

**Trustee Act, 1893.**  
**[56 & 57 VICT. CH. 53.]**

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A.D. 1893.

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## CHAPTER 53.

An Act to consolidate Enactments relating to Trustees. A.D. 1893.  
 [22nd September 1893.]

**B**E it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

### PART I.

#### INVESTMENTS.

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, in manner following, that is to say: Authorised investments.

- (a.) In any of the parliamentary stocks or public funds or Government securities of the United Kingdom:
- (b.) On real or heritable securities in Great Britain or Ireland:
- (c.) In the stock of the Bank of England or the Bank of Ireland:
- (d.) In India three and a half per cent. stock and India three per cent. stock, or in any other capital stock which may at any time hereafter be issued by the Secretary of State in Council of India under the authority of Act of Parliament, and charged on the revenues of India:
- (e.) In any securities the interest of which is for the time being guaranteed by Parliament:
- (f.) In consolidated stock created by the Metropolitan Board of Works, or by the London County Council, or in debenture stock created by the Receiver for the Metropolitan Police District:
- (g.) In the debenture or rentcharge, or guaranteed or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per centum per annum on its ordinary stock:
- (h.) In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity

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or for a term of not less than two hundred years at a fixed rental to any such railway company as is mentioned in sub-section (g.), either alone or jointly with any other railway company :

(i.) In the debenture stock of any railway company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India :

(j.) In the "B" annuities of the Eastern Bengal, the East Indian, and the Scinde Punjab and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway ; also in deferred annuities comprised in the register of holders of annuity Class D. and annuities comprised in the register of annuitants Class C. of the East Indian Railway Company :

(k.) In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed :

(l.) In the debenture or guaranteed or preference stock of any company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five pounds per centum on its ordinary stock :

(m.) In nominal or inscribed stock issued, or to be issued, by the corporation of any municipal borough having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any county council, under the authority of any Act of Parliament or Provisional Order :

(n.) In nominal or inscribed stock issued or to be issued by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such commissioners shall not have exceeded eighty per centum of the amount authorised by law to be levied :

(o.) In any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the High Court,

and may also from time to time vary any such investment.

Purchase at a premium of redeemable stocks.

2.—(1.) A trustee may under the powers of this Act invest in any of the securities mentioned or referred to in section one of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

(2.) Provided that a trustee may not under the powers of this Act purchase at a price exceeding its redemption value any stock mentioned or referred to in sub-sections (g.), (i.), (k.), (l.), and (m.) of section one, which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such stock as is mentioned or referred to in the sub-sections aforesaid, which is 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. A.D. 1893.

(3.) A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act.

3. 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 with respect to the investment of the trust funds. Discretion of trustees.

4. 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.

5.—(1.) A trustee having power to invest in real securities, unless expressly forbidden by the instrument creating the trust, may invest and shall be deemed to have always had power to invest— Enlargement of express powers of investment.

(a) on mortgage of property held for an unexpired term of not less than two hundred years, and not subject to a reservation of rent greater than a shilling a year, or to any right of redemption or to any condition for re-entry, except for non-payment of rent; and

(b) on any charge, or upon mortgage of any charge, made under the Improvement of Land Act, 1864. 27 & 28 Vict. c. 114.

(2.) A trustee having power to invest in the mortgages or bonds of any railway company or of any other description of company may, unless the contrary is expressed in the instrument authorising the investment, invest in the debenture stock of a railway company or such other company as aforesaid.

(3.) A trustee having power to invest money in the debentures or debenture stock of any railway or other company may, unless the contrary is expressed in the instrument authorising the investment, invest in any nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875. 38 & 39 Vict. c. 83.

(4.) A trustee having power to invest money in securities in the Isle of Man, or in securities of the government of a colony, may, unless the contrary is expressed in the instrument authorising the investment, invest in any securities of the Government of the Isle of Man, under the Isle of Man Loans Act, 1880. 43 & 44 Vict. c. 8.

(5.) A trustee having a general power to invest trust moneys in or upon the security of shares, stock, mortgages, bonds, or debentures of companies incorporated by or acting under the authority of an Act of Parliament, may invest in, or upon the security of, mortgage

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28 & 29 Vict.  
c. 78.Power to  
invest, not-  
withstanding  
drainage  
charges.10 & 11 Vict.  
c. 32.

debentures duly issued under and in accordance with the provisions of the Mortgage Debenture Act, 1865.

**6.** A trustee having power to invest in the purchase of land or on mortgage of land may invest in the purchase, or on mortgage of any land, notwithstanding the same is charged with a rent under the powers of the Public Money Drainage Acts, 1846 to 1856, or the Landed Property Improvement (Ireland) Act, 1847, or by an absolute order made under the Improvement of Land Act, 1864, unless the terms of the trust expressly provide that the land to be purchased or taken in mortgage shall not be subject to any such prior charge.

Trustees not to  
convert in-  
scribed stock  
into certificates  
to bearer.26 & 27 Vict.  
c. 73.33 & 34 Vict.  
c. 71.38 & 39 Vict.  
c. 83.40 & 41 Vict.  
c. 59.

**7.**—(1.) A trustee, unless authorised by the terms of his trust, shall not apply for or hold any certificate to bearer issued under the authority of any of the following Acts, that is to say :

(a.) The India Stock Certificate Act, 1863 ;

(b.) The National Debt Act, 1870 ;

(c.) The Local Loans Act, 1875 ;

(d.) The Colonial Stock Act, 1877.

(2.) Nothing in this section shall impose on the Bank of England or of Ireland, or on any person authorised to issue any such certificates, any obligation to inquire whether a person applying for such a certificate is or is not a trustee, or subject them to any liability in the event of their granting any such certificate to a trustee, nor invalidate any such certificate if granted.

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

**8.**—(1.) A trustee lending money on the security of any 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, provided that 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 an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2.) A trustee lending money on the security of any 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 lessor's title.

(3.) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase of or in lending money upon the security of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the court the title accepted be such as a person acting with prudence and caution would have accepted.

(4.) 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 on the twenty-fourth day of December one thousand eight hundred and eighty-eight. A.D. 1893. —

9.—(1.) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon the security shall be deemed an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest. Liability or loss by reason of improper investments.

(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 on the twenty-fourth day of December one thousand eight hundred and eighty-eight.

## PART II.

### VARIOUS POWERS AND DUTIES OF TRUSTEES.

#### *Appointment of New Trustees.*

10.—(1.) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the United Kingdom 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 personal 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 United Kingdom, desiring to be discharged, refusing, or being unfit or being incapable, as aforesaid. Power of appointing new trustees.

(2.) On the appointment of a new trustee for the whole or any part of trust property—

- (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, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; 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

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discharged under this section from his trust unless there will be at least two trustees to perform the trust; and

(d) any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, 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 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.

Retirement of trustee.

**11.**—(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.

(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.

Vesting of trust property in new or continuing trustees.

**12.**—(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 persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

(2.) Where a deed 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. A.D. 1893.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, 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 any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the thirty-first of December one thousand eight hundred and eighty-one.

#### *Purchase and Sale.*

**13.**—(1.) Where a trust for sale or a power of sale of property is vested in a trustee, he 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, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks 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. Power of trustee for sale to sell by auction, &c.

(2.) 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.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the thirty-first of December one thousand eight hundred and eighty-one.

**14.**—(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. Power to sell subject to depreciatory conditions.

(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 twenty-fourth day of December one thousand eight hundred and eighty-eight.

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Power to sell  
under  
37 & 38 Vict.  
c. 78.

Married  
woman as  
bare trustee  
may convey.

**15.** A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section two of the Vendor and Purchaser Act, 1874.

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

*Various Powers and Liabilities.*

Power to  
authorise  
receipt of  
money by  
banker or  
solicitor.

44 & 45 Vict.  
c. 41.

**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 containing any such receipt as is referred to in section fifty-six of the Conveyancing and Law of Property Act, 1881; and a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the producing of any such deed by the solicitor shall have the same validity and effect under the said section as if the person appointing the solicitor had not been a trustee.

(2.) A trustee may appoint a banker or 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 banker 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.

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

(4.) This section applies only where the money or valuable consideration or property is received after the twenty-fourth day of December one thousand eight hundred and eighty-eight.

(5.) 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 equal fourth parts 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.

(2.) 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. A.D. 1893.

(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.

**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 endeavours 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 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.

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

(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.

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Power for  
executors and  
trustees to  
compound, &c.

**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 for 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.

(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 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.

Powers of two  
or more  
trustees.

**22.**—(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 thirty-first day of December one thousand eight hundred and eighty-one.

Exoneration  
of trustees in  
respect of  
certain powers  
of attorney.

**23.** 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.

Implied  
indemnity of  
trustees.

**24.** A trustee shall, without prejudice to the provisions of the instrument, if any, creating the trust, be chargeable only for money 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 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. A.D. 1893.

## PART III.

## POWERS OF THE COURT.

*Appointment of New Trustees and Vesting Orders.*

**25.**—(1.) The High 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 existing 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 felony, or is a bankrupt.

Power of the Court to appoint new trustees.

(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.

**26.** In any of the following cases, namely:—

Vesting orders as to land.

- (i.) Where the High Court appoints or has appointed a new trustee; and
- (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 an infant, or
  - (b) is out of the jurisdiction of the High Court, or
  - (c) cannot be found; and
- (iii.) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; and
- (iv.) Where, as to the last trustee known to have been entitled to or possessed of any land, it is uncertain whether he is living or dead; and
- (v.) Where there is no heir or personal representative to a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land 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

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neglected to convey the land or release the right for twenty-eight days after the date of the requirement ;

the High 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 High Court or cannot be found, the land or right shall be vested in such other person, either alone or with some other person.

Orders as to contingent rights of unborn persons.

**27.** 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 High 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.

Vesting order in place of conveyance by infant mortgagee.

**28.** Where any person entitled to or possessed of land, or entitled to a contingent right in land, by way of security for money, is an infant, the High Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee.

Vesting order in place of conveyance by heir, or devisee of heir, &c., or personal representative of mortgagee.

**29.** 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 any order for the reconveyance of the land, then the High Court may make an order vesting the land in such person 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 personal representative or devisee of the mortgagee is out of the jurisdiction of the High Court or cannot be found ; and

(b.) Where an heir or personal 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 the space of twenty-eight days next after a proper deed for conveying the land has been tendered to him by or on behalf of the person so entitled ; and

(c.) Where it is uncertain which of several devisees of the mortgagee was the survivor ; and



- (d.) Where it is uncertain as to the survivor of several devisees of the mortgagee or as to the heir or personal representative of the mortgagee whether he is living or dead; and
- (e.) Where there is no heir or personal 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 personal representative or devisee.

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**30.** Where any court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of the land, or entitled to a contingent right therein as heir, or under the will of a deceased person for payment of whose debts the judgment was given or order made, and is a party to the action or proceeding in which the judgment or order is given or made or is 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 High 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.

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

**31.** 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 High 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 High 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, &amp;c.

**32.** 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 High 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.

Effect of vesting order.

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Power to  
appoint person  
to convey.

**33.** In all cases where a vesting order can be made under any of the foregoing provisions, the High 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.

Effect of  
vesting order  
as to copyhold.

**34.**—(1.) Where an order vesting copyhold land in any person is made under this Act with the consent of the lord or lady of the manor, the land shall vest accordingly without surrender or admittance.

(2.) Where an order is made under this Act appointing any person to convey any copyhold land, that person shall execute and do all assurances and things for completing the assurance of the land; and the lord and lady of the manor and every other person shall, subject to the customs of the manor and the usual payments, be bound to make admittance to the land and to do all other acts for completing the assurance thereof, as if the persons in whose place an appointment is made were free from disability and had executed and done those assurances and things.

Vesting orders  
as to stock and  
choses in  
action.

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

(i.) Where the High 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—

(a) is an infant, or

(b) is out of the jurisdiction of the High 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 High 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 High 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. A.D. 1893.

(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 other person, according to the order, and the Banks of England and Ireland and all other 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 the Bank of England or of Ireland or any other company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5.) The High 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 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.

**36.**—(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 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 beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

**37.** 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 trustee appointed by Court.

**38.** The High Court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, 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.

**39.** The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock, or chose in action in Trustees of charities. Trustees of charities.

A.D. 1893. — any trustee of a charity or society over which the High Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the High Court under its general or statutory jurisdiction.

Orders made upon certain allegations to be conclusive evidence.  
53 & 54 Vict. c. 5.

40. Where a vesting order is made as to any land under this Act or under the Lunacy Act, 1890, or under any Act relating to lunacy in Ireland, founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or personal representative or devisee of a mortgagee is out of the jurisdiction of the High 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 personal 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 personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section shall not prevent the High Court from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained.

Application of vesting order to land out of England.

41. The powers of the High Court in England to make vesting orders under this Act shall extend to all land and personal estate in Her Majesty's dominions, except Scotland.

*Payment into Court by Trustees.*

Payment into Court by trustees.

42.—(1.) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into the High Court; and the same shall, subject to rules of Court, be dealt with according to the orders of the High Court.

(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, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the High 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.

*Miscellaneous.*

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**43.** Where in any action the High 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.

Power to give judgment in absence of a trustee.

**44.**—(1.) Where a trustee is for the time being authorised to dispose of land by way of sale, exchange, partition, or enfranchisement, the High 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 so disposing of the minerals, with or without the said rights or powers, separately from the residue of the land.

Power to sanction sale of land or minerals separately.

(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.

(3.) Nothing in this section shall derogate from any power which a trustee may have under the Settled Land Acts, 1882 to 1890, or otherwise.

**45.**—(1.) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the High 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 person claiming through him.

Power to make beneficiary indemnity for breach of trust.

(2.) This section shall apply to breaches of trust committed as well before as after the passing of this Act, but shall not apply so as to prejudice any question in an action or other proceeding which was pending on the twenty-fourth day of December one thousand eight hundred and eighty-eight, and is pending at the commencement of this Act.

**46.** The provisions of this Act with respect to the High Court shall, in their application to cases within the jurisdiction of a palatine court or county court, include that court, and the procedure under this Act in palatine courts and county courts shall be in accordance with the Acts and rules regulating the procedure of those courts.

Jurisdiction of palatine and county courts.

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## PART IV.

## MISCELLANEOUS AND SUPPLEMENTAL.

Application to trustees under Settled Land Acts of provisions as to appointment of trustees.

**47.**—(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 Land Acts, 1882 to 1890, 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, otherwise than under the provisions of the Conveyancing and Law of Property Act, 1881.

44 & 45 Vict.  
c. 41.

Trust estates not affected by trustee becoming a convict.

33 & 34 Vict.  
c. 23.

**48.** Property vested in any person on any trust or by way of mortgage shall not, in case of that person becoming a convict within the meaning of the Forfeiture Act, 1870, vest in any such administrator 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.

Indemnity.

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

Definitions.

**50:** In this Act, unless the context otherwise requires,—

The expression “bankrupt” includes, in Ireland, insolvent:

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 assurance for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof 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 required by law to the validity of the conveyance, including the acts to be performed by married women and tenants in tail in

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accordance with the provisions of the Acts for abolition of fines and recoveries in England and Ireland respectively, and also including surrenders and other acts which a tenant of customary or copyhold lands can himself perform preparatory to or in aid of a complete assurance of the customary or copyhold land :

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 manors and lordships, and reputed manors and lordships, and incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land :

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 connexion with the expression " into court " include the deposit or transfer of the same in or into court :

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 " rights " includes estates and interests :

The expression " securities " includes stocks, funds, and shares ; and so far as relates to payments into court has the same meaning as in the Court of Chancery (Funds) Act, 1872 :

35 & 36 Vict.  
c. 44.

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 " 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 ; but with this exception 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 personal representative of a deceased person.

- A.D. 1893. **51.** The Acts mentioned in the schedule to this Act are hereby repealed except as to Scotland to the extent mentioned in the third column of that schedule.
- Repeal.
- Extent of Act. **52.** This Act does not extend to Scotland.
- Short title. **53.** This Act may be cited as the Trustee Act, 1893.
- Commencement. **54.** This Act shall come into operation on the first day of January one thousand eight hundred and ninety-four.

## Section 51.

## SCHEDULE.

| Session and Chapter.   | Title or Short Title.   | Extent of Repeal.  |
|------------------------|---|--|
| 36 Geo. 3. c. 52. -    | The Legacy Duty Act, 1796.  | Section thirty-two.  |
| 9 & 10 Vict. c. 101. - | The Public Money Drainage Act, 1846.  | Section thirty-seven.  |
| 10 & 11 Vict. c. 32. - | The Landed Property Improvement (Ireland) Act, 1847.  | Section fifty-three.   |
| 10 & 11 Vict. c. 96. - | An Act for better securing trust funds, and for the relief of trustees.   | The whole Act.   |
| 11 & 12 Vict. c. 68. - | An Act for extending to Ireland an Act passed in the last session of Parliament, entitled "An Act for better securing trust funds, and for the relief of trustees." | The whole Act.   |
| 12 & 13 Vict. c. 74. - | An Act for the further relief of trustees.  | The whole Act.   |
| 13 & 14 Vict. c. 60. - | The Trustee Act, 1850 -   | Sections seven to nineteen, twenty-two to twenty-five, twenty-nine, thirty-two to thirty-six, forty-six, forty-seven, forty-nine, fifty-four and fifty-five; also the residue of the Act except so far as relates to the Court exercising jurisdiction in lunacy in Ireland. |
| 15 & 16 Vict. c. 55. - | The Trustee Act, 1852 -   | Sections one to five, eight, and nine; also the residue of the Act except so far as relates to the Court exercising jurisdiction in lunacy in Ireland.   |



| Session and Chapter.   | Title or Short Title.  | Extent of Repeal.  | A.D. 1893. |
|------------------------|--|--|------------|
| 17 & 18 Vict. c. 82. - | The Court of Chancery of Lancaster Act, 1854.  | Section eleven.  |            |
| 18 & 19 Vict. c. 91. - | The Merchant Shipping Act Amendment Act, 1855.   | Section ten, except so far as relates to the Court exercising jurisdiction in lunacy in Ireland. |            |
| 20 & 21 Vict. c. 60. - | The Irish Bankrupt and Insolvent Act, 1857.  | Section three hundred and twenty-two.  |            |
| 22 & 23 Vict. c. 35. - | The Law of Property Amendment Act, 1859.   | Sections twenty-six, thirty and thirty-one.  |            |
| 23 & 24 Vict. c. 38. - | The Law of Property Amendment Act, 1860.   | Section nine.  |            |
| 25 & 26 Vict. c. 108.  | An Act to confirm certain sales, exchanges, partitions, and enfranchisements by trustees and others. | The whole Act.   |            |
| 26 & 27 Vict. c. 73. - | An Act to give further facilities to the holders of Indian stock.                                    | Section four.  |            |
| 27 & 28 Vict. c. 114.  | The Improvement of Land Act, 1864.   | Section sixty so far as it relates to trustees; and section sixty-one.                           |            |
| 28 & 29 Vict. c. 78. - | The Mortgage Debenture Act, 1865.  | Section forty.   |            |
| 31 & 32 Vict. c. 40. - | The Partition Act, 1868  | Section seven.   |            |
| 33 & 34 Vict. c. 71. - | The National Debt Act, 1870.   | Section twenty-nine.   |            |
| 34 & 35 Vict. c. 27. - | The Debenture Stock Act, 1871.   | The whole Act.   |            |
| 37 & 38 Vict. c. 78. - | The Vendor and Purchaser Act, 1874.  | Sections three and six.  |            |
| 38 & 39 Vict. c. 83. - | The Local Loans Act, 1875.   | Sections twenty-one and twenty-seven.  |            |
| 40 & 41 Vict. c. 59. - | The Colonial Stock Act, 1877.  | Section twelve.  |            |
| 43 & 44 Vict. c. 8. -  | The Isle of Man Loans Act, 1880.   | Section seven, so far as it relates to trustees.   |            |
| 44 & 45 Vict. c. 41. - | The Conveyancing and Law of Property Act, 1881.  | Sections thirty-one to thirty-eight.   |            |

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| Session and Chapter.   | Title or Short Title.                           | Extent of Repeal.                             |
|------------------------|---|---|
| 45 & 46 Vict. c. 39. - | The Conveyancing Act, 1882.                     | Section five.                                 |
| 46 & 47 Vict. c. 52. - | The Bankruptcy Act, 1883.                       | Section one hundred and forty-seven.          |
| 51 & 52 Vict. c. 59. - | The Trustee Act, 1888 -                         | The whole Act, except sections one and eight. |
| 52 & 53 Vict. c. 32. - | The Trust Investment Act, 1889.                 | The whole Act, except sections one and seven. |
| 52 & 53 Vict. c. 47. - | The Palatine Court of Durham Act, 1889.         | Section eight.                                |
| 53 & 54 Vict. c. 5. -  | The Lunacy Act, 1890 -                          | Section one hundred and forty.                |
| 53 & 54 Vict. c. 69. - | The Settled Land Act, 1890.                     | Section seventeen.                            |
| 55 & 56 Vict. c. 13. - | The Conveyancing and Law of Property Act, 1892. | Section six.                                  |

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