

No. XIX.

An Act to consolidate and amend the Laws relating to the Conveyance and Transfer of Real and Personal Property vested in Mortgagees and Trustees. [2nd September, 1852.]

TRUSTEES AND
MORTGAGEES.

WHEREAS an Act of Council was passed in the fifth year of the reign of His late Majesty King William the Fourth for adopting and applying amongst other Acts an Act of Parliament passed in the first year of the same reign 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 and Orders in certain cases*" And whereas it is expedient that the provisions of the said adopted Act should be enlarged Be it therefore enacted by His Excellency the Governor of New South Wales by and with the advice and consent of the Legislative Council thereof as follows :—

1. All proceedings under the said Act commenced before the passing of this Act may be proceeded with under the said adopted Act or according to the provisions of this Act as shall be thought expedient and subject as aforesaid so much of the said recited Act of Council as adopts and applies the Act of Parliament above particularly mentioned shall be and the same is hereby repealed Provided always that the several Acts repealed by the said adopted Act shall not be revived.

2. The several words hereinafter named are herein used and applied in the manner following respectively (that is to say)—

The word "stock" shall mean any fund annuity or security transferable in books kept by any company or society established

Repealing so much of former Act 5 Gul. IV. No. 8 as adopts 11 G. 4 and 1 W. 4 c. 60.

Interpretation of terms.

Trustees and Mortgagees.

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 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 person 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 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 tenants in tail in accordance with the provisions of the Act passed in the seventh year of the reign of Her present Majesty number sixteen or under any future Act or enactments giving effect to conveyances by such persons as if fines with proclamations had been levied or common recoveries suffered

The words "assign" or "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 "trust" and "trustee" shall extend to and include implied and constructive trusts and 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 "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 dependant 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 "lunatic" shall mean "any person who shall have been found to be a lunatic upon a commission of inquiry in the nature of a writ de lunatico inquirendo"

The

Trustees and Mortgagees.

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.

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 he 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.

Supreme Court may convey 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 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.

and may convey contingent rights of lunatic trustees and mortgagees.

5. When 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 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 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 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 lunatic trustees and mortgagees.

6. When any stock shall be 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 shall be vested in any lunatic or person of unsound mind as the personal representative of a deceased 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 or any interest in respect thereof in any person or persons he may appoint.

Power to transfer stock of deceased person.

7. 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 shall 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.

Court may convey estates of infant trustees and mortgagees.

8. 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.

Contingent rights of infant trustees and mortgagees.

Trustees and Mortgagees.

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

9. When any person solely seised or possessed of 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 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.

10. When any person or persons shall be seised or possessed of any lands 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 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 said Court shall 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 rights of trustees.

11. 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 shall 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.

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

12. 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 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.

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

13. 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 whether the last trustee be living or dead.

14. 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 trustee dies without an heir.

15. 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 for the same estate.

Trustees and Mortgagees.

16. 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 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 person or class of unborn persons would upon coming into existence be seised or possessed of in such lands.

Contingent right of unborn trustee.

17. Where any person jointly or solely seised or possessed of any lands upon any trust shall after a demand by a person entitled to require a conveyance or assignment of such lands or a duly authorized agent of such last-mentioned person have stated in writing that he will not convey or assign the same or shall neglect or refuse to convey or assign such lands for the space of twenty-eight days next after a proper deed for conveying or assigning the same shall have been tendered to him by any person entitled to require the same or by a duly authorized agent of such last-mentioned person 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 trustee had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

Power to convey in place of a refusing trustee.

18. Where any person jointly or solely entitled to a contingent right in any lands upon any trust shall after a demand for a conveyance or release of such contingent right by a person entitled to require the same or a duly authorized agent of such last-mentioned person have stated in writing that he will not convey or release such contingent right or shall neglect or refuse to convey or release such contingent right for the space of twenty-eight days next after a proper deed for conveying or releasing the same shall have been tendered to him by any person entitled to require the same or by a duly authorized agent of such last-mentioned person it shall be lawful for the Supreme Court to make an order releasing or disposing of such contingent right in such manner as it shall direct and the order shall have the same effect as if the trustee so neglecting or refusing had duly executed a conveyance so releasing or disposing of the contingent right.

Power to convey in place of person entitled to contingent right.

19. 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—

Power to convey in place of mortgagee.

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 stated 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 shall have been tendered to him by a person entitled as aforesaid or a duly authorized agent of such last-mentioned person

Trustees and Mortgagees.

When it shall be 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 his 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.

Power to appoint a person to convey in certain cases.

20. 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 born or unborn it shall also be lawful for the said Court should it be deemed more convenient to make an order 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 said Court would in the particular case have had under the provisions of this Act and in every case where the Supreme 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 said Court if it be deemed more convenient to make an order directing any officer of such company or society at once to transfer or join in transferring the stock to 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 and their officers and servants for all acts done or permitted to be done pursuant thereto.

When trustees of stock out of jurisdiction.

21. 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 of the said Court 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 trustee of stock refuses to transfer.

22. 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 for the Supreme

Trustees and Mortgagees.

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.

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

24. When any stock shall be standing in the sole name of a deceased person and his or her personal representatives 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 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 may appoint.

When stock is standing in the name of a deceased person.

25. Where any order shall have been made under any of the provisions of this Act vesting the right to any stock in any person or persons appointed by the Supreme Court such legal right shall vest accordingly and thereupon the person or persons so appointed are hereby 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 or relating to the receipt of the dividends thereof to the extent and in conformity with the terms of such 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 and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made and after notice in writing of any such order of the said Court concerning any stock shall have been given it shall not be lawful for any company or association whatever or any person having received such notice to act upon the requisition of the person in whose place an appointment shall have been made in any matter whatever relating to the transfer of such stock or the payment of the dividends or produce thereof.

Effect of an order vesting the legal right to transfer stock.

26. Where any order shall have been made under the provisions of this Act by the Supreme Court 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

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

Trustees and Mortgages.

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.

When a decree is made for sale of real estate for payment of debts.

27. When a decree shall have been made by the Supreme 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 said Court is hereby empowered to make an order wholly discharging the contingent right under the will of such deceased debtor of any unborn person.

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

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

29. 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 Court to make order appointing new trustees.

30. 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.

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

31. 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 decree in a suit duly instituted.

Power to Court to vest lands in new trustees.

32. It shall be lawful for the said Court upon making any order for appointing a new trustee or new trustees either by the same or by 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 to Court to vest right to sue at law in new trustees.

33. It shall be lawful for the said Court upon making any order for appointing a new trustee or new trustees either by the same or
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Trustees and Mortgagees.

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.

34. Any such appointment by the 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.

Old trustees not to be discharged from liability.

35. That 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 that 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.

Who may apply.

36. When any person shall deem himself entitled to an order under any of the provisions hereinbefore contained from the said Court it shall be lawful for him to exhibit before the Master in Equity of the said Court 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 said Master 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 a person is entitled to an order in the form set forth in such certificate.

Power to go before the Master in the first instance.

37. Any person who shall have obtained such certificate may apply by motion to the Supreme Court for an order to the effect set forth in such certificate or for such other as such person may deem himself entitled to upon the facts found by the Master.

Power to petition the Court.

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

Power to present petition in the first instance.

39. Upon the hearing of any such motion or petition it shall be lawful for the said Court should it be deemed necessary to direct a reference to the Master in Equity of the Court to inquire into any facts which require such an investigation or it shall be lawful for the said Court to direct such motion or petition to stand over to enable the petitioner or petitioners to adduce evidence or further evidence before the said Court or to enable notice or any further notice of such motion or petition to be served upon any person or persons.

What may be done upon petition.

40. Upon the hearing of any such motion or petition whether any certificate or report from the Master shall have been obtained or not it shall be lawful for the Court to dismiss such motion or petition with or without costs or to make an order thereupon in conformity with the provisions of this Act.

Court may dismiss petition with or without costs.

41. 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 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

Power to make an order in a cause.

Trustees and Mortgagees.

the said Court either upon the hearing of the said cause or of any petition or motion in the said cause or matter to make such order under this Act.

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

42. Whenever any order shall be made 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 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 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 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 Provided always that nothing herein contained shall prevent the 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 costs occasioned by the order under this Act when the same shall appear to have been improperly obtained.

Trustees of charities.

43. It shall be lawful for the Supreme Court to exercise the powers herein conferred for the purpose of vesting any lands stock or chose in action in the trustee or trustees of any charity or society over which charity or society the said Court would have jurisdiction upon suit duly instituted whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument or by the decree of the said Court or by order made upon a petition to the said Court under any Act authorizing the said Court to make an order to that effect in a summary way upon petition.

No escheat of property held upon trust or mortgage.

44. 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 by reason of the attainder or conviction for any offence of such trustee or mortgagee but shall remain in such 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.

45. Nothing contained in this Act shall prevent the escheat or forfeiture of any lands or personal estate vested in any 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.

46. 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 into any of the banks established in this Colony by Acts of Council in the name and with the privity of the Master in Equity of the Supreme Court in trust in any cause then depending concerning such money or if there shall be no such cause to the credit of such infant or 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 such manner as the said Court shall think fit and to order payment

or

Trustees and Mortgagees.

or distribution thereof or payment of the dividends or interest thereof as to the said Court shall seem reasonable and every cashier of any bank who shall receive any such money is hereby required to give to 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.

47. 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 by name or by designation if his name be unknown who is only a trustee 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 such cause. Provided always that no such decree shall bind affect or in anywise 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.

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

48. When any person shall under the provisions of this Act apply to the Master in Equity of the Supreme Court in the first instance and adduce evidence for the purpose of obtaining the certificate of such Master as a foundation for an order of the said Court it shall be lawful for the said Master to order service of such application upon any person or to dismiss such application and to direct that the costs of any person consequent thereon shall be paid by the person making the same and all orders of the Master under this Act shall be enforced by the same process as orders of the Court made in any suit against a party thereto.

Powers of the Master.

49. The Supreme 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.

Costs may be paid out of the estate.

50. Upon any petition being presented under this Act to the Supreme Court concerning a person of unsound mind it shall be lawful for the said Court of Equity should it so think fit to direct that a commission in the nature of a writ de lunatico inquirendo shall issue concerning such person and to postpone making any order upon such petition until a return shall have been made to such commission.

Commission concerning persons of unsound mind.

51. Upon any petition under this Act being presented to the Supreme Court it shall be lawful for the said Court to 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.

Suit may be directed.

52. Whenever the person entitled to receive payment of any money secured by mortgage upon land shall indorse upon the deed of mortgage an acknowledgment under his hand attested by one witness of the payment of the mortgage debt in full or of any less sum in satisfaction thereof such indorsement shall (upon registration thereof in the manner provided by law for the registration of other instruments affecting land) operate as a discharge of the mortgage debt and a conveyance of all and singular the hereditaments comprised in such mortgage

Facilitating extinguishment of mortgages.

Trustees and Mortgagees.

mortgage to the person or persons who shall at the time of such payment be entitled to the equity of redemption thereof according to his and their respective interests therein.

Facilitating redemption in case of absent or unknown mortgagees.

53. Whenever a person entitled to receive payment of any mortgage debt or of any portion thereof shall be out of the jurisdiction of the Supreme Court or cannot be found within this Colony or is unknown or it shall be uncertain who is so entitled it shall be lawful for the said Court upon petition for that purpose by the person entitled to redeem the mortgaged premises to direct the amount of such mortgage debt or of such portion as aforesaid to be paid into Court for the use of such person or persons as may thereafter claim the same and establish his or their right thereto and upon such payment into Court a certificate under the hand and seal of the Master in Equity that such payment was allowed and has been made shall on registration thereof as aforesaid operate in the same manner as an indorsement upon the mortgage deed by the person entitled as aforesaid and registered as aforesaid under the provisions hereinbefore contained respectively Provided that before any such payment into Court shall be allowed the amount of the debt or of such portion thereof as aforesaid shall be ascertained in such manner as the said Court or Judge may think fit and that in respect of any amount not paid into Court and which may eventually be shewn by the person or persons claiming the same to have been in fact due or payable over and above the amount paid into Court the same shall continue to be a debt due upon the mortgage upon the land anything in this section to the contrary notwithstanding.

On claim made by petition and proof of right Court may order money to be paid provided it be proved also that all deeds have been delivered up to person or persons entitled thereto.

54. Upon petition by the person or persons claiming to be entitled to the money so paid into Court and on proof of his or their right thereto the said Court shall order the said money to be paid to the said person or persons according to his or their right or interest to and in the same Provided that no such money shall be paid to the said person or persons under such order until it shall be shewn by the admission of the parties concerned or otherwise to the satisfaction of the Master in Equity of the said Court that the deed or instrument of mortgage and all the title deeds which were delivered by the mortgagor to the mortgagee on executing the same or in connection therewith have been delivered up to the person or persons by whom the said money was so paid into Court or to his or their executors administrators or assigns.

Master in Equity may by order of Primary Judge or of the Court invest the money paid into Court in Government securities.

55. It shall be lawful for the said Master in Equity by the order of the Primary Judge in Equity of the said Court to be made without any formal request by motion petition or otherwise to invest the money so paid into Court in the purchase of debentures or other negotiable securities granted by the Government of this Colony in respect of debts contracted by the said Government.

Jurisdiction and powers given by this Act to be exercised by Primary Judge subject to appeal &c.

56. The jurisdiction and powers by this Act conferred and vested in the Supreme Court shall and may be exercised and discharged by the Primary Judge thereof in Equity or by one other Judge acting as such in his absence or during his illness in the same manner as the ordinary equitable jurisdiction and powers of the Supreme Court are now exercised and discharged and subject in like manner to appeal rehearing and review.

Short title.

57. In citing this Act in other Acts of Council and in legal instruments and in legal proceedings it shall be sufficient to use the expression "The Trustee Act 1852."

Commencement of Act.

58. This Act shall come into operation on the first day of September one thousand eight hundred and fifty-two.