



ANNO DECIMO-SEXTO

VICTORIÆ REGINÆ,

No. 18.

*By His Excellency SIR WILLIAM THOMAS DENISON, Knight,
Lieutenant-Governor of the Island of Van Diemen's Land
and its Dependencies, with the Advice and Consent of the
Legislative Council.*

**AN ACT to consolidate and amend the Laws relating to
the Conveyance and Transfer of Real and Personal
Property vested in Mortgagees and Trustees.**

[20th October, 1852.]

WHEREAS a Statute was passed in the First Year of the Reign of His late Majesty King William the Fourth, intituled *An Act for amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees, and for enabling Courts of Equity to give effect to their Decrees and Orders in Certain Cases*—**AND WHEREAS** another Statute was passed in the Fifth Year of the Reign of His late Majesty King William the Fourth, intituled *An Act for the Amendment of the Law relative to the Escheat and Forfeiture of Real and Personal Property holden in Trust*—**AND WHEREAS** the Provisions of the firstly recited Statute were extended to this Colony by an Act of Council of this Island passed in the Fourth Year of the Reign of His late Majesty King William the Fourth, intituled *An Act for extending to Van Diemen's Land certain Statutes passed in England in the Ninth Year of His late and First Year of His present Majesty for the Amendment of the Law*—**AND WHEREAS** the Provisions of the secondly recited Statute were extended to this Colony by an Act of Council of this Island passed in the Eighth Year of the Reign of His late Majesty King William the Fourth, intituled *An Act for extending to this Colony Two Statutes lately passed respecting the Apportionment of Rents and the Forfeiture of Property holden in Trust*—**AND WHEREAS** it is expedient that the Provisions of the said Statutes as applicable to this Colony, and the Laws relating to the Conveyance and Transfer of Real and Personal Property vested in Mortgagees and Trustees, should be consolidated, amended, and enlarged—**BE IT THEREFORE ENACTED** by His Excellency SIR

PREAMBLE.

Recites Statute
11 Geo. 4 and
1 Will. 4, c. 60;

and Statute 4 &
5 Will. 4, c. 23;
and Act of Coun-
cil 4 Will. 4,
No. 12, extending
Provisions of first-
recited Statute to
the Colony,

and Act of Coun-
cil 8 Will. 4,
No. 5, extending
secondly recited
Statute to this
Colony.

Recited Acts of Council so far as they extend recited Statutes to this Colony repealed.

WILLIAM THOMAS DENISON, Knight, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, by and with the Advice and Consent of the Legislative Council of the said Island, That the said recited Acts of Council, so far as they operate to extend the said firstly and secondly recited Statutes to this Colony (but no farther), shall be and the same are hereby repealed—PROVIDED ALWAYS that the several Statutes repealed by the said recited Statutes shall not be revived.

Definitions.

Interpretation of certain Words.

II. AND WHEREAS it is expedient to define the meaning in which certain Words are hereafter used ; it is declared, That the several Words hereinafter named are herein used and applied in the Manner following respectively ; (that is to say,)

"Property."

The Word "Property" shall extend to and include Lands, Messuages, Tenements, and Hereditaments, corporeal and incorporeal, of every Description, whatever may be the Estate or Interest therein : and shall also extend to and include personal Property of every Description not included in the Term "Stock" as hereinafter defined :

"Stock."

The Word "Stock" shall mean any Fund, Annuity, or Security transferable in Books kept by any Company or Society established, or to be established, or transferable by Deed alone, or by Deed accompanied by other Formalities, and any Share or Interest therein :

"Seised."

The Word "seised" shall be applicable to any vested Estate for Life or of a greater Description, and shall extend to Estates at Law and in Equity in Possession or in futurity in any real Property :

"Possessed."

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 real Property ; and to personal Property :

"Contingent Right."

The Words "contingent Right" as applied to real Property 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 :

"Convey," "Conveyance."

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 real Property 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 any Acts to be performed by married Women and Tenants in Tail, in accordance with any Law now or hereafter to be in force for giving Effect to their Assurances :

"Transfer."

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 :

"Assign," "Assignment."

The Words "Assign" and "Assignment" shall mean the Execution and Performance by a Person of every necessary or suitable Deed or Act for assigning, surrendering, or otherwise transferring real or personal Property of which such Person is possessed, either for the

whole Estate or Interest of the Person so possessed, or for any less Estate or Interest :

Definitions.

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 shall extend to and include Cases where the Trustee has some beneficial Estate or Interest in the Subject of the Trust, and shall extend to and include personal Representatives of a deceased Person, and the Duties incident to the Office of personal Representative of a deceased Person :

"Trust,"
"Trustee."

Executor, &c.

The Word "Lunatic" shall mean any Person who shall have been found or determined by the Supreme Court of this Colony to be deprived of his Understanding or Reason by the Act of God, so as to be unable to govern himself or his Estate :

"Lunatic."

The Expression "Person of unsound Mind" shall mean any Person, not an Infant, who, not having been so found or determined to be deprived of his Understanding or Reason as aforesaid, shall be incapable from Infirmary of Mind to manage his own Affairs :

"Person of un-
sound Mind."

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 real Property of a deceased Person, not as Heir of such deceased Person, but by a Title dependent solely upon the Operation of the Laws concerning Devise and Descent :

"Devisee."

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 :

"Mortgage."

The Expression "Mortgaged Property" shall extend to and include Lands, Personalty, and every Description of Property, and every Interest therein subject to any Mortgage :

"Mortgaged Pro-
perty."

The Word "Mortgagee" shall, besides its ordinary Signification, extend to and include the Devisee of a Mortgage, and the Heir of a Mortgagee who is also the Executor and Residuary Legatee of such Mortgagee :

"Mortgagee."

The Word "Person" used and referred to in the Masculine Gender shall include a Female as well as a Male, and shall include a Body Corporate :

"Person."

And generally, unless the contrary shall appear from the Context, every Word importing the Singular Number only shall extend to several Persons or Things, and every Word importing the Plural Number shall apply to one Person or Thing, and every Word importing the Masculine Gender only shall extend to a Female.

III. AND BE IT ENACTED, That when any Lunatic or Person of unsound Mind shall be seised or possessed of any Property upon any Trust or by way of Mortgage, it shall be lawful for the Supreme Court in its Equity Jurisdiction to make an Order that such Property be vested in such Person in such Manner and for such Estate or Interest as the said Court shall direct ; and the Order shall have the same Effect

*Lunatic Trustees
and Mortgagees.*

Supreme Court
may by Order
convey Trust or
Mortgage Estate
of Lunatic, &c.

*Lunatic Trustees
and Mortgagees.*

as if the Trustee or Mortgagee had been sane, and had duly executed a Conveyance or Assignment of the Property in the same Manner for the same Estate or Interest.

Court may by
Order convey or
release contingent
Right vested in
Lunatic, &c. as
Trustee or Mort-
gagee.

IV. AND BE IT ENACTED, That when any Lunatic or Person of unsound Mind shall be entitled to any contingent Right in any Property upon any Trust or by way of Mortgage, it shall be lawful for the said Court to make an Order wholly releasing such Property from such contingent Right, or disposing of the same to such Person 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.

Court may au-
thorise any Person
to transfer &c.
Trust or mort-
gaged Stock or
Chose in Action
of Lunatic, &c.

V. AND BE IT ENACTED, That when any Lunatic or Person of unsound Mind shall be solely entitled 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 in any Person the Right to transfer such Stock, or to receive the Dividends or Income thereof, or to sue for and recover such Chose in Action, or any Interest in respect thereof; and when any Person 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 so jointly entitled as aforesaid, or in such last-mentioned Person, together with any other Person the said Court may appoint.

*Infant Trustees
and Mortgagees.*

Court may convey
Trust or Mortgage
Estate of Infant.

VI. AND BE IT ENACTED, That where any Infant shall be seised or possessed of any Property upon any Trust or by way of Mortgage, it shall be lawful for the said Court to make an Order vesting such Property in such Person in such Manner and for such Estate or Interest 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 Property in the same Manner for the same Estate or Interest.

Infant Trustee or
Mortgagee of con-
tingent Right,
Stock, or
Chose in Action.

VII. AND BE IT ENACTED, That where any Infant shall be entitled to any contingent Right in any Property, or 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 wholly releasing such Property from such contingent Right, or disposing of the same to such Person, or 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 such Person as the said Court shall direct or appoint; and the Order as to any such contingent Right 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.

Property—Trusts.
Property—Sole

VIII. AND BE IT ENACTED, That when any Person solely, or

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several Persons jointly, seised or possessed of any Property upon any Trust shall be out of the Jurisdiction of the said Court, or cannot be found, it shall be lawful for the said Court to make an Order vesting such Property in such Person in such Manner and for such Estate or Interest as the said Court shall direct ; and the Order shall have the same Effect as if the Trustee or Trustees had duly executed a Conveyance or Assignment of the Property in the same Manner and for the same Estate or Interest.

Property—Trusts.

Trustee or several Trustees out of the Jurisdiction, or not to be found.

IX. AND BE IT ENACTED, That when any Person shall be seised or possessed of any Property jointly with a Person out of the Jurisdiction of the said Court, or who cannot be found, it shall be lawful for the said Court to make an Order vesting the Property in the Person so jointly seised or possessed, or in such last-mentioned Person, together with any other Person in such Manner and for such Estate or Interest 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 Property in the same Manner for the same Estate or Interest.

Property—Joint Trustee out of the Jurisdiction not to be found.

X. AND BE IT ENACTED, That when any Person solely, or several Persons jointly entitled to a contingent Right in any Property upon any Trust shall be out of the Jurisdiction of the said Court, or cannot be found, it shall be lawful for the said Court to make an Order wholly releasing such Property from such contingent Right, or disposing of the same to such Person as the said Court shall direct ; and the Order shall have the same Effect as if the Trustee or Trustees had duly executed a Conveyance so releasing or disposing of the contingent Right.

Contingent Right —Sole Trustee or several Trustees out of the Jurisdiction or not to be found.

XI. AND BE IT ENACTED, That when any Person jointly entitled with any other Person to a contingent Right in any Property upon any Trust shall be out of the Jurisdiction of the said 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 so jointly entitled as aforesaid, or to such last-mentioned Person together with any other Person ; 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.

Contingent Right —Joint Trustee out of the Jurisdiction or not to be found.

XII. AND BE IT ENACTED, That where there shall have been Two or more Persons jointly seised or possessed of any Property upon any Trust, and it shall be uncertain whether any of such Trustees be living, or which of such Trustees (if any) was the Survivor, it shall be lawful for the said Court to make an Order vesting such Property in such Person in such Manner and for such Estate or Interest as the said Court shall direct ; and the Order shall have the same Effect as if one of such Trustees had survived and the Survivor of such Trustees

Property—Uncertainty as to Survivorship of several Trustees.

Property—Trusts. had duly executed a Conveyance or Assignment of the Property in the same Manner for the same Estate or Interest.

Property—Uncertainty as to whether the last Trustee be living or dead.

XIII. AND BE IT ENACTED, That where any One or more Person or Persons shall have been seised or possessed of any Property 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 said Court to make an Order vesting such Property in such Person in such Manner and for such Estate or Interest 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 Property in the same Manner for the same Estate or Interest.

Contingent Right—Uncertainty as to Survivorship of several Trustees.

XIV. AND BE IT ENACTED, That where there shall have been two or more Persons jointly entitled to a contingent Right in any Property upon any Trust, and it shall be uncertain whether any of such Trustees be living, or which of such Trustees (if any) was the Survivor, it shall be lawful for the said Court to make an Order wholly releasing such Property from such contingent Right, or disposing of the same to such Person as the said Court shall direct; and the Order shall have the same Effect as if one of such Trustees had survived, and such Survivor had duly executed a Conveyance so releasing or disposing of the contingent Right.

Contingent Right—Uncertainty as to whether last Trustee be living or dead.

XV. AND BE IT ENACTED, That where any one or more Person or Persons shall have been entitled to a contingent Right in any Property upon any Trust, and it shall not be known, as to the Trustee last known to have been entitled, whether he be living or dead, it shall be lawful for the said Court to make an Order wholly releasing such Property from such contingent Right, or disposing of the same to such Person as the said Court shall direct; and the Order shall have the same Effect as if the last Trustee had duly executed a Conveyance so releasing or disposing of the contingent Right.

Property or contingent Right—Trustee dying intestate without Heir, or his Heir or Devisee being unknown.

XVI. AND BE IT ENACTED, That when any Person seised of any Lands, or entitled to a contingent Right in any Property upon any Trust, shall have died intestate as to such Property or contingent Right 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 said Court to make an Order vesting such Property in such Person in such Manner and for such Estate, or wholly releasing such Property from such contingent Right or disposing of the same to such Person 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 Property in the same Manner for the same Estate, or so releasing or disposing of the contingent Right.

Contingent Right of unborn Trustees or Class of Trustees.

XVII. AND BE IT ENACTED, That when any Property is subject to a contingent Right in an unborn Person or Class of unborn Persons

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who upon coming into existence would in respect thereof become seised or possessed of such Property upon any Trust, it shall be lawful for the said Court to make an Order which shall wholly release and discharge such Property from such contingent Right in such unborn Person or Class of unborn Persons, or to make an Order which shall vest in any Person 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 Property.

Property--Trusts.

XVIII. AND BE IT ENACTED, That where any Person jointly or solely seised or possessed of any Property upon any Trust shall, after a Demand by a Person entitled to require a Conveyance or Assignment of such Property, or a duly authorised 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 Property 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 authorised Agent of such last-mentioned Person, it shall be lawful for the said Court to make an Order vesting such Property in such Person in such Manner and for such Estate or Interest 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 Property in the same Manner for the same Estate or Interest.

Property—Sole or joint Trustee refusing to convey.

XIX. AND BE IT ENACTED, That where any Person jointly or solely entitled to a contingent Right in any Property 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 authorised 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 authorised Agent of such last-mentioned Person, it shall be lawful for the said Court to make an Order releasing or disposing of such contingent Right in such Manner as the said Court 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.

Contingent Right — Trustee refusing to convey.

XX. AND BE IT ENACTED, That when any Mortgagee shall have died without having entered into the possession or into the Receipt of the Rents and Profits of the mortgaged Property, and the Money due in respect of the 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 Conveyance or Re-conveyance of such mortgaged Property, then in any of the following Cases it shall be lawful for the said Court to make an Order vesting such mortgaged Property in such Person in such Manner and for such Estate or Interest as the said Court shall direct; that is to say,—

Mortgages.

Conveyance of mortgaged Estates after Death of Mortgagee and Satisfaction of the Security.

Mortgages.

Heir or Devisee
out of Jurisdic-
tion, &c.

Heir or Devisee
refusing to convey.

Uncertainty as
to Survivorship
of Devisees.

Uncertainty
whether Heir or
surviving Devisee
be living.

No Heir or
Devisee, or none
known.

When an Heir or Devisee of such Mortgagee shall be out of the Jurisdiction of the said Court, or cannot be found :

When an Heir or Devisee of such Mortgagee shall, upon demand by a Person entitled to require a Conveyance of such mortgaged Property, or a duly authorised 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 mortgaged Property shall have been tendered to him by a Person entitled as aforesaid, or a duly authorised Agent of such last-mentioned Person :

When it shall be uncertain whether any of several Devisees of such Mortgagee be living, or which of them (if any) 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 mortgaged Property 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 mortgaged Property in the same Manner and for the same Estate or Interest.

Vesting Order
under this Act
not to operate as a
Severance of a
Joint-tenancy.

XXI. PROVIDED ALWAYS, AND BE IT ENACTED, That in no Case shall any Order made by the said Court under the Provisions of this Act, having the Effect of a Conveyance or Assignment of any Property, or having the Effect of a Disposition of any contingent Right, operate or be deemed to operate as a Severance of any Joint Estate or Interest in such Property or contingent Right, unless such Operation shall be expressly declared in such Order to be thereby intended ; but, in every Case, all the Persons (if more than one) in whom any such Property shall be vested, or to whom any such contingent Right shall be disposed, as Trustees, by such Order, shall be and be deemed and taken to be seised or possessed of such Property, or entitled to such contingent Right, for a Joint Estate or Interest, and not otherwise, unless the contrary be so expressly declared as aforesaid.

*Appointment of
Person to convey.*

Court in lieu of
conveying, &c.
by Order may
appoint a Person
to convey, &c.

XXII. AND BE IT ENACTED, That in every case where the said Court shall under the Provisions of this Act be enabled to make an Order having the Effect of a Conveyance or Assignment of any Property, 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 Property, 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 Property, 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 said Court shall, under the Provisions of this Act, be enabled to make an Order vesting in any Person 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 any such Company or Society, at once to transfer or join in transferring the Stock to the Person to be named in the Order; and this Act shall be a full and complete Indemnity and Discharge to all such Companies or Societies, and their Officers and Servants, for all Acts done or permitted to be done pursuant thereto.

*Appointment of
Person to convey.*

XXIII. AND BE IT ENACTED, That when any sole Trustee or several joint Trustees 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 or they, or any of them, be living or dead, or which (if any) was the Survivor of the several Trustees, 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 the said Court may appoint.

*Stock or Chose in
Action—Trustees*

*Sole Trustee or
several Trustees
of Stock or
Chose in Action
out of the Juris-
diction or not to
be found, or not
known whether
living.*

XXIV. AND BE IT ENACTED, That when any Person shall be jointly entitled with any Person out of the Jurisdiction of the said 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 Stock or Chose in Action, or any Interest in respect thereof, either in such Person so jointly entitled as aforesaid, or in such last-mentioned Person together with any other Person the said Court may appoint.

*Joint Trustee of
Stock or Chose
in Action out
of the Jurisdic-
tion or not to
be found, or not
known whether
living.*

XXV. AND BE IT ENACTED, That where any sole Trustee or several joint 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, or any Interest in respect thereof, according to the Direction of the Person absolutely entitled thereto, or to any immediate beneficial Interest therein, 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, or to any immediate beneficial Interest therein, 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 such Person as the said Court may appoint.

*Sole Trustee or
several Trustees
of Stock or
Chose in Action
refusing to transfer
or sue.*

XXVI. AND BE IT ENACTED, That 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 Stock or Chose in Action, or any Interest in respect

*Joint Trustee of
Stock or Chose
in Action refusing
to transfer or sue.*

Stock or Chose in Action—Trustees. thereof, according to the Directions of the Person absolutely entitled thereto, or to any immediate beneficial Interest therein, for the Space of Twenty-eight Days next after a Request in Writing for that Purpose shall have been made to him by such Person, 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 the other Trustees of the said Stock or Chose in Action, or in any Person whom the said Court may appoint jointly with such other Trustees.

Stock and Chose in Action—Effect of Order.

Effect of an Order vesting the legal Right to transfer Stock.

XXVII. AND BE IT ENACTED, That where any Order shall have been made under any of the Provisions of this Act vesting the Right to any Stock in any Person appointed by the said Court, such legal Right shall vest accordingly; and thereupon the Person so appointed is hereby authorised and empowered to execute all Deeds and Powers of Attorney, and to perform all Acts relating to the Transfer of such Stock into his own Name or otherwise, 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 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 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 legal Right to sue for Chose in Action.

XXVIII. AND BE IT ENACTED, That where any Order shall have been made under the Provisions of this Act by the said Court vesting the legal Right to sue for or recover any Chose in Action, or any Interest in respect thereof, in any Person such legal Right shall vest accordingly; and thereupon it shall be lawful for the Person so appointed to carry on, commence, and prosecute, in his own Name, any Action, Suit, or other Proceeding at Law or in Equity for the Recovery of such Chose in Action, or any Interest in respect thereof.

Sale of Debtors' Property.

Decree for Sale of Real Estate for Payment of Debts of Deceased, his Heir or

XXIX. AND BE IT ENACTED, That when a Decree shall have been made by the said Court directing the Sale of any Property for the Payment of the Debts of a deceased Person, every Person seised or possessed of such Property, 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.

Devisee to be a
Trustee.
Contingent Right.

XXX. AND BE IT ENACTED, That where any Decree shall be made by the said Court for the specific Performance of a Contract concerning any Property, or for the Partition or Exchange of any Property, or generally when any Decree shall be made for the Conveyance or Assignment of any Property, 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 Suit wherein such Decree is made are Trustees of such Property, 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 Transaction 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.

Property—Specific Performance.

On Decree for Specific Performance, Partition, Exchange, or generally for Conveyance, Court may declare what Parties are Trustees, and as to the Interests of Persons unborn;

and may make Order for Conveyance, &c.

XXXI. AND BE IT ENACTED, That it shall be lawful for the said Court to make Declarations and give Directions concerning the Manner in which the Right to or over any Stock or Chose in Action vested under the Provisions of this Act shall be exercised; and thereupon the Person 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.

Stock or Chose in Action—Directions.

Power to Court to direct how the Right to Stock or Chose in Action is to be exercised.

XXXII. AND BE IT ENACTED, That whenever it shall be expedient to appoint a new Trustee, or to appoint a Trustee in Cases where, by reason of Lapse, Renunciation, Disclaimer, or otherwise, there shall be no Trustee to carry out or effectuate any Trust, and it shall be found inexpedient, difficult, or impracticable so to do without the Assistance of the said Court, it shall be lawful for the said Court to make an Order appointing a new Trustee, either in Substitution for any existing, or deceased, or other Trustee, or in Addition to any existing Trustee, or appointing a Trustee in Cases where, by reason of Lapse, Renunciation, Disclaimer, or otherwise, there shall be no Trustee.

Appointment of New and other Trustees.

Power to Court to appoint new or additional Trustees, or Trustees in cases of Lapse, Renunciation, or Disclaimer.

XXXIII. AND BE IT ENACTED, That every Person who, upon the making of such Order as last aforesaid, shall be a Trustee, shall have all the same Rights and Powers as he would have had if appointed by Decree in a Suit duly instituted.

Such Trustees to have the same Powers as if appointed in a Suit.

XXXIV. AND BE IT ENACTED, That it shall be lawful for the said Court, upon making any such Order as aforesaid for appointing

Court may vest Property in such Trustees.

*Appointment of
New and other
Trustees.*

any Trustee under this Act, either by the same or by any subsequent Order, to direct that any Property subject to the Trust shall vest in the Person who upon the Appointment shall be the Trustee, for such Estate or Interest as the Court shall direct; and such Order shall have the same Effect as if the Person who before such Order was the Trustee (if any) had duly executed all proper Conveyances and Assignments of such Property for such Estate or Interest.

*Court may vest
Stock or Chose
in Action in such
Trustees.*

XXXV. AND BE IT ENACTED, That it shall be lawful for the said Court, upon making any such Order as aforesaid for appointing any Trustee under this Act, either by the same or any subsequent Order, to vest the Right to call for the Transfer of any Stock subject to the Trust, or to receive the Dividends or Income thereof, or to sue for or recover any Chose in Action subject to the Trust, or any Interest in respect thereof, in the Person who upon the Appointment shall be the Trustee.

*Effect of Appoint-
ment in dis-
charging old
Trustees.*

XXXVI. AND BE IT ENACTED, That any such Appointment by the said Court of a new Trustee, and any such Conveyance, Transfer, or Assignment as aforesaid, shall operate no further or otherwise as a Discharge to any former or continuing Trustee than if, in every such Case as aforesaid, there had been a Power for the Appointment of new Trustees contained in some Instrument, and such Appointment, Conveyance, or Assignment as aforesaid had been made or executed under such a Power.

*Right to apply
under this Act.*

Who may apply
under this Act.
For Appoint-
ment of Trustees
or in respect of
any Trust Pro-
perty.

In respect of
mortgaged Pro-
perty.

XXXVII. AND BE IT ENACTED, That an Order under any of the herein-before contained Provisions for the Appointment of any Trustee, or concerning any Property, Stock, or Chose in Action subject to a Trust, may be made upon the Application of any Person beneficially interested in such Property, 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 mortgaged Property 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 Monies secured by the Mortgage.

Procedure.

Power to present
Petition on
Affidavit or
otherwise.

XXXVIII. AND BE IT ENACTED, That any Person, entitled in manner aforesaid to apply for an Order from the said Court, may present a Petition 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 with Notice of such Petition as he may deem entitled to Service thereof.

What may be done
upon Petition.

Reference.

Further Evidence.
Notices.

XXXIX. AND BE IT ENACTED, That upon the hearing of any such Petition it shall be lawful for the said Court, should it be deemed necessary, to direct a Reference to the Master of the said Court to enquire into any Facts which require such an Investigation; or it shall be lawful for the said Court to direct such Petition to stand over, to enable the Petitioner to adduce Evidence or further Evidence

before the said Court, or to enable Notice or any further Notice of such Petition to be served upon any Person.

Procedure.

XL. AND BE IT ENACTED, That upon the hearing of any such Petition, whether any Report from the said Master shall have been obtained or not, it shall be lawful for the said Court to dismiss such 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.

XLI. AND BE IT ENACTED, That 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 of the said Court, the Facts necessary for an Order under this Act shall appear to the said Court to be sufficiently proved, it shall be lawful for 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.

Power to make an Order in a Cause at the hearing, or on Petition or Motion.

XLII. AND BE IT ENACTED, That whenever any Order shall be made under this Act by the said Court for the Purpose of conveying or assigning any Property, or for the Purpose of releasing or disposing of any contingent Right, and such Order shall be founded on an Allegation of the personal Incapacity of a Trustee or Mortgagee, or on an Allegation that a Trustee or the Heir or Devisee of a Mortgagee is out of the Jurisdiction of the said Court or cannot be found, or that it is uncertain whether any of several Trustees or any of several Devisees of a Mortgagee be living, or which of several Trustees or which of several Devisees of a Mortgagee was the Survivor, or whether the last Trustee or the Heir or last surviving Devisee of a Mortgagee be living or dead, or on an Allegation that any Trustee or Mortgagee has died intestate without an Heir, or has died and it is not known who is his Heir or Devisee, then, in any of such Cases, the Fact that the said Court has made an Order upon such an Allegation shall be conclusive Evidence of the Matter so alleged in any Court of Law or Equity upon any Question as to the legal Validity of the Order—**PROVIDED ALWAYS,** that nothing herein contained shall prevent the said Court directing a Re-conveyance or Re-assignment of any Property 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 Property or contingent Right to pay any Costs occasioned by the Order under this Act, when the same shall appear to have been improperly obtained.

Validity of Order.

Orders founded on certain Allegations to be conclusive Evidence of the Matter alleged.

Power to direct a Re-conveyance.

Costs.

XLIII. AND BE IT ENACTED, That no Property, Stock, or Chose in Action vested in any Person upon any Trust or by way of Mortgage, or any Profits thereof, shall escheat or be forfeited to Her Majesty, Her Heirs or Successors, by reason of the Attainder or Conviction of any Offence of such Trustee or Mortgagee, but shall remain in such Trustee or Mortgagee, or survive to his Co-trustee, or descend to or vest in his Representative, as if no such Attainder or Conviction had taken place.

Escheat and Forfeiture.

No Escheat or Forfeiture of Property held upon Trust or Mortgage.

Act not to prevent
Escheat or Forfeiture of beneficial Interest.

XLIV. AND BE IT ENACTED, That nothing contained in this Act shall prevent the Escheat or Forfeiture of any Property or Stock vested in any such Trustee or Mortgagee so far as relates to any beneficial Interest therein of any such Trustee or Mortgagee, but such Property or Stock, 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 Infant,
Lunatic, or
Unborn Person.

Money of Infants,
Persons of unsound Mind, and
unborn Persons
charged on Land,
&c. to be paid
into Court.

Investment and
Payment out.

XLV. AND BE IT ENACTED, That where any Infant or Person of unsound Mind shall be entitled, or where any unborn Person or Class of unborn Persons would upon coming into existence become entitled to any Money payable in Discharge of any Property 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 the said 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, Person of unsound Mind, unborn Person or Class of unborn Persons, subject to the Order or Disposition of the said Court; and it shall be lawful for the said Court, upon Petition in a summary Way, to order any Money so paid to be invested in any Real Security to be approved by the Master of the said Court, and to order Payment or Distribution thereof, or Payment of the Dividends or Interest thereof, as to the said Court shall seem reasonable.

Absent Trustee.

Court may make
a Decree in the
Absence of a
Trustee who cannot
be found.

XLVI. AND BE IT ENACTED, That where in any Suit commenced or to be commenced in the said Court it shall be made to appear to the said Court by Affidavit that diligent Search and Inquiry has been made after any Person made a Defendant, who is only a Trustee, to serve him with the Process of the said Court, and that he cannot be found, it shall be lawful for the said Court to hear and determine such Cause, and to make such absolute Decree therein against every Person who shall appear to the said Court 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 said 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.

Not to affect
any beneficial
Interest in the
Defendant.

Costs.

Costs and Expenses
may be paid
out of the Estate.

XLVII. AND BE IT ENACTED, That the said Court may order the Costs and Expenses of and relating to the Petitions, Orders, Directions, Conveyances, Transfers, and Assignments to be made in pursuance of this Act, or of any of them, to be paid and raised out of or from the Property, Stock, or Personal Estate, or the Rents, Dividends, or Produce thereof, in respect of which the same respectively shall be made, or in such Manner as the said Court shall think proper.

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XLVIII. AND BE IT ENACTED, That upon any Petition being presented under this Act to the said Court concerning a Person of unsound Mind, it shall be lawful for the said Court, should the said Court so think fit, to enquire, hear, and determine whether such Person be deprived of his Understanding or Reason by the Act of God so as to be unable to govern himself or his Estate, and to postpone making any Order upon such Petition until after such Inquiry, Hearing, and Determination shall have been had and made.

Lunacy.

Inquiry and Determination as to Lunacy may be had upon Petition.

XLIX. AND BE IT ENACTED, That upon any Petition under this Act being presented to the said Court, it shall be lawful for the said Court to postpone making any Order upon such Petition until the Right of the Petitioner shall have been declared in a Suit duly instituted for that Purpose.

Suit.

On a Petition a Suit may be directed.

L. AND BE IT ENACTED, That 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."

Short Title.

Act may be shortly cited.

RICHARD DRY, *Speaker.*

Passed the Legislative Council this twelfth day of October, one thousand eight hundred and fifty-two.

FR. HARTWELL HENSLOWE,

Clerk of the Council.

In the name and on the behalf of Her Majesty I assent to this Act.

W. DENISON,

Lieut.-Governor.

*Government House, Hobart Town,
20th October, 1852.*