

New South Wales.



ANNO QUARTO

GEORGI V REGIS.

An Act to facilitate the subdivision of
a leasehold area of thirteen
thousand two hundred and eighty-
two acres two roods, forming part
of the Arthursleigh Estate, situate
in the counties of Argyle and
Camden, in the State of New
South Wales. [15th October, 1913.]

CAMPBELL'S
ARTHURS-
LEIGH
SUBDIVISION.
—

WHEREAS on and prior to the thirty-first day of Preamble.
July in the year one thousand eight hundred
and eighty Thomas Holt, late of Bexley, in the county
of Kent, England, was the registered proprietor for an
estate in fee-simple in possession under the provisions
of the Real Property Act of certain lands situate in the
counties

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counties of Argyle and Camden, in the State (then Colony) of New South Wales, known as the Arthursleigh Estate: And whereas by an indenture dated the thirty-first day of July, in the year one thousand eight hundred and eighty, it was witnessed that the said Thomas Holt, for the considerations therein mentioned, did demise and lease unto one Alfred William Holt a piece or parcel of land forming part of the said Arthursleigh Estate, containing eleven thousand acres more or less, in the said indenture more particularly described, and being the lands referred to in the memorandum of lease hereinafter mentioned as containing thirteen thousand four hundred and three acres two roods, to hold the same unto the said Alfred William Holt for the term of ninety-nine years from the first day of July, one thousand eight hundred and eighty, at the yearly rental of four hundred and twelve pounds: And whereas the said Thomas Holt, on the sixth day of March, in the year one thousand eight hundred and eighty-eight, duly made and executed his last will and testament, whereby, subject to the payment of an annuity of five hundred pounds charged thereon in favour of his wife Sophia Johanna Charlotte Holt, and to all powers and remedies for the recovery thereof, he devised his estates known as "Arthursleigh," "Detley," "Wingello Park," and "Kerrawarra," in the counties of Argyle and Camden, in the State (then Colony) of New South Wales, together with the land of which he was seised and possessed near the Marulan railway station, and any other land he might be seised or possessed of or entitled to dispose by will of at the time of his decease, in the immediate neighbourhood or within twenty miles of Arthursleigh (all of which lands were therein described as thereafter referred to as the Arthursleigh Estate), unto his Australian trustees and their heirs, to the use of his son the said Alfred William Holt for his life without impeachment of waste, with remainder to the use of Claude Alfred Wallis Holt, the first son of the said Alfred William Holt, for his life without impeachment of waste, with remainder to the use of the first and other sons of the said Claude Alfred Wallis Holt successively according to their seniorities in tail male, with remainder to the use of the first and other daughters of the said Claude Alfred Wallis Holt successively according to their seniorities in tail male, with successive remainders in tail male to the use of the

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second and other sons and first and other daughters of the said Alfred William Holt, with further successive remainders over in favour of the testator's sons and daughters and their respective issues as therein particularly set forth, with remainder to the use of the testator's own right heirs: Provided always, and the said Thomas Holt thereby declared, that if any person to whom any estate in tail male or in tail general by purchase was thereinbefore limited was born in his lifetime, such respective estates should not take effect, and in lieu of such estate in tail male he devised the said premises to the use of such person for his or her life without impeachment of waste, with remainder to the use of the first and every other son of such person successively according to their seniorities in tail male, with remainder to the use of the first and other daughters of such person successively according to their seniorities in tail male, with provision also in lieu of such estate in tail general; and the said Thomas Holt devised the Arthursleigh Estate, in every case where the same was devised to the use of any person during his or her life, from and after the determination of that estate, by any means in his or her lifetime, to the use of his Australian trustees and their heirs during the life of the tenant for life, whose estate should so determine in trust for him or her, and by the usual ways and means to preserve the contingent remainders expectant or dependent thereon; and the said Thomas Holt devised and bequeathed all his real and personal estate in the Southern Hemisphere, not otherwise disposed of in his said will, or any codicil thereto, unto and to the use of his Australian trustees and their heirs upon trust, to convert the same into money and to stand possessed of the proceeds of such conversion, and to pay thereout certain debts, legacies, and annuities, and subject thereto the said Thomas Holt bequeathed the said residue to his three sons, Frederick Samuel Ellis Holt, Walter Henry Holt, and the said Alfred William Holt, equally as tenants in common; and the said Thomas Holt appointed his wife, the said Sophia Johanna Charlotte Holt, and his sons, the said Frederick Samuel Ellis Holt, Alfred William Holt, and Walter Henry Holt, and one Samuel Cook, to be his Australian trustees and executrix and executors of his said will as regards all property in the Southern Hemisphere thereinbefore bequeathed to them:

And

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And whereas the said Thomas Holt, on the thirteenth day of March, in the year one thousand eight hundred and eighty-eight, duly made and executed a codicil to his said last will and testament: And whereas the said devise of the said Arthursleigh Estate was not affected by the said codicil: And whereas the said Thomas Holt died on the fifth day of September, in the year one thousand eight hundred and eighty-eight, without having altered or revoked his said will, save by the said codicil: And whereas the said Alfred William Holt did not accept the devise to him for life of so much of the said Arthursleigh Estate as was contained in the hereinbefore recited indenture of lease: And whereas by a deed poll made on the thirty-first day of January, in the year one thousand eight hundred and eighty-nine, the said Alfred William Holt did renounce and disclaim, inter alia, so much of the said freehold lands and hereditaments devised to him for life by the said will as were contained in the said hereinbefore recited indenture of lease: And whereas by an indenture dated the fifth day of March, in the year one thousand eight hundred and eighty-nine, the said Frederick Samuel Ellis Holt and Walter Henry Holt, in consideration of the natural love and affection which they bore towards the said Alfred William Holt, did release, assign, and set over unto him all their respective interests in the rents reserved by the hereinbefore recited indenture of lease: And whereas the said indenture of lease, dated the thirty-first day of July, in the year one thousand eight hundred and eighty, by inadvertence, was not drawn up in the form authorised by the said Real Property Act, and the said Alfred William Holt was therefore unable to obtain the registration of the same under the provisions of the said Act: And whereas a suit was instituted in the Supreme Court of New South Wales in its equitable jurisdiction by the said Alfred William Holt as plaintiff, against the said Frederick Samuel Ellis Holt, Samuel Cook, Sophia Johanna Charlotte Holt, Alice Sophia Ellen Holt, Annie Isabella Holt, Emmeline Augusta Holt, the said Walter Henry Holt, and Claude Alfred Wallace Holt, Sophia Arthursleigh Holt, Silva May Holt, Thomas Samuel Holt, Frederick Charles Sydney Holt, Sophia Lucy Holt, Ruth Endora Holt and Owen Howard Holt infants, as defendants, by a statement of claim number five thousand two hundred and eighty-nine,

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nine, filed on the thirteenth day of May, one thousand eight hundred and ninety, whereby the said Alfred William Holt submitted that the said indenture of lease was a valid and binding agreement between the parties thereto for a lease of the land therein comprised for the term and upon the conditions mentioned in the said indenture, and that the said agreement ought to be specifically performed: And whereas by a decree made in the said suit on the nineteenth day of December, in the year one thousand eight hundred and ninety, it was declared that the said Alfred William Holt was entitled to a specific performance of the agreement embodied in the said indenture of lease dated the thirty-first day of July, one thousand eight hundred and eighty, and it was further declared that the defendants in the said suit were respectively trustees for the said Alfred William Holt of their respective estates or interests of the lands comprised in the said indenture for the term of ninety-nine years from the first day of July, one thousand eight hundred and eighty, and that all persons unborn who might thereafter become entitled under the said will of the said Thomas Holt to any estate or interest in the said lands would, on becoming so entitled, become trustees for the said Alfred William Holt of their respective estates and interests, and it was accordingly ordered and decreed that the said lands should vest in the said Frederick Samuel Ellis Holt for the said term of ninety-nine years from the said first day of July, one thousand eight hundred and eighty, and that the said Frederick Samuel Ellis Holt should execute a proper memorandum of lease of the said lands for the said term under the provisions of the Real Property Act: And whereas in pursuance of the said decree the said Frederick Samuel Ellis Holt, on the twenty-third day of May, one thousand eight hundred and ninety-one, by a memorandum of lease under the provisions of the Real Property Act, registered number one hundred and eighty thousand five hundred and twenty-nine, did lease unto the said Alfred William Holt the said piece or parcel of land forming a portion of the said Arthursleigh Estate, containing eleven thousand acres, more or less, but described by more recent survey as containing thirteen thousand four hundred and three acres two roods, for the term of ninety-nine years from the first day of July,

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July, one thousand eight hundred and eighty, at the yearly rent of four hundred and twelve pounds, payable to the person or persons for the time being entitled to the reversion expectant on the determination of the said lease (thereinafter referred to by the expression "the reversioner or reversioners"), and the said Alfred William Holt, for himself, his heirs, executors, administrators, and assigns, did thereby covenant with the said Frederick Samuel Ellis Holt, his executors and administrators, and also as a separate covenant with the reversioner or reversioners, that the said Alfred William Holt, his executors, administrators, or assigns, should and would at all times during the said term pay unto the reversioner or reversioners the said rent of four hundred and twelve pounds, and also should and would pay all rates, taxes, assessments, impositions, outgoings, or payments—parliamentary, municipal, civic, or parochial, which should be chargeable upon or might affect or be imposed on the said premises during the existence of the tenancy, and at the end or sooner determination thereof should and would peaceably deliver the said premises and the appurtenances unto the reversioner or reversioners in good tenantable condition: And also that it should be lawful for the reversioner or reversioners or his or their agent or agents, from time to time and at all reasonable times in the daytime, during the said term to enter into and upon the said demised premises or any part thereof to view and examine the same: And also should and would keep the said premises in good tenantable repair during the lease: And it was provided that if the said rent or any part thereof should be behind or unpaid by the space of twenty-one days next over or after any of the days on which the same was reserved and appointed to be paid, or if the said Alfred William Holt, his executors, administrators, or assigns should not in all things well and truly observe, perform, fulfil, and keep all and singular, the covenants, clauses, and agreements according to the true intent and meaning of the said lease, then and in either of the said cases it should and might be lawful for the reversioner or reversioners, into and upon the said demised premises or any part thereof, in the name of the whole, to re-enter, and the said Alfred William Holt, his executors, or administrators, or assigns, and all other occupiers of the said demised premises

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premises or any part thereof, thereout from thenceforth utterly to expel and remove: And whereas it has recently been ascertained that the true area of the lands comprised in the said memorandum of lease, number one hundred and eighty thousand five hundred and twenty-nine, is thirteen thousand two hundred and eighty-two acres two roods: And whereas on the twenty-eighth day of August, in the year one thousand nine hundred and twelve, the said Alfred William Holt transferred the lands comprised in the said memorandum of lease number one hundred and eighty thousand five hundred and twenty-nine for the residue then unexpired of the said term to one Hugh Campbell, junior: And whereas on the same day the said Hugh Campbell, junior, by a memorandum of mortgage mortgaged the said lands for the residue then unexpired of the said term to the said Alfred William Holt: And whereas on the same day the said Alfred William Holt transferred the said mortgage to the Perpetual Trustee Company (Limited): And whereas the said Sophia Johanna Charlotte Holt is now deceased; And whereas the said Alfred William Holt has had lawful issue, three children and no more, namely, Claude Alfred Wallis Holt, Sophia Arthursleigh Holt, and Silva May Holt, who are all alive and above the age of twenty-one years: And whereas the said Claude Alfred Wallis Holt is married, and has lawful issue—one child and no more, namely, Eric Thomas Wallis Holt, who is an infant, and is still alive: And whereas the said Eric Thomas Wallis Holt was not born in the lifetime of the said Thomas Holt: And whereas the Perpetual Trustee Company (Limited) is now the sole Australian trustee of the will of the said Thomas Holt: And whereas it is desired by the said Hugh Campbell, junior, with the consent of the said Alfred William Holt and Claude Alfred Wallis Holt, that the said area of thirteen thousand two hundred and eighty-two acres two roods should be subdivided and the several parcels thereof assigned and transferred for the residue unexpired of the said term in areas suitable for cultivation by farmers: And whereas by reason inter alia of the provision for re-entry in the said memorandum of lease contained, and of the right of distress incident to the rent thereby reserved, it is impossible to give security of tenure to transferees of such several parcels: And whereas it

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is expedient that provision should be made whereby upon a transfer of part of the land comprised in the said memorandum of lease for the residue for the time being unexpired thereof, the amount of rent for which the transferor and transferee shall be respectively liable to the reversioner may be determined, and the liability of such transferor and transferee to distress and re-entry may be restricted: And whereas by reason of the infancy of the said Eric Thomas Wallis Holt it is impossible to make such provision without the assistance of Parliament: 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:—

Provision for apportioning rent and limiting right of distress and re-entry.

1. Until the reversion of the term of ninety-nine years, leased by the said memorandum of lease number one hundred and eighty thousand five hundred and twenty-nine, dated the twenty-third day of May, one thousand eight hundred and ninety-one, shall become vested in a person or persons beneficially entitled as the registered proprietor or proprietors for an estate in fee simple in possession to the lands the subject of the said memorandum of lease, the following provisions of this section shall apply, but without prejudice to the liabilities of the said Alfred William Holt, his executors and administrators, under the said memorandum of lease:—

- (1) When any person, being the registered proprietor of the lands comprised in the said memorandum of lease for the residue for the time being unexpired of the said term, shall transfer to a transferee part only of the lands whereof he is such registered proprietor as aforesaid, and shall agree in writing in the manner hereinafter prescribed with the said transferee and with the Perpetual Trustee Company (Limited), or other the Australian trustee or trustees for the time being of the will of the said Thomas Holt, what proportion of the rent shall be payable by such registered proprietor in respect of the severed part of the said lands retained by him, and what proportion of the rent shall

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be payable by such transferee in respect of the severed part of the said lands transferred to him then in every such case,—

- (a) no greater rent shall be recoverable by the reversioner from the registered proprietor in respect of the severed part of such lands retained by him than the rent appropriated to such part by the said agreement, and no greater rent shall be recoverable by the reversioner from the transferee in respect of the severed part transferred to him than the rent appropriated to such part by the said agreement:
- (b) the reversioner shall not be entitled to distrain upon the lands and premises comprised in either of such severed parts in respect of any rent falling due after the date of such agreement except for so much of the rent appropriated by the said agreement to such severed part as shall for the time being be due and unpaid:
- (c) the reversioner shall not be entitled to re-enter upon any of the lands and premises comprised in either of such severed parts, except for one or more of the following causes:—
 - (i) Non-payment of the proportion of the rent payable in respect of the lands and premises comprised in such severed part.
 - (ii) Non-payment of so much of the rates, taxes, assessments, impositions, outgoings, or payments as is payable in respect of the lands and premises so comprised.
 - (iii) Failure to keep the lands and premises so comprised in good tenantable repair.
 - (iv) Failure to permit the reversioner or his agent or agents to enter upon the lands so comprised, or any part thereof, as provided in the said memorandum of lease with respect to the whole of the said lands.
- (2) Any such agreement as aforesaid shall be included in the memorandum of transfer whereby the lands comprised in such severed part are transferred and shall be sufficient if expressed in the following terms with such variations

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variations as may be deemed necessary or expedient :—“ We agree, under the provisions of Campbell's Arthursleigh Subdivision Act, 1913, that the rent payable by the transferor in respect of the land retained by him shall be _____ pounds, payable _____, and that the rent payable by the transferee in respect of the land transferred to him shall be _____ pounds, payable _____.”

(3) The provisions of clauses one and two of this section shall be applicable also, *mutatis mutandis*, in the following cases :—

(a) When a person, being the registered proprietor of part of the lands comprised in the said memorandum of lease for the residue for the time being unexpired of the said term, shall transfer to a transferee, part only of the lands whereof he is such registered proprietor as aforesaid.

(b) When a person, being the registered proprietor of the whole or part of the lands comprised in the said memorandum of lease for the residue for the time being unexpired of the said term, shall assign to two or more transferees in divided shares the whole or any part or parts of the lands whereof he is such registered proprietor as aforesaid.

(4) The term “reversioner” in this section contained shall mean the person or persons for the time being entitled to recover the rents payable under the said memorandum of lease, or to distrain or re-enter thereunder.

Provision
when
reversion in
tenant in
fee-simple.

2. When the said reversion of the said term of ninety-nine years shall become vested in a person or persons beneficially entitled as the registered proprietor or proprietors for an estate in fee simple in possession to the lands the subject of the said memorandum of lease,—then

(1) no such agreement in writing as aforesaid shall be operative in the manner and for the purposes set out in section one of this Act unless made with such person or persons instead of with the said Australian trustee or trustees; but

(2)

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- (2) every such agreement in writing previously made in pursuance of section one of this Act with the said Australian trustee or trustees shall remain in full force, and shall be effectual for all the purposes of subsection one, two, three, and four of the said section.

3. The Australian trustee or trustees of the will of the said Thomas Holt shall incur no liability whatsoever for entering into any such agreement as provided for in section one of this Act except on the ground of fraud. Exoneration of trustees.

4. This Act may be cited as “Campbell’s Arthurs- Short title. Leigh Subdivision Act, 1913.”
