

- (g) direct the manner in which all future accounts shall be kept;
- (h) authorize in any scheme framed under the said section the devotion of a portion of the income of the trust property to the education of children of the religious community interested in the trust, and, if necessary, the utilization of any immovable property comprised in the trust as a site, for; the said purpose.

Application of religious law.

**106.** In settling any scheme for the management of any trust under section 102, or in determining any question relating to—

- (a) the constitution or existence of any such trust;
- (fr) the devolution of the trusteeship ;
- (c) the administration of the trust;

the court shall have regard—

- (i) to the instrument of trust (if any) ;
- (ii) to the religious law and custom of the community concerned ;
- (iii) to the local custom or practice with reference to the particular trust concerned ;

and may have regard to any arrangement *de facto* in force for the purpose of the administration of the trust.

*Defacto* trusts.

**107.** In dealing with any property alleged to be subject to a charitable trust, the court shall not be debarred from exercising any of its powers by the absence of evidence of the formal constitution of the trust, if it shall be of opinion from all the circumstances of the case that a trust in fact exists, or ought to be deemed to exist.

Special powers of court.

**108.** In settling any scheme for the management of a charitable trust (without prejudice to its general powers), the court shall have the powers following :—

- (a) to provide for the periodical auditing of the accounts of the trust property by auditors appointed by or subject to the approval of the court, or otherwise as the court may deem expedient ;
- (b) to provide for the visitation of the charity ;

- (c) to provide for the settlement of the remuneration of the trustee :

Provided that no such remuneration shall in any case exceed ten *per centum* of the gross income of the trust;

- (d) to devote any surplus income that may be available after the reasonable satisfaction of the objects of the trust to the extension of such objects, or, if the court see fit, to purposes of education.

**109.** This Chapter shall not apply—

- (a) to religious trusts regulated by the Buddhist Temporalities Ordinance ;
- (b) to religious trusts regulated by the Muslim Mosques and Charitable Trusts or Wakfs Act.

Exclusion of trusts under the Buddhist Temporalities Ordinance and the Muslim Mosques and Charitable Trusts or Wakfs Act.

## CHAPTER XI

### MISCELLANEOUS

**110.** (1) No trust shall operate to create Rule against an interest which is to take effect after the perpetuities. lifetime of one or more persons living at the date of the constitution of the trust, and the minority of some person who shall be in existence at the expiration of that period and to whom, if he attains full age, the interest created is to belong.

(2) If owing to any trust an interest is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of the provisions of this section, such interest fails as regards the whole class.

(3) Where an interest fails by reason of the provisions of this section, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

(4) In any case in which any interest intended to be created fails by reason of the provisions of this section, the court shall have power to give effect to the trust in such a manner as to carry out as nearly as practicable the intentions of the author of the trust, subject to the limits imposed by this section, and may make any order necessary for the purpose.

(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