

Constructive trusts in cases not expressly provided for.

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Illustrations.

(a) *A*, an executor, distributes the assets of his testator *B* to the legatees without having paid the whole of *B*'s debts. The legatees hold for the benefit of *B*'s creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(b) *A* by mistake assumes the character of a trustee for *B*, and under colour of the trust receives certain money. *B* may compel him to account for such moneys.

(c) *A* makes a gift of a lakh of rupees to *B* reserving to himself, with *B*'s assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000 and *B* holds that sum for the benefit of *A*.

Obligor's duties, liabilities and disabilities.

95. The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (b) where he holds the property by virtue of a contract with a person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

Saving of rights of bona fide purchasers.

96. Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

THE OFFICIAL TRUSTEES ACT.

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THE OFFICIAL TRUSTEES ACT.

[INDIA ACT II, 1913.] (1st April, 1914.)

PART I.

PRELIMINARY.

11. * * * *

Interpre-
tation
clause.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1)—(3) * * * *

(4) "prescribed" means prescribed by rules under this Act;

(5)—(7) * * * *

3. * * * *

PART II.

THE OFFICE OF OFFICIAL TRUSTEE.

Official
Trustee.

4. (1) The President of the Union shall appoint an Official Trustee.

(2) No person shall be appointed to the office of Official Trustee who is not—

(a) a Barrister; or

(b) an Advocate of the High Court.

Appoint-
ment and
powers of
Deputy Offi-
cial Trustee.

5. The President of the Union may appoint a Deputy or Deputies to assist the Official Trustee; and any Deputy so appointed shall, subject to the control of the President of the Union and the general or special orders of the Official Trustee, be competent to discharge any of the duties and exercise any of the powers of the Official Trustee, and, when discharging such duties or exercising such powers, shall have the same privileges and be subject to the same liabilities as the Official Trustee.

* Omitted by the Union of Burma (Adaptation of Laws) Order, 1948.

6. The Official Trustee shall be a corporation sole by the name of the Official Trustee of the Union of Burma and, as such Official Trustee, shall have perpetual succession and an official seal, and may sue and be sued in his corporate name.

Official Trustee to be corporation sole, to have perpetual succession and official seal, and to sue and be sued in his corporate name.

PART III.

RIGHTS, POWERS, DUTIES AND LIABILITIES OF OFFICIAL TRUSTEE.

7. (1) Subject to, and in accordance with, the provisions of this Act and the rules made thereunder, the Official Trustee may, if he thinks fit,—

General powers and duties of Official Trustee.

- (a) act as an ordinary trustee ;
- (b) be appointed trustee by a Court of competent jurisdiction.

(2) Save as hereinafter expressly provided, the Official Trustee shall have the same powers, duties, and liabilities and be entitled to the same rights and privileges and be subject to the same control and orders of the Court as any other trustee acting in the same capacity.

(3) The Official Trustee may decline, either absolutely or except on such conditions as he may impose, to accept any trust.

(4) The Official Trustee shall not accept any trust under any composition or scheme of arrangement for the benefit of creditors, nor of any estate known or believed by him to be insolvent.

(5) The Official Trustee shall not, save as provided by any rules made under this Act, accept any trust for a religious purpose or any trust which involves the management or carrying on of any business.

(6) The Official Trustee shall not administer the estate of a deceased person unless he is expressly appointed sole executor of, and sole trustee under, the will of such person.

(7) The Official Trustee shall always be sole trustee, and it shall not be lawful to appoint the Official Trustee to be trustee along with any other person.

8. (1) Any person intending to create a trust, other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, may, by the instrument creating the trust and with the consent of the Official Trustee, appoint him by that name or any other sufficient description to be the trustee of the property subject to such trust :

Official Trustee may, with consent, be appointed trustee of settlement by grantor.

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Upon such appointment the property subject to the trust shall vest in such Official Trustee, and shall be held by him upon the trusts declared in such instrument.

Appointment
of Official
Trustee as
trustee by
will.

9. When the Official Trustee has by that name or any other sufficient description been appointed trustee under any will, the executor of the will of the testator or the administrator of his estate shall, after obtaining probate or letters of administration, notify in the prescribed manner the contents of such will to the Official Trustee; and if the Official Trustee consents to accept the trust, then upon the execution by such executor or administrator of an instrument in writing transferring the property subject to the trust to the Official Trustee, such property shall vest in the Official Trustee, and shall be held by him upon the trusts expressed in the said will:

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

Power of
High Court
to appoint
Official
Trustee to
be trustee
of property.

10. (1) If any property is subject to a trust, other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and there is no trustee within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court willing or capable to act in the trust, the High Court may on application make an order for the appointment of the Official Trustee by that name with his consent to be the trustee of such property.

(2) Upon such order such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such order, and the previous trustee or trustees (if any) shall be exempt from liability as trustees of such property save in respect of acts done before the date of such order.

(3) Nothing in this section shall be deemed to affect the Trusts Act.

Power of
private
trustees to
appoint Offi-
cial Trustee
to be trustee
of property.

11. (1) If any property is subject to a trust, other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and all the trustees or the surviving or continuing trustee or trustees and all persons beneficially interested in the trust are desirous that the Official Trustee shall be appointed in the room of such trustee or trustees, it shall be lawful for such trustee or trustees, by an instrument in writing, to appoint the Official Trustee by that name or any other sufficient description with his consent to be the trustee of such property:

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by him.

(2) Upon such appointment such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such appointment, and the previous trustee or trustees shall be exempt from all liability as trustees of such property save in respect of acts done before the date of such appointment.

Executor
or adminis-
trator may
pay to

12. (1) If any infant or lunatic is entitled to any gift, legacy or share of the assets of a deceased person, it shall be lawful for the person by whom such gift is made, or executor or administrator by whom such legacy or share

is payable or transferable, or any trustee of such gift, legacy or share, to transfer the same by an instrument in writing to the Official Trustee by that name or any other sufficient description with his consent :

Official Trustee legacy, share, etc., of infant or lunatic.

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Any money or property transferred to the Official Trustee under this section shall vest in him and shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee.

13. (1) The Official Trustee shall not be required by any Court to enter into any bond or security on his appointment in any capacity under this Act.

Official Trustee not to be required to give bond or security.

(2) The Official Trustee shall not be required to verify otherwise than by his signature any petition presented by him under the provisions of this Act, and if the facts stated in any such petition are not within the Official Trustee's personal knowledge, the petition may be verified and subscribed by any person competent to make the verification.

14. The entry of the Official Trustee by that name in the books of a company shall not constitute notice of a trust ; and a company shall not be entitled to object to enter the name of the Official Trustee on its register by reason only that the Official Trustee is a corporation ; and, in dealing with property, the fact that the person dealt with is the Official Trustee shall not of itself constitute notice of a trust.

Entry of Official Trustee not to constitute notice of a trust.

15. (1) The revenues of the Union of Burma shall be liable to make good all sums required to discharge any liability which the Official Trustee, if he were a private trustee, would be personally liable to discharge, except when the liability is one to which neither the Official Trustee nor any of his officers has in any way contributed or which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in either of those cases the Official Trustee shall not, nor shall the revenues of the Union of Burma, be subject to any liability.

Liability of Government.

(2) * * * *

16. Nothing in section 80 of the Code of Civil Procedure shall apply to any suit against the Official Trustee in which no relief is claimed against him personally.

Notice of suit not required in certain cases.

PART IV.

FEEES.

17. (1) There shall be charged in respect of the duties of the Official Trustee such fees, whether by way of percentage or otherwise, as the President of the Union may prescribe.

Fees.

(2) The fees under this section may be at different rates for different properties or classes of properties or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sum as the President of the Union may determine to be required to insure the revenues of the Union of Burma against loss under this Act).

Disposal of fees.

18. (1) All expenses which might be retained or paid out of the trust fund, if the Official Trustee were a private trustee, shall be so retained or paid, and any fees leviable under this Act shall be retained or paid in like manner as and in addition to such expenses.

(2) The Official Trustee shall transfer and pay to such authority and in such manner and at such times as the President of the Union may prescribe all fees received by him under this Act, and the same shall be carried to the account and credit of the Government.

PART V.

AUDIT.

Auditors to be appointed to examine Official Trustee's accounts, etc., and to report to Government.

19. (1) The accounts of the Official Trustee shall be audited at least once annually, and at any other time if the President of the Union so direct, by the prescribed person and in the prescribed manner.

(2) The auditor shall examine such accounts, and shall forward to Government a statement thereof in the prescribed form, together with a report thereon and a certificate signed by him showing—

¹(a) whether the accounts have been audited in the prescribed manner,

²(aa) whether, so far as can be ascertained by such audit, the accounts contained a full and true account of everything which ought to be inserted therein, and

(b) whether the books, which by any rules made under this Act are directed to be kept by the Official Trustee, have been duly and regularly kept, and

(c) whether the trust funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or any rules made thereunder;

or (as the case may be) that such accounts are deficient, or that the Official Trustee has failed to comply with this Act or the rules made thereunder, in such respects as may be specified in such certificate.

Auditor's power to summon witnesses and to call for documents.

20. (1) Every auditor shall have the powers of a civil Court under the Code of Civil Procedure—

(a) to summon any person whose presence he may think necessary to attend him from time to time, and

¹ Substituted by Act XXII, 1948.

² Inserted *ibid.*

- (b) to examine any person, on oath to be by him administered; and
- (c) to issue a commission for the examination on interrogatories or otherwise of any person, and
- (d) to summon any person to produce any document or thing, the production of which appears to be necessary for the purposes of such audit or examination.

(2) Any person who, when summoned, refuses, or without reasonable cause neglects to attend or to produce any document or thing, or attends and refuses to be sworn or to be examined, shall be deemed to have committed an offence within the meaning of, and punishable under, section 188 of the Penal Code, and the auditor shall report every case of such refusal or neglect to the President of the Union.

21. The cost of and incidental to every such audit and examination shall be determined in accordance with rules made by the President of the Union and shall be defrayed in the prescribed manner. Cost of audit, etc., how paid.

22. Every beneficiary under a trust which is being administered by the Official Trustee shall, subject to such conditions and restrictions as may be prescribed, be entitled, at all reasonable times, to inspect the accounts of such trust, and the report and certificate of the auditor, and, on payment of the prescribed fee, to be furnished with copies thereof or extracts therefrom, and nothing in the Trusts Act shall affect the provisions of this section. Right of beneficiary to inspection and copies of accounts.

PART VI.

MISCELLANEOUS.

23. When any moneys payable to a beneficiary under a trust have been in the hands of the Official Trustee for a period of twelve years or upwards in consequence of the Official Trustee having been unable to trace the person entitled to receive the same, such moneys shall be transferred in the prescribed manner to the account and credit of the Government: Transfer to Government of accumulations in the hands of Official Trustee.

Provided that no such moneys shall be so transferred if any suit or proceeding is pending in respect thereof in any Court.

24. (1) If any claim is made to any moneys so transferred and such claim is established to the satisfaction of the prescribed authority, the Government shall pay to the claimant the amount in respect of which the claim is established. Mode of proceeding by claimant to recover money so transferred.

(2) If such claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such moneys, apply by petition to the High Court against the Government, and, after taking such evidence as it thinks fit, such Court shall make such order on the petition in regard to the

payment of such moneys as it thinks fit, and such order shall be binding on all parties to the proceedings :

Provided that nothing in this section affects any option afforded to a claimant [by any other law for the time being in force.]¹

(3) The Court may further direct by whom all or any part of the costs of such proceedings shall be paid.

Power to High Court to make orders in respect of property vested in Official Trustee. Who may apply for order under Act.

25. The High Court may make such orders as it thinks fit respecting any trust-property vested in the Official Trustee, or the interest or produce thereof.

26. Any order under this Act may be made on the application of any person beneficially interested in any trust-property or of any trustee thereof.

Order of Court to have effect of a decree.

27. Any order made by the High Court under this Act shall have the same effect as a decree.

General powers of administration.

28. The Official Trustee may, in addition to and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure--

(a) on such acts as may be necessary for the proper care and management of any property belonging to any trust administered by him ; and

(b) with the sanction of the High Court on such religious, charitable and other objects and on such improvements as may be reasonable and proper in the case of such property.

Transfer of trust-property by Official Trustee to original trustee or any other trustee.

29. (1) Nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to—

(a) the original trustee (if any) ; or

(b) any other lawfully appointed trustee ; or

(c) any other person if the Court so directs.

(2) Upon such transfer such property shall vest in such trustee, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Official Trustee shall be exempt from all liability as trustee of such property except in respect of acts done before such transfer :

Provided that, in the case of any transfer under this section, the Official Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Act.

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

30. (1) The President of the Union shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Official Trustee in the discharge of his duties. Ruels.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the accounts to be kept by the Official Trustee and the audit and inspection thereof ;
- (b) the safe custody and deposit of the funds and securities which come into the hands of the Official Trustee ;
- (c) the remittance of sums of money in the hands of the Official Trustee in cases in which such remittances are required ;
- (d) the statements, schedules and other documents to be submitted by the Official Trustee to Government or to any other authority and the publication of such statements, schedules or other documents ;
- (e) the realization of the cost of preparing any such statements, schedules or other documents ;
- (f) subject to the provisions of this Act, the fees to be paid thereunder and the collection and accounting for any fees so fixed ;
- (g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed ;
- (h) the manner in which summonses issued under the provisions of section 20 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination ;
- (i) the acceptance by the Official Trustee of trusts for religious purposes and trusts which involve the management or carrying on of business ; and
- (j) any matter in this Act directed to be prescribed.

(3) Rules made under the provisions of this section shall be published in the Gazette, and shall thereupon have effect as if enacted in this Act.

31. * * * *

32. Nothing contained in this Act shall be deemed to affect the provisions of the Registration Act.

Saving of provisions of Registration Act.

THE ADMINISTRATION OF PUBLIC FUNDS ACT. *

[BURMA ACT III, 1943.] (1st March, 1943.)

Whereas it is expedient to make provision for the administration of funds belonging to certain public bodies in the Union of Burma and funds held in trust in the Union of Burma for public purposes ;

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* Published in Chief Secretary's Office Notification No. 61, dated 1st March 1943.
 † Omitted by Act IX, 1945.