against perpetuities. — A trust of real or personal property, or real and personal property combined, created by an employer as part of a stock bonus, pension, disability, death benefit or profit sharing plan for the benefit of some or all of his employees, to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees the earnings or the principal, or both earnings and principal, of the fund held in trust, may continue in perpetuity or for such time as may be necessary to accomplish the purpose for which it is created, and shall not be invalid as violating any rule of law against perpetuities or suspension of the power of alienation of the title to property.

No rule of law against perpetuities or suspension of the power of alienation of the title to property shall operate to invalidate any trust created or attempted to be created, prior to August 20, 1951 by an employer as a part of a stock bonus, pension, disability, death benefit or profit sharing plan for the benefit of some or all of his employees to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees earnings or principal, or both earnings and principal, of the fund held in trust, unless the trust is terminated by a court of competent jurisdiction in a suit instituted within 3 years after August 20, 1951. (1951, c. 272. 1953, c. 308, § 107.)

Trustees to Fill Vacancies.

Sec. 23. Vacancies under deed of trust or mortgage; property to vest in new trustee; record of decree.—Whenever vacancies shall occur by the death or resignation of any or all of the trustees named in any deed of trust or mortgage, and from any cause such vacancy cannot be filled by appointment by the surviving trustee or trustees named therein or such trustees neglect or refuse to make such appointment, the probate court or the superior court, or any judge thereof, in term time or vacation, on the petition of any party interested in said trust, and upon such notice to all persons interested by publication or otherwise as the court shall order, and after hearing thereon, may appoint a trustee or trustees to fill such vacancy or vacancies; and upon and by virtue of said appointment the property described in said deed of trust or mortgage, held by said trustees at the time of such decease or resignation, shall vest in said trustees so appointed without further conveyance thereof, and they shall have the rights and powers and be subject to the duties relating to such trust to the same extent and for the same purpose as the same were held by the original trustees in said trust; the decree making such appointment shall confirm the transfer of title as hereinbefore provided and shall be recorded as the original trust deed was recorded. The heirs at law and personal representatives of any deceased trustee shall not be necessary as parties to said petition nor any proceedings thereunder, but may appear and be heard in relation to the matters therein contained, and such notice of said petition and hearing shall be given them by publication or otherwise as the court may order. (R. S. c. 147, § 18.)

See c. 168, § 19, re trustees in mortgage hold in joint tenancy.

Sec. 24. Vacancy in trusts; bond.—When a trustee under a written instrument declines, resigns, dies or is removed before the objects thereof are accomplished, if no adequate provision is made therein for supplying the vacancy, the probate court or superior court shall, after notice to all persons interested,

appoint a new trustee to act alone or jointly with the others, as the case may be. Such new trustee, upon giving the bonds and security required, shall have and exercise the same powers, rights and duties, whether as a sole or joint trustee, as if he had been originally appointed, and the trust estate vests in him in like manner as it had or would have vested in the trustee in whose place he is substituted. (R. S. c. 147, § 19.)

Cross reference.—See c. 168, § 19, re trustees in mortgage hold in joint tenancy.

Superior court may appoint successor trustee though probate court previously appointed one.—Under this section the superior court in equity may appoint a successor testamentary trustee, where the will of the testator neither confers authority, nor provides a method to be pursued to fill a vacancy, and notwithstanding the probate court had previously appointed a successor trustee. Eastern Maine General Hospital v. Harrison, 135 Me. 190, 193 A. 246.

For probate court does not gain exclusive jurisdiction by appointing trustee.—A probate court, in virtue of having appointed one successor trustee, and examined and allowed accounts, does not acquire exclusive jurisdiction to make all future trustee appointments, within the meaning of this section. Eastern Maine General Hospital v. Harrison, 135 Me. 190, 193 A. 246.

The cumbersome proceedings of a bill to fill a vacancy under a trust are rendered unnecessary by the provisions of this section. Eastern Maine General Hospital v. Harrison, 135 Me. 190, 193 A. 246.

The discretionary power given to the trustees named in a will vest in their successors, appointed under this section, in the absence of any provision showing a different intention. Hichborn v. Bradbury, 111 Me. 519, 90 A. 325.

A will is a written instrument within the meaning of this section. For if not, there would be no occasion for giving probate courts jurisdiction to make appointments. Huston v. Dodge, 111 Me. 246, 88 A. 888; Eastern Maine General Hospital v. Harrison, 135 Me. 190, 193 A. 246.

Stated in Deering v. Adams, 37 Me. 264; Pillsbury v. Consolidated European and North American Ry., 69 Me. 394; In re Inhabitants of Anson, 85 Me. 79, 26 A. 996.

Cited in Herrick v. Snow, 94 Me. 310, 47 A. 540; Goodwin v. Boutin, 130 Me. 322, 155 A. 738.

Sec. 25. Court may order conveyance made to him.—Upon the appointment of a trustee under the provisions of the preceding section, the court may order such conveyance to be made by the former trustee or by his representatives, or by the other remaining trustees, as is proper or convenient to vest in such trustee, either alone or jointly with the others, the estate and effects to be held in trust. (R. S. c. 147, § 20.)

Cross references.—See c. 46, §§ 30, 54, re bondholders under mortgage given by a corporation may elect trustees to fill vacancies; c. 58, § 14, re city or town appointed trustee not required to give bond in certain cases; c. 153, § 45, re fees of trustees, etc.; c. 168, § 6, re jurisdiction of probate court in matters relating to trusts for sale of contingent remainders.

Court directs conveyance of property at time of appointment of trustee.—The appointment of a new trustee is not complete until the property is vested in him; therefore a court usually embraces, in the decree appointing a new trustee, a direction for a proper conveyance to be executed to him as provided in this section. In re Inhabitants of Anson, 85 Me. 79, 26 A. 996.

Quoted in Pillsbury v. Consolidated European and North American Ry., 69 Me. 394.

Amortization of Obligations in Trust.

Sec. 26. Obligations in trust; amortization.—Where any part of the principal of a trust consists of bonds or other obligations for the payment of money, they shall be deemed principal at their inventory value or in default thereof at their market value at the time the principal was established, or at their cost where purchased later, regardless of their par or maturity value; and upon their respective maturities or upon their sale or other disposition any loss or gain realized thereon shall, unless otherwise provided in the instrument creat-

ing the trust, fall upon or inure to principal; except that in the case of bonds bearing on stated interest and payable at maturity or at a future time at an amount in excess of their issue price, the amount realized upon their respective maturities or upon their sale or other disposition which is in excess of their inventory value or in default thereof of their market value at the time the principal was established, or of their cost where purchased later, shall, unless otherwise provided in the instrument creating the trust, inure to income when received. (1947, c. 60.)