

An Act to authorize the Trustees of the Marriage Settlement of Mrs. Sophia Mary Hill formerly Sophia Mary Atkinson to sell mortgage and lease certain lands in the village of Collingwood near Liverpool in the Colony of New South Wales and to invest the proceeds thereof. [19th December, 1881.]

HILL'S ESTATE.

WHEREAS by an indenture dated the first day of March in the Preamble. year of our Lord one thousand eight hundred and fifty-eight and made between James Henry Atkinson thereafter styled the settlor of the first part Rowland Brodhurst Hill of the second part Sophia Mary Atkinson now Sophia Mary Hill of the third part and Thomas Blackett Stephens and Edward Wrench thereafter styled the Trustees of the fourth part reciting that a marriage was intended shortly to be solemnized between the said Rowland Brodhurst Hill and the said Sophia Mary Atkinson and upon the treaty for the said marriage it had been agreed between the parties thereto that the lands and hereditaments set forth and described in the Schedule to this Act whereof or whereto the settlor was seized and possessed or well entitled in fee simple should be conveyed and settled as thereafter contained the settlor granted sold aliened and released unto the Trustees and their heirs all the lands tenements and hereditaments set forth and described in the said Schedule hereto to hold the same to the Trustees their heirs and assigns for ever to the uses and upon the trusts and for the intents hereinafter declared and expressed concerning the same that is to say to the use of the settlor his heirs and assigns until the solemnization of the said then intended marriage and immediately thereafter to the use of the Trustees their heirs and assigns upon trust at their discretion either to receive and pay to the said Sophia Mary Atkinson or to permit her to receive during the term of her natural life the rents and profits of the thereby released lands tenements hereditaments and premises subject to certain deductions for premiums of insurance and the costs of necessary repairs if any such payment to the said Sophia Mary Atkinson by the Trustees or such receipt by herself to be to and for her own sole and separate use free from the control debts or engagements of her said intended or any future husband and every such payment to be made to her sole receipt notwithstanding coverture and from and immediately after the death of the said Sophia Mary Atkinson upon the following trusts respectively according to the several states of circumstances thereafter mentioned that is to say if the said Sophia Mary Atkinson should have lawful issue of the said intended or any future marriage but no husband her surviving then in trust for such issue equally share and share alike upon their respectively attaining the age of twenty-one years with benefit of survivorship if any should die under that age And if the said Sophia Mary Atkinson should leave any such issue and also a husband her surviving then in trust for and among such issue in manner and subject to the provisions aforesaid in that behalf but with the deduction by the Trustees and their payment to such husband for his natural life of so much of the rents and profits aforesaid as should be equivalent to one equal share calculated on the footing of such husband taking share and share alike with such issue Provided that

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the amount so paid to such husband should in no one year exceed the sum of five hundred pounds and that the surplus of his calculated share if any over the said sum should fall into division share and share alike among such issue And if the said Sophia Mary Atkinson should die without lawful issue or if leaving any all such issue should die under the age of twenty-one years then to the use of the children as joint tenants or of the child if only one then living of the settlor their or his heirs or assigns for ever And if no child then living then to the use of the settlor his heirs and assigns for ever And it was thereby agreed and declared that the Trustees should after the death of the said Sophia Mary Atkinson have full power and discretion to appropriate to the support maintenance and education of any or all of such issue as aforesaid or if none such or upon failure as aforesaid then if any and every such child of the settlor the whole or such part of the Trustees should deem necessary or proper of the rents and profits of the respective presumptive shares of such issue or of such children during their respective minorities And that the Trustees should have all necessary powers of managing and letting but in no case for a longer term than three years the thereby released hereditaments and premises And it was thereby further agreed and declared that the word Trustees wherever therein used should extend and apply to the survivor of the Trustees therein named either alone or jointly with any new Trustee to be appointed as thereafter mentioned and also to any and every such new Trustee and also during any and every entire vacancy of the trust but no longer to the executors or administrators of the last surviving Trustee And that upon any and every vacancy in the trust by the death resignation refusal to act residence out of the Australian Colonies or absence therefrom for twelve months insolvency or other inability or incapacity to act of any Trustee it should be lawful for the said Sophia Mary Atkinson if living or for the continuing or surviving or retiring Trustee or Trustees or if none such then for the executors or administrators of the last surviving Trustee by any instrument in writing under her his or their hand or hands to appoint a new Trustee or Trustees who should thereupon and by virtue of such instrument and without other assurance in the law become and be invested with all the estate and interest uses trusts powers and authorities thereby vested in the Trustees therein named as fully and effectually as if such new Trustee or Trustees had been so therein named And whereas the said Sophia Mary Atkinson (hereinafter called Sophia Mary Hill) on the second day of March in the year of our Lord one thousand eight hundred and fifty-eight intermarried with the said Rowland Brodhurst Hill and there are issue of such marriage living And whereas the said Rowland Brodhurst Hill died on the twenty-first day of September in the year of our Lord one thousand eight hundred and seventy-three And whereas the said Thomas Blackett Stephens died on the twenty-sixth day of August in the year of our Lord one thousand eight hundred and seventy-seven And whereas the said Edward Wrench in the month of November in the year of our Lord one thousand eight hundred and sixty retired from the said trusts And whereas the said Sophia Mary Hill by an instrument in writing under her hand duly appointed Joseph Atkinson Holdsworth and Henry Moncur Atkinson Trustees of the said indenture of settlement And whereas the said indenture does not empower the Trustees to sell or mortgage or demise except as aforesaid for the period not exceeding three years the said lands and hereditaments in the said schedule hereto set forth and described And whereas it would be advisable and of great advantage to all parties interested in the said lands that powers to sell mortgage and lease for a longer period than three years the said lands and hereditaments should be conferred on the

Hill's Estate.

the Trustees for the time being of the said indenture of settlement for the benefit of the persons interested under the said indenture of settlement and that the proceeds of the sale of such of the lands and hereditaments as should from time to time be sold and the moneys raised by mortgage of such of the said lands and hereditaments as should from time to time be mortgaged and the interest thereof and the rents and profits arising from the lease of such of the said lands and hereditaments as should from time to time be leased should be held in trust for the parties interested in the said lands and hereditaments according to their respective estates and interests therein And whereas the said objects cannot be attained without an Act of the Legislature 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 Joseph Atkinson Holdsworth Trustees empowered to sell and convey. and Henry Moneur Atkinson or the Trustees or Trustee for the time being of the said indenture of settlement hereinbefore referred to to sell and absolutely dispose of all and singular the said lands and hereditaments set forth and described in the Schedule to this Act or any or either of them or any part of the same by public auction or private contract either in one or 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 or either 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 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 any part thereof.

2. It shall be lawful for the said Trustees or Trustee to allow Power to give credit to purchasers. 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 vendors lien for the said purchase money and every part thereof shall not be thereby affected or lost.

3. It shall be lawful for the said Trustees or Trustee from Power to borrow money for buildings &c. 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 set forth and described in the Schedule hereto 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

Hill's Estate.

hereby given shall be bound to enquire as to the advisability or propriety of the raising of such money when raised or 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 non-application or misapplication 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 or 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 all liability for the non-application or misapplication of the same or any part thereof.

Trusts of unsold land and purchase money.

5. 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 indenture of settlement 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 authorized. And in the next place to pay and satisfy all costs and expenses incurred in and about the said sale. And after such payment as aforesaid upon trust to invest the net surplus of such moneys 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 authorized.

Trusts of investments rents &c.

6. The said Trustees or Trustee shall stand possessed of such investments and securities and the net dividends income and annual produce

Hill's Estate.

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 indenture of settlement 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 admit 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 and towards payment or in and towards providing a sinking fund for the payment of the principal and interest due or owing on the security of any mortgage or mortgages of such portion or portions executed under the power herein contained.

7. 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 watercourses or other works which may in the discretion of the said Trustees or Trustee conduce to the better laying 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 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 they are hereby authorised to incur) may be deducted and retained by the said Trustees or Trustee in the same way as they are 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 or dedicate either absolutely or upon any conditions any part or parts of the said lands and hereditaments.

8. This Act may be cited as the "Hill's Estate Act of 1881." Short title.

SCHEDULE ABOVE REFERRED TO.

ALL that piece or parcel of land situate and being in the village of Collingwood in the parish of Saint Luke near to and to the south of the town of Liverpool in the county of Cumberland colony of New South Wales and being that portion of the said village marked on the plan thereof as Collingwood Terrace with the garden ground attached Commencing at a point on the northern side of Atkinson-street videlicet the point of its intersection with the western side of Collingwood-street and bounded on its eastern side by Collingwood-street being a line bearing north four degrees forty-five minutes east three hundred and forty-seven feet on its northern side by the School Reserve being a line bearing south eighty-six degrees west two hundred and forty-seven feet on its eastern side by a line bearing south three degrees ten minutes east three hundred and forty-five feet and on its southern side by Atkinson-street being a line bearing north eighty-six degrees east two hundred feet to the point of commencement on which are erected twenty cottages known as Collingwood Terrace of brick covered with slates in four blocks of five houses each having detached kitchens &c. The southern block has also at its south end an additional building of weatherboards covered with iron and stabling of slabs.