

See No. 350 of 85 sec. 9

After under this
Act may be
made in the Chambers
Referenced Ch
XXXII - III



5-86 of 93, subd I

1855-6.

No. 7.

An Act to consolidate and amend the Laws relating to the Conveyance and Transfer of Real and Personal Property vested in Mortgagees and Trustees.

[Assented to, April 2, 1856.]

*of Act of Real
Property act as
this act?*

Preamble.

WHEREAS it is expedient to consolidate, amend, and extend the provisions of the law relating to the conveyance and transfer of real and personal property vested in Mortgagees and Trustees in South Australia—Be it therefore Enacted, by the Governor-in-Chief of South Australia, by and with the advice and consent of the Legislative Council thereof, in manner following, that is to say:

1. All proceedings had and taken in the Supreme Court of South Australia, under or by virtue of an Act of the Imperial Parliament, passed in the first year of the reign of His late Majesty King William the Fourth, intituled "An Act for amending the laws respecting conveyances and transfers of estates, and funds vested in trustees and mortgagees, and for enabling Courts of Equity to give effect to their decrees in certain cases," or under and by virtue of the power and authority of an Act of the Imperial Parliament, called "The Trustee Act of 1850," which by the seventy-fifth section of the Act No. 14 of the year 1853, intituled "An Act to amend the practice and proceedings in the Equitable Jurisdiction of the Supreme Court of South Australia," were vested in the said Court shall, so far as the same have been lawfully done, be affirmed; and all proceedings under the last-mentioned Act, commenced before the passing of this Act, may be proceeded with under the said last-mentioned Act, or under this Act, as may be thought most advisable, and subject as aforesaid, the said Acts of the Imperial Parliament, shall, after the passing of this Act have no force or operation in this Province.

Proceedings under former Acts confirmed.

2. And

Interpretation of
terms.

2. And whereas it is expedient to define the meaning in which certain words are hereafter used, it is declared that the several words hereinafter named are herein used and applied in the manner following respectively, that is to say—

The word "Lands" shall extend to and include messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenor or description whatever may be the estate or interest therein :

The word "Stock" shall mean any fund, annuity, or security, transferable in books kept by any Company or Society, established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share or interest therein :

The word "Seised" shall be applicable to any vested estate for life or of a greater description, and shall extend to estates at law and in equity, in possession or in futurity, in any lands :

The word "Possessed" shall be applicable to any vested estate less than a life estate at law, or in equity in possession, or in expectancy in any lands :

The words "Contingent Right," as applied to lands, shall mean a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained ; also a right of entry, whether immediate or future, and whether vested or contingent :

The words "Convey" and "Conveyance," applied to any persons shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another lands, whereof such person is seised, or wherein he is entitled to a contingent right, either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts necessary to be performed by married women and tenants in tail, in order to the perfect conveyance and assurance of their respective estates and interests :

The words "Assign" and "Assignment" shall mean the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring lands of which such person is possessed, either for the whole estate of the person so possessed or for any less estate :

The word "Transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock can transfer such stock from himself to another :

The word "Trust" shall not mean the duties incident to an estate conveyed by way of mortgage ; but, with this exception, the
words

words "Trust" and "Trustee" shall extend to and include implied and constructive trusts; and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust; and shall extend to and include the duties incident to the office of personal representative of a deceased person:

The word "Lunatic" shall mean any person who shall have been found to be a lunatic upon inquiry by the Supreme Court, or any Judge thereof, or upon a Commission of Inquiry issuing out of the Supreme Court in the nature of a writ *de lunatico inquirendo* :

The expression "Person of Unsound Mind" shall mean any person not an infant, who, not having been found to be a lunatic, shall be incapable, from infirmity of mind, to manage his own affairs:

The word "Devisee" shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the lands of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent:

The word "Mortgage" shall be applicable to every estate, interest, or property in lands or personal estate, which would in a Court of Equity be deemed merely a security for money:

The word "Person" used and referred to in the masculine gender shall include a female as well as a male, and shall include a body corporate:

And generally, unless the contrary shall appear from the context, every word importing the singular number only shall extend to several persons or things, and every word importing the plural number shall apply to one person or thing, and every word importing the masculine gender only shall extend to a female:

3. When any lunatic or person of unsound mind shall be seised or possessed of any lands upon any trust or by way of mortgage, it shall be lawful for the Supreme Court to make an order that such lands be vested in such person or persons, in such manner, and for such estate as such Court shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

The Court may make an order for vesting estates of lunatic trustees and mortgagees.

4. When any lunatic or person of unsound mind shall be entitled to any contingent right in any lands upon any trust, or by way of mortgage, it shall be lawful for the Supreme Court to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and

Court may convey contingent rights.

and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.

Court may convey estates of infant trustees and mortgagees.

5. Where any infant shall be seised or possessed of any lands upon any trust, or by way of mortgage, it shall be lawful for the Supreme Court to make an order vesting such lands in such person or persons, in such manner, and for such estate as the said Court may direct; and the order shall have the same effect as if the infant trustee or mortgagee had been twenty-one years of age, and had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

Contingent rights of infant trustees and mortgagees.

6. Where any infant shall be entitled to any contingent right in any lands upon any trust or by way of mortgage, it shall be lawful for the Supreme Court to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the infant had been twenty-one years of age, and had duly executed a deed so releasing or disposing of the contingent right.

Court may convey the estate of a trustee out of the jurisdiction of the Court.

7. When any person, solely seised or possessed of any lands upon any trusts, shall be out of the jurisdiction of the Supreme Court, or cannot be found, it shall be lawful for the Court to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands in the same manner and for the same estate.

Court may make order in cases where persons are seised of lands jointly with parties out of jurisdiction of Court, &c.

8. When any person shall be seised or possessed of any lands upon any trust jointly with a person out of the jurisdiction of the Supreme Court, or who cannot be found, it shall be lawful for the said Court to make an order vesting the lands in the person so jointly seised or possessed, or in such last-mentioned person together with any other person in such manner and for such estate as the said Court may direct; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

Contingent right of trustees.

9. When any person solely entitled to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Supreme Court, or cannot be found, it shall be lawful for the said Court to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said Court may direct; and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.

10. When

10. When any person jointly entitled with any other person or persons to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Supreme Court, or cannot be found, it shall be lawful for the said Court, or a Judge thereof, to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.

Court may make an order in cases where persons are jointly entitled with others out of its jurisdiction to a contingent right in lands.

11. Where there shall have been two or more persons jointly seised or possessed of any lands upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the Supreme Court to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

When it is uncertain which of several trustees was the survivor.

12. Where any one or more person or persons shall have been seised or possessed of any lands upon any trust, and it shall not be known as to the trustee last known to have been seised or possessed, whether he be living or dead, it shall be lawful for the Supreme Court to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

When it is uncertain whether the last trustee be living or dead.

13. When any person seised of any lands upon any trust shall have died intestate as to such lands without an heir, or shall have died and it shall not be known who is his heir or devisee, it shall be lawful for the Supreme Court to make an order vesting such lands in such person or persons, in such manner and for such estate, as the said Court shall direct; and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the lands in the same manner or for the same estate.

When trustee dies without an heir.

14. When any lands are subject to a contingent right in an unborn person or class of unborn persons who in coming into existence would in respect thereof become seised or possessed of such lands upon any trust, it shall be lawful for the Supreme Court to make an order which shall wholly release and discharge such lands from such contingent right in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons the estate or estates which such unborn or class of unborn persons would upon coming into existence be seised or possessed of in such lands.

Contingent right of unborn trustees.

May make an order for vesting the estate, in lieu of conveyance, by a party to the suit, after a decree or order for sale.

15. That when any decree or order shall have been made by the Supreme Court directing the sale of any lands for any purpose whatever, every person seised or possessed of such lands, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby, or being otherwise bound by such decree or order, 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 in every such case it shall be lawful for the Supreme Court, if the said Court shall think it expedient, for the purpose of carrying such sale into effect, to make an order vesting such lands, or any part thereof, for such estate as the Court shall think fit either in any purchaser or in such other person as the Court shall direct; and every such order shall have the same effect as if such person so seised or possessed or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such lands for such estate.

Power to make an order for vesting the estate on refusal or neglect of a trustee to convey or release.

16. In every case where any person is or shall be jointly or solely seised or possessed of any lands, or entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance or assignment of such lands, or by a duly authorized agent of such last-mentioned person, requiring such trustee to convey or assign the same, or to release such contingent right, it shall be lawful for the Supreme Court, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey or assign the said lands for the space of twenty-eight days after such demand, to make an order vesting such lands in such person in such manner and for such estate as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands, or a release of such right in the same manner and for the same estate.

Power to convey in place of deceased mortgagee not in possession.

17. When any person to whom any lands have been conveyed by way of mortgage shall have died without having entered into the possession, or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the re-conveyance of such lands, then in any of the following cases it shall be lawful for the Supreme Court to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct, that is to say—When an heir or devisee of such mortgagee shall be out of the jurisdiction of the Supreme Court or cannot be found: When an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such lands or a duly authorized agent of such last-mentioned person, have refused to convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such lands shall have been tendered to him by a person entitled as aforesaid, or a duly authorized agent of such last-mentioned person: When it shall be uncertain

uncertain which of several devisees of such mortgagee was the survivor: When it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee, whether he be living or dead: When such mortgagee shall have died intestate as to such lands and without an heir, or shall have died and it shall not be known who is heir or devisee: And the order of the said Court made in any one of the foregoing cases shall have the same effect as if the heir or devisee, or surviving devisee, as the case may be, had duly executed a conveyance or assignment of the lands in the same manner and for the same estate.

18. Where a person having contracted by any instrument in writing to sell any land, dies without having conveyed the land in pursuance of his contract, and the whole consideration for the sale of such land hath been paid or satisfied to him in his lifetime, or to his personal representative after his decease, or to some person entitled to receive the same, or his personal representative is willing to receive and accept the consideration money or such part thereof as may remain unsatisfied, and there is no dispute or question as to the making of the contract, or as to the right of the purchaser of the land so agreed to be sold to demand a specific performance of such contract, and the Court shall be satisfied that the only impediment to the performance thereof arises from the fact that the legal estate in the land has become vested in an heir or devisee of the deceased vendor, who is an infant, or lunatic, or of unsound mind, then it shall be lawful for the Supreme Court to make an order declaring the heir or devisee, as the case may be, of the deceased vendor to be a trustee of the land contracted to be sold, and such heir or devisee shall thereupon be deemed to be a trustee thereof within the meaning of this Act, and the said Court, by the same or any subsequent order, may order that such land shall vest in such person, in such manner and for such estate as the said Court may direct, and the order shall have the same effect as if the person so declared to be a trustee had been twenty-one years of age, and of sound mind, and had duly executed a conveyance of the land in the same manner and for the same estate; and the said Court may also, by the same or any subsequent order, give directions as to the payment and satisfaction of any purchase money which may remain unpaid or unsatisfied at the time of making the order.

In what cases the heir or devisee of a person, who has contracted to sell land, shall be deemed a trustee within this Act.

19. Where any decree shall be made by the Supreme Court for the specific performance of a contract concerning any lands, or for the partition or exchange of any lands, or generally when any decree shall be made for the conveyance or assignment of any lands, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said Court to declare that any of the parties to the said suit wherein such decree is made are trustees of such lands or any part thereof within the meaning of this Act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was during his lifetime a party

Court to declare what parties are trustees of lands comprised in any suit, and as to the interests of persons unborn.

to

to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act, and thereupon it shall be lawful for the said Court to make such order or orders as to the estates, rights, and interests of such persons, born or unborn, as the said Court might, under the provisions of this Act, make concerning the estates, rights, and interests of trustees born or unborn.

Power to appoint new trustees in lieu of persons convicted of felony.

20. Where any person is or shall be jointly seised or possessed of any lands or entitled to any stock upon any trust, and such person has been or shall be convicted of felony, it shall be lawful for the Supreme Court, upon proof of such conviction, to appoint any person to be a trustee in the place of such convict, and to make an order for vesting such lands, or the right to transfer such stock, and to receive the dividends or income thereof, in such person to be so appointed trustee; and such order shall have the same effect as to lands as if the convict trustee had been free from any disability and had duly executed a conveyance or assignment of his estate and interest in the same.

Power to Court to make order appointing new trustees.

21. Whenever it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the Supreme Court, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, and whether there be any existing trustee or not at the time of making such order.

The new trustees to have the powers of trustees appointed by decree in suit.

22. The person or persons, who upon the making of such order as last aforesaid shall be trustee or trustees, shall have all the same rights and powers as he or they would have had if appointed by a decree in a suit duly instituted.

Power to Court to vest lands in new trustees.

23. It shall be lawful for the Supreme Court, upon making any order for appointing a new trustee or new trustees, either by the same or any subsequent order to direct that any lands subject to the trust shall vest in the person or persons who, upon the appointment, shall be the trustee or trustees for such estate as the Court shall direct; and such order shall have the same effect as if the person or persons, who before such order were the trustee or trustees (if any), had duly executed all proper conveyances and assignments of such lands for such estate.

Power for Court to vest right to sue at law in new trustees.

24. It shall be lawful for the Supreme Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order to vest the right to call for a transfer of any stock subject to the trust, or to receive the dividends or income thereof, or to sue for or recover any chose in action subject to the trust, or any interest in respect thereof, in the person or persons who upon the appointment shall be the trustee or trustees.

25. When

See S. 25

See S. 35

25. When any infant, or any lunatic, or person of unsound mind shall be solely entitled to any stock or to any chose in action upon any trust, or by way of mortgage, it shall be lawful for the Supreme Court to make an order vesting in any person or persons the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof; and when any person or persons shall be entitled jointly with any infant, or lunatic, or person of unsound mind to any stock or chose in action upon any trust, or by way of mortgage it shall be lawful for the Court to make an order vesting the rights to transfer such stock or to receive the dividends or income thereof, or to sue for and recover such chose in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said Court may appoint.

Court may transfer stock of infant or lunatic trustees and mortgagees.

26. When any stock shall be standing in the name of any deceased person whose personal representative is an infant, or a lunatic, or person of unsound mind, or when any chose in action shall be vested in any infant, or lunatic, or person of unsound mind as the personal representative of a deceased person, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action or any interest in respect thereof, in any person or persons he may appoint.

Power to transfer stock, &c., standing in the name of deceased person, when personal representative is an infant or lunatic, &c.

27. When any person or persons shall be jointly entitled, with any person out of the jurisdiction of the Supreme Court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or chose in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last mentioned person or persons, together with any person or persons the said Court may appoint; and when any sole trustee of any stock or chose in action shall be out of the jurisdiction, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in any person or persons the said Court may appoint.

When trustees of stock out of jurisdiction.

28. Where any sole trustee of any stock or chose in action shall neglect or refuse to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful

When sole trustee of stock refuses to transfer for twenty-eight days after demand.

for the Supreme Court to make an order vesting the sole right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.

When one of several trustees of stock refuses to transfer, or receive and pay over dividends.

29. Where any one of the trustees of any stock or chose in action shall neglect or refuse to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him or her by such person, it shall be lawful for the Supreme Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, in the other trustee or trustees of the said stock or chose in action, or in any person or persons whom the said Court may appoint jointly with such other trustee or trustees.

When stock is standing in the name of a deceased person, whose personal representative shall be out of the jurisdiction of the Supreme Court, &c., or shall refuse, &c.

30. When any stock shall be standing in the sole name of a deceased person, and his or her personal representative shall be out of the jurisdiction of the Supreme Court, or cannot be found, or it shall be uncertain whether such personal representative be living or dead, or such personal representative shall neglect or refuse to transfer such stock or to receive the dividends or income thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the said Court or Judge may appoint.

On neglect to transfer stock for twenty-eight days after an order to transfer, order may be made, vesting right to transfer in such person as the Court shall appoint.

31. Where any person shall neglect or refuse to transfer any stock, or to receive the dividends or income thereof, or to sue for or recover any chose in action, or any interest in respect thereof, for the space of twenty-eight days next after an order of the Court for that purpose shall have been served upon him, it shall be lawful for the Supreme Court to make an order vesting all the rights of such person to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.

On like neglect by executor, similar order may be made.

32. When any stock shall be standing in the sole name of a deceased person, and his personal representative shall refuse or neglect to transfer such stock, or to receive the dividends or income thereof, for the space of twenty-eight days next after an order of the Supreme Court for that purpose shall have been served upon him, it shall be lawful for the Court or a Judge thereof to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the said Court may appoint.

33. When

33. When any order being or purporting to be under this Act shall be made by the Supreme Court, vesting the right to any stock, or vesting the right to transfer any stock, or vesting the right to call for the transfer of any stock, in any person or persons, in every such case the legal right to transfer such stock shall vest accordingly; and the person or persons so appointed shall be authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock into his or their own name or names, or otherwise, to the extent and in conformity with the terms of the order; and all companies and associations whatever, and all persons shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.

Effect of order, vesting right in any stock, &c.

34. Every order made or to be made, being or purporting to be made, under this Act by the Supreme Court, shall be a complete indemnity to all companies and associations whatsoever, and all persons, for any act done pursuant thereto; and it shall not be necessary for such company, or association, or person, to inquire concerning the propriety of such order, or whether the Court or Judge making the order had jurisdiction to make the same.

Indemnity to companies, &c., so obeying.

35. Where any order shall have been made under the provisions of this Act, vesting the legal right to sue for or recover any chose in action, or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly; and thereupon it shall be lawful for the person or persons so appointed to carry on, commence, and prosecute, in his or their own name or names, any action, suit, or other proceeding at law or in equity, for the recovery of such chose in action, in the same manner in all respects as the person in whose place an appointment shall have been made, could have sued for or recovered such chose in action.

Effect of an order vesting legal right in a chose in action.

See S. 24

36. It shall be lawful for the Supreme Court to 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, shall be exercised; and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced.

Power to make directions how the right to transfer stock to be exercised.

37. In every case where the Supreme Court shall under the provisions of this Act be enabled to make an order having the effect of a conveyance or assignment of any lands, or having the effect of a release or disposition of the contingent right of any person or persons born or unborn, it shall also be lawful for the said Court, should it be deemed more convenient so to do, to make an order appointing

Power to appoint person to convey in certain cases.

appointing a person to convey or assign such lands, or release or dispose of such contingent right; and the conveyance, or assignment, or release, or disposition of the person so appointed shall, when in conformity with the terms of the order by which he is appointed, have the same effect in conveying or assigning the lands, or releasing or disposing of the contingent right, as an order of the Supreme Court would in the particular case have had under the provisions of this Act; and in every case where the said Court shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of any Company or Society established or to be established, it shall also be lawful for the Court, if it be deemed more convenient, to make an order directing the Secretary or any officer of such Company or Society at once to transfer or join in transferring the stock of the person or persons to be named in the order; and this Act shall be a full and complete indemnity and discharge to all Companies or Societies, their officers and servants, for all acts done or permitted to be done pursuant thereto.

Old trustees not to be discharged from liability.

38. Any such appointments by the Supreme Court of new trustees, and any such conveyance, assignment, or transfer as aforesaid, shall operate no 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 done.

Who may apply for order of Court.

39. An order under any of the hereinbefore contained provisions, for the appointment of a new trustee or trustees, or concerning any lands, stock, or chose in action subject to a trust, may be made upon the application of any person beneficially interested in such lands, stock, or chose in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and an order under any of the provisions hereinbefore contained concerning any lands, stock, or chose in action, 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 moneys secured by such mortgage.

Parties entitled may apply to the Court by petition.

40. Any person entitled in manner aforesaid to apply for an order from the Supreme Court, may apply for the same upon petition to be addressed to the Judges of the said Court for such order as he may deem himself entitled to, which petition, and all matters directly or indirectly arising thereout, may be heard and disposed of by the Court, or any Judge or Judges thereof; and the person applying for such order may give evidence by affidavit or otherwise, in support of such petition, and may serve such person or persons with notice of such petition as he may deem entitled to service thereof, and upon hearing such petition the Court, or Judge, or Judges before whom the same is brought, may either dispose of the matter thereof in the first instance, or may direct a reference to the Master to inquire into any facts which require investigation, or may direct such petition to stand over until the

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*Robert J. P.
M. H. B. & J.
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the right of the petitioner shall have been declared in a suit instituted for that purpose, or to enable the petitioner to adduce evidence, or for further consideration, or to enable notice or any further notice of such petition to be served upon any person, and may either dismiss such petition or make an order in conformity with the provisions of this Act, and in either case may make such order with respect to costs as shall seem just; and may, when it shall seem proper to do so, order the costs and expenses of and relating to the petitions, orders, directions, conveyances, assignments, and transfers to be made in pursuance of this Act or any of them, to be paid, and raised out of or from the lands or personal estate in respect of which the same shall be made, or in such manner as the Court shall think proper.

41. Whensoever in any cause or matter, either by the evidence adduced therein, or by the admission of the parties, or by a report of the Master the facts necessary for an order under this Act shall appear to such Court to be sufficiently proved, it shall be lawful for the said Court either upon the hearing of the said cause, or any petition or motion in the said cause or matter, to make such order under this Act.

Power to make order in a cause.

42. Whenever any order shall be made under this Act by the Supreme Court for the purpose of conveying or assigning any lands, or for the purpose of releasing or disposing of any contingent right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the Supreme 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 heir or last surviving devisee of a mortgagee be living or dead, or an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or devisee, then, in any of such cases, the fact that the Supreme Court has made an order upon such an allegation, shall be conclusive evidence of the matter so alleged in any Court of law or equity, upon any question as to the legal validity of the order: Provided always, that nothing herein contained shall prevent the said Court directing a re-conveyance or re-assignment of any lands conveyed or assigned by any order under this Act, or a re-disposition of any contingent right conveyed or disposed of by such order; and it shall be lawful for the said Court to direct any of the parties to any suit concerning such lands or contingent right, to pay any cost occasioned by the order under this Act, when the same shall appear to have been improperly obtained.

Orders made by the Supreme Court founded on certain allegations to be conclusive evidence of the matter contained in such allegations.

43. No lands, stock, or chose in action vested in any person upon any trust or by way of mortgage or any profits thereof shall escheat or be forfeited to Her Majesty, Her heirs or successors, or to any Corporation, or other person by reason of the attainder or conviction for any offence of such trustee or mortgagee, but shall remain in such

No escheat of property held upon trust or mortgage.

*See also of Sup Court
and Western Chancery
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trustee or mortgagee, or survive to his or her co-trustee, or descend or vest in his or her representative as if no such attainder or conviction had taken place.

Act not to prevent escheat or forfeiture of beneficial interest.

44. Nothing contained in this Act shall prevent the escheat or forfeiture of any lands or personal estate vested in such trustee or mortgagee so far as relates to any beneficial interest therein of any such trustee or mortgagee, but such lands or personal estate, so far as relates to any such beneficial interest, shall be recoverable in the same manner as if this Act had not passed.

Money of infants and persons of unsound mind to be paid into Court.

45. Where any infant, or person of unsound mind, shall be entitled to any money payable in discharge of any lands, stock, or chose in action, conveyed, assigned, or transferred under this Act, it shall be lawful for the person by whom such money is payable to pay the same to the Master of the Supreme Court or to such other officer thereof as the Court shall appoint, 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 person of unsound mind, subject to the order or disposition of the said Court; and it shall be lawful for the said Court, upon petition in a summary way, to order any money so paid to be invested in any public funds, or upon mortgage of real estate, and to order payment or distribution thereof, or payment of the dividends or interest thereof, as to the said Court shall seem reasonable; and the Master, or officer, who shall receive any such money is hereby required to give the person paying the same a receipt for such money, and such receipt shall be an effectual discharge for the money therein respectively expressed to have been received.

Court may make a decree in the absence of a trustee.

46. Where, in any suit commenced or to be commenced in the Supreme Court, it shall be made to appear to the Court by affidavit that diligent search and inquiry has been made after any person made a defendant, who is only a trustee, to serve him with the process of the Court, and that he cannot be found it shall be lawful for the said Court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to them to be only a trustee, and not otherwise concerned in interest in the matter in question in such and the same manner as if such trustee had been duly served with the process of the Court, and had appeared and filed his answer thereto, and had also appeared by his counsel and solicitor at the hearing of the cause: Provided always that no such decree shall bind, affect, or otherwise prejudice any person against whom the same shall be made without service of process upon him as aforesaid his heirs, executors, or administrators, for or in respect of any estate, right, or interest, which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a trustee as aforesaid.

Commission concerning person of unsound mind.

47. Upon any petition being presented under this Act to the Supreme Court concerning a person of unsound mind, it shall be lawful

lawful for the said Court, should it so think fit, to direct that a commission, in the nature of a writ *de lunatico inquirendo*, should issue concerning such person; and to postpone making any order upon such petition until a return shall have been made to such commission.

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48. In citing this Act in other Acts of the Colonial Legislature, and in legal instruments, it shall be sufficient to use the expression, "The Trustee Act, 1855."

Short title of Act.