

HOSKING'S TRUSTEES. **An Act to authorize the Sale and Exchange of  
Property held in trust for Mrs. Martha Fox-  
lowe Hosking and her Issue. [9th May,  
1861.]**

Preamble.

**W**HEREAS by an indenture bearing date the twenty-sixth day of May in the year one thousand eight hundred and forty-five and made between Rosetta Terry of the city of Sydney in the Colony of New South Wales widow now deceased of the first part John Hosking of the same place Esquire and Martha Foxlowe his wife of the second part and Francis Clarke and Henry Terry Sheldon both of the city of Sydney aforesaid Esquires of the third part After reciting that the said Rosetta Terry was seized in her demesne as of fee of and in the lands hereditaments and premises thereafter particularly described And further reciting that the said Rosetta Terry was desirous of settling the said hereditaments upon her daughter the said Martha Foxlowe Hosking and the children of the said Martha Foxlowe Hosking in manner thereafter mentioned in consideration of the natural love and affection which the said Rosetta Terry bore towards the said Martha Foxlowe Hosking the said Rosetta Terry did grant bargain sell alien release and confirm unto the said Francis Clarke and Henry Terry Sheldon and their heirs certain pieces or parcels of land in the Colony of New South Wales viz.—one thousand one hundred and five acres eight hundred and eight acres six hundred and forty acres one thousand three hundred acres six hundred and forty acres six hundred and forty acres six hundred and forty acres and one thousand acres of land in the county of Murray in the said Colony two roods two roods and two roods of land in the town of Queanbeyan in the said county respectively eighty acres and one hundred acres of land in the county of Cumberland respectively six hundred and forty acres and eight hundred acres of land in the county of Murray and fifty acres in the district of Evan in the said Colony All which several pieces or parcels of land with the abutments and boundaries thereof were in such indenture particularly mentioned and described upon trust to receive the

*Hosking's Trustees.*

the rents and profits thereof during the life of the said Martha Foxlowe Hosking and to pay the same unto such person or persons as she the said Martha Foxlowe Hosking should from time to time appoint And in default of appointment into her own hands for her own separate use free from the debts control or engagements of her then present or any future husband and after the decease of the said Martha Foxlowe Hosking upon trust to stand possessed of the said hereditaments and premises for the first son of the body of the said Martha Foxlowe Hosking to be begotten and for the heirs male of the body of such first son and for default of such issue then upon trust for the second third fourth and all and every other son and sons of the body of the said Martha Foxlowe Hosking to be begotten severally successively and in remainder one after another according as they should be in seniority of age and priority of birth and for the several and respective heirs male of the body and bodies of all and every such son and sons the elder of such sons and the heirs male of his body always to be preferred and to take before the younger of such sons and the heirs male of his and their body and bodies and in default of such issue upon trust for all and every the daughters of the said Martha Foxlowe Hosking begotten and to be begotten as tenants in common if more than one and the heirs of their respective bodies issuing and if any one or more of such daughter or daughters should depart this life and there should be a failure of issue of her or their body or respective bodies then as to for and concerning as well the original share or shares of such child or children who should so die and whose issue should so fail as to the share or shares which should survive or accrue to any such daughter or daughters or to their or any of their issue by the decease and failure of issue of any other or others of the said daughter or daughters upon trust for the survivors or survivor or others or other of the said daughter or daughters to be divided between or among them (if more than one) in equal shares as tenants in common and the heirs of their respective bodies issuing and if all such daughters (save one) shall die without issue or if there should be but one such daughter then upon trust for such one or only daughter and the heirs of her body issuing and in default of such issue then upon trust for the heirs and assigns of the said Martha Foxlowe Hosking And it was thereby agreed and declared that the said Trustees or Trustee for the time being should after the decease of the said Martha Foxlowe Hosking and during the minority of any child of the said Martha Foxlowe Hosking pay and apply the rents issues and profits of the said hereditaments and premises or of his or her share therein unto and for his or her maintenance education and benefit and should suffer the residue (if any) of the rents issues and profits of the said hereditaments or share to accumulate in the way of compound interest for the benefit of the person or persons who should become ultimately entitled to the said hereditaments or share from which the same should have proceeded And whereas the said Henry Terry Sheldon one of the Trustees of the said indenture of settlement departed this life and the said Martha Foxlowe Hosking by virtue and in exercise of the power reserved to her by such indenture of settlement did by indenture bearing date the sixth day of January one thousand eight hundred and forty-eight and made between the said Martha Foxlowe Hosking of the first part the said Francis Clarke of the second part and Francis Mitchell of Sydney aforesaid merchant of the third part appoint the said Francis Mitchell to be a Trustee of such indenture in the place and stead of the said Henry Terry Sheldon deceased and by such indenture all and singular the said trust premises were conveyed unto the said Francis Mitchell and Francis Clarke their heirs

*Hosking's Trustees.*

heirs and assigns as joint tenants and as Trustees of the said indenture of settlement And whereas the said indenture of settlement contains no power enabling the Trustees thereof for the time being to sell the said several pieces or parcels of land or any part or parts thereof and for investing the proceeds of any sale or sales thereof in the purchase of any other lands or hereditaments And whereas the said John Hosking and Martha Foxlowe his wife are both still living and there is issue of their marriage two children only that is to say two daughters both of whom are infants under the age of twenty-one years And whereas the lands comprised in the said indenture of settlement have been for many years past rendered available as a farming and grazing establishment under the management of John Hosking the husband of the said Martha Foxlowe Hosking conjointly with adjacent lands belonging to the said John Hosking and which have hitherto formed together therewith one consolidated property under the designation of the Foxlowe Estate And whereas the said lands comprised in the said settlement and those belonging to the said John Hosking are so connected as to be of much greater value as a whole than in distinct portions and are also greatly dependent on personal management for yielding a profitable return And whereas the said John Hosking being about to relinquish the active management of the said property has determined to sell his own portion thereof And whereas a separate sale of his portion thereof would greatly deteriorate the value of the settled portion and would render the continuance thereof as an investment of trust property far less advantageous than could be obtained through the exercise of the powers of sale and exchange usual in settlements of real estate And whereas the said Martha Foxlowe Hosking is entitled for her separate use and subject to her own absolute control and appointment to other property of much greater pecuniary value than the property comprised in the said recited settlement and is willing to substitute the same by way of exchange for the lands comprised in the said settlement in order that the last-mentioned lands may be more advantageously disposed of in connection with the said land of the said John Hosking adjacent thereto And whereas there is good reason to believe that the vesting in the said Trustees of power to effect such sale substitution or exchange will be greatly for the advantage of all parties interested in the trusts of the said indenture of settlement and it is therefore expedient that the same be sanctioned by legislative authority Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows—

Trustees of Mrs.  
Hosking's settlement  
authorized to sell or  
exchange.

1. It shall be lawful for the said Francis Mitchell and Francis Clarke or the survivor of them or other the Trustees or Trustee for the time being of the said indenture with the consent in writing of the said Martha Foxlowe Hosking during her life and after her decease and during the minority of any person or persons by the said indenture of settlement made tenant in tail of the hereditaments thereby granted and released at the discretion of the Trustee or Trustees for the time being of the said indenture to dispose of and convey either by way of absolute sale or in exchange for other lands the whole or any part or parts of the said hereditaments either by public auction or private contract and either in one lot or in several lots and subject or not at their or his absolute discretion to any special conditions or stipulations as to title evidence of title expense compensation indemnity arbitration postponement of payment of and security for purchase money or otherwise with power for them or him to buy in the said hereditament at any auction or auctions or to rescind abandon

or

*Hosking's Trustees.*

or vary any contract for sale or exchange and to resell any hereditaments bought in or as to which any contract shall be rescinded or abandoned without being answerable for any loss to be occasioned thereby and to convey and transfer the same to the purchaser or respective purchasers thereof or person or respective persons taking the same in exchange freed and discharged from the trusts created and declared by the said indenture and the receipt or receipts in writing of the said Francis Mitchell and Francis Clarke and the survivor of them or other the Trustees or Trustee for the time being of the said indenture shall absolutely discharge the purchaser or purchasers of the said hereditaments or any part or parts thereof for the purchase money payable by him or them respectively and shall exonerate him or them from seeing to the application of the said purchase money or moneys and from all liability as to the misapplication or nonapplication thereof.

2. It shall be lawful for the said Francis Mitchell and Francis Clarke or the survivor of them or other the Trustees or Trustee for the time being of the said indenture with such consent as aforesaid to invest the moneys to arise from such sale or sales in the purchase of any freehold messuages lands tenements or hereditaments in the said Colony and to cause the same when so purchased to be conveyed and assured unto and to the use of the said Francis Mitchell and Francis Clarke or the survivor of them or other the Trustees or Trustee for the time being of the said indenture their heirs and assigns to be held by them or him upon trust at any time or times with such consent as aforesaid to sell and absolutely dispose of the whole or any part or parts of the said hereditaments in the manner and with the several powers and authorities hereinbefore provided.

Investment of  
proceeds of sale.

3. In case any of the lands and hereditaments to be purchased or taken in exchange as aforesaid shall be purchased or taken in exchange from the said Martha Foxlowe Hosking being parts of her separate estate as aforesaid the sufficiency of the value of the property shall be referred to the Master in Equity for the time being of the Supreme Court of New South Wales whose determination in this behalf certified under his hand shall be a sufficient authority to the said Trustees or Trustee to effect a sale or exchange in conformity therewith.

Master in Equity to  
certify value of  
property purchased  
&c. from separate  
estate of Mrs.  
Hosking.

4. The said Francis Mitchell and Francis Clarke or the survivor of them or other the Trustees or Trustee for the time being of the said indenture shall hold the said hereditaments so to be purchased or taken in exchange and the rents issues and profits thereof in the mean time until the sale thereof and the money to arise from such sales upon and subject to such of the several trusts provisos and directions of the said indenture of settlement as shall be then subsisting or capable of taking effect.

Trusts of lands  
purchased or  
exchanged.

5. In citing this Act in any instrument document or other proceeding it shall be sufficient to use the expression "Hosking's Trust Act."

Title of Act.