

THE INDIAN TRUSTEE ACT, 1866.

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PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 24th October 1866.)

An Act to consolidate and amend the law relating to the conveyance and transfer of property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable.

Whereas it is expedient to consolidate and amend the laws relating to the conveyance and transfer of moveable and immoveable property in British India vested in Mortgagees and Trustees, in cases to which English law is applicable; It is hereby enacted as follows:—

Preamble.

1. Section 3 of Act XXIV of 1841 (*for the greater uniformity of the law administered by Her Majesty's Supreme Courts with that administered in England, in regard to the undisposed residue of the effects of Testators; illusory appointments; the transfer of estates by persons under disabilities pursuant to the direction of Courts, and the better management of the property of such persons, and other like matters*), and so much of Act No. XIV of 1852 (*for extending the provisions of Acts XXIV of 1841 and XVII of 1843 to the Straits' Settlement*) as extends the provisions of the said Section to the Settlement of Prince of Wales' Island, Singapore and Malacca, are hereby repealed: Provided that all proceedings under the said Section or Act commenced before this Act comes into operation, may be proceeded with under the said Section or Act or according to the provisions of this Act, as shall be thought expedient by the person by whom they were commenced.

Acts repealed.

2. In this Act, unless there be something repugnant in the subject or context—

Interpretation.

"Immoveable property" shall extend to and include messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein:

"Immoveable property."

"Stock"

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“ Stock” shall mean any fund, annuity or security transferable in books
“ Stock.” 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. It shall also include shares in ships registered under the Merchant Shipping Act, 1854, or at any port in British India :

“ Hold” and “ Holding” shall be applicable to any vested estate, whether
“ Hold” and “ Hold- for life or of a greater or less description, in possession,
ing.” futurity or expectancy, in any immoveable property :

“ Contingent right” as applied to immoveable property shall mean a con-
“ Contingent right.” tingent or executory interest, or 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” and “ Conveyance” applied to any person, shall mean the exe-
“ Convey” cution by such person of every necessary or suitable assur-
“ Conveyance.” ance for conveying or disposing to another immoveable property which such person holds, or in which he is entitled to a contingent right either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants in tail in accordance with the provisions of Act XXXI of 1854 (*to abolish real actions and also fines and common recoveries, and to simplify the modes of conveying land in cases to which the English law is applicable*) :

“ Transfer” shall mean the execution and performance of every deed and
“ Transfer.” act by which a person entitled to stock or Government securities can transfer such stock or Government securities from himself to another :

“ High Court” shall mean every Court now or hereafter established under
“ High Court.” the Statute 24 & 25 Vic., cap. 104, and also the Chief Court of the Punjab, or such one or more Judges of the said Courts respectively as shall be appointed by the Chief Justice or the Senior Judge, as the case may be, to entertain applications and make orders under this Act :

“ Trust ”

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"Trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but with this exception, the words "Trust"
"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 the duties incident to the office of executor or administrator of a deceased person:

"Lunatic" shall mean any person who shall have been found by due
"Lunatic." course of law to be of unsound mind and incapable of managing his affairs:

"Person of unsound mind" shall mean any person not a minor who, not
"Person of unsound mind." having been found to be a lunatic, shall be incapable from infirmity of mind to manage his own affairs:

In the case of a will made or an intestacy occurring before the first day of January 1866, "Heir" shall mean the person claiming an
"Heir" and "Devisee." interest in the immoveable property of a deceased person under the laws concerning descent applicable to such property: and "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 immoveable 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:

In the case of a will made or an intestacy occurring on or after the first day of January 1866, "Heir" shall mean any person claiming an interest in the immoveable property of a deceased person under the rules for the distribution of an intestate's estate; and "Devisee" shall mean any person taking immoveable property under a bequest, and any person, other than an executor or administrator, claiming an interest in immoveable property, not as entitled thereto under the said rules, but by a title dependent solely upon the operation of the laws concerning intestate and testamentary succession:

"Mortgage" shall be applicable to every estate or interest in immoveable
"Mortgage." or moveable property which would in the High Court be deemed merely a security for money:

"Person"

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" Person" shall include any Company or Association, or body of persons
" Person." whether incorporated or not :

Words importing the singular number only shall extend to several persons
Number. or things; words importing the plural number shall apply
gender. to one person or thing; words importing the masculine
gender shall extend to a female.

3. The powers and authorities given by this Act to the High Courts
shall and may be exercised only in cases to which English
The High Court to have jurisdiction in what cases. law is applicable, and may be exercised with respect to prop-
erty within the local limits of the extraordinary original
Civil jurisdiction of the said Courts respectively.

4. When any lunatic or person of unsound mind shall hold any im-
moveable property upon any trust or by way of mortgage,
High Court may convey estates of lu- natic Trustees and Mortgagees; it shall be lawful for the High Court to make an order that
such property be vested in such person or persons in such
manner and for such estate as the said Court shall direct; and the order shall
have the same effect as if the Trustee or Mortgagee had been sane, and had duly
executed a conveyance of the property in the same manner for the same estate.

5. When any lunatic or person of unsound mind shall be entitled to any
contingent right in any immoveable property upon any
and may convey contingent rights. trust or by way of mortgage, it shall be lawful for the High
Court to make an order wholly releasing such property from such contingent
right, or disposing of the same to such person or persons as the said High
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.

6. When any lunatic or person of unsound mind shall be solely
entitled to any stock or Government securities, or to any
thing in action upon any trust or by way of mortgage, it
shall be lawful for the High Court to make an order vesting
in any person or persons the right to transfer such stock or
Government securities, or to receive the dividends, interest or income thereof,
or to sue for and recover such thing in action, or any interest in respect thereof:
and when any person or persons shall be entitled jointly with any lunatic or
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person of unsound mind to any stock or Government securities or thing 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 Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said High Court may appoint.

7. When any stock or Government securities shall be standing in the name of any deceased person whose executor or administrator is a lunatic or person of unsound mind, or when any thing in action shall be vested in any lunatic or person of unsound mind as the executor or administrator of a deceased person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.

Power to transfer stock or Government securities of deceased persons.

8. Where any minor shall hold any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the minor Trustee or Mortgagee had attained his majority, and had duly executed a conveyance of the property in the same manner for the same estate.

High Court may convey estates of minor Trustees and Mortgagees.

9. Where any minor shall be entitled to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the minor had attained his majority, and had duly executed a deed so releasing or disposing of the contingent right.

Contingent rights of minor Trustees and Mortgagees.

10. When any person solely holding any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order vesting such property in such person or persons in such

High Court may convey the estate of a Trustee out of the jurisdiction of the Court.

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such manner and for such estate as the said Court shall direct, and the order shall have the same effect as if the Trustee had duly executed a conveyance of the property in the same manner and for the same estate.

11. When any person or persons shall hold any immoveable property in trust jointly with a person not within the jurisdiction of the High Court, or who cannot be found, it shall be lawful for the said Court to make an order vesting the property in the person or persons so jointly holding, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the Trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance of the property in the same manner for the same estate.

High Court may make order in cases where persons hold immoveable property in trust jointly with persons out of jurisdiction of Court, &c.

12. When any person solely entitled to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High 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 or persons as the said Court shall direct; and the order shall have the same effect as if the Trustee had duly executed a conveyance so releasing or disposing of the contingent right.

Contingent rights of Trustees.

13. When any person jointly entitled with any other person or persons to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the Trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.

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

14. Where there shall have been two or more persons jointly holding any immoveable property upon any trust, and it shall be uncertain which of such Trustees was the survivor, it shall be lawful for the High Court to make an order vesting such property

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

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property in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the survivor of such Trustees had duly executed a conveyance of the property in the same manner for the same estate.

15. Where any one or more person or persons shall have held any immoveable property upon any trust, and it shall not be known, When it is uncertain whether the last Trustee be living or dead. as to the Trustee last known to have held such property, whether he be living or dead, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the last Trustee had duly executed a conveyance of the property in the same manner for the same estate.

16. When any person holding any immoveable property upon any trust When Trustee dies without an heir. shall have died intestate as to such property 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 High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the heir or devisee of such Trustee had duly executed a conveyance of the property in the same manner for the same estate.

17. When any immoveable property is subject to a contingent right in an Contingent right of unborn Trustee. unborn person, or class of unborn persons who, upon coming into existence, would in respect thereof hold such property upon any trust, it shall be lawful for the High 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 or persons the estate or estates which such unborn person or class of unborn persons would, upon coming into existence, hold in such property.

18. In every case where any person holds or shall hold jointly or solely any immoveable property, or is or shall be entitled to a contingent right therein upon any trust, and a demand shall Power to make an order for vesting the estate on refusal or neglect of a Trustee to convey or release. have been made upon such Trustee by a person entitled to require a conveyance of such property, or a duly authorized agent of such last-mentioned person, requiring such Trustee to convey the same

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same, or to release such contingent right, it shall be lawful for the High Court, if the said Court shall be satisfied that such Trustee has wilfully refused or neglected to convey the said property for the space of twenty-eight days after such demand, to make an order vesting such property in such person or persons, in such manner and for such estate as the Court shall direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the Trustee had duly executed a conveyance of the property, or a release of such right, in the same manner and for the same estate.

19. When any person to whom any immoveable property has been conveyed by way of mortgage, shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the re-conveyance or vesting of such property, then in any of the following cases, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said Court shall direct, that is to say,—

Power to convey in place of Mortgagee.

When an heir or devisee of such mortgagee shall be out of the jurisdiction of the High Court, or cannot be found :

When an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such property, or a duly authorized agent of such last-mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such property shall have been tendered to him by a person entitled as aforesaid, or a duly authorized agent of such last-mentioned person :

When it shall be uncertain which of several devisees of such mortgagee was the survivor :

When it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee whether he be living or dead :

When such mortgagee shall have died intestate as to such property and without an heir, or shall have died, and it shall not be known who is his heir or devisee :

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And the order of the said High 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 of the property in the same manner and for the same estate.

20. In every case where the High Court shall, under the provisions of this Act, be enabled to make an order having the effect of a conveyance of any immoveable property, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the High Court, should it be deemed more convenient, to make an order appointing a person to convey such property or release or dispose of such contingent right; and the conveyance, 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 the property, or releasing or disposing of the contingent right, as an order of the High Court would in the particular case have had under the provisions of this Act. In every case where the High Court shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of any Company or Society established or to be established, it shall also be lawful for the High Court, if it be deemed more convenient, to make an order directing the Secretary or any Officer of such Company or Society at once to transfer or join in transferring the stock to the person or persons to be named in the order; and this Act shall be a full and complete indemnity and discharge to all Companies or Societies and their officers and servants for all acts done or permitted to be done pursuant thereto.

21. When any person or persons shall be jointly entitled with any person out of the jurisdiction of the High Court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or Government securities or thing 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 Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said Court may appoint. When any sole Trustee of any stock, Government securities, or thing

Power to appoint a person to convey in certain cases.

When Trustees of stock or Government securities out of the jurisdiction.

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thing in action shall be out of the jurisdiction of the said Court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in any person or persons the said Court may appoint.

22. Where any sole Trustee of any stock, Government securities, or thing in action, shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful for the High Court to make an order vesting the sole right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.

When Trustee of stock, &c., refuses to transfer.

23. Where any one of the Trustees of any stock, Government securities, or thing in action, shall neglect or refuse to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover such thing in action according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by such person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, in the other Trustee or Trustees of the said stock, Government securities, or thing in action, or in any person or persons whom the said Court may appoint jointly with such other Trustee or Trustees.

When one of several Trustees of stock, &c., refuses to transfer or receive and pay over dividends.

24. When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall be out of the jurisdiction of the High Court, or cannot be found, or it shall be uncertain whether such executor or administrator be living or dead, or such executor or administrator shall

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

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shall neglect or refuse to transfer such stock or Government securities, or receive the dividends, interest or income thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, in any person or persons whom the said Court may appoint.

25. Where any order shall have been made under this Act vesting the right to any stock or Government securities in any person or persons appointed by the High Court, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock and Government securities into his or their own name or names or otherwise, or relating to the receipt of the dividends, interest or income thereof, to the extent and in conformity with the terms of such order. All Companies and Associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such Companies, Associations or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made. After notice in writing of any such order of the High Court concerning any stock or Government securities shall have been given, it shall not be lawful for any Company or Association, 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 relating to the transfer of such stock or Government securities, or the payment of the dividends, interest or income thereof.

26. Where any order shall have been made under this Act by the High Court vesting the legal right to sue for or recover any thing in action, or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly; and thereupon

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upon it shall be lawful for the person or persons so appointed to carry on, commence and prosecute, in his or their own name or names, any suit or other proceeding for the recovery of such thing in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such thing in action.

27. Where any person shall neglect or refuse to transfer any stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for or recover any thing in action, or any interest in respect thereof, for the space of twenty-eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting all the right of such person to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.

On neglect to transfer stock, &c., for twenty-eight days, order may be made vesting right to transfer in such person as the Court shall appoint.

28. When any stock or Government securities shall be standing in the sole name of a deceased person, and his executor or administrator shall refuse or neglect to transfer such stock or Government securities, or receive the dividends, interest or income thereof for the space of twenty-eight days next after an order of the High Court for that purpose shall have been served upon him, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, in any person or persons whom the said Court may appoint.

On like neglect by executor, similar order may be made.

29. When any order being or purporting to be under this Act shall be made by the High Court, vesting the right to any stock or Government securities, or vesting the right to transfer any stock or Government securities, or vesting the right to call for the transfer of any stock or Government securities in any person or persons, in every such case the legal right to transfer such stock or Government securities shall vest accordingly; and the person or persons so appointed shall be authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock or Government securities into his or their own name or names or otherwise, to the

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the extent and in conformity with the terms of the order. All Companies and Associations, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such Companies, Associations or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.

30. When any minor shall be solely entitled to any stock or Government securities upon any trust, it shall be lawful for the High Court to make an order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof.

Power to make an order for the transfer or receipt of dividends of stock, &c., in name of a minor Trustee.

When any minor shall be entitled jointly with any other person or persons to any stock or Government securities upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, either in the person or persons jointly entitled with the minor, or in him or them together with any other person or persons the said Court may appoint.

31. When a decree or order shall have been made by the High Court directing the sale of any immoveable property for the payment of the debts of a deceased person, every person holding such property, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act: and the High Court is hereby empowered to make an order wholly discharging the contingent right under the will of such deceased debtor of any unborn person.

When a decree is made for sale of immoveable property for payment of debts.

32. When any decree or order shall have been made by the High Court, whether before or after the passing of this Act, directing the sale of any immoveable property for any purpose whatever, every person holding such property, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made and bound thereby, or being otherwise bound by such decree or order, shall be deemed so to hold or be entitled (as the case may be) upon a trust within the meaning of this Act. In every such case, it shall be lawful for the High Court, if the

High Court may make an order for vesting the estate in lieu of conveyance by a party to the suit after a decree or order for sale.

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if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such property or any part thereof, for such estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct. Every such order shall have the same effect as if the person so holding or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such property for such estate.

33. Where any decree or order shall be made by the High Court for the specific performance of a contract concerning any immovable property, or for the partition or exchange of any immovable property, or generally when any decree shall be made for the conveyance of any immovable 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 said 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 life-time a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be Trustees within the meaning of this Act. Thereupon it shall be lawful for the High 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.

Court to declare what parties are Trustees of immovable property comprised in any suit, and as to the interests of persons unborn.

34. It shall be lawful for the High Court to make declarations and give directions concerning the manner in which the right to any stock, Government securities or thing in action vested under the provisions of this Act shall be exercised, and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced.

Power to make directions how the right to transfer stock shall be exercised.

35. In all cases in which it shall be expedient to appoint a new Trustee or new Trustees, and it shall be found inexpedient, difficult or impracticable so to do without the assistance of the High Court, it shall be lawful for the said Court to make an order appointing

Power to Court to make order appointing new Trustees.

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appointing a new Trustee or new Trustees, whether there be any existing Trustee or Trustees or not at the time of making such order, and if there be such Trustee or Trustees, either in substitution for or in addition to him or them. The person

New Trustees to have powers of Trustees appointed by decree in suit.

or persons who, upon the making of such order shall be Trustee or Trustees, shall have the same rights and powers as he or they would have had if appointed by decree in a suit duly instituted.

36. It shall be lawful for the High Court, upon making any order for

Power to Court to vest immoveable property in new Trustee.

appointing a new Trustee or new Trustees, either by the same or by any subsequent order, to direct that any immoveable property subject to the trust shall vest in the person or persons who upon the appointment shall be the Trustee or Trustees, for such estate as the Court shall direct. Such order shall have the same effect as if the person or persons who, before such order, was or were the Trustee or Trustees (if any) had duly executed all proper conveyances of such property for such estate.

37. It shall be lawful for the High Court, upon making any order for

Power to Court to vest right to sue in new Trustees.

appointing a new Trustee or new Trustees, either by the same or by any subsequent order, to vest the right to call for a transfer of any stock or Government securities subject to the trust, or to receive the dividends, interest or income thereof, or to sue for or recover any thing in action subject to the trust, or any interest in respect thereof, in the person or persons who upon the appointment shall be the Trustee or Trustees.

38. Any such appointment by the High Court of new Trustees, and any

Old Trustees not to be discharged from liability.

such conveyance or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing Trustee, than an appointment of new Trustees under any power for that purpose contained in any instrument would have done.

39. An order under any of the hereinbefore contained provisions, for the

Who may apply.

appointment of a new Trustee or new Trustees, or concerning any immoveable property, stock or Government securities, or thing in action subject to a trust, may be made upon the application of any person beneficially interested in such immoveable property, stock, Government securities, or thing in action; whether under disability or not, or upon the application of any person duly appointed as a Trustee thereof; and an order

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order under any of the provisions hereinbefore contained, concerning any immoveable property, stock, Government securities, or thing 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 monies secured by such mortgage.

40. When any person shall deem himself entitled to an order under any of the provisions hereinbefore contained, it shall be lawful for Application may be by petition. him to present a petition to the High Court for such order as he may deem himself entitled to, and he may give evidence by affidavit or otherwise in support of such petition before the said Court, and may serve such person or persons with notice of such petition as he may deem entitled to service thereof.

41. Upon the hearing of any such petition, it shall be lawful for the said What may be done upon petition. High Court, should it be deemed necessary, to direct a reference to one of the Judges of the Court to inquire into any facts which require such an investigation, or it shall be lawful for the said Court to direct such petition to stand over, to enable the petitioner to adduce evidence or further evidence before the Court, or to enable notice or any further notice of such petition to be served upon any person or persons.

42. Upon the hearing of any such petition, it shall be lawful for the Court may dismiss petition with or without costs. High Court to dismiss such petition with or without costs, or to make an order thereupon in conformity with the provisions of this Act.

43. Whensoever in any cause or matter, either by the evidence adduced Power to make an order in a cause. therein, or by the admissions of the parties, or by report of one of the Judges of the Court, the facts necessary for an order under this Act shall appear to the High 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 application in the said cause or matter, to make such order under this Act.

44. Whenever any order shall be made under this Act by the High Orders made by the High Court founded on certain allegations to be conclusive evidence of the matter contained in such allegations. Court, for the purpose of conveying any immoveable 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

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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 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 High Court has made an order upon such an allegation, shall be conclusive evidence of the matter so alleged in any Court of Civil Judicature upon any question as to the legal validity of the order: Provided always, that nothing herein contained shall prevent the High Court directing a re-conveyance of any immoveable 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.

45. It shall be lawful for the High Court to exercise the powers herein conferred for the purpose of vesting any immoveable property, stock, Government securities, or thing in action in the Trustees of charity. Trustee or Trustees of any charity or society, over which charity or society the High Court would have jurisdiction upon suit duly instituted, whether such Trustee or Trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court, or by order made upon a petition to the said Court.

46. Where any minor or person of unsound mind shall be entitled to any money payable in discharge of any immoveable property, stock, Government securities, or thing in action conveyed or transferred under this Act, it shall be lawful for the person by whom such money is payable to pay the same into the High Court, in trust in any cause then depending concerning such money, or if there shall be no such cause, to the credit of such minor or person of unsound mind, subject to the order or disposition of the said Court; and it shall be lawful for the said Court, upon petition in a summary way, to order any money so paid to be invested in Government securities, and to order payment or distribution thereof, or payment of the dividends or interest thereof, as to the said Court shall seem reasonable.

47. Where

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47. Where in any suit commenced or to be commenced in the High Court it shall be made to appear to the Court that diligent search and enquiry have been made after any person made a defendant, who is only a Trustee, to serve him with the process of the 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 it to be only a Trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such Trustee had been duly served with the process of the Court, and had appeared at the hearing of such cause: Provided always, that no such decree shall bind, affect, or in any wise prejudice any person against whom the same shall be made, without service of process upon him as aforesaid, his heirs, executors, or administrators for or in respect of any estate, right or interest which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a Trustee as aforesaid.

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

48. Every order to be made under this Act, which shall have the effect of a conveyance of any immoveable property, or a transfer of any such stock, Government securities, or thing in action as can only be transferred by stamped deed, or for the transfer of which a stamp is necessary, shall be chargeable with the like amount of stamp duty as it would have been chargeable with if it had been a deed executed or a transfer made by the person or persons holding such property or entitled to such stock, Government securities, or thing in action. Every such order shall be duly stamped for denoting the payment of the said duty.

Orders made under this Act to be chargeable with the same stamp duty as deeds of conveyance.

49. The High Court may order the costs and expenses of and relating to the petitions, orders, directions, conveyances and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the immoveable or moveable property, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Court shall think proper.

Costs may be paid out of the estate.

50. Upon any petition being presented under this Act to the High Court concerning a person of unsound mind, it shall be lawful for the said Court to make an order directing an enquiry whether such person is or is not of unsound mind, and incapable

Enquiry concerning person of unsound mind.

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capable of managing himself and his affairs. Such order shall have the same effect as the like order made under Section 1 of Act XXXIV of 1858 (*to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter*), and the enquiry directed to be made shall be made in all respects in the manner declared and prescribed for making an enquiry under the last-mentioned Act. The High Court may postpone making any order upon the petition presented as aforesaid, until any enquiry so directed to be made shall have been finally concluded.

51. Upon any petition under this Act being presented to the High 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.

52. Every order made or purporting to be made under this Act by the High Court shall be a complete indemnity to all persons whatsoever for any act done pursuant thereto; and it shall not be necessary for such persons to enquire concerning the propriety of such order, or whether the High Court has jurisdiction to make the same.

Orders under the Act to be executed as, and have the effect of, decrees.

53. Any order made by the High Court under this Act shall have the same effect and be executed in the same manner as a decree.

Short Title.

54. This Act may be cited as "The Indian Trustee Act, 1866."

55. On and after the first day of February 1867 (but not till then), the powers and authorities given by this Act to the High Courts, shall and may be exercised by the Court of Judicature of the Settlement of Prince of Wales' Island, Singapore and Malacca, with respect to moveable and immoveable property within the local limits of the jurisdiction of that Court; and, in the said Settlement, Section 2 of this Act shall be read as if the words and figures "first day of February 1867" were substituted for the words and figures "first day of January 1866."

From 1st February 1867, this Act to apply to Straits' Settlement.