

BATES'S ESTATE. **An Act to authorize the Sale Mortgage and
Leasing of certain Lands and Heredita-
ments devised by the Will of Mary Ann
Bates deceased and for other purposes.
[18th August, 1881.]**

Preamble.

WHEREAS Mary Ann Bates late of Parramatta Road in the Parish of Concord in the County of Cumberland in the Colony of New South Wales widow deceased was at the time of her death hereinafter mentioned seized and possessed for an estate of inheritance in fee simple of the lands and hereditaments in the first Schedule to this Act mentioned and described free from incumbrances and of the lands and hereditaments in the second Schedule to this Act mentioned and described subject to a mortgage from the said Mary Ann Bates to John Gurner which said mortgage has not yet been released nor the principal and interest due and owing on the security thereof paid or discharged And whereas the said Mary Ann Bates duly made and published her last will and testament dated the fifth day of February one thousand eight hundred and fifty-one and thereby devised unto Archibald Campbell and Piddocke Arthur Tompson all the real estate of which she should die seized or possessed upon trust that they or the survivor of them his heirs or assigns or the Trustees or Trustee for the time being of that her will did and should permit and suffer her son-in-law Joseph Hyde Potts and her daughter Emma Potts his wife during their joint lives and after the death of the pre-deceaser for the survivor

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survivor of them during his or her life to occupy and enjoy the same and receive the rents and profits thereof for their his or her own use and upon further trust after the death of the survivor of them to divide the said estate in equal portions between Francis Howard Potts Tremayne Hyde Potts and Josephine Elizabeth Harriet Potts the children of the said Joseph Hyde Potts and Emma Potts or such of them as should be then living or at the discretion of her Trustees or Trustee to sell the same and pay over to her said grandchildren the moneys arising from the said sale Provided always and the said testatrix declared it to be her will that in case the said Trustees or either of them should die in her lifetime or should at her decease renounce the trusts of that her will or in case the said Trustees or either of them or any Trustee or Trustees to be appointed under the now reciting provision should afterwards die or become unable or unwilling to act in the trusts of that her will or should go to reside out of the said Colony before the same should be fully executed and performed then and in such case and so often as the same should happen it should be lawful for the surviving or continuing Trustees or Trustee for the time being or if there should be no surviving or continuing Trustee then for the retiring Trustees or Trustee or if there should be no such last-mentioned Trustee then for the executors or administrators of the last deceased Trustee to appoint any fit person or persons to supply the place or places of the Trustee or Trustees so dying or becoming unable or unwilling to act or going to reside out of the said Colony as aforesaid and that immediately after every such appointment the said trust estate moneys and premises should be conveyed assigned and transferred at the costs and expenses of her trust estate in such manner that the same might vest in such new Trustee or Trustees jointly with the surviving or continuing Trustee or Trustees or in such new Trustee or Trustees solely as the case might require subject to the trusts aforesaid and that such new Trustee or Trustees should have and might exercise as well before as after such conveyance and transfer as aforesaid all the powers and authorities whatsoever in the said will before contained in the same manner to all intents and purposes as if he or they had been appointed a Trustee or Trustees by that her will And whereas the said Mary Ann Bates died on the tenth day of June one thousand eight hundred and sixty without having in any way revoked or altered her said will and leaving her surviving the said Joseph Hyde Potts Emma Potts Francis Howard Potts Tremayne Hyde Potts and Josephine Elizabeth Harriet Potts And whereas the said Tremayne Hyde Potts died on the twenty-fourth day of October one thousand eight hundred and sixty and the said Piddocke Arthur Tompson died on the seventh day of August one thousand eight hundred and sixty-three and the said Joseph Hyde Potts died on the twenty-sixth day of September one thousand eight hundred and sixty-five And whereas the said Josephine Elizabeth Harriet Potts intermarried with Donald Fraser on the fourteenth day of April one thousand eight hundred and sixty-six And whereas by an indenture of settlement made upon the said marriage and dated the ninth day of April one thousand eight hundred and sixty-six reciting (*inter alia*) that the real estate of which the said Mary Ann Bates deceased was possessed at the time of her death consisted of the lands and hereditaments in the first Schedule to this Act mentioned and described it was witnessed that she the said Josephine Elizabeth Harriet Potts granted assured and disposed of to certain Trustees therein named upon the trusts therein expressed and contained all that share or entirety to which she was or might be in the event of her surviving the said Emma Potts entitled of and in the lands and premises thereinbefore and in the said first Schedule to this Act mentioned and described and all her estate and interest in the said premises and every

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every part thereof And whereas William Hattam Wilkinson and Francis Howard Potts are the present Trustees of the said indenture of settlement And whereas the said Archibald Campbell duly made and published his last will and testament bearing date the fourth day of January one thousand eight hundred and fifty-eight whereby (*inter alia*) he devised and bequeathed all estates vested in him as Trustee unto his wife Isabella Campbell her heirs executors administrators and assigns subject to the trusts affecting the same and if his said wife should pre-decease him he appointed Robert John Campbell John Alexander Horatio Price and Charles Edward Gordon to be his Executors and Trustees and devised the said trust estates to them their heirs executors administrators and assigns upon trust to hold the same subject to the trusts affecting the same And whereas the said Isabella Campbell and John Alexander Horatio Price both pre-deceased the said Archibald Campbell And whereas the said Archibald Campbell died on the nineteenth day of May one thousand eight hundred and seventy without having altered or revoked his said will which was duly proved on the twenty-eighth day of June one thousand eight hundred and seventy in the Supreme Court of New South Wales by the said Robert John Campbell only And whereas the said Charles Edward Gordon the other surviving Executor renounced and disclaimed probate and execution of the said will of the said Archibald Campbell and the trusts thereof and all estates powers and authorities devised and given to or vested in him by the said will And whereas by indenture dated the twenty-third day of October one thousand eight hundred and seventy-nine made between the said Robert John Campbell of the first part the said Emma Potts widow of the second part and the said Francis Howard Potts and the said Donald Fraser of the third part reciting (*inter alia*) the will of the said Mary Ann Bates deceased the will of the said Archibald Campbell deceased and the said renunciation and disclaimer by the said Charles Edward Gordon it was witnessed that the said Robert John Campbell with the privity and consent and at the request of the said Emma Potts and in exercise and execution of the power or authority given to or vested in him by virtue of the therein and hereinbefore recited wills and by virtue of the "Trust Property Act of 1862" and all other powers and authorities whatsoever in anywise enabling him in that behalf did nominate and appoint the said Francis Howard Potts and Donald Fraser to be trustees of the said will of the said Mary Ann Bates deceased for all the trusts and purposes and with all the powers and authorities expressed and contained in the same will so far as such trusts purposes powers and authorities were then subsisting undetermined or capable of taking effect and the said Francis Howard Potts and Donald Fraser did thereby testify and declare their acceptance of the said trust and it was further witnessed that in pursuance of the nomination and appointment thereinbefore contained and in consideration of the premises and also in consideration of the sum of ten shillings to the said Robert John Campbell in hand paid by the said Francis Howard Potts and Donald Fraser on the execution thereof the receipt whereof was thereby acknowledged by the said Robert John Campbell (with the privity and consent of the said Emma Potts testified as aforesaid) did grant bargain sell alien release and confirm unto the said Francis Howard Potts and Donald Fraser their heirs and assigns all the real estates of the said Mary Ann Bates deceased then vested in him the said Robert John Campbell by virtue of the therein and hereinbefore recited wills or either of them or otherwise howsoever with all the rights members and appurtenances to the same belonging and all the estate right title and interest both at law and in equity of him the said Robert John Campbell therein and thereto to have and to hold all and singular the premises

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premises unto and to the use of the said Francis Howard Potts and Donald Fraser their heirs and assigns for ever upon the trusts and for the intents and purposes and with under and subject to the powers provisions and declarations in and by the said will of the said Mary Ann Bates deceased expressed and declared of and concerning the same or such of the said trusts intents purposes powers provisions and declarations as were then subsisting undetermined or capable of taking effect And whereas the said Emma Potts still survives And whereas the said will of the said Mary Ann Bates deceased does not give to the Trustees or Trustee thereof or to any other person any power to sell during the lifetime of the said Emma Potts or to mortgage or demise the lands and hereditaments thereby devised And whereas it is impossible without the assistance of Parliament to sell or mortgage the said lands and hereditaments devised by the said will of the said Mary Ann Bates deceased or to demise the same for a longer period than the life of the said Emma Potts And whereas in consequence of such impossibility the lands and hereditaments in the first Schedule to this Act mentioned and described are and remain unimproved and almost unproductive of income and certain buildings on the lands and hereditaments in the second Schedule to this Act mentioned and described are becoming dilapidated and almost unproductive and of small and decreasing value And whereas it is expedient and would be for the benefit of all parties interested in the said lands and hereditaments in the said Schedules respectively mentioned and described that powers to sell mortgage and lease the same should be conferred on the Trustees or Trustee for the time being of the said will of the said Mary Ann Bates deceased for the benefit of the persons interested under the said will and that the proceeds of the sale of such of the said lands and hereditaments as shall from time to time be sold and the rents and profits arising from the lease of such of the said lands and hereditaments as shall from time to time be leased should be held in trust for and the moneys raised by mortgage of such of the said lands and hereditaments as shall from time to time be mortgaged should be applied towards the improvement of the property for the benefit of the persons respectively entitled under the said will to the lands and hereditaments so sold demised or mortgaged 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 Francis Howard Potts and Trustees empowered to sell and convey. Donald Fraser or other the Trustees or Trustee for the time being of the said will of the said Mary Ann Bates deceased [such persons being hereinafter designated "the said Trustees or Trustee"] to sell and absolutely dispose of all and singular the said lands and hereditaments mentioned and described in the said several Schedules to this Act or any of them or any part of the same lands and hereditaments either by public auction or private contract either in one or in more lot or lots and in such manner generally and upon and subject to such terms and conditions as the said Trustees or Trustee shall deem expedient with power to buy in the said lands and hereditaments or any of them or any part thereof at any sale by auction and to rescind or vary any contract for sale either on terms or gratuitously and to re-sell without being responsible for any loss occasioned thereby and upon any sale or sales to convey the land so sold to the purchaser or purchasers thereof his her or their heirs and assigns or as such purchaser or purchasers may direct freed and discharged from all trusts affecting the same and the receipts in writing of the said Trustees or Trustee for the purchase money of any lands and hereditaments so sold shall be full and sufficient discharges to any purchasers from

from the same and from being bound to see to the application of the same and from any liability for the loss non-application or misapplication of the same or of any part thereof.

Power to give credit to purchasers.

2. It shall be lawful for the said Trustees or Trustee to allow any purchaser or purchasers credit for the payment of the whole or part of his her or their purchase money upon such terms as to interest or otherwise and generally as the said Trustees or Trustee may deem reasonable and expedient Provided that the land in respect of which such credit shall be given shall remain unconveyed or shall by a proper mortgage with full powers of entry and sale and other usual and proper provisions be made a security for the payment of the purchase money remaining unpaid Provided further that in the event of any such security being taken the vendor's lien for the said purchase money and every part thereof shall not be thereby affected or lost.

Power to borrow money for building &c.

3. It shall be lawful for the said Trustees or Trustee from time to time for the purpose of raising any sum or sums of money which in their or his opinion it may be desirable to borrow for the purpose of erecting any buildings or repairing or re-building any existing buildings upon or otherwise improving any part or parts of the lands and hereditaments mentioned and described in the said several Schedules to this Act to execute any mortgage or mortgages in fee or for any term or terms of years of such part or parts of the said lands and hereditaments with power of sale and all other usual powers provisions and covenants Provided that no person who shall advance money upon the security of any mortgage purporting to be made under the power hereby given shall be bound to enquire as to the advisability or propriety of the raising of such money or as to the application of such money when raised and advanced and the receipt of the said Trustees or Trustee for the moneys so advanced shall effectually discharge the person advancing the same from any liability in respect of the misapplication or non-application thereof.

Power to grant leases.

4. It shall be lawful for the said Trustees or Trustee from time to time by deed or writing to demise and lease all or any part of the said lands and hereditaments to any person or persons for any term of years not exceeding twenty-one years to take effect in possession at the best yearly rent that can be reasonably obtained for the same without any fine premium or foregift And also from time to time by deed to demise and lease any part of the said lands and hereditaments to any person or persons who shall covenant to improve the same by repairing any building or buildings now standing or which shall hereafter be standing on any part of the land thereby leased or by erecting and building any house or houses building or buildings on such land or any part thereof or by otherwise expending in improvement such moneys as shall be deemed by the said Trustees or Trustee adequate to the interest to be parted with but so that every lease under this last-mentioned power shall be for a term not exceeding fifty years to take effect in possession or within one year from the date thereof and shall be at such rent as the said Trustees or Trustee shall having regard to the terms and conditions of such lease think reasonable and proper so however that nothing be taken by way of fine premium or foregift Provided that every indenture of lease made under the provisions of this section shall contain a covenant by the lessee to pay the rent thereby reserved and for insurance against fire of any building erected or to be erected on the land thereby demised and also a condition of re-entry on non-payment of rent within a time to be therein specified and so also that a counterpart of such lease be executed by the lessee Any lessee paying any rent reserved by any such lease to the said Trustees or Trustee shall not be bound to see to the application thereof and shall be free from any liability for the non-application or misapplication of the same or any part thereof.

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5. The powers in this Act contained shall be exercised during the consent necessary in certain cases. lifetime of the said Emma Potts with the consent in writing of the said Emma Potts and from and after the death of the said Emma Potts save as hereinafter mentioned at the absolute discretion of the said Trustees or Trustee Provided always that all the said powers so far as the exercise of them may affect the lands and hereditaments in the first Schedule to this Act mentioned and described shall at all times be exercised with the consent in writing of the Trustees for the time being of the said indenture of settlement of the said fourteenth day of April one thousand eight hundred and sixty-six.

6. The said Trustees or Trustee shall stand seized and possessed of the said lands and hereditaments or of such portion thereof as may from time to time remain unsold subject to any leases granted and to any other estates rights or interests created under the authority of this Act upon the trusts and subject to the provisions in the said will of the said Mary Ann Bates expressed and declared concerning the same respectively And from and after the sale of any portion of the said lands and hereditaments shall stand possessed of the moneys arising from such sale upon trust in the first place to pay all costs and expenses of and incidental to the procuring and passing this Act and also of all deeds instruments acts dealings and proceedings subsequently to the passing of this Act executed signed done or undertaken for the purpose of enabling the said Trustees or Trustee to carry out advantageously any sale hereby authorised And in the next place to pay and satisfy all costs charges and expenses incurred in and about the said sale And after such payment as aforesaid upon trust to lay out so much of the net surplus of such moneys or any part thereof as may arise from the sale of the lands and hereditaments in the said second Schedule to this Act mentioned and described in or towards paying the principal due or owing on the security of the said mortgage from the said Mary Ann Bates deceased to the said John Gurner or of any other mortgage or mortgages of the said lands and hereditaments or of any part thereof which may at any time or from time to time be due or owing and subject as aforesaid to invest the whole or the balance of such net surplus as aforesaid in any debentures or Government securities of any kind of any of the Colonies of New South Wales Victoria or Queensland or upon freehold securities in the said Colony of New South Wales or upon deposit at interest in any bank carrying on business in the said last-mentioned Colony with power from time to time and at any time to vary or transpose any such investment or security into or for any other investment or security of the kind hereby authorised.

7. The said Trustees or Trustee shall stand possessed of such trusts of investments rents &c. investments and securities and the net dividends income and annual produce arising therefrom and also of the net rents arising from and payable under any lease made under the authority of this Act Upon such trusts and with and subject to such powers provisions and declarations as shall as nearly correspond with the uses trusts provisions and declarations in the said will of the said Mary Ann Bates expressed and contained concerning the said lands and hereditaments or any part or parts thereof respectively or such of them as shall be subsisting or capable of taking effect as the different nature and quality of the premises and the rules of law and equity will permit Provided that it shall be lawful for the said Trustees or Trustee at any time or from time to time to apply the whole or any part of the rents and profits of any portion or portions of the said lands and hereditaments in the said second Schedule to this Act mentioned and described in and towards payment of the interest from time to time due or owing on the security of the said mortgage from the said Mary Ann Bates deceased to the said John Gurner And to apply the whole or any part of the rents and profits of any

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any portion or portions of the said lands and hereditaments in the said Schedules to this Act mentioned and described in or towards payment of the interest from time to time due or owing on the security of any mortgage or mortgages of such portion or portions executed under the power herein contained.

Power to make roads
&c.

8. It shall be lawful for the said Trustees or Trustee to make and alter and concur in the making and altering of any roads streets or ways on and over any part or parts of the said lands and hereditaments And also to erect make and carry out and concur in the erecting making and carrying out of any walls sewers drains water-courses or other works which may in the discretion of the said Trustees or Trustee conduce to the better laying out improving or selling of the said lands and hereditaments or the convenience and enjoyment of those persons who shall have purchased or shall purchase any part thereof The costs of any such works on the part of the said Trustees or Trustee or their or his proportion of any costs for such works and any costs and expenses of and incidental to the bringing of the said lands and hereditaments or any part thereof under the provisions of the Real Property Act (which the said Trustees or Trustee are or is hereby authorised to incur) may be deducted and retained by them or him in the same way they or he are or is hereby authorised to deduct and retain the costs and expenses of and incidental to sales hereunder For any of the purposes of this section the said Trustees or Trustee may reserve and dedicate either absolutely or upon any conditions any part or parts of the said lands and hereditaments.

Short title.

9. This Act may be cited as "Bates's Estate Act of 1881."

SCHEDULES.

THE FIRST SCHEDULE.

ALL that piece or parcel of land containing by admeasurement six hundred and twenty-five acres situate in the county of Cumberland and parish of Liberty Plains in the Colony aforesaid Commencing at the south-east corner of Thomas Barber's land and bounded on the north by that farm thirty-six chains on the west by the farms of Thomas and Hugh O'Donnell fifty-eight chains and fifty links on the south by part of Eldridge's farm and on the east by the village reserve being the same piece or parcel of land which is more particularly described in Crown grant to Joseph Hyde Potts dated the sixth day of July one thousand eight hundred and thirty-five Also all that piece or parcel of land containing by admeasurement eighty-nine acres two roods and twenty-nine perches more or less situate in the parish of Liberty Plains aforesaid and forming part and parcel of one thousand one hundred acres granted by the Crown to Henry Grattan Douglass Commencing at the south-east corner of Fleming's two hundred acre grant and bounded on the east by the easternmost boundary of the said grant to Douglass being a line bearing south fifty-six chains on the south by a line bearing west nineteen chains on the west by a line bearing north thirty-five chains to Sir T. L. Mitchell's marked line of new road leading from Sydney to Liverpool thence on the north by the southern side of the said road bearing north sixty-eight degrees east eleven chains and six links again on the west by a line bearing north twenty-one chains fifty links including the breadth of the said road and again on the north by part of the southern boundary of Fleming's grant being a line bearing east eighteen degrees south to the commencing point reserving the breadth of the said Sir T. L. Mitchell's road (which is not included in the above quantity of land) which divides lots twenty-nine and thirty And also all that piece or parcel of land containing by admeasurement two hundred and fifty-six acres be the same more or less situated in the county of Cumberland and parish of Concord in the Colony aforesaid being part of four hundred acres originally granted as St. James' Glebe Commencing at the north-west corner of Newton's land and bounded on the south by a line bearing east sixty-two chains ten links thence on the east by a line bearing northerly six chains and sixty links thence on the north-west by a line bearing west southerly six chains thence again on the east by a line bearing first north thirty-three degrees west sixty-four chains fifty links and then north twenty degrees east twenty-three chains to the Parramatta road

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road on the north by the Parramatta road as far as the north-west corner and thence on the west by a line bearing first south eighteen degrees west fifty-six chains twenty links and then south twenty-nine chains ninety links to the point of commencement which said piece or parcel of land was granted to the said Joseph Hyde Potts by grant from the Crown by letters patent dated the third day of December one thousand eight hundred and forty-one.

THE SECOND SCHEDULE.

ALL that parcel of land containing by admeasurement three roods and three perches and situated in the town of Sydney parish of Saint Andrew county of Cumberland in the territory of New South Wales Bounded on the west by Sussex-street bearing north sixteen degrees thirty minutes west two hundred and one links on the north by Bathurst-street bearing east two degrees thirty minutes north three hundred and ninety links on the east by Kent-street bearing south sixteen degrees east two hundred and five links and on the south by number six and number four allotments bearing west two degrees south three hundred and ninety-six links being allotment number five of section eleven described in the Government notice dated the twenty-fifth May one thousand eight hundred and thirty-one.