



ANNO QUINQUAGESIMO SEXTO ET QUINQUAGESIMO
SEPTIMO

VICTORIÆ REGINÆ.

A.D. 1893.

No. 586.

An Act to consolidate and amend the Law relating to
Trustees, and for other purposes.

[Assented to, December 23rd, 1893.]

BE it Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

1. This Act may be cited as "The Trustee Act, 1893," and shall come into operation on a day to be fixed by the Governor, by Proclamation in the *Government Gazette*. Short title and commencement.

2. This Act is divided into parts, as follows:— Division.

PART I.—Investments.

PART II.—Various Powers and Duties of Trustees.

PART III.—Powers of the Court.

PART IV.—Special provisions as to Appointment of New Trustees.

PART V.—Miscellaneous and Supplemental.

3. The Acts mentioned in the First Schedule hereto are repealed to the extent in such schedule mentioned. Such repeal shall not affect— Repeal.

1. Anything done under any enactment hereby repealed:

II. Any right or privilege acquired, or liability incurred, under any enactment hereby repealed. Any

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Any proceedings begun under the repealed enactments, or any of them, may be continued and concluded as though this Act had not been passed.

PART I.

PART I.

INVESTMENTS.

Authorised
investments.

4. (1) A trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not—

- (a) In South Australian Government securities :
- (b) On real securities in the said province :
- (c) In any securities guaranteed by the Government or Parliament of the said province :
- (d) In the bonds, debentures, or other securities of any Municipal Corporation in the said province :
- (e) On deposit in the Savings Bank of South Australia :
- (f) On deposit in any incorporated bank carrying on business in the said province and proclaimed by the Governor in the *Government Gazette* as a bank in which deposits may be made by trustees :
- (g) In any of the Parliamentary stocks or public funds, or Government securities of the United Kingdom of Great Britain and Ireland (subject to sub-section (3) of this section) :
- (h) In the Government securities of any British colony or possession (subject to sub-section (4) of this section) :

and may also from time to time vary such investment.

(2) The Governor may from time to time, by Proclamation in the *Government Gazette*, declare that satisfactory arrangements have been made in the said United Kingdom, or in any British colony or possession, for permitting trustees in the said United Kingdom, or in any such colony or possession to invest in the public securities of this province; and may from time to time, by Proclamation in the *Government Gazette*, revoke any such Proclamation as in this sub-section first above mentioned.

(3) No investment under the authority of this section shall be made in any of the stocks, funds, or securities mentioned in the foregoing division (g), except while a Proclamation such as in sub-section (2) of this section is first mentioned and relating to the United Kingdom shall remain in force.

(4) No investment under the authority of this section shall be made in any of the securities mentioned in the foregoing division (h) except while a Proclamation such as in sub-section (2) of this section

is

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is first mentioned, and relating to the British colony or possession concerned, shall remain in force.

PART 1.

5. No trustee who has heretofore deposited trust moneys either on fixed deposit or on current account in any bank shall be liable for any loss which may have ensued in consequence of the failure of any such bank: Provided that in the opinion of the Court he shall have acted with ordinary prudence, and not in contravention of any express trust.

No trustee to be liable in consequence of loss occasioned by depositing trust moneys in a bank.

6. (1.) Subject to sub-section (2) of this section, a trustee may invest in any of the securities mentioned in section 4, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

Trustees may invest notwithstanding securities redeemable.

(2) A trustee may not under this Act purchase at a price exceeding its redemption value any securities mentioned or referred to in division (c), (d), (g), or (h) of section 4, which are liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any securities mentioned or referred to in the same divisions which are liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per centum above par or such other fixed rate.

(3) A trustee may retain until redemption any redeemable security which may have been purchased in accordance with this Act.

7. Every power conferred by the preceding sections shall be exercised according to the discretion of the trustee, but subject to any consent required by the instrument (if any) creating the trust.

Discretion of trustee.

8. The preceding sections shall apply as well to trusts created before as to trusts created after the passing of this Act, and the powers thereby conferred shall be in addition to the powers conferred by the instrument (if any) creating the trust.

Application of preceding sections.

9. (1) A trustee lending money on the security of property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the Court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be competent to give a report upon the value thereof, instructed and employed independently of any owner of the property, whether such person carried on business in the locality where the property is situate or not; and that the amount of the loan did not exceed two-thirds of the value of the property as stated in the report; and that the loan was made in reliance on the report.

Loans and investments by trustees not chargeable as breaches of trust under certain circumstances.

(2) A trustee lending money on the security of leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed either wholly or partly with the production or investigation of the lessee's title. (3) This

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(3) This section applies to transfers of existing securities as well as to new securities, and to investments made as well before as after the commencement of this Act, except where an action or other proceeding was pending with reference thereto at the time of such commencement.

Limitation of liability for loss on improper investments.

10. (1) Where a trustee improperly lends trust money on a mortgage security, which would at the time of the investment have been a proper investment in all respects for a smaller sum than that actually lent thereon, the security shall be deemed a proper investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2) This section applies to investments made as well before as after the commencement of this Act, except where an action or other proceeding was pending with reference thereto before such commencement.

PART II.

PART II.

VARIOUS POWERS AND DUTIES OF TRUSTEES.

Appointment of New Trustees.

Power of appointing new trustees.

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

(2) On the appointment of a new trustee—

(a) The number of trustees may be increased; and

(b) A separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part; and

(c) It shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and

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(d) Any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, or solely in the new trustee, as the case may require, shall be executed or done.

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

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

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

(6) This section applies to trusts created either before or after the commencement of this Act.

(7) Nothing in this section shall give power to appoint an executor or administrator.

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

Retirement of trustees.

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

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

(4) This section applies to trusts created either before or after the commencement of this Act.

13. (1) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land, subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the person or persons

Vesting of trust property in new or continuing trustees.

who,

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who, by virtue of the deed, become and are the trustee or trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in that person or those persons, as joint tenants if more than one, and for the purposes of the trust, that estate, interest, or right.

(2) Where a deed under section 12, by which a retiring trustee is discharged under this Act, contains such a declaration as is in this section mentioned by the retiring and continuing trustees and by the other person (if any) empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3) This section does not extend to land under the provisions of the Real Property Act, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner directed by or under Act of Parliament.

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

(5) This section applies only to deeds executed after the commencement of this Act.

Purchase and Sale.

Power of trustees for sale to sell by auction, &c.

14. (1) Where a trust for sale or a power of sale of property is vested in trustees, they may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, at one time or at several times, subject to any such condition respecting title or evidence of title or other matter as the trustees think fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

Trustees exercising power of sale, empowered to convey.

(2) For the purpose of completing any such sale as aforesaid, the trustees shall have full power to convey or otherwise dispose of the property in question, either by way of revocation and appointment of uses, or otherwise, as may be necessary.

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

(4) This section applies only to trusts and powers created by an instrument coming into operation after the twenty-first day of October, one thousand eight hundred and sixty-two.

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Power to sell subject to depreciating conditions.

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

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

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

(4) This section applies only to sales made after the commencement of this Act.

16. When any freehold hereditament is vested in a married woman as a bare trustee she may convey or surrender it as if she were a *feme sole*.

Married woman as bare trustee may convey.

Various Powers and Liabilities.

17. (1) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of, and to produce, a deed having in the body thereof or endorsed thereon a receipt for such money, consideration, or property, the deed being executed or the endorsed receipt signed by the trustee.

Power to authorise receipt of money by banker or solicitor.

(2) A trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment. The producing of any such deed by the solicitor shall be sufficient authority to the person liable to pay or give the consideration, or transfer or deliver the property, for his paying, giving, transferring, or delivering the same to the solicitor, without the solicitor producing any separate or other direction or authority from the trustee.

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

(4) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the bank

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bank or solicitor for a period longer than is reasonably necessary to enable the bank or solicitor (as the case may be) to pay or transfer the same to the trustee.

(5) This section applies only where the money or valuable consideration or property is received after the commencement of this Act.

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

Power to insure building.

18. (1) A trustee may insure against loss or damage by fire any building or other insurable property, to any amount (including the amount of any insurance already on foot) not exceeding three-fourths of the full value of such building or property, and pay the premiums for such insurance out of the income thereof, or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

Court may authorise expenditure or improvements, &c.

(2) The Supreme Court may, on the application *ex parte* or otherwise, of a trustee, or of a beneficiary interested in trust property, authorise the expenditure by the trustee, out of the capital or income of the trust property or of the estate of a deceased person, of such sum as the Court may think fit in repairing, reinstating, or improving the trust property or estate, and may by the same or any subsequent order authorise the trustee to raise moneys required for the purpose of such expenditure by mortgage of the trust property or estate concerned, or of any other property or estate subject to the same trusts.

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

(4) This section applies to trusts created either before or after the commencement of this Act; but nothing in this section shall authorise any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

Power of trustees of renewable leaseholds to renew and raise money for the purpose.

19. (1) A trustee of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract, or by custom or usual practice, may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use his best endeavors to obtain from time to time a renewed lease of the same hereditaments on the accustomed and reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite: Provided that, where by the terms of the settlement or will, the person in possession for his life or other limited interest

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interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply, unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

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

(3) This section applies to trusts created either before or after the commencement of this Act; but nothing in this section shall authorise any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

20. (1) The receipt in writing of any trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

Power of trustee to give receipts.

(2) This section applies to trusts created either before or after the commencement of this Act.

21. (1) An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

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

Power for executors and trustees to compound, &c.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall

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shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4) This section applies to executorships, administratorships, and trusts constituted or created either before or after the commencement of this Act.

Distribution of estate after notice by representative or trustee.

22. (1) Where a representative or trustee has given notices such as would have been given by the Court in an administration suit for creditors, beneficiaries, and others to send in to the representative or trustee their claims against the estate of the deceased person or against the trust property, the representative or trustee may, at the expiration of the time named in the notices, distribute the estate of the deceased person or the trust property or any part thereof amongst the persons entitled thereto, having regard only to the claims of which he then has notice, and shall not be liable for the estate or property or any part thereof so distributed to any person of whose claim he had no notice at the time of the distribution.

(2) Where a representative or trustee has received a claim or notice of claim against the estate of a deceased person or against a trust property, and he disputes the same, such representative or trustee may give to the person making such claim, or giving such notice, a notice in writing that such claim is disputed, and requiring such claimant either to withdraw such claim or to institute proceedings to enforce such claim within six months of the service of such last-mentioned notice; and if such claim is not so withdrawn or prosecuted, the representative or trustee may apply by summons in Chambers to any Judge of the Supreme Court, on affidavit setting out the facts for an order that, as against such representative or trustee, such claim shall be absolutely barred, and any such Judge may make such order as he shall deem just, and the same shall bind all persons whom it purports to affect.

(3) Nothing in this section shall prejudice the right of any person to follow the estate or property or any part thereof into the hands of any person who has received the same.

(4) A representative or trustee desirous of giving notices under this section may, on application, *ex parte* or otherwise, obtain the direction of the Supreme Court, or of the Master thereof, as to what notices are proper to be given, and as to the mode of service.

Powers of two or more trustees.

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

(2) This section applies only to trusts constituted after or created by instruments coming into operation after the commencement of this Act.

24. (1) Where

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Powers of maintenance in case of infants.

24. (1) Where any property is held by trustees in trust for an infant, either for life or for any greater interest, and whether absolutely or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian (if any) or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property, or any part thereof, whether there is or is not any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance.

(2) The trustees shall accumulate all the residue of that income in the way of compound interest by investing the same, and the resulting income thereof, from time to time on securities in which they are by the instrument of trust (if any), or by law, authorised to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arose, but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4) This section applies whether the instrument of trust comes into operation before or after the commencement of this Act.

25. A trustee acting or paying money in good faith, under or in pursuance of any power of attorney, shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying: Provided that nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made, and that the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Exoneration of trustees in respect of certain powers of attorney.

26. A trustee shall, without prejudice to the provisions of the instrument (if any) creating the trust, be chargeable only for money, stocks, funds, and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds or securities, nor for any other loss, unless the same happens through his own wilful default, and may reimburse himself, or pay or discharge out of the trust premises, all expenses incurred in or about the execution of his trusts or powers.

Implied indemnity of trustees.

PART III.

PART III.

POWERS OF THE COURT.

Appointment of New Trustees and Vesting Orders.

Power of the Court
to appoint new
trustees.

27. (1) The Supreme Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no trustee. In particular, and without prejudice to the generality of the foregoing provision, the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of treason or felony, or has been adjudicated insolvent or made an assignment or composition or arrangement with his creditors under any Act in force in that behalf, and may remove such last-mentioned trustee.

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

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

Vesting order as to
land.

28. In any of the following cases, namely:—

- i. Where the Supreme Court appoints or has appointed a new trustee:
- ii. Where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person—
 - (a) Is a lunatic or person of unsound mind; or
 - (b) Is an infant; or
 - (c) Is out of the jurisdiction of the Supreme Court; or
 - (d) Cannot be found:
- iii. Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land or entitled to a contingent right therein:
- iv. Where as to the last trustee known to have been entitled to or possessed of any land, or entitled to a contingent right therein, it is uncertain whether he is living or dead:
- v. Where there is no heir or representative to a trustee who was entitled to or possessed of land or entitled to a contingent right therein and has died intestate as to that land, or where it is uncertain who is the heir or representative

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or devisee of a trustee who was entitled to or possessed of land or entitled to a contingent right therein and is dead: and

- vi. Where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for twenty-eight days after the date of the requirement:

the Supreme Court may make an order (in this Act called a vesting order) vesting the land in any such person in any such manner and for any such estate as the Court may direct, or releasing or disposing of the contingent right to such person, as the Court may direct: Provided that—

- (a) Where the order is consequential on the appointment of a new trustee the land shall be vested for such estate as the Court may direct in the persons who on the appointment are the trustees; and
- (b) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of the jurisdiction of the Supreme Court or cannot be found, the land or right shall be vested in such other person, either alone or with some other person.

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

Contingent rights of unborn trustees.

30. Where any person entitled to or possessed of land or entitled to a contingent right in land, either solely or jointly with any other person, by way of security for money, is a lunatic, or a person of unsound mind, or an infant, the Supreme Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of a trustee who is a lunatic, a person of unsound mind, or an infant.

Vesting order in place of conveyance by heir or devisee of mortgagee.

31. Where a mortgagee of land has died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that last-mentioned person consents to an order for the re-conveyance of the land, then the Supreme Court may make an order vesting the land in such person

Vesting order in place of conveyance by heir or devisee of mortgagee.

or

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or persons in such manner and for such estate as the Court may direct in any of the following cases, namely:—

- (a) Where an heir or representative or devisee of the mortgagee is out of the jurisdiction of the Supreme Court, or cannot be found:
- (b) Where an heir or representative or devisee of the mortgagee, on demand made by or on behalf of a person entitled to require a conveyance of the land, has stated in writing that he will not convey the same, or does not convey the same for twenty-eight days next after a proper instrument conveying the land has been tendered to him by or on behalf of the person so entitled:
- (c) Where it is uncertain which of several devisees of the mortgagee was the survivor:
- (d) Where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the heir or representative of the mortgagee, whether he is living or dead: and
- (e) Where there is no heir or representative to a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir or representative or devisee.

Vesting order consequential on judgment for sale or mortgage of land.

32. Where any Court gives a judgment, or makes an order directing the sale or mortgage of land, every person, whether under disability or not, who is entitled to or possessed of the land, or entitled to a contingent right therein, and is a party to the action or proceeding, or otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Act; and the Supreme Court may, if it thinks expedient, make an order vesting the land, or any part thereof, for such estate as that Court thinks fit in the purchaser or mortgagee, or in any other person.

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

33. Where a person having contracted in writing to sell land dies without having conveyed the land in pursuance of his contract, and the consideration for the sale has been paid or satisfied in his lifetime, or after his decease, or the person entitled to receive the consideration money or such part thereof as may remain unsatisfied, is willing to receive the same, and there is no dispute or question as to the making of the contract, or as to the right of the purchaser of the land so agreed to be sold to demand specific performance of such contract, and the Court shall be satisfied that the only impediment to the performance thereof arises from the fact that the legal estate in the land has become vested in an heir, representative, or devisee of the deceased vendor, who is an infant, or lunatic, or of unsound mind, the Supreme Court may make an order declaring the heir, representative, or devisee, as the case may be, of the deceased vendor to be a trustee of the land contracted to be sold, and such heir, representative, or devisee shall thereupon be deemed to be a trustee thereof within the

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the meaning of this Act, and at the same time or subsequently the said Court may order that the land shall vest in such person in such manner and for such estate as the said Court may direct, and may give directions as to the payment and satisfaction of any unpaid or unsatisfied purchase-money.

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

Vesting order consequential on judgment for specific performance, &c.

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

Effects of vesting order.

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

Power to appoint person to convey.

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

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

Vesting orders as to stock and choses in action.

(a) Is

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

III. Where it is uncertain whether a trustee entitled, alone or jointly with another person, to stock or to a chose in action is alive or dead:

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

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

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

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act may transfer the stock to himself or any person, according to the order; and all companies shall obey every order under this section according to its tenor.

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

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

(6) The

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

38. Where a person entitled alone or jointly with another person to stock or a chose in action by way of security for money is a lunatic, or a person of unsound mind, or an infant, the Supreme Court may make an order vesting the right to transfer, or call for a transfer of the stock, or receive the dividends or income thereof, or to sue for or recover the chose in action in like manner as in the case of a trustee who is a lunatic, a person of unsound mind, or an infant.

Vesting order as to stock in cases of lunatic or infant mortgagee.

39. (1) An order under this Act for the appointment of a new trustee, or concerning any land, stock, or chose in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or chose in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

Persons entitled to apply for vesting orders.

(2) An order under this Act concerning any land, stock, or chose in action subject to a mortgage may be made on the application of any person, whether under disability or not, who is beneficially interested, in equity or otherwise, in the land, stock, or chose in action, or of any person interested in the money secured by the mortgage.

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

Powers of new trustees appointed by Court.

41. The Supreme Court may order the costs of and incident to any application for an order appointing a new trustee, or for a vesting order, or for an order releasing or disposing of a contingent right, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or personal estate in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court may seem just.

Power to charge costs on trust estate.

42. The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock, or chose in action in any trustee of a charity or society over which the Supreme Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the Supreme Court under its general or statutory jurisdiction.

Trustees of charities.

43. Where a vesting order has been made as to any land under this Act, or under any Act relating to lunacy, founded on an allegation of the infancy or personal incapacity of a trustee, representative

Orders made upon certain allegations to be conclusive evidence.

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or mortgagee, or on an allegation that a trustee or the heir or representative 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 representative or last surviving devisee of a mortgagee, is 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 representative or devisee, the fact that the order has been so made shall be conclusive evidence of the fact alleged in any Court upon any question as to the validity of the order ; but this section shall not prevent the Supreme Court from directing a reconveyance, or a re-disposition of any contingent right, or the payment of costs occasioned by any such order if improperly obtained.

Payment into Court by Trustees and Mortgagees.

Payment into Court
by trustees and
mortgagees.

44. (1) Trustees or mortgagees, or the majority of trustees or mortgagees, having in their hands or under their control money or securities belonging to a trust, or in respect whereof a trust has arisen by implication or construction of law, may, on filing an affidavit shortly describing the instrument under or in consequence of which the trust arises, according to the best of their knowledge and belief, or if there be no such instrument, then shortly setting out the facts of the case, pay the money or securities into the Supreme Court; and the same shall, subject to rules of Court, be dealt with according to the orders of the Supreme Court, which may also order the administration of the trusts in respect of such money or securities.

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

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

Limitation of Proceedings.

Application of statutes
of limitation to
express trusts.

45. Subject to the provisions of the next following section—

- i. Where any land or rent, within the meaning of any statute of limitations, is vested in a trustee on any express trust, the
right

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right of the beneficiary or any person claiming through him to bring an action against the trustee or any person claiming through him, to recover the land or rent, shall be deemed to have first accrued, according to the meaning of any statute of limitations, at, and not before, the time at which the land or rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against that purchaser and any person claiming through him :

- II. No claim of a beneficiary against his trustee, in respect of any property held on an express trust, or in respect of any breach of an express trust, shall, subject to the next following sub-section, be barred by any statute of limitations :
- III. No action or other proceeding shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust.

46. (1) In any action or other proceeding against a trustee or any person claiming through him, except where the claim is founded on any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply:—

Application of statutes of limitations to trustees.

- (a) All rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in the action or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through him.
- (b) If the action or other proceeding is brought to recover money or other property, and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead this Act as a bar to the action or other proceeding, in the like manner and to the like extent as he would have been entitled to plead any statute of limitations in an action for money had and received ; and so that this Act shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary is an interest in possession.

(2) No

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

(3) This section shall apply only to actions or other proceedings begun after the commencement of this Act, and shall not deprive any executor or administrator of any right or defence to which he was then entitled under any then existing statute of limitations.

Miscellaneous.

Power to give judgment in absence of a trustee.

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

Trustee to have power to sell or convey in certain cases.

48. (1) Where a trustee has, by the instrument creating the trust, power, subject to the direction, request, or authority of any person, to sell, convey, assure, mortgage, or otherwise deal with property, and such person is dead, of unsound mind, a lunatic, under disability, or absent from the province, the Supreme Court may authorise the trustee to sell, convey, assure, mortgage, or otherwise deal with the property as if such direction, request, or authority had been given, but the power conferred by this section shall not be exercised so as to injuriously affect any beneficial interest of such person.

(2) This section applies to trusts created either before or after the commencement of this Act.

(3) This section shall authorise the Supreme Court to confirm any sale, conveyance, assurance, mortgage, or other dealing heretofore made or executed by such trustee in any case in which the Court, under this Act, would have authorised the same had it not been made or executed.

Power to sanction sale of land or minerals separately.

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

(2) Any

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(2) Any such trustee, with the said sanction previously obtained, may, unless forbidden by the instrument creating the trust or direction, from time to time, without any further application to the Court, so dispose of any such land or minerals.

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(3) Nothing in this section shall derogate from any power which a trustee may have under "The Settled Estates Act, 1880," or otherwise.

50. (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Supreme Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman entitled for her separate use and restrained from anticipation, make such order as to the Court seems just for impounding all or any part of the interest of the beneficiary in the trust estate, by way of indemnity to the trustee or any person claiming through him.

Power to make beneficiary indemnify for breach of trust.

(2) This section shall apply to breaches of trust committed as well before as after the commencement of this Act, but shall not apply so as to prejudice any question in an action or other proceeding which is pending at the commencement of this Act.

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SPECIAL PROVISIONS AS TO APPOINTMENT OF NEW TRUSTEES.

51. This part of this Act is permissive only, and trustees may be appointed and trust estates may be transferred, conveyed, and assigned as if this part of this Act had not been passed.

This part to be permissive.

52. This part of this Act shall not apply to trust estates held upon any trust created by an instrument expressly forbidding the application of this part of this Act; but, except as provided by this section, this part of this Act shall apply to all trust estates.

Application of this part.

53. In the interpretation of this part of this Act the following words shall have the following meanings:—

Interpretation.

"Trust estates" shall include real and personal estate of every description held upon trust:

"Appointment of new trustees" shall include every appointment of new trustees, and whether such new trustees are to act solely or jointly with any old trustees:

"Real Property Act" shall include "The Real Property Act, 1886," and any Act amending the same or substituted therefor.

54. Any

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Form of appointment
of new trustee.

54. Any appointment of new trustees, if signed by the persons entitled to exercise the power of appointment and by the new trustees, and attested in manner prescribed by the Real Property Act for the attestation of instruments, and made in the form or to the effect contained in the Third Schedule hereto, or as near thereto as circumstances will permit, shall be sufficient and valid and effectual to all intents and purposes, so far as regards the form and mode of execution and attestation thereof.

Extension of power
of appointing new
trustees.

55. Any power of appointing new trustees vested in any persons within the province, jointly with any persons absent therefrom, and who shall have been continuously absent therefrom for at least one year then immediately preceding, may be exercised by such first-mentioned persons solely as if such power were exclusively vested in them, and such power shall extend to authorise the appointment of new trustees in the places of any trustees absent from the province, and having been continuously absent therefrom as aforesaid, and such trustees on any appointment of new trustees in their places shall cease to be trustees.

Appointment of new
trustees may be
registered.

56. On any appointment of new trustees, a memorandum of such appointment may be registered in the General Registry Office, or in the Lands Titles Registration Office, at Adelaide.

Registration to vest
estates in new
trustees.

57. On the registration of any memorandum of the appointment of new trustees, such trustees shall be deemed to be duly appointed, and the trust estates held upon the trusts to which such new trustees are appointed shall, without any conveyance, transfer, or assignment, vest in the new trustees, either solely or jointly with the old trustees, as the case may require, for all the estate and interest of the old trustees therein, subject to the trusts affecting such trust estates then subsisting, and capable of taking effect: Provided that—

- i. In order to affect any land not held under the provisions of the Real Property Act, the memorandum shall be registered in the General Registry Office:
- ii. In order to affect any land held under the provisions of the Real Property Act, the memorandum shall be registered in the Land Titles Registration Office, and the Registrar-General shall enter in the register book a memorial of such memorandum.

Registered pro-
prieters.

58. Upon the entry in the register book of the memorial provided for by sub-division ii. of the preceding section, the persons in whom the trust estates shall vest pursuant to the said section shall be the registered proprietors thereof for all the purposes of the Real Property Act.

Registration with
power of disposition
to lesser number of
joint owners.

59. Whenever any land is brought or dealt with under the provisions of the Real Property Act, the application or instrument affecting the same may require the registration consequent thereon,
if

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if in favor of two or more persons, to be made with the addition of the words "with power of disposition to any" less number of "registered proprietors" to be specified in such application or instrument, and thereupon the Registrar-General shall include in the registration the words desired, and thereafter, whilst such registration shall continue, the number of registered proprietors so specified whilst registered with others as joint owners may deal with and dispose of the registered estate or interest as if they were registered as sole proprietors thereof.

60. Every memorandum of the appointment of new trustees presented for registration pursuant to this part of this Act shall be in the form contained in the Fourth Schedule hereto, and shall contain the particulars therein referred to.

Form of memorandum of appointment of new trustee.

61. No memorandum of the appointment of new trustees shall be received for registration unless the contents thereof shall be verified by affidavit or declaration accompanying such memorandum in the form contained in the Fifth Schedule hereto, and made by the persons entitled to exercise and exercising the power by which the new trustees are appointed, or, if such persons number more than three, by any three of such persons. Such affidavit or declaration shall for all purposes be *prima facie* evidence of the truth of the statement contained therein.

Verification of memorandum.

62. When a power of appointing new trustees is exercisable and exercised by any meeting or body of persons by resolution or voting, the affidavit or declaration required to be made by the preceding section may be made by any three persons present at the exercise of such power, of whom the chairman or person presiding shall be one.

Verification of memorandum in special case.

63. Nothing in this part of this Act contained, or thereby implied or to be done in pursuance thereof, shall be construed to affect the title of any registered proprietor with notice of any trust, or otherwise to limit the right of any registered proprietor to deal with the estate or interest of which he is registered proprietor for all the purposes of the Real Property Act, as absolute owner, or to defeat, limit, or prejudice any power or discretion vested in the Registrar-General under the Real Property Act, but all such powers and discretions may be exercised by the Registrar-General with reference to proceedings under this Act; and for the purpose of such proceedings this part of this Act shall be incorporated with the Real Property Act, and all persons shall be subject to the provisions thereof.

Preservation of powers of Registrar-General.

64. Nothing in this part of this Act contained, or thereby implied or to be done in pursuance thereof, shall release any trustee from any liability for any breach of trust.

Preservation of liability of trustee.

65. It shall be sufficient if an affidavit or declaration under section 61 shall purport to be made under "The Trustee Act, 1893," and any person wilfully making a false statement in any such affidavit or declaration shall be guilty of perjury.

False affidavit or declaration.

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MISCELLANEOUS AND SUPPLEMENTAL.

Commission concern-
ing person of unsound
mind.

66. Upon any petition being presented under this Act to the Supreme Court concerning a person of unsound mind, the Court may direct a commission in the nature of a writ *de lunatico inquirendo* to issue as to such person, and may postpone making an order on such petition until after the return to the commission.

Provisions of Act in
addition to unrepealed
Acts.

67. The provisions of this Act are in addition to those of any enactment not hereby repealed.

Application to trustees
under Settled Estates
Act of provisions as
to appointment of
trustees.

68. (1) All the powers and provisions contained in this Act with reference to the appointment of new trustees, and the discharge and retirement of trustees, are to apply to and include trustees for the purposes of "The Settled Estates Act, 1880," whether appointed by the Court or by the settlement, or under provisions contained in the settlement.

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

(3) This section is not to render invalid or prejudice any appointment or any discharge and retirement of trustees effected before the passing of this Act.

Disposal of rever-
sionary interest.

69. (1) After the passing of this Act, a married woman, whether married after the passing of this Act, or at any other time, may, without the concurrence of her husband, dispose of every future or reversionary interest, and every possibility of an interest in personal estate, including leaseholds, chattels real, and choses in action to which any person in trust for her, or for her husband in her right, or to which she or her husband in her right, is or may be entitled, as fully and effectually as she could do if she were not under coverture, and whether such interest shall be vested or contingent, and whether her title to such interest or possibility has accrued to her after the passing of this Act, or at any other time, or under or by virtue of any deed or other instrument executed after the passing of this Act or at any other time.

(2) After the passing of this Act a married woman, whether married after the passing of this Act or at any other time, may, by deed unacknowledged and without the concurrence of her husband, release or extinguish any power which may be vested in or limited or reserved to her, and also release or extinguish her right or equity to a settlement in any personal estate, including leaseholds, chattels, real, and choses in action, as fully and effectually as she could do if she were a *feme sole*.

(3) The powers of disposition given to a married woman by this section shall not interfere with any power which, independently of this section, may be vested in or limited or reserved to her so as to prevent her from exercising such power in any case, except so far as
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by any disposition made by her under this section she may be prevented from so doing, in consequence of such power having been suspended or extinguished by such disposition.

(4) Nothing in this section before contained shall extend to any interest in personal estate to which a married woman is or may be entitled, in so far as such interest is subject to a restraint upon her anticipating or alienating the same.

70. (1) For the purposes of section 64 of "The Administration and Probate Act, 1891," the word "owner," in addition to the interpretation put thereon by section 67 of the same Act, shall mean and include any person (including a married woman) seized or possessed of or entitled to any estate or interest in land as defined by the said section 67 (and as to a married woman whether for her separate use or as her separate property or otherwise) upon trust or by way of security for money.

Amendment of
Administration and
Probate Act, 1891

(2) The word "beneficial" is hereby excised from the said section 67, and the following words are hereby added to the same section at the end thereof, that is to say, "or to the heir-at-law of the person who was, within the meaning of the interpretation clause of the Statute 3 and 4, William IV., c. 106, entitled 'An Act for the Amendment of the Law of Inheritance,' the purchaser of such estate or interest in land."

71. Property vested in any person on trust, or by way of mortgage, shall not, in case of that person becoming a convict within the meaning of Act No. 25 of 1874, to abolish forfeitures for treason and felony, and to otherwise amend the law relating thereto, vest in any such curator as may be appointed under that Act, but shall remain in the trustee or mortgagee, or survive to his co-trustee or descend to his representative, as if he had not become a convict: Provided that this enactment shall not affect the title to the property so far as relates to any beneficial interest therein of any such trustee or mortgagee.

Trust estates not
affected by trustee
becoming a convict.

72. Where a person, after the commencement of this Act dies intestate in respect of real estate consisting of any estate or interest legal or equitable in an incorporeal hereditament, or of any equitable estate or interest in a corporeal hereditament, whether devised or not to trustees by the will of such person, the law of escheat shall, in any case where such person shall not have left anyone entitled to succeed to such estate or interest, apply in the same manner as if the estate or interest were a legal estate in corporeal hereditaments.

Escheat of real estate.

73. (1) Where in any proceeding, *ex parte* or otherwise, it appears to the Supreme Court that Her Majesty is entitled to any hereditament, corporeal or incorporeal, or to any estate, legal or equitable, therein, the Court may, on the application or with the consent of the Attorney-General of the said province, notwithstanding that no office has been found and no commission issued, order a sale of the

Power of Court to sell
interest of Crown in
real estate.

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the hereditament, estate, or interest; and the net proceeds of such sale, or such portion thereof as represents the interest of Her Majesty, shall be paid to the Treasurer of the said province for the public revenue thereof.

(2) The Supreme Court on any such sale may make an order for the Public Trustee to convey the hereditament, estate, or interest to or vesting the same in the purchaser.

(3) Any money paid to the Treasurer under this section shall be subject to the provisions of section 104 of "The Administration and Probate Act, 1891," and for the purposes of such section shall be deemed to have been paid to the Treasurer under section 103 of the same Act.

Power to waive right of Crown in certain cases.

74. (1) Where a person dies intestate in respect of land and without leaving anyone entitled to succeed thereto, whether his estate or interest therein is legal or equitable, and application is made to the Governor for the waiver of any right of Her Majesty in respect of such intestacy in favor of any person to whom, or to a trustee for whom, Her Majesty would, if Her Majesty's title had been duly proved by inquisition, have power to grant such land, the Governor may, by warrant under his hand, authorise the waiver of such right on such terms, whether for the payment of money or otherwise, as may be specified in the warrant; and the Public Trustee may, in pursuance of such warrant, convey to the person in whose favor the waiver is made the right of Her Majesty so waived.

(2) If at any time within two years after such conveyance any person claiming an estate or interest in or to the said land applies by petition to the Supreme Court for an annulment of the said conveyance, and proves that Her Majesty had not the right which the Governor purported to waive, the Court may annul the conveyance.

(3) If the conveyance be not so annulled it shall, as from the date thereof, have the same effect as a grant from Her Majesty after office found, and every person bringing an action to establish any claim to such real estate, or any part thereof or interest therein, shall be in the same position and have the same rights as if he were traversing such office found.

(4) If the conveyance be not so annulled the Supreme Court may as to land under the provisions of the Real Property Act, on the application of the person to whom the conveyance shall have been made, or any person claiming through or under him, make an order vesting any estate or interest in the land in any person who shall appear to be entitled thereto.

Definition of intestacy.

75. Where any beneficial interest in real estate or land of a deceased person, whether the estate or interest of such deceased person therein was legal or equitable, is owing to the failure of the objects of the devise or other circumstances happening before or after the death of such person in whole or in part not effectually disposed

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disposed of, such person shall be deemed for the purposes of this part of this Act to have died intestate in respect of such part of the said beneficial interest as is ineffectually disposed of.

76. The Registrar-General shall, on receiving any vesting order or transfer made in pursuance of an order of the Supreme Court under this Act of land under the provisions of the Real Property Act, register the same by making an entry thereof in the register book, and thereupon the person in whose favor such vesting order is made, or the transferee, shall be the registered proprietor of the land, and the Registrar-General may register any such vesting order or transfer without requiring the production of the duplicate certificate or other instrument of title.

Registration of vesting order or transfer.

77. Any person entitled to apply for an order of the Supreme Court under this Act may apply by summons or upon petition, and may give evidence, by affidavit or otherwise, in support of such summons or petition, and may serve such person or persons with notice of the application as he may be deemed entitled to service thereof. Upon hearing the application the Court may either dispose of the matter in the first instance, or may direct a reference to the Master to inquire into any facts which require investigation, or may direct the application to stand over until the right of the applicant shall have been declared in a suit instituted for that purpose, or to enable the applicant to adduce evidence, or for further consideration, or to enable notice or any further notice of the application to be served upon any person, and may deal with the applicant, and may make such order with respect to costs as shall seem just.

Parties entitled may apply to the Court by summons or petition.

78. Sections 63 and 99 of "The Administration and Probate Act, 1891," apply to trustees as defined by this Act, and section 76 of this Act shall extend to applications under either of the same sections, but without limiting the powers of the Supreme Court, apart from the said section 76, with regard to such applications.

Sections 63 and 99 of Administration and Probate Act, 1891, to apply to trustees under this Act, &c.

79. When in any action or matter, either by the evidence adduced therein, or by the admission of the parties, or by a report of the Master, the facts necessary for an order under this Act shall appear to the Supreme Court to be sufficiently proved, the Court may, either upon the hearing of the action or any petition or motion in the action or matter, make such order under this Act.

Power to make order in a cause.

80. This Act, and every order purporting to be made under this Act, shall be a complete indemnity to all companies and persons for any acts done pursuant thereto; and it shall not be necessary for any company or person to inquire concerning the propriety of the order, or whether the Court by which it was made had jurisdiction to make the same.

Indemnity.

81. Notwithstanding the provisions of "The Real Property Act, 1886," this Act shall apply to land subject to the provisions of such Act, but only to the extent necessary for carrying out the purposes of this Act.

Act to apply to Real Property Act.

82. In

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Definitions.

82. In this Act (except as to Part IV.), unless the context otherwise requires—

The expression “contingent right,” as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained; also a right of entry, whether immediate or future, and whether vested or contingent:

The expressions “convey” and “conveyance” applied to any person include the execution by that person of every necessary or suitable transfer or assurance for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land to which he is entitled or of which he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities or acts required by law under the Real Property Act or otherwise for the validity or completion of the conveyance, including the acts to be performed by married women and tenants in tail for perfect conveyance and assurance under the Acts for the time being in force in that behalf:

The expression “devisee” includes the heir of a devisee and the devisee of an heir, and any person who may claim right by devolution of title of a similar description:

The expression “instrument” includes Act of Parliament:

The expression “land” includes incorporeal as well as corporeal hereditaments, and any estate or interest therein, and also an undivided share of land:

The expression “lunatic” means any person who shall have been found to be a lunatic upon inquiry by the Supreme Court, or upon a commission of inquiry issuing out of the Supreme Court in the nature of a writ of *de lunatico inquirendo*:

The expressions “mortgage” and “mortgagee” include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee:

The expressions “pay” and “payment,” as applied in relation to stocks and securities, and in connection with the expression “into Court,” include the deposit or transfer of the same in or into Court:

The expression “person of unsound mind” means any person, not an infant who, not having been found to be a lunatic, shall be incapable from infirmity of mind of managing his own affairs:

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The expression “possessed” applies to receipt of income of and to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in, any land :

The expression “property” includes real and personal property, and any estate and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not :

The expression “Real Property Act” means “The Real Property Act 1886,” and any Act amending the same or substituted therefor :

The expression “representative” means an executor or administrator, and includes the Public Trustee in cases where the Supreme Court shall have authorised him to administer the estate of a deceased person :

The expression “securities” includes stocks, funds, and shares :

The expression “stock” includes fully paid up shares, and, so far as relates to vesting orders made by the Court under this Act, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein :

The expression “Supreme Court” includes a Judge of the Supreme Court :

The expression “transfer,” in relation to stock, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee :

The expression “trust” does not include the duties incident to an estate conveyed by way of mortgage, or to the estate or interest of a mortgagee under the Real Property Act, but with these exceptions the expressions “trust” and “trustee” include implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of representative of a deceased person: and the expression “trustee” includes a representative of a deceased person.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

S. J. WAY, Lieutenant-Governor.

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SCHEDULES.

FIRST SCHEDULE.

No. of Act.	Title.	Extent of Repeal.
No. 7 of 1855-6	The Trustee Act, 1855	Sections 2 to 47 inclusive
No. 6 of 1860 ..	The Property Act of 1860	Sections 24 to 30 inclusive
No. 7 of 1862 ..	An Act to give to Trustees, Mortgagees, and others, certain powers now commonly inserted in Settlements, Mortgages, and Wills	Sections 1 to 9 inclusive, sections 23 to 31 inclusive
No. 14 of 1866-7	The Limitations of Suits and Actions Act, 1866	Section 26
No. 523 of 1891	The Trustees Appointment Act 1891	The whole

SECOND SCHEDULE.

South Australian Government Securities.

No.

[Royal Arms.]

No.

(Authorised by "The Trustee Act, 1893.")

I, the Treasurer of the Province of South Australia, in consideration of the sum of _____ Pounds, paid to me for public purposes by _____, do hereby bind myself to pay to the holder for the time being of this bond the sum of _____ Pounds, and interest thereon at the rate of Four Pounds per centum per annum; such interest to be payable on the first day of April and the first day of October in every year, and the principal to be paid on the first day of _____, in the year one thousand nine hundred and _____.

Sealed with my seal. Dated the _____ day of _____ one thousand eight hundred and _____

Signed, sealed, and delivered in
the presence of

[Bond transferable by delivery

.]

THIRD SCHEDULE.

Appointment of New Trustees.

Pursuant to Part IV. of "The Trustee Act, 1893," we [here set out names, addresses, and occupations], being persons entitled to exercise and exercising the power of appointing new trustees of the trust hereinafter referred to, do hereby appoint [here set out names, addresses and occupations of new trustees], to be new trustees (here if necessary insert "jointly with") [here insert names, addresses, and occupations of the old continuing trustees] of the trust constituted under [here set out shortly particulars of the instrument creating the trust, including date, and name of person by whom trust was created], and we the said [here insert names of new trustees] do hereby accept the said trusteeship.

Dated this

day of

, 18

[To be signed by the persons exercising the power of appointment,
and by the new trustees, and to be attested.]

FOURTH

The Trustee Act.—1893.

FOURTH SCHEDULE.

Memorandum of the Appointment of New Trustees.

Pursuant to Part IV. of "The Trustee Act, 1893," it is hereby certified as follows:—

1. The trust is constituted under [*here set out shortly particulars of the instrument creating the trust, including date and names of persons by whom trust created*].

2. The trust estates consist of [*here set out shortly the trust estates, giving particulars sufficient to identify, so far as practicable, and, as regards real estate, giving the last registration reference, and the estate or interest of the trustees*].

3. The names, addresses, and occupations of the trustees on the constitution of the trust (*or, whichever shall last happen*, on the last appointment of trustees, dated the day of _____, 18__) were [*here set out names, addresses, and occupations*].

4. The power of appointing new trustees is vested in [*here set out persons in whom it is vested*] by virtue of the provision in that behalf contained in [*here set out where contained. Add, if provision not contained in Act of Parliament*] and of which provision the following is a copy [*here set out copy*].

5. The power of appointing new trustees of the said trust has been lawfully exercised by the persons entitled to exercise the same by the appointment of the new trustees mentioned in the next paragraph.

6. The persons in whom the trust estates will become vested on compliance with the provisions of Part IV. of "The Trustee Act, 1893," are as follows:—

First.—Old continuing trustees [*here set out names, addresses, and occupations of old trustees, if any*].

Secondly.—New trustees [*here set out names, addresses, and occupations of new trustees*].

Dated this _____ day of _____, 18__ .

[*To be signed by the persons entitled to make the affidavit or declaration verifying, and to be attested*].

FIFTH SCHEDULE.

We [*here set out names, addresses, and occupations of deponents*], the persons signing the memorandum of the appointment of new trustees above written (*or annexed thereto, as the case may be*), severally make oath and swear (*or, as the case may be, solemnly and sincerely declare*) as follows, that is to say:—

1. The statements contained in the said memorandum are true in every particular.

2. We are [*here show authority to make the affidavit or declaration, as, for instance, "the persons entitled to exercise and exercising the power by which the new trustees are appointed."*]

[*To be signed and severally sworn or declared by all deponents before a notary public or a Justice of the Peace.*]