

(5) The restrictions of this section shall not apply to charitable trusts as defined by section 99.

(5) This section shall not apply to constructive trusts, except in so far as such trusts are treated as express trusts by the law of England.

Prescription

**111.** (1) In the following cases, that is to say

**112.** (I) In any of the following cases. Vesting orders. namely :-

- (a) in the case of any claim by any beneficiary against a trustee founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy ;
- (b) in the case of any claim to recover trust property, or the proceeds thereof still retained by a trustee, or previously received by the trustee and converted to his use , and
- (c) in the case of any claim in the interests of any charitable trust, for the recovery of any property comprised in the trust, or for the assertion of title to such property,

- (i) where it is uncertain in whom the title to any trust property is vested , or

- (ii) where a trustee or any other person in whom the title to trust property is vested has been required in writing , . to transfer the property by or on behalf of a person entitled to require such transfer, and has wilfully refused or neglected to transfer the property for twenty-eight days after the date of the requirement,

the claim shall not be held to be barred or prejudiced by any provision of the Prescription Ordinance.

the court may make an order (in this Ordinance called a " vesting order ") vesting the property in any such person in any such manner or to any such extent as the court may direct.

(2) Save as aforesaid, all rights and privileges conferred by the Prescription Ordinance shall be enjoyed by a trustee in all actions and legal proceedings in the like manner and to the like extent as they would have been enjoyed if the trustee had not been a trustee ;

(2) A vesting order under any provision of this Ordinance shall have the same effect as if the trustee or other person in whom the trust property was vested had executed a transfer to the effect intended by the order.

Provided that in the case of any action or other proceeding by a beneficiary to recover money or other property, the period of prescription shall not begin to run against such beneficiary, unless and until the interest of such beneficiary shall be an interest in possession.

(3) A vesting order under this Ordinance, in so far as it affects immovable property, shall contain the particulars required by section 13 of the Registration of Documents Ordinance, and section 29 of the said Ordinance shall apply to every such order in the same manner as if it were an instrument which affects land :

(3) No beneficiary as against whom there would be a good defence by virtue of this section shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such action or other proceeding and this section had been pleaded.

Provided that no such order in the case of any charitable trust shall be invalidated by reason of the fact that it does not contain the said particulars, or shall be liable to be defeated by the registration of any subsequent deed, order, or other instrument under section 7 of the said Ordinance.

(4) Nothing in this section shall preclude the court from giving effect to any application by a trustee for any equitable relief to which he would otherwise be entitled on any ground recognized by the court.

(4) Where any trust property comprises any stocks or any shares or securities transferable in any book kept by any company or society, or any shares in any ship registered under the law relating to merchant shipping, a vesting order under this section shall not take effect, so far as it relates thereto, unless and until notice of

such order in writing shall have been given by or on behalf of the person in whom the property is vested under the order to the person or authority in charge of the register or book in which such stocks, shares, or securities, as the case may be, are entered, and upon such notice in writing being given, and on reasonable proof being furnished that such stocks, shares, or securities form part of the said trust property, the person in whom the property is vested under the order shall be entitled to a transfer into his name of any such stocks, shares, or securities, and to the receipt of all dividends, interest, or other sums due, or to become due, in respect of any such stocks, shares, or securities.

(5) In all cases in which a vesting order can be made under this section the court may, if it is more convenient, appoint a person to transfer the property, and a transfer by that person in conformity with the order shall have the same effect as an order under this section, and every person so appointed for the purposes of all transactions, proceedings, and formalities incidental to the said transfer shall have all the powers and capacities of the trustee or other person in whom the trust property was vested, and shall be deemed to be the duly authorized attorney of such trustee or other person for the purposes aforesaid.

Devolution of  
trust properly.

**113.** (I) Where, whether before or after the commencement of this Ordinance, it is declared or intended in any instrument of trust that the trustee of the trust shall be a person for the time being holding or acting in any public office, or holding or acting in any office or discharging any duty in any public or private institution, body, corporation, association, or community, or where any property comes into or is in the possession or ownership of any such person in any of the aforesaid capacities upon any constructive trust, the title to the trust property shall devolve from time to time upon the person for the time being holding or acting in any such office, or discharging such duty, without any conveyance, vesting order, or other assurance otherwise necessary for vesting the property in such person.

(2) Where, whether before or after the commencement of this Ordinance, in the case of any charitable trust, or in the case of

any trust for the purpose of any public or private association (not being an association for the purpose of gain), a method for the appointment of new trustees is prescribed in the instrument of trust (other than nomination in the manner referred to in paragraph (a) of section 75), or by any rule in force, or in the absence of any such prescribed method is established by custom, then upon any new trustee being appointed in accordance with such prescribed or customary method, and upon the execution of the memorandum referred to in the next succeeding subsection, the trust property shall become vested without any conveyance, vesting order, or other assurance in such new trustee and the old continuing trustees jointly, or if there are no old continuing trustees, in such new trustee wholly.

(3) Every appointment under the last preceding subsection shall be made to appear by a memorandum under the hand of the person presiding at the meeting, or other proceeding at which the appointment was made, and attested by two other persons present at the said meeting or proceeding. Every such memorandum shall be notarially executed.

(4) It shall be the duty of the Registrar-General to prepare and maintain special registers of trustees appointed under subsection (2) of this section, and it shall be the duty of every notary before whom any such memorandum is attested to forward to the prescribed officer for the purpose of such registers all such particulars with reference to such memorandum as may be prescribed by rules made under the Notaries Ordinance.

(5) All rules made in pursuance of the last preceding subsection shall apply to notaries who are attorneys-at-law in the same manner as to other notaries, anything in section 36 of the Notaries Ordinance, to the contrary notwithstanding.

114. The Minister may, in his discretion, Incorporation by Order, on the application of the trustees of trustees. of any charitable trust or of any public or private association (not being an association for the purposes of gain), authorize the incorporation of the said trustees, and upon the publication of the said Order, the said trustees of the charity or association and