

New South Wales.



ANNO TRICESIMO NONO

VICTORIÆ REGINÆ.

An Act to authorize the Executor of the last Will of Robert Fitzgerald to pay and the Trustees of the "Hawkesbury Benevolent Society" to receive a certain capital sum of money in lieu of an annual payment.
[9th February, 1876.]

FITZGERALD'S
ENABLING.

WHEREAS Richard Fitzgerald late of Windsor in the Colony of New South Wales deceased by his last will and testament charged all his personal estate of whatever nature and kind soever with the payment of all his debts funeral and testamentary expenses and legacies and by his said will gave and bequeathed the annual sum of fifty pounds sterling during the life of Robert Fitzgerald the executor and Trustee of his said will unto the Treasurer as Trustee for the time being of "The Hawkesbury Benevolent Society" for the use and benefit of and to be applied towards the charitable purposes of the said Society and further by his said will requested the said Robert Fitzgerald to give a like annual sum and secure the payment of the same after his decease unto the Treasurer or Trustees of the said Society for the like use benefit and charitable purposes And whereas Robert Marsden Fitzgerald is the devisee legatee and executor of the last will and testament of the said Robert Fitzgerald deceased And whereas after the death of the said Robert Fitzgerald doubts arose as to the liability of the said Robert Marsden Fitzgerald as such executor to pay to the Trustees of the said Society the annual sum of fifty pounds sterling or to make provision for securing the annual payment thereof as aforesaid And whereas in order to remove such doubts a special case was stated for the opinion of the Supreme Court of New South Wales pursuant to the statute passed in the Session of Parliament holden in the sixteenth

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year

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year of the reign of Her present Majesty numbered three and intituled "*An Act to diminish the delay and expense of proceedings in the Supreme Court in its jurisdiction as a Court of Equity and in Infancy and Lunacy*" And upon the hearing of such special case the said Court decreed that the said Robert Marsden Fitzgerald as the devisee legatee and executor under and of the will of the said Robert Fitzgerald was bound to pay and make due provision for and secure the payment in perpetuity to the said Society or so long as it should continue of the annual sum of fifty pounds sterling And whereas the said Robert Marsden Fitzgerald has taken upon himself the burden of the said trust And whereas an Act was passed by the Governor and Legislative Council of New South Wales in the fourth year of the reign of Her present Majesty intituled "*An Act to enable the Members of a certain Society in the Colony of New South Wales denominated 'The Hawkesbury Benevolent Society' to sue and be sued in the name of their Treasurer and for other purposes therein mentioned*" as amended by an Act passed in the twenty-third year of Her present Majesty intituled "*An Act to amend the Hawkesbury Benevolent Society's Act of Incorporation*" And whereas by the said Acts no provision is made for enabling the Trustees or other officer or person for and on behalf of the said Society to compound for any debts due or accruing due to the said Society or to accept a capital sum of money in lieu of any annual payment due and accruing due to the said Society And whereas since the making of the said decree doubts have arisen as to the power of the said Robert Marsden Fitzgerald as such executor to pay to the Trustees of the said Society and of the said Trustees to receive from the said Robert Marsden Fitzgerald a capital sum to secure the payment of the annual sum of fifty pounds sterling in lieu of the payment annually of the sum of fifty pounds sterling by the said Robert Marsden Fitzgerald to the said Society in perpetuity or so long as the said Society shall continue And whereas the said Robert Marsden Fitzgerald as such executor is willing to pay to the Trustees of the said Society and they are willing to receive from the said Robert Marsden Fitzgerald a capital sum of money to secure the payment to them of the said annual sum of fifty pounds sterling on behalf of the said Society as aforesaid And whereas the capital sum of twelve hundred and fifty pounds is sufficient to secure the payment of the said annual sum of fifty pounds sterling And whereas it is expedient to remove such doubts and to empower the said Robert Marsden Fitzgerald as such executor as aforesaid and the said Trustees respectively to pay and receive that capital sum for the purpose aforesaid 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:—

Power for Robert Marsden Fitzgerald to pay a certain sum to the Hawkesbury Benevolent Society.

1. It shall be lawful for the said Robert Marsden Fitzgerald and he is hereby empowered to pay to the Trustees for the time-being of "*The Hawkesbury Benevolent Society*" the capital sum of twelve hundred and fifty pounds to secure the payment in perpetuity to the said Society or so long as it shall continue of the said annual sum of fifty pounds sterling.

Power for the Trustees of the Hawkesbury Benevolent Society to receive a certain sum from Robert Marsden Fitzgerald.

2. It shall be lawful for the Trustees of "*The Hawkesbury Benevolent Society*" and they are hereby empowered and required to take and receive from the said Robert Marsden Fitzgerald the capital sum of twelve hundred and fifty pounds in lieu of the annual payment by him as such executor to them on behalf of the said Society of the said sum of fifty pounds sterling and to secure the payment in perpetuity to the said Society or so long as it shall continue of the said annual sum of fifty pounds sterling anything in the Act four Victoria number three to the contrary notwithstanding.

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3. The payment by the said Robert Marsden Fitzgerald of the said capital sum to the Trustees of the said Society shall be an absolute discharge to him his heirs executors and administrators and of the lands estate and effects of him the said Robert Marsden Fitzgerald his heirs executors and administrators and of the lands and estate of the said Richard Fitzgerald and Robert Fitzgerald respectively and shall absolutely release him the said Robert Marsden Fitzgerald his heirs executors and administrators from all action or actions suit or suits claims or demands of any kind whatever for or on behalf of the said Society in respect of the said annual payment by him as such executor or otherwise to the Treasurer or Trustees for the time being of the said Society of the said annual sum of fifty pounds sterling.

Payment to the said Society to discharge Robert Marsden Fitzgerald.

4. The receipt of the Trustees for the time being of the "Hawkesbury Benevolent Society" of the said capital sum from the said Robert Marsden Fitzgerald shall discharge them their heirs executors and administrators from all liability in respect of the payment by the said Robert Marsden Fitzgerald to the Treasurer or Trustees for the time being of the said annual sum of fifty pounds sterling.

Receipt of Trustees of Society to discharge them.

5. After the payment by the said Robert Marsden Fitzgerald of the said capital sum to the Trustees for the time being of the said Society no action or other proceeding whatever at law or in Equity shall be maintainable or commenced against him the said Robert Marsden Fitzgerald his executors or administrators by or on behalf of the said Society in respect of the non-payment by him or them to the said Trustees or Treasurer for the time being for and on behalf of the said Society of the said annual sum of fifty pounds sterling or in respect of the securing the payment in perpetuity by him his executors or administrators to the said Trustees or Treasurer of the said Society or so long as it may continue of the said annual sum of fifty pounds sterling and if any such action or other proceeding shall be commenced in violation of this enactment the same may summarily be stayed by order of the Supreme Court of New South Wales or any Judge thereof with costs to be paid by the plaintiff or any person or persons prosecuting or bringing such action or proceeding to the said Robert Marsden Fitzgerald his executors and administrators when taxed as between attorney and client.

No action shall be brought.

6. Provided always and it is hereby expressly declared that the said capital sum shall vest in the Trustees for the time being of the said Society only so long as the said Society shall continue to exist And when and so soon as the said Society shall cease to exist or be dissolved the said capital sum shall immediately revest in the said Robert Marsden Fitzgerald his executors or administrators and thereupon he or they shall be entitled to sue for and recover the same in any Court of competent jurisdiction from any person or persons or bodies corporate who may then hold or be possessed of or have the control of the said capital sum.

Said sum only to vest in Society so long as it continues to exist.

7. The said capital sum shall be forthwith invested by the said Trustees in Government Debentures of New South Wales in the name of the Hawkesbury Fitzgerald Legacy Fund.

Capital sum to be invested in Debentures in certain name.

8. This Bill may be cited as the "Fitzgerald's Enabling Bill."

Short title.