

An Act to authorise the receipt and invest-
ment by the Trustees of the will of William
McQuade of certain compensation moneys
payable by the Government of the Colony
of New South Wales, and to add to the
powers of investment under the said will.
[29th March, 1894.]

McQUADE ESTATE.

WHEREAS William McQuade, late of Potts' Point, near Sydney, Preamble. in the Colony of New South Wales, deceased, being at the date of his death seized, possessed of, or otherwise well entitled to certain real and personal estates in the said Colony, duly made and executed his last will and testament, bearing date the sixth day of February, one thousand eight hundred and eighty-five, whereby after making certain bequests which are not material to be herein set forth, and after reciting (as the facts were) that under the will of their grandfather James Hale, who died on the twenty-first day of June, one thousand eight hundred and fifty-seven, the testator's three sons William James Hale McQuade, Henry Michael Hale McQuade, and Arthur Frederick Hale McQuade were entitled to the following properties, namely:—The farm and homestead situate at Cornwallis, then occupied and under lease to Thomas Cupitt, about twenty-five acres; also the farm situate at Cornwallis aforesaid, then occupied by John Wood; also all that land and property situate in George-street, in the city of Sydney, then occupied by J. S. Abrahams, as a chemist shop; also all that land or property situate in George-street, Sydney, aforesaid, and adjoining the last-mentioned shop, then occupied by Lysacht, as an hotel; also all that land and property situate in George-street, Sydney, aforesaid, and occupied by C. Hafer, as a jeweller's shop; also all that land and property used as a shop, situate at the corner of Hunter and George Streets, Sydney, aforesaid, then occupied by D. Hume, as a chemist's shop; also all that land and property situate in George-street, Sydney, aforesaid, and occupied as a shop by, or leased to, C. and A. Huennerbein, as a music warehouse; also all that land and property situate in Hunter-street, Sydney, aforesaid, and then leased to George John Wells, as two shops; also all that land and property situate in George-street, in the town of Windsor aforesaid, and occupied by John Henry Crowley, as a dwelling-

McQuade Estate.

dwelling-house and shop ; also all that paddock in Macquarie-street, Windsor, aforesaid, occupied by the said John Henry Crowley ; also all that land and property situate in George-street, Windsor, aforesaid, occupied as a saddler's shop, by William Linsley, and adjoining the shop in the occupation of the said John Henry Crowley ; also all that land and property or farm situate at Emu Plains, in the said Colony, and occupied by one Daniel Upton ; and after reciting that the said testator had purchased from his two sons, the said William James Hale McQuade and Henry Michael Hale McQuade, their shares and interest in all the properties above-mentioned, and had also obtained a conveyance from his son, Arthur Frederick Hale McQuade, of his share and interest in all the said properties situate in the town or district of Windsor, and that it was his intention to settle the shares of his three sons under that his will in manner thereafter mentioned, the said testator thereby gave and devised all the real estate to which he should be entitled at the time of his death, or which he should have power to dispose of unto the said Henry Michael Hale McQuade and his heirs, to the use of John McLaughlin, of Sydney, solicitor, and the said Henry Michael Hale McQuade and their heirs, to hold the same upon the trusts thereafter declared, and he bequeathed all his personal estates (including personal estate which he should have power to appoint) not therewith otherwise disposed of to the said John McLaughlin and Henry Michael Hale McQuade, their executors and administrators, upon the trusts thereafter declared ; and he directed that the share of his son, William James Hale McQuade, should consist of the following properties, namely :—One-third of the lands and hereditaments mentioned above as devised by the will of the said James Hale, except the properties situated in Windsor ; and also all that land and property situate in Goulburn and George Streets, in the city of Sydney aforesaid, on which is erected a hotel and four houses, then occupied by or leased to one Thompson ; and also all that land situate in George-street, Sydney, aforesaid, occupied by Parry and McRae ; also the land in Pitt-street, in the said city, on which is erected a shop or building then leased to and occupied by the Compagnoni Catering Company (Limited) ; also all that piece or parcel of land situate and lying in the parish of Alexandria, city of Sydney, in the county of Cumberland, Colony of New South Wales, and be the thereafter mentioned dimensions all more or less, being portion of John Wylde's eleven acre grant at Potts' Point : Commencing on the western side of Wylde-street, at the north-east corner of F Hilly's property ; and bounded on the east by a private entrance opening on Wylde-street, by a line along a stone wall bearing northerly sixty-six feet ; and thence on the north-east by a line to the centre of said wall, and by a line along the centre of said wall, being a curve bearing south-easterly one hundred and fifteen feet ; on the north by a line bearing west ten degrees north to a point on Woolloomooloo Bay fifty-seven feet southerly from the top of the boat steps ; on the west by that bay southerly to the north-west corner of F Hilly's property ; on the south-east and again on the south by lines bearing east thirty-one degrees north thirty-two feet six inches, east twenty degrees north one hundred and four feet, east ten degrees north forty-nine feet, north fifty degrees thirty minutes east forty-two feet ; and thence northerly along a stone wall one hundred and twenty feet, and again by a stone wall bearing easterly one hundred and twenty feet to the point of commencement ; also one equal third share of his residuary real and personal estate ; and the said testator thereby empowered his said trustees out of the said residuary estate to erect a house on the said lands at Potts' Point aforesaid, at a cost of not more than three thousand pounds, if he should not build such house in his lifetime,

McQuade Estate.

lifetime, or if the said William James Hale McQuade should himself erect a residence at the same or greater cost to allow him that sum for such erection; and he directed that the share of his said son, Henry Michael Hale McQuade, should consist of the following properties, namely:—One-third share of the lands and hereditaments above-mentioned as devised by the will of the said James Hale, not situate in Windsor, and the whole of such part of the said lands as were situate in Windsor aforesaid, and also all his property situate in Emu Plains aforesaid; also all his lands situate in Pitt and Market Streets, Sydney, aforesaid, then leased to and held by James Allison, Esquire, and upon which Her Majesty's Theatre and Opera House Company (Limited), were about to erect a theatre and other buildings; also his land situate at George-street, in the city of Sydney, then or lately occupied by or known as the City Catering Company, and leased to Messieurs Allt and Company; and also all other lands belonging to him in the district of Windsor aforesaid, except the property occupied by Crowley and Linsley; also all that portion of his land at Potts' Point, and lying in the parish of Alexandria, city of Sydney, in the county of Cumberland, Colony of New South Wales, and be the thereafter mentioned dimensions all more or less, and being portion of John Wylde's eleven acres grant at Potts' Point, commencing at the termination of the western side of Wylde-street; and bounded on the south part of the termination of said street bearing easterly six feet six inches; on the east by a line bearing north nineteen degrees thirty minutes west and parallel to the eastern side of the house and six feet distant therefrom to the waters of Port Jackson; on the north-west and west by Port Jackson and Woolloomooloo Bay south-westerly and southerly to a point fifty-seven feet southerly from the top of the boat steps; on the south by a line bearing east ten degrees south to the end of a stone wall with an iron railing thereon; on the north-east by the centre of said wall, being a curved line bearing south-easterly one hundred and fifteen feet; on the south by a private entrance bearing easterly thirty-four feet six inches to Wilde-street, and on the east by that street bearing north nineteen degrees thirty minutes west ninety-two feet to the point of commencement, upon part of which his residence, Bomera, was then erected; also one equal third share of all other his residuary, real, and personal estate; and the said testator directed that the share of his son, the said Arthur Frederick Hale McQuade, should consist of the following properties, namely:—All his land in Goulburn and Sussex Streets, Sydney, known as the Friendship Inn, then leased and occupied by William Hennessy; also all his land in George-street, Sydney, aforesaid, on which were erected two shops, then leased by Mr. Bond; and also the remaining portion of his land at Potts' Point, and lying in the parish of Alexandria, city of Sydney, in the county of Cumberland, Colony of New South Wales, and be the thereafter mentioned dimensions all more or less, and being portion of John Wylde's eleven acre grant at Potts' Point, commencing at the termination of the eastern side of Wylde-street; and bounded on the south by the termination of said street bearing westerly forty-two feet; on the west by a line bearing north nineteen degrees thirty minutes west, and parallel to the eastern side of the house, and six feet distant therefrom to the waters of Port Jackson; on the north by Port Jackson easterly to Flood's boundary; and on the east by that boundary as indicated by walls bearing south twenty-one degrees west to the point of commencement, together with a sum of three thousand pounds for the erection of a residence upon the same conditions and terms as the house to be erected for his son, William James Hale McQuade; also one-third share of all his residuary, real, and personal estate; and he directed that his trustees should stand seized

McQuade Estate.

seized and possessed of the share of his son, the said William James Hale McQuade, upon trust if the said William James Hale McQuade should not by reason of any antecedent bankruptcy or insolvency or alienation or charge or attempted alienation or any other event (whether occurring in the testator's lifetime or after his decease) be disentitled personally to receive and enjoy the income to the same share or any part thereof, to pay the same income to the said William James Hale McQuade during his life, or until he should become bankrupt or insolvent or alienate or charge the same income or some part thereof, or affect so to do, or the happening of any other event disentitling him personally to receive and enjoy such income or some part thereof, and after the failure or determination in the lifetime of the said William James Hale McQuade of the trust in his favour lastly thereinbefore declared upon trust from time to time during the remainder of the life of the said William James Hale McQuade, in the absolute and uncontrolled discretion of his trustees, to either pay or apply the whole or any part of the same income as the same should accrue for or towards the maintenance and personal support of all or any one or more to the exclusion of the others or other of the following persons, namely, the said William James Hale McQuade and his wife and issue (whether children or more remote) for the time being in existence, and if more than one in such shares and in such manner as his trustees in their absolute discretion should think fit, or to pay or apply the whole of the said income or so much thereof as should not be applied under the discretionary trust or power lastly thereinbefore contained to the person or persons or for the purposes to whom and for which the said income would for the time being be payable or applicable if the said William James Hale McQuade were then dead; and from and after the death of the said William James Hale McQuade upon trust to pay to his widow (if any) one moiety of the same income and subject thereto as to as well the inheritance and capital of the said share as the income thereof upon trust for all or any one or more of the issue of his said son William James Hale McQuade, in such proportions, and for such interests to be absolutely vested within twenty-one years of his decease, as he should by deed or will appoint; but no child in whose favour or in favour of any of whose issue an appointment should be made should participate under the trust thereafter contained in the unappointed portion of the said shares without bringing the benefit of such appointment into hotch-pot, and in default of appointment or subject to any partial appointment in trust for children of his said son, who being sons should attain the age of twenty-one years, or being daughters attained that age or were married under that age, such children, if more than one, to take in equal shares. And the said testator directed his said trustees to stand seized and possessed of the respective shares of his said sons, Henry Michael Hale McQuade and Arthur Frederick Hale McQuade, upon such trusts, with such powers and such limitations in favour of his said last-mentioned sons respectively and their respective wives, children, and issue as should correspond with the therein preceding trusts, powers, and limitations in favour of his son, the said William James Hale McQuade, and his wife, children, and issue: Provided always that in case all the trusts thereinbefore declared concerning any of the said shares into which his estate was thereinbefore divided, should determine or fail to take effect, then and in every such case the share as to which there should be such determination or failure (including any additions which might have been made thereto by way of accrue under the clause now in statement, and any accumulation which might have been added thereto, or the income thereof, or so much thereof respectively as should not have become

McQuade Estate.

become vested, or been applied or disposed of under or by virtue of the trusts or powers of that his will) should (subject and without prejudice to the trusts, powers, and provisions therinbefore declared concerning such share and the income thereof) go and accrue by way of addition in equal proportions to the other shares in his said estate, and so that every such accruing share should thenceforth be held upon and for the same trusts and purposes (so far as subsisting and capable of taking effect) as were thereinbefore declared of and concerning the original share to which the same should be added and be considered as forming part thereof for all purposes: Provided always that if there should be no child of any of his sons who, being a son attained the age of twenty-one years, or being a daughter should attain that age or be married, then subject to the trusts, powers, and provisions therinbefore contained, his trustees should stand seized and possessed of his said estates upon trust, as to one-half moiety for his brother John McQuade, of Windsor aforesaid, and as to the other half moiety upon trust for the half brothers and sisters of his late wife, Amelia Ann McQuade, in equal shares as tenants in common, the issue of his deceased brother or sister taking the share that would have belonged to their parent or ancestor *per stirpes* and not *per capita*; and if at his death there should be living neither the said John McQuade, nor his issue, nor any other brother or sister, or issue of any deceased brother or sister, or half brother or sister of his said wife, upon trust for such persons as under the statutes for the distribution of the effects of intestates would have been entitled thereto if he had died intestate without leaving a widow, child, or other issue, such persons to take in the proportions prescribed by the said statutes. And he directed his said trustees to sell and convert into money all his residuary personal estate, or such part thereof as should be of a saleable or convertible nature, and to get in the other parts thereof. And he directed his trustees to hold the moneys to arise from such sale, conversion, and getting in, upon trust thereout in the first place to pay the expenses incidental to the execution of the preceding trust, and his debts and funeral and testamentary expenses, and in the next place to pay the pecuniary legacies therinbefore bequeathed, and to invest the surplus of the moneys as thereafter mentioned. And he empowered his said trustees to sell all such parts of his real estate as were not specifically mentioned in his will, and his real estate, purchased under the power in that behalf thereafter contained, by public auction or private contract, together or in parcels, subject to such terms and conditions as to title or evidence, or commencement of title, or the time or mode of payment of the purchase money, or indemnity against, or apportionment of encumbrances, or as to any other matters relating to the sale, as they should judge expedient. And to fix reserved biddings, and to buy in property for sale, and vacate or vary contracts for sale, and to resell as aforesaid without liability to answer for consequential loss, and generally to effect the sale and conversion of such parts of his estate as were directed or authorised to be sold and converted, on such terms and in such manner as they should deem most advantageous; and, in particular, as to any of his said estates under which there are or are supposed to be minerals, the said testator empowered his said trustees to sell the surface apart from the minerals, or to sell the minerals together with or apart from the surface; and to grant or reserve such rights of way, air, and water of in-stroke and out-stroke and other easements in, upon, over, or under any of the said estates as might be necessary or desirable for the most effectual and advantageous mining and working, storing, manufacturing, selling, and carrying away of such minerals or any minerals under adjacent or neighbouring lands; and he directed that his trustees should invest the

McQuade Estate.

the moneys to arise from the sale of any part of his real estate in the manner thereafter authorised, and should hold the funds and securities whereon such investments should be made upon the same trusts as the real estate from the sale of which such moneys arose; and he declared that his trustees should have a discretionary power to postpone for such period as they should deem expedient the conversion or getting in of any part of his residuary personal estate, but the yearly proceeds thereof should be deemed annual income for the purposes of the trusts of his will as if the same were income arising from authorised investments; and he empowered his trustees to manage and order all affairs connected with his estate, or any part thereof, as regards letting, occupation, cultivation, repairs, insurance against fire, receipt of rents, indulgences and allowances to tenants, and all other matters, and in the execution of the power of letting to grant building and repairing, improving or mining leases for any term not exceeding fourteen years, and other leases for any term not exceeding twenty-one years, for such terms, at such rents, and generally on such conditions as his trustees should deem advantageous, after taking or not taking fines or premiums, which, if taken, should be considered as capital; and he directed that all investments of moneys to be made by his trustees should be made in their names in Government debentures or in the purchase of shares in any banking or insurance company, carrying on business in the Colony of New South Wales, or on mortgage or purchase of real or leasehold estate in the said Colony, or on fixed deposit in a banking company therein; and he empowered his trustees to vary such investments from time to time for others of a like value; and he empowered his trustees to apply all or any part of the yearly income to which, under any of the dispositions thereinbefore contained, any infant should be entitled or presume to be entitled in possession towards the maintenance and education, or otherwise for the benefit of such infant, or at the option of his trustees to pay the same into the hands of the parent or guardian of such infant to be so applied, but for the application thereof by such parent, or guardian, his trustees should not be responsible; and empowered his trustees with the consent of the respective prior life owners if any, and if none at the discretion of his trustees to advance and apply any part not exceeding one half of the capital to which, under any of the said dispositions, each or any infant should be entitled, or presume to be entitled in or towards his or her advancement or preferment in the world; and he thereby declared that notwithstanding the restriction thereinbefore mentioned as to alienation of any real estate by his said sons, it should be lawful for any of his said sons to convey and transfer any lands of which he may have devised to him by that his will, a one-third undivided share or interest into his trustees for the time being of that his will, such son conveying as aforesaid to receive from his said trustees in exchange, such other lands by way of equality of exchange as should be agreed between such son and his said trustees, such lands or the interest therein to be held by his trustees upon the same trusts and limitations as those given in exchange therefor were previously held by his said trustees; and he empowered and directed his said trustees for the time being with the consent of his said son, Henry Michael Hale M'Quade, if they should see fit at any time to sell all or any land situate in the district of Windsor, except his estate called "Fairfield," which his said trustees held in trust for the use of his said son Henry Michael Hale McQuade, his said trustees having similar and full powers vested in them as regards the sale of the said lands as they had in respect of his residuary real estate, and the moneys and proceeds of such sale or sales should be held by his said trustees upon the same trusts and limitations

McQuade Estate.

limitations as the lands so sold as aforesaid were held by them; and he declared that the expression "my trustees" used by him in that his will should be construed as comprising and referring to the trustees or trustee for the time being of that his will, and that the power of appointing new trustees of his will should be exercisable by said three sons or the survivors or survivor of them and the continuing trustee during the lifetime of his said sons, and after the death of the survivor by the persons and in manner by law prescribed, and that the number of trustees might from time to time be varied, but so that it be not less than two; and he declared that in addition to the ordinary indemnity given to trustees by law, his trustees should not be answerable for any loss which might arise from purchasing land or lending money on mortgage with less than a marketable title. As to estates held by him in trust or by way of mortgage, he devised the same to his trustees, their heirs, executors, administrators, and assigns, subject to the trusts and equities affecting the same. And he thereby revoked all other wills and codicils at any time previously made by him. And he appointed the said John McLaughlin and Henry Michael Hale McQuade executors and trustees of that his will, and he directed that the said John McLaughlin, so long as he should act as trustee of his will, should be paid an annual commission of three pounds per centum upon the gross amounts of rents and profits or income which should reach the hands or be collected by his said trustees and executors, and that any trustee, not being one of his said sons, that should be appointed according to law, should receive an annual commission of one pound and ten shillings per centum, and that the said John McLaughlin should be allowed all professional and other charges for his time and trouble in addition to the said commission; And whereas the said testator died on the third day of April, one thousand eight hundred and eighty-five, without having revoked or altered his said will: And whereas probate thereof was duly granted to the said John McLaughlin and Henry Michael Hale McQuade, the executors therein named, on the fourteenth day of May, one thousand eight hundred and eighty-five: And whereas the said Henry Michael Hale McQuade died on the twentieth day of November, one thousand eight hundred and ninety-three, and Cecily McQuade, of Sydney aforesaid, widow, has since been duly appointed trustee of the said will in his place, and all real and personal property, subject to the trusts of the said will, are now duly vested in the said Cecily McQuade as such trustee jointly with the said John McLaughlin: And whereas by a notification of resumption dated the first day of February, one thousand eight hundred and ninety, and under the hand of His Excellency the Right Honorable Charles Robert, Baron Carrington, Governor and Commander-in-chief of the Colony of New South Wales and its Dependencies, and under the great seal of the said Colony, and duly published in the New South Wales *Government Gazette*, on the fourth day of February, one thousand eight hundred and ninety, His Excellency the said Charles Robert, Baron Carrington, as such Governor as aforesaid, with the advice of the Executive Council of the said Colony, in pursuance of the powers in that behalf given to or vested in him by the Lands for Public Purposes Acquisition Act, did by that notification declare that the lands therein described had been resumed for the purpose of providing additional wharf accommodation at Woolloomooloo Bay: And whereas the said lands so resumed as aforesaid form portion of the said specifically devised lands in respect of which trusts have been declared by the said will in favour of the said testator's said sons William James Hale McQuade and Henry Michael Hale McQuade: And whereas the amount of compensation money payable in respect of the said lands so resumed as aforesaid was agreed upon

McQuade Estate.

upon between the Minister for Public Works of the said Colony and the said John McLaughlin and Henry Michael Hale McQuade, as such trustees as aforesaid, at the sum of forty-two thousand nine hundred and twenty-five pounds: And whereas it is expedient, and for the interest of all parties entitled under the said will to the said compensation money, whether in possession, reversion, or remainder, that one equal half part of the said compensation money should be forthwith invested in the purchase of New South Wales Funded Stock, and that the remaining equal half part of the said compensation money should be invested in the same manner as is by the said will, and this Act prescribed with reference to the proceeds of the said residuary, real, and personal estate: And whereas it may hereafter be necessary or expedient to sell the said New South Wales Funded Stock so purchased as aforesaid, or the Government of the said Colony may redeem the said stock: And whereas it will be expedient, and for the interest of all parties entitled thereto, whether in possession, reversion, or remainder, that in the event of such sale or redemption as lastly abovementioned, the proceeds of such sale or redemption should be invested in the same manner as is by the said will and this Act prescribed with reference to the proceeds of the said residuary, real, and personal estate: 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 receive compensation money and execute conveyances, &c.

1. From and after the passing of this Act, the said John McLaughlin and Cecily McQuade, or other the trustees or trustee for the time being of the said will (hereinafter in this Act called the said trustees) are hereby authorised to receive from the Minister for Public Works and to give him a valid receipt for the said sum of forty-two thousand nine hundred and twenty-five pounds, together with interest thereon, at the rate of four per centum from the twenty-fifth day of October one thousand eight hundred and ninety-three, and to execute all proper and necessary conveyances, transfers, and assurances of the lands so resumed as aforesaid which the said Minister for Public Works may require.

Trusts of compensation money.

2. Save as is otherwise provided in this Act the said trustees shall hold the said sum of forty-two thousand nine hundred and twenty-five pounds, together with all interest accrued due thereon until payment of the said sum and interest by the Minister for Public Works, and all investments for the time being representing the same, upon and subject to the same trusts, limitations, and provisions as are declared by the said will concerning the said lands so resumed as aforesaid.

Investment of compensation money, &c.

3. The said trustees may invest one equal half-part of the said sum of forty-two thousand nine hundred and twenty-five pounds in the purchase of New South Wales Funded Stock, and may hereafter, if they think fit, sell the whole or any part of the said New South Wales Funded Stock so purchased as aforesaid and reinvest the same in the manner in the said will or in this Act provided.

Investment of compensation money, &c.

4. The said trustees may invest the remaining equal half-part of the said sum of forty-two thousand nine hundred and twenty-five pounds, and all interest accruing due on the said sum until the said sum and interest be paid by the said Minister for Public Works, and any moneys which may hereinafter arise from the sale of the said New South Wales Funded Stock under the power in that behalf contained in the third section hereof, or from the redemption thereof by the Government of the said Colony (all of which moneys are hereinafter referred to as the said resumption moneys), in the same manner, and subject to the same conditions and provisions as are by the said will and this Act prescribed in reference to the proceeds of the said residuary real and personal estate.

Silkstone Coal-mine Railway Act Further Amending.

5. The said trustees may carry out the following works or any of them upon any of the said specifically devised lands in respect of which trusts have been declared by the said will in favour of the said William James Hale McQuade and Henry Michael Hale McQuade, that is to say: The erection of houses or buildings, or the repairing or rebuilding of any existing houses or buildings, and the building, making, repairing, or rebuilding of walls, fences, drains, sewers, or other permanent improvements.

6. To enable them to carry out the said works, or any of them referred to in the last preceding section hereof, the said trustees may expend the said resumption moneys or such part thereof as the said trustees may in their absolute discretion think fit: Provided nevertheless that the said trustees shall not for the purposes aforesaid expend upon any of the said specifically devised lands in respect of which trusts have been declared by the said will in favour of the said William James Hale McQuade, more of the said resumption moneys than the amount of compensation paid by the said Minister for Public Works for the resumed portion of the said last-mentioned specifically devised lands, and shall not for the purposes aforesaid expend upon any of the said specifically devised lands in respect of which trusts have been declared by the said will in favour of the said Henry Michael Hale McQuade, more of the said resumption moneys than the amount of compensation paid by the said Minister for Public Works for the resumed portion of the said last-mentioned specifically devised lands.

7. In addition to the powers of investment given by the said will with reference to the proceeds of the said residuary real and personal estate, the said trustees may invest the proceeds of the said residuary real and personal estate in their names in any form of Government security, whether funded stock or otherwise.

8. This Act may be cited as the "McQuade Estate Act of 1894." Short title.