

CHAPTER 24.

An Act to facilitate the Incorporation of Trustees of Charities for Religious, Educational, Literary, Scientific, and Public Charitable Purposes, and the Enrolment of certain Charitable Trust Deeds. [27th June 1872.]

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WHEREAS it is expedient to facilitate the incorporation of the trustees of charities established for religious, educational, literary, scientific, or public charitable purposes, and to provide for the due protection and transmission of the property belonging to or vested in such charities, or trustees of such charities, and to diminish the expense of enrolment under an Act passed in the thirtieth year of the reign of Her present Majesty, intituled "An "Act to make further provision for the enrolment of certain "deeds, assurances, and other instruments relating to charitable "trusts :"

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Upon application of trustees of any charity, Commissioners may grant certificate of registration as a corporate body.

1. From and after the passing of this Act it shall be lawful for the trustees or trustee for the time being of any charity for religious, educational, literary, scientific, or public charitable purposes, to apply, in manner herein-after mentioned, to the Charity Commissioners for England and Wales for a certificate of registration of the trustees of any such charity as a corporate body; and if the Commissioners, having regard to the extent, nature, and objects and other circumstances of the charity, shall consider such incorporation expedient, they may grant such certificate accordingly, subject to such conditions or directions as they shall think fit to insert in their certificate relating to the qualifications and number of the trustees, their tenure or avoidance of office, and the mode of appoint-

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ing new trustees, and the custody and use of the common seal; and the trustees of such charity shall thereupon become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, of which the device shall be approved by the Commissioners, and power to sue and be sued in their corporate name, and to hold and acquire, notwithstanding the statutes of mortmain, and by instruments under their common seal to convey, assign, and demise, any present or future property, real or personal, belonging to, or held for the benefit of, such charity, in such and the like manner, and subject to such restrictions and provisions, as such trustees might, without such incorporation, hold or acquire, convey, assign, or demise the same for the purposes of such charity: Provided that nothing herein contained shall be taken or construed so as to extend, modify, or control any of the provisions of an Act passed in the ninth year of His Majesty King George the Second, chapter thirty-six, intituled "An Act to "restrain the disposition of lands whereby the same become "unalienable," or to make valid any gift, grant, or purchase which would be invalid under the enactments contained in that Act.

Estate to vest in body corporate.

2. The certificate of incorporation shall vest in such body corporate all real and personal estate, of what nature or tenure soever, belonging to or held by any person or persons in trust for such charity, and thereupon any person or persons in whose name or names any stocks, funds, or securities shall be standing in trust for the charity, shall transfer the same into the name of such body corporate, except as herein-after provided; and all covenants and conditions relating to any such real estate enforceable by or against the trustees thereof before their incorporation shall be enforceable to the same extent and by the same means by or against them after their incorporation: Provided always, that if such property shall be of copyhold or customary tenure, and liable to the payment of any fine or heriot on the death or alienation of the tenant or tenants thereof, it shall be lawful for the lord or lady of the manor of which such property shall be holden, on the granting of the said certificate, and at the expiration of every period of forty years thereafter so long as such property shall belong to such body corporate, to receive and take a sum corresponding to the fine and heriot, if any, which would have been payable by law upon the death or alienation of the tenant or tenants thereof, and to recover the same by any means which such lord or lady could have used in the event of the death or alienation of the tenant or tenants of such property, such payments to be in full of all fines and heriots payable in respect of the same property: Provided also, that such certificate shall not

have the effect of summarily transferring or directing the transfer to the incorporated trustees any stocks, funds, or securities held by the official trustees of charitable funds for the benefit of the charity, but the same shall be transferable only by the official trustees to the incorporated trustees under the discretionary order of the Commissioners, and by the ordinary means of transfer or assignment.

Particulars respecting application.

3. Every application to the Commissioners for a certificate under this Act shall be in writing, signed by the person or persons making the same, and shall contain the several particulars specified in the schedule hereto, or such of them as shall be applicable to the case. The said Commissioners may require such declaration or other evidence in verification of the statements and particulars in the application, and such other particulars, information, and evidence, if any, as they may think necessary or proper.

Nomination of trustees, and filling up vacancies.

4. Before a certificate of incorporation shall be granted, trustees of the charity shall have been effectually appointed to the satisfaction of the Commissioners, and where a certificate of incorporation shall have been granted vacancies in the number of the trustees of such charity shall from time to time be filled up so far as shall be required by the constitution or settlement of the charity, or by any such conditions or directions as aforesaid, by such legal means as would have been available for the appointment of new trustees of the charity if no certificate of incorporation had been granted, or otherwise as shall be required by such conditions or directions as aforesaid, and the appointment of every new trustee shall be certified by or by the direction of the trustees to the Commissioners, either upon the completion of such appointment or when the next return of the yearly income and expenditure of the charity shall or ought to be made to the Commissioners under the general law, with which the certificate of such appointment shall be sent, and within one month after the expiration of each period of five years after the grant of a certificate of incorporation, or whenever required by the Commissioners, a return shall be made to the said Commissioners by the then trustees of the names of the trustees at the expiration of each such period with their residences and additions.

Liability of trustees and others, notwithstanding incorporation.

5. After a certificate of incorporation has been granted under the provisions of this Act all trustees of the charity, notwithstanding their incorporation, shall be chargeable for such property as shall come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects, and defaults, and for the due administration of the charity and its property, in the same manner

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and to the same extent as if no such incorporation had been effected, and nothing herein contained shall diminish or impair any control or authority exerceisable by the Commissioners over the trustees who shall be so incorporated, but they shall remain subject jointly and separately to such control and authority as if they were not incorporated.

Certificate to be evidence of compliance with requisitions.

6. A certificate of incorporation so granted shall be conclusive evidence that all the preliminary requisitions herein contained and required in respect of such incorporation have been complied with, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which incorporation has taken place.

Commissioners to keep record of applications for certificates, &c. and charge fees for inspection.

7. The said Commissioners shall keep a record of all such applications for and certificates of incorporation, and shall preserve all documents sent to them under the provisions of this Act, and any person may inspect such documents, under the direction of the Commissioners, and any person may require a copy or extract of any such document to be certified under the hand of the secretary or chief clerk of the said Commissioners, and there shall be paid for such certified copy or extract a fee, to be fixed by the Commissioners, not exceeding fourpence for each folio of such copy or extract.

Enforcement of orders and directions of Commissioners.

8. All conditions and directions inserted in any certificate of incorporation shall be binding upon and performed or observed by the trustees as trusts of the charity, and shall also be enforceable by the same means or in the same manner as any orders made by the Commissioners under their ordinary jurisdiction may now be enforced.

Applications and certificates to be stamped.

9. Every application for a certificate of incorporation under this Act, and every such certificate, shall be charged with a stamp duty of ten shillings, and a stamp denoting the payment of that duty shall be impressed or fixed upon such application or certificate.

Gifts to charity before incorporation to have same effect afterwards.

10. After the incorporation of the trustees of any charity pursuant to this Act every donation, gift, and disposition of property, real or personal, theretofore lawfully made (but not having actually taken effect), or thereafter lawfully made by deed, will, or otherwise to or in favour of such charity, or the trustees thereof, or otherwise for the purposes thereof, shall take effect as if the same had been made to or in favour of the incorporated body or otherwise for the like purposes.

Contracts not under seal to be binding in certain cases.

11. Every contract made or entered into by the trustees of a charity, which would be valid and binding according to the constitution, settlement, or rules of the charity, if no such incorporation

had taken place as aforesaid, shall be valid and binding although the same shall not have been made or entered into under the common seal of the trustees. A.D. 1872.

Payments on transfers in reliance on corporate seal protected.

12. Any company or person who shall make or permit to be made any transfer or payment bonâ fide, in reliance on any instruments to which the common seal of any body corporate created under this Act is affixed, shall be indemnified and protected in respect of such transfer or payment, notwithstanding any defect or circumstance affecting the execution of the instrument.

Enrolment where deeds have been lost or not duly enrolled.

13. And whereas by an Act passed in the thirtieth year of the reign of Her present Majesty, chapter fifty-seven, intituled "An "Act to make further provisions for the enrolment of certain Deeds, "Assurances, and other instruments relating to Charitable Trusts," provision was made for the enrolment upon application by summons in a summary way to the Court of Chancery, and by order of the court made upon such application of certain deeds, assurances, and other instruments relating to charitable trusts, and it is expedient to extend such provision and to facilitate the enrolling of deeds, assurances, and instruments relating to charitable trusts where the original deeds creating such trusts have been lost, or when the same have not been enrolled in proper time: Be it enacted, from and after the passing of this Act, if the clerk of enrolments in Chancery for the time being shall be satisfied, by affidavit or otherwise, that the deed, assurance, or other instruments conveying or charging the hereditaments, estate, or interest for charitable uses was made really and bonâ fide for full and valuable consideration actually paid at or before the making or perfecting thereof, or reserved by way of rentcharge or other annual payment, or partly paid at or before the making or perfecting of such deed, assurance, or other instrument and partly reserved as aforesaid, without fraud or collusion, and that at the time of the application to the said clerk of enrolments possession or enjoyment is held under such deed, assurance, or other instrument, and that the omission to enrol the same in proper time has arisen from ignorance or inadvertence, or from the destruction thereof by time or accident, it shall be lawful for the said clerk of enrolments to enrol the deed, assurance, or instrument to which the application relates, or such a subsequent deed as in the said Act mentioned, as the case may be, and the same shall thereupon be enrolled accordingly, and such enrolment shall be as valid and effective for all purposes as if the same had been made under the authority of the said last-mentioned Act. Over and above the ordinary fee payable upon the enrolment

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of any deed, assurance, or other instrument, there shall be paid upon the enrolment under this section of any deed, assurance, or other instrument, the further fee of ten shillings.

Definition of terms "public charitable purposes," "trustees."

14. The words "public charitable purposes" shall mean all such charitable purposes as come within the meaning, purview, or interpretation of the statute of the forty-third year of Queen Elizabeth, chapter four, or as to which, or the administration of the revenues or property applicable to which, the Court of Chancery has or may exercise jurisdiction; and the word "trustees" shall include the governors, managers, or other persons having the conduct or management of any charity.

Short title.

15. This Act may be cited for all purposes as "The Charitable Trustees Incorporation Act, 1872."

SCHEDULE.

The objects of the charity and the rules and regulations of the same, together with the date of and parties to every deed, will, or other instrument, if any, creating, constituting, or regulating the same.

A statement and short description of the property, real and personal, which at the date of the application is possessed by or belonging to or held on behalf of such charity.

The names, residences, and additions of the trustees of such charity.

The proposed title of the corporation, of which title the words "Trustees" or "Governors" and "Registered" shall form part.

The proposed device of the common seal, which shall in all cases bear the name of incorporation.

The regulations for the custody and use of the common seal.

LONDON: Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1872.