

An Act to authorize the sale of certain land devised by Joseph Napoleon Dillon and to provide for the investment and appropriation of the proceeds. [31st October, 1884.]

DILLON'S ESTATE.

WHEREAS Joseph Napoleon Dillon late of Sydney deceased being seised in fee of the land described in the Schedule hereto made and executed his last will bearing date the seventeenth day of December one thousand eight hundred and fifty-two in the words following that is to say "This is the last will and testament of me Joseph Napoleon Dillon of Sydney in the Colony of New South Wales gentleman being of sound and disposing mind memory and understanding give and bequeath unto my wife Mary Ann after payment of my debts and funeral expenses all my household furniture and effects of what nature and kind soever I give and devise to my son Joseph Napoleon Dillon all my right title and interest in and to sixty acres of land at Cook's River for the term of his natural life the rents and profits of the said land to be applied towards his maintenance and education until he shall arrive at the age of twenty-one years and after his death the said land to go to his children if any in equal shares as tenants in common and in case he shall die without issue then to my said wife if she shall survive for her life and after her death to my own right heirs And I appoint my said wife executrix of this my will In testimony whereof I have hereunto set my hand and seal this seventeenth day of December in the year of our Lord one thousand eight hundred and fifty-two" And whereas the said Joseph Napoleon Dillon departed this life on or about the twentieth day of May one thousand eight hundred and fifty-five without having altered or revoked his said will and leaving his said wife and son him surviving And whereas the land in the said will mentioned being the same as is described in the Schedule hereto has been brought under the provisions of the "Real Property Act" (twenty-sixth Victoria number nine) and its amending Acts and a certificate for an estate for life in respect thereof has issued in favour of Joseph Napoleon Dillon the younger being the son of the said testator mentioned in his said will And whereas the will contains no authority for the sale of the said land during the son's life And it is impossible therefore without the aid of Parliament to sell the same or to demise it for a longer period than the life of the said son in consequence whereof the land cannot be advantageously cultivated and it remains unproductive of income And whereas it is important in the interests of all concerned having title whether in possession or prospectively therein that the whole legal estate in the said land should be vested in Trustees to be appointed for the purpose and subject to the provisions hereinafter expressed to sell the land and invest and apply the proceeds of sale as hereinafter directed 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:—

Preamble.

Recites will of Joseph Napoleon Dillon.

Devise of sixty acres.

Death of testator &c.

Certificate of title as to son.

Will gives no power of sale.

Expediency of appointing Trustees for sale.

Vesting legal estate in Trustees.

1. After the passing of this Act the whole legal estate of and in the land devised by the aforesaid will shall for the purposes of this Act vest in Gerald Ross Campbell of Sydney in the Colony aforesaid barrister-at-law and John MacDonald of the same place commission

Dillon's Estate.

agent or other the Trustees under this Act for the time being and their heirs and assigns and shall be divested out of every person who now is or would hereafter but for this Act become entitled thereto.

Power of sale.

2. It shall be lawful for the said Gerard Ross Campbell and John MacDonald (who hereinafter in this Act are included under the designation of Trustees) and for other the Trustees for the time being under this Act at such time or times as they shall think fit to sell the said land or any part or parts thereof by public auction in one or in more lot or lots and with such rights-of-way if any over the same and in such manner generally and upon such terms and conditions as they shall deem expedient and for such price or prices as can reasonably be obtained for the same with power to buy in the land or lots offered for 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 to convey the said land or the part or parts thereof sold to the purchaser or purchasers and his or their heirs and assigns or to such uses and in such manner as such purchaser or purchasers may direct and thereupon the said land or such part or parts thereof as shall be conveyed by the said Trustees and the legal estate therein shall vest absolutely in the person or persons to whom the same has or have been so conveyed his or their heirs and assigns or shall remain to such uses and in such manner as aforesaid freed and discharged from the trust or trusts created by the said will or by this Act. Provided that the Trustees shall not thereby lose their lien on the land conveyed for so much of the purchase money as shall remain unpaid thereon.

Power to give credit to purchasers &c.

3. It shall be lawful for the Trustees for the time being to allow to any purchaser or purchasers credit for any number of years not exceeding fourteen years 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 and otherwise as may by the Trustees be deemed reasonable. Provided that the land sold shall remain unconveyed or be otherwise rendered a security by mortgage with power of entry and sale and other usual provisions for payment of the purchase money remaining unpaid together with the interest thereon until satisfied. Provided further that notwithstanding any such security being taken the vendors' lien for the purchase money shall not be thereby affected.

Receipts for purchase money.

4. The receipt or receipts in writing of the Trustees for the purchase money and interest thereon as to the whole or any part or parts of the land shall be full discharges to the purchaser or purchasers for the same and from all liability to see to the application thereof and from any liability for the loss non-application or misapplication of the same or any part thereof.

Proceeds how dealt with.

5. It shall be lawful for the Trustees of this Act for the time being on the receipt of the proceeds of the sale of any property sold under the provisions of this Act to deduct the costs and expenses of and incidental to such sale and also so much of the costs and expenses of all parties of and incidental to the passing of this Act as shall be fairly chargeable to the parties interested in the property out of the sale of which such proceeds shall have arisen. And the said Trustees shall after deducting such costs and expenses of sale and costs of passing this Act as aforesaid pay the balance of the said proceeds within three months at the latest after the receipt thereof together with the rents if any received in respect of the same premises into the Supreme Court of New South Wales in its Equitable Jurisdiction in the matter of the said will to an account to be entitled in the trusts of the said will.

Trusts of the unsold land.

6. The Trustees for the time being shall stand seised of the said land until sold and conveyed as aforesaid or of such portions thereof as from time to time remain unsold in trust for such person or persons

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Dillon's Estate.

as but for this Act would be entitled for the time being to the same or to some estate or interest therein to the extent of such estate or interest respectively under the aforesaid will and subject to the provisions therein expressed concerning the same.

7. The Court shall have the same power to apply and deal with such moneys in every respect as if the same had been paid into Court under the Act passed in the twenty-first year of Her present Majesty's reign intituled "*An Act for better securing Trust Funds and for the relief of Trustees.*" Proceeds to be dealt with as under 21 Victoria No. 7.

8. It shall be lawful for the Supreme Court in Equity from time to time to allow to the said Trustees for the time being of this Act such commission or percentage as shall be just and reasonable for their pains or trouble in effectuating such sale or sales or otherwise in exercising the powers and performing the duties hereby conferred and imposed. Remuneration.

9. Whenever either of the Trustees herein named dies or goes to reside out of New South Wales or desires to be discharged from or refuses or becomes incapable to act in the trusts created by this Act before the same have been fully performed he shall be held to have vacated such trusts and thereupon the surviving or continuing Trustee may by instrument in writing appoint a new Trustee in the place of the Trustee so vacating his office and as often as any new Trustee is so appointed all the trust property then remaining unconveyed shall by virtue of such instrument become vested in the new Trustee jointly with the surviving or continuing Trustee and every new Trustee appointed as aforesaid shall have the same powers as if he had been originally named in this Act. Power to appoint new Trustees.

10. The Trustees for the time being under this Act may make and alter any roads or streets over the said land as they shall deem expedient and also may erect make and alter any walls sewers drains or other works upon the said land which may in the discretion of the said Trustees conduce to the improving or more advantageously selling the said land or any part thereof. The cost of any such works on the part of the Trustees may be deducted by them as expenses incidental to the sale under this Act and for any of the purposes of this section the Trustees for the time being may reserve and dedicate any ways either absolutely or conditionally any part or parts of the said land. Power as to making roads.

11. This Act may be cited as "*Dillon's Estate Act of 1884.*" Short title.

THE SCHEDULE.

All that piece of land situated on the Rocky Point Road in the parish of Saint George and county of Cumberland containing sixty-three acres fifteen perches or thereabouts Commencing on the eastern side of Rocky Point Road at its intersection with Park-street and bounded thence on the west by that road bearing northerly twenty-two chains seven links to A. Kennerley's forty-two acres grant on the north by that grant bearing easterly twenty-two chains forty-seven links to a swamp on the north-east and on the north-west by lines along the margin of that swamp bearing south fifty-three degrees fifteen minutes east one chain ninety links south fifty degrees nineteen minutes east two chains ninety-three links south sixty-six degrees forty-five minutes east one chain four links and north eighty-seven degrees one minute east one chain eighty-eight links to Scarborough Park on the east by that park bearing southerly eighteen chains eighty links to Park-street aforesaid and on the south by that street bearing westerly twenty-nine chains fifty links to the point of commencement.
