

CHAPTER 53.

MITCHELL TRUST.

ARRANGEMENT OF SECTIONS.

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SCHEDULE.

CHAPTER 53.

MITCHELL TRUST.

An Ordinance to make provision for the future disposition of the charitable bequest contained in the will of Walter Mitchell, deceased, and for the administration of the assets now pertaining thereto.

30 of 1937.
37 of 1950.
Order 49
of 1953.

[1ST JANUARY, 1938.]

WHEREAS the late Walter Mitchell died at Georgetown on the 24th March, 1862, and by his last Will and Testament dated 4th March, 1862, which was deposited in the Deeds Registry on 27th March, 1862, directed that after the lapse of fifteen years from the date of his death the whole of his residuary estate was to be at the disposal of the Legislature of the Colony in order to form or found a church college or other charitable institution in this Colony similar to the Saffon Establishment though not with the same exclusion but under similar rules for

such purpose appointing the Legislature his residuary heir, leaving the arrangement to the superior judgment of the Governor and Court of Policy, the then Legislature of the Colony ;

AND WHEREAS the Legislature of the Colony did from time to time give directions and make regulations for the application of the income accruing annually from the said residuary estate by the establishment of certain scholarships and foundations ;

AND WHEREAS doubts having arisen as to whether such directions and regulations gave proper effect to the intention of the Testator in that they were not in strict accordance with the directions contained in the will of Pierre Louis De Saffon, deceased, as embodied in the Saffon Trust Ordinance, now Chapter 246* of the 1930 edition of the Laws of British Guiana, the Legislative Council did by a resolution dated 29th August, 1934, approve of an application being made to the Supreme Court for an interpretation of the before mentioned bequest ;

AND WHEREAS an application as aforesaid was made to the Supreme Court on 13th October, 1936, and a judgment thereon given by His Honour the acting Chief Justice on 6th November, 1936 ;

AND WHEREAS by the terms of the aforesaid judgment the Court held, *inter alia*, that the income from the estate being insufficient to form or found a church college or other charitable institution in the Colony, the Cy-pres doctrine should be invoked and it being a term of the bequest that the arrangements for giving effect thereto were left to the superior judgment of the Legislature of the Colony, it was therefore competent for the Legislative Council to formulate, subject to the conditions of eligibility as laid down in the judgment, a scheme for the maintenance and education of orphans and half orphans ;

AND WHEREAS in the past under the directions and regulations of the Legislature of the Colony the benefits of the bequest have not at all times been devoted to the benefit of eligible persons, that is to say, the poorest and most needy orphans and half orphans ;

AND WHEREAS it is therefore now expedient to give effect to the judgment of His Honour the acting Chief Justice as aforesaid by embodying in an Ordinance a scheme for the future disposition of the bequest and the administration of the assets now pertaining thereto in manner as near as possible to the testamentary intentions of Walter Mitchell, deceased :

* Chapter 50 in this edition.

BE IT, THEREFORE, enacted by the Governor of British Guiana, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as the Mitchell Trust Ordinance. Short title.

2. In this Ordinance—

“ the beneficiaries ” means the persons selected as such as provided for in this Ordinance ;

Interpreta-
tion.

“ the estate ” means the property held by the Financial Secretary on behalf of the Legislative Council under the terms of the will of Walter Mitchell, deceased, as set out in the schedule to this Ordinance or any securities which may have been substituted therefor prior to the date of the coming into force of this Ordinance together with any moneys uninvested upon that date ;

Schedule.

“ the trustees ” means the persons from time to time filling the office of trustees and having and exercising all the rights and powers in them vested by this Ordinance.

3. (1) On and after the commencement of this Ordinance the estate shall be vested in a committee of the Legislature which shall be styled “ The Mitchell Fund Trustees ” and shall consist of the persons following—

Appointment
of trustees.
Order 49
of 1953.

(a) the person for the time being holding or acting in the office of Chief Secretary ;

(b) two other members of the Legislature to be appointed by the Governor.

(2) The trustees shall hold office for a period of three years subject to the provisions of section 4 and shall be eligible for re-appointment for a further term or terms.

(3) The Governor may, for any cause he deems sufficient cancel the appointment of a trustee and appoint another trustee in his place.

(4) A trustee shall vacate his office—

Order 49
of 1953.

(a) if he resigns in writing addressed to the Governor, or

(b) if he departs from the Colony without the leave of the Governor, or

(c) if he ceases to be a member of the Legislature.

(5) The Governor may appoint any member of the Legislature to act in the place of any trustee who is temporarily absent from the Colony.

Order 49
of 1953.

(6) The foregoing subsections (other than subsection (1)) of this section shall not apply to the Chief Secretary.

Order 49
of 1953.

(7) All powers and functions conferred on the Governor by sections 3, 4, 5 and 8 of this Ordinance shall be exercisable by him on the advice of the Executive Council.

Trustees not
affected by
dissolution
of Legisla-
tive Council.

4. Upon a dissolution of the Legislative Council the Trustees, notwithstanding the provisions of the last preceding section, shall continue in office and shall have the powers and discharge the duties of trustees appointed under this Ordinance until the day upon which the Legislative Council next meets after a dissolution. Thereupon the trustees other than the Chief Secretary shall cease to be trustees but shall, subject to the provisions of subsection (1) of section 3 be eligible for re-appointment by the Governor.

Administra-
tion and
accounting
by trustees.
37 of 1950,
s. 2.

5. (1) The trustees shall administer the estate in accordance with the provisions of this Ordinance and shall on or before the 31st May in each year present to the Legislative Council an account of their administration during the twelve months ending on the preceding 31st December.

(2) The accounts of the trustees shall be audited by the Director of Audit annually and at such other times as the Governor may appoint.

Cost of
administra-
tion.

6. The trustees shall not be entitled to remuneration for their services but may charge to the fund any disbursement on account of travelling and subsistence expenses together with all other costs, charges and expenses incidental to the administration of the estate.

Appointment
of Secretary.
Order 49
of 1953.

7. The person for the time being holding or acting in the office of Clerk of the Legislature shall be Secretary to the trustees and shall be entitled to remuneration from the estate at the rate of seventy-two dollars *per annum* in respect of any period during which he discharges the duties of Secretary :

Provided that the Governor may at any time and for any cause he deems sufficient appoint any other person to act in place of the Secretary and to receive the remuneration.

Investment
of estate.

8. The trustees shall keep the funds of the estate invested in such securities as the Governor may from time to time approve.

9. The annual income of the estate after deducting therefrom the cost of administration as hereinbefore provided shall be applied in the manner and to the extent hereinafter set out and any balance remaining shall be added to the funds of the estate of which it shall thereafter form a part.

Application of income from estate.

10. Within one month of the commencement of this Ordinance or within one month of the occurrence of a vacancy under section 13 or within such further time as the trustees may allow the Secretary to the trustees shall cause notices to be published in the Gazette and in two daily newspapers circulating in the Colony upon two occasions inviting applications to be made on or before the date specified in the notices (which date shall be approved by the trustees for the purpose) on behalf of children of either sex between the ages of five and sixteen years who are orphans or half orphans born in the Colony. Such applications shall be submitted in writing to the Secretary and in a form approved by the trustees.

Applications to trustees. 37 of 1950, s. 3.

11. Within three months of the commencement of this Ordinance the trustees shall select from the children eligible and on whose behalf application has been made, six beneficiaries, preference being given to the poorest and most needy.

Selection of beneficiaries.

12. (1) The trustees shall pay to the parent or guardian of each beneficiary or to some other person selected by the trustees for the purpose the sum of one hundred and eighty dollars *per annum* until the beneficiary shall attain the age of sixteen years or shall cease to be a beneficiary.

Tenure and benefits. 37 of 1950, s. 4.

(2) It shall be the duty of a parent or guardian or other person selected by the trustees to apply all sums received by them from the trustees for the care, maintenance, education and welfare of the beneficiary, and the trustees shall have power at any time to withhold any payment, or to make payment to some other person on behalf of the beneficiary, whenever the trustees have reason to believe that the parent, guardian, or person selected by them to receive payment, has not applied the sums received or any portion thereof as in the manner required.

(3) The Governor in Council may, by order, increase or reduce the sum payable under this section.

37 of 1950, s. 4.

13. (1) Upon a vacancy occurring amongst the beneficiaries, the Secretary to the trustees shall proceed within the time and in the manner provided in section 10 and the trustees shall

Filling vacancies amongst beneficiaries.

within a reasonable time thereafter select a new beneficiary in compliance with the provisions of section 11.

(2) A vacancy shall occur—

(a) when a beneficiary attains the age of sixteen years ;

(b) upon the death of a beneficiary ;

(c) upon the revocation of a benefaction by the trustees under section 14.

Revocation
of a
benefaction.

14. The trustees may at any time subject to the approval of the Governor in Council, revoke a benefaction if they are satisfied that a beneficiary has ceased to stand in need of or to merit further benefit from the estate.

Power to
make rules.

15. Subject to the provisions of this Ordinance the trustees shall have power from time to time to make rules for the conduct of their business, and for the administration and management of the estate which shall be binding on all persons affected thereby.

Provision for
cases of
difference
between the
trustees.

16. If any difference of opinion arises between the trustee as to the exercise of any of the powers conferred by this Ordinance, or as to the administration of the estate, they or one of them may report the matter to the Governor in Council who shall give his opinion thereon, which when given, shall be binding on the trustees and on all persons claiming under the trust who shall be affected by the question so decided.

s. 2.

SCHEDULE.

DESCRIPTION.		FACE VALUE IN £ STERLING.	
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British Guiana (Ord. 6 of 1916)	18th Issue 4 " " " " " " " " " " " "		52 1 8
Do. do.	20th Issue 5 " " " " " " " " " " " "		83 6 8
Do. do.	21st Issue 5 " " " " " " " " " " " "		104 3 4
Gold Coast (1939/59)	4 " " " " " " " " " " " "		1,168 3 8
Canada (1930/50)	3½ " " " " " " " " " " " "		744 1 1
Cape (1933/43)	3 " " " " " " " " " " " "		463 14 5
Sierra Leone (1938/63)	4 " " " " " " " " " " " "		94 11 0
Straits Settlements (1937/67)	3½ " " " " " " " " " " " "		193 1 5
New Zealand (1945)	4½ " " " " " " " " " " " "		1,607 19 3
Nigeria (1950/60)	5 " " " " " " " " " " " "		1,000 0 0
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