

ROGERS'S ESTATE. **An Act to enable and authorize Martha Rogers or other the Trustee or Trustees for the time being of the Will of the late George John Rogers to sell and lease the lands hereditaments and premises which are subject to the trusts of the said Will and to make provision for the investment of the proceeds of the sale thereof and for other purposes. [6th December, 1881.]**

Preamble.

WHEREAS George John Rogers late of Sydney in the Colony of New South Wales Solicitor deceased duly made and executed his last will and testament dated the fifth day of January one thousand eight hundred and fifty-four and thereby after a certain specific bequest to his son James Dowling Rogers not in any way affecting his real estate gave all the remainder of his personal property and also his real property over which he might have a disposing power unto his wife the said Martha Rogers for her life trusting to her discretion in the management thereof so that from the interest and proceeds she would maintain and educate herself and his children then already born or thereafter to be born of her according to their station with liberty for her if she should think proper for the advancement in life or upon the marriage of any such children to anticipate and pay any part of the portion of the property to which any such child might become entitled under his will and by his said will the said testator directed that after the decease of his said wife the whole of his property real and personal should be divided amongst his said children by the said Martha Rogers share and share alike with benefit of survivorship each child's share to vest in such child as and when he or she should attain the age of twenty-one or on the day of marriage with the consent of mother or guardian a deduction being made from those whose portions had been already anticipated as aforesaid and he thereby appointed his said wife the said Martha Rogers to be executrix of his will and guardian of his children during minority And whereas the said George John Rogers duly made and executed a codicil to his said will which codicil is dated the fourteenth day of July one thousand eight hundred and fifty-seven whereby he revoked the said bequest to his said son James Dowling Rogers but in all other respects confirmed his said will And whereas the said George John Rogers died on or about the sixteenth day of January one thousand eight hundred and sixty-three without having altered or revoked his said will and codicil leaving the said Martha Rogers his widow and seven children of their marriage him surviving And whereas the said will and codicil were duly proved in the Supreme Court of New South Wales on or about the twenty-seventh day of February one thousand eight hundred and sixty-four by the said Martha Rogers And whereas the said George John Rogers was at the time of his death seised of various lands and hereditaments in the Colony of New South Wales for an estate in fee simple And whereas an undivided moiety or equal half part of and in the lands and hereditaments mentioned and described in the Schedule to this Act is now vested in the said Martha Rogers in fee simple upon the trusts and for the ends intents and purposes of and declared by the will of the said George John Rogers And whereas the said will of the said George

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George John Rogers does not give the said Martha Rogers or any other person during the lifetime of the said Martha Rogers any power to sell or to demise the lands and hereditaments subject to the trusts of the said will. And whereas it is impossible without the authority of an Act of Parliament to sell the said lands and hereditaments or to demise the same for a longer period than the life of the said Martha Rogers and in consequence of such impossibility the said lands and hereditaments are and remain unproductive of income. And whereas it is expedient to authorize an immediate sale or leasing of the said lands and hereditaments now subject to the trusts of the said will and to provide for the investment of the proceeds of such sale or leasing in manner hereinafter appearing. 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 Martha Rogers or other the Trustee or Trustees for the time being of the said will either personally or by her his or their attorney or agent acting under a power of attorney to join in any deed or deeds for the purpose of effecting or obtaining a partition of the lands hereditaments and premises mentioned and described in the Schedule to this Act and for the like purpose to take or join with any person or persons in taking all necessary proceedings in any Court or Courts of law equity or other jurisdiction in the Colony of New South Wales and either as plaintiff or defendant in such proceedings.

2. It shall be lawful for the said Martha Rogers or other the Trustee or Trustees for the time being of the said Will either personally or by her his or their attorney or agent authorised as aforesaid and either before or after the partition of the lands and hereditaments mentioned and described in the Schedule to this Act to sell and dispose of or join and concur with any other person or persons in selling and disposing of all or any part of the lands and hereditaments which now are or at any time hereafter may be subject to the trusts of the said will including the undivided moiety or half-part of the lands and hereditaments mentioned and described in the Schedule to this Act (all which lands and hereditaments including such undivided moiety or half-part are hereinafter designated as the said trust property) either by public auction or private contract in one or in more lot or lots and in such manner generally and upon and subject to such terms and conditions as she he or they shall deem expedient and for such price or prices as can be reasonably obtained for the same with power to buy in the said trust property or any part thereof at any sale by auction and to vary or rescind any contract for sale either on terms or gratuitously and to resell without being responsible for any loss occasioned thereby and upon any sale or sales to convey or join and concur with any other person or persons in conveying 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 and thereupon the said trust property or such part thereof as shall be conveyed by the said Martha Rogers or other the Trustee or Trustees for the time being of the said will either personally or by her or their attorney or agent authorized as aforesaid and the legal estate therein shall vest absolutely in the person or persons to whom the same shall be so conveyed her his or their heirs and assigns in fee simple freed and discharged from all trusts affecting the same except such trusts as may be created and limited by such conveyance to such purchaser or purchasers and the receipts in writing of the said Martha Rogers or other the Trustee or Trustees for the time being of the said will or her his or their attorney or agent authorized as aforesaid for the purchase or other moneys of the said trust property

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so sold shall be full and sufficient discharges to any purchaser from the same and from being bound to see to the application of the same and from any liability for any loss non-application or misapplication of the same or any part therof.

Power to give credit to purchasers.

3. It shall be lawful for the said Martha Rogers or other the Trustee or Trustees for the time being of the said will on any such sale or sales as aforesaid 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 Martha Rogers or other the Trustee or Trustees of the said will 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 powers of entry and sale and other usual and proper provisions be made a security for the payment of the purchase money remaining unpaid with any interest thereon 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 grant leases.

4. It shall be lawful for the said Martha Rogers or other the Trustee or Trustees for the time being of the said will either personally or by her his or their attorney or agent duly constituted as aforesaid from time to time by deed or writing to demise and lease or join and concur with any other person or persons in demising and leasing all or any part of the said trust property 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 or writing to demise and lease or join and concur with any other person or persons in demising and leasing to any person or persons who shall covenant to improve the same by repairing any building or building 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 improvements such moneys as shall be deemed by the said Martha Rogers or other the Trustee or Trustees for the time being of the said will 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 Martha Rogers or other the Trustee or Trustees for the time being of the said will 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 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 Martha Rogers or other the Trustee or Trustees for the time being of the said will or their attorney or agent authorized as aforesaid shall not be bound to see to the application thereof and shall be free from any liability for the non-payment or misapplication of the same or any part thereof.

Trusts of the unsold land and purchase money.

5. The said Martha Rogers or other the Trustee or Trustees for the time being of the said will shall stand seized and possessed of the said trust property or of such portions thereof as may from time to time remain unsold subject to any leases granted and to any other estates rights or interest created under the authority of this Act upon the trusts and subject to the provisions in the said will expressed and declared

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declared concerning the same respectively. And from and after the sale of any portion of the said trust property 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 of 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 purposes of enabling the said Martha Rogers or others the Trustee or Trustees for the time being of the said will to carry out advantageously any sale hereby authorized. 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 invest the whole or the balance of such net surplus as aforesaid in any debentures or other Government securities of any kind of the Colony of New South Wales or upon freehold securities in the said 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.

6. The said Martha Rogers or other the Trustee or Trustees for the time being of the said will shall stand possessed of such investments and securities and the 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 the same trusts and with and subject to the same powers provisions and declarations as are in the said will expressed and contained concerning the trust property thereby devised.

7. The said Martha Rogers or other the Trustee or Trustees for the time being of the said will either personally or by her his or their attorney or agent authorized as aforesaid may at any time and from time to time make execute sign take and do or join with any other person or persons in making executing signing taking and doing all applications deeds instruments matters and things necessary or expedient for the purpose of bringing under the provisions of the "Real Property Act" the said trust property (including therein the land and hereditaments described or comprised in the said Schedule to this Act) or any part or parts of any such trust property and may deduct and retain out of the trust funds in her his or their hands the costs and expenses of and incidental thereto.

8. It shall be lawful for the said Martha Rogers or other the Trustee or Trustees for the time being of the said will either personally or by her his or their attorney or agent authorized as aforesaid to make or concur in the making of any roads streets or ways on and over any part or parts of the said trust property. 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 Martha Rogers or other the Trustee or Trustees of the said will conduce to the better laying out improving or selling of the said trust property or the convenience and enjoyment of those persons who shall have purchased or shall purchase any part thereof. The cost of any such works on the part of the said Martha Rogers or other the Trustee or Trustees for the time being of the said will or her or their proportions of any costs for such works may be deducted and retained by her him or them in the same way as she he or they is or are hereby authorized to deduct and retain the costs and expenses of and incidental to sales hereunder. And for any of the purposes of this section the said Martha Rogers or other the Trustee or Trustees for the time being of the said will may reserve and dedicate either absolutely or upon any conditions any part or parts of the said trust property.

9. This Act may be cited as "Rogers's Estate Act of 1881." Short title.

SCHEDEULE BEFORE REFERRED TO.

All that piece or parcel of land containing one hundred acres situated in the county of Cumberland parish of Saint George in the Colony of New South Wales being number three of the Cook's River allotments bounded on the east by the western boundary of number four allotment bearing south forty-eight chains from Cook's River to the northern boundary of number seven allotment on the south by parts of the northern boundary of number seven allotment and Peek's fifty acres being a line bearing west twenty chains on the west by the eastern boundary of number two allotment bearing north fifty-three chains to Cook's River and on the north by Cook's River to the western boundary of number four allotment being the land sold as lot thirty-nine in pursuance of the advertisement of the thirtieth day of March one thousand eight hundred and thirty-five.

Also all that piece or parcel of land containing one hundred acres situate in the parish aforesaid being number four of the Cook's River allotments bounded on the east by the western boundary of George Tyrrell's sixty acres bearing south eight chains commencing at Cook's River on the north by part of the southern boundary of George Tyrrell's sixty acres bearing west eight chains and again on the east by the western boundary of number five allotment bearing south forty-three chains to the northern boundary of number six allotment on the south by parts of the northern boundaries of numbers six and seven allotments being a line bearing west twenty-three chains on the west by the eastern boundary of number three allotment bearing north forty-eight chains to Cook's River again on the north by Cook's River to the western boundary of George Tyrrell's sixty acres reserving the present roads being the land sold as lot forty in pursuance of advertisement of the thirtieth day of March one thousand eight hundred and thirty-five.

Also all that piece or parcel of land containing one hundred acres situate in the parish aforesaid being number five of the Cook's River allotments bounded on the east by Cook's River from the eastern extremity of the southern boundary-line of George Tyrrel's sixty acres to the creek forming the north-western boundary of Patrick Moore's fifty acres on the south-east by that creek on the north-east by the south-western boundary of Patrick Moore's fifty acres bearing south thirty degrees east twenty-eight chains to the north-east corner of number six allotment on the south by the northern boundary of number six allotment bearing west twenty-nine chains to the south-east corner of number four allotment on the west by the eastern boundary of number four allotment bearing north forty-three chains to the southern boundary of George Tyrrel's sixty acres on the north by the southern boundary of George Tyrrel's sixty acres bearing east twenty-two chains to Cook's River being the land sold as lot forty-one in pursuance of the advertisement of the thirtieth day of March one thousand eight hundred and thirty-five.

Also all that piece or parcel of land lying and situate in the parish aforesaid at Wooli Creek containing by admeasurement ninety acres (more or less) bounded on the east by the western boundary of J. Buckley's thirty acres bearing north eighteen chains Commencing at Wooli Creek on part of the south by a line east seven chains on the north-east by a line north thirty degrees west four chains fifty links on the north by a line west thirty-three chains ninety links on the west by a line south twenty-nine chains thirty-three links to Wooli Creek and on the remainder of the south by Wooli Creek to the south-west corner of Buckley's thirty acres aforesaid being the land sold as lot nine in pursuance of the advertisement of the first day of December one thousand eight hundred and thirty-five.

Also all that messuage or cottage garden and premises situate at Cook's River near Sydney aforesaid together with the paddock on the east side thereof the whole lying between the range of rocks and Cook's River aforesaid as the same are more particularly delineated in the plan drawn at the foot of an indenture of release dated the twentieth day of February one thousand eight hundred and forty-one made between Frederick Wright Unwin of the one part and Joseph Newton of the other part.

Also all that piece or parcel of land situate in the parish aforesaid being the northern and western portion of Joshua Thorp's grant of fifty acres Commencing at Cook's River at the north-west corner of Frederick Wright Unwin's one hundred acres and bounded towards the east by a part of the west boundary line thereof bearing south thirty degrees east to Unwin's Road thence towards the south by that road dividing the land now being described from other portions of Thorp's fifty acres aforesaid the property of Leslie Duguid bearing westerly to a point opposite to the north-west corner of Leslie Duguid's land and by part of the west boundary of that land bearing by compass south twenty degrees thirty-five minutes west to the west boundary of Thorp's grant of fifty acres aforesaid thence towards the west by part of the west boundary-line thereof bearing north thirty degrees west to a stream and on the north by that stream to its confluence with Cook's River and by Cook's River to the commencing corner.