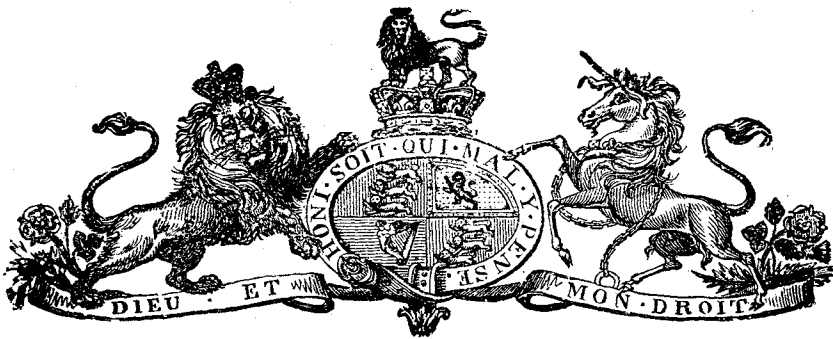


T A S M A N I A.



1898.

ANNO SEXAGESIMO-SECUNDO

VICTORIÆ REGINÆ,

No. 34.

AN ACT to consolidate Enactments and A.D. 1898.
amend the Law relating to Trustees.
[29 October, 1898.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

PART I.

PRELIMINARY.

1 This Act may be cited as “The Trustee Act, 1898.” Short title.

2 This Act shall come into operation on the First day of *November*, Commencement.
One thousand eight hundred and ninety-eight.

3 The Acts mentioned in the Schedule to this Act are hereby Repeal.
repealed to the extent mentioned in the Third column of that Schedule :
Provided that this repeal shall not affect anything done or suffered,
or any right acquired or accrued, before the commencement of this Act
under the said repealed Acts.

When in any Act reference is made to any of the said repealed provisions, such reference shall be taken to be to the corresponding provisions of this Act.

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Definitions.
56 & 57 Vict.
c. 53, s. 50.**4** In this Act, unless the context otherwise indicates—

- “Banker” means any Bank, or the Manager for the time being of any Bank, authorised under this Act to receive Fixed Deposits from Trustees :
- “Company” includes any Banking or Mercantile or Trading Corporation, however created, and any Company registered, incorporated, or constituted under or pursuant to any Act of Parliament :
- “The Court” means the Supreme Court of *Tasmania*, or a Judge thereof :
- “Contingent right,” as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest, or possibility, is or is not ascertained, also a right of entry whether immediate or future, and whether vested or contingent :
- “Convey” and “Conveyance,” applied to any person, include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of any property whereof he is seized or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of the conveyance :
- “Devisee” includes the heir of a devisee and the devisee of an heir, and any person who may claim right by devolution of title of a similar description :
- “Instrument” includes Act of Parliament :
- “Land” includes incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land :
- “Mortgage” and “Mortgagee” include and relate to every estate and interest regarded by law or in equity as merely a security for money, and every person deriving title under the original mortgagee :
- “Pay” and “Payment,” as applied in relation to stocks and securities, and in connection with the expression “into Court,” include the deposit or transfer of the same in or into Court :
- “Possessed” applies to receipt of income of, and to any vested estate less than, a life estate, legal or equitable, in possession or in expectancy, in any land :
- “Property” includes real and personal property, and any estate and interest in any property, real or personal, and any debt and any thing in action, and any other right or interest, whether in possession or not, excluding only Stock and choses in action in the construction and interpretation of Section Thirty-one of this Act :
- “Representative” includes—
- I. The Devisee or Devisees, or the Executor or Executors, Administrator or Administrators, or the Curator of the intestate estate of any person :
 - II. The heir of any person who died intestate before the First day of *October*, One thousand eight hundred and seventy-four :

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- “Rights” includes estate and interests :
- “Securities” includes stocks, funds, and shares, and any money or securities for money paid into or deposited in Court to the credit of any cause, matter, or account :
- “Stock” includes fully paid-up shares, and, so far as relates to vesting orders made by the Court under this Act, includes Debentures, shares in companies, and any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein :
- “Transfer,” in relation to stock, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferrer to effect and complete the title in the transferee :
- “Trust” does not include the duties incident to an estate conveyed by way of mortgage, but with this exception “trust” includes implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property and the duties incident to the office of representative of a deceased person :
- “Trustee” includes—
- i. Any person seized or possessed of or entitled to any property subject to any Trust as aforesaid :
 - ii. Any person who has also a beneficial interest in the Trust property :
 - iii. The Committee of any Lunatic :
 - iv. Any Company, Corporation, Firm, or Association authorised by law to act as Trustee, Executor, or Administrator of the estate of any deceased person :
 - v. Any Representative in any way possessed of or entitled to any property subject to any Trust express or implied :
 - vi. Any Trustee whose Trust arises by construction or implication of law, but does not include a mortgagee ; and
 - vii. Joint Trustees, Executors, or Administrators, where more than one person is acting in any of the said capacities.

PART II.

INVESTMENTS.

5 A Trustee may, unless expressly forbidden by the instrument, if any, creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say—

- i. In any of the parliamentary stocks or public funds, or Government securities of the *United Kingdom* :
- ii. On real or heritable securities in *Great Britain* or *Ireland* :
- iii. In the stock of the Bank of *England* or the Bank of *Ireland* :

Authorised investments.
56 & 57 Vict.
c. 53, s. 1.

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iv. In any securities the interest of which is for the time being guaranteed by the Parliament of the *United Kingdom* or of *Tasmania* or of any of the other Australian Colonies or *New Zealand*:

v. In debentures, stock, or securities of the Government of *Tasmania* or of any of the other Australian Colonies or *New Zealand*:

vi. On first mortgage of real estate in *Tasmania*:

vii. In any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the Court:

viii. On fixed deposit at interest in any Bank in *Tasmania* carrying on business in *Tasmania* at the date of the passing of this Act:

ix. On deposit in any Savings Bank in *Tasmania* carrying on business in *Tasmania* at the date of the passing of this Act:

and may also from time to time vary any such investment.

Applies to Savings Banks and Friendly Society's Trustees.

The Trustees for the time being of any Savings Bank, and the Trustees of any Registered Friendly Society, shall be deemed to be Trustees within the meaning of this Section.

Provided that where any instrument directs that trust funds shall be invested in debentures of the Government of *Tasmania*, the same may be invested in Government Inscribed Stock or Treasury Bills.

Purchase at a premium of redeemable stocks. 56 & 57 Vict., c. 53, s. 2.

6—(1.) A Trustee may under the powers of this Act invest in any of the securities mentioned or referred to in the last preceding Section, notwithstanding that the same may be redeemable, or that the price exceeds the redemption value.

(2.) A Trustee may retain until redemption any redeemable stock, fund, or securities which may have been purchased in accordance with the powers of this Act.

Discretion of Trustees. *Ib.*, s. 3.

7 Every power conferred by the preceding Sections shall be exercised according to the discretion of the trustee, but subject to any consent required by the instrument, if any, creating the trust with respect to the investment of the trust funds.

Application of preceding Sections. *Ib.*, s. 4.

Investment on Mortgage of long terms.

8 The powers conferred by the preceding Sections are in addition to the powers conferred by the instrument, if any, creating the trust.

9 A Trustee having power to invest on mortgage of real estate, unless expressly forbidden by the instrument creating the trust, may invest, and shall be deemed to have always had power to invest, on mortgage of property held for an unexpired term of not less than Two hundred years, and not subject to a reservation of rent greater than One Shilling a year, or to any right of redemption, or to any condition for re-entry, except for non-payment of rent.

Loans and investments by Trustees not chargeable as breaches of trust. 56 & 57 Vict. c. 53, s. 8, and 57 Vict. c. 10, s. 4.

10—(1.) A Trustee lending money on the security of any property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the Court that in making the loan the Trustee was acting upon a report as to the value of the property made by Two persons whom he reasonably believed to be competent valuers instructed and

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employed independently of any owner of the property, whether such competent valuator resided in the locality where the property is situate or elsewhere; and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report, and that the loan was made under the advice of such competent valuator expressed in the report. A.D. 1898.

(2.) A Trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed, either wholly or in part, with the production or investigation of the Lessor's title.

(3.) A Trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase of or in lending money upon the security of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the Court the title accepted be such as a person acting with prudence and caution would have accepted.

(4.) A trustee is not liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the instrument of trust or by the general law.

(5.) This Section applies to transfers of existing securities as well as to new securities, and to investments made as well before as after the commencement of this Act.

11—(1.) Where a Trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorised investment for the smaller sum, and the Trustee shall only be liable to make good the sum advanced in excess thereof with interest. Liability or loss by reason of improper investments. 56 & 57 Vict. c. 53, s. 9

(2.) This Section applies to investments made as well before as after the commencement of this Act.

12 A Trustee may be registered as the holder of a share in any Company—

- i. If he be the Trustee of the estate of a deceased person who was registered as holder thereof; or
- ii. If the share be transferred to him as part of the corpus of a Trust Fund; or
- iii. If the instrument under which he acts or derives his title authorises the purchase of shares in Companies; and
- iv. No Trustee shall by reason of being so registered incur any personal liability in respect of such share; but
- v. If the share formed part of a deceased person's estate, it shall continue to be liable in respect of such share in the same manner and to the same extent as if the share had remained registered in the name of such deceased person:
- vi. If the share forms part of a Trust Fund transferred to the Trustee, or has been purchased in exercise of any power conferred by the Trust instrument, then the person or persons beneficially entitled to the share, and the whole of the said Trust Fund or of the property subject to the provisions of the Trust instrument and to which such person or persons are beneficially entitled shall be liable in respect of such share in the same manner and to the same extent as if the person or persons beneficially entitled

Conditions under which Trustee may be registered as a shareholder in a Company.

Trustee to incur no personal liability. Trust Funds to remain liable.

Also beneficiaries in certain cases.

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This Section applies to all Companies.

But Companies may decline to register in certain cases.

Fiduciary capacity to be entered on Register, but Company not assumed to have notice of trust.

Shares not to be held contrary to provisions of trust instrument.

thereto had been registered as the holder or holders of such share.

The provisions of this Section shall apply to all Companies : Provided—

- I. That it shall not be compulsory upon any Company to register any Trustee to whom the share may be transferred as aforesaid, or who applies to be registered as the purchaser of a share :
- II. The fiduciary capacity in which any share may be so dealt with shall be entered on the Register of the Company and in all Lists of its Shareholders ; but notwithstanding any such entry no Company shall be assumed to have notice of any trust, expressed or implied, in connection with any share the holder of which appears on its books as a Trustee :
- III. This Section shall not be construed to empower any Trustee to hold a share in any Company unless empowered so to do by the instrument creating the trust.

PART III.

VARIOUS POWERS AND DUTIES OF TRUSTEES.

Appointment of New Trustees.

Power of appointing new Trustees.
56 & 57 Vict.
c. 53, s. 10.

13—(1.) Where a Trustee, either original or substituted, and whether appointed by the Court or otherwise, is dead, or remains out of *Tasmania* for more than Twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for the purpose of appointing new Trustees in such event by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing Trustees or Trustee for the time being, or the personal representatives of the last surviving or continuing Trustee, may, by writing, appoint another person or other persons to be a Trustee or Trustees in the place of the Trustee dead, remaining out of *Tasmania*, desiring to be discharged, refusing, or being unfit, or being incapable, as aforesaid.

(2.) On the appointment of a new Trustee for the whole or any part of trust property—

- I. The number of Trustees may be increased ; and
- II. A separate set of Trustees may be appointed for any part of the trust property, whether held on trusts distinct from those relating to any other part or parts of the trust property or not, and notwithstanding that no new Trustees or Trustee are or is to be appointed for other parts of the trust property ; and any existing Trustee may be appointed or remain one of such separate set of Trustees, or, if only one Trustee was originally appointed, then one separate Trustee may be so appointed for the first-mentioned part ; and
- III. It shall not be obligatory to appoint more than One new Trustee where only One Trustee was originally appointed, or to fill up the original number of Trustees where more

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than Two Trustees were originally appointed ; but, except where only One Trustee was originally appointed, a Trustee shall not be discharged under this Section from his trust unless there will be at least Two Trustees to perform the trust ; and

iv. Any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the Trustees, shall be executed or done.

(3.) Every new Trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a Trustee by the instrument, if any, creating the trust.

(4.) The provisions of this Section relative to a Trustee who is dead include the case of a person nominated Trustee in a will but dying before the testator, and those relative to a continuing Trustee include a refusing or retiring Trustee, if willing to act in the execution of the provisions of this Section.

(5.) This Section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and has effect subject to the terms of that instrument and to any provisions therein contained.

14—(1.) Where there are more than Two Trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his Co-trustees and such other person, if any, as is empowered to appoint Trustees by deed consent to the discharge of the Trustee, and to the vesting in the Co-trustees alone of the trust property, then the Trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new Trustee being appointed in his place.

Retirement of Trustee.
56 & 57 Vict.
c. 53, s. 11.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing Trustees alone shall be executed or done.

(3.) This Section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and has effect subject to the terms of that instrument and to any provisions therein contained.

15—(1.) Where a deed or instrument by which a new Trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed or instrument become and are the Trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

Vesting of trust property in new or continuing Trustees.
Ib., s. 12.

(2.) Where a deed or instrument by which a retiring Trustee is discharged under this Act contains such a declaration as is in this Section mentioned by the retiring and continuing Trustees, and by the other person (if any) empowered to appoint Trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing Trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This Section does not extend to land conveyed by way of mortgage for securing money subject to the trust, or to any such

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share, stock, annuity, or property as is only transferable in books kept by a company or other body or in manner directed by or under Act of Parliament.

(4.) For purposes of registration of the deed or instrument in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

Purchase and Sale.

Power of Trustee for sale to sell by auction, &c.
56 & 57 Vict.
c. 53, s. 13.

16—(1.) Where a trust for sale or a power of sale of property is vested in a Trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or any other matter as the Trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

(2.) This Section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

Power to sell subject to depreciatory conditions.
Ib., s. 14.

17—(1.) No sale made by a Trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2.) No sale made by a Trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the Trustee at the time when the contract for sale was made.

(3.) No purchaser, upon a sale made by a Trustee, shall be at liberty to make any objection against the title upon the ground aforesaid.

Power to sell under 39 Vict. No. 2.

18 A Trustee who is either a vendor or a purchaser may sell or buy without excluding the application of Section Two of "The Vendor and Purchaser Act, 1875."

Married woman as bare Trustee may convey.

19 When any freehold hereditament is vested in a married woman as a bare Trustee she may convey or surrender it as if she were a *femme sole*.

Various Powers and Liabilities.

Power to authorise receipt of money by banker or solicitor.
56 & 57 Vict.,
c. 53, s. 17.

20—(1.) A Trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the Trustee under the trust, by permitting the banker or solicitor to have the custody of, and to produce a deed or instrument, having in the body thereof, or endorsed thereon, a receipt for such money, valuable consideration, or property, such deed or instrument being executed, or such endorsed receipt being signed by the Trustee; and a Trustee is not chargeable with breach of trust by reason

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only of his having made, or concurred in making, any such appointment; and the producing of any such deed or instrument by the banker or solicitor has the same validity and effect as if the person appointing the banker or solicitor had not been a Trustee. A.D. 1898.

(2) A Trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the Trustee under or by virtue of a policy of assurance, by permitting the banker or solicitor to have the custody of, and to produce, the policy of assurance, with a receipt signed by the Trustee; and a Trustee is not chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

(3.) Nothing in this section shall exempt a Trustee from any liability which he would have incurred if this Act had not been passed in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor, as the case may be, to pay or transfer the same to the Trustee.

(4.) Nothing in this Section shall authorise a Trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

21—(1.) A Trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding Three equal fourth parts of the full value of such building or property, and may pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income. Power to insure building.
56 & 57 Vict.
c. 53, s. 18.

(2.) This Section does not apply to any building or property which a Trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

(3.) Nothing in this Section shall authorise a Trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

22—(1.) A Trustee of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract, or by custom or usual practice, may, if he thinks fit, and shall if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same lands on the accustomed and reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite: Provided that, when by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the trust property without any obligation to renew or to contribute to the expense of renewal, the consent in writing of that person must be obtained to the renewal on the part of the Trustee. Power of Trustees of renewable leaseholds to renew and raise money for the purpose.
Ib., s. 19.

(2.) If money is required to pay for the renewal, the Trustee effecting the renewal may pay the same out of any money then in

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his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose, he may raise the money required by mortgage of the lands to be comprised in the renewed lease, or of any other lands for the time being subject to the uses or trusts to which those lands are subject; and any person advancing money upon a mortgage purporting to be given under this power is not bound to see that the money is wanted, or that no more is raised than is wanted for the purpose.

(3.) Nothing in this Section shall authorise a Trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

Power of Trustee to give receipts. 56 & 57 Vict. c. 53, s. 20.

23 The receipt in writing of a Trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power, is a sufficient discharge for the same, and effectually exonerates the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

Power for Executors and Trustees to compound, &c. *Ib.*, s. 21.

24—(1.) An Executor, Trustee, or Administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) An Executor or Administrator or Two or more Trustees acting together, or a sole acting Trustee when by the instrument, if any, creating the trust a sole Trustee is authorised to execute the trusts and powers thereof, may, if and as he or they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) This Section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and has effect subject to the terms of that instrument, and to the provisions therein contained.

Powers of Two or more Trustees. *Ib.*, s. 22.

25 Where a power or trust is given to or vested in Two or more Trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

Exoneration of Trustees in respect of certain powers of attorney. *Ib.*, s. 23.

26 A Trustee, Executor, or Administrator acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power, if this fact was not known to the Trustee at the time of his so acting or paying.

Provided that nothing in this Section shall affect the right of any person entitled to the money as against the person to whom the pay-

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ment is made; and that the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the Trustee. A.D. 1898.

27—(1.) A Trustee shall, without prejudice to the provisions of the instrument, if any, creating the trust, be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, 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 securities, nor for any other loss, unless the same happens through his own wilful default.

Implied indemnity of Trustees.
56 & 57 Vict. c. 53, s. 24.

(2.) A Trustee may reimburse himself, or pay or discharge out of the trust estate, all expenses incurred in or about the execution of his trusts or powers.

Reimbursement of Trustees.

28 If any person beneficially interested in any property subject to any Trust shall apply in writing to any Trustee administering such Trust for true and accurate accounts as to the state of the Trust property, and of all receipts and payments on account thereof, such Trustee shall, at the expense of the person requiring the same, render such accounts in accordance with the application within Twenty-eight days after the receipt thereof, provided that no such true and accurate accounts have been rendered during the Twelve months preceding the receipt of such application. And if any Trustee neglects or refuses to render such accounts as aforesaid, he shall be personally liable to pay all costs and expenses incident to obtaining the same, upon an application to the Court under the provisions of Section Forty-five of this Act.

Beneficiary may apply to Trustee for accounts.

PART IV.

TRUSTEE COMPANIES.

29 A Company authorised by law to act as a Trustee shall, where appointed Trustee, be deemed to constitute for all purposes a Trusteeship of more than one Trustee, and may be appointed to act, or to continue to act as Trustee, where two or more Trustees are, by Act of Parliament or other instrument, required to execute the trust, unless the instrument creating the trust expressly prohibits such appointment or action. And, notwithstanding anything to the contrary hereinbefore contained, in any such case any retiring Trustee may be discharged although there will not be Two or more Trustees left to perform the Trust.

Trustee Company may act for two or more Trustees.

Other Trustees may be discharged.

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PART V.

POWERS OF THE COURT.

Appointment of new Trustees and Vesting Orders.

Power of the Court to appoint new Trustees. 56 & 57 Vict. c. 53, s. 25.

30 The Court may, whenever it is expedient to appoint a new Trustee or new Trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, make an order for the appointment of a new Trustee or new Trustees either in substitution for or in addition to any existing Trustee or Trustees, or although there is no existing Trustee. In particular and without prejudice to the generality of the foregoing provision, the Court may make an order for the appointment of a new Trustee in substitution for a Trustee who is convicted of felony, is bankrupt, or is of unsound mind.

(2.) An order under this Section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing Trustee than an appointment of new Trustees under any power for that purpose contained in any instrument would have operated.

(3.) Nothing in this Section shall give power to appoint an executor or administrator.

Vesting orders as to property. *Ib.*, s. 26.

31 In any of the following cases, namely:—

- i. Where the Court appoints or has appointed a new Trustee; and
- ii. Where a Trustee entitled to or possessed of any property, or entitled to a contingent right therein, either solely or jointly with any other person—
 - (a) Is an infant; or
 - (b) Is of unsound mind; or
 - (c) Is out of the jurisdiction of the Court; or
 - (d) Cannot be found; and
- iii. Where it is uncertain who was the survivor of two or more Trustees jointly entitled to or possessed of any property; and
- iv. Where, as to the last Trustee or Trustees known to have been entitled to or possessed of any property, it is uncertain whether he or they or any of them be living or dead; and
- v. Where there is no representative to a Trustee who was entitled to or possessed of property, and has died intestate as to that property, or where it is uncertain who is the representative of a Trustee who was entitled to or possessed of property and is dead; and
- vi. Where a Trustee jointly or solely entitled to or possessed of any property, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the property or a release of the right, to convey the property or to release the right, and has wilfully refused or neglected to convey the property or release the right for Twenty-eight days after the date of the requirement;

the Court may make an order, in this Act called a vesting order, vesting the property in such person in any such manner and for any

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such estate as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct : A.D. 1898.

Provided that—

- I. Where the order is consequential on the appointment by the Court of a new Trustee, the property shall be vested for such estate as the Court may direct in the persons who, on the appointment, are the Trustees; and
- II. Where the order relates to a Trustee entitled jointly with another person, the property or right shall be vested in such other person, either alone or with some other person, and shall not operate as a severance of any joint estate or interest unless the contrary be expressly declared in such order.

Not to operate as of course to sever a joint estate.

32—(1.) In any of the following cases, namely :—

- I. Where the Court appoints or has appointed a new Trustee; and
- II. Where a Trustee entitled alone or jointly with another person to stock or to a chose in action—

Vesting orders as to stock and choses in action. 56 & 57 Vict., c. 53, s. 35.

- (a) Is an infant; or
- (b) Is of unsound mind;
- (c) Is out of the jurisdiction of the Court; or
- (d) Cannot be found; or
- (e) Neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto for Twenty-eight days next after a request in writing has been made to him by the person so entitled; or
- (f) Neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action for Twenty-eight days next after an order of the Court for that purpose has been served on him; and

- III. Where it is uncertain who was the survivor of Two or more Trustees jointly entitled to or possessed of any stock or chose in action;
- IV. Where it is uncertain whether a Trustee entitled alone or jointly with another person to stock or to a chose in action is alive or dead;

the Court may make an order vesting the right to transfer or call for a transfer of the stock, or to receive the dividends or income thereof, or to sue for or recover the chose in action, in any such person as the Court may appoint :

Provided that—

- (a) Where the order is consequential on the appointment by the Court of a new Trustee, the right shall be vested in the persons who, on the appointment, are the Trustees; and
- (b) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with some other person whom the Court may appoint.

(2.) In all cases where a vesting order can be made under this Section, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(3.) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act, may

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transfer the stock to himself or any other person, according to the order, and all companies shall obey every order under this Section according to its tenor.

(4.) Where an order is made under this Section vesting the right to sue for or recover a chose in action or any interest in respect thereof in any person, such right shall vest accordingly, and such person may thereupon commence and carry on in his own name any action or other proceeding for the recovery of such chose in action in the same manner as the person in whom it was previously vested.

(5.) After notice in writing of an order under this Section it shall not be lawful for any company to transfer any stock to which the order relates, or to pay any dividends thereon except in accordance with the order.

(6.) The Court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised.

(7.) The provisions of this Act as to vesting orders apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock.

Orders as to
contingent rights
of unborn
persons.
56 & 57 Vict.
c. 53, s. 27.

33 Where any property is subject to a contingent right in an unborn person or class of unborn persons who on coming into existence would, in respect thereof, become entitled to or possessed of the property on any trust, the Court may make an order releasing the property from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the property.

Vesting order in
place of
conveyance by
infant or lunatic
mortgagee.
Ib., s. 28.

34 Where any person entitled to or possessed of any property, or entitled to a contingent right in any property by way of security for money, is an infant, or a person of unsound mind, the Court may make an order vesting or releasing or disposing of the property or right in like manner as in the case of an infant trustee.

Vesting order in
place of
conveyance by
representative of
mortgagee.
Ib., s. 29.
31 Vict. No. 19,
s. 25.

35 Where a mortgagee of property has died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or the last-mentioned person consents to any order for the reconveyance of the property, then the Court may make an order vesting the property in such person or persons in such manner and for such estate as the Court may direct in any of the following cases; namely:—

- I. Where the representative of the mortgagee is out of the jurisdiction of the Court or cannot be found; and
- II. Where the representative of the mortgagee, on demand made by or on behalf of a person entitled to require a conveyance of the property, has stated in writing that he will not convey the same, or does not convey the same for the space of Twenty-eight days next after a proper deed or document for conveying the property has been tendered to him by or on behalf of the person so entitled; and
- III. Where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the representative of the mortgagee, whether he is living or dead; and

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- iv. Where there is no representative to a mortgagor who has died A.D. 1898.
 intestate as to the land, or where the mortgagor has died
 and it is uncertain who is his representative. —

36 Where the Court gives a judgment or makes an order directing the sale or mortgage of any property, every person who is entitled to or possessed of the property, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made, or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a Trustee within the meaning of this Act; and the Court may, if it thinks expedient, make an order vesting the property or any part thereof for such estate as the Court thinks fit in the purchaser or mortgagor or in any other person.

Vesting order consequential on judgment for sale or mortgage. 56 & 57 Vict. c. 53, s. 30, and 57 Vict. c. 10, s. 1.

37 Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition or exchange, of any land, and generally when a judgment is given for the conveyance of any land either in cases arising out of the doctrine of election or otherwise, the Court may declare that any of the parties to the action are Trustees of the land or any part thereof within the meaning of this Act, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be Trustees within the meaning of this Act, and thereupon the Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been Trustees.

Vesting order consequential on judgment for specific performance, &c. 56 & 57 Vict., c. 53, s. 31.

38 A vesting order made under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new Trustee, have the same effect as if the persons who before the appointment were the Trustees, if any, had duly executed all proper conveyances of the property for such estate as the Court directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity and had duly executed all proper conveyances of the property for such estate as the Court directs, and shall in every other case have the same effect as if the Trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

Effect of vesting order. *Ib.*, s. 32.

39 In all cases where a vesting order can be made under any of the foregoing provisions the Court may, if it is more convenient, appoint a person to convey or transfer the property or release the contingent right; and a conveyance, transfer, or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

Power to appoint person to convey. *Ib.*, s. 33.

40—(1.) An order under this Act for the appointment of a new Trustee or concerning any property subject to a trust, may be made on the application of any person beneficially interested in the property,

Persons entitled to apply for orders. *Ib.*, s. 36.

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- A.D. 1898. — whether under disability or not, or on the application of any person duly appointed Trustee thereof.
- (2.) An order under this Act concerning any property subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.
- Powers of new Trustee appointed by Court. 56 & 57 Vict. c. 53, s. 37. **41** Every Trustee appointed by the Court shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a Trustee by the instrument, if any, creating the trust.
- Power to charge costs on trust estate. *Ib.*, s. 38. **42** The Court may order the costs and expenses of and incident to any application for an order appointing a new Trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or personal estate in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court may seem just.
- Trustees of charities. *Ib.*, s. 39. **43** The powers conferred by this Act as to vesting orders may be exercised for vesting any property in any Trustee of a charity or society over which the Court would have jurisdiction upon suit duly instituted, whether the appointment of the Trustee was made by instrument under a power or by the Court under its general or statutory jurisdiction.
- Orders made upon certain allegations to be conclusive evidence. *Ib.*, s. 40. **44** Where a vesting order as to any property is made under this Act, or under any Act relating to insanity founded on an allegation of the personal incapacity of a Trustee, or on an allegation that a Trustee or the representative of a mortgagee is out of the jurisdiction of the Court or cannot be found, or that it is uncertain which of several Trustees, or which of several devisees of a mortgagee was the survivor, or whether the last Trustee or the representative of a mortgagee is living or dead, or on an allegation that there is no representative of a Trustee or mortgagee, or on an allegation that any Trustee or mortgagee has died intestate without a representative, or has died and it is not known who is his representative, or has died and it is uncertain whether he died intestate or who is his representative, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any Court upon any question as to the validity of the order; but this Section shall not prevent the Court from directing a reconveyance or the payment of costs occasioned by any such order if it was improperly obtained.
- Summons for vesting orders and for administration of trust estates. **45** Any Trustee, and any Executor or Administrator of a deceased person, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, or as taking any beneficial interest in the property of a deceased person, or in any property subject to any trust, or as *cestui que trust* under the trust of any instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may take out as, of course, an originating summons returnable in Chambers for any order under this Act, or for such relief of the nature or kind following, as may by the summons be specified and as the circumstances of the case may require, that is to say, the deter-

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mination without an administration of the estate or trust of any of the following questions or matters, notwithstanding a question of construction may be involved— A.D. 1898.

- I. Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, or to be otherwise beneficially interested in the property or as *cestui que trust* :
- II. The ascertainment of any class of creditors, legatees, devisees, or others :
- III. The furnishing of any particular accounts by the Trustee, and the vouching, when necessary, of such accounts :
- IV. The payment into Court of any money in the hands of the Trustee :
- V. Directing the Trustee to do or abstain from doing any particular act in his character as such Trustee :
- VI. The approval of any sale, purchase, compromise, or other transaction :
- VII. The making of any inquiries or the taking of any accounts as upon a decree of the Court directing inquiries to be made and accounts to be taken : 59 Vict. No. 24, s. 10.
- VIII. The determination of any question arising in the administration of the trust estate :
- IX. The removal of any Trustee except a Trustee in Bankruptcy :
- X. The appointment of a Trustee in the place of a Trustee so removed, or for a direction that the remaining Trustee or Trustees, if any, may continue to act without any additional Trustee : *Ib.*, ss. 9, 10.

Provided that there shall in all cases be an appeal to the full Court in its Equity Jurisdiction.

46 The persons to be served with the summons under the last preceding Section shall be the same as those who would be entitled to be served in case the proceedings were by suit instead of by summons : Provided that the Court may direct such other persons to be served with the summons as the Court may think fit, or may in any case dispense with service upon any person, or may direct service out of the jurisdiction or substituted service, subject to the conditions regulating service in similar cases in suits, or such of these conditions and with such variations as the Court may order. Service of summons.
See 29 Vict. No. 11, s. 3.

47 In all proceedings under this Act initiated in Chambers, a Judge may order such proceedings to be continued before him in open Court or before the Full Court. Proceedings in Chambers may be transferred to open Court.

Payment into Court by Trustees.

48—(1.) Trustees, or the majority of Trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into Court, and the same shall, subject to rules of Court, be dealt with according to the orders of the Court. Payment into Court by Trustees.
56 & 57 Vict. c. 53, s. 42.

(2.) The receipt or certificate of the proper officer shall be a sufficient discharge to Trustees for the money or securities so paid into Court.

(3.) Where any moneys or securities are vested in any persons as Trustees and the majority are desirous of paying the same into Court,

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but the concurrence of the other or others cannot be obtained, the Court may order the payment into Court to be made by the majority without the concurrence of the other or others; and where any such moneys or securities are deposited with any banker, broker, or other depositary, the Court may order payment or delivery of the moneys or securities to the majority of the Trustees for the purpose of payment into Court, and every transfer, payment, and delivery made in pursuance of any such order shall be valid, and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid, or delivered.

Money of infants, lunatics, and unborn persons may be paid into Court.

Court may order investment, &c.

49 Where any infant or person of unsound mind shall be entitled, or when any unborn person or class of unborn persons would upon coming into existence become entitled, to any money payable in discharge of any property which has been made the subject of an Order under this Act, the person by whom such money is payable may pay the same into Court in trust in any cause then depending concerning such money; or, if there shall be no such cause, to the credit of such infant or other persons as aforesaid; and the Court may, upon petition or summons, make such Order as to the investment of such money or the payment out or distribution thereof, or as to the payment of the dividends or interest thereof, as to the Court may seem reasonable.

Miscellaneous.

Jurisdiction of the Court in cases of breach of trust. 59 & 60 Vict. c. 35, s. 3.

50 If it appears to the Court that a Trustee is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve the Trustee, either wholly or partly, from personal liability for the same.

Power to give judgment in absence of a Trustee. 56 & 57 Vict. c. 53, s. 43.

51 When in any cause or matter the Court is satisfied that diligent search has been made for any person who, in the character of Trustee, is made a defendant or party to the cause or matter, to serve him with process of the Court or with any proceedings in the cause or matter, and that he cannot be found, the Court may hear and determine the cause or matter, and give judgment therein against that person in his character of a Trustee as if he had been duly served or had entered an appearance in the cause or matter, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the cause or matter in any other character.

Power to sanction sale of land or minerals separately. 56 & 57 Vict. c. 53, s. 44; and 57 Vic. c. 10, s. 3.

52—(1.) When a Trustee or other person is for the time being authorised to dispose of land by way of sale, exchange, or partition, the Court may sanction his so disposing of the land with an exception or reservation of any minerals, and with or without rights and powers of or incidental to the working, getting, or carrying away of the minerals, or so disposing of the minerals, with or without the said rights or powers, separately from the residue of the land.

(2.) Any such Trustee or other person, having obtained such sanction, may, unless forbidden by the instrument creating the trust or

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direction, from time to time, without any further application to the Court, so dispose of any such land or minerals. A.D. 1898.

(3.) This Section does not derogate from any power which a Trustee may have under "The Settled Land Act, 1884," or otherwise.

53 Where a Trustee shall have committed a breach of trust at the instigation or request, or with the consent in writing of a beneficiary, the Court may, if it shall think fit, and notwithstanding that the beneficiary may be a married woman entitled for her separate use, whether with or without a restraint upon anticipation, make such order as to the Court shall seem just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the Trustee or person claiming through him.

Power to make beneficiary indemnify for breach of trust.
56 & 57 Vict. c. 53, s. 45.

This Section shall apply to breaches of trust committed as well before as after the passing of this Act, but shall not apply so as to prejudice any question in an action or other proceeding which was pending on the Twenty-eighth day of *October*, One thousand eight hundred and eighty-nine, and is pending at the commencement of this Act.

PART VI

MISCELLANEOUS AND SUPPLEMENTAL.

54—(1.) All the powers and provisions contained in this Act with reference to the appointment of new Trustees, and the discharge and retirement of Trustees, apply to and include Trustees for the purposes of "The Settled Estates Act, 1882," or "The Settled Land Act, 1884," or any Amendments thereof respectively, whether appointed by the Court or by the settlement, or under provisions contained in the settlement.

Application to Trustees under Settled Land Acts of provisions as to appointment of Trustees.
Ib., s. 47.
46 Vict. No 7.
48 Vict. No. 10.

(2.) This Section applies and has effect with respect to an appointment or a discharge and retirement of Trustees taking place before as well as after the commencement of this Act.

(3.) This Section is not to render invalid or prejudice any appointment or any discharge and retirement of Trustees effected before the passing of this Act, otherwise than under the provisions of "The Conveyancing and Law of Property Act, 1884."

55 A Trustee may, with the sanction of the Court, and notwithstanding any directions given by the instrument under which the Trust arises, raise, by way of mortgage of the trust property or any part thereof, any sum or sums of money which, in the opinion of the Court, it may be necessary to raise for the purpose of the preservation or improvement of the trust property, or its insurance against damage by fire, or for the discharge of any debts or liabilities charged upon the trust property or for the payment of which the trust property may be made available. And any sum so raised may be raised at such rate of interest and shall be repayable at such period as the Court may sanction.

Trustees may with sanction of Court raise by mortgage for the preservation of the estate or like purposes.

56—(1.) In any suit or other proceeding against a Trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the Trustee was party or privy, or is to recover trust property or the proceeds thereof

Statute of Limitations may be pleaded by Trustees.

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still retained by the Trustee, or previously received by the Trustee and converted to his use, the following provisions shall apply :—

- i. All rights and privileges conferred by any Statute of Limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action or other proceeding, if the Trustee or person claiming through him had not been a Trustee or person claiming through him :
- ii. If the suit or other proceeding is brought to recover money or other property, and is one to which no existing Statute of Limitations applies, the Trustee or person claiming through him shall be entitled to the benefit of, and be at liberty to plead, the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received, but so, nevertheless, that the Statute shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

(2.) No beneficiary as against whom there would be a good defence by virtue of this Section shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such suit or other proceeding and this Section had been pleaded.

(3.) This Section shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing Statute of Limitations.

Decrees, &c. to bind land under "The Real Property Act."

57 Where any decree, order, declaration, or document is made or executed under the provisions of this Act, by the Court or by any person, relating to lands held under "The Real Property Act," the Recorder of Titles shall, on application to him by any party interested, cause to be entered in the Register Book every such decree, order, declaration, and document, and thereupon the same shall, as to the land affected thereby, take effect according to the tenor thereof.

Remuneration of Trustee.

58 In any case in which there is not in the instrument creating the trust, or otherwise any provision for remunerating a Trustee, it shall be lawful for a Judge in a summary way to allow such Trustee such remuneration as shall be just and reasonable for his pains and trouble in the execution of the trust, and to determine the fund out of which, or the persons by whom, the same shall be paid.

Trust estates not affected by Trustee becoming a convict. 56 & 57 Vict. c. 53, s. 48.

59 Property vested in any person on any trust, or by way of mortgage, shall not, in case of that person becoming a convict within the meaning of "The Criminal Law Procedure Act, 1881," vest in any such administrator as may be appointed under that Act, but shall remain in the Trustee or Mortgagee or survive to his Co-trustee or descend to his representative, as if he had not become a convict: Provided that this enactment shall not affect the title to the property, so far as relates to any beneficial interest therein, of any such Trustee or Mortgagee.

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- 60** Whenever any application is made to the Court under this Act which concerns a person of unsound mind, the Court may enquire, hear, and determine whether such person be deprived of his understanding or reason by the act of God so as to be unable to govern himself or his estate, and may postpone making an Order until after such enquiry, hearing, and determination shall have been had and made. A.D. 1898.
Court may order enquiry in cases where persons of unsound mind are concerned.
- 61** Upon a Decree of the Court directing a sale of any property of a deceased person for the payment of his debts, every person seised or possessed of such property, or entitled to any contingent right therein as a Representative of such deceased debtor, shall be deemed to be so seised or possessed or entitled, as the case may be, upon a Trust within the meaning of this Act, and the Court may make an Order wholly discharging the contingent right of any unborn person in such property. Decree for sale.
- 62** The Judges may make general rules for regulating the practice and fees, and generally for giving effect to the purposes of this Act. Judges may make rules.
- 63** In all proceedings and matters which may come before the Court or a Judge under this Act, the Court or Judge may make such order as to the payment of costs and expenses they or he deem just. Costs in discretion of Court.
- 64**—(1.) The provisions of this Act, except when otherwise expressly provided, apply as well to trusts, executorships, and administratorships created by instruments executed before as to trusts, executorships, and administratorships created by instruments executed after the passing of this Act. Application of Act.
- (2.) Provided always that, save as in this Act expressly provided, nothing therein contained authorises any trustee, executor, or administrator to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument or instruments creating the trust, executorship, or administratorship.
- 65** This Act, and every order purporting to be made under this Act, shall be a complete indemnity to all persons for any acts done pursuant thereto; and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the Court had jurisdiction to make the same. Indemnity. 56 & 57 Vict. 53, s. 49.

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SCHEDULE.

<i>Session and Number.</i>	<i>Short Title.</i>	<i>Extent of Repeal.</i>
16 Vict. No. 18. ✓	<i>The Trustee Act, 1852.</i>	The whole Act.
22 Vict. No. 9. ✓	<i>The Trustee Act, 1858.</i>	The whole Act.
23 Vict. No. 3. ✓	<i>The Trustee Relief Act.</i>	The whole Act.
24 Vict. No. 2. ✓	<i>An Act to further amend the Law of Property and to relieve Trustees.</i>	Sections 25 and 28 to end of the Act.
39 Vict. No. 2. ✓	<i>"The Vendor and Purchaser Act, 1875."</i>	Sections 3 and 6.
47 Vict. No. 19. ✓	<i>"The Conveyancing and Law of Property Act, 1884."</i>	Sections 33 to 41.
53 Vict. No. 14. ✓	<i>"The Trustee Act, 1889."</i>	The whole Act.
56 Vict. No. 21. ✓	<i>"The Conveyancing and Law of Property Amendment Act, 1892."</i>	Sections 3 and 4.
59 Vict. No. 24. ✓	<i>"The Trustee Act, 1895."</i>	The whole Act.