

WILLIAM CLIFT TRUST ESTATE ACT.

An Act to appoint additional trustees of the will **George V.**
and codicils of William Clift late of Breeza in
the State of New South Wales to enable the
trustees of the said will and codicils to sell
the real estate devised therein to allocate the
incidence of certain charges imposed by the
said will and codicils on the said real estate
and for other purposes incidental thereto.
[Assented to, 5th March, 1926.]

WHEREAS at the respective dates of his will and **Preamble**,
codicils and death hereinafter mentioned William
Clift formerly of Breeza in the State of New South Wales
was carrying on the business of a grazier at Breeza aforesaid
in co-partnership with Joseph Clift Samuel Clift and
George Clift under and by virtue of certain Articles of
Agreement dated the third day of September one
thousand eight hundred and seventy-seven: And
whereas by his will dated the eleventh day of October
one thousand eight hundred and eighty-eight the said
William Clift appointed his wife Mary Ann Clift his son
Samuel Branxton Clift and Joseph Henry Clift
executrix executors and trustees thereof and charged
his estate generally with the payment of an annuity of
seventy-eight pounds per annum to his brother James
Clift and subject to the provisions of the said Articles
of Agreement gave devised and bequeathed unto his
five sons the said Samuel Branxton Clift John
Branxton Clift William George Clift Alexander
Morson Clift and Walter William Clift all his share
and interest in the lands live stock and plant then the
property of the said partnership in which the said
testator

George V. testator included also all his lands at Breeza or in that neighbourhood in the nature of freehold and then standing in his name his said sons taking the real estate as tenants in common and the live stock and other personal estates share and share alike the whole standing charged nevertheless with the payment by his said sons within seven years after his decease of the sum of four thousand pounds to his wife the said Mary Ann Clift and five thousand pounds to each of his five daughters in the said will named the said sums bearing interest at the rate of four pounds per centum per annum for the said period of seven years or until payment and in respect of the said devise and bequest to his said sons the said testator declared his will and meaning to be that should any of the said sons die without leaving lawful issue him surviving the share of such son should fall into and merge in the devise to his surviving brothers the lawful issue of such a one as might have died leaving such issue him surviving taking between them the share of their deceased parent: And whereas by a first codicil to his said will dated the third day of November one thousand eight hundred and eighty-eight the said testator declared that should any of his said sons die leaving a wife but no issue him surviving he charged the devise and bequest to his said sons generally with the payment to such wife of the sum of two thousand five hundred pounds to be paid to her within twelve months after the death of her husband provided that if such husband should by his last will forbid such payment the provision therein contained for the benefit of his said wife should not come into operation: And whereas the said testator subsequently executed second and third codicils to his said will the terms of which are not now material: And whereas by a fourth codicil to his said will the said testator charged the said annuity to his brother James Clift only upon his station lands and interest instead of generally upon his estate and the said testator also revoked the legacy given by his will to his said wife of four thousand pounds and in lieu thereof charged his estate with the payment to his said wife of an annuity of one hundred and sixty pounds payable half-yearly: And whereas the said testator died on the thirtieth day

day of March one thousand eight hundred and eighty-nine **George V.**
and probate of the said will and four codicils was on
the thirtieth day of September one thousand eight
hundred and eighty-nine duly granted to the said
Mary Ann Clift Samuel Branxton Clift and Joseph
Henry Clift as such executrix and executors as
aforesaid: And whereas the said Mary Ann Clift died
on or about the fourteenth day of February one thousand
nine hundred and fourteen and the annuity bequeathed
to her has been fully paid and discharged: And whereas
the legacies (and all interest thereon) bequeathed by the
said will to the said five daughters of the testator and
charged on the said lands have long since been fully
paid and satisfied: And whereas the said Joseph Henry
Clift died on or about the twenty-sixth day of January
one thousand eight hundred and ninety-four: And
whereas the said Samuel Branxton Clift is now the sole
trustee of the will and codicils of the said testator: And
whereas the said James Clift mentioned in the said
will and the fourth codicil thereto died long since and
the annuity bequeathed to him has been fully paid and
satisfied: And whereas the said Samuel Branxton
Clift who is now of the age of seventy-two years is
married to Jane Sophia Dixon Clift and has lawful
issue now living four children and no more namely:—
Clive Eric Clift Alva May Stanton wife of Arthur
Stanton Raymond Lysle Clift and Vida Rae Clift all of
whom are adults: And whereas John Branxton Clift
who is now of the age of seventy years is a widower and
has lawful issue now living four children and no more
namely:—John McElhone Clift Arthur Branxton Clift
William Ambrosoli Clift and Joseph Allen Clift all of
whom are adults: And whereas the said William
George Clift married Elizabeth Ann Clift and died on
or about the fourteenth day of November one thousand
eight hundred and ninety-two leaving him surviving
the said Elizabeth Ann Clift and three children and no
more namely:—William Clift Lilian May Clift and
Verlie Vickers wife of John Vickers: And whereas
upon the death of the said William George Clift leaving
such issue as aforesaid his undivided share in the said
lands became absolutely vested: And whereas by his
last will dated the twenty-third day of October one
thousand

George V. thousand eight hundred and ninety the said William George Clift devised and bequeathed all his real and personal estate to the said Elizabeth Ann Clift and probate of his said will was duly granted to her as executrix: And whereas by indenture of settlement dated the eighth day of March one thousand eight hundred and ninety-three the said Elizabeth Ann Clift conveyed and assigned the property so devised and bequeathed to her to trustees therein named upon trust for herself for her life with remainder to her said three children in equal shares: And whereas the said Alexander Morson Clift died on or about the eleventh day of January one thousand nine hundred and eleven a bachelor and intestate: And whereas the said Walter William Clift who is now of the age of fifty-one years is married to Edith Clift and has lawful issue now living nine children and no more of whom two namely:—Mary Gertrude Ann McElhone O'Neill wife of John O'Neill and William Thomas McElhone Clift are adults: And whereas by marriage settlement dated the fourteenth day of February one thousand eight hundred and ninety-nine the said Walter William Clift assigned to Arthur McElhone as trustee all his share and interest under the will of the said testator William Clift to hold the same in trust to pay to his wife the said Edith Clift three hundred pounds per annum and the balance of the rents and profits to him the said Walter William Clift during their joint lives and after the death of either to pay the whole of the said rents and profits to the survivor and after the death of the survivor to hold the said share upon trust for the children of the marriage: And whereas by a decree of the Supreme Court of New South Wales in Equity made on the thirteenth day of October one thousand eight hundred and ninety-nine in the suit of the said Samuel Branxton Clift and others versus the said Mary Ann Clift and others it was declared that upon the true construction of the said will and codicils of the said testator William Clift the said Samuel Branxton Clift John Branxton Clift William George Clift Alexander Morson Clift and Walter William Clift respectively took absolute interests in their respective shares of the lands devised to them as aforesaid subject however to a gift over of all the share of each of the

the said sons of the said testator William Clift in the **George V.** event of the death at any time of the son entitled to such share without leaving lawful issue him surviving: And whereas shortly before the death of the said testator William Clift in pursuance of the said Articles of Partnership a Partition was effected by the said partners of the land then the property of the partnership and certain lands amounting in area to twenty-nine thousand two hundred and nineteen acres or thereabouts were thereupon transferred to the said testator William Clift: And whereas by Indenture of Conveyance and Assignment dated the twenty-seventh day of June one thousand nine hundred and twenty-four and made between the said Elizabeth Ann Clift and Verlie Vickers of the first part the said Elizabeth Ann Clift of the second part the said William Clift Verlie Vickers and Lilian May Clift of the third part and the said Samuel Branxton Clift and John Branxton Clift of the fourth part all the right title and interest of what kind soever taken by the said Elizabeth Ann Clift William Clift Verlie Vickers and Lilian May Clift and each of them by virtue of the said Indenture of Settlement of the eighth day of March one thousand eight hundred and ninety-three and of the wills of the said testator William Clift and the said William George Clift were conveyed and assigned to the said Samuel Branxton Clift and John Branxton Clift for their sole use and benefit absolutely as tenants in common: And whereas by Indenture of Mortgage dated the twenty-seventh day of June one thousand nine hundred and twenty-four and made between the said Samuel Branxton Clift and John Branxton Clift of the first part Hugh Hamon Massie General Manager of the Commercial Banking Company of Sydney Limited of the second part and the Commercial Banking Company of Sydney Limited of the third part all the right title and interest of what kind soever taken by the said Samuel Branxton Clift and John Branxton Clift by virtue of the said Indenture of Conveyance and Assignment of the twenty-seventh day of June one thousand nine hundred and twenty-four was granted assigned and transferred unto the said Commercial Banking Company of Sydney Limited by way of mortgage to secure to the said Bank the repayment of a sum

George V. sum of thirteen thousand five hundred pounds: And whereas by an Agreement for Partition dated the twenty-seventh day of June one thousand nine hundred and twenty-four and made between the said Samuel Branxton Clift of the first part the said John Branxton Clift of the second part the said Arthur McElhone of the third part the said Walter William Clift of the fourth part and the said John Branxton Clift and Samuel Branxton Clift of the fifth part it was agreed to make a partition of the lands devised as aforesaid by the will of the said testator William Clift (and more particularly described in the four Schedules annexed to the said Agreement) on the terms that Samuel Branxton Clift should take in severalty the lands comprised in the said first schedule the said John Branxton Clift should take in severalty the lands comprised in the said second schedule the said Arthur McElhone should take in severalty as such trustee as aforesaid the lands comprised in the said third schedule and the said Samuel Branxton Clift and John Branxton Clift should take as tenants in common the lands comprised in the said fourth schedule: And whereas the lands described in the said four schedules comprised all the area transferred from the said partnership to the said testator William Clift as aforesaid all the said testator's lands at Breeza or in that neighbourhood in the said will mentioned and also an area of fifty acres or thereabouts purchased subsequently to his death by his said trustees with moneys derived from the income of his estate and since held by such trustees on the trust of the said will and codicils: And whereas the said scheduled lands comprise all the lands now held on the trusts of the will of the said testator William Clift: And whereas by a Decree of the Supreme Court of New South Wales in Equity dated the thirteenth day of November one thousand nine hundred and twenty-four and made in a suit of which were parties all the persons then in existence and having any beneficial interest in the said lands the said Arthur McElhone as such trustee and the said Bank as such mortgagee as aforesaid it was ordered that the said lands be partitioned amongst the persons interested therein in accordance with the terms of the said Agreement for Partition and it was further ordered that the said land so partitioned

partitioned should be taken and held subject to the limitations contained in the will of the said testator William Clift: And whereas by Indenture of Family Arrangement made on the twenty-ninth day of October one thousand nine hundred and twenty-four between the said Jane Sophia Dixon Clift of the first part Edith Clift of the second part the said John Branxton Clift of the third part the said Samuel Branxton Clift of the fourth part and the said Walter William Clift of the fifth part the said Jane Sophia Dixon Clift and Edith Clift severally renounced their rights to the contingent legacies of two thousand five hundred pounds each bequeathed as aforesaid by the said first codicil to the will of the testator William Clift and each of them the said John Branxton Clift Samuel Branxton Clift and Walter William Clift covenanted with the others of them that he would by his last will or by a codicil thereto forbid the payment of any portion of the said contingent legacy to any wife present or future who might survive him: And whereas each of the said partitioned areas is now of the value of Thirty thousand pounds or thereabouts: And whereas it is expedient that the contingent legacies charged as aforesaid on the said partitioned lands should be secured as to each such legacy on one only of the said partitioned areas and not on the said lands generally: And whereas since the death of the said testator William Clift until the year one thousand nine hundred and twenty-one a grazing business was conducted on the said partitioned lands by the persons beneficially interested therein and for that purpose such lands were worked as a whole: And whereas all the stock on the said lands were lost by drought in the said year and their replacement has been found impossible: And whereas the income now received from the said lands is insufficient to keep down the annual charges thereon: And whereas the said Samuel Branxton Clift and the said Arthur McElhone as such trustees and the said Commercial Banking Company of Sydney Limited as such mortgagee as aforesaid and all the persons now adult and entitled to beneficial interests in the said lands are of opinion that it would be advantageous to all persons concerned if power to sell the said lands were conferred on the trustee or trustees for the time being of the said will and codicils

George V. codicils of William Clift : And whereas the said Samuel Branxton Clift as such trustee as aforesaid is advised that no valid authority to sell the said lands can be conferred on him by any Court of Law or Equity : And whereas it is expedient to appoint three additional trustees of the said will and codicils and the present trustee the said Samuel Branxton Clift is advised that it is doubtful whether such appointment can lawfully be made by him as sole surviving trustee of the said will and codicils : And whereas it is expedient that vesting orders of the said lands consequential on such appointment should be made : Be it therefore enacted by the King's Most Excellent Majesty by and with the consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

Short title.

1. This Act may be cited as the "William Clift Trust Estate Act 1926."

Appointment of additional trustees.

2. Clive Eric Clift of Breeza in the State of New South Wales grazier Arthur Branxton Clift of the same place grazier and George Hill McElhone of Sydney in the said State dentist are hereby appointed trustees of the will and codicils of the said William Clift in addition to the said Samuel Branxton Clift and future appointments of new trustees of the said will and codicils may be made in accordance with the provisions of any Act relating to the appointment of new trustees for the time being in force.

Allocation of incidence of contingent charges.

3. Notwithstanding anything in the said will or codicils contained the contingent legacies directed by the said first codicil of the will of William Clift to be paid to the respective wives of such sons of the testator as should die leaving a wife but no issue surviving and without having forbidden such payment by will or codicil shall be charged only upon the lands contained in the first second and third schedules to the said decree of the Supreme Court in Equity dated the thirteenth day of November one thousand nine hundred and twenty-four or upon the proceeds of sale of such lands and in manner following and not otherwise :—

(i) As to the legacy payable to any wife of Samuel Branxton Clift who may become entitled thereto

thereto only upon the lands included in the George V. said first schedule or upon the proceeds of sale thereof

- (ii) As to the legacy payable to any wife of John Branxton Clift who may become entitled thereto only upon the lands included in the said second schedule or upon the proceeds of sale thereof
- (iii) As to the legacy payable to any wife of Walter William Clift who may become entitled thereto only upon the lands included in the said third schedule or upon the proceeds of sale thereof.

4. (1) The trustee or trustees for the time being of the said will and codicils of William Clift shall have power to sell and convey (whether in subdivision or otherwise) exchange for other lands mortgage lease or otherwise deal with the whole or any portion of the lands contained in the said first second and third schedules to the said lastmentioned Decree freed from all trusts charges and limitations affecting the same and in all respects as if he or they were the absolute owner or owners of the fee simple in such lands. And the said power shall be deemed to include in relation to the said lands

- (a) A power to cut and sell or contract for the cutting and sale of any timber
- (b) A power to sever and sell fixtures apart from the balance of the property
- (c) A power to sell any easement right or other privilege
- (d) A power to lay out and make such roads streets and ways to be dedicated to the public or not and to grant such easements rights of way or drainage over the same as the circumstances of the case may require
- (e) A power to surrender any portion of the said lands to the Crown and to accept any other lands in lieu of such portion so surrendered

(2) The power aforesaid shall be exercised

- (a) As to the lands comprised in the said first schedule only with the consent in writing of the said Samuel Branxton Clift during his life

(b)

George V.

- (b) As to the lands comprised in the said second schedule only with the consent in writing of the said John Branxton Clift during his life
- (c) As to the lands comprised in the said third schedule only with the consent of the trustee or trustees for the time being of the said Indenture of Marriage Settlement dated the fourteenth day of February one thousand eight hundred and ninety-nine.

Trustees
receipt to be
sufficient
discharge.

5. The receipt or receipts in writing of the trustee or trustees for the time being of the said will and codicils shall be an absolute discharge to any purchaser mortgagor lessee or other person or persons paying any moneys to such trustee or trustees and shall exonerate the person or persons so paying from the necessity of seeing to the application of such moneys from any liability for the non-application or misapplication of the same or any part thereof.

Vesting of
lands in
trustees.

6. The lands contained in the said first second and third schedules of the said Decree of the thirteenth day of November one thousand nine hundred and twenty-four are hereby vested in the said trustees Samuel Branxton Clift Clive Erie Clift Arthur Branxton Clift and George Hill McElhone their heirs and assigns for an estate of inheritance in fee simple.

Except as stated
trusts of will and
codicils shall not
be affected by
this Act.

7. Save as hereinbefore mentioned the trusts of the said will and codicils of William Clift shall not be affected by the provisions of this Act.

Trustees may
pay costs etc.
of Act.

8. The trustee or trustees for the time being of the said will and codicils of William Clift may pay out of the corpus of the trust estate the costs charges and expenses of and incidental to the drafting preparation and passing of this Act.