

BRODIE'S ENABLING
ACT AMENDMENT.

An Act to amend Brodie's Enabling Act, 1900.
[19th October, 1903.]

Preamble.

WHHEREAS, by an Act passed in the sixty-fourth year of the reign of Her late Majesty Queen Victoria, and intituled "An Act to authorise the sale, mortgage, and leasing of certain lands and hereditaments settled by John Brodie and Ellen, his wife; and for other purposes." After reciting (*inter alia*) as the facts were that certain lands and hereditaments described in the First Schedule to the said Act had been settled by the said John and Ellen Brodie, by two several indentures of the tenth day of February, one thousand eight hundred and seventy-five, and the twenty-first day of April, one thousand eight hundred and eighty, respectively, upon certain trusts therein set out in favour of Mary Gilroy, the wife of Peter Gilroy, and of any husband who should survive her, and of the children of the said Mary Gilroy, and in default of such children then in favour of Margaret Downes, the wife of Michael Downes, and that a certain portion of the said lands and hereditaments, comprising about two acres and four perches, described in the Second Schedule to the said Act, had been on or about the first day of November, one thousand eight hundred and eighty-seven, resumed by the Railway Commissioners, and the compensation money paid therefor had been expended in erecting two cottages on another certain portion of the said lands and hereditaments described in the Third Schedule to the said Act, which cottages
where

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were let to tenants whensoever possible, and when let produced a gross annual income of about one hundred and twenty-four pounds, and that the remaining unalienated portion of the said land was partly orchard land and partly bush land, and was bringing in very little return and did not pay expenses, and that William Foster the trustee under the said indenture of the twenty-first day of April, one thousand eight hundred and eighty, and the said Peter and Mary Gilroy were unable to pay the land tax and water rates on the said land, and that, in the absence of any power of sale of the said land, no benefit could be obtained from the same for the said Mary Gilroy or her children, and that the said Peter and Mary Gilroy had nine children therein named, and were unable to provide properly for the education and advancement of the said children, and were therefore desirous to have power to dispose of the said land, and that the said Mary Gilroy should be free to dispose of the proceeds thereof in what manner she might think best for the benefit of herself and the said children, it was enacted that after the passing of the said Act it should be lawful for the said Mary Gilroy in her own name to sell and dispose of so much of the said land and hereditaments described in the First Schedule to the said Act as was not included in the portions described in the Second and Third Schedules thereto or any portion thereof in manner therein provided, and it was thereby further enacted that the said Mary Gilroy, her executors, and administrators, should stand possessed of all moneys arising from any such sale or sales as aforesaid, upon trust to apply the same in whatever manner she should think best for the maintenance of herself and family, and for the education and advancement in life of her said children: And whereas powers to mortgage and lease the said lands were inadvertently omitted from the said Act: And whereas one portion of the said land has been sold, but it has been found impracticable at the present time to effect advantageous sales of the rest of the said lands and hereditaments or any portion thereof: And whereas, owing to the absence of such powers of mortgaging and leasing, the said Peter and Mary Gilroy can still obtain no benefit from the said land for the said Mary Gilroy or her children, and are still unable to properly provide for the education and advancement of the said children, and are desirous that the said Act should be amended by giving to the said Mary Gilroy such powers to mortgage and lease the said lands and hereditaments as it was originally intended to give her by the said Act: And whereas the said Peter and Mary Gilroy are also desirous that the powers given to the said Mary Gilroy by Brodie's Enabling Act, 1900, and by this Act should, after her death, be exercisable by the trustee or trustees for the time being of the said indenture of the twenty-first day of April, one thousand eight hundred and eighty: And whereas the said John Brodie, Ellen Brodie, William Foster and

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Margaret Downes, and Eleanor Theresa Gilroy (the only child of the said Peter and Mary Gilroy, now over the age of twenty-one years), are satisfied that such course would be for the best interests of all persons concerned, and desire that it should be carried out, and consent thereto: And whereas since the passing of the said Act the portion of the said lands and hereditaments which the said Mary Gilroy was thereby authorised to sell (with the exception of the portion already sold as hereinbefore mentioned) has been brought under the provisions of the Real Property Act, 1900, and is more particularly described in the First Schedule hereto: And whereas the portion of the said lands described in the Third Schedule to the said Act is described in the Second Schedule hereto: Be it therefore enacted by the King'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 execute
certain mortgage in
First Schedule.

1. After the passing of this Act, it shall be lawful for the said Mary Gilroy in her lifetime, and after her death for the trustee or trustees for the time being of the said indenture of the twenty-first day of April, one thousand eight hundred and eighty, notwithstanding the provisions of the said indentures, for the purpose of raising such sum or sums of money as in her, his, or their own free and uncontrolled discretion she, he, or they may think fit from time to time to execute any mortgage of the lands and hereditaments mentioned and described in the First Schedule hereto, or of any part or parts thereof, with power of sale and all other usual powers, provisions, and covenants, and to enter into, execute, and do all such arrangements, assurances, and things as shall be necessary or expedient for the purpose of effectuating such mortgage: Provided that no person who shall advance money upon the security of any mortgage purporting to be made under the power hereby given shall be bound or concerned to inquire as to the advisability or propriety or necessity of the raising of such money, or as to the application of such money when raised and advanced, nor shall any such person be affected by express or constructive notice to the contrary; and the receipt of the said Mary Gilroy or of the said trustee or trustees, as the case may be, for the moneys so advanced shall effectually discharge the person advancing the same from any liability in respect of the misapplication or non-application thereof.

Power to lease lands,
&c., mentioned in
First and Second
Schedules.

2. After the passing of this Act, it shall be lawful for the said Mary Gilroy during her lifetime, and after her death for the trustee or trustees for the time being of the said indenture of the twenty-first day of April, one thousand eight hundred and eighty, from time to time to demise and lease the lands and hereditaments mentioned and described in the First and Second Schedules hereto, or any part thereof, to any person or persons for any term of years not exceeding ten years,

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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 to demise and lease the said lands and hereditaments, or any part thereof, to any person or persons who shall covenant to improve the same by repairing any building or buildings now standing or which shall hereafter be standing on any part of the land thereby leased, or by erecting or building any house or houses, building or buildings, on such land or any part or parts thereof, or by otherwise expending in improvement such moneys as shall be deemed by the said Mary Gilroy, or the said trustee or trustees, as the case may be, 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 thirty years, to take effect in possession or within one year from the date thereof, and shall be at such rent as the said Mary Gilroy, or the said trustee or trustees, as the case may be, 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 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 so, also, that a counterpart of such lease be executed by the lessee ; and provided, also, that any lessee paying any rent reserved by any such lease to the said Mary Gilroy, or to the said trustee or trustees, as the case may be, shall not be bound to see to the application thereof, and shall be free from any liability for the non-application or mis-application of the same or of any part thereof.

3. The said Mary Gilroy, and the said trustee or trustees, shall in respect of all moneys advanced under any such mortgage or mortgages, and of all rent paid under any such lease or leases as aforesaid to her, him, or them respectively, stand possessed of the same upon trust to apply the same in whatever manner she, he, or they, as the case may be, shall think best for the maintenance, education, and advancement in life of the children of the said Mary Gilroy.

4. The power of sale by section one of Brodie's Enabling Act, 1900, conferred upon the said Mary Gilroy shall, after her death, be exercisable by the trustee or trustees for the time being of the said indenture of the twenty-first day of April, one thousand nine hundred, and the said Act shall be read as if it conferred upon such trustee or trustees after the death of the said Mary Gilroy exactly the same powers over the said land described in the first Schedule hereto mutatis mutandis as the said Mary Gilroy has by virtue of the said Act during her lifetime, and such trustee or trustees shall stand possessed of all moneys to arise from any sale or sales effectuated by them by virtue of

Application of proceeds.

Power to sell and dispose of land, &c.

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of this section upon trust to apply the same in whatever manner he or they may think best for the maintenance, education, and advancement in life of the children of the said Mary Gilroy.

Short title.

5. This Act may be cited as "Brodie's Enabling Act Amendment Act, 1903," and this Act and Brodie's Enabling Act, 1900, shall be read together and construed as one Act.

SCHEDULES.

FIRST SCHEDULE.

That piece of land situated at Turrumurra, in the parish of Gordon, and county of Cumberland, containing fifteen acres two roods twenty-nine perches or thereabouts: Commencing on the north-eastern side of Great Eastern Road at the south-western corner of land of J. Bateman; and bounded thence on the south-west by that road bearing north-westerly two hundred and thirty-nine feet two inches to land of J. Bennett; thence by that land, being fenced lines bearing northerly two hundred and sixty-four feet eleven and one-quarter inches, westerly sixty feet, and southerly two hundred and nine feet eleven and one-half inches to the Great Eastern Road aforesaid; again on the south-west and on the west by that road, being lines bearing north-westerly one hundred and sixty-two feet nine inches; and again northerly six hundred and ninety feet four and three-eighths inches to other land of the said Mary Gilroy; thence by that land, being fenced lines bearing easterly one hundred and eighty-three feet one and one-quarter inches; again northerly two hundred and four feet one inch; and again westerly one hundred and eighty-three feet three and one-quarter inches to the Great Eastern Road aforesaid; again on the west by that road, being lines bearing northerly two hundred and forty-seven feet, three hundred and fifty-seven feet, and three hundred and fifty-three feet four inches to land of S. Edwards; again on the north by that land, being a fenced line bearing easterly three hundred and sixty-one feet to land of John Brodie and Ellen Brodie, and on the east by that land, land of Ellen Brodie, land of R. S. Callaghan and others, land of Henry Beeson and others, and land of J. Bateman aforesaid, bearing southerly, in all two thousand one hundred and sixty-five feet three inches, to the point of commencement, being part of lot four of section one of the Big Island Estate, and also part of two thousand acres (delineated in the public map of the said parish deposited in the Department of Lands) originally granted to John Terry Hughes by Crown grant, dated the eighteenth day of August, one thousand eight hundred and forty-two.

SECOND SCHEDULE.

All that piece or parcel of land, containing by admeasurement three roods and seventeen and a half perches more or less, situate lying and being in the parish of Gordon, county of Cumberland, and Colony of New South Wales, being part of John Terry Hughes' grant of two thousand acres: Commencing on the eastern side of the Great Eastern Road at a point bearing northerly, and distant one thousand and forty-six links from an angle formed by the intersection of a northern side of said Great Eastern Road, opposite Turrumurra Railway Station; and bounded thence on the west by part of the eastern side of the Great Eastern Road aforesaid, being a fenced line bearing north three hundred and nine links; thence on the north by a fenced line bearing

Sydney Harbour Collieries (Limited).

bearing north eighty-eight degrees fifty-seven minutes east two hundred and seventy-eight and seven-tenths links; thence on the east by a fenced line bearing south five minutes east three hundred and nine and one-fifth links; and on the south by a fenced line bearing south eighty-eight degrees fifty-nine minutes west two hundred and seventy-nine and one-fifth links, to the point of commencement, be the said several bearings and dimensions a little more or less.
