

An Act to authorize John Williams or other the Trustees or Trustee for the time being of the Will of the late William Moffitt deceased to sell lease or otherwise dispose of portions of the Real Estate of the said William Moffitt deceased. [6th December, 1881.]

MOFFITT'S ESTATE
ENABLING.

WHEREAS William Moffitt late of Sydney in the Colony of New South Wales bookseller deceased duly made and executed his last will and testament dated the fifth day of June one thousand eight hundred and seventy-three and thereby appointed John Williams of Sydney aforesaid Crown Solicitor sole devisee in trust of all his real and personal estate upon trust as to certain properties including the property mentioned in Schedule I hereto for the testator's daughter Sarah Jane Marks wife of James Marks of Jamberoo in the said Colony for her sole and separate use during her lifetime and thereafter upon the trusts in the said will declared concerning the same And as to certain other properties including the property mentioned in Schedule II hereto for the said testator's daughter Mary Thorne wife of Robert Thorne of Liverpool-street in Sydney aforesaid for her sole and separate use during her lifetime and thereafter upon the trusts in the said will declared concerning the same and as to the residue of the said testator's estate upon the trusts in the said will declared And whereas the said William Moffitt died on the thirty-first day of July one thousand eight hundred and seventy-four leaving him surviving his said two daughters and another daughter Elizabeth Preston Marks wife of John Marks then of Jamberoo but now of Darling Point near Sydney aforesaid a Member of the Legislative Council And whereas probate of the said will was duly granted on the twenty-seventh day of August one thousand eight hundred and seventy-four to the said John Williams and Elizabeth Preston Marks the executor and executrix named in the said will And whereas the said will does not contain any power to sell demise or otherwise dispose of the lands and premises thereby devised And whereas and in consequence of the absence of such power and the inability to grant a lease for a longer period than the lives of the respective persons who are entitled as tenants for life to the respective portions devised the said lands and premises remain unimproved and the buildings thereon are becoming deteriorated and of less value through want of repair and otherwise And whereas the lands and premises mentioned in Schedule I hereto can now be sold for a sum of money the interest of which when invested will exceed the rental now obtainable for the said lands and premises and it is desirable in the interests of all concerned that the said John Williams or other the Trustee for the time being of the said will should be empowered to sell the said lands and premises and invest the proceeds and apply the interest thereof upon the trusts in the said will declared concerning the said lands and premises And whereas there is reason to believe that the said lands and premises mentioned in Schedule II hereto can now be let on a building lease for a ground rent equal to the rent at present received and upon favourable conditions as to building and otherwise and it is desirable that the said John Williams or other the Trustee as aforesaid should be empowered to grant such building lease for any period not exceeding twenty-one

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Preamble.

Schedule I.

Schedule II.

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years And whereas it is desirable that the said John Williams or other Trustee as aforesaid should be empowered to grant leases of any portion of the said trust estate for any period not exceeding seven years for an ordinary lease or twenty-one years for a building lease and to apply the rents or issues thereof for the benefit of the persons respectively entitled thereto And whereas the authority of the Legislature is necessary in the premises 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 sell lands in
Schedule I.

1. It shall be lawful for the said John Williams or other the Trustees or Trustee for the time being of the will of the said William Moffitt deceased to sell and absolutely dispose of all and singular the said lands hereditaments and premises described in Schedule I hereto either by public auction or private contract and either in one or more lot or lots and in such manner generally and upon and subject to such terms and conditions as he or they may deem expedient and for such price or prices as can be reasonably obtained for the same and when sold to convey the same or any part or parts thereof to the purchaser or purchasers his or their heirs or successors and assigns or to such uses and in such manner as such purchaser or purchasers may direct freed and discharged from all trusts affecting the same and the receipt in writing of the said John Williams or other Trustees or Trustee as aforesaid for the purchase money of any lands so sold as aforesaid shall be full and sufficient discharges to any purchaser for the same and from being bound to see to the application thereof or from any liability for the loss non-application or misapplication of the same or any part thereof.

Power to give credit
for purchase money.

2. It shall be lawful for the person so selling as aforesaid to give credit to any purchaser or purchasers of the said lands or of any part or parts thereof for any number of years not exceeding seven for the payment of so much of the purchase money as shall not exceed two-thirds of the whole upon such terms as to interest as may be deemed proper Provided that the lands so sold shall remain unconveyed or be otherwise rendered a security for so much of the purchase money as shall remain unpaid together with interest thereon until the same shall have been wholly satisfied.

Power to grant
building or improving
leases.

3. It shall be lawful for the said John Williams or the said Trustees or Trustee as aforesaid with the consent of the person for the time being entitled to the rents income or profits of the lands respectively hereinafter referred to to execute and make leases of the lands and premises described in Schedule II hereto and also any other portion of the said lands and premises devised by the said will to any person or persons who shall covenant to improve the same by erecting thereon any house or building or by repairing or rebuilding any house or building which may be now or hereafter shall be standing thereon or by otherwise expending in improvements such moneys as shall be deemed adequate by the Trustee for the time being of the said will But so that every such lease shall be for a term not exceeding twenty-one years to take effect in possession and shall be at the best rent that can be reasonably obtained for the same having regard to the covenants to be performed on the part of the lessee but 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 covenant by the lessee for the payment of rent thereby reserved and a condition of re-entry for non-payment thereof 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.

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4. It shall be lawful for the said John Williams or other the Trustees or Trustee as aforesaid with such consent as aforesaid to lease any part or parts of the lands and premises devised by the said will for any term not exceeding seven years from the time of making such leases so as there be reserved in every such lease the best rent that can be reasonably obtained without taking any fine or premium for the granting thereof and so also that there be contained in every lease executed under this power a covenant by the lessee to pay the rent thereby reserved and a condition of re-entry on non-payment thereof or non-observance or non-performance of the other covenants therein contained and so also that the said lessee do execute a counterpart thereof.

Power to grant
ordinary leases.

5. The said John Williams or other the said Trustees or Trustee shall stand possessed of the proceeds of any sale under the power herein contained upon trust in the first place to pay the costs and expenses of and incidental to such sale and to invest the residue upon any of the securities mentioned in the will of the said Testator with reference to the investment of his personal estate and to pay the interest or annual proceeds thereof and also the rents issues and proceeds of any portion of the said estate to the parties entitled to the income profits or rent of the said lands respectively under and by virtue of the said will of the said testator.

Trusts of the
proceeds of sale and
rents and profits.

6. This Act may be cited as "Moffitt's Estate Enabling Act of 1881."

Short title.

SCHEDULES.

SCHEDULE I.

All that allotment or parcel of land containing by admeasurement thirteen perches and one half-perch more or less situated in the town of Sydney parish of Saint Andrew County of Cumberland allotment number nineteen of section number twenty-six Bounded on the east by George-street bearing north eight degrees west one hundred and three links and one-half on the north by King-street west bearing west five degrees thirty minutes south eighty links and one-half on the west by allotment number twenty bearing south ten degrees east one hundred and ten links and on the south by allotment number eighteen bearing east nine degrees thirty minutes north seventy-eight links and one-half.

SCHEDULE II.

All that piece or parcel of land situate and lying in the parish of Saint James City of Sydney in the County of Cumberland Colony of New South Wales and be the herein-after mentioned dimensions all more or less and containing by admeasurement thirty-six perches Commencing on the western building-line of Pitt-street at the north-eastern corner of lot sixteen of section thirty-six and bounded on the east by Pitt-street bearing northerly sixty-two feet nine inches on the north by a line passing partly through a wall in all one hundred and seventy-two feet four inches bearing westerly on the west by a line passing through the centre of the Sydney Arcade wall bearing southerly fifty-six feet three inches and on the south by lines bearing easterly twenty-four feet nine inches forty-seven feet three inches and east four degrees north and passing through the centre of a wall ninety feet to the point of commencement.