

An Act to enable the Trustees of the Will of the late Henry Denton to grant building and improving Leases of certain lands devised by the said Will and to borrow money by mortgage of such lands for the purpose of building upon and improving the same. [6th December, 1881.]

DENTON'S ESTATE
LEASING AND
MORTGAGING.

WHEREAS Henry Denton late of Sydney gentleman deceased **Preamble.** duly made his last will dated the twenty-ninth day of June one thousand eight hundred and sixty and thereby appointed John Linsley and Thomas Hicks Executors and Trustees and also declared that Henry Hicks son of the said Thomas Hicks should be a Trustee of his said will on attaining the age of twenty-one years and by his said will the testator gave and devised to his said Trustees and their heirs a certain messuage and premises situated at the west side of Clarence-street in the city of Sydney also two houses situate in Kent-street and the house in Market-street in which the testator then resided upon trust for the said Henry Hicks during his life and after his death to the use for such child or children of the said Henry Hicks as should be living at his decease or who having died should have left children him her or them surviving and if more than one in equal shares their heirs and assigns for ever as tenants in common But if there should be no child of the said Henry Hicks who should survive him or having died should have left issue him her or them surviving then the testator directed that the same should form part of his residuary estate And the testator also devised unto his said Trustees and their heirs all that his messuage and premises situated at the north-west corner of Druitt and Clarence Streets upon trust for Isabella Hicks during her life and after her death in like manner and subject to like limitations in favour of her child or children as in the property devised to the said Henry Hicks And by his said will the testator empowered the trustees or trustee for the time being of his said will to let any portion of his real estate from year to year or for any period not exceeding seven years for the best rent that could be obtained for the same and also to repair insure against loss or damage by fire and adjust compound and settle all claims with tenants to make such allowances as they might deem necessary and generally to manage his estate as they might deem most beneficial for the interest thereof And whereas the said testator died on the twenty-first day of November one thousand eight hundred and sixty without having altered or revoked his said will which was proved by the said John Linsley and Thomas Hicks on the fourteenth day of December one thousand eight hundred and sixty And whereas the said Isabella Hicks on the thirteenth day of June one thousand eight hundred and seventy-two intermarried with and is now the wife of George Robert Swyne And whereas the said Henry Hicks and John Linsley are the present Trustees of the said will And whereas the said Henry Hicks and Isabella Swyne have children living all of whom are infants under the age of twenty-one years And whereas the properties hereinbefore mentioned and devised by the will of the testator are more particularly described in the Schedule hereto And whereas the buildings upon the said lands are old and dilapidated and the rents received in respect of the same are very small and inadequate to the capital value of the said lands

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lands and the value of the said properties would be greatly enhanced either by granting building or improving leases of the said lands or by borrowing money upon mortgage of the said lands for the purpose of building upon and improving the same. And whereas the said will contains no power to lease for more than seven years and no power to mortgage but it would be beneficial to all parties interested under the said will that such powers should be conferred upon the Trustees thereof. 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 to grant building leases.

1. It shall be lawful for the said Henry Hicks and John Linsley or other the Trustees for the time being of the said will of the said Henry Denton hereinafter called "The Trustees" by deed to grant leases of either the whole or any part or parts of the lands described in the Schedule hereto to any person or persons corporation or corporations who shall covenant to improve the lands so leased by erecting and building thereon any house or houses building or buildings and to repair and keep in repair all houses or buildings which shall be erected thereupon or by otherwise expending in improvement of the lands so leased such moneys as shall by the Trustees granting or making such lease be deemed adequate for any term of years not exceeding thirty years from the date of the passing of this Act such 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 such lease can reasonably obtain (having regard to the covenants entered into by the lessee) without taking anything in the nature of a fine premium or foregift and so that there be contained in every indenture of lease executed under this power all proper and usual covenants in leases of a like nature and a condition of re-entry for non-payment of rent within a reasonable time to be therein specified or non-observance or breach by the lessee of any of the covenants therein contained and so that the lessee do execute a counterpart thereof and be not by any express words therein made dispusable for waste.

Application of rents.

2. The rents received by the Trustees in respect of any leases granted under the power hereinbefore conferred shall be paid and applied by them to the same persons and in the same manner as if such leases had been granted by them under the power of leasing contained in the said will.

Power to mortgagees

3. It shall be lawful for the Trustees from time to time to borrow and raise at interest any sum or sums of money not exceeding in the whole the sum of eleven thousand pounds with power to pay off any mortgage or mortgages and to re-borrow any sum or sums thereby secured or any less sum or sums provided that not more than eleven thousand pounds shall at any one time be due upon the security of the said lands for the purpose of building upon and improving the said lands or any part or parts thereof and to execute any mortgage or mortgages with or without power of sale of the said lands or any part or parts thereof for securing payment of the sum or sums so borrowed and to give effectual receipts and discharges for the moneys advanced by any mortgagee and to do all such other acts as may be necessary or expedient for the purpose of effectuating such mortgage or mortgages. Provided that no mortgagee advancing money upon the security of any mortgage purporting to be made under the power herein conferred shall be bound to inquire whether such money is required for the purposes aforesaid or in any way concerned to see to the application of such money when so advanced or be liable for the loss non-application or misapplication

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misapplication thereof. Provided also that the declaration of the Trustees that the sum secured by any mortgage does not with the other sums then due on the security of the said lands exceed the sum of eleven thousand pounds shall be sufficient evidence to the mortgagee under such mortgage of the fact therein stated.

4. The Trustees shall out of the rents and profits of the lands comprised in any mortgage in each year set apart and retain one moiety or half part of such rents and profits and accumulate the same at interest and until the principal sum secured by such mortgage or any part thereof or the interest thereon shall be due under the provisions of such mortgage and shall apply the sums so set aside and the accumulations thereof in payment or part payment of such principal and interest so far as the same shall extend and shall pay and apply the balance of such rents and profits to the persons and in the manner to whom and in which the same would have been paid or applied under the provisions of the said will in case no mortgage had been given.

5. This Act may be cited as "Denton's Estate Leasing and Mortgaging Act 1881." Short title.

SCHEDULE.

ALL that piece or parcel of land situate lying and being in the parish of Saint Andrew in the city of Sydney in the Colony of New South Wales Bounded on the south by the building-line in Market-street (commencing at lot three formerly occupied by Mr. Henry Denton being the west side of the wall of the house separating it from the said lot) bearing east sixteen degrees fifteen minutes north twenty-nine feet ten inches to lot five on the east by lot five being the east side of the wall of the house formerly occupied by Mr. J. Griffiths bearing north fourteen degrees eleven minutes west twenty-one feet to the north-west corner of the said dwelling-house and a prolongation of the same line six feet to the corner of the building lately occupied by Mr. J. Griffiths as a gig-house thence by the west side of that building to the end of a passage and the west side of the stable lately occupied by Mr. J. Walker being a line bearing north twenty-three degrees west thirty feet to the back entrance leading from York-street to Clarence-street on the north by that back entrance bearing westerly twenty-six feet four-and-a-half inches and on the west by lot three being a line bearing south fifteen degrees fifteen minutes east in part along the west side of a wall thirty-three feet four inches to the dwelling-house formerly occupied by Mr. J. Griffiths aforesaid thence westerly four inches and thence southerly along the west side of the wall of the said dwelling-house twenty feet six inches more or less to the commencing corner at the building-line in Market-street.

All that allotment or parcel of land in the territory of New South Wales containing by admeasurment twelve perches situate in the parish of Saint Andrew in the city of Sydney and county of Cumberland allotment number one of section number twenty-three and bounded on the east by Clarence-street bearing north fourteen degrees forty minutes west seventy-four links on the north by number two allotment bearing west fourteen degrees thirty minutes south one hundred and nine and a half links on the west by number twenty-three allotment bearing south fourteen degrees thirty minutes east seventy-five links and on the south by Drumm-street bearing east fifteen degrees twenty minutes north one hundred and ten links being the allotment advertised in the name of James Brodie deceased in the Government notice dated thirteenth day of April one thousand eight hundred and thirty-nine.

All that piece or parcel of land containing by admeasurment eighteen and a half perches situate in the city of Sydney parish of Saint Andrew county of Cumberland allotment number seven of section number twenty-eight bounded on the east by Clarence-street bearing north fifteen degrees thirty minutes west eighty-three links on the north by number six allotment bearing west sixteen degrees thirty minutes south one hundred and forty-two links on the west by number eight allotment bearing south fourteen degrees thirty minutes east seventy-six links and on the south by number nine allotment bearing east thirteen degrees thirty minutes north one hundred and forty-six links.

All that piece or parcel of land situate in Kent-street in the city of Sydney parish of St. Andrew county of Cumberland Colony of New South Wales containing by admeasurment three perches more or less Commencing in Kent-street at the south-west corner of Board's grant and bounded on the west by Kent-street being a line bearing southerly sixteen feet four inches more or less on the south by allotment number seven being a line bearing westerly fifty-seven feet more or less on the east by allotment number one being a line bearing northerly sixteen feet four inches more or less and on the

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the north by part of Board's grant being a line bearing westerly fifty-seven feet more or less to the point of commencement in Kent-street the said parcel of land being allotment number eight of the subdivision into allotments of allotment number nine of section number twenty-eight in the city of Sydney.

All that piece or parcel of land situate in Kent-street Sydney parish of St. Andrew county of Cumberland in the Colony of New South Wales containing by admeasurment five perches more or less. Commencing in Kent-street at the south-west corner of allotment number eight being bounded on the west by Kent-street being a line bearing southerly twenty-seven feet three inches more or less on the south by allotment number six being a line bearing easterly fifty-seven feet more or less on the east by parts of lots three and two being a line bearing northerly twenty-seven feet three inches more or less and on the north by allotment number eight being a line bearing westerly fifty-seven feet to the point of commencement in Kent-street such piece or parcel of land being allotment number seven of the subdivision into allotments of allotment number nine of section number twenty-eight city of Sydney.
