

**An Act to enable the Trustees of the Will of
the late Thomas Chapman to grant leases
for any term not exceeding fifty years from
the passing of this Act of certain portions
of the real estate devised by the said Will
and to make roads streets and ways over
upon and adjacent to the said lands and
for other purposes in the said Act to be
mentioned. [5th April, 1881.]**

Preamble.

WHÈREAS Thomas Chapman late of Kiama in the Colony of New South Wales gentleman duly made and executed his last will and testament dated the fourteenth day of August in the year one thousand eight hundred and seventy-three and thereby appointed Samuel Charles then of Eureka Kiama aforesaid gentleman and Walter Hayes then of Kiama aforesaid painter and glazier (but now of Croydon near Sydney in the said Colony) the Executors and Trustees of his said will and (*inter alia*) devised to his said Trustees his land in Dowling-street Sydney upon trust to pay the rents and profits thereof respectively (not by way of anticipation) to a step-daughter of the said testator Charlotte Rutter Frances Kendall wife of William Rutter Kendall for her sole and inalienable use during her then present or any future coverture and for which rents and profits her receipts alone should be sufficient discharges to the said Trustees and

Chapman's Estate Leasing.

and from and after the decease of the said Charlotte Rutter Frances Kendall the said testator devised the said parcel of land and premises with the appurtenances to the child if only one or the children if more than one who either before or after the limitation in the said will contained in favour of the said Charlotte Rutter Frances Kendall should take effect in possession should attain the age of twenty-one years or who should die under that age in such manner as the said Charlotte Rutter Frances Kendall should by any testamentary writing appoint and in default of appointment to her in fee-simple And the said testator the said Thomas Chapman devised his land at Miller's Point Sydney purchased by him from Henry Cooper with the two dwelling-houses cottages and premises thereon erected being the said lands hereinafter mentioned as being situate in Merriman-street in Sydney and also his land situate near Pine Cottage Bourke-street Surry Hills Sydney with the appurtenances as the same was formerly occupied by one Shaw with the appurtenances being the land situate in Bourke and Dowling streets near Sydney aforesaid to his said Trustees under and subject to similar limitations in favour of another stepdaughter of the said testator Cecilia Sophia Rutter wife of John Jewell Rutter to those contained in the hereinbefore mentioned devise by the said testator to his said Trustees in favour of the said Charlotte Rutter Frances Kendall And whereas the said Thomas Chapman the testator died on the seventh day of November in the year one thousand eight hundred and seventy-four leaving him surviving the said William Rutter Kendall and Charlotte Rutter Frances Kendall his said wife and three children that is one son and two daughters and no more now aged respectively twenty years seventeen years and fourteen years and the said John Jewell Rutter and Cecilia Sophia Rutter his said wife and four children that is three sons and one daughter and no more now aged respectively sixteen years fourteen years twelve years and ten years And whereas probate of the said will was granted to the said Samuel Charles and Walter Hayes on the seventeenth day of March in the year one thousand eight hundred and seventy-five And whereas the said testator had in his said will not correctly described the said land and hereditaments situate in Bourke-street and so devised as aforesaid to his said Trustees in favour of the said Charlotte Rutter Frances Kendall and the said Cecilia Sophia Rutter And whereas by a decree of the Supreme Court of New South Wales in the equitable jurisdiction thereof dated the thirteenth day of February in the year one thousand eight hundred and seventy-eight and made in a certain cause wherein the said Trustees were plaintiffs and the said William Rutter Kendall and his said wife and the said John Jewell Rutter and his said wife and others were defendants it was ordered and declared that under the devise in the will mentioned of certain land of the testators described in the said will as follows namely:— “ My land situated at Crown Road Surry Hills near Sydney aforesaid with the cottage and premises thereon erected as the same is now in the occupation of one Cuthbert and known as number thirty-three Crown Road ” the said defendant Charlotte Rutter Frances Kendall and her children are entitled according to the limitations and trusts in the said devise contained to the testator's land situate in Dowling-street Surry Hills containing two acres and one rood and bounded on the east by Dowling-street and on the south by Phelps-street being the land colored light pink in the map or plan marked exhibit C 3 and to no other land of the said testators And whereas the said lands so devised by the said testator to the said Trustees for the benefit of the said Charlotte Rutter Frances Kendall and her children and the said Cecilia Sophia Rutter and her children are more particularly described in the Schedule hereto and the said lands are either altogether unimproved or

Chapman's Estate Leasing.

the buildings and improvements thereon are old and dilapidated and the income therefrom is inadequate according to the capital value of the said lands. And whereas the said will of the said testator only empowers the said Trustees of the said will during the minorities of any object of *inter alia* the foregoing devises to demise all or any portion of the land so devised for such term at such rent and upon such terms and conditions as the said Trustees should deem expedient. And whereas some of the said children of the said William Rutter Kendall and some of the children of the said John Jewell Rutter have nearly attained the age of twenty-one years whilst others of the said children are respectively of tender years and will not attain the age of twenty-one years for a long time yet to come and it is doubtful whether the said Trustees could grant or make any leases of any of the said lands so devised as aforesaid to which any of the children of the said William Rutter Kendall or the said John Jewell Rutter might respectively become entitled to or interested in after any such children had respectively attained the age of twenty-one years. And whereas there is not any power or provision in the said will of the said testator enabling the said Trustees or any person to expend or lay out the income or rent from the said lands or any other moneys in building upon or improving the said lands or to grant building or improving leases thereof or to grant leases thereof for a long term of years. And whereas the said several pieces or parcels of land and hereditaments are all of them of considerable area and the same are peculiarly adapted for building purposes by reason of the proximity thereof to thickly populated parts of the said City of Sydney and the same would become of considerably greater value than the same are now in the event of leases of such lands being granted for terms of years and the income therefrom would be thereby largely increased and it would be for the benefit of the several persons interested under the said will of the said testator in the said several lands and hereditaments that the said Trustees of the said will should be authorized empowered or enabled to grant or make leases thereof. And whereas it would be beneficial to the parties interested under the said will in the said lands that roads streets or ways should be formed laid out and made in over and upon the said lands or adjacent thereto and that part of the said lands should be exchanged for other lands adjacent thereto for the purpose of altering the boundaries thereof and laying out forming or making roads streets or ways adjacent to or in over or upon any of the said land. 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:—

Interpretation clause.

1. The following expressions and words in this Act shall have the meaning hereby assigned to them unless there be something either in the context or subject repugnant to such construction. The words "The said Trustees" shall mean the Trustees or Trustee howsoever appointed acting for the time being in the execution of the trusts of the said will of the said testator Thomas Chapman. The expression "the said lands" used hereafter shall mean the several pieces or parcels of land described in the Schedule hereto and any land that may be acquired by the said Trustees by virtue of the powers in this Act contained. The words "road street or way" shall include and mean any square court or alley highway lane road thoroughfare or other passage or place within or adjacent to any of the said lands.

Power to grant leases.

2. It shall be lawful for the Trustees to execute grant or make leases of either the whole or any part or parts of the said pieces or parcels of land and hereditaments to any person or persons associations companies or corporations who shall covenant to improve the lands so leased by erecting and building thereon any house or houses building or

Chapman's Estate Leasing.

or buildings and to repair any houses or buildings which shall hereafter be standing thereon or by otherwise expending in improvement of the lands so leased such moneys as shall by the said Trustees granting or making any such lease be deemed adequate for any term of years not exceeding fifty years from the date of the passing of this Act such lease or leases to take effect in possession and not in reversion or by way of future interest and so as there be reserved in every such lease the best yearly rent to be incident to the immediate reversion that the Trustees granting or making any such lease can reasonably obtain without taking anything in the nature of a fine or premium for the making thereof and so that there be contained in every such lease a condition of re-entry for non-payment of rent within a reasonable time to be therein specified or non-observance or non-performance of covenants by the lessee and so that the lessee do execute a counterpart thereof and do thereby covenant for payment of the rent thereby reserved and be not by any express words therein made dispusable for waste.

3. The said Trustees may make exchanges of any of the said lands or any part thereof for other lands adjacent to any of the said lands for the purpose of altering the boundaries of any of the said lands or for forming laying out or making roads streets or ways adjacent to over or upon any of the said lands with liberty to give or accept any sum or sums of money for equality of exchange and thereupon all necessary acts assurances deeds and matters may be done executed or made by the said Trustees as shall be proper for effecting any such sale or exchange.

4. The said Trustees may appropriate dedicate lay out or set apart any part of the said lands respectively as and for roads streets or ways sewer drains or other such places or easements for the use of the public or for the use of any messuages or other buildings to be erected upon any of the said lands or the tenants or occupiers thereof without receiving any consideration therefor and the said Trustees may allow authorize or make generally any such arrangements and dispositions of any parts of the said lands respectively as the said Trustees may deem expedient for the purpose of advancing the letting of the said lands or promoting any building operations or other improvements thereon.

5. The rents received by the said Trustees from the said lands shall be payable to the parties entitled to the income profits or rent of the said lands respectively under and by virtue of the devises hereinbefore mentioned in the said will of the said testator the said Thomas Chapman.

6. This Act shall be known and may be cited or referred to for all purposes as "Chapman's Estate Leasing Act of 1881."

SCHEDULE.

All that piece or parcel of land situate lying and being in the parish of Alexandria in the county of Cumberland Colony of New South Wales be the hereinafter mentioned several dimensions a little more or less Commencing at a point on the west side of Dowling-street at its junction with the north-east side of Phelps-street (before being widened) and bounded on the east by Dowling-street bearing northerly four chains forty links on the north and north-west by Eager's land bearing west forty-five minutes south five chains twenty-two links and south fifty-nine degrees fifteen minutes west three chains thirty-six links on the west by Marshall-street bearing south fifteen degrees fifty-four minutes west ten links on the south by Phelps-street as aforesaid bearing east seventeen degrees fifteen minutes south eight chains fifty links to the point of commencement and containing an area of two and a quarter acres.

Also all that piece or parcel of land situate lying and being in the parish of St. Phillip in the county of Cumberland Colony of New South Wales be the hereinafter mentioned several dimensions a little more or less being part of lot four section ninety-two Commencing at a point at the south-east corner of lot five and bounded on the east by Crown Road (now Merriman-street) bearing southerly seventy feet six inches on the south by lines bearing westerly one hundred and ten feet thence southerly eight feet thence westerly ninety-nine feet thence southerly nine feet nine inches and again westerly twenty-four feet nine inches on the west by a roadway bearing northerly seventy-four feet eight inches and on the north by part of the southern boundary of lot five aforesaid bearing east five degrees north one hundred and ten feet and east seven degrees thirty minutes north one hundred and twenty-seven feet to the point of commencement.

And also all that piece or parcel of land situate lying and being in the parish of Alexandria in the county of Cumberland Colony of New South Wales be the hereinafter mentioned several dimensions a little more or less Commencing at a point on the east side of Bourke-street at its junction with the north side of Thurlow-street and bounded on the south by said street bearing easterly six hundred and seventy-six feet on the east by Dowling-street bearing northerly one hundred and sixty-seven feet six inches on the north by Stack's land bearing westerly five hundred and thirty-three feet on the west by Pine Cottage premises bearing southerly one hundred and eighteen feet thence westerly forty-three feet five inches thence southerly nine feet three inches thence south-westerly fifty feet ten inches and thence westerly sixty-nine feet and lastly on the west by Bourke-street aforesaid bearing southerly ten feet eight inches to the point of commencement.