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An Act to enable the trustees for the time-being of the Will of the late George Hill, deceased, to purchase, mortgage, and grant leases of lands; to provide for the application of the moneys borrowed on mortgage and of the rents and profits arising from leases; and for other purposes. [20th December, 1894.]

Preamble.

WHEREAS George Hill, late of Surry Hills, in the city of Sydney, in the Colony of New South Wales, duly made his last will dated the thirteenth day of December, one thousand eight hundred and seventy-nine, and thereby gave and devised all his real estate unto and to the use of his wife Jane Hill, his daughter Florence Hill, and his sons William Charles Hill and Sydney Smith Hill, their heirs and assigns, upon trust that his trustees should permit and suffer his said wife during her life to occupy the dwelling-house in which the testator at the time of making his will resided or any other one of his dwelling-houses his said wife might select, and upon trust out of the rents and profits of the residue of his real estate to raise and pay

George Hill's Estate.

pay to his said wife an annuity of five hundred pounds a year for and during the remainder of her life: And as to the real estate devised to the testator by the will of the late Patrick Moore and his interest therein, the testator directed his trustees or trustee to receive the rents and profits thereof during the life of his said wife, and until his youngest child should attain the age of twenty-one years, and until the undivided third part or share in the said Patrick Moore's estate devised to Patrick Moore, of Cook's River, for life should be vested in some person or persons who should be in a position to agree with the testator's trustees or trustee for a partition of the said lands, and to execute all necessary conveyances upon such partition: And the testator directed his trustees or trustee after the death of his said wife, and after the coming of age of his said youngest child, so soon as the said undivided third part or share in the said estate should be vested in a person or persons able to agree to and execute the necessary conveyances upon the partition to arrange and agree with such person or persons for a partition of the said estate, and as to the rents and other annual proceeds arising from any estate or interest in the two undivided third parts or shares in the said lands to which the testator was entitled under the said will of Patrick Moore, the testator directed that the same should be received by his trustees or trustee, and applied in and about the necessary reparation and maintenance and insurance of the buildings thereon, and that the balance remaining after such payments should go to and form part of the rents of the testator's real estate until division of his residuary personal estate, and the other portion of his real estate as in the said will mentioned, and the testator declared that after such last-mentioned division, and until a partition could and should be made, his trustees or trustee should stand possessed of the rents which should arise from the said lands left to him by the said Patrick Moore upon trust thereout to repair and uphold the buildings upon the said land, and to divide the surplus yearly in equal shares amongst each of the testator's children, excepting Mary, the wife of Fitzwilliam Wentworth, and Alice, the wife of William Cooper, and Sophia, the wife of James Hill, as should then be living, or should have died leaving issue, him or her surviving, such issue to take *per stirpes* and not *per capita*, and from and immediately after a partition of the said lands should have been made upon trust to sell and dispose of as in the said will mentioned, all such portion of the said lands as upon such partition should be allotted and conveyed to his trustees or trustee, and the testator declared that his trustees or trustee should stand possessed of the money to arise from such sale upon trust, firstly, to pay the costs of and attending such partition and such sale, and secondly, upon trust to invest the balance and to pay the interest, dividends, and income arising therefrom unto the testator's said children, including the said Mary, the wife of the said Fitzwilliam Wentworth, and Alice, the wife of the said William Cooper, and Sophia, the wife of the said James Hill, in equal shares during their life, and after the death of any of them leaving issue to divide the said balance equally among such issue, taking *per stirpes* and not *per capita*. And the testator declared that if any of his sons should become insolvent, or take the benefit of any Act for the relief of insolvent debtors, or assign his estate for the benefit of his creditors, or encumber, alien, dispose of, convey, or assign the share by his will devised and bequeathed to such son, or any part thereof, such share should forthwith be vested in, and the testator thereby devised and bequeathed the same to his trustees during the life of such son, upon trust for the wife of such son during her life, and after her decease for the child or children of such son, if more than one in equal shares. And if, on the happening of any such event, there should be no wife or no child

George Hill's Estate.

of such son then living, upon trust from time to time, if and as his said trustees should, in their sole discretion, think fit to allow to such son such sum or sums of money as they might consider proper for his maintenance and support, and subject thereto upon trust for the other sons and daughters of the testator, in equal shares, in the same manner and for the same estates, and subject to the same powers, conditions, and provisos as the shares by his said will originally devised and bequeathed to his said sons and daughters respectively. And the said testator appointed his said wife and the said Florence Hill, William Charles Hill, and Sydney Smith Hill, executors of his said will: And whereas the said George Hill died on the nineteenth day of July, one thousand eight hundred and eighty-three, without having altered or revoked his said will, and the same was, on the twenty-second day of August, one thousand eight hundred and eighty-three, duly proved in the Supreme Court of New South Wales by the executors therein named: And whereas in a suit in the Supreme Court of New South Wales, in its Equitable Jurisdiction, being *Moore v. Hill*, No. 3,853, the Court did declare that the plaintiffs and the defendant Eliza Moore were entitled to one equal undivided third part of the said lands and hereditaments forming part of the estate of the said Patrick Moore, deceased, and that the defendants, Jane Hill, Florence Hill, William Charles Hill, and Sydney Smith Hill, as trustees of the said will of the said George Hill, deceased, were entitled for an estate of inheritance in fee simple in possession to the remaining two equal undivided third parts of the said lands. And the Court did order and decree that a partition of the said lands be made between the plaintiffs and the defendant, Eliza Moore, and the defendants, Jane Hill, Florence Hill, William Charles Hill, and Sydney Smith Hill, according to their interests thereinbefore declared in pursuance of a proposal for partition in a certificate of the Master-in-Equity in the said decree referred to: And whereas the said proposal for partition was subsequently carried into effect, and the lands allotted thereunder to the said Jane Hill, Florence Hill, William Charles Hill, and Sydney Smith Hill were effectually assured to them: And whereas by an indenture made the twenty-second day of June, one thousand eight hundred and ninety-two, between the said Jane Hill, Florence Hill, and Sydney Smith Hill (hereinafter called lessors), the trustees for the time being of the said will of the said George Hill of the one part and Walter Ives (hereinafter called lessee) of the other part, the lessors in pursuance and exercise of the trusts and powers conferred on them by the said Supreme Court in its Equitable Jurisdiction in the matter of the "Settled Estates Act, 1886," and in the matter (*inter alia*) of the said lands so allotted and assured as aforesaid did demise and lease unto the said lessee, his executors, administrators, and assigns, all that piece or parcel of land described in the First Schedule hereto (being part of the said lands allotted and assured as aforesaid), together with all rights, easements, and appurtenances to the same belonging, for the term of thirty years, from the first day of April, one thousand eight hundred and ninety-two, at the rental thereby reserved, and the lessee covenanted (*inter alia*) with the lessors that he would, at his own expense, erect and completely finish within twelve months from the said first day of April, one thousand eight hundred and ninety-two, a substantial building upon the said land with proper and sufficient outbuildings and conveniences, and would expend in erecting the same a sum which would amount in the aggregate to twenty thousand pounds: And whereas by an indenture made the twenty-second day of June, one thousand eight hundred and ninety-two, between the Anglo-Australian Investment, Finance, and Land Company (Limited) of Sydney (hereinafter called lessors) of the one part, and the said Walter Ives (hereinafter

(thereinafter called lessee) of the other part, the lessors did demise and lease unto the lessee, his executors, administrators, and assigns, all that piece or parcel of land described in the Second Schedule hereto and adjoining the land comprised in the First Schedule hereto for the term of thirty years, to be computed from the fifteenth day of June, one thousand eight hundred and ninety-two, at the rental thereby reserved, and the lessee covenanted (*inter alia*) with the lessors that he would pull down the buildings then upon the said land, and at his own cost erect upon the same new buildings to the value of two thousand pounds at the least, and by the said indenture it was agreed and declared that if the lessee, his executors, administrators, or assigns should be desirous at any time within five years from the day of the date thereof of purchasing the fee simple of the said premises thereby demised for the sum of seven thousand eight hundred pounds, the lessors, their successors or assigns would, at the expiration of notice duly given upon payment of the said sum of seven thousand eight hundred pounds and of all rent then accrued due, grant and convey the fee simple of the said premises unto the lessee, his executors, administrators, or assigns as he or they should direct: And whereas the said Walter Ives has erected on the said lands comprised in the said First Schedule hereto the Lyceum Theatre, a hotel, and other buildings, and has erected upon the said lands comprised in the said Second Schedule hereto certain offices and premises belonging to the said theatre, and has incurred debts to tradesmen and others for work and labour done and materials and goods supplied and for moneys advanced or paid to him or on his behalf in and about the erection and furnishing of the same, but has not yet completed the same: And whereas it is desirable in the interests of all persons beneficially interested under the said will of the said George Hill in the said lands comprised in the said First Schedule hereto that the trustees of the said will should have power to purchase the unexpired residues of the respective terms of years in the said lands respectively comprised in the said First and Second Schedules hereto, and to purchase the fee simple of the said lands comprised in the said Second Schedule hereto, also the said materials and goods, and complete the said buildings, and should also have the other powers hereinafter contained and expressed upon the terms and securities hereinafter provided: 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 trustees or trustee for the time being of the said will of the said George Hill, deceased, to purchase upon such terms and conditions and for such price or prices as to the said trustees or trustee shall seem fit all or any of the following, that is to say:—

- (i) The unexpired residues of the said respective terms of years in the said lands respectively comprised in the First and Second Schedules hereto.
- (ii) The fee simple of the said lands comprised in the Second Schedule hereto.
- (iii) All or any part of the plant, machinery, furniture, fittings, electric light apparatus and appurtenances, fixtures, goods, and chattels in or upon the said lands comprised in the First and Second Schedules hereto, or in or upon the said theatre, hotel, or other buildings erected thereon, or held or used in connection with the same.

2. It shall be lawful for the said trustees or trustee to borrow and raise at interest upon the security of their interest in all or any part of the said lands comprised in the First and Second Schedules hereto, and the said plant, machinery, furniture, fittings, electric light apparatus,

Power to purchase lands, &c.

Power to borrow money.

George Hill's Estate.

apparatus, and appurtenances, fixtures, goods, and chattels, any sum or sums of money that may be sufficient for the following purposes, that is to say:—

- (i) For the purpose of paying a sum not exceeding five thousand pounds in or towards satisfaction of all or any of the debts incurred as aforesaid by the said Walter Ives for work and labour done and materials and goods supplied and for moneys advanced or paid to him or on his behalf.
- (ii) For the purpose of providing the necessary moneys to effect the said purchases which the said trustees or trustee are by this Act empowered to make.
- (iii) For the purpose of completing the said theatre, hotel, and other buildings, and of properly and suitably equipping and fitting the same at a total cost not exceeding one thousand two hundred pounds.
- (iv) For the purpose of paying all costs, charges, and expenses of and incidental to the said purchases and the said borrowing, and of and to the obtaining of this Act.
- (v) For the purpose of from time to time paying off any mortgage or mortgages given in pursuance of the powers herein contained.

3. It shall be lawful for the said trustees or trustee to execute any mortgage or mortgages with or without power of sale and with all other usual powers, provisions, and covenants 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 authority of this Act shall be bound or concerned to inquire whether such money is required for the purposes aforesaid, or otherwise as to the propriety of such mortgage, or in any way concerned to see to the application of such money when so advanced, or be liable for the loss, nonapplication, or misapplication thereof or of any part thereof.

Power to execute mortgages.

Power to grant leases.

Trusts of rents, &c.

4. It shall be lawful for the said trustees or trustee after having effected the said purchases from time to time by deed to demise and lease all or any part of the said lands comprised in the First and Second Schedules hereto, and of the said plant, machinery, furniture, fittings, electric light apparatus and appurtenances, fixtures, goods, and chattels to any person or persons for any term of years not exceeding twenty 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: 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 also a condition of re-entry on nonpayment of rent within a time to be therein specified, and also that a counterpart of such lease be executed by the lessee: Provided, also, that any lessee paying any rent reserved by any such lease to the said trustees or trustee shall not be bound or concerned to see to the application thereof, and shall be free from any liability for the non-application or misapplication of the same or any part thereof.

5. The said trustees or trustee shall stand possessed of the rents and profits arising from any lease or leases made under any of the powers hereinbefore contained upon the following trusts, that is to say:—

- (i) Upon trust from time to time to pay interest as it shall accrue due under any mortgage or mortgages executed by the said trustees or trustee under the authority of this Act.
- (ii) Upon trust to make such provision (so far as such provision shall not be made by any lessee under the terms of his lease) for insurance against fire as the said trustees or trustee shall think fit, and for payment of any rates, taxes, or other outgoings in respect of such lands or buildings.
- (iii)

George Hill's Estate.

(iii) Upon trust to set apart in each year such sum as the said trustees or trustee shall think fit for repairs to any building or buildings now standing, or that may hereafter be standing upon any part of the land included in the said Schedules: Provided that if in any year such sum or any part thereof shall not be required for such repairs then such sum or such part thereof as shall not be so required as the case may be shall be added to and form part of the sinking fund to be created as hereinafter provided.

(iv) Upon trust after making the said payments and provisions and setting apart the said sum to set apart in each year such part of the residue of the said rents and profits, not being less than the sum of four hundred pounds, as the said trustees shall think fit in and towards a sinking fund for the payment of any principal owing on any mortgage or mortgages executed under the authority of this Act, and to place such sum so set apart upon deposit at interest with any Bank in the city of Sydney, and from time to time, as the said deposit shall mature, to pay the same or any part thereof in reduction of the said principal, or to renew the same or any part thereof, together with the accrued interest thereon until the said principal shall have been entirely paid off.

(v) Upon trust after deducting the said sum so lastly set apart to divide the net residue of the said rents and profits quarterly in equal shares amongst or to appropriate the same for the benefit of the children of the said George Hill living at the time of the passing of this Act (including Mary, the wife of FitzWilliam Wentworth, and Alice, the wife of William Cooper, and Sophia, the wife of James Hill), and the issue then living of such of the said children as shall then be dead, such issue to take *per stirpes* and not *per capita*: Provided always and without prejudice to any existing or future order of or proceedings in any Court of competent jurisdiction affecting the share of any of the said children if any of the sons of the said George Hill shall have or shall become insolvent or bankrupt, or shall have taken or shall take the benefit of any Act for the relief of insolvent debtors, or shall have assigned or shall assign his estate for the benefit of his creditors, or shall have encumbered, aliened, disposed of, conveyed, or assigned, or shall encumber, alien, dispose of, convey, or assign his said share or any part thereof, such share shall forthwith be vested in the said trustees or trustee during the life of such son upon trust for the wife of such son during her life, and after her decease for the child or children of such son, if more than one, in equal shares, and if on the happening of any such event there shall be no wife or no child of such son then living, then upon the trusts and with the discretion which by the said will are in that event declared or conferred upon the said trustees or trustee.

6. Save as by this Act appears nothing herein shall be deemed *saving clause* to interfere with or affect any of the trusts, powers, and provisions of the said will of the said George Hill, and such trusts, powers, and provisions shall (save as aforesaid) extend to the lands comprised in the Second Schedule hereto, if and when they shall be purchased by the said trustees or trustee as though such lands had been included in the devise of the lands comprised in the First Schedule hereto.

7. This Act may be cited as the "George Hill's Estate Act of *short title*. 1894."

SCHEDULES.

THE FIRST SCHEDULE.

All that piece or parcel of land situate in the city of Sydney, county of Cumberland, Colony of New South Wales, being part of Hill's Estate, Pitt-street, Sydney: Commencing at a point on the east side of Pitt-street, being its intersection with the southern side of a private right-of-way seven feet wide, the said right-of-way being southerly two feet three inches from the southern wall of Thomas' coffee palace; and bounded thence on the west by Pitt-street bearing southerly fifty-nine feet one and three-quarter inches; thence on the south by a line bearing easterly one hundred and eighty-five feet seven inches; thence on the east by a line bearing northerly forty-three feet three and three-quarter inches to aforesaid right-of-way; thence on the north by said right-of-way bearing westerly twenty feet; thence again on the east by the said right-of-way bearing northerly seven feet nine inches; and thence again on the north by said right-of-way bearing westerly one hundred and sixty-three feet five and a half inches, to the point of commencement,—as shown on the plan drawn on the lease granted by the said trustees to the said Walter Ives, registered in the Registrar-General's Office, at Sydney, number thirty-one, book four hundred and ninety-three.

THE SECOND SCHEDULE.

All that piece or parcel of land situate, lying, and being in the parish of Saint James, in the county of Cumberland, Colony of New South Wales, be the hereinafter mentioned several dimensions a little more or less, being part of lot thirty, section thirty-two, city of Sydney, town grants, containing eleven perches: Commencing at a point on the west side of Castlereagh-street two hundred and twenty-three feet southerly from Market-street; and bounded on the east by Castlereagh-street bearing southerly twenty-six feet; on the south by the Hon. R. H. Roberts' land bearing westerly one hundred and fifteen feet eleven and a half inches; on the west by W. T. Muston's theatre premises bearing northerly twenty-three feet ten and a quarter inches westerly two and three-quarter inches; and thence by George Hill's premises northerly two feet one and three-quarters of an inch; and on the north by other part of lot thirty bearing easterly one hundred and eighteen feet four inches, to the point of commencement.