

An Act to confer powers to sell and grant Building Leases upon the Trustees of the Marriage Settlement of William Henry Mackenzie and Helen his wife. [9th May, 1861.]

Preamble reciting
settlement.

WHEREAS by an indenture bearing date the thirty-first day of March one thousand eight hundred and thirty-two and made between William Henry Mackenzie then and therein described as of Sydney in the Colony of New South Wales (but now of Melbourne in the Colony of Victoria) Esquire of the first part Helen Hawkins then of Bathurst in the said Colony spinster now the wife of the said William Henry Mackenzie of the second part and John Piper Mackenzie then and therein described as of Bathurst aforesaid (but now of Sydney aforesaid) Esquire and George Cox then and now of Mulgoa in the

Mackenzie's Trustees.

the said Colony Esquire of the third part a certain parcel of land containing one acre one rood and twenty-one perches situate on the Surry Hills in Sydney aforesaid therein particularly described was in consideration of the marriage then intended between the said William Henry Mackenzie and his said wife conveyed to the said John Piper Mackenzie and George Cox and their heirs to the use (after the said marriage) of the said William Henry Mackenzie and his assigns for his life and thereafter (with a provision for supporting contingent remainder) for the use of the child or children of the said marriage his her and their heirs and assigns and if more than one in such shares and proportion and in such manner as the said William Henry Mackenzie and Helen his wife or in default of joint appointment as the survivor should as therein mentioned appoint and in default of any appointment to the use of such child or children and his her or their respective heirs and assigns equally between them if more than one as tenants in common with benefit of survivorship in case of the death of any or either of them under the age of twenty-one years and with the ultimate remainder to the use of the said William Henry Mackenzie his heirs and assigns for ever And whereas the buildings hitherto erected on the land occupy a small portion thereof only and are old and dilapidated and yield only a small rental which is greatly reduced as income by the cost of necessary repairs And whereas the whole of the said land is of considerable value as a site for building and it would be greatly for the advantage of all parties beneficially interested under the said settlement that the Trustees thereof when and as convenient opportunity shall offer and with such consent as hereinafter provided should be empowered to realize such value either in purchase money or ground rents by the exercise of sufficient power of sale and of granting building leases And whereas the said power having been omitted in the said settlement the same cannot be supplied without the authority of Parliament 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—

1. It shall be lawful for the said John Piper Mackenzie and George Cox 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 William Henry Mackenzie and Helen his wife or of the survivor of them after the decease of either of them and after the decease of the survivor at the sole discretion of such Trustees or Trustee to lease either the whole or any part of the land and hereditaments comprised in the said indenture to any person or persons who shall covenant to improve the same by erecting and building thereon any new house or houses building or buildings or by repairing or re-building any of the houses or buildings which are now or shall hereafter be standing thereon or by otherwise expending in improvements such moneys as shall be deemed adequate to the interest to be parted with for any term of years not exceeding ninety-nine years to take effect in possession and not in reversion or by way of future interest so as there be reserved in every such lease the best or most improved yearly rent that can be reasonably obtained to be incident to the immediate reversion without any fine foregift or other payment of like nature for the making thereof and so that there be contained in every such lease a condition of entry by the lessor for non-payment of rent or non-observance or non-performance of covenants by the lessee within a reasonable time to be therein specified and so that the lessee do execute a counterpart and do thereby covenant for payment of the rent thereby reserved and be not by any express words therein made dispenishable for waste.

Trustees authorized
to grant leases.

Mackenzie's Trustees.

Trustees authorized
to sell.

2. It shall also be lawful for the said John Piper Mackenzie an George Cox or the survivor of them or other the Trustees or Trustee for the time being as aforesaid and with the like consent and at the like discretion as provided for the exercise of the power of leasing hereinbefore conferred absolutely to sell and dispose of all or any part of the land and hereditaments comprised in the said indenture to any person or persons whomsoever for such prices as the said Trustees or Trustee shall deem reasonable either by public auction or private contract and subject to any conditions of sale which shall be considered expedient including a power of allowance in such conditions of credit for the purchase money or any part thereof on security of the purchased land and with power to buy in the same at any sale or rescind or alter any contract in regard thereto without being answerable for any loss which may be thereby occasioned And the receipts in writing of the said Trustees or Trustee for any moneys or money arising from any such sale as aforesaid shall be sufficient discharge to the persons to whom the same shall be given who shall not be liable in respect of any misapplication or nonapplication thereof.

As to re-investment
of proceeds of sale.

3. The moneys to arise from any such sale shall either be laid out by the said Trustees or Trustee in the purchase of other lands situate in Great Britain or in the Colony of New South Wales or in the Colony of Victoria or invested at interest upon Government or real securities in Great Britain or the said Colonies or one of them and the said Trustees or Trustee shall have the same powers of leasing and selling any land to be so purchased as aforesaid as are hereby conferred in respect of the land and hereditaments originally comprised in the said settlement and shall also have power to vary and transpose any securities on which the trust money shall be invested pursuant hereunto Provided that the like consent shall be required in respect of each and every such purchase investment sale transfer or change of securities as hereinbefore required in regard to the exercise of the powers of selling or leasing the lands and hereditaments originally comprised in the said trusts and provided that the rents interests dividends or annual produce of the said trust property howsoever invested shall go and be paid and applied to the same persons and for the same purposes as the rents and profits of the land and hereditaments are by the said indenture of settlement directed to be applied and the capital of the trust property or the lands or securities whereon the same shall be invested shall go and belong to the same person or persons who would have been absolutely entitled to the land and hereditaments originally comprised in the said settlement pursuant to the trusts thereof and if more than one in the like shares and proportions.

Title of Act.

4. In citing this Act in any instrument document or legal proceeding it shall be sufficient to use the expression "Mackenzie's Trust Act."