

ACT No. XVII OF 1864.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 24th March 1864).

An Act to constitute an Office of Official Trustee.

WHEREAS it is expedient to amend the law relating to Official Trustees,
and to constitute an Office of Official Trustee; It is
enacted as follows:—

Preamble.

I. The following words and expressions in this Act shall have the meanings
hereby assigned to them unless there be something in the
context repugnant to such construction, that is to say:—

Interpretation.

The expression "High Court" shall mean Her Majesty's High Courts of
Judicature at Fort William in Bengal, Fort St. George,
and Bombay respectively in the exercise of their original

"High Court."

Civil jurisdiction.

The expression "Chief Justice" shall mean the Chief Justice or Acting Chief
Justice for the time being of any of the said High
Courts.

"Chief Justice."

"Person." The word "person" shall include a corporation.

Words importing the singular number shall include the plural, and words
importing the plural number shall include the singular.

Number.

Words importing the masculine gender shall include
females.

Gender.

II. Act XVII of 1843 (*for the appointment of Official Trustees in certain
cases*) is hereby repealed except as to any proceedings
pending or any Trusts now vested in an Official Trustee
under it, and except in so far as that Act is made applicable to the Settle-
ment

Act XVII of 1843 repealed.

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ment of Prince of Wales' Island, Singapore, and Malacca, by Act XIV of 1852 (for extending the provisions of Acts XXIV of 1841 and XVII of 1843 to the Straits' Settlement).

III. Every Official Trustee appointed under the said Act XVII of 1843 shall, save as regards the remuneration to be received by him, hold and execute the Trusts of which he is Trustee in all respects as if he were an Official Trustee appointed under this Act.

Official Trustee under Act XVII of 1843 to act as if appointed under this Act, save as regards remuneration

IV. In each of the Presidencies of Fort William in Bengal, Fort St. George, and Bombay, there shall be an Official Trustee. The said Official Trustees shall be called the Official Trustee of Bengal, the Official Trustee of Madras, and the Official Trustee of Bombay respectively.

An Official Trustee to be appointed in each Presidency.

V. Every Official Trustee appointed under this Act shall be appointed and may be suspended or removed from his Office by the authorities hereinafter named, that is to say—

Appointment, suspension, and removal of Official Trustees.

The Official Trustee of Bengal by the Chief Justice of Her Majesty's High Court of Judicature at Fort William in Bengal.

The Official Trustee of Madras by the Chief Justice of Her Majesty's High Court of Judicature at Fort St. George.

The Official Trustee of Bombay by the Chief Justice of Her Majesty's High Court of Judicature at Bombay.

VI. The Administrator General or Officiating Administrator General for the time being of any of the said Presidencies shall be eligible for the Office of Official Trustee of that Presidency. Every Official Trustee appointed under this Act shall give security for the due execution of the duties of his Office in such manner and to such amount as the Chief Justice by whom he is appointed shall direct.

Administrator General may be appointed Official Trustee.

Security to be given by Official Trustee.

VII. It shall be lawful for the Chief Justice of the High Court at any of the Presidencies, from time to time, to grant leave of absence to the Official Trustee of that Presidency, but subject always to such and the like rules as may be for the

Leave of absence of Official Trustee, and appointment of a person to officiate for him.

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the time being in force as to leave of absence of the Officers attached to such High Court. Whenever any Official Trustee shall obtain leave of absence, it shall be lawful for the Chief Justice to appoint some person to officiate as Official Trustee, and such person while so officiating shall be subject to the same conditions and be bound by the same responsibilities as the Official Trustee, and he shall be deemed to be the Official Trustee for the time being under this Act, and shall be liable to give security for the due execution of the duties of his Office in like manner as if he had been appointed Official Trustee.

VIII. If any person shall be about to grant, assign, or settle any property moveable or immoveable, of what nature or kind soever, upon or subject to any Trust, whether for a charitable purpose or otherwise, it shall be lawful for such person, with the consent of the Official Trustee, to appoint him, by the deed creating the Trust, to be the Trustee of such settlement; and upon such appointment the property so granted, assigned, or settled shall vest in such Officer and his successors in Office, and shall be held by him and them upon the Trust declared and contained in the said deed. Provided always that the consent of the Official Trustee shall be recited in the said deed, and that the deed shall be duly executed by the Official Trustee: provided also that no Trust for any religious purpose shall ever be held by the Official Trustee, under this or under any other section of this Act.

IX. Every Official Trustee appointed Trustee of any property under the last preceding Section, shall be entitled to receive by way of remuneration in that behalf such sum or sums only as he shall by the deed of settlement be declared to be entitled to receive.

X. If any property is subject to a Trust, whether for a charitable purpose or otherwise, and there shall be no Trustee willing to act or capable of acting in the Trusts thereof, who is within the local limits of the ordinary or extraordinary original Civil jurisdiction of the High Court, or if property is subject to a Trust, and all the Trustees, or the surviving or continuing Trustee and all the persons beneficially interested in the said Trust, shall be desirous that the Official Trustee shall be appointed in the room of such Trustees or Trustee, then and in any such case it shall be lawful for the High Court on petition, and with the consent of the Official Trustee, to appoint the Official Trustee to be the Trustee of such property: and upon such appointment such property shall vest in the Official Trustee and his successors

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in Office, and shall be held by him and them upon the same Trusts as the same were held previous to such appointment.

XI. The Official Trustee shall be entitled by way of remuneration, in respect of all Trust property transferred to him under the last preceding Section, to a commission the rate of which shall be as follows, that is to say,—

Rate of commission under last preceding Section.

On all capital monies received by him, a commission of one half per cent. on receiving the same.

On all capital monies invested by him, a commission of one half per cent. on investing the same.

On all sums received by him by way of interest or dividends in respect of monies invested, a commission of three quarters per cent.

On all rents collected by him, a commission of two and a half per cent.

XII. The Official Trustee shall defray all the expenses of the establishment necessary for his Office, including the provision of Office accommodation together with all other charges to which the said Office shall be subject, except those for which express provision is made by this Act, and except those costs of litigation and the like which a Trustee would, under ordinary circumstances, be entitled to pay for out of the Trust monies in his hand. The commission to which the Official Trustee shall be entitled, is intended to cover all the expenses and risk and responsibility of management, collection, and distribution.

What expenses, &c., commission to cover.

XIII. It shall in no case be lawful to appoint the Official Trustee to be a Trustee along with any other person: but the Official Trustee shall always be sole Trustee.

In all cases Official Trustee to be sole Trustee.

XIV. The Official Trustee shall cause all capital monies received by him to be invested in Government securities, or otherwise as the Court shall direct: and if in any case the Trust funds or any part of them shall at the time of their vesting in the Official Trustee be invested otherwise than as provided in the deed or Will creating the Trust or than as ordered by the Court, it shall be the duty of the Official Trustee, as soon as he reasonably can, to realize the funds so improperly invested, and to invest the same in Government securities or otherwise as the Court shall direct.

In what securities Official Trustee to invest Trust money.

XV. The

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XV. The High Court may make any such orders as shall seem to it necessary respecting any Trust property vested in the Official Trustee, or the interest or produce thereof. All such orders shall be made on petition, unless the Court shall direct a suit to be instituted.

High Court may make orders respecting Trust property vested in Official trustee.

XVI. Nothing in this Act shall prevent the re-transfer of any Trust property which may have become vested in the Official Trustee, to the original or any subsequently appointed Trustee, or to such person as the Court shall direct, unless otherwise provided by the deed or Will creating the Trust.

Re-transfer of Trust property to original, or transfer to other, Trustee.

XVII. All orders which shall be made appointing any Official Trustee to act as Trustee in virtue of his Office, shall appoint him by his name of Office and shall authorize the Official Trustee for the time being of the same Presidency to act as Official Trustee of the property to which such order shall relate: and all property and interests which at the time of the death, resignation, or removal from Office of any Official Trustee shall be vested in him by virtue of such order, shall upon such death, resignation, or removal cease to be vested in him, and shall vest in his successor in Office immediately upon his appointment thereto, and all books, papers, and documents kept by such Official Trustee by virtue of his Office shall be transferred to and vested in his successor in Office.

Order of appointment of Official Trustee.

On death, &c, of Official Trustee, property to vest in his successor.

XVIII. All actions, suits, or other proceedings which shall be commenced by or against any Official Trustee in his official character, may be brought by or against him by his name of Office, and no suit, action, or other proceeding already commenced or which shall be commenced by or against any person as Official Trustee either alone or jointly with any other person, shall abate by reason of the death, resignation, or removal from Office of any such Official Trustee, but the same may by order of the Court and upon such terms as to the service of notices or otherwise as the Court may direct, be continued against his successor immediately upon his appointment, in the same manner as if no such death, resignation, or removal had occurred. Provided that nothing herein contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the action or suit against him, or shall release an Official Trustee who has resigned or been removed from his Office, or the heirs, executors, administrators, or representatives of a deceased Official Trustee from being liable for any such costs.

Official Trustee to sue or be sued by his name of Office. Suit not to abate by death, &c.

Proviso.

XIX. Every

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XIX. Every Official Trustee appointed under this Act shall enter into books, Official Trustee to keep a separate account of each Trust, to be open to the inspection of the Chief Justice, and of any person authorized by him to demand inspection. to be kept by him for that purpose, separate and distinct accounts of each Trust of which he is the Trustee, and of all such sums of money and securities for money, goods, and things, as shall come to his hands, or to the hands of any person employed by him, or in Trust for him, under this Act, and likewise of all payments made by him on account of such Trust, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively, which said books shall be kept in the Official Trustee's Office, and shall be at all times open for the inspection of the Chief Justice and of any person authorized by him to demand inspection thereof.

XX. The Chief Justice shall have power, from time to time, to make and Chief Justice may make and alter rules and orders for custody of Trust Funds, &c. alter any general rules and orders consistently with the provisions of this Act, for the safe custody of the Trust Funds and securities which shall come to the hands or possession of the Official Trustee, and for the remittance to Europe or elsewhere of all sums of money which shall be payable or belong to persons resident in Europe or elsewhere, or in other cases where such remittances shall be required, and generally for the guidance and government of the Official Trustee in the discharge of his duties; and may by such rules and orders, amongst other things, direct what books, accounts, and statements in addition to those mentioned in this Act, shall be kept by the Official Trustee, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the funds and securities and other the property belonging to the Trust of which the Official Trustee is the Trustee shall be kept or invested or deposited, and how any remittances thereof shall be made.

XXI. Such orders shall be published in the Official Gazette, and it shall be Publication of orders, &c. the duty of the several Official Trustees to obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

XXII. The Official Trustee of each of the said Presidencies shall once in every year, that is to say, on the first day of March, or on Official Trustee to furnish Annual Schedules which shall be filed in the High Court. such other day as the Chief Justice shall direct, deliver to the Chief Justice a true Schedule showing the gross amount of all sums of money received or paid by him on account of each Trust of which he is the Trustee, and the balances during the year ending

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ending on the thirty-first day of December next before the day of delivering such Schedule, and a true list of all securities received on account of each of the said Trusts during the same period; and also a true Schedule of all Trusts which shall have come to an end or of which the Official Trustee shall have ceased to be the Trustee and the property subject to which shall have been paid or made over to the persons entitled to the same or to new Trustees during the same period, specifying the nature and amount or value of such property and the persons to whom paid or made over. The Chief Justice shall cause the said Schedules to be filed as record in the High Court; but it shall not be lawful for any person to inspect the same or to make copies thereof or of any part thereof, except on an order granted by the Chief Justice permitting him so to do.

XXIII. The Chief Justice shall from time to time appoint an Auditor or Auditors to examine the accounts of the Official Trustee at the time of the delivery of the said Schedules and also at any other time when the Chief Justice shall think fit.

XXIV. The Auditor or Auditors shall examine the Schedules and accounts, and report to the Chief Justice whether they contain a full and true account of every thing which ought to be inserted therein, and whether the books which by this Act are, or which by any such general rules and orders as aforesaid shall be directed to be kept by the Official Trustee, have been duly and regularly kept, and whether the Trust funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or which shall be prescribed by any such rules and orders to be made as aforesaid.

XXV. Every Auditor shall have power to summon as well the Official Trustee as any other person or persons whose presence he may think necessary, to attend him from time to time; and to examine the Official Trustee or other party or parties, if he shall think fit, on oath or solemn affirmation, to be by him administered; and to call for all books, papers, vouchers, and documents, which shall appear to him to be necessary for the purposes of the said reference; and if the Official Trustee or other person or persons when summoned shall refuse, or, without reasonable cause, neglect to attend or to produce any book, paper, voucher, or document required, or shall attend and refuse to be sworn or make a solemn affirmation, when by law an affirmation may be substituted for an oath, or shall refuse to

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to be examined, the Auditor or Auditors shall certify such neglect or refusal in writing to the High Court; and every person so refusing or neglecting shall thereupon be punishable, in like manner as if such refusal or neglect had been in contempt of the said High Court.

Penalty for refusal or neglect to attend &c., to produce books &c.

XXVI. The costs and expenses of preparing the said Schedules and accounts and of every such reference and examination as aforesaid, shall be defrayed by all the Trust estates to which such Schedules or accounts shall relate, which costs and expenses, and the portion thereof to be contributed by each of the said Trust estates, shall be ascertained and settled by the Auditor or Auditors, subject to the approval of the Chief Justice, and shall be paid out of the said estates accordingly by the Official Trustee.

Costs of preparing Schedules, &c., how to be paid.

XXVII. If upon any such reference and examination the Auditor or Auditors shall see reason to believe that the said Schedules do not contain a true and correct account of the matters therein contained, or which ought to be therein contained, or that the Trust Funds and securities have not been duly kept and invested or deposited in the manner directed by this Act, or which shall be directed by any such rules and orders as aforesaid, or that the Official Trustee has failed to comply with the provisions and directions of this Act, or of any such rules and orders, he or they shall report accordingly to the Chief Justice.

Matters to be reported by Auditors.

XXVIII. The Chief Justice may refer every such report as last aforesaid to the consideration of the Advocate General for the Presidency, who shall thereupon, if he shall think fit, proceed summarily against the defaulter or his personal representative in the High Court by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the Trust estates then or formerly under the charge of such defaulter; and the Court shall have power, upon any such petition, to compel the attendance in Court of the defendant or defendants, and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said Court shall think fit, and to make and enforce such order or orders as the Court shall think just.

Proceedings upon such report.

XXIX. The costs, including those of the Advocate General, and of the reference to him, if the same shall be directed by the Court to be paid, shall be defrayed either by the defendant or defendants, or out of the Trust estates rateably as the said Court shall direct; and when-

Costs upon such proceedings, &c., how to be defrayed.

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ever any costs shall be recovered from the defendant or defendants, the same shall be repaid to the estates by which the same shall have been in the first instance contributed, and the Court shall have power to order the Official Trustee or other person or persons, defendants, to receive his or her costs out of the said estates, if it shall think fit.

Orders of the High Court to have same effect, and to be executed in the same manner, as decrees.

XXX. Any orders which shall be made by any of the said High Courts shall have the same effect and be executed in the same manner as decrees.

XXXI. Any order under this Act may be made on the application of any person beneficially interested in any Trust property, or of any Trustee thereof, whether under disability or not.

Who may apply for order under this Act.

XXXII. If any infant or lunatic shall be entitled to any gift or legacy or residue or share thereof, it shall be lawful for the Executor or Administrator by whom such legacy, residue, or share may be payable or transferable, or the party by whom such gift may be made, or any Trustee of such gift, legacy, residue, or share, to pay or transfer the same to the Official Trustee appointed under this Act; provided that the leave of the High Court to make such payment or transfer shall be first obtained by motion made on petition. Any money or property paid or transferred to the Official Trustee or vested in him under this Section shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee under the provisions thereof.

Executor or Administrator may, by leave of the High Court, pay to Official Trustee, legacy, share, &c., to which an infant or lunatic is entitled.