

MACKEN ESTATE.

An Act to enable the executors and the trustees for the time being of the will of James Joseph Macken to invest certain moneys belonging to the estate of the said James Joseph Macken in the purchase of shares in "Mark Foy's, Limited," and to retain the shares so purchased as investments of the funds of the said estate; to extend the powers of investment conferred by the said will upon the said trustees; and for other purposes. [19th August, 1910.]

Preamble.

WHEREAS James Joseph Macken of Sydney, in the State of New South Wales, draper, now deceased, duly made his last will and testament, bearing date the ninth day of April, one thousand eight hundred and ninety-one, whereby he devised and bequeathed all his real and personal estate unto his wife, Alice Macken, and Mark Foy, his brother-in-law, their heirs, executors, administrators, and assigns, upon trust that his said wife and the said Mark Foy, or the survivor of them, or the heirs, executors, or administrators of such survivor, or other the trustees or trustee for the time being of that his will (hereinafter and hereinafter referred to as the said trustees or trustee) should at such time and, in such manner as his said trustees or trustee should in their, his, or her absolute discretion think fit, sell, call in, and convert into money the same or such part thereof as should not consist of money; and should, out of the money produced thereby, and out of such part of his personal estate as should consist of money, pay all his just debts, funeral and testamentary expenses, and legacies, and should invest the residue of the said moneys in some or one of the modes of investment thereafter authorised, with power for his trustees or trustee from time to time at their discretion to vary the said investments for others of the same or a like nature, and should stand possessed of the said residuary trust moneys and the investments for

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for the time being representing the same (hereinafter called "the residuary trust funds") upon trust to pay to his wife the rents, profits, and income thereof until his youngest child should attain the age of twenty-one years, for the maintenance and support of herself and the maintenance, education, and support of his children, or such of them as should be living; and so soon as his youngest child who should be living should attain the age of twenty-one years, then in trust to divide the same equally between his said wife and all his children, or such of them as should then be living, share and share alike as tenants in common: And the said testator thereby provided that if any child of his should die in his lifetime or before his youngest child should have attained the age of twenty-one years, leaving a child or children who should survive the testator and, being a son or sons, should attain the age of twenty-one years, or being a daughter or daughters should attain that age or marry, then the last-mentioned child or children should take (and if more than one, equally between them) the share which his or her or their parent would have taken if such parent had survived the testator and lived till his youngest child had attained the age of twenty-one years, and the testator thereby declared that in the event of the death of his said wife before his youngest child should have attained the age of twenty-one years, then his trustees or trustee might apply the whole or any part of the income of the expectant share of any of his children or grandchildren towards his or her maintenance and education with liberty to pay the same to the guardian of such child or grandchild for the purpose aforesaid: And the testator thereby declared that all moneys liable to be invested under that his will might either be retained in the state of investment in which they were at the time of his decease, or might be invested by placing the same on fixed deposit in the Bank of New South Wales, the Commercial Banking Company of Sydney, or the Union Bank of Australia, or on mortgage of freehold properties in any of the Australian Colonies: And the testator thereby declared that his trustees or trustee might postpone the sale and conversion of his real and personal estate or any part thereof for so long as they, he, or she should think fit: And the said testator thereby appointed his said wife during her life, and after her decease, the said Mark Foy the guardian of his infant children: And whereas the said James Joseph Macken died on the fourth day of September, one thousand nine hundred and eight, without having revoked or altered his said will, probate whereof was duly granted by the Supreme Court of New South Wales in its probate jurisdiction to the said Alice Macken and Mark Foy, on the second day of December, one thousand nine hundred and eight: And whereas the said James Joseph Macken left him surviving eight children and no more, namely, James Victor Macken, Marjorie Macken, Hugh Michael Macken, Noel Francis Macken, Erroll St. John

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Sheridan Macken, Neville Aloysius Macken, Lorna Mary Macken, and John Christian Macken: And of the said eight children, the two first-named are over the age of twenty-one years, and the remaining six, are still under the age of twenty-one years, and the youngest of the said children, namely, John Christian Macken, will attain the age of twenty-one years on the tenth day of July, one thousand nine hundred and twenty-two: And whereas all the debts, funeral, and testamentary expenses of the said James Joseph Macken have now been paid: And whereas the said James Joseph Macken was at the said respective dates of his will and death hereinbefore mentioned, carrying on business at Sydney aforesaid in partnership with the said Mark Foy and Francis Foy, Hugh Victor Foy, and Kathleen Sophie Smith, as general drapers and outfitters, importers and manufacturers, under the style or firm of "Mark Foy": And whereas for some time prior to the death of the said James Joseph Macken, the said James Joseph Macken, Mark Foy, Francis Foy, Hugh Victor Foy, and Kathleen Sophie Smith had been taking the preliminary steps towards the conversion of the said partnership into a limited liability company, to be registered under the provisions of the Companies Acts in force in the said State of New South Wales: And whereas the scheme for such conversion included the sale of the said business to such company when formed, and the consideration for the said sale was to be a sum of money which was to be paid and satisfied by the allotment to the partners in the said business of preference and ordinary shares in the said company all fully paid up: And whereas before the said sale was carried into effect the said James Joseph Macken died, as hereinbefore mentioned: And whereas after the death of the said James Joseph Macken a company was duly registered in the State of New South Wales under the name of "Mark Foy's Limited," pursuant to the provisions of the Companies Acts in force in the said State: And whereas by agreement, dated the sixteenth day of November, one thousand nine hundred and nine, made between the said Francis Foy, Mark Foy, Hugh Victor Foy, and Kathleen Sophie Smith (hereinafter called the vendors) of the one part, and the said company of the other part, the said proposed scheme was duly carried out, and the said business was sold to the said company for the sum of four hundred and fifty-six thousand one hundred and forty-four pounds, which sum was to be paid and satisfied by the allotment and issue to the vendors of preference and ordinary shares all fully paid up, to be issued in the proportions set out in the said agreement: And it was thereby agreed that the company should satisfy all the liabilities of the said firm and the vendors, including the amount due by the said firm or the vendors to the executors of the said James Joseph Macken, for his share of the capital and income of the said business and any interest that might be due

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due thereon: And it was thereby further agreed that if the company should issue to the executors of the will of the said James Joseph Macken shares in the company, either in full or part payment of the amount due by the company to them, such shares should be issued upon and subject to the same terms and conditions as the shares to be issued to the vendors as the consideration for the sale thereby made, but that the company should not be bound to reserve any shares for a longer period than twelve months from the date of the said agreement: And whereas the said sale has been completed by the transfer of the said business, and of the assets and liabilities thereof, to the said company, and by the issue to the said vendors of the preference and ordinary shares mentioned in the said agreement: And whereas the share of the said James Joseph Macken at the date of his death in the said business and the goodwill thereof, and in the real and personal estate belonging thereto, was valued at the sum of fifty-six thousand six hundred and fifty-four pounds fifteen shillings and elevenpence: And whereas the said share was at the date of the sale to the said company valued at the sum of sixty-five thousand seven hundred and fifty-seven pounds nineteen shillings and tenpence: And whereas such last-mentioned sum is now due and owing by the said business to the said executors: And whereas the said company has set aside and appropriated for the purpose of issuing the same to the executors of the said James Joseph Macken in payment of the amount owing by the said company to the said executors in respect of the share of the said James Joseph Macken in the said business the following shares, namely, twenty-eight thousand two hundred and fifty-eight preference shares fully paid up, and thirty-seven thousand five hundred ordinary shares fully paid up: And whereas the value of the said last-mentioned preference and ordinary shares exceeds the amount now due and owing to the said executors as aforesaid: And it is to the interest of all persons entitled under the will of the said James Joseph Macken that the amount so owing as aforesaid should be paid by the issue to the said executors of the said last-mentioned preference and ordinary shares rather than by the payment to the said executors of the said amount in cash: And whereas the said James Joseph Macken intended to accept as and for his interest in the said business preference and ordinary shares in the said company, and intended such shares to pass to and devolve upon his executors upon trust for the persons beneficially interested under his said will: And whereas by the terms of the said will the said executors have no power to invest the moneys owing by the said firm to the said executors in the purchase of shares, either preference or ordinary, in the said company, nor to accept such shares in lieu of cash in payment for the interest of the said James Joseph Macken in the said business: And whereas it is desirable

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desirable in the interests of all persons beneficially entitled under the said will that the said executors should have power to accept the said shares in lieu of cash from the said company, and that the said executors should have power to invest other funds belonging to the said estate in the purchase of any other shares issued by the said company, and to accept in lieu of the shares to be issued to them in the said company shares in any company to which the business of the said company may be sold; and should have power to retain as investments of the said estate any shares to be issued to them as hereinafter provided; and should also have the other powers hereinafter contained: And whereas the said Alice Macken, James Victor Macken, and Marjorie Macken, the only beneficiaries under the said will who are over the age of twenty-one years, are satisfied that the conferring of such powers upon the said trustees would be in the best interests of all persons concerned, and consent thereto: 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 the trustees or trustee to take up shares in Mark Foy, Limited, in lieu and satisfaction of moneys due to the trustees of the estate.

Power to the trustee or trustees to retain as investments the shares to be issued.

Power to trustees in event of issue of further shares in the company to apply to the court for permission to invest, and consent to investments.

**1.** It shall be lawful for the trustees or trustee for the time being of the said will of the said James Joseph Macken to accept from the said company in lieu and satisfaction of all moneys due to the said trustees by the said firm of Mark Foy and the surviving partners thereof and the said company, or by or from any of them, and as full payment for the share of the said James Joseph Macken in the said business, twenty-eight thousand two hundred and fifty-eight fully paid up preference shares and thirty-seven thousand five hundred fully paid up ordinary shares in the said company.

**2.** It shall be lawful for the said trustees or trustee to retain as investments of the funds of the said estate the shares to be issued to the said trustees or trustee in pursuance of section one hereof or any of such shares for such period or periods as the said trustees or trustee in their absolute and uncontrolled discretion may think fit.

**3.** In the event of the said company issuing any further shares in the said company (whether such shares form part of the original six hundred thousand shares of the said company or of any increased capital thereof), it shall be lawful for the said trustees or trustee with the consent of any Judge of the Supreme Court of New South Wales sitting as Judge in Equity to invest the trust funds belonging to the said estate in the acquisition from the said company of such shares and with such consent to retain such shares or any of them either as a temporary or permanent investment for such time or times and upon such terms and conditions as such judge may determine.

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**4.** In the event of the business of the said company, or any portion thereof, being sold and assigned to any other company or companies (whether formed for the purpose of acquiring the said business or not) it shall be lawful for the said trustees, with the consent of any Judge of the said Supreme Court sitting as Judge in Equity, in exchange for any shares which they may then hold in the said company, to accept shares in such other company or companies, and with such consent to retain such shares or any of them, either as a temporary or permanent investment, for such time or times and upon such terms and conditions as such Judge may determine.

Power to the trustees on sale of business to any other company to apply to court for permission to accept shares in company, and to retain same.

**5.** Nothing in this Act contained shall authorise the said trustees or trustee to accept any shares or share in any company which are or is not issued as fully paid up to the face value thereof.

Trustees not to accept shares in any company unless fully paid up.

**6.** The powers by this Act conferred upon the said trustees or trustee shall be in addition to, and shall not prejudice or affect any powers, rights, or privileges which the said trustees or trustee may have by virtue of the provisions of the said will or of any Act of Parliament or otherwise.

This Act not to affect powers or rights under will or of any other Act of Parliament.

**7.** Wherever by this Act the consent of a Judge of the Supreme Court sitting as Judge in Equity is required to be obtained by the said trustees or trustee, such consent may be obtained on application by way of originating summons in accordance with the provisions of the Equity Act, 1901, or in such other way as such Judge may determine.

Procedure to be followed in obtaining consent of court or judge.

**8.** This Act may be cited as the "Macken Estate Act, 1910." Short title.