

1950

c 230 Mental Incompetency Act

Ontario

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Bibliographic Citation

Mental Incompetency Act, RSO 1950, c 230

Repository Citation

Ontario (1950) "c 230 Mental Incompetency Act," *Ontario: Revised Statutes*: Vol. 1950: Iss. 3, Article 15.

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CHAPTER 230

The Mental Incompetency Act

1. In this Act,

Interpretation.

- (a) "contingent right", as applied to land, includes a contingent and an executory interest; a possibility coupled with an interest whether the object of the gift or limitation or such interest or possibility is or is not ascertained, and a right of entry whether immediate or future and whether vested or contingent; Imp. Act, 53-54 Vict., c. 5, s. 341.
- (b) "convey" and "conveyance", applied to any person, mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another land whereof such person is seised, or in which he is entitled to a contingent right, either for the whole estate of the person conveying or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance;
- (c) "court" means the Supreme Court;
- (d) "land" includes messuages, tenements, and hereditaments, corporeal and incorporeal of every tenure or description, whatever may be the estate or interest therein, and whether entire or undivided;
- (e) "mentally incompetent person" means a person,
 - (i) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or
 - (ii) who is suffering from such a disorder of the mind,

that he requires care, supervision and control for his protection and the protection of his property;
- (f) "mental incompetency" means the condition of mind of a mentally incompetent person;
- (g) "mortgage" includes every interest or property in real or personal estate which is a security for money or money's worth; Imp. Act, 53-54 Vict., c. 5, s. 341.

- (h) "possessed" is applicable to any vested estate less than a life estate at law or in equity, in possession or in expectancy in any land;
- Imp. Act,
54-55 Vict.,
c. 65, s. 28.
- (i) "seised" is applicable to any vested interest for life or of a greater description, and extends to estates at law and in equity in possession or in futurity in any land;
- Imp. Act,
53-54 Vict.,
c. 5, s. 341.
- (j) "stock" includes shares and any fund, annuity or security transferable in books kept by any company or society, or by instrument of transfer alone, or by instrument of transfer accompanied by other formalities, and any share or interest therein, and also shares in ships registered under the Acts relating to merchant shipping;
- Imp. Act,
53-54 Vict.,
c. 5, s. 341.
- (k) "trust" and "trustee" include implied and constructive trusts and cases where the trustee has some beneficial interest, and also the duties incident to the office of personal representative of a deceased person, but not the duties incident to an estate conveyed by way of mortgage. R.S.O. 1937, c. 110, s. 1.

JURISDICTION OF COURT

Powers of
the court.
Rev. Stat.,
c. 229.

2.—(1) Subject to *The Mental Hospitals Act*, the court shall have all the powers, jurisdiction and authority of His Majesty over and in relation to the persons and estates of mentally incompetent persons, including the care and the commitment of the custody of mentally incompetent persons and of their persons and estates.

Orders of
court.

(2) The court may make orders for the custody of mentally incompetent persons and the management of their estates, and every such order shall take effect as to the custody of the person immediately, and as to the custody of the estate upon the completion of the committee's security. R.S.O. 1937, c. 110, s. 2.

Exercise of
powers.

3. The powers conferred by this Act upon the court may be exercised by a judge thereof in chambers. R.S.O. 1937, c. 110, s. 3.

Delegation
of powers.

4. The court may delegate to a master, official referee or other officer all or any of the powers of the court under this Act, except the making of a declaration of mental incompetency. R.S.O. 1937, c. 110, s. 4.

DECLARATION OF MENTAL INCOMPETENCY

5.—(1) The court upon application supported by evidence may by order declare a person a mentally incompetent person if the court is satisfied that the evidence establishes beyond reasonable doubt that he is a mentally incompetent person. Declaration of mental incompetency.

(2) The application may be made by the Attorney-General, by any one or more of the next of kin of the alleged mentally incompetent person, by his or her wife or husband, by a creditor, or by any other person. By whom application to be made.

(3) The alleged mentally incompetent person and any person aggrieved or affected by the order shall have the right to appeal therefrom. Appeal.

(4) The practice and procedure on the appeal shall be the same as on an appeal from an order made by a judge of the court. R.S.O. 1937, c. 110, s. 5. Procedure.

6.—(1) Where in the opinion of the court the evidence does not establish beyond reasonable doubt the alleged mental incompetency, or where for any other reason the court deems it expedient so to do, instead of making an order under subsection 1 of section 5, the court may direct an issue to try the alleged mental incompetency. Issue to try the alleged mental incompetency.

(2) Subject to section 7, the issue shall be tried with or without a jury as the court directing it or the judge presiding at the trial may order. Method of trial.

(3) The trial shall take place at such time and place as the court may direct. Time and place.

(4) On the trial of the issue the alleged mentally incompetent person, if within the jurisdiction of the court, shall be produced, and shall be examined at such time and in such manner, either in open court or privately, and, where the trial is with a jury, before the jury retire to consider their verdict, as the presiding judge may direct, unless the court by the order directing the issue or the judge presiding at the trial dispenses with the production of the mentally incompetent person or with his examination. Production of mentally incompetent person.

(5) On the trial of the issue the inquiry shall be confined to the question whether or not the person who is the subject of the inquiry is at the time of the inquiry a mentally incompetent person and incapable of managing himself or his affairs, and the presiding judge shall make an order in accordance with the result of the inquiry. Scope of inquiry.

(6) The practice and procedure as to the preparation, entry for trial and trial of the issue, and all the proceedings incidental Procedure.

thereto, shall be the same as in the case of any other issue directed by the court or a judge.

Appeal.

(7) The alleged mentally incompetent person and any person aggrieved or affected thereby shall have the like right to move against a verdict or to appeal from an order made upon or after the trial as may be exercised by a party to an action in the court including the right of appeal; and the court hearing any such motion or appeal shall have the same powers as upon a motion against a verdict or an appeal from a judgment entered at or after the trial of an action.

Finality.

(8) Subject to section 9, the order or judgment of the court or, where the issue is tried by a jury, the verdict of the jury shall be final unless set aside upon appeal or motion under subsection 7. R.S.O. 1937, c. 110, s. 6.

Trial by jury.

7. An alleged mentally incompetent person shall be entitled to demand, by notice in writing to be given to the person applying for the declaration of his mental incompetency and also to be filed in the office of the Registrar of the Supreme Court, Toronto, at least ten days before the first day of the sittings at which the issue is directed to be tried, that any issue directed to determine the question of his mental incompetency shall be tried with a jury, and, unless he withdraws the demand before the trial, or the court is satisfied by personal examination of the mentally incompetent person that he is not mentally competent to form and express a wish for a trial by jury and so declares by order, the issue shall be tried by a jury. R.S.O. 1937, c. 110, s. 7.

Examination of alleged mentally incompetent person.

8.—(1) For the purposes of the examination mentioned in section 7, or where it is deemed proper for any other purpose, the court may require the alleged mentally incompetent person to attend at such convenient time and place as the court may appoint.

Order for medical examination.

(2) The court may by order require an alleged mentally incompetent person to attend and submit to examination by one or more medical practitioners at such time and place as the order directs. R.S.O. 1937, c. 110, s. 8.

SUPERSEDING DECLARATION OF MENTAL INCOMPETENCY

Application to supersede declaration of mental incompetency.

9.—(1) Upon application at any time after the expiration of one year from the date of the order by which a person has been declared a mentally incompetent person, or sooner by leave of the court, the court, if satisfied that the person has become mentally competent and capable of managing his own affairs, may make an order so declaring.

(2) Any such order shall be subject to appeal as provided ^{Appeal.} by subsections 3 and 4 of section 5.

(3) Instead of making an order under subsection 1 the court ^{Directing issue as to recovery.} may direct an issue to try the question of the recovery of the person so formerly declared or adjudged a mentally incompetent person.

(4) Any issue so directed shall be subject to sections 6 and 7. ^{Application of ss. 6 and 7.}

(5) Where a person formerly declared a mentally incompetent person has been found to be mentally competent and capable of managing his own affairs and the time for appealing from or moving against the order or verdict has expired, ^{Order superseding declaration of mental incompetency.} or if an appeal be taken or a motion made, when the same has been finally dismissed, an order may be issued superseding, vacating, and setting aside the order declaring the mental incompetency of the person for all purposes except as to acts or things done in respect of the person or estate of the mentally incompetent person while the order was in force. R.S.O. 1937, c. 110, s. 9.

COMMITTEES OF ESTATES OF MENTALLY INCOMPETENT PERSONS

10. Where a committee of the estate of a mentally incompetent person has been appointed, ^{Duties,}

- (a) the committee shall, within six months after being appointed, file in the office of the master to whom the matter is referred, or of such officer as may be appointed for that purpose, a true inventory of the whole real and personal estate of the mentally incompetent person, stating the income and profits thereof, and setting forth the debts, credits, and effects of the mentally incompetent person, so far as they have come to the knowledge of the committee; ^{inventory of present property;}
- (b) if any property belonging to the estate is discovered after the filing of the inventory the committee shall file a true account of such property, from time to time, as it is discovered; ^{also, of after discovered property;}
- (c) every inventory and account shall be verified by the oath of the committee; ^{verification;}
- (d) the committee shall give security with two or more sureties in double the amount of the personal estate, and of the annual rents and profits of the real estate, for duly accounting for the same from time to time at such intervals as may be directed by the court, ^{security to be given by the committee;}

for filing the inventory and for the payment into court of the balances in his hands upon such accounting forthwith after it has been ascertained or otherwise as the court may direct; and

form of security.

- (e) the security shall be taken by bond in the name of the Accountant of the Supreme Court, and shall be filed in his office. R.S.O. 1937, c. 110, s. 10.

MANAGEMENT AND ADMINISTRATION

Powers of court as to maintenance of mentally incompetent person or his family.
Imp. Act, 53-54 Vict., c. 5, s. 116 (4).

11. The powers conferred by this Act as to the management and administration of a mentally incompetent person's estate shall be exercisable in the discretion of the court for the maintenance or benefit of the mentally incompetent person or of his family or where it appears to be expedient, in the due course of management of the property of the mentally incompetent person. R.S.O. 1937, c. 110, s. 11.

Rights of creditors.

Imp. Act, 53-54 Vict., c. 5, s. 116 (5).

12. Nothing in this Act shall subject a mentally incompetent person's property to claims of his creditors further than it is now subject thereto by due course of law. R.S.O. 1937, c. 110, s. 12.

Power to raise money for certain purposes.

13.—(1) The court may order that any property of the mentally incompetent person, whether present or future, be sold, charged, mortgaged, dealt with or disposed of as may be deemed most expedient for the purpose of raising or securing or repaying, with or without interest, money which is to be or has been applied to,

- (a) payment of the mentally incompetent person's debts or engagements;
- (b) discharge of any encumbrance on his property;
- (c) payment of any debt or expenditure incurred for the mentally incompetent person's maintenance or otherwise for his benefit;
- (d) payment of or provision for the expenses of his future maintenance.

Terms of charge or mortgage.

Imp. Act, 53-54 Vict., c. 5, s. 117.

(2) Where a charge or mortgage is made under this Act for the expenses of future maintenance, the court may direct the same to be payable either contingently if the interest charged is contingent or future, or upon the happening of the event if the interest is dependent on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as may be deemed expedient. R.S.O. 1937, c. 110, s. 13.

14.—(1) The court may order that the whole or any part of any moneys expended or to be expended under an order of the court for the permanent improvement, security, or advantage of the property of the mentally incompetent person, or of any part thereof, shall, with interest, be a charge upon the improved property or any other property of the mentally incompetent person, but so that no right of sale or foreclosure during the lifetime of the mentally incompetent person be conferred by the charge.

Charging mentally incompetent person's estate for permanent improvements.

Imp. Act, 53-54 Vict., c. 5, s. 118.

(2) The interest shall be kept down during the mentally incompetent person's lifetime out of the income of his general estate, as far as the same is sufficient to bear it.

Interest, how to be met.

(3) The charge may be made either to some person advancing the money or, if the money is paid out of the mentally incompetent person's general estate, to some person as trustee for him as part of his personal estate. R.S.O. 1937, c. 110, s. 14.

To whom charge to be made.

15. The court may, by order, authorize and direct the committee of the estate of a mentally incompetent person to do all or any of the following things:

Powers of committee under order of court.

- (a) sell any property belonging to the mentally incompetent person;
- (b) make exchange or partition of any property belonging to the mentally incompetent person, or in which he is interested, and give or receive any money for equality of exchange or partition;
- (c) carry on any trade or business of the mentally incompetent person;
- (d) grant leases of any property of the mentally incompetent person for building, agricultural, or other purposes;
- (e) grant leases of minerals forming part of the mentally incompetent person's property, whether the minerals have been worked or not, and either with or without the surface or other land;
- (f) surrender any lease and accept a new lease;
- (g) accept a surrender of any lease and grant a new lease;
- (h) execute any power of leasing vested in a mentally incompetent person having a limited estate only in the property over which the power extends;
- (i) perform any contract relating to the property of the mentally incompetent person entered into by him before his mental incompetency;

Imp. Act, 53-54 Vict., c. 5, s. 120.

- (j) surrender, assign, or otherwise dispose of with or without consideration any onerous property belonging to the mentally incompetent person;
- (k) exercise any power or give any consent required for the exercise of any power where the power is vested in the mentally incompetent person for his own benefit or the power of consent is in the nature of a beneficial interest in the mentally incompetent person;
- (l) give consent to the transfer or assignment of a lease where the consent of the mentally incompetent person to the transfer or assignment thereof is requisite. R.S.O. 1937, c. 110, s. 15.

Property exchanged and renewed lease to be to same uses as before.

Imp. Act, 53-54 Vict., c. 5, s. 121.

16. Any property taken in exchange and any renewed lease accepted on behalf of a mentally incompetent person under this Act shall be to the same uses and be subject to the same trusts, charges, encumbrances, dispositions, devices, and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to. R.S.O. 1937, c. 110, s. 16.

Extent of leasing power.

Imp. Act, 53-54 Vict., c. 5, s. 122.

17.—(1) The power to authorize leases of a mentally incompetent person's property under this Act shall extend to property of which the mentally incompetent person is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the mentally incompetent person and all persons entitled in remainder and reversion expectant upon the estate tail of the mentally incompetent person, including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the mentally incompetent person shall have the same rights and remedies against the lessee, his executors, administrators and assigns as the mentally incompetent person or his committee would have had.

Term.

(2) Leases authorized to be granted or accepted by or on behalf of a mentally incompetent person under this Act may be for such number of lives or such term of years, at such rent and royalties, and subject to such reservations, covenants, and conditions as the court approves.

Premiums, etc., on renewal.

(3) Premiums or other payments on the renewal of leases may be paid out of the mentally incompetent person's estate, or charged with interest on the leasehold property. R.S.O. 1937, c. 110, s. 17.

Nature of proceeds of sale and mortgage;

18.—(1) The mentally incompetent person, his heirs, executors, administrators, next of kin, devisees, legatees and assigns, shall have the same interest in any money arising from

any sale, mortgage or other disposition, under this Act, which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage or disposition, if no sale, mortgage or disposition had been made, and the surplus money shall be of the same nature as the property sold, mortgaged or disposed of.

(2) Money received for equality of partition and exchange, or under any lease of unopened mines, and all premiums and sums of money received upon the grant or renewal of a lease, where the property the subject of the partition, exchange or lease was land of the mentally incompetent person, shall, subject to the application thereof for any purposes authorized by this Act, as between the representatives of the real and personal estate of the mentally incompetent person, be considered as real estate, except in the case of premiums and sums of money received upon the grant or renewal of leases of property of which the mentally incompetent person was tenant for life, in which case the premiums and sums of money shall be personal estate of the mentally incompetent person.

and of money received from certain other sources.

(3) In order to give effect to this section the court may direct any money to be carried to a separate account, and may order such assurances and things to be executed and done as may be deemed expedient. R.S.O. 1937, c. 110, s. 18.

Powers of court.

53-54 Vict., c. 5, s. 123.

19. The committee of the estate, or such person as the court approves, shall, in the name and on behalf of the mentally incompetent person, execute and do all such assurances and things for giving effect to any order under this Act as the court directs, and every such assurance and thing shall be valid and effectual and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject. R.S.O. 1937, c. 110, s. 19.

Power to carry orders into effect.

Imp. Act, 53-54 Vict., c. 5, s. 124.

20. Where a power is vested in a mentally incompetent person in the character of trustee or guardian, or the consent of a mentally incompetent person to the exercise of a power is necessary in the like character, or as a check upon the undue exercise of the power, and it appears to the court to be expedient that the power should be exercised or the consent given, the committee of the estate, in the name and on behalf of the mentally incompetent person, under an order of the court made upon the application of any person interested, may exercise the power or give the consent in such manner as the order directs. R.S.O. 1937, c. 110, s. 20.

Powers vested in mentally incompetent person as trustee or guardian.

Imp. Act, 53-54 Vict., c. 5, s. 128.

21. Where the court exercises, in the name and on behalf of the mentally incompetent person, a power of appointing

Appointment of trustees by court.

Imp Act,
53-54 Vict.,
c. 5, s. 129.
Rev. Stat.,
c. 400.

new trustees vested in the mentally incompetent person, the court, where it seems to be for the mentally incompetent person's benefit and also expedient, may make any order respecting the property subject to the trust which might have been made in the same case under *The Trustee Act*, on the appointment thereunder of a new trustee or new trustees. R.S.O. 1937, c. 110, s. 21.

Provision for
maintenance
when dis-
ability is
temporary.

22.—(1) Where it appears to the court that there is reason to believe that the mental incompetency of any mentally incompetent person so found is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision be made for the maintenance of the mentally incompetent person, or of the mentally incompetent person and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income or of ready money belonging to the mentally incompetent person, and standing to his account with a banker or agent, or being in the hands of any person for his use, is readily available, and may be safely and properly applied in that behalf, the court may allow thereout such amount as may be deemed proper for the temporary maintenance of the mentally incompetent person or of the mentally incompetent person and the members of his immediate family who are dependent upon him for maintenance, and may, instead of proceeding to order a grant of the custody of the estate, order or give liberty for the payment of any such sum of money, or any part thereof, to such person as under the circumstances of the case it may be thought proper to entrust with the application thereof, and may direct it to be paid to such person accordingly, and when received to be applied and it shall accordingly be applied in or towards such temporary maintenance.

Effect of
receipt.

(2) The receipt in writing of the person to whom payment is to be made for any money payable to him by virtue of an order under this section shall be a good discharge, and every person is hereby directed to act upon and obey every such order.

Liability to
account.

Imp. Act,
53-54 Vict.,
c. 5, s. 127.

(3) The person receiving any money by virtue of an order under this section shall pass an account thereof when and as the court may direct. R.S.O. 1937, c. 110, s. 22.

VESTING ORDERS

Power to
transfer
stock.

23. Where any stock is standing in the name of or is vested in a mentally incompetent person beneficially entitled thereto, or is standing in the name of or vested in the committee of the estate of a mentally incompetent person so

found in trust for the mentally incompetent person or as part of his property, and the committee dies intestate, or himself becomes a mentally incompetent person, or is out of Ontario, or it is uncertain whether the committee is living or dead, or he neglects or refuses to transfer the stock, or to receive or pay over the dividends thereof as directed by an order of the court, then the court may order some fit person to transfer the stock to or into the name of a new committee, or of the Accountant of the Supreme Court, or otherwise, and also to receive and pay over the dividends in such manner as the court directs. R.S.O. 1937, c. 110, s. 23.

Imp. Act,
53-54 Vict.,
c. 5, s. 133.

24. Where any stock is standing in the name of or vested in a person residing out of Ontario, the court upon proof that he has been declared a mentally incompetent person and that his personal estate has been vested in a person appointed for the management thereof according to the law of the place where he is residing, may order some fit person to make such transfer of the stock or any part thereof to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends thereof as the court directs. R.S.O. 1937, c. 110, s. 24.

Stock in
name of
mentally
incompetent
person out of
jurisdiction.

Imp. Act,
53-54 Vict.,
c. 5, s. 134.

25.—(1) Where a mentally incompetent person is solely or jointly seised or possessed of any land upon trust or by way of mortgage, the court may by order vest the land in such person or persons for such estate and in such manner as the court directs.

Power to
vest land of
mentally in-
competent
trustee or
mortgagee.

(2) Where a mentally incompetent person is solely or jointly entitled to a contingent right in any land upon trust or by way of mortgage the court may by order release the land from the contingent right and dispose of it to such person as the court directs.

Or a contin-
gent right.

(3) An order made under subsection 1 or 2 shall have the same effect as if the trustee or mortgagee had been sane and had executed a deed conveying the land for the estate named in the order, or releasing or disposing of the contingent right.

Effect of
order.

(4) Where an order may be made under this section the court may, if it is more convenient, appoint a person to convey the land or release the contingent interest, and a conveyance or release by such person in conformity with the order shall have the same effect as an order under subsections 1 and 2. R.S.O. 1937, c. 110, s. 25.

Conveyance.

Imp. Act,
53-54 Vict.,
c. 5, s. 135.

26.—(1) Where a mentally incompetent person is solely entitled to any stock or chose in action upon trust or by way of mortgage, the court may by order vest in any person the

Mentally
incompetent
trustee or
mortgagee
of chose in
action.

right to transfer or to call for a transfer of the stock or to receive the dividends thereof, or vest in any person the chose in action, or any interest in respect thereof.

Jointly interested.

(2) Where any person is jointly entitled with a mentally incompetent person to any stock or chose in action upon trust or by way of mortgage the court may make an order vesting the right to transfer or to call for a transfer of the stock or to receive the dividends thereof or vesting the chose in action or any interest in respect thereof either in such person alone or jointly with any other person.

Mentally incompetent personal representative.

(3) Where any stock is standing in the name of a deceased person whose personal representative is a mentally incompetent person or where a chose in action is vested in a mentally incompetent person as the personal representative of a deceased person, the court may make an order vesting the right to transfer or to call for a transfer of the stock or to receive the dividends thereof or vesting the chose in action or any interest in respect thereof in any person whom the court may appoint.

Transfer. Imp. Act, 53-54 Vict., c. 5, s. 136.

(4) Where an order may be made under this section the court may, if it is more convenient, appoint some fit person to make or join in making the transfer. R.S.O. 1937, c. 110, s. 26.

Execution of powers of attorney and transfers.

27.—(1) The person in whom the right to transfer or to call for a transfer of any stock is vested may execute and do all powers of attorney, assurances and things to complete the transfer, according to the order, and the transfer shall be valid and effectual to all intents and purposes, and banks and other companies and their officers and all other persons shall be bound to obey every such order according to its terms.

Bank or company to be bound by order. Imp. Act, 53-54 Vict., c. 5, s. 136.

(2) After notice in writing of an order under this Act it shall not be lawful for a bank or other company to transfer stock to which the order relates or pay any dividends except in accordance with the order. R.S.O. 1937, c. 110, s. 27.

Order to be complete discharge.

28. This Act and every order purporting to be made under this Act shall be a full indemnity and discharge to any bank and other company and society and their respective officers and servants, and all other persons for all acts and things done or permitted to be done pursuant thereto so far as relates to any property in which a mentally incompetent person is interested either in his own right or as trustee or mortgagee, and it shall not be necessary to inquire into the propriety of any order purporting to be made under this Act relating to any such property or the jurisdiction to make such order. R.S.O. 1937, c. 110, s. 28.

Imp. Act, 53-54 Vict., c. 5, s. 333.

29. The fact that an order made under this Act for conveying or vesting land or releasing or disposing of a contingent right has been founded on an allegation of the mental incompetency of a trustee or mortgagee, shall be conclusive evidence of the fact alleged in any court upon any question as to the validity of the order; but this section shall not prevent the court from directing a reconveyance of any land or contingent right dealt with by the order, or from directing any party to any proceeding concerning such land or right to pay any costs occasioned by the order, where the order appears to have been improperly obtained. R.S.O. 1937, c. 110, s. 29.

Order to be conclusive evidence of mental incompetency.

Imp. Act, 53-54 Vict., c. 5, s. 140.

30. The powers conferred by this Act as to vesting orders may be exercised by vesting any land, stock or chose in action in the trustee or trustees of any charitable society or in any incorporated charitable body over which the court would have jurisdiction upon action duly instituted, whether the appointment of such trustee or trustees was made by instrument under a power or by the court under its general or statutory jurisdiction. R.S.O. 1937, c. 110, s. 30.

Order vesting in trustees of charities.

Imp. Act, 53-54 Vict., c. 5, s. 138.

31. The court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under this Act is to be exercised. R.S.O. 1937, c. 110, s. 31.

Declarations and directions by court.

Imp. Act, 53-54 Vict., c. 5, s. 139.

32. Where the court has jurisdiction to order a conveyance or transfer of land or stock or to make a vesting order, an order may also be made appointing a new trustee or trustees. R.S.O. 1937, c. 110, s. 32.

Appointment of new trustee.

Imp. Act, 53-54 Vict., c. 5, s. 141.

MISCELLANEOUS

33. Where there is money in any court to the credit of a person who has been found or who is alleged to be a mentally incompetent person and the person is resident in Great Britain or Ireland or in any part of Canada other than Ontario, upon production of an order made by a Superior Court exercising jurisdiction where the person is resident authorizing any person to receive such money, the court may make an order for payment of such money to the person designated in the order to receive the same. R.S.O. 1937, c. 110, s. 33.

Money in court belonging to mentally incompetent person in any other part of Canada, or Great Britain, or Ireland.

34. The court may order the costs, charges, and expenses of and incidental to orders, issues, directions, conveyances, transfers, and all proceedings of whatever nature under this Act to be paid by any party to the application, issue or proceeding, or out of the estate of the mentally incompetent person or alleged mentally incompetent person, or partly in one way and partly in another. R.S.O. 1937, c. 110, s. 34.

Costs.

Rules.

35. Subject to the approval of the Lieutenant-Governor in Council, the Rules Committee may make rules for carrying this Act into effect and for regulating the costs in relation thereto, and except where inconsistent with this Act or such rules, *The Judicature Act* and rules made thereunder shall apply to proceedings under this Act. R.S.O. 1937, c. 110, s. 35 (1); 1941, c. 55, s. 20.

Rev. Stat.,
c. 190.

APPLICATION OF ACT TO PERSONS NOT MENTALLY INCOMPETENT,
BUT INCAPACITATED BY MENTAL INFIRMITY

Extension of
Act.

36.—(1) The powers and provisions of this Act relating to management and administration shall apply to every person not declared to be mentally incompetent with regard to whom it is proved, to the satisfaction of the court, that he is, through mental infirmity, arising from disease, age, or other cause, or by reason of habitual drunkenness or the use of drugs, incapable of managing his affairs.

Application
of section.

(2) This section shall apply although the person is not a mentally incompetent person.

Powers of
committee,
how
exercised
and by
whom.

(3) Such of the powers of this Act as are made exercisable by the committee of the estate under order of the court shall be exercised in the cases provided for by subsection 1 by such person, in such manner, and with or without security, as the court may direct, and any such order may confer upon the person therein named authority to do any specified act or exercise any specified power, or may confer a general authority to exercise on behalf of the person to whom the order relates until further order, all or any such powers without further application to the court.

Liability of
person
appointed.
Imp. Act,
53-54 Vict.,
c. 5,
s. 116 (1)
(d), (2),
54-55 Vict.,
c. 65,
s. 27 (4).

(4) Every person appointed to do any such act or exercise any such power shall be subject to the jurisdiction and authority of the court as if such person were the committee of the estate of a mentally incompetent person so declared.

Application
of s. 11.

(5) Section 11 shall apply to the cases provided for by subsection 1, and the person in respect of whom the order is made, and any person aggrieved or affected by the order shall have the like right to appeal therefrom as is provided for by section 5. R.S.O. 1937, c. 110, s. 36 (1-5).

Proceedings
on applica-
tion to
discharge
order.

(6) Upon application at any time after the expiration of one year from the date of the order by which a person has been declared incapable of managing his affairs under subsection 1, or sooner by leave of the court, the like proceedings may be taken and the like order made as provided in section 9 in the case of a person who has been declared a mentally incompetent person. 1946, c. 53, s. 2.