



Trustee Act 1925

1925 CHAPTER 19 15 and 16 Geo 5

PART IV

POWERS OF THE COURT

Vesting Orders

44 Vesting orders of land.

In any of the following cases, namely:—

- (i) Where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;
- (ii) Where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person—
 - (a) is under disability; or
 - (b) is out of the jurisdiction of the High Court; or
 - (c) cannot be found, or, being a corporation, has been dissolved;
- (iii) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land;
- (iv) Where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;
- (v) Where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;
- (vi) Where a trustee jointly or solely entitled to or possessed of any interest in 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 interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement;

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(vii) Where land or any interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the court to be expedient;

the court may make an order (in this Act called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest 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 trustee the land or interest therein 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 or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the High Court or cannot be found, or being a corporation has been dissolved, the land interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint.

45 Orders as to contingent rights of unborn persons.

Where any interest in 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 that interest on any trust, the court may make an order releasing the land or interest therein from the contingent right, or may make an order vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

46 Vesting order in place of conveyance by infant mortgagee.

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

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

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 any interest in the land, or entitled to a contingent right therein, 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 for the purposes of this Act, and the court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate or interest as that court thinks fit in the purchaser or mortgagee or in any other person:

Provided that, in the case of a legal mortgage, the estate to be vested in the mortgagee shall be a term of years absolute.

48 Vesting order consequential on judgment for specific performance, &c.

Where a judgment is given for the specific performance of a contract concerning any interest in land, or for sale or exchange of any interest in land, or generally where any judgment is given for the conveyance of any interest in land either in cases arising out of the doctrine of election or otherwise, the court may declare—

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- (a) that any of the parties to the action are trustees of any interest in the land or any part thereof within the meaning of this Act; or
- (b) that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or transaction 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 court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

49 Effect of vesting order.

A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a trustee, have the same effect—

- (a) 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 or interest as the court directs; or
- (b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate or interest 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.

50 Power to appoint person to convey.

In all cases where a vesting order can be made under any of the foregoing provisions, the court may, if it is more convenient, appoint a person to convey the land or any interest therein 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.

51 Vesting orders as to stock and things in action.

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

- (i) Where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;
- (ii) Where a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person to stock or to a thing in action—
 - (a) is under disability; or
 - (b) is out of the jurisdiction of the High Court; or
 - (c) cannot be found, or, being a corporation, has been dissolved; or
 - (d) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing 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 thing in action for twenty-eight days next after an order of the court for that purpose has been served on him;

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- (iii) Where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead;
- (iv) Where stock is standing in the name of a deceased person whose personal representative is under disability;
- (v) Where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the court to be expedient;
- the 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 the thing in action, in any such person as the court may appoint:
- Provided that—
- (a) Where the order is consequential on the appointment of a 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.
- (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: Provided that the person appointed to make or join in making a transfer of stock shall be some proper officer of the bank, or the company or society whose stock is to be transferred.
- (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 [^{F1}Registrar of Government Stock and any company] 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 [^{F2}Registrar of Government Stock or any company] to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.
- (5) The court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing 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 [^{F3}Merchant Shipping Act 1995] as if they were stock.

Textual Amendments

- F1** Words in s. 51(3) substituted (1.7.2004) by [The Government Stock \(Consequential and Transitional Provision\) \(No. 2\) Order 2004 \(S.I. 2004/1662\)](#), art. 1, Sch. para. 1 **Sch. para. 10(2)(a)** (with art. 3)
- F2** Words in s. 51(4) substituted (1.7.2004) by [The Government Stock \(Consequential and Transitional Provision\) \(No. 2\) Order 2004 \(S.I. 2004/1662\)](#), art. 1, Sch. para. 1 **Sch. para. 10(2)(b)** (with art. 3)
- F3** Words in s. 51(6) substituted (1.1.1996) by [1995 c. 21](#), ss. 314(2), 316(2), **Sch. 13 para.13** (with s. 312(1))

52 Vesting orders of charity property.

The powers conferred by this Act as to vesting orders may be exercised for vesting any interest in land, stock, or thing in action in any trustee of a charity or society over which the court would have jurisdiction upon action duly instituted, whether the

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appointment of the trustee was made by instrument under a power or by the court under its general or statutory jurisdiction.

53 Vesting orders in relation to infant’s beneficial interests.

Where an infant is beneficially entitled to any property the court may, with a view to the application of the capital or income thereof for the maintenance, education, or benefit of the infant, make an order—

- (a) appointing a person to convey such property; or
- (b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the court may think fit.

54 Jurisdiction in regard to mental patients.

[^{F4}(1) Subject to subsection (2), the Court of Protection may not make an order, or give a direction or authority, in relation to a person who lacks capacity to exercise his functions as trustee, if the High Court may make an order to that effect under this Act.]

(2) [^{F5}Where a person lacks capacity to exercise his functions as a trustee and a deputy is appointed for him by the Court of Protection or an application for the appointment of a deputy] has been made but not determined, then, except as respects a trust which is subject to an order for administration made by the High Court, [^{F6}the Court of Protection] shall have concurrent jurisdiction with the High Court in relation to—

- (a) mortgaged property of which [^{F7}the person concerned] has become a trustee merely by reason of the mortgage having been paid off;
- (b) matters consequent on the making of provision by [^{F6}the Court of Protection] for the exercise of a power of appointing trustees or retiring from a trust;
- (c) matters consequent on the making of provision by [^{F6}the Court of Protection] for the carrying out of any contract entered into by [^{F7}the person concerned];
- (d) property to some interest in which [^{F7}the person concerned] is beneficially entitled but which, or some interest in which, is held by [^{F7}the person concerned] under an express, implied or constructive trust.

The Lord Chancellor may make rules with respect to the exercise of the jurisdiction referred to in this subsection.

^{F8}(3)

Textual Amendments

- F4** S. 54(1) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), s. 68\(1\)](#), **Sch. 6 para. 3(4)(a)** (with ss. 27-29, 62); [S.I. 2007/1897](#), art. 2(1)(d)
- F5** Words in s. 54(2) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), s. 68\(1\)](#), **Sch. 6 para. 3(4)(b)(i)** (with ss. 27-29, 62); [S.I. 2007/1897](#), art. 2(1)(d)
- F6** Words in s. 54(2) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), s. 68\(1\)](#), **Sch. 6 para. 3(4)(b)(ii)** (with ss. 27-29, 62); [S.I. 2007/1897](#), art. 2(1)(d)
- F7** Words in s. 54(2) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), s. 68\(1\)](#), **Sch. 6 para. 3(4)(b)(iii)** (with ss. 27-29, 62); [S.I. 2007/1897](#), art. 2(1)(d)
- F8** S. 54(3) repealed (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), s. 68\(1\)](#), [Sch. 6 para. 3\(4\)\(c\)](#), **Sch. 7** (with ss. 27-29, 62); [S.I. 2007/1897](#), art. 2(1)(d)

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55 Orders made upon certain allegations to be conclusive evidence.

Where a vesting order is made as to any land under this Act or under [^{F9}sections 15 to 20 of the Mental Capacity Act 2005 or any corresponding provisions having effect in Northern Ireland], founded on an allegation of any of the following matters namely—

- [^{F10}(a) that a trustee or mortgagee lacks capacity in relation to the matter in question;]
- (b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the High Court or cannot be found, or being a corporation has been dissolved; or
 - (c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor; or
 - (d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead; or
 - (e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested;

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 does not prevent the court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

Textual Amendments

- F9** Words in s. 55 substituted (1.10.2007) by Mental Capacity Act 2005 (c. 9), s. 68(1), **Sch. 6 para. 3(5)** (a) (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)
- F10** S. 55(a) substituted (1.10.2007) by Mental Capacity Act 2005 (c. 9), s. 68(1), **Sch. 6 para. 3(5)(b)** (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)

56 Application of vesting order to property out of England.

The powers of the court to make vesting orders under this Act shall extend to all property in any part of His Majesty's dominions except Scotland.

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