

An Act for defining the powers of the Trustees or Trustee for the time being of the Settlement made on the Marriage of the Honorable Edward Deas Thomson with Anne Maria his wife and for giving better effect to Sales and Exchanges made and to be made pursuant thereto and for other purposes. [24th September, 1849.]

Preamble.

WHEREAS by an indenture bearing date on or about the seventeenth day of September one thousand eight hundred and thirty-three made between Richard Bourke a Major-General in the British Army and Governor-in-Chief of the territory of New South Wales of the first part Edward Deas Thomson Esquire of the second part Anne Maria Bourke daughter of the said Richard Bourke of the third

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third part and the Honorable William Westbrooke Burton one of the Judges of the Supreme Court of New South Wales and George Macleay Esquire of the fourth part (being a settlement made in contemplation of a marriage then intended and afterwards had and solemnized between the said Edward Deas Thomson and Anne Maria Bourke) certain lands and hereditaments were conveyed and assured unto the said William Westbrooke Burton and George Macleay and their heirs to the uses upon the trusts and for the intents and purposes thereby declared And whereas by the said indenture certain powers of sale and exchange and other powers and authorities are conferred upon the said William Westbrooke Burton and George Macleay and the survivor of them and the heirs of the survivor And whereas by the same indenture it is provided that in case the said William Westbrooke Burton and George Macleay or any future Trustee should die or be desirous of being discharged from the trusts thereby created or should neglect or refuse to act in the said trusts at any time before they should be fully performed it should be lawful for the said Edward Deas Thomson and Anne Maria Bourke and for the survivor of them and the heirs and executors of such survivor with the consent of the surviving or continuing Trustee to nominate or appoint any other person to be a Trustee or Trustees in the place and stead of them the said William Westbrooke Burton and George Macleay or either of them or such future Trustee or Trustees as should happen to die or be desirous of being discharged from or neglect or refuse to act in the trusts aforesaid and upon such nomination or appointment that the Trustees or Trustee for the time being or the heirs or executors of the surviving Trustee should release convey surrender transfer and assure all and singular the said trust estate in such manner as that the same might be vested in the surviving or continuing Trustee or Trustees and the person or persons who should be appointed to be a new Trustee or Trustees upon the same trusts and for the same purposes as are in the said settlement mentioned and declared of and concerning the same or to for and upon such of the uses trusts intents and purposes as according to the event and existence of persons should be then subsisting or capable of taking effect which person or persons so to be appointed a Trustee or Trustees as aforesaid it was thereby declared should and might from thenceforth act in the management and execution of the aforesaid trusts or such of them as should be then subsisting or capable of taking effect as fully and effectually in all respects and with the like indemnification as he or they might have done in case he or they had been originally appointed a Trustee or Trustees for the purposes aforesaid And whereas in exercise of the said power of appointing new Trustees in the stead of retiring Trustees divers appointments have from time to time been made and by virtue of the last of such appointments George Kenyon Holden of the city of Sydney aforesaid solicitor and William Macpherson of Sydney aforesaid Clerk of the Legislative Council are now the Trustees of the said indenture And whereas doubts have arisen whether the language of the said indenture with respect to the powers of sale and exchange and other the powers and authorities thereby granted to and exercisable by the said William Westbrooke Burton and George Macleay and the survivor of them and the heirs of the survivor is according to strict and legal construction sufficient to include the said George Kenyon Holden and William Macpherson and the Trustees or Trustee for the time being of the said settlement so as that the said powers may be exercised by the said George Kenyon Holden and William Macpherson or by the said Trustees or Trustee And whereas the power to the Trustees or Trustee of giving final receipts and discharges to purchasers and others as usual in settlements of the like nature

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nature is not sufficiently expressed in the said settlement. And whereas the intentions of the parties to the said indenture and the advantages to accrue from the said settlement to the parties beneficially interested therein will be defeated or greatly diminished unless the doubts subsisting as to the powers of the Trustees or Trustee for the time being

All powers conferred by original indenture dated 17th September 1833 on the first Trustees His Honor W. W. Burton and G. Macleay Esquire to be deemed to have been conferred upon the present and future Trustees.

of the said indenture in the matters aforesaid be removed. Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That the powers of sale and exchange and all other the powers and authorities conferred by the said indenture upon the said William Westbrooke Burton and George Macleay the original Trustees of the said indenture shall be held and construed to be and to have been conferred upon and transferred or transferable to the said George Kenyon Holden and William Macpherson and other the Trustees or Trustee past or future of the said indenture and shall and may be and be considered to have been exercised in like manner as if the words "or the Trustees or Trustee for the time being" had been inserted throughout the said indenture after the names of the said William Westbrooke Burton and George Macleay instead of or in addition to the words "or the survivor of them or the heirs of the survivor" and as if in and by the said recited provision for the appointment of new Trustees the right to exercise the said powers and authorities had been in express terms declared to be transferred together with the right of acting in the trusts of the said indenture and that every or any receipt in writing given by the said William Westbrooke Burton and George Macleay or either of them or by the said George Kenyon Holden and William Macpherson or either of them or given or which shall be given by any other the Trustees or Trustee for the time being of the said indenture while acting in the trusts thereof to any purchaser or other person who shall have paid or shall pay any moneys to the said William Westbrooke Burton and George Macleay or the said George Kenyon Holden and William Macpherson or other the said Trustees or Trustee for the time being (past or future) of the said settlement shall operate as an effectual discharge for the moneys therein expressed to be received and to release the person paying the same from all responsibility as to the application or non-application thereof.

2. And whereas divers parts of the land comprised in the said settlement are so situated as to be convertible to profitable account by the sale thereof in allotments for building upon divers terms as to credit for purchase money interest and security for the same and upon other conditions requiring an extension of the powers of Trustees to confirm and give legal effect to such sales. And whereas it is considered that the proceeds of such sales or the other trust moneys from time to time in the hands of the Trustees or Trustee for the time being of the said settlement or a portion thereof may from time to time be advantageously expended or invested in buildings or other improvements on other parts of the trust property or upon real or Government security in Great Britain or Ireland or in securities of the Government of New South Wales or some other Colony or Colonies of Great Britain and the advantages to be derived from the improved and marketable value of the trust property will be greatly impaired unless the powers of the Trustees or Trustee for the time being of the said settlement be defined and extended for the purposes aforesaid

and otherwise as hereinafter mentioned and enacted. Be it therefore enacted That as to any land and hereditaments part or parcel of the trust property to the sale of which the consent in writing of the said Edward Deas Thomson and Anne Maria Deas Thomson has been given or of them or the survivor of them shall at any future time be given also

Trustees to be deemed to have had and to have power to sell trust lands with consent of Honorable Edward Deas Thomson and Mrs. Thomson.

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also in writing as aforesaid the Trustees or Trustee for the time being shall be deemed to have had and shall have sufficient authority to sell such lands and hereditaments either by public sale or private contract and either in one or more parcels or allotments to any purchaser or purchasers to whom and for any price or prices for which the same shall have been or shall be sold by such Trustees or Trustee without proof of such consent as aforesaid in regard to the individual purchaser or purchasers price or prices or other incidents of the sale of such parcels or allotments respectively.

3. And be it enacted That it shall be lawful for the Trustees or Trustee for the time being of the said settlement to allow to any purchaser or purchasers of the said land or any part or parts thereof credit for any number of years not exceeding ten years for payment of his or her purchase money or any part thereof upon such terms as to interest or otherwise as may by the Trustees or Trustee for the time being of the said settlement be deemed proper Provided that the land shall remain unconveyed or be otherwise rendered a security for the unpaid purchase money together with interest thereon until the same shall have been paid and further that either as a part of the contract of purchase or otherwise it shall be lawful for the Trustees or Trustee for the time being of the said settlement to lay out and invest any part of the proceeds of the sale of the said land or any other land originally comprised in the said trusts or any part of the said trust moneys upon mortgage of the same or of any other part of the said land to be taken from any purchaser or purchasers thereof or his her or their heirs or assigns.

4. And be it enacted That it shall be lawful for the Trustees or Trustee for the time being of the said settlement with the consent of the said Edward Deas Thomson and Anne Maria Deas Thomson or the survivor of them and after the decease of the survivor at the discretion of the Trustees or Trustee for the time being of the said settlement to invest the moneys arising from the said sale or sales and all other the moneys belonging to the trusts of the said settlement either at interest upon real securities or upon securities of the Government of Great Britain or of the Government of New South Wales or of any other Colony or Colonies of Great Britain or in erecting buildings or making improvements or repairs in and upon unsold portions of the trust estate for the time being or upon purchase of other lands and hereditaments in New South Wales or Great Britain or Ireland as the Trustees or Trustee for the time being of the said settlement shall with such consent or at such discretion as aforesaid think fit and that either or any of the modes of investment aforesaid shall be deemed and construed to be equally in accordance with the intent and meaning of the trusts of the said settlement.

5. And be it enacted That if in the conveyance or conveyances to any purchaser or purchasers by the Trustees or Trustee for the time being of the said settlement of any part of the land mentioned and comprised in the said settlement the Trustees or Trustee for the time being of the said settlement shall grant any right of way in over or through any streets roads or ways delineated in a plan contained in or mentioned or referred to in such conveyance or conveyances such purchaser or purchasers shall have and possess the same right of way in over and through such streets roads or ways (provided such right of way shall be over or through some part of the land mentioned and comprised in the said settlement and not otherwise sold or disposed of) in such manner as such purchaser or purchasers could or might have had if the trustees or trustee for the time being of the said settlement were themselves the absolute owners of the soil of the said streets roads or ways in their own right and had granted the said right of way in

Trustees may grant a limited credit to purchasers of land retaining sufficient security on the land and may invest trust moneys upon mortgage of said lands or portions thereof.

Trustees may with consent of Honorable Edward Deas Thomson and Mrs. Thomson invest moneys in Government securities.

Trustees may grant right of way in over and through streets delineated on plan.

Sydney Railway Company.

in and over such streets roads or ways and that none of the trusts or uses of the said settlement shall thereafter prevail against any such right of way as aforesaid.

This Act to apply to
conveyances &c.
already executed by
former or present
Trustees.

6. And be it enacted That all conveyances receipts or other acts and deeds of the present or any former Trustee or Trustees of the said settlement already executed given or done in relation to the trusts of the said settlement shall have as full force and effect as if the same had been executed given or done after the passing of this Act.

This Act to be
deemed a public Act.

7. And be it enacted That this Act shall be deemed to be a public Act and shall be judicially taken notice of as such in all cases without being specially pleaded.
