

New Zealand.



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1883, No. 30.

AN ACT to consolidate certain Acts relating to Trusts and Trustees. Title.
 [8th September, 1883.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Trustee Act, 1883," and Short Title.
 it shall come into operation on the first day of January, one thousand eight hundred and eighty-four.

(1.) PRELIMINARY.

2. In this Act, if not inconsistent with the context,— Interpretation.

"Assign" and "assignment" means the execution and performance by a person of every necessary or suitable deed, instrument, 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:

"Bank" and "banker" includes any person, partnership, or corporation carrying on the business of banking:

"Contingent right," as applied to lands, means 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:

"Convey" and "conveyance," applied to any person, means the execution by such person of every necessary or suitable assurance or instrument for conveying or disposing to another lands whereof such person is seised or 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 to be performed by married women and any other party or parties, in accordance with the provisions of any enactment in force in the colony:

"Court" means the Supreme Court of New Zealand:

"Devisee," in addition to its ordinary signification, means 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 law concerning devise and descent :

- “ District ” means a district now or hereafter constituted under “ The Supreme Court Act, 1882 : ”
- “ Government securities ” mean any bonds, debentures, or other securities issued by or under the authority of the Government of the colony by virtue of an Act of the General Assembly, and which are secured upon the revenues of the colony :
- “ Judge ” means a Judge of the Supreme Court of New Zealand :
- “ Lands ” includes messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein :
- “ Lunatic ” means any person duly found by inquisition to be an idiot or lunatic or of unsound mind :
- “ 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 :
- “ Person of unsound mind ” means any person who is not an infant or a lunatic, but who is incapable of managing his affairs, whether by reason of infirmity of mind, age, or any other cause :
- “ Possessed ” is applicable to any vested estate less than a life estate at law or in equity, in possession or in expectancy, in any lands :
- “ Registrar ” means the Registrar of the Supreme Court acting for the district, constituted under “ The Supreme Court Act, 1882,” in which any proceeding is taken or anything is done under this Act, and includes a Deputy-Registrar where there is no Registrar, or in any case where the Deputy may lawfully act for and on behalf of the Registrar :
- “ Seised ” is 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 :
- “ Stock ” means any fund, annuity, or security transferable in books kept by any company or society established or to be established, or transferable by deed or other instrument, or by deed or other instrument accompanied by other formalities, and any share or interest therein respectively, and includes Government securities :
- “ Transfer ” means the execution and performance of every deed, instrument, and act by which a person entitled to stock can transfer such stock from himself to another :
- “ Treasury ” means the Treasury of the colony :
- “ Trust ” shall not mean the duties incident to property conveyed or assigned by way of security for money but with this exception “ trust ” and “ trustee ” shall include implied and constructive trusts, and includes cases where the trustee has some beneficial estate or

interest in the subject of the trust, and includes also the duties incident to the office of personal representative of a deceased person.

3. The Acts and part of an Act specified in the Schedule to this Act shall be repealed to the extent in that Schedule mentioned, but this repeal shall not invalidate or affect any order, instrument, act, or thing made, executed, or done before the commencement of this Act.

Repeal of Acts.

4. When any enactment, statutory rule, deed, instrument, or other document made before the commencement of this Act refers to any Act repealed by this Act, or to any enactment thereof, it shall be construed as referring to this Act or to the corresponding enactment of this Act.

References to Acts repealed to be deemed to refer to this Act.

(2.) POWERS OF THE SUPREME COURT.

5. When any lunatic or person of unsound mind is seised or possessed of any lands upon any trust or by way of mortgage, the Court may make an order that such lands be vested in such person in such manner and for such estate as the Court directs.

Court may make order vesting estates held by lunatic trustees or mortgages.

6. When any lunatic or person of unsound mind is entitled to any contingent right in any lands upon any trust or by way of mortgage, the Court may make an order wholly releasing such lands from such contingent right, or disposing of the same to such person as the Court directs.

May release or dispose of contingent rights in lands held by lunatic trustees or mortgagees.

7. When any lunatic or person of unsound mind is solely entitled to any stock or to any chose in action upon any trust or by way of mortgage, the Court may make an order vesting in any person 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.

May transfer stock, &c., held solely by such trustees or mortgagees.

8. When any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or chose in action upon any trust or by way of mortgage, the Court may 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, either in such person so jointly entitled as aforesaid, or in such last-mentioned person together with any other person the Court may appoint.

When stock, &c., held jointly with such trustees or mortgagees.

9. When any stock is standing in the name of any deceased person whose personal representative is a lunatic or person of unsound mind, or when any chose in action is vested in any lunatic or person of unsound mind as the personal representative of a deceased person, the Court may 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 the Court may appoint.

Power to transfer stock, &c., of deceased person whose personal representative is lunatic.

10. Where any infant is seised or possessed of any lands upon any trust or by way of mortgage the Court may make an order vesting such lands in such person or persons in such manner and for such estate as the Court directs.

Court may make order respecting lands held by infant trustee or mortgagees.

11. Where any infant is entitled to any contingent right in any lands upon any trust or by way of mortgage the Court may make an order wholly releasing such lands from such contingent right or

Or as to contingent right in lands held by infant trustee or mortgagees.

disposing of the same to such person or persons as the said Court directs.

Or as to stock held by infant trustee or mortgagee.

12. When any infant is solely entitled to any stock upon any trust the Court may make an order vesting in any person or persons the right to transfer such stock or to receive the dividends or income thereof, and when any infant shall be entitled jointly with any other person or persons to any stock upon any trust the Court may make an order vesting the right to transfer such stock or to receive the dividends or income thereof either in the person or persons jointly entitled with the infant, or in him or them together with any other person the Court may appoint.

Power of Court when trustee out of jurisdiction.

13. When any person solely seised or possessed of lands upon any trust is out of the jurisdiction of the Court, or cannot be found, the said Court may make an order vesting such lands in such person or persons in such manner and for such estate as the Court directs.

When lands held jointly with person out of jurisdiction.

14. When any person or persons is seised or possessed of any lands jointly with a person out of the jurisdiction of the Court, or who cannot be found, the said Court may make an order vesting the lands in the person or persons so jointly seised or possessed, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the Court directs.

When person solely entitled to contingent right in lands is out of jurisdiction.

15. When any person solely entitled to a contingent right in any lands upon any trust is out of the jurisdiction of the Court, or cannot be found, the Court may 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 directs.

When persons jointly entitled, &c.

16. When any person jointly entitled with any other person or persons to a contingent right in any lands upon any trust is out of the jurisdiction of the Court, or cannot be found, the Court may 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.

Where it is uncertain which of several trustees was survivor.

17. Where there shall have been two or more persons jointly seised or possessed of any lands upon any trust and it is uncertain which of such trustees was the survivor, the Court may make an order vesting such lands in such person or persons in such manner and for such estate as the said Court directs.

Where it is uncertain whether last trustee be living or dead.

18. Where any one or more person or persons shall have been seised or possessed of any lands upon any trust, and it is not known as to the trustee last known to have been seised or possessed whether he be living or dead, the Court may make an order vesting such lands in such person or persons in such manner and for such estate as the Court directs.

When trustee dies without an heir.

19. 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 is not known who is his heir or devisee, the Court may make an order vesting such lands in such person in such manner and for such estate as the Court directs.

Contingent right of unborn persons.

20. When any lands are subject to a contingent right in an unborn person or class of unborn persons who, upon coming into existence, would, in respect thereof, become seised or possessed of such lands upon

any trust, the Court may 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 make an order which shall vest in any person or persons the estate or estates which such unborn person or class of unborn persons would, upon coming into existence, be seized or possessed of in such lands.

21. In every case where any person is or shall be jointly or solely seized or possessed of any lands or entitled to a contingent right therein upon any trust, and a demand has been made upon such trustee by a person entitled to require a conveyance or assignment of such lands, or a duly-authorized agent of such last-mentioned person, requiring such trustee to convey or assign the same, or to release such contingent right, the Court, if it is 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, may make an order vesting such lands in such person in such manner and for such estate as the Court directs, or releasing such contingent right in such manner as the Court directs.

Where trustee refuses or neglects to convey, &c.

22. When any person is or shall be jointly or solely seized or possessed of any lands or entitled to any stock upon any trust, and such person has been or is convicted of felony, the Court, upon proof of such conviction, may appoint any person to be a trustee in the place of such convict, and may make an order for vesting such lands, or the right to transfer such stock and to receive the dividends or income thereof, in some person to be so appointed trustee.

Power to appoint new trustee in lieu of person convicted of felony.

23. 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 consents to an order for the reconveyance of such lands, the Court may make an order vesting such lands in such person or persons in such manner and for such estate as the Court directs, that is to say,—

Power to order reconveyance in certain cases.

- (1.) When an heir or devisee of such mortgagee is out of the jurisdiction of the Court, or cannot be found;
- (2.) When an heir or devisee of such mortgagee, upon a demand by a person entitled to require a conveyance of such lands, or a duly-authorized agent of such last-mentioned person, states in writing that he will not 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 has been tendered to him by a person entitled as aforesaid or a duly-authorized agent of such last-mentioned person;
- (3.) When it is uncertain which of several devisees of such mortgagee was the survivor;
- (4.) When it is 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;
- (5.) When such mortgagee has died intestate as to such lands and without an heir, or has died and it is not known who is his heir or devisee.

24. An order of the Court made under any of the preceding provisions of this Act shall have the same effect as if the person by

Effect of orders made under preceding provisions.

reason of whose incapacity, absence, death, uncertainty of existence or status, or disability, such order has been made or has become necessary, had been free from incapacity or disability, had survived, was within the jurisdiction, or otherwise capable of executing and had duly executed, made, and perfected, with all necessary formalities, a conveyance, assignment, or other proper assurance or disposition of the lands, stock, or chose in action so affected to the person to and in the manner in which such order purports to dispose of the same.

Power to appoint a person to convey in certain cases.

25. In every case where the Court is, under the provisions of this Act, 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, the Court (should it be deemed more convenient) may make an order appointing a person to convey or assign such lands or release or dispose of such contingent right.

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 said Court would, in the particular case, have had under the provisions of this Act.

Power to order a bank, &c., to transfer stock.

26. In every case where the said Court is, under the provisions of this Act, enabled to make an order vesting in any person the right to transfer any stock transferable in the books of any bank or any other company or society established or to be established, the Court (if it be deemed more convenient) may make an order directing any officer of such bank, company, or society at once to transfer or join in transferring the stock to the person or persons to be named in the order.

Indemnity to banks, &c.

27. This Act shall be a full and complete indemnity and discharge to the banks, companies, or societies, and their officers and servants, for all acts done or permitted to be done pursuant thereto.

When person jointly entitled to stock, &c., out of the jurisdiction.

28. When any person is jointly entitled with any person out of the jurisdiction of the 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, the Court may 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 so jointly entitled as aforesaid, or in such last-mentioned person together with any person or persons the said Court may appoint.

When trustee of stock, &c., out of the jurisdiction.

29. When any sole trustee of any stock or chose in action is out of the jurisdiction of the Court, or cannot be found, or it is uncertain whether he be living or dead, the Court may 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 the Court may appoint.

When trustee of stock refuses to transfer, &c.

30. 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, the Court may 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 Court may appoint.

31. 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 directions 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 such person, the Court may 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 Court may appoint jointly with such other trustee or trustees.

When one of several trustees of stock refuses to transfer or pay over dividends, &c.

32. Where any person neglects or refuses 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 has been served upon him, the Court may make an order vesting all the right 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 as the Court may appoint.

On neglect to transfer stock, &c., order may be made by Court.

33. When any stock is standing in the sole name of a deceased person, and his personal representative refuses or neglects to transfer such stock or receive the dividends or income thereof for the space of twenty-eight days next after an order of the Court for that purpose shall have been served upon him, the Court may make an order vesting the right to transfer such stock or to receive the dividends or income thereof in any person whom the Court may appoint.

On neglect of personal representative to transfer stock, &c., Court may make order.

34. When any stock is standing in the sole name of a deceased person and his or her personal representative shall be out of the jurisdiction of the Court, or cannot be found, or it is uncertain whether such personal representative be living or dead, or such personal representative neglects or refuses to transfer such stock or 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, the Court may make an order vesting the right to transfer such stock or to receive the dividends or income thereof in any person whom the Court may appoint.

When stock is in name of deceased person.

35. Any order made by the Court under this Act 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 shall vest the legal right to transfer such stock accordingly, and the person 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 own name or otherwise, to the extent and in conformity with the terms of the order.

Effect of orders vesting right to stock.

36. All banks and all other companies and associations whatever, and all persons, shall be equally bound and compellable to comply with

Banks, &c., to comply with orders.

the requisitions of such person so appointed as aforesaid, to the extent and in conformity with the terms of such order, as the said banks, 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.

Indemnity to banks and companies so obeying.

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

Effect of order vesting legal right in chose in action.

38. Where any order is made under the provisions of this Act by the Court vesting the legal right to sue for or recover any chose in action or any interest in respect thereof in any person such legal right shall vest accordingly, and thereupon the person so appointed may carry on, commence, and prosecute, in his own name, any action, or other proceeding, 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 a decree for sale of real estate for payment of debts.

39. When a decree is made by the Court directing the sale of any lands for the payment of the debts of a deceased person, every person seised or possessed of such lands, or entitled to a contingent right therein, as heir or under the will 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 is hereby empowered to make an order wholly discharging the contingent right under the will of such deceased debtor of any unborn person.

Persons bound by decree or order to be deemed trustees.

40. When any decree or order is made by the Court directing the sale of any lands for any purpose whatever every person seised or possessed of such land, or entitled to a contingent right therein, being a party to the action or proceeding in which such decree or order is 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 the Court (if it thinks expedient, for the purpose of carrying such sale into effect) may make an order vesting such lands or any part thereof, for such estate as the Court thinks fit, either in any purchaser or in such other person as the Court directs.

Court may make an order for vesting estate in lieu of conveyance by party to a suit after a decree, &c.

Court to declare what parties are trustees of lands comprised in any suit.

41. Where any decree is made by the 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 is made for the conveyance or assignment of any lands, either in cases arising out of the doctrine of election or otherwise, the Court may declare that any of the parties to the action wherein such decree is made are trustees of such lands or any part thereof within the meaning of this Act, or declare, concerning 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 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 the Court may 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.

And as to the interests of persons unborn.

42. 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 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 give directions how right to stock, &c., shall be exercised.

43. In all cases where it is expedient to appoint a new trustee, and it is found inexpedient, difficult, or impracticable to do so without the assistance of the Court, the Court may make an order appointing a new trustee, either in substitution for or in addition to any existing trustee, and whether there be any existing trustee or not at the time of making such order.

Power to Court to appoint new trustees in certain cases.

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

Powers of new trustees.

45. The Court, upon making any order for appointing a new trustee, either by the same or by any subsequent order may direct that any lands subject to the trust shall vest in the person who upon the appointment shall be the trustee 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 to Court to vest lands in new trustees.

46. The Court, upon making any order for appointing a new trustee, either by the same or by any subsequent order may 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 who upon the appointment shall be the trustee.

Power to vest right to sue in new trustees.

47. Any such appointment by the Court of a new trustee, 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.

Old trustees not to be discharged from liability.

48. An order under any of the hereinbefore contained provisions for the appointment of a new trustee, or concerning any lands, stock, or chose in action subject to 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.

Who may apply for order.

49. 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.

Order may be made on application of person beneficially interested.

50. When any person deems himself entitled to an order under any of the provisions hereinbefore contained, he may exhibit before

Power to go before Registrar in first

instance and obtain certificate.

the Registrar a statement of the facts whereon such order is sought to be obtained and adduce evidence in support thereof, and, if such evidence shall be satisfactory to the Registrar, he shall, at the request of the person adducing such evidence, give a certificate under his hand of the several material facts found by him to be true, and of his opinion that such person is entitled to an order in the form set forth in such certificate.

Any person may apply to Court upon certificate.

51. Any person who has obtained such certificate may apply, by motion to the Court, for an order to the effect set forth in such certificate, or for such other order as such person deems himself entitled to upon the facts found by the Registrar.

Power to present petition in first instance.

52. Any person entitled in manner aforesaid to apply for an order from the Court may, should he so think fit, present a petition in the first instance to the Court for such order as he deems himself entitled to, and may give evidence, by affidavit or otherwise, in support of such petition before the Court, and may serve such person with notice of such petition as he may deem entitled to service thereof.

What may be done on petition.

53. Upon the hearing of any such motion or petition, the Court, should it be deemed necessary, may direct a reference to the Registrar to inquire into any facts which require such an investigation, or the Court may direct such motion or petition to stand over to enable the petitioner to adduce evidence or further evidence before the Court, or to enable notice or any further notice of such motion or petition to be served upon any person.

Court may dismiss petition.

54. Upon the hearing of any such motion or petition, whether any certificate or report from the Registrar has been obtained or not, the Court may dismiss such motion or petition, with or without costs, or may make an order thereupon in conformity with the provisions of this Act.

Power to make an order in a cause.

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

Orders made in certain cases to be conclusive.

56. Whenever any order shall be made by the Court under this Act 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 said 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 on 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 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. But nothing herein contained shall prevent the Court from directing a reconveyance or reassignment

of any lands conveyed or assigned by any order under this Act, or a redistribution of any contingent right conveyed or disposed of by such order :

And the Court may direct any of the parties to any suit concerning such lands or contingent right to pay any costs occasioned by the order under this Act when the same shall appear to have been improperly obtained.

Court may order costs to be paid by parties in certain cases.

57. The Court may exercise the powers herein conferred for the purpose of vesting any lands, stock, or chose in action in the trustee of any charity or society over which charity or society the Court would have jurisdiction upon action duly instituted, whether such trustee shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the Court, or by order made upon a petition to the Court under any statute authorizing the Court to make an order to that effect in a summary way upon petition.

Trustees of charities, &c.

58. Lands, stock, or choses in action vested in any person upon any trust or by way of mortgage, or any profits thereof, shall, notwithstanding the conviction for any offence of such trustee or mortgagee, remain in such trustee or mortgagee, or survive to his co-trustee, or descend or vest in his representative as if no such conviction had taken place.

No escheat of property held upon trust or mortgage.

This enactment shall not extend to or affect any beneficial estate, right, or interest liable to become vested in the administrator of a convict under the provisions of "The Convicts Forfeitures Act, 1871."

Proviso.

59. 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, the person by whom such money is payable shall pay the same, in the name and with the privity of the Registrar, into any bank 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 the receipt of the cashier or proper officer of the bank shall be an effectual discharge for the money therein respectively expressed to have been received.

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

The Court, upon petition in a summary way, may order any money so paid to be invested in Government securities, and may order payment or distribution thereof, or payment of the dividends thereof, as to the Court shall seem reasonable.

Court may order such money to be invested.

60. Where in any action in the Court it appears 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 a process of the Court, and that he cannot be found, the Court may hear and determine such cause, and may 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 or delivered his statement of defence thereto, and had also appeared by his counsel and solicitor at the hearing of such cause :

Court may make decree in the absence of trustee.

But no such decree shall bind, affect, or in anywise prejudice any person against whom the same shall be made without service of process

Proviso as to effect of decree.

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.

Powers of the Registrar in certain cases.

61. When any person, under the provisions of this Act, applies to the Registrar of the Court in the first instance and adduces evidence for the purpose of obtaining the certificate of such Registrar as a foundation for an order of the Court, the Registrar may order service of such application upon any person, or may dismiss such application, and may direct that the costs of any person consequent thereon shall be paid by the person making the same, and all orders of the Registrar under this Act shall be enforced by the same process as orders of the Court made in any suit against a party thereto.

Court may order costs to be paid out of estate.

62. The Court may 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, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Court shall think proper.

Court may direct an inquisition *de lunatico*.

63. Upon any petition being presented under this Act to the Court concerning a person of unsound mind the Court, if it shall so think fit, may direct that an inquisition *de lunatico* shall issue concerning such person, and may postpone making any order upon such petition until a return shall have been made to such inquisition.

Court may postpone making order till rights declared in a suit.

64. Upon any petition under this Act being presented to the Court it may postpone making any order upon such petition until the right of the petitioner or petitioners shall have been declared in a suit duly instituted for that purpose.

Orders liable to stamp duty.

65. Every order made under this Act which shall have the effect of a conveyance or assignment of any lands or a transfer of any such stock as can only be transferred by stamped deed or instrument shall be chargeable with the like amount of stamp duty as it would have been chargeable with if it had been executed or made by the person seised or possessed of such lands or entitled to such stock. Every such order shall be duly stamped for denoting the payment of the said duty.

Powers of Court to be exercised according to rules for time being in force.

66. The jurisdiction and powers conferred on the Court by this Act may be exercised and put in force by any Judge of the Court, either in open Court or at Chambers, according to the rules of the Court in force immediately before the commencement of this Act with reference to proceedings under the Acts mentioned in the Schedule to this Act, or according to any other rules of the Court for the time being in force with reference to proceedings under this Act.

(3.) RELIEF OF TRUSTEES.

Trustees may pay moneys into Treasury.

67. All trustees, executors, administrators, or other person, having in their hands any moneys belonging to any trust whatsoever or the major part of such trustees, shall be at liberty, on filing an affidavit shortly describing the instrument creating the trust according to the best of their knowledge and belief, to pay the same (after notice thereof to the Registrar for the district within which such trustees or other persons, or the major number of them, shall reside)

into the Treasury to the account of such Registrar in the matter of the particular trust (describing the same by the names of the parties as accurately as may be for the purpose of distinguishing it) in trust to attend the orders of the said Court.

68. All trustees or other persons having any bonds, debentures, stocks, or any other securities whatsoever standing in their names, or in the names of any deceased persons of whom they shall be personal representatives, upon any trusts whatsoever, or the major part of them, shall be at liberty to transfer or deposit such securities into or in the name of such Registrar after notice in the matter of the particular trust, describing the same as aforesaid, in trust to attend the order of the Court.

Trustees may deposit securities in Treasury.

69. In every such case the certificate of the Colonial Treasurer of the payment of the said money, or of the transfer or deposit of such securities, shall be a sufficient discharge to such trustees or other persons for the money so paid or the securities so transferred or deposited.

Certificate of Treasurer to discharge trustees.

70. Such orders as seem fit shall be from time to time made by the Court in respect of the trust moneys or securities so paid in, transferred, and deposited as aforesaid, and for the investment and payment of any such moneys, or of any dividends or interest on any such securities, and for the transfer and delivery out of any such securities, and for the administration of any such trusts, generally upon a petition to be presented to any Judge by such party or parties as to such Judge appear to be competent and necessary in that behalf.

Court may make order as to disposal of such moneys, &c.

Service of such petition shall be made upon such person or persons as the Court directs.

Service of petition as Court directs.

71. Every order made upon any such petition shall have the same authority and effect and shall be subject to rehearing and appeal in the same manner as if the same had been made in any action regularly instituted in the Court; and, if it appears that any such trust funds cannot be safely distributed without the institution of one or more action or actions, such Judge may direct any such action to be instituted.

Effect of order.

72. Any trustee as aforesaid may apply by petition to any Judge for an order or direction of the Court for the transfer, payment, or delivery of any trust moneys or securities as aforesaid, and, upon service of such petition and hearing of such parties as the Judge shall think fit, he may order such transfer, payment, or delivery to be made by any one or more of the trustees in whom such trust estate is vested without the concurrence of the other or others of them, and such order shall fully protect and indemnify all bankers, brokers, depositaries, or other persons acting under or in pursuance of such order.

Court may order payment of money or deposit of securities.

73. The Colonial Treasurer shall from time to time publish, together with the public accounts of the colony, a statement of the various moneys and securities transferred, paid, or delivered to him as aforesaid and then remaining in his hands, distinguishing the several estates and the amounts belonging to them respectively.

Treasurer to publish accounts.

74. Such payments and allowances shall from time to time be made out of such trust estates respectively to the Registrar and other persons employed by him in the management of such estates as a Judge shall order.

Expenses of management may be paid out of estates.

After publishing notice executors, &c., may distribute estate.

75. When an executor or administrator has given such notices as any Judge, upon application by petition to him, directs for creditors and others to send in, to the executors or administrators their claims against the estate of the testator or intestate, such executors or administrators shall, at the expiration of the time named in such notices or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claims such executors or administrators shall not have had notice at the time of distribution of the said assets, or a part thereof, as the case may be.

Proviso.

But nothing in this Act shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

Trustees, &c., may apply to Court for directions.

76. Any trustee, executor, or administrator shall be at liberty, without the institution of an action, to apply by petition to any Judge, or by summons upon a written statement to any such Judge at Chambers, for the direction of such Judge on any question respecting the management or administration of the trust property, or the assets of any testator or intestate.

Such application shall be served upon, or the hearing thereof be attended by, all persons interested in such application, or such of them as the Judge thinks expedient.

Trustee acting on order of Judge discharged from responsibility.

77. The trustee, executor, or administrator, acting upon the direction given by the Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator in the subject-matter of such application.

Proviso in case of fraud.

Provided that this Act shall not extend to indemnify any trustee, executor, or administrator in respect of any act done in accordance with such direction as aforesaid if he shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such direction, and the costs of such application as aforesaid shall be in the discretion of the Judge to whom such application shall be made.

Power of investment by trustees.

78. When a trustee, executor, or administrator shall not by some instruments creating his trust be expressly forbidden to invest any trust fund on real securities in any part of New Zealand, or on Government securities, such trustee, executor, or administrator may invest such trust fund on such debentures or securities, and he shall not be liable on that account as for a breach of trust, provided that such investment shall in other respects be reasonable and proper.

(4.) APPOINTMENT OF NEW TRUSTEES.

Appointment of new trustees.

79. Whenever any trustees or trustee appointed either by deed or will shall die, or shall decline to act, or shall be absent from the colony for the space of six months, or shall be desirous of being discharged from or become incapable of acting in the trusts of such deed or will, the continuing trustees or trustee, or the executors or administrators of the continuing trustee, or, if all the trustees shall decline to act, then the majority of the persons so declining, but in

every case with the consent in writing of the persons for the time being beneficially entitled in possession under the trusts, their guardians or committees, may appoint by deed any persons or person to be trustees or trustee in the place of the trustees or trustee so dying, or declining to act, or being absent, or being desirous of being discharged, or becoming incapable of acting as aforesaid.

80. Upon every such appointment the trust property shall vest, without any conveyance or assignment, in the continuing trustees or trustee, and such new trustees or trustee, their heirs, executors, or administrators, as joint tenants, or, if there be no continuing trustee, then in the new trustees, their heirs, executors, or administrators, upon the same trusts and with the same powers as the original trustees or trustee.

Vesting of trust property.

81. The receipt in writing of any person to whom any money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication or non-application thereof, and from inquiring into the necessity or propriety of any transaction in consequence whereof such money may have become payable.

Trustees' receipt.

82. Every trustee shall be chargeable for such moneys only as he shall actually have received, although he shall have joined in any receipt for moneys received by any co-trustee, and shall not be answerable for the act of any co-trustee, or for any loss which may arise by reason of any trust moneys being deposited in the hand of any banker or agent, or from the insufficiency or deficiency of any security upon which the trust moneys or any part thereof may be invested, nor for any loss in the execution of the trust unless the same shall happen through his own wilful neglect or default.

Liability of trustees.

83. Every trustee may, out of the moneys which shall come into his hands by virtue of the trust, retain to himself and allow to his co-trustee all costs, charges, and expenses which may have been reasonably incurred in or about the execution thereof; but no solicitor who shall act as a trustee shall be allowed the costs of any professional services performed by him in the execution of the trust unless the contrary shall have been expressly declared by the instrument whereby such trust was created.

Costs of trustees.

(5.) DELEGATION OF TRUSTEES' POWERS.

84. Trustees of property in New Zealand appointed by deed or will, whether executed out of New Zealand or not, and residing out of New Zealand, or so many of such trustees as shall for the time being be residing out of New Zealand, may, with the consent in writing of the persons entitled in possession under the trusts, their guardians or committees, where such consent is required to the execution of the powers vested in such trustees, delegate by deed to any persons residing in New Zealand the powers of sale, exchange, mortgage, assignment, and leasing vested in such trustees, so far as such powers affect or are capable of being exercised over property in New Zealand.

Resident trustees may delegate certain powers.

85. Any trustee of property in New Zealand, whether appointed by deed or will, who shall be resident in the colony, but who may be about to depart therefrom, may, in the manner herein provided, and to

When about to leave colony, may also delegate.

the like extent, exercise all or any of the powers of delegation hereby conferred on trustees residing out of New Zealand.

Sales, &c., made
under delegated
powers valid.

86. Every sale, conveyance, exchange, mortgage, assignment, and lease executed under such delegated powers shall be as valid and effectual as if the same had been executed and consented to in writing by the persons who executed and consented in writing to the deed by which such powers were delegated: Provided that the powers hereby given may be limited or withheld by express declaration in the instrument creating the trust.

Deeds executed by
attorneys of trustees
valid.

87. Every conveyance, exchange, mortgage, lease, and assignment of property in New Zealand heretofore executed by persons in New Zealand acting under and pursuant to conveyances and powers of attorney executed by trustees in whom power to sell, mortgage, exchange, or lease, was vested, and out of New Zealand, shall be and shall be deemed to have been as valid and effectual in law and equity as if the provisions hereinbefore contained had been enacted and in force previous to the execution of such conveyance, exchange, mortgage, lease, or assignment.

Powers of attorney
executed by trustees
in certain cases valid

88. Every power of attorney or other delegation by deed executed by trustees, previous to the passing of this Act, whether residing out of the Colony of New Zealand, or who, if resident therein, may have been about to depart therefrom, as hereinbefore mentioned, delegating to persons residing in the said colony the exercise over property in the said colony of the trusts or powers of sale, exchange, mortgage, assignment, and leasing, or any of them, vested in such trustees, and every sale, conveyance, exchange, mortgage, assignment, and lease heretofore or hereafter executed under such power of attorney or other delegation shall be and be deemed to have been as good, valid, and effectual at law and in equity as if this Act had been in force at the time of the execution of such power of attorney or other delegation as aforesaid.

Deeds, &c., executed
under such powers
of attorney valid.

SCHEDULE.

Schedule.

Repeals.

ACTS OF THE IMPERIAL PARLIAMENT.

13 and 14 Vict., c. 60.—The Trustee Act, 1850, excepting sections fifty-four and fifty-six.

15 and 16 Vict., c. 55.—An Act to extend the Provisions of the Trustee Act, 1850.

ACTS OF THE GENERAL ASSEMBLY OF NEW ZEALAND.

1854, No. 1.—The English Acts Act, 1854. In part, namely, so much thereof as declares that the Acts of the Imperial Parliament herein above enumerated shall be taken to extend to this colony, and shall be applied therein in the administration of justice.

1862, No. 7.—The Trustees' Relief Act, 1862.

1869, No. 56.—The Trustees' Powers Delegation Act, 1869.

1872, No. 29.—The Trustees' Powers Delegation Act 1869 Amendment Act, 1872.