

No. 7.—1871.

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*An Ordinance to amend the Law of Property, and to relieve Trustees.*

**W**HEREAS it is expedient to amend the Law of Property, and to grant relief in certain cases to Trustees, Executors, and Administrators: IT IS ENACTED BY THE GOVERNOR OF CEYLON, with the advice and consent of the Legislative Council thereof, as follows:—

Title.

1. THIS Ordinance may be cited for all purposes as "*The Property and Trustees' Ordinance, 1871.*"

Persons entitled to assign property to themselves and others.

2. ANY person shall have power to assign and convey moveable and immoveable property, now by law assignable, directly to himself and another person, or other persons or corporation, by the like means as he might assign or convey the same to another. And no transfer or assignment of moveable or immoveable property heretofore made or executed by a person to himself and another person or persons or corporation, shall be deemed to be in any manner invalid by reason of its being a transfer or assignment by a person to himself and another person or persons or corporation: PROVIDED that nothing in this section contained shall give any validity to any assignment or conveyance which would have been heretofore by any law or custom invalid by any other reason than by reason of its being an assignment or conveyance by a person to himself and any other person or persons or corporation.

Property vested in trustees, as such, to be held with the quality of survivorship.

3. ALL property, whether moveable or immoveable, which any persons shall be possessed of, or entitled to, in equal undivided shares, as trustees, shall be held by such persons as joint tenants, with the right or quality of survivorship between or amongst them, in the same manner as subsists between or amongst joint tenants by the Law of England, unless otherwise provided by the deed or instrument creating or establishing the trusts upon which such property is to be held; anything by the Ordinances No. 21 of 1844, and No. 10 of 1863, to the contrary provided notwithstanding.

District Court may nominate trustees in certain cases.

4. THAT any District Court in this Colony, within the jurisdiction of which any property, moveable or immoveable, which is subject to any trust, may be situated, may, on petition from any person having any interest, present or future, in such trust property, or from any trustee or trustees thereof, nominate a trustee or trustees to have control thereof, either solely or jointly, with any previous trustee or trustees, and either in addition to or in the place of any such previous trustee or trustees, as circumstances may require in any of the cases following, that is to say:—

- (1.) WHERE the deed or instrument creating the trust shall contain no adequate provision for the appointment of a new trustee or trustees, and the trustee, or one or more of the trustees originally appointed or nominated under the powers by this Ordinance created, may have died, or become incapable of acting, or may have left the Colony and be residing elsewhere, or may be desirous of being relieved from the duties thereof.
- (2.) WHERE any such trustee shall neglect or refuse to act in the duties of his office, or shall misconduct himself in the discharge thereof, whether the said deed or instrument shall contain an adequate provision for the appointment of new trustees or not.
- (3.) WHERE the said deed or instrument does contain such provision, but the sole remaining trustee or trustees thereof shall be incapable of acting or of making a sufficient transfer and assignment of the trust property by reason of lunacy or infancy, or where the remaining trustee or trustees may be resident out of the Colony, or where all the trustees may be dead, and the heirs of the last survivor incapable, for any of the reasons aforesaid, of making a valid transfer, or where such heirs, or any of them, may be resident out of the Colony, or where there may be a difficulty in discovering them, or where it may be doubtful which of several trustees is the survivor.

(4.) **WHERE** the said deed or instrument contains an adequate provision for the appointment of a trustee in the room of any retiring trustee, but the person in whom such appointment is vested by virtue of such provision shall refuse or neglect for the space of twenty-eight days after being requested so to do by any trustee desiring to retire, to make any such fresh appointment; but in this case the petition of the retiring trustee shall be accompanied by a statement in writing of all trust property then under his control, and such an account or statement as may satisfy the Court that he has duly discharged his office and duty as trustee.

5. **THAT** when and so soon as such nomination shall be made by such District Court, all the property, moveable and immoveable, which may be subject to the trusts aforesaid, and situate within this Colony, whether within the jurisdiction of the said Court or not, shall become vested in the trustee or trustees so nominated, either solely or jointly, with the continuing trustee or trustees, as fully and effectually as if the same had been conveyed and assigned to them or him by the person or persons in whom the same was vested, and such newly nominated trustee or trustees shall thenceforth possess and enjoy all the powers of a trustee or trustees, in the same manner as if he or they had been nominated or appointed in and by the original deed or instrument creating the trust, and as well in respect of property in the Colony, situated out of, as in respect of property within, the jurisdiction of the Court making the nomination.

Vesting of property in new trustees.

6. **THE** Secretary of the Court making such nomination of a trustee shall give information thereof forthwith to the Registrar-General of Lands, who shall cause an alphabetical list of all persons appointed trustees by any District Courts to be made out, shewing the Courts by which they were appointed and the number of the record in which the appointments have been made. And such list shall be preserved in the Land Registry Office in Colombo, and shall, at all reasonable hours, upon a written application in that behalf, duly stamped, be open to the inspection and perusal of all persons.

Lists of trustees to be kept in Land Registry Office in Colombo.

7. **ANY** person, having first obtained permission from the Court, may file a petition in the name of any lunatic or infant interested in any trust fund, but such permission shall not be granted unless the Court shall be satisfied that the interest of such lunatic or infant requires that such petition should be filed, and that the person applying is a proper person to represent them.

Petition in name of lunatics and infants interested in trust funds.

8. **THE** District Court, before making order on any such petition as aforesaid, may require notice to be issued to such person or persons as it may consider entitled thereto; and may require evidence in support of any allegation in the petition which it may consider as requiring proof.

Proceedings of Court thereon.

9. **ALL** orders made by any District Courts in pursuance of the powers hereinbefore contained, shall be subject to appeal to the Supreme Court on the part of any person having or claiming to have any interest in the trust property, or any part thereof, and such appeals shall be subject to the same rules, regulations, and practice as exist with respect to interlocutory appeals from District Courts.

Appeals from orders of District Courts.

10. **WHERE** an Executor or Administrator shall have given such notices as, in the opinion of the District Court which granted Probate or Letters of Administration to such Executor or Administrator, shall be sufficient for creditors and others to send in to the Executor or Administrator their claims against the Estate of the Testator or Intestate, such Executor or Administrator shall, at the expiration of the time named in the said notices or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the Testator or Intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such Executor or Administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person, of whose claim such Executor or Administrator shall not have had notice at the time of the distribution of the said assets or a part thereof, as the case may be; but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

Executor or Administrator winding up Estate after due notice to claimants, to be freed from responsibility.

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Trustee, Executor, or Administrator to be allowed to apply to Supreme Court for directions, and to be relieved from responsibility when acting in accordance with such.

Direction of Judge to be recorded.

Power of Trustees to give valid receipts.

Commencement of Ordinance.

11. ANY Trustee, Executor or Administrator shall be at liberty, without the institution of a suit, to apply by Petition to a Judge of the Supreme Court sitting in Chambers, for the direction of such Judge on any question respecting the management or administration of the Trust property or the assets of any Testator or Intestate; and such application shall be served upon such of the persons interested therein as the said Judge shall deem expedient, or notice thereof be published in such manner as such Judge shall determine; and the Trustee, Executor or Administrator, acting upon the direction given by the said Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such Trustee, Executor or Administrator in the subject-matter of the said application; PROVIDED nevertheless, that this Ordinance shall not extend to indemnify any Trustee, Executor or Administrator in respect of any act done in accordance with such direction as aforesaid, if such Trustee, Executor or Administrator shall have been guilty of any fraud or misrepresentation, or shall have neglected to disclose in his petition all facts within his knowledge which are material to the determination of any question submitted to any Judge for such direction as aforesaid, and the costs of such application shall be in the discretion of the said Judge. PROVIDED further that every such Petition shall be signed by an Advocate of the Supreme Court, and every such applicant shall appear by such Advocate, and the Judge to whom any such Petition shall be presented shall have power to reject the same if, in his opinion, no question of sufficient doubt or difficulty is therein raised to justify such application.

12. THE direction of the Judge, referred to in the preceding section, shall be duly recorded in the Minutes of the Supreme Court, and shall be deemed an order of that Court.

13. THE receipts in writing of any Trustees or Trustee for any money payable to them or him by reason or in the exercise of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof.

14. THIS Ordinance shall come into operation on the date of the passing thereof.

Passed in Council, the Fourteenth day of January, One thousand Eight hundred and Seventy-one.

JAMES SWAN,  
Clerk to the Council.

Assented to by His Excellency the Governor, the Fourteenth day of January, One thousand Eight hundred and Seventy-one, and published by his Order.

HENRY T. IRVING,  
Colonial Secretary.