

This PRIVATE BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

W. L. S. COOPER,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 16th February, 1926.*

New South Wales.



ANNO SEXTO DECIMO

GEORGII V REGIS.

An Act to appoint additional trustees of the will 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.

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
5 George

William Clift Trust Estate.

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
5 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
10 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
15 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 included also all his lands at Breeza or in that neighbourhood in the nature of freehold and then
20 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
25 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 pay-
30 ment 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
35 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
40 and eighty-eight the said testator declared that should any of his said sons die leaving a wife but no issue
him

William Clift Trust Estate.

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
5 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
10 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
15 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
20 day of March one thousand eight hundred and eighty-nine 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
25 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
30 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
35 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
40 the annuity bequeathed to him has been fully paid and satisfied: And whereas the said Samuel Branxton Clift

William Clift Trust Estate.

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 :—
5 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
10 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
15 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
20 lands became absolutely vested: And whereas by his last will dated the twenty-third day of October one 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
25 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
30 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
35 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
40 McElhone Clift are adults: And whereas by marriage settlement dated the fourteenth day of February one thousand

William Clift Trust Estate.

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
5 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
10 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
15 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
20 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 said sons of the said testator William Clift in the
25 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
30 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 Assign-
35 ment 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
40 Lilian May Clift of the third part and the said Samuel
Branxton Clift and John Branxton Clift of the fourth
part

William Clift Trust Estate.

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 5 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 10 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 15 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 20 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 and transferred unto the said Commercial Banking Company of Sydney Limited by way of 25 mortgage to secure to the said Bank the repayment of a 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 30 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 35 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 40 John Branxton Clift should take in severalty the lands comprised in the said second schedule the said Arthur

McElhone

William Clift Trust Estate.

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 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

William Clift Trust Estate.

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
5 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
10 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
15 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 replace-
ment has been found impossible : And whereas the
20 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
25 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
30 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 con-
ferred on him by any Court of Law or Equity : And
whereas it is expedient to appoint three additional trustees
35 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
40 said lands consequential on such appointment should be
made : Be it therefore enacted by the King's Most
Excellent

William Clift Trust Estate.

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 :—

5 **1.** This Act may be cited as the “William Clift Short title.
Trust Estate Act 1926.”

10 **2.** Clive Eric Clift of Breeza in the State of New South Wales grazier Arthur Branxton Clift of the same place Appointment of additional trustees.
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
15 the appointment of new trustees for the time being in force.

20 **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
25 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 :—

30 (i) As to the legacy payable to any wife of Samuel Branxton Clift who may become entitled thereto only upon the lands included in the said first schedule or upon the proceeds of sale thereof

35 (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

40 (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

William Clift Trust Estate.

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
- Power to sell
mortgage
etc.
- (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) 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

William Clift Trust Estate.

- 5 **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.
- 10 **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 Eric Clift Arthur Branxton Clift and George Hill McElhone their heirs and assigns for an estate of inheritance in fee simple.
- 15 **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.
- 20 **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.

Trustees receipt to be sufficient discharge.

Vesting of lands in trustees.

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

Trustees may pay costs etc. of Act.

