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052178185X - The Private Trustee in Victorian England  
Chantal Stebbings  
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## THE TRUSTEE

A simple creature GAFFER JONES,  
A Court he never saw;  
An income adequate he owns;  
What should he know of Law?

He had a quiet stupid air,  
And he was richly clad;  
I thought if he's got cash to spare,  
'Tis easy to be had.

A suit I heard was 'gainst him brought,  
Which must expensive be.  
'Expense!' he cried; 'Pooh pooh, 'tis nought;  
I'm only a trustee.'

'But how is that? I pray you tell.'  
He answered, 'Don't you see?  
I'd got some property to sell –  
Only as a trustee.'

'Two purchasers they did apply,  
Whilst, to prevent all bother,  
When one hung back I by and by  
Concluded with the other.'

'The first from Chancery got a writ,  
And served it straight on me;  
But why am I to care a bit? –  
I'm only a trustee.'

'You say in Chancery you are thrown;  
Great the expense will be;  
And since the fault has been your own,  
The costs will fall on thee.'

Then did the simpleton reply,  
'Tis true the first vendee  
Has filed a bill – I can't tell why –  
I'm only a trustee.'

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*The Trustee*

‘You’re in a mess, my little man,  
As sure as you’re alive,  
Unless to hit upon a plan  
For safety you contrive.’

‘You’re rather green, it may be seen,’  
The silly man replied;  
‘The purchase-money paid has been,  
The fund I did divide;

‘And when I’d parted with it, Sir,  
Another suit they brought;  
Because, they said, I’d sold it for  
Less money than I ought.

‘First, the original vendee  
Had filed a bill to say,  
His purchase-money paid would be,  
Upon a certain day.

‘But as it happen’d, I’d been paid  
By number two, and I  
To him had the estate consign’d,  
Passing the first one by;

‘And as I did not better know  
With whom I ought to side,  
I’ve let the money from me go –  
The fund I did divide.

‘So the executors have brought  
An action ’gainst me, too,  
Yet I’ve proceeded as I thought  
’Twere best for me to do.’

‘How many suits must you defend,  
In numbers odd or even?’  
Said he, ‘To say I can’t pretend:  
I think, though, there are seven.

‘But then, you know, you’ll understand  
It matters not to me;  
For though no fund I’ve got in hand,  
I still am a trustee.’

‘The cash is gone, the suit runs on,  
Each day requires a fee!’  
’Twas waste of argument, for still  
He said, ‘I’ve not to pay a bill,  
I’m only a trustee.’

*Punch*, 1848

## CHALLENGES TO TRUSTEESHIP

When the concept of the trust was accepted and enforced by the Court of Chancery in the fifteenth century, Equitable theory and practical considerations placed the trustee at the very centre of the institution. The responsibility for the administration of the trust was placed in his hands; a task which, once accepted, he undertook with no remuneration, significant risk, and considerable effort. The jurisdiction of the Court of Chancery, and the acceptance of such a burden by the trustee himself, stemmed from the moral obligation attached to the transfer of the property to the latter. The creation of the trust and its effective management was both personally and legally a matter of conscience. The principal protagonists, namely the settlor, the trustee, the beneficiaries and the court, recognised it as such, a view understood and supported by the general public.

The undertaking of onerous duties possibly extending over many years for the benefit of one's family and friends was expected and accepted in early modern England. The ties of blood and friendship were strong. Family responsibility was essential in a society which was necessarily self-reliant, where fortunes, however modest, had to be preserved and passed down to later generations, and mortality was such that orphaned infants were not unusual and could only look to the prescience of their parents and the goodwill of their wider families. Moral duty, self-interest and practical necessity were conveniently united in the acceptance of the duties of trustee. In the relatively stable social structures prior to the industrial revolution, such attitudes were maintained. National wealth increased, but not so rapidly as to flood the country with surplus funds, and while the population increased, assets continued to be concentrated in relatively few hands. That prosperity was also sought and expressed largely in terms of land rather than in personal property or money. Land continued to be the foundation of political power, social status

and material wealth, and the preservation and transmission of land to subsequent generations within a family through the line of the eldest son, as well as ensuring the material support of family members, was a prime objective of the landowning classes. The many desirable qualities of the settlement of land had been fully appreciated and exploited.<sup>1</sup> Religious conviction was an equally potent force both socially and economically. In the eighteenth century, the institution of the trust appeared satisfactorily to address the demands of propertied individuals in the context of their society and economy, and the development of the law took place in that context.

In 1740 Lord Hardwicke LC expressed the original and traditional conception of the trust when he observed that, in general, his court looked upon it 'as honorary, and a burden upon the honour and conscience of the person intrusted, and not undertaken upon mercenary views'.<sup>2</sup> Trustees were to embrace the sacred duty of trusteeship with no receipt, or indeed thought, of financial reward. They were, furthermore, expected to undertake the burden personally, and were to devote themselves wholeheartedly to the well being and security of their beneficiaries. The beneficiaries were pre-eminent in Chancery's concern. Early Equity adopted a view of somewhat extreme paternalism, and perceived the beneficiary as a victim ripe for exploitation. The courts had to be supremely vigilant, for if trustees were given an inch, they would take a mile. Accordingly errant trustees had to be dealt with swiftly and severely to serve as an example to others. The voluntary nature of the trust was additional justification. The law neither encouraged nor permitted deviation from this ideal. Throughout the eighteenth and the early years of the nineteenth century the fundamental principles of Equity were settled and subsequently elaborated by Lord Hardwicke and then by Lord Eldon.<sup>3</sup> They laid the foundations of trusts jurisprudence in the Victorian period.

The dawn of the Victorian age saw the trust fully established in law and in English society and culture. It was familiar to and understood by the landed classes, who had employed it in the preservation

<sup>1</sup> See Lloyd Bonfield, *Marriage Settlements 1601–1740: The Adoption of the Strict Settlement* (Cambridge, 1983); M. R. Chesterman, 'Family Settlements on Trust: Landowners and the Rising Bourgeoisie' in G. R. Rubin and David Sugarman (eds.), *Law, Economy and Society* (Professional Books, 1984), pp. 127–45.

<sup>2</sup> *Per* Lord Hardwicke LC in *Ayliffe v. Murray* (1740) 2 Atk 58 at 60.

<sup>3</sup> See W. S. Holdsworth, *Some Makers of English Law* (Cambridge, 1938).

of family estates and the provision for their families for over a hundred years. Its fundamental doctrines were largely settled and a considerable body of law had grown up around it. It was, furthermore, supported by an infrastructure, though still general in nature, of legal and other professional expertise. The Victorians embraced the trust with the same enthusiasm which they showed in all aspects of their lives. An intense curiosity about art, literature, history, science, medicine and the natural world was continued into the more prosaic sphere of government and social and legal institutions. Legal concepts and devices were addressed, examined, reformed, refined, developed and adopted, and, thus adapted, played their full part in the vibrant and dynamic society of Victorian England.

Since the trust was a purely private arrangement, with no requirements of registration and with significant fluctuations in the value of trust funds, it is impossible to state with accuracy how much property was held in trust in the nineteenth century. It was widely believed by contemporaries to be considerable, and to be increasing as the country became wealthier with more money available to be settled. In 1895 it was said that 'an enormous amount of personal property, as well as a great deal of land',<sup>4</sup> was held in trust, and some believed it was as much as one-tenth of the property in Great Britain.<sup>5</sup> One estimate was £1,000 million.<sup>6</sup> As a result Lord St Leonards could say that there were 'few social questions of more importance' than the trust relationship in Victorian England,<sup>7</sup> and as early as 1857 the trust could accurately be described as 'one of the most ordinary relations of life', and the positions of trustee and beneficiary as 'among the most common and the most necessary'.<sup>8</sup> Writing in the early years of the next century, Frederic Maitland observed that the trust 'seems to us almost essential to civilization'.<sup>9</sup> Where such numbers were concerned, trusteeship was a concept which formed an integral part of Victorian society and the issue of

<sup>4</sup> 'Report from the Select Committee on Trusts Administration', *House of Commons Parliamentary Papers* (1895) (248) xiii 403.

<sup>5</sup> 'Minutes of Evidence taken before the Select Committee on Trust Administration', *House of Commons Parliamentary Papers* (1895) xiii (403) q. 79, C. 248, hereafter cited as *Minutes of Evidence*, 1895.

<sup>6</sup> *Minutes of Evidence*, 1895, q. 593, per William Walters, solicitor.

<sup>7</sup> Lord St Leonards, *A Handy Book on Property Law* (2nd edn, Edinburgh and London, 1858), p. 159.

<sup>8</sup> *Parl. Deb.*, vol. 145, ser. 3, col. 673, May 21 1857 (HC).

<sup>9</sup> F. W. Maitland, *Equity* (2nd edn, Cambridge, 1949), p. 23.

trustees' powers, duties and liabilities was one of considerable legal and popular importance.

Being a relationship based on property, the trust was not one employed or enjoyed by the abject poor, but whereas in the eighteenth century it had been the province principally, though not exclusively, of the aristocracy and the landed classes, Victorian England saw its widespread adoption by the emerging middle class. This was a class with unprecedented power and influence in national life. These businessmen, bankers, lawyers, doctors, clergymen, civil servants and shopkeepers were, as a class, self-reliant, educated and commercially astute. An income of £1,000 a year put a man towards the top of the middle class, and many men were worth considerably more. They also had confidence, both in themselves and in the future of their country's political and economic standing. The complex family settlements of the landed estates of the aristocracy continued in their pattern of creation and renewal, but the principal innovation of the nineteenth century was the growth of the small – and not so small – family trust of personalty. Not only did this reflect the decline in the political, economic and social value of land and the increased tendency to express wealth in terms of money,<sup>10</sup> it also reflected the congenial nature of the trust in its fulfilment of the social, moral, religious and financial expectations of Victorian society. All sections of the middle classes, and some of the skilled working classes, employed the trust. Gentlemen, clerks in holy orders, butchers, printers, merchants and yeomen were typical of the range of middle-class settlers. In practice their creation reflected the most significant human rite of passage – marriage – and the most final – death – the former, moreover, implicitly embracing birth. Some individuals settled considerable amounts of property, others more modest fortunes, but it was clearly perceived as an accessible and flexible legal device which met – or at least had the potential to meet – the diverse needs of the new Victorian order.

Social structures in nineteenth-century England were unambiguously hierarchical and fixed, though movement could and did occur between the classes. Inherent in the psyche of the middle classes was the desire to rise through this hierarchy, and this was often expressed through the imitation and adoption of the habits and institutions

<sup>10</sup> See Tom Nicholas, 'Businessmen and Land Purchase in Late Nineteenth Century England', *Discussion Papers in Economic and Social History*, University of Oxford, No. 15, April 1997.

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*Challenges to trusteeship*

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of the social classes above them.<sup>11</sup> In this context the adoption of the trust was unsurprising. The trust, however, was much more than a mark of social aspirations, for it provided a home for the new wealth which the middle classes produced. But central to its use was its traditional nature as a vehicle to support their wives and often numerous children, the family being the centre of Victorian life. There was no welfare state to speak of. Illness and epidemic made life itself uncertain, and the possibility of a parent left alone to raise infant children, or indeed infant children left as orphans, was very real. Children had to be supported and educated, since survival to adulthood brought exposure to a harsh world in which a living had to be sought and made. The liberal education essential to entry into the learned professions of medicine, the church and the law, and the support of young men while they were establishing themselves, was a considerable and long-term expense.<sup>12</sup> Towards the end of the century entry into the new professions, and the introduction of competitive entry to the traditional ones, increased the importance of a sound and relevant – and preferably public-school – education. Married women were entirely dependent on their husbands because they were, until the latter part of the century, incapable of holding property at Common Law. Widows, as indeed all single women of the middle class, had few opportunities to earn their own living for most of the nineteenth century. The trust addressed these issues and allowed the settlor to arrange his fortune in order to ensure that on his death his wife and children would not be left unprovided for, indeed that they would have a measure of that independence which was so highly valued as a measure of respectability in Victorian England. While the settlor desired their security above all else, he also wished his trustees to take financial decisions in unexpected circumstances to ensure his infant children were appropriately provided for in the social and economic context in which he himself had lived. Once a family had arrived in the middle class, it tended to want to stay there. As long as men in contemplation of their death wanted to consign their property to a trusted friend or relation to look after it for the benefit of their wives and children, and to regulate their enjoyment of it, there would be a need for the trust. In this sense trusts were regarded as a powerful and essential tool in family provision.

<sup>11</sup> See John Roach, *Social Reform in England 1780–1880* (London, 1978), pp. 153–73.

<sup>12</sup> See generally, W. J. Reader, *Professional Men* (London, 1966).

Even if the motive were the support of the family, the trust also satisfied the natural human desire to preserve and transmit family wealth to the next generation. The aims of Victorian settlors, and accordingly the powers they purported to give to their trustees, were, however, noticeably short-term in nature. The desire was not the preservation of a specific landed estate for future generations,<sup>13</sup> but rather the preservation and growth of a fund for the support of the next immediate generation or the support of dependants in the event of an early death. The danger in the nineteenth century was not that of taxation, for the rates were too low to make that a significant factor, but rather the natural decline in the value of property if it were not carefully attended to and placed, as well as the possibilities of dissipation by the current owners or appropriation by subsequent marriage. Accordingly, most trusts in Victorian England were trusts of a mixed fund, or of personalty, established for the benefit of persons in succession, generally the wife for life, remainder to the children of the marriage.

In its use in the family context, the trust concept reflected the common social, moral and religious values of the Victorian age. The prevailing culture was that of the family and the public good, of the responsibility of the individual and of thrift and self-reliance. The latter, embodied in the concept of self-help, was of profound significance in Victorian social attitudes. Self-help was 'the means by which the individual made his contribution to the community'.<sup>14</sup> That contribution was only partly material. The perception was that trusteeship, being a prime means of securing the place of a family within the social structure, was a moral duty owed directly to the family and to society. A husband's duty, in return for the complete rights he had over his wife, was to support her. A father's duty as head of the family was to provide for his children and more remote dependants. Socially the trust ensured the perpetuation of the status quo; it not only kept the settlor's dependants from destitution, it also enabled them to continue in the class in which they had lived and thereby preserved both individual position and the class itself.

<sup>13</sup> And indeed the Leases and Sales of Settled Estates Act 1856, 19 & 20 Vict. c. 120, the Settled Estates Act 1877, 40 & 41 Vict. c. 18, and the Settled Land Act 1882, 45 & 46 Vict. c. 38, recognised this in relation to settlements of land.

<sup>14</sup> See E. L. Woodward, '1851 and the Visibility of Progress' in Noel Annan *et al.*, *Ideas and Beliefs of the Victorians: An Historic Revaluation of the Victorian Age* (London, 1949), p. 59.



*Challenges to trusteeship*

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Any man – relatively rarely, it will be seen, woman – who took on trusteeship for a member of his family was thus playing – and was seen to be playing – his part in the preservation not only of the family interests but of the wider social order. This was done at great personal inconvenience, but as a contemporary writer observed, ‘every trusted friend must be prepared to make sacrifices for friendship’s sake’.<sup>15</sup> Trusteeship was an act of true affection and esteem, a demonstrable adherence to the social and moral codes, and as such it ensured the respect of the trustee’s own social class. Moreover, since this ethos was reinforced and encouraged by the teaching of the Christian church, a man falling short of the expected moral code would have to answer ultimately to God.<sup>16</sup> In the context of the intense religious fervour in Victorian England, trusteeship was significant. It showed, no less, the moral standing of a man: to his family, his fellows, and to God.

As well as achieving its purpose in providing long-term financial support within a quasi-familial context for the middle classes, the trust strengthened the position of the class itself. It perpetuated that class through provision for subsequent generations, and furthermore the infrastructure of the trust in the Victorian period was itself middle class. It was to a large extent dependent on the lower branches of the legal profession and on the new professions of surveyor and accountant for its efficient administration. This supported and strengthened those same professions and, in turn, the class from which both sprang. The social and commercial interaction between settlors, trustees, beneficiaries and the supporting professions, with their shared values and outlook, reinforced the importance of the Victorian trust and facilitated its development.

Trusts in Victorian England were principally of three types. The first was the simplest, where a trustee held a capital sum on trust to pay the income to an adult beneficiary, often the widow, who largely managed her own affairs, and thereafter to distribute the capital to the adult children. This arrangement was straightforward and gave relatively little room for dissension. The principal issue in such trusts was that of investment. The second and most common form of trust was the family or mercantile trust. These trusts were much

<sup>15</sup> A. R. Rudall, *Duty of Trustees as to Investment of Trust Funds* (London, 1906), ‘Introductory’.

<sup>16</sup> See W. J. Reader, *Life in Victorian England* (London, 1964).

more complex, often demanding a great deal of time and effort by the trustees, and requiring the exercise of discretion, for they necessitated the running of a business, or the supervision of the education and upbringing of infant children as well as the management of the trust fund. Trusts for widows and infant children, often portrayed as the archetypal Victorian trust, had a particular pathos and were often used to encourage the passage of trust law reform. The third was the traditional trust of landed property, which also required considerable effort from the trustee, though of a different nature, since land needed to be maintained through prudent investment and its value upheld.

Trusts were either testamentary or *inter vivos*. Though many wills did not contain any trusts, simply allocating absolute interests in property to beneficiaries who were *sui juris*, they were a useful vehicle for trusts. The most common testamentary trust was the gift of a fund, often the residue, to trustees on trust for the settlor's widow, remainder to the children, or again the gift of contingent pecuniary legacies to infant children. Trusts of businesses were testamentary in nature, the testator leaving his property and enterprise to his trustees, who were often friends in the same line of work. The trustees could be directed to carry on the business themselves until a child of the testator reached his majority,<sup>17</sup> or they might be directed to allow the widow to do so, though retaining ultimate control.<sup>18</sup> *Inter vivos* trusts, in the form of marriage settlements, typically comprised a capital sum of between £2,000 and £10,000 invested in, for example, consolidated bank annuities<sup>19</sup> held by trustees on trust to pay the income to either the husband or the wife for life, then to the survivor of them for life, then to hold the capital for the issue of the marriage in such shares as the husband or wife should have appointed. If no appointment were made, the property would be held on trust for the issue equally. Each child's share would vest on reaching the age of twenty-one if a son, or twenty-one or earlier marriage (usually with parental consent) if a daughter, though actual payment would be postponed until

<sup>17</sup> See for example Devon Record Office IRW C498 (1854), hereafter cited as DRO; DRO IRW H701 (1817).

<sup>18</sup> See for example DRO 4263 B/AB 28 (1898).

<sup>19</sup> Schedules of investments to marriage settlements yield valuable information as to the composition of individual trust funds. See for example DRO 1335 B/F18 (1883); DRO 337 add 3B/1/12/5 Box 5 (1893).