

# David Berry Hospital Act 1906 No 53

[1906-53]



New South Wales

## Status Information

### Currency of version

Current version for 6 July 2009 to date (accessed 17 May 2024 at 14:01)

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File last modified 6 July 2009

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# David Berry Hospital Act 1906 No 53



New South Wales

An Act to vest in the Crown certain lands held in trust for the erection and endowment of a hospital under the will of the late David Berry and certain other lands, and for dealing with such lands and the proceeds and revenues thereof; to provide for making certain payments in respect thereof; to provide for the establishment and maintenance by the Crown of a public hospital at or near the township of Berry to be called the “David Berry Hospital”, and subject thereto of technical and agricultural colleges and other institutions for the promotion of agricultural and veterinary science; and for purposes consequent thereon or incidental thereto.

## Preamble

WHEREAS David Berry, late of Coolangatta, duly made his will, dated the twenty-third day of September, one thousand eight hundred and eighty-nine, whereof he appointed John Hay and the Honorable James Norton trustees and executors, and whereby he directed his said trustees to set apart the sum of one hundred thousand pounds for the purpose of erecting and endowing a hospital for non-infectious diseases for the benefit particularly of inhabitants of Broughton Creek and the district of Shoalhaven, and generally of all persons to whom it might be accessible, and for the purpose aforesaid his said trustees were authorised to pay the said sum into the hands of other trustees to be selected and appointed by them, and to grant all necessary powers for the establishment and management of the said hospital, including the appointment from time to time of officers and of new trustees whenever vacancies might occur through death, resignation, incapacity or otherwise, and including the making of all necessary by-laws: And after making certain further bequests and devises, and giving certain directions, the said testator charged all the residue of his real and personal estate in his said will now in recital, not therein disposed of, with, inter alia, all moneys directed by his said will to be expended or appropriated by his said trustees; and the said testator appointed, devised, and bequeathed unto his said trustees and their heirs, executors, administrators, and assigns, all other real and personal estate which he had power to dispose of by will upon trust to collect, sell, and dispose of in the same manner specified in his said will, but declared that his said trustees should be at liberty to postpone the sale or realisation of any part of the same so long as they should think fit; and the said testator declared that as he was anxious to prevent any disputes or litigation from arising after his death in consequence of any real or supposed obscurity in his said will, or otherwise in connection with his estate, he constituted his said trustees sole judges of the meaning and

intent of his said will and of all questions in respect of which disputes might arise, and any person or persons or corporate or other body who should institute legal or other proceedings for the purpose of questioning or impugning any decision arrived at by his said trustees should be deprived of all benefit which he or it would otherwise have been entitled to receive: And whereas the said David Berry died on the said twenty-third day of September, one thousand eight hundred and eighty-nine, without having altered or revoked his said will: And whereas probate of the same was duly granted on the sixteenth day of May, one thousand eight hundred and ninety, to the said John Hay and the Honorable James Norton: And whereas the said John Hay and the Honorable James Norton, as the sole judges constituted by the said testator of the meaning and intent of his said will and of all questions in respect of which disputes might arise, met together on the first day of May, one thousand nine hundred and one, and took into consideration and deliberation, amongst other things, the question of setting apart a sum of one hundred thousand pounds for the purposes of the said hospital, and the further question whether, upon the terms of the said will, and having regard to the intentions of the said testator, they ought to set apart any, and if so what, interest upon the said sum: And whereas the said John Hay and the Honorable James Norton caused a minute of their proceedings at such meeting, duly signed by them, to be taken and entered in an official book and notarially attested for the guidance of any trustees who might thereafter succeed them: And whereas at such meeting the said John Hay and the Honorable James Norton, after taking into consideration the several matters specified in the said minute, decided that it was not the intention of the said testator to give a larger sum than one hundred thousand pounds in all towards the establishment and endowment of the said hospital, and considered that the full intention of the said testator would be carried out by appointing suitable persons as trustees of the said hospital and by handing over to them cash, securities, or other investments or endowments representing a sum of one hundred thousand pounds: And whereas, in exercise of the authority conferred upon them by the said will of selecting and appointing trustees of the said hospital, the said John Hay and the Honorable James Norton subsequently selected and appointed as such trustees Alexander Hay, Philip Henry Morton, and Sinclair Gillies, who have consented to accept and act in the trusts: And whereas the said John Hay, by a memorandum of transfer under the provisions of the [Real Property Act 1900](#), transferred to the said Alexander Hay, Philip Henry Morton, and Sinclair Gillies the lands and hereditaments mentioned in Schedule One hereto, and situate in the Shoalhaven district aforesaid, as and for a site for the said hospital: And whereas the residuary personal estate of the said testator being insufficient to satisfy the said hospital legacy of one hundred thousand pounds, and as sufficient of the residuary real estate of the said testator to satisfy the same could not be realised except by a considerable sacrifice of value, the said John Hay and the Honorable James Norton had a careful valuation by competent valuers made of the lands and hereditaments mentioned in Schedule Two hereto, which said lands and hereditaments formed portion of the residuary real estate of the said testator, and, being satisfied that the value of such lands and hereditaments amounted to at least one hundred thousand pounds, they set apart and appropriated such lands and hereditaments so mentioned in Schedule Two hereto as and by way of satisfaction of the said sum of one hundred thousand pounds, and as and for an investment or endowment for the

benefit of the said hospital: And whereas the said Alexander Hay, Philip Henry Morton, and Sinclair Gillies agreed to accept the said lands mentioned in the said Schedule Two at the said value of one hundred thousand pounds, and to hold the same upon and subject to certain trusts and provisions declared concerning the same: And whereas the said John Hay and the Honorable James Norton, as such sole judges as aforesaid, being of opinion that in the execution of the memorandum of transfer next hereinafter mentioned, and by the creation and declaration of certain trusts, conditions, and stipulations then provided for, they were in all respects giving effect to the true meaning and intent of the said will, they did by a memorandum of transfer under the provisions of the [Real Property Act](#), dated the thirteenth day of August, one thousand nine hundred and three, transfer the lands and hereditaments referred to in Schedule Two unto the said Alexander Hay, Philip Henry Morton, and Sinclair Gillies to be held by them upon certain trusts and subject to certain powers, provisions, and conditions concerning or affecting the same, as set forth in a certain indenture of settlement relating thereto, and dated the same thirteenth day of August one thousand nine hundred and three, and which indenture is registered as number six hundred and sixty-one, book seven hundred and fifty-two, in the Office of the Registrar-General: And whereas the said John Hay has erected a temporary hospital at Berry for non-infectious diseases: And whereas the said hospital is sufficient temporarily to satisfy the requirements of the inhabitants of Broughton Creek and the district of Shoalhaven: And whereas the said John Hay has agreed to allow to the Crown the use of the said temporary hospital free of rent until such time as a new hospital is erected on the land described in Schedule One hereto: And whereas it is not necessary, in order to satisfy the requirements of the inhabitants of Broughton Creek and the district of Shoalhaven, that the whole of the said legacy and the endowments representing the same should be devoted exclusively to the purposes of erecting and endowing a hospital for non-infectious diseases as specified in the said will, and it is expedient and will be in furtherance of the objects of the testator, and for the advantage of those intended to be benefited thereby, that the lands so set apart and appropriated in satisfaction of the said legacy should be vested in the Crown on just terms, and that the trusts relating to the said hospital should be administered by the Governor, with the advice of the Executive Council, with such modifications and variations of the original objects of the testator as are hereinafter provided for:

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:

## **1 Name of Act**

This Act may be cited as the [David Berry Hospital Act 1906](#).

## **2 Definitions**

In this Act, unless the context requires another meaning:

**The hospital trustees** means the trustees for the time being of the said indenture of settlement of the thirteenth day of August, one thousand nine hundred and three.

**The testator** means the late David Berry.

**The will** means the will, dated as aforesaid, of the late David Berry.

### **3 Lands in Schedules vested in Crown**

The lands described in the Schedules to this Act are vested in His Majesty, free from all estates and interests, and from all trusts, conditions, reservations, dedications, and easements affecting the same, and are divested from any other person having any right, title, or interest to or in the same.

The hospital trustees, the trustees of the will, and all persons claiming through or under them, shall, at the request of the Colonial Treasurer, execute all conveyances, transfers, and assurances, and do all things necessary to convey, transfer, and assure the said lands to His Majesty. The costs of such conveyances, transfers, and assurances shall be borne by the Crown.

### **4 Manner in which lands may be dealt with**

(1) The said lands, or any part thereof, may be dealt with as follows:

- (a) The land described in Schedule One may be used as the site for the David Berry hospital, or may be dealt with under the next succeeding paragraph.
- (b) The residue of the lands described in the Schedules to this Act not so used may be reserved or dedicated for public purposes, including wharves, railways, recreation reserves, and public roads and places, or may be vested in the Sydney Harbour Trust Commissioners, and for such purposes, and for purposes relating thereto, shall be deemed to be Crown lands within the meaning of the Crown Lands Acts.
- (c) Any part thereof not required for any such purpose as aforesaid may be sold by the Governor by public auction or private contract on such conditions as he thinks fit.
- (d) Any part thereof may be leased by the Governor for such term and subject to such conditions as he thinks fit.

(2) The proceeds and revenues of such lands shall be paid into the Treasury, and shall form part of the Consolidated Revenue Fund.

### **5 Charge on Consolidated Revenue**

The Consolidated Revenue Fund is charged to the amount of the value of the lands described in Schedule Two, as periodically certified by the Government land valuator, and not exceeding one hundred thousand pounds.

### **6 Hospital to be erected within ten years**

The Governor shall, within ten years, construct and fit out with all necessary furnishings

and appliances a hospital for non-infectious diseases, to be called “The David Berry Hospital”, which shall be erected on the site described in Schedule One hereto, or on some other suitable site to be acquired on behalf of His Majesty at or near the township of Berry, and may from time to time add to such hospital and to such furnishings and appliances: Provided that until the said hospital is constructed and fitted out, the Governor shall maintain the present temporary hospital at Berry.

## **7 Application of amount charged**

After providing out of the amount so charged for the outlay incurred in pursuance of the preceding section, the Governor shall apply the net revenue derived from the lands described in Schedules One and Two hereto, or the residue thereof, in the maintenance of the hospital, and subject thereto in or towards the establishing, maintenance, and repair, in the district of Berry, of technical and agricultural colleges and other institutions for the promotion of agricultural and veterinary science: Provided that the total amount to be expended under this subsection upon the hospital and other institutions shall not exceed three and a half per centum per annum on the said value of the land described in Schedule Two.

## **8 Until revenue from lands sufficient, cost to be a charge upon the Consolidated Revenue Fund**

Until the revenue derived from the lands described in Schedules One and Two is sufficient to maintain and repair the said hospital, the cost of such maintenance and repair shall be a charge upon the Consolidated Revenue Fund, and may be taken into account against revenues later to be derived as aforesaid.

## **9 Saving**

Nothing in this Act shall be deemed to release the trustees of the will from any liability or obligation if any under the will.

## **10 Regulation of hospital**

The Governor may make regulations for the governing of the said hospital, and may, in such regulations, impose any penalty not exceeding twenty pounds for the breach of the same. Such penalties may be recovered in a summary way before the Local Court.

## **Schedule One**

ALL that piece or parcel of land, containing an area of thirty acres one rood, or thereabouts, situated in the municipal district of Berry, parish of Coolangatta, county of Camden, and comprised in certificate of title volume one thousand five hundred and eighteen, folio thirty-five, registered in the office of the Registrar-General, Sydney.

## **Schedule Two**

All those pieces or parcels of land containing an aggregate area of eighty-eight acres two roods twenty-nine perches, or thereabouts, situated in the borough of North Sydney, parish of Willoughby,

county of Cumberland, and comprised in certificate of title volume one thousand five hundred and twenty-four, folio two hundred and forty-four, registered in the office of the Registrar-General, Sydney.