#### Tegislative Council.

1934.

# A BILL

To facilitate the early inauguration by the trustees of the will and codicils of Peter Stuckey Mitchell, deceased, of the Peter Mitchell Trust Competitions; to dispense with the necessity for making certain recoupments to the capital of the estate of the said Peter Stuckey Mitchell out of the income of the said estate; to limit the number of trustees of the said will and codicils to three; and for other incidental purposes.

[SIR HENRY BRADDON; -4 December, 1934.]

W HEREAS Peter Stuckey Mitchell of Bringenbrong Preamble in the State of New South Wales grazier died on the fourth day of January one thousand nine hundred and twenty-one having duly made his last will and testament and three codicils thereto probate whereof was duly granted to the executors and trustees thereby appointed And whereas by his said will in addition to making certain provisions not material to be herein mentioned, the said testator requested his 52987 c 51—A wife wife to protect and take care of "Skarry" an aboriginal at Bringenbrong aforesaid for the remainder of his life and not to let him suffer from want of any necessary or reasonable comfort and after the death of the said testator's said wife should 5 "Skarry" be then still alive or after her failure (if any) to comply with such request the said testator extended the request last aforesaid to his trustees and empowered them out of the general revenue of his residuary estate to expend for the purpose of comply- 10 ing with such request an annual sum not exceeding fifty pounds per annum: And whereas subject to the direction thereinafter contained with regard to the right of his said wife to use Bringbenbrong Homestead and its appurtenances as and for the purposes of a residence the said 15 testator devised and bequeathed all his real and personal estate whatsoever not thereby otherwise disposed of unto his trustees upon trust that they should sell call in and convert into money the same or such part thereof as should not consist of money and should with 20 and out of the moneys produced by such sale calling in and conversion and with and out of his ready money pay his funeral and testamentary expenses (including stamp duty) and debts (including mortgage debts) and the legacies bequeathed by his said will and any codicil 25 thereto and should invest the residue of the said moneys with power for his trustees from time to time at their discretion to vary such investments and should stand possessed of the said residuary trust moneys and the investments for the time being representing the same 30 upon certain trusts as to parts thereof not material to be herein mentioned and in further trust should the said testator die without leaving a child or children him surviving and subject to the declaration hereinafter recited with regard to the right of his said wife to 35 use as and for the purposes of a residence his homestead at Bringenbrong, to pay to his said wife during her life the net income arising from the remainder of the residuary trust moneys (which remainder was hereinafter referred to as the residuary trust fund) But should he 40 die leaving a child or children him surviving then in trust subject

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	subject as aforesaid to pay to his said wife during her	
	life and by equal quarterly instalments an annuity of two	
	thousand pounds And whereas the said testator further	
	directed that his said wife should so long as she should	
0	b live have the right to use as and for the purposes of a	
	residence such part of the Bringenbrong Homestead as	
	was ordinarily used by him for that purpose together	
	with certain rights with respect thereto not material to	
	be herein stated and upon further trust and subject to	
10	the trusts aforesaid to pay and apply the whole or all	
	that should remain of the said net income (all of which	
	that should remain of the said liet income (all of which	
	income payable under the trust next hereinafter	
	mentioned was thereinafter referred to as the said in-	
	come) in the manner and to and for the ends intents and	
15	purposes hereinafter set forth concerning the same: And	
	whereas the said testator by his said will expressed the	
	desire that the said income and the moneys producing	
	the same and the purposes thereafter set forth concerning	
	the same should be known as "The Peter Mitchell	
(20	Trust" And whereas the said testator directed that	
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	the said income should be divided into twenty-one parts	
	and that the purposes to which the same should be applied	
	should be as follows namely:	
	As to seven of such parts to provide prizes for the	
25	persons and parposes and subject to the due	
	fulfilment of the qualifications and conditions	
	set forth in the First Schedule to the said will.	
	As to three of such parts to provide prizes (whether	
	in cash or in trophies or partly in the one way	
30	and partly in the other) for such military com-	
	petitions or competitions not strictly military but	
	connected with on relating to military but	
	connected with or relating to military life or	
	training as his trustees might decide upon such	
-	competitions to be confined to the military forces	
315	(including cadets) of the Commonwealth of	
	Australia.	
	As to two of such parts to provide prizes as afore-	
	said for such naval competitions or competitions	
	relating to naval training as his trustees might	
90	decide upon such competitions to be confined to	
41)	the naval forces of the said Commonwealth.	
	As	

As to three of such parts to provide prizes as aforesaid for such military competitions or competitions not strictly military but connected with or relating to military life or training as his trustees might decide upon such competitions to be open only to the military forces of the British Empire including the troops and cadets of the said Commonwealth.

As to three of such parts to provide prizes as aforesaid for such naval competitions or competitions **10** relating to naval training as his trustees might decide upon such competitions to be open only to the naval forces of the British Empire including the naval forces of the said Commonwealth.

As to one of such parts to provide prizes as afore-**15** said for competitions amongst and to be confined to the members of the police force of the State of New South Wales.

And as to the remaining two parts of the said income to provide prizes for the persons and purposes 20 and subject to the due fulfilment of the qualifications and conditions set forth in the Second Schedule of the said will

And whereas the said testator declared that all competitions or examinations in his said will referred to 25 should be held at such times and in such place or places within the said Commonwealth and subject to such regulations terms and conditions in all respects as his trustees either with or without expert advice should decide upon save only that until his trustees should 30 otherwise agree the testator desired that the said military or partly military competitions should be held at Albury And whereas the said testator empowered his trustees to fix (subject nevertheless to any express direction in that behalf in the said will contained) the amount of value and 35 nature of all prizes and to pay all expenses (not however including the travelling or other expenses of candidates) connected with or incidental to all competitions therein referred to and of advertising the same by any means they may think fit out of the said income And 40 whereas the said testator further provided that in case the make a ter and the s

the bequests trusts and dispositions thereinbefore contained or any of them should for any reason wholly or partially fail or be declared by any court incapable of taking effect or in case any portion of the corpus or 5 income of his estate should not by the said will or any codicil thereto be effectually disposed of otherwise then he gave the property or funds so undisposed of to his trustees upon trust for such nonsectarian charitable uses purposes or institu-10 tions as his trustees should in their absolute and uncontrolled discretion decide upon And whereas the said testator declared that except in respect of the doing of purely formal acts (which should not include the appointment of new trustees) the powers contained in 15 his said will or any codicil thereto or conferred by law should not be exercisable by his trustees by the said will or by any codicil thereto appointed and proving his said will unless there should be at least two of such and when there should no longer be at least two of such then he 20 directed that the number of trustees thereof should be increased to five and that thereafter the powers aforesaid except as aforesaid should not be exercisable unless there should be at least four trustees but he desired nevertheless that the number should be maintained at 25 five with as little break as possible And whereas the said testator declared that any appointment of new trustees of the said will should be made by the trustees living at the time of any such appointment who should have proved his will so long as two or more of them 30 should be alive and continue to act in the trusts thereof (but his wife nevertheless should join in such appointment whether she should have joined in proving his will or not) and after the death or retirement of all but one of his trustees who should have proved his will any such 35 appointment should be made by the majority of the following persons namely the then existing trustee or trustees (including his wife whether she should actually be a trustee or not) the Chief Naval and Chief Military Commandants of the Naval and Military Forces of the 40 Commonwealth of Australia and the Chancellor for the

time being of the University of Sydney (any one of whom might

might act as trustee and be so appointed) and if such persons should not within one calendar month after notice in writing should have been given them by any resident (being a British subject) in the Commonwealth of Australia requiring them to appoint a new trustee or new 5 trustees have appointed such new trustee or trustees as might be necessary then by a Judge of the Supreme Court of New South Wales in its Equitable or Probate Jurisdiction on the application of any such resident the persons empowered to appoint a new trustee or trustees to be 10parties on the hearing of such application And whereas the said testator declared that his trustees might postpone the sale and conversion of his real and personal estate or any part thereof so long as they should think fit And whereas the said testator 15empowered his trustees during such postponement of sale of his real and personal estate or any part thereof as aforesaid to manage his real and leasehold estate and during such interval or postponement as aforesaid if and for so long a time as they should 20 deem it expedient so to do to carry on in whole or in part the business of a grazier then being carried on by him And whereas the First Second and Third Schedules to the said will contain certain particulars not necessary to be herein recited And whereas by a first 25. codicil to the said will the said testator after reciting inter alia the trust in the said will contained to pay to his said wife during her life the net income arising from the remainder of the residuary trust moneys (which remainder was thereafter referred to as the residuary 30. trust fund) revoked the said last mentioned trust in favour of his said wife so far as related to the payment of the said net income and directed that during her life his trustees should pay to her in lieu of such net income but subject to and without interfering with the 35. other trusts and provisions contained in his said will an annuity of three thousand pounds per annum to begin as from the date of his death and to be paid quarterly the first payment to be made on the expiration of three calendar month's from the date of his death And 10 whereas the said testator directed that such payments should Burder belanstrene bets mer a bit mainen

#### The Peter Mitchell Trust.

should be regularly made on quarterly dates whether there should be actual income to meet them or not and might be made out of capital or income as his trustees might think fit And whereas the said testator em-5 powered his trustees should they deem it expedient so to do to provide for the said annuity of three thousand pounds by setting apart and investing the sum of sixty thousand pounds and declared that the income derived from the sum so set apart should whether such income 10-should from time to time be greater or less than the said annuity of three thousand pounds be in substitution therefor and in complete satisfaction thereof And whereas the said testator by his said first codicil made other provisions not material to be herein referred to 15 And whereas by a second codicil to his said will the said testator in addition to making thereby other provisions not material to be herein referred to empowered his trustees in lieu of setting apart the sum of sixty thousand pounds to meet the annuity of three thousand pounds to 20 his wife as provided for in the said first codicil to his said will to set apart instead in the events that happened the sum of one hundred thousand pounds And whereas the said testator revoked the appointment of his said wife as an executrix and trustee of his said will and 25 codicil and empowered his trustees should his said wife inform them in writing that she no longer desired to use the Bringenbrong Homestead as a residence or to take advantage of the privileges given to her by his said will in connection with her right to reside there to make such 30 arrangement or agreement with her and to pay to her such compensation as they or she might think proper for or relating to her giving up such right and debarring herself from such use and such privileges And whereas the said testator empowered his trustees at any time or from 3) time to time during the lifetime of his said wife to hold or carry out the competitions provided for or in relation to The Peter Mitchell Trust under his said will or any codicil thereto whenever they his trustees should in their discretion consider that sufficient funds had

40 accumulated for that purpose after paying up to date and out of income the annuity for the time being payable to

of to his wife or if such annuity or any part thereof should have been paid out of capital then after replacing the capital so used but after the death of his said wife he directed that the said competitions should be held 5 annually And whereas in all respects save as therein provided to the contrary the said testator confirmed his said will and the first codicil thereto And whereas by a third codicil to his said will after reciting that by his said first codicil he directed that during her life his trustees should pay to his wife in lieu of the net income 10 previously bequeathed to her an annuity of three thousand pounds per annum payable as therein mentioned the said testator directed that the said annuity should in the events that have happened be five thousand pounds per annum instead of three thousand pounds per annum 15 and that the said first codicil should in relation thereto be read and construed in all respects as if the words five thousand pounds had been therein originally inserted in lieu of the sum of three thousand pounds and that the sum which his executors were empowered to raise and 20 set apart for meeting the said annuity might be increased accordingly And whereas the testator by his said third codicil made other provisions not material to be herein mentioned And whereas the said aboriginal "Skarry" is still living and is being maintained by the 25 trustees in accordance with the provisions of the said will And whereas the said testator died without leaving any child or children him surviving And whereas the said testator's said wife informed the trustees in writing that she no longer desired to use the Bringen- 80 brong Homestead as a residence or to take advantage of the privileges given to her by the said will in connection with her right to reside there and thereupon the trustees paid her the sum of one thousand five hundred pounds in consideration whereof she gave up such right and de-35 barred herself from such use and such privileges And whereas shortly after the death of the said testator the value of his estate became very greatly depreciated by reason of the collapse in the price of cattle And whereas in the interests of the capital of the said 40 trust the trustees accordingly postponed the sale and conversion

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conversion of the real and personal estate comprising the said property known as Bringenbrong until the year one thousand nine hundred and twenty-seven and in the meantime carried on the said testator's said grazing busi-

- **5** ness on the said property And whereas by reason of the said depreciation in the price of cattle the profits arising from the carrying on of the said grazing business were small and totally inadequate to meet the payment of the said annuity and other income charges under the
- 10 said will and codicils And whereas during the period of the said postponement of realisation and by reason of the said postponement it was necessary to resort by way of mortgage to the capital of the said testator's estate in order to meet the said annuity and other income
- 15 charges And whereas by reason of the said postponement of realisation the trustees were enabled in the years one thousand nine hundred and twenty-seven and one thousand nine hundred and twenty-eight to sell the said property known as Bringenbrong for a sum greatly
- 20 in excess of the highest price which could have been realised by any earlier sale of the said property And whereas the capital of the said The Peter Mitchell Trust has been greatly enhanced by reason of the said postponement of realisation And whereas even without the
- 25 recoupment of any part of the amount by which the capital of the said estate was resorted to as aforesaid the capital now available to the said The Peter Mitchell Trust is considerably greater than it would have been had realisation not been postponed as aforesaid And where-
- **30** as the trustees have not set apart any sum to provide for the said annuity payable to the testator's wife And whereas the terms of the said The Peter Mitchell Trust having become widely known throughout the Commonwealth of Australia and elsewhere the trustees receive
- 35 many inquiries evidencing a widespread desire that the said competitions should be inaugurated without delay And whereas it is desirable in the public interest that the competitions for such prizes should be inaugurated forthwith And whereas the trustees are accordingly
- 40 desirous of inaugurating the same forthwith And whereas the trustees have been advised that they have

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no power and that the Supreme Court of New South Wales has no jurisdiction to authorise them to apply any of the income of the testator's estate for the purposes of such competitions until the capital of the said estate has been recouped by the amount to which it was resorted to as aforesaid And whereas such recoupment would absorb the said income for several years to come And whereas it is accordingly in the public interest that the necessity for such recoupment should be dispensed with And whereas by reason of the nature of the said trust 10 it is desirable and necessary that the trustees should meet frequently And whereas the appointment of more than three trustees would render the administration of the said trust difficult and unnecessarily expensive And whereas for the purposes of the economical and efficient 15 administration of the said trust it is accordingly desirable to restrict the number of such trustees to three 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 20 in Parliament assembled, and by the authority of the same, as follows :----

Short title.

1. This Act may be cited as "The Peter Mitchell Trust Act, 1934."

Definitions.

Administration of

Capital un-

necessary to recoup.

estate.

- 2. In this Act unless the context otherwise requires— 25 "Estate" means the estate of Peter Stuckey Mitchell, deceased.
  - " Testator " means the said Peter Stuckey Mitchell, deceased.
  - "Trustees" means the trustees of the will and 30 codicils of the testator.

**3.** Except as otherwise provided by this Act the estate shall be administered in accordance with the provisions of the will and codicils contained in the Schedule hereto.

4. Notwithstanding anything in the said will and 35 codicils contained it shall not be necessary or deemed to have been necessary to recoup out of the income of the estate any of the capital moneys expended by the trustees during the period of the postponement of the realisation of that portion of the estate comprising the property 40 known as Bringenbrong, in payment of the annuity to the testator's widow and other income charges under the said will and codicils. 5.

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5. Notwithstanding anything contained in the said Number of will and codicils the number of trustees shall not exceed three and the powers of the trustees shall at all times be exercisable although there are only three trustees.

- 6. The existing trustees, namely, Alfred Henry Existing 5 Chesterman, Walter George Henderson and James trustees to Stanhan heiner the trustees to continue to Stephen, being the trustees appointed under the said act. will and codicils shall continue to be the trustees as if this Act had not been passed.
- 7. The trustees may pay out of the capital of the Trustees to 10 estate the costs, charges and expenses of all persons and etc. bodies of and incidental to the passing of this Act, including consultations and advisings for initiation and drafting of the Bill therefor and all other preparation 15 and work connected therewith.

### SCHEDULES.

#### SCHEDULE.

I, Peter Stuckey Mitchell, of Bringenbrong, in the State of New South Wales grazier do hereby revoke all wills and testamentary 20 dispositions heretofore made by me and declare this to be my last will and testament. I appoint my wife Jeannie Mitchell, Thomas Mates of Melbourne in the State of Victoria, commission agent, Alfred Henry Chesterman of Sydney in the State of New South Wales, Chairman of the Closer Settlement Advisory Board, and Walter

- 25 George Henderson of Albury in the State last aforesaid solicitor (hereinafter called my trustees) to be the executrix executors and trustees of this my will. I bequeath all my curios pictures and other works of art prints photographs and all my household furniture and other household effects of what nature or kind soever and also my
- 30 watch and chain ornaments of the person and effects in personal use by me at the time of my death to my said wife absolutely I give to my said wife for her immediate use the sum of one thousand pounds to be paid to her as soon as conveniently may be after my decease. I bequeath the following legacies that is to say to the said Alfred
- 3; Henry Chesterman the sum of five hundred pounds and to the said Walter George Henderson the sum of one thousand pounds but I declare nevertheless that such legacies shall not in any way affect. the

the right of the said Alfred Henry Chesterman and Walter George Henderson to commission as executors and trustees of this my will in addition to such legacies. To such of the children of my sisters Mary Annie Brown wife of Edward J. Brown of Brighton in the State of Victoria, surveyor, and Henrietta Evelyn Peck lately the wife of Solon A. Peck of Melbourne aforesaid architect as shall survive me the sum of two hundred and fifty pounds each. To Andrew Rixon of Bringenbrong aforesaid stockman the sum of two hundred and fifty pounds providing he shall be in my employ at the time of my decease. To James Mahon provided he shall be in my employ 10 at the time of my decease and to Thomas Mahon subject to the same proviso the sum of fifty pounds each. To the Public Hospital at Corryong in the said State of Victoria the sum of fifty pounds I declare that the receipt of the secretary treasurer or president for the time being of such hospital shall be a sufficient discharge to my 15 trustees for payment of the last-mentioned legacy. I declare that none of the legacies hereby or by any codicil or codicils hereto bequeathed to individuals shall lapse because of the death of the legatee prior to my decease provided such legatee shall leave children living at my death him or her surviving but shall pass to such children who if 20 more than one shall take equally between them but this declaration shall not extend to the legacies to the said Andrew Rixon James Mahon and Thomas Mahon unless the legatee shall be in my employ at the time of my decease or shall previously have died while still in my employ. I further direct my trustees to set apart one acre 25 of ground at Bringenbrong aforesaid for the purposes of a cemetery for the use of the members of the family of my parents and of their wives or husbands and issue and of employees (past or present) on Bringenbrong aforesaid and of their wives and children such acre to comprise the site of the present cemetery on Bringenbrong and 30 to be square in shape taking as a centre the obelisk erected to the memory of my late father and mother. And I direct my trustees (unless this shall have been done prior to my decease) to enclose such acre with a suitable fence and to reserve a right-of-way and passage for all persons entitled to use the cemetery and their relatives and 35 friends from such convenient point on the public road running past the Bringenbrong Homestead and leading to Greg Greg and following such line or route as my trustees may determine but so that the land covered by such right-of-way shall not be more than half a chain in width and I empower my trustees to employ and pay a licensed sur- 40 veyor for the purpose of defining the same I direct my trustees should there not have been erected prior to my death a suitable headstone over and railing round the grave at Bringenbrong aforesaid of Charles H. Blackburn who was formerly an overseer at Bringenbrong aforesaid to have such headstone and railing erected at a cost not exceed- 45 ing one hundred pounds. I request my said wife to protect and take care of "Skarry" an aboriginal at Bringenbrong aforesaid for the remainder of his life and not to let him suffer from want of any necessary or reasonable comfort and after the death of my said wife should

should "Skarry" be then still alive or after her failure (if any) to

comply with such request I extend the request last aforesaid to my Trustees and empower them out of the general revenue of my residuary estate to expend for the purpose of complying with such request an 5 annual sum not exceeding fifty pounds per annum. Subject to the direction hereinafter contained with regard to the right of my said wife to use the Bringenbrong Homestead and its appurtenances as and for the purposes of a residence I devise and bequeath all my real and personal estate whatsoever not hereby otherwise disposed of 10 unto my Trustees upon trust that they shall sell call in and convert into money the same or such part thereof as shall not consist of money and shall with and out of the moneys produced by such sale calling in and conversion and with and out of my ready money pay my funeral and testamentary expenses (including stamp duty) and 15 debts (including mortgage debts) and the legacies bequeathed by this my Will or any codicil hereto and shall invest the residue of the said moneys with power for my Trustees from time to time at their discretion to vary such investments and shall stand possessed of the said residuary trust moneys and the investments for the time being 20 representing the same upon the trusts following that is to say in trust to set apart during the lifetime of George Sexton Evans of Bringenbrong aforesaid working overseer and invest in manner hereinafter authorized the sum of one thousand pounds and to pay the net income and profits arising from such investment as they shall be 25 received or by quarterly payments to the said George Sexton Evans during his life or until he shall assign charge or otherwise dispose of the said income or some part thereof or become bankrupt or do or suffer some thing whereby the said income if belonging absolutely to him or some part thereof would become payable to or vested in some 30 other person (whichever of the said events shall first happen). And if the trust lastly hereinbefore declared shall determine in the lifetime of the said George Sexton Evans in trust during the remainder of the life of the said George Sexton Evans to pay and apply the said income for or towards the maintenance and support or other-35 wise for the benefit of all or such one or more exclusively of the other or others of the said George Sexton Evans and his wife and issue for the time being and my said wife or towards the the inception or augmentation of any valid charitable trust created by this my will in such manner in all respects as my Trustees shall in their uncontrolled 40 discretion think fit. And I further declare that upon the decease of the said George Sexton Evans whether in my lifetime or not provided he shall be in my employ at the time of my decease the said sum of one thousand pounds shall pass to his issue (if any) living at my decease and if more than one in equal shares and if there shall be 45 no such issue or if the said George Sexton Evans shall not be in my employ either at the time of his decease or my decease the said sum of one thousand pounds shall sink into and become part of my residuary estate I direct that pending and until the setting apart and investment of the said sum of one thousand pounds (which setting

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apart and investment my Trustees may postpone for so long a period as they may think fit) my Trustees shall as from the date of my death pay and apply in the same manner as they would the net income arising from the said sum of one thousand pounds if already set apart and invested interest thereon or on so much thereof as shall 5 not already have been set apart and invested at the rate of five pounds per centum per annum. And in further trust should I die without leaving a child or children me surviving and subject to the declaration hereinafter contained with regard to the right of my said wife to use as and for the purposes of a residence my homestead at Brin- 10 genbrong to pay to my said wife during her life the net income arising from the remainder of the residuary trust moneys (which remainder is hereafter referred to as the residuary trust fund). But should I die leaving a child or children me surviving then in trust subject as aforesaid to pay to my said wife during her life and by equal quar- 15 terly instalments an annuity of two thousand pounds I empower my Trustees to provide for the said annuity of two thousand pounds by setting apart and investing the sum of forty thousand pounds. And I declare that the income derived from the sum so set apart shall whether such income shall from time to time be greater or less than 20 the said annuity of two thousand pounds be in substitution therefor and in complete satisfaction thereof. And further that the moneys so set apart shall on the death of my wife sink into and become part of my residuary estate and devolve accordingly I declare that my said wife shall not have power to dispose or deprive herself by an- 25 ticipation of the said income or annuity or any part thereof and further that payment as aforesaid of such income or annuity (as the case may be) shall continue only until she shall assign or purport to assign charge or otherwise dispose of such income or annuity or some part thereof or become bankrupt or do or suffer some act or 30 thing whereby the said income if belonging absolutely to her or some part thereof would become payable to or vested in some other person (whichever of the said events shall first happen). And if the trust lastly hereinbefore declared shall determine during the lifetime of my said wife in trust during the remainder of her life to 35 pay and apply the said income or annuity for or towards the maintenance and support or otherwise for the benefit of all or such one or more exclusively of the other or others of the following persons that is to say my said wife and my child or children (if such there be) or towards the inception or augmentation of any valid charitable 40 trust created by this my will in such manner in all respects as my Trustees shall in their uncontrolled discretion think fit. And subject to such annuity to my said wife to hold the said residuary trust fund upon trust to divide the same or treat the same as divided into as many shares or parts as there are children of mine surviving me 45 such shares or parts to be allotted for the benefit of such children but so that the prospective share of each son shall be equal to twice the prospective share to be allotted to each daughter and her issue in manner hereinafter set out. And I declare that one-half of the prospective

prospective share of each son so surviving me as aforesaid shall vest

in him upon his attaining the age of twenty-one years and not sooner and the other half thereof upon his attaining the age of twenty-three years and not sooner and if any prospective share or moiety thereof 5 shall not vest in any such son by reason of his not attaining the age of twenty-one or twenty-three years as the case may be the same shall be held upon trust for the other or others of my sons surviving me and living at the death of such son in the same manner as if part of their original prospective share or shares and if the prospective (10 shares allotted to such sons or any part thereof shall fail to vest under the aforesaid trusts then the same shall be held upon trust for my daughters or daughter and their or her issue in the same manner as if part of the original shares allotted to them under this my Will. And I declare that the prospective share to be allotted to each 15 daughter and her issue shall be set apart for such daughter upon her attaining the age of twenty-one years or marrying under that age and not sooner and the income arising from such investment shall thenceforth be paid to her until she shall assign charge or otherwise dispose of the said income or some part thereof by way of anticipation or 20 attempt so to do or suffer some act or thing whereby the said income if payable to herself would become vested in some other person or persons. And if she shall make any such assignment charge or other disposition by way of anticipation or attempt so to do or suffer any such act or thing as aforesaid then during the remainder of the life 25 of my said daughter the said income shall be applied in such manner as my Trustees shall in their uncontrolled discretion think proper for the maintenance and support or otherwise for the benefit of all or any one or more exclusively or the other or others of my said daughter and her issue or if there shall be no such issue then of my said ,30 daughter and my said wife and after the death of such daughter the said share shall be held in trust for such of her children as shall attain the age of twenty-one years and if more than one in equal shares and proportions. And I further declare that if any such daughter shall die before attaining the age of twenty-one years or 35 marrying or having attained that age or married shall die without leaving any children her surviving or leaving children all of whom die under the age of twenty-one years then the share allotted to such daughter shall be held upon trust for my other daughters or daughter and their or her issue in the same manner as if part of the original 40 shares allotted to them under this my Will and if all my daughters shall die before attaining the age of twenty-one years or marrying or having attained that age or married shall die without leaving any children them or her surviving or leaving children all of whom die under the age of twenty-one years then the prospective shares allotted 45 to my daughters shall be held upon trust for my sons or son living at the date of the death of the last survivor of my daughters and their children in the same manner as if part of their original prospective shares or share I direct that my said wife shall so long as she shall live have the right to use as and for the purposes of a residence

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such part of the Bringenbrong Homestead as is ordinarily used by me for that purpose together with the right to run not more than ten head of large stock in any of the homestead paddocks at Bringenbrong aforesaid ordinarily used for grazing and to use the stables outbuildings and yards for the purpose of housing or keeping such 5 stock and to use and enjoy the gardens at Bringenbrong aforesaid and other the appurtenances to the said residence but so nevertheless that my Trustees shall also be entitled in common with my said wife to the use and benefit for the purpose of conducting the business hereinafter mentioned of so much of the said Homestead stables 10 outbuildings yards gardens and appurtenances as are or have been ordinarily used for the purpose of such business. And upon further trust and subject to the trusts aforesaid to pay and apply the whole or all that remains of the said net income (all of which income payable under the trust next hereinafter mentioned is hereinafter 15 referred to as the said income) in the manner and to and for the ends intents and purposes hereinafter set forth concerning the same. And I desire that the said income and the moneys producing the same and the purposes hereafter set forth concerning the same shall be known as "The Peter Mitchell Trust." Now I consider that though 20 gifts for the benefit of the weak failing and sick are highly praiseworthy and to be commended yet more lasting good is to be effected by providing means to encourage and help the capable healthy and strong to develop and bring to fruition their natural advantages and which will act as an incentive to all sane normal and healthy 25 persons of both sexes to improve so far as possible their natural mental moral and physical conditions and will enable the worthiest amongst them by a process of selection and by competitions whereby they shall earn the benefits hereby intended to still further better those conditions develop themselves broaden their outlook as citizens 30 of the Empire and so provide a leaven of strong well-balanced and self-reliant individualities who mixing in daily intercourse with their fellows will tend by their example and by the magnetism of their bright and healthful personalities to benefit and assist those with whom they may so daily mix and will also in the natural course of 35 events reproduce in future generations those qualities which they themselves possess I desire though without in any way fettering or interfering with the absolute discretion of my Trustees that so far as possible the competitions of a military or partly military nature hereinafter referred to shall be shaped and carried out in such manner 40 that while due consideration is given to intelligent combination and co-operation amongst competitors at least equal attention shall be given to cultivating the faculties of self-reliance and initiative in each individual concerned and to the development of his self-respect his personal cleanliness and his knowledge of such clean and sanitary 45 conditions as are best calculated to keep a community of individuals or an army free from disease and that while careful attention shall be given to the development of the body mere muscularity and overtraining should be discouraged. I also but again without fettering or interfering

The Peter Mitchell Trust.

interfering with the absolute discretion of my Trustees desire that in considering the merits of competitors coming within the terms of the Second Schedule hereto the success of the candidate in open air sports and his capacity for leadership amongst his fellows shall have 5 due consideration by my Trustees I now direct that the said income shall be divided into twenty-one parts and that the purposes to which the same shall be applied shall be as follows namely: As to seven of such parts to provide prizes for the persons and purposes and subject to the due fulfilment of the gualifications and conditions set forth 10 in the First Schedule hereto. As to three of such parts to provide prizes (whether in cash or in trophies or partly in the one way and partly in the other) for such military competitions or competitions not strictly military but connected with or relating to military life or training as my Trustees may decide upon such competitions to be 15 confined to the military forces (including cadets) of the Commonwealth of Australia. As to two of such parts to provide prizes as aforesaid for such naval competitions or competitions relating to naval training as my Trustees may decide upon such competitions to be confined to the naval forces of the said Commonwealth. As 20 to three of such parts to provide prizes as aforesaid for such military competitions or competitions not strictly military but connected with or relating to military life or training as my Trustees may decide upon such competitions to be open only to the military forces of the British Empire including the troops and cadets of the said Common-25 wealth. As to three of such parts to provide prizes as aforesaid for such naval competitions or competitions relating to naval training as my Trustees may decide upon such competitions to be open only to the naval forces of the British Empire including the naval forces of the said Commonwealth. As to one of such parts to provide prizes as 30 aforesaid for competitions amongst and to be confined to the members of the Police Force of the State of New South Wales. And as to the remaining two parts of the said income to provide prizes for the persons and purposes and subject to the due fulfilment of the qualifications and conditions set forth in the Second Schedule hereto 35 I declare that all competitions or examinations in this my Will referred to shall be held at such times and in such place or places within the said Commonwealth and subject to such regulations terms and conditions in all respects as my Trustees either with or without expert advice shall decide upon save only that until my Trustees shall otherwise agree I desire that the said military or partly mili-40 tary competitions shall be held at Albury aforesaid. And I empower my Trustees to fix (subject nevertheless to any express direction in this behalf herein contained) the amount of value and nature of all prizes and to pay all expenses (not however including the travelling 45 or other expenses of candidates) connected with or incidental to all competitions herein referred to and of advertising the same by any means they may think fit out of the said income. And in case the bequests trusts and dispositions hereinbefore contained or any of them shall for any reason wholly or partially fail or be declared by any c 51-B Court

Court incapable of taking effect or in case any portion of the corpus or income of my estate shall not by this my Will or any codicil thereto be effectually disposed of otherwise then I give the property or funds so undisposed of to my Trustees upon trust for such nonsectarian charitable uses purposes or institutions as my Trustees shall; 5 in their absolute and uncontrolled discretion decide upon. I declare that except in respect of the doing of purely formal acts (which shall not include the appointment of new Trustees) the powers contained in this my Will or any codicil thereto or conferred by law shall not be exercisable by my Trustees hereby or by any codicil hereto 10 appointed and proving my Will unless there shall be at least two of such and when there shall no longer be at least two of such then I direct that the number of Trustees hereof shall be increased to five and that thereafter the powers aforesaid except as aforesaid shall not be exercisable unless there shall be at least four Trustees but 15 I desire nevertheless that the number shall be maintained at five with as little break as possible. I declare that any appointment of new Trustees hereof shall be made by the Trustees living at the time of any such appointment who shall have proved my will so long as two or more of them shall be alive and continue to act in the trusts 20 hereof (but my wife nevertheless shall join in such appointment whether she shall have joined in proving my Will or not) and after the death or retirement of all but one of my Trustees who shall have proved my Will any such appointment shall be made by the majority of the following persons namely the then existing trustee or trustees 25 (including my wife whether she shall actually be a Trustee or not) the Chief Naval and Chief Military Commandants of the Naval and Military Forces of the Commonwealth of Australia and the Chancellor for the time being of the University of Sydney (any one of whom may act as trustees and be so appointed) and if such persons 30 shall not within one calendar month after notice in writing shall have been given them by any resident (being a British subject) in the Commonwealth of Australia requiring them to appoint a new trustee or new trustees have appointed such new trustee or trustees as may be necessary then by a Judge of the Supreme Court of New 35 South Wales in its Equitable or Probate Jurisdiction on the application of any such resident the persons empowered to appoint a new trustee or trustees to be parties on the hearing of such application. And further that in case of any difference between my Trustees in relation to any question arising thereunder or in the execution of 40 any of the trusts powers and discretions herein contained and except as herein or in any codicil hereto otherwise expressly provided the decision of the majority of my Trustees shall be binding and conclusive and the dissenting trustees or trustee may and shall join in any acts deeds or things necessitated by such decision without incur- 45 ring any responsibility thereby but save and subject as aforesaid I declare that all trusts and powers herein vested in my Trustees may be exercised by the survivors or survivor of them or other the trustees or trustee for the time being of this my Will. And I also declare that

that during the minority of any minor entitled or prospectively entitled to a share of the residuary trust funds either absolutely or for life or for other limited period under this my Will my Trustees may apply the whole or any part of the income of the expectant share 5 of such minor for or towards her or his benefit maintenance and education or may apply in the same way any part of the capital of such share (not however exceeding three hundred pounds) with liberty if they shall think fit so to do pay the same to the guardian or guardians of such minor or other person or persons having for the 10 time being the actual charge and custody of such minor for the purposes aforesaid without being liable to see to the application thereof and shall accumulate the residue (if any) of the said income by investing the same and the resulting income thereof to the intent that such accumulations shall be added to the principal share from 15 which the same shall have proceeded and follow the destination thereof but my Trustees may at any time resort to the accumulations of any preceding year or years and apply the same for or towards the maintenance and education of the minor expectantly entitled thereto. But I declare that this clause shall not have the effect of 20 accelerating or affecting the vesting of such share. And I also declare that my Trustees may postpone the sale and conversion of my real and personal estate or any part thereof for so long as they shall think fit. And I declare that any such sale and conversion as aforesaid may be made in such manner and under such stipulations 25 and upon such terms and conditions in all respects as my Trustees in their uncontrolled discretion shall think fit, and that they may allow to any purchaser such time for payment of his purchase money or any part thereof as they may think expedient, and that they may buy in or rescind or vary any contract for sale or of any other 30 description and resell without being answerable for loss and may for the purposes of such sale and conversion or any of them do and execute all such assurances and things as they shall think fit. And I also declare that all moneys liable to be invested under this my Will may be invested in the names of my Trustees or under their legal 35 control in or upon any of the public stocks or funds or Government securities of or guaranteed by the Commonwealth of Australia or any of the Australian States or in or upon the securities of any municipality or shire within the said Commonwealth or in or upon the shares of any bank carrying on business in Australia or in or upon 40 freehold securities in New South Wales or Victoria or land in New South Wales conditionally purchased from the Crown and as to which last-mentioned land the certificate of all conditions other than payment of the balance of purchase moneys owing the Crown having been complied with has been duly granted and issued or lands con-45 ditionally leased by virtue or in respect of or as appurtenant to such conditionally purchased lands as aforesaid or land in Victoria leased from the Crown and convertible into freehold but not in any other mode of investment (save only that whilst seeking or waiting for such investment as aforesaid my Trustees may at any time or from time

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time to time deposit the said moneys or any part thereof in any bank in either of the States of New South Wales or Victoria at interest as fixed deposit or otherwise as to them shall seem expedient). I empower my Trustees during such postponement of sale of my real and personal estate or any part thereof as aforesaid to manage my 5 real and leasehold estate and to let the same or any part or parts thereof with or without any stock station plant or other personal property for any period or periods not exceeding ten years on such terms and conditions in all respects and with or without an option of purchase as to my Trustees shall seem proper. And to accept surrenders '0 of leases and tenancies and generally to manage my real and leasehold estates and the unsold portion of my personal estate as my Trustees shall think fit. I also empower my Trustees during such interval or postponement as aforesaid if and for so long a time as they shall deem it expedient so to do to carry on in whole or in part the busi-15 ness of a grazier now being carried on by me with power to vary such business by adding thereto any branch of a graziers farmers or dairyman's business including power to carry on any part of such business under the share system with liberty to use and employ in the said business such part or parts of my residuary estate or the 20 proceeds thereof as my Trustees may think fit and with liberty for that purpose to resort to any accumulations of income or profits which may have arisen under the trusts herein contained or any of them. And I declare that my Trustees shall be entitled to be indemnified in the fullest manner out of my estate in respect of all losses 25 and liabilities which may be sustained or incurred in carrying on or otherwise in relation to any of such business as aforesaid or the employment of any part of my estate in such business. And I further declare that my Trustees in case they shall think proper may leave the entire management of any such business to any manager 30 or managers and may give to such manager or managers such powers or authorities as may be deemed expedient. And I hereby declare that the net rents and profits or other income derived from every or any part of my real or personal estate previously to the conversion or collection thereof or the carrying on of the business aforesaid pursuant 35 to the trusts hereinbefore declared shall be applied in the same manner in all respects as if the same were income proceeding from such investments as are hereinbefore authorized or directed and that the whole of the income proceeding from my estate in its actual condition or state of investment for the time being shall as well during 40 the first year after my death as at all times afterwards be expended or applicable as income under the trusts of this my Will no part thereof being in any event liable to be retained as corpus or capital I empower my Trustees at any time to sell live stock to either of my brothers Walter Edward Mitchell or John Francis Huon Mitchell 45 on credit and to take in payment for the same from either of them if he shall so desire his promissory note or promissory notes payable six months or earlier after the date or dates thereof for the price or prices with interest at the rate of five pounds per centum per annum D added

added without requiring any endorsement or other guarantee. I also empower my Trustees at any time or times to exchange lands with the Crown or with adjoining holders or to acquire lands lying within the outer boundaries of my estate. I also empower my Trustees dur-5 ing the period of postponement of sale of any part of my real estate as aforesaid to mortgage or join in mortgaging the same or any part or parts thereof at any time or times to obtain money for the carrying out of any of the trusts or provisions of this my Will. I declare that my Trustees shall have the fullest power of determining what 10 articles of property pass under any bequest contained in this my Will or any codicil thereto and of apportioning blended trust funds and of determining whether any moneys are to be treated as capital or income and of determining what is net income and generally all matters as to which any doubt or difficulty or question may arise 15 under or in relation to the execution of the trusts of this my Will or any codicil thereto. And I declare that every determination of my Trustees in relation to any of the matters aforesaid whether made upon a question formally or actually raised or implied in any of the Acts or proceedings of my Trustees in relation to the premises shall bind all parties interested under this my Will and shall not 20 be objected to or questioned upon any ground whatsoever. I declare that the remuneration of the executors and trustees of this my Will shall in lieu of the commission which might from time to time be allowed by the Supreme Courts of the States in which my property 25 may lie to the Executors and Trustees who actually shall prove my said Will a commission at the rate of one pound per centum on the net value of my estate as valued for the purpose of assessment of stamp duty and to my said Executors and Trustees and all future Trustees of this my Will an annual commission of five pounds per 30 centum on the gross annual profits of my estate such annual commission to be apportioned if necessary according to the income received for the then current year as at the date of the appointment of the incoming trustee or trustees. And I direct that my Trustees shall once at least in every year file and pass accounts in the Supreme Court 35 of New South Wales showing the receipts and disbursements in connection with my whole estate wheresoever situated and prior to filing such accounts shall have their correctness certified to by a public accountant and with such accounts shall be filed a statement or balance-sheet showing all assets then comprised in and all liabilities 40 then outstanding against my estate and notice in writing of the filing of such accounts shall within fourteen days after the date of such finding be given to the said Naval and Military Command-

ants and the said Chancellor and in addition to the advertisements required by the rules of the said Court notice of such filing shall be 45 advertised once at least in one newspaper published in each of the capitals of the Australian States and in one newspaper published in Albury aforesaid and such notice shall contain a statement to the effect that all persons are entitled to inspect such accounts and if they think fit object thereto. And I declare that any British subject

resident

resident in the said Commonwealth shall be deemed to be an interested party for the purpose of so objecting as aforesaid. I declare that the said Walter George Henderson or any other solicitor who may hereafter be appointed a trustee of this my Will may by himself or his firm act as Solicitor for or in relation to my estate or to my Executors or Trustees for the time being and shall be entitled to charge and shall be paid for all business done by him as such solicitor in the same manner as if he had not been appointed an executor or a trustee.

In witness whereof I have hereunto and at the foot of each of the 10 seven preceding and three succeeding pages of this my Will set my hand this twenty-third day of October one thousand nine hundred and sixteen.

#### Witnesses-

M. C. MASON.

S. P. BUTCHER.

#### THE FIRST SCHEDULE.

The persons to whom this Schedule refers shall be unmarried females not exceeding the age of thirty years British subjects and 20 bona fide residents of the Commonwealth of Australia of a white race and not the offspring of first cousins.

The purposes covered by this Schedule shall be the providing each year of prizes or bonuses for fifteen of the fittest of such persons last aforesaid the fitness to be decided by my Trustees or by any examiner 25 or examiners they may choose to appoint or by my Trustees assisted by such examiners. The amount of the first prize shall be twice that df the second and the amount of the second shall be twice that of the third and the amount of the third shall be twice the amount of 30 each of the remaining prizes which shall all be equal.

In the deciding of the fitness of any candidate and her superiority to the others the following matters (in addition to the main test hereafter mentioned and hereafter called "the main test") shall be taken into consideration; and each candidate must reasonably comply with conform to or satisfy each of such matters according to a 35 minimum standard required by my Trustees before being admitted to the main test.

- 1. Her physical excellence and the goodness of her general health; her freedom from any hereditary taint or disease. particularly of the intellect; her brightness and cheerfulness 40 of disposition and the fact that she is a person who may be calculated generally to bear and rear healthy normal children.
- 2. Her knowledge and understanding of the main elements of the history of the British Empire apart from the mere memorizing of facts and dates.
- 3. Her general knowledge of the climates and geography of the Commonwealth of Australia and of its main natural products. 4.

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P. S. MITCHELL.

4. Her knowledge and understanding of standard English Literature (as embraced in the books or parts of books set forth in the Third Schedule hereunder and such other books not exceeding five as my Trustees may unanimously add to such Schedule with power to replace any of the books so added) 5 and in particular a sound and appreciative knowledge of such parts of the Protestant Bible as are specially mentioned in such Schedule. 5. Her knowledge of elementary anatomy and physiology and 10 the main functions of the human body her knowledge of first aid and her ability to ride on horseback and to swim. 6. The soundness of her knowledge of practical house-keeping and domestic economy and of the necessity at all times for clean and sanitary surroundings and conditions and the best 15 practical means of attaining them under ordinary circumstances in the said Commonwealth. The main test to which the candidate must be subjected is as follows :-Her practical and theoretic knowledge of the nursing (in sick-20 ness and health) handling management training care and rearing to perfect health and strength of babies and young children. The candidates (in their order of merit) who best satisfy the main test shall be entitled to succeed provided they shall have reached the minimum standards prescribed by my Trustees with regard to the

25 preceding matters or tests but if the examiners shall be of opinion that any two or more candidates have equalled each other in the main test then the extent to which they shall have answered or satisfied the previous requirements or tests shall be taken into consideration and the best in order of merit chosen.

P. S. MITCHELL.

30 Witnesses:

M. C. MASON.

S. P. BUTCHER.

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#### THE SECOND SCHEDULE.

The persons to whom this Schedule refers shall be males under the age of twenty-one years British subjects and bona fide residents of the Commonwealth of Australia of a white race and not the offspring of first cousins; of good general health and free so far as my 40 Trustees may reasonably be able to ascertain from any hereditary taint or disease particularly of the intellect. They must have honourably fulfilled all military obligations imposed upon them by the laws of the Commonwealth of Australia. They must be able to swim to ride a horse and to shoot reasonably well with the rifle according to 45 standards from time to time prescribed by my Trustees.

The purposes covered by this Schedule shall be the providing each year or every second year of prizes or bonuses for such number as my Trustees may determine not exceeding ten of the fittest of the persons

persons last aforesaid the question of fitness to be decided by my Trustees or by such examiner or examiners as they may choose to appoint or by my Trustees assisted by any such examiner or examiners. The amount of the first prize shall be thrice that of the second and the amount of the second twice that of each of the remaining prizes which shall all be equal.

In deciding as to the merits of each candidate the following (in addition to the foregoing) shall be the matters to be considered namely):---

1. The excellence of his physique.

- 2. His knowledge and understanding of the main elements of the history of the British Empire and of the British Constitution also his knowledge and understanding of the Commonwealth of Australia and the Constitution of his own State.
- 3. His knowledge of the geography of the Australian Common- 15 wealth and of its climates and primary products.
- 4. His knowledge of elementary anatomy and physiology and the main functions of the human body and of "first aid."
- 5. His knowledge and understanding of standard English literature (as embraced in the books or parts of books set forth 20 in the Third Schedule hereto and such other books not exceeding ten as my Trustees may add to such Schedule with power to replace by others any of the books so added or merely omit without replacing them) and in particular a sound and appreciative knowledge of such parts of the 25 Protestant Bible as are specially mentioned in such Schedule.

#### THE THIRD SCHEDULE.

The Protestant Bible and in particular Genesis, Exodus, First and Second Samuel, First and Second Kings, the Book of Job, Psalms, Proverbs, Ecclesiastes, the Song of Solomon, Isaiah, Daniel, St. Luke, **30** St. John, The Acts of the Apostles, Corinthians (First and Second), James, Peter (First and Second), First John, Revelation.

Shakespeare's Plays as follows:—The Tempest, Midsummer Night's Dream, The Merchant of Venice, As You Like It, King Henry IV (first and second parts), King Henry V, The Life of King Henry 35 VIII, The Life and Death of Julius Caesar, King Lear, The Tragedy of Macbeth, and Hamlet Prince of Denmark.

Carlyle—Sartor Resartus, Heroes and Hero Worship, Presidential address at Edinburgh.

Walt Whitman—Me Imperturbe, Song of the Open Road; A Song 40 of Joys; Myself and Mine.

Cervantes-Don Quixote.

Smiles—Self Help.

Dickens-Pickwick, David Copperfield.

George Elliot's Middlemarch. Kingley's Westward Ho.

Scott's Novels.

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Stevenson's

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Stevenson's Treasure Island, Dr. Jekyl and Mr. Hyde, The Black Arrow, Master of Ballantrae, David Balfour, Catriona, The Wrong Box.

Harris' Uncle Remus.

- Thackeray—Vanity Fair. Kipling—Kim, Tales of Soldier Life, Puck of Pook's Hill, Rewards
- and Fairies, Poems and Verses.

Conan Doyle-White Company.

Charles Reade-The Cloister and the Hearth.

10 Macauley—The Earl of Chatham, William Pitt, Earl of Chatham; Lord Clive; Warren Hastings.

Lubbock's Pleasures of Life.

Burns' Poems as follows:-The Cotter's Saturday Night; Tam O'Shanter; The Twa' Dogs; The Brigs of Ayr; Address to the Unco'

15 Guid; To a Mouse; A Winter Night; Epistle to Davie a brother poet; To a Mountain Daisy; Man was made to Mourn; Epistle to a Young Friend.

Provided nevertheless that if from time to time by reason of its being practically unprocurable my Trustees shall unanimously decide

20 to omit any book herein mentioned they may do so and replace it by another.

Signed by the said Peter Stuckey Mitchell the Testator as and for his last will and testament in the sight and presence of us both being present at the same time who at his request and in his sight and

25 presence have hereunto and to the preceding pages subscribed our names as witnesses.

#### P. S. MITCHELL.

M. C. MASON, Law Clerk, Albury. S. P. BUTCHER, Law Clerk, Albury.

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#### FIRST CODICIL TO SAID WILL, DATED 25TH MAY, 1917.

I, Peter Stuckey Mitchell of Bringenbrong in the State of New South Wales grazier declare this to be a Codicil to my last Will which bears date the twenty-third day of October one thousand nine hundred

- 35 and sixteen. Whereas by my said Will I after making certain bequests and other provisions devised and bequeathed all my real and personal estate not thereby otherwise disposed of unto my Trustees upon trust for sale and conversion as therein mentioned and after a trust in favour of George Sexton Evans. In further trust should I die
- 40 without leaving a child or children me surviving and subject to the declaration therein contained with regard to the right of my wife to use as and for the purposes of a residence my homestead at Bringenbrong to pay to my said wife during her life the net income arising from the remainder of the residuary trust moneys (which
- 45 remainder is thereafter referred to as the residuary trust fund) Now I revoke the last-mentioned trust in favour of my said wife so far as relates to the payment of the said net income and direct that during her life my Trustees shall pay to her in lieu of such net income but subject to and without interfering with the other trusts and

and provisions contained in my said will an annuity of three thousand pounds per annum such annuity to begin as from the date of my death and to be paid quarterly the first payment to be made on the expiration of three calendar months from the date of my death. And I direct that such payments shall be regularly made on quarterly dates whether there shall be actual income to meet them or not and may be made out of capital or income as my Trustees may think fit I empower my Trustees should they deem it expedient so to do to provide for the said annuity of three thousand pounds by setting apart and investing the sum of sixty thousand pounds. And I declare 10' that the income derived from the sum so set apart shall whether such income shall from time to time be greater or less than the said annuity of three thousand pounds be in substitution therefor and in complete satisfaction thereof. And I further declare that should I die leaving me surviving a child or children such annuity shall be 15 reduced to the sum of two thousand pounds as in the said will mentioned with power to my Trustees to set apart and invest the sum of forty thousand pounds to meet the same as also in the said will mentioned. And whereas by my said will I have made provision for prizes or bonuses to be paid to certain persons as in my said Will 20 set forth. Now I declare that no person shall be entitled to win and receive more than one first prize or bonus nor more prizes or bonuses of any other description than will make up the value of one first prize or bonus and such value shall be taken to be the value of the first prize or bonus for the competition in which any competitor 25 shall have first competed. And whereas by my said Will I have appointed as one of my Trustees my friend Thomas Mates of Melbourne in the State of Victoria Commission Agent into whose hands I have been in the habit of placing live stock for sale and with whom I have been doing other business in his capacity of general commis- 30 sion agent. Now I declare that the appointment of the said Thomas Mates as an Executor and Trustee of my Will shall not debar him from acting as agent for my Executors and Trustees in the same manner as he has heretofore done for me or in any modified manner and that his so acting shall not debar him from receiving any com- 35 - ... mission or other benefit to which he may be entitled under my said Will. And I empower my Executors and Trustees at their discretion to employ him accordingly. And in all respects save as hereby provided I confirm my said Will.

In witness whereof I have hereunto set my hand this Twenty-fifth 40 and the formula of May one thousand nine hundred and seventeen. Signed and acknowledged by the abovenamed Testator as and for a Codicil to his last Will and Testament in the presence of us both being present at the same time who at his request in his presence and in the presence of each other have hereunto subscribed our names as attesting 45 witnesses:

H. K. GERRARD, Law Clerk, Albury. S. P. BUTCHER, Law Clerk, Albury.

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#### PETER S. MITCHELL.

#### SECOND

#### SECOND CODICIL TO SAID WILL, DATED 15TH DECEMBER, 1917.

I, Peter Stuckey Mitchell, of Bringenbrong in the State of New South Wales grazier declare this to be a second Codicil to my last Will which Will bears date the twenty-third day of October one thousand nine hundred and sixteen. I bequeath to Andrew Rixon in lieu of the sum of two hundred and fifty pounds bequeathed to him by my said Will (which bequest I revoke) the sum of one hundred pounds if he shall be in my employ at the time of my decease. I 10 bequeath to Archibald (or Archie) McCallum now a stockman on Bringenbrong if he shall be in my employ at the time of my decease the sum of one hundred pounds. I revoke the provision in my said will contained for payment of an annuity to George Sexton Evans and in lieu thereof I bequeath to him if he shall be in my employ at 15 the time of my decease the sum of one hundred pounds. I revoke the bequests by my said Will made in favour of James Mahon and Thomas Mahon. I empower my Trustees in lieu of setting apart the sum of sixty thousand pounds to meet the annuity of three thousand pounds to my wife as provided for in the First Codicil to my said

- 20 Will to set apart instead the sum of one hundred thousand pounds to be reduced to two-thirds of that amount should the annuity to my said wife pursuant to the terms of the said Will and Codicil be reduced to two thousand pounds per annum I revoke the appointment of my said wife as an Executrix and Trustee of my said Will
- 25 and Codicil. I empower my Trustees should my said wife inform them in writing that she no longer desires to use the Bringenbrong Homestead as a residence or to take advantage of the privileges given to her by my said Will in connection with her right to reside there to make such arrangement or agreement with her and to pay to her 30 such compensation as they and she may think proper for or relating
- to her giving up such right and debarring herself from such use and such privileges. I empower my Trustees at any time or from time to time during the lifetime of my said wife to hold or carry out the competitions provided for or in relation to The Peter Mitchell Trust
- 35 under my said Will or any codicil thereto whenever they my Trustees shall in their discretion consider that sufficient funds have accumulated for that purpose after paying up to date and out of income the annuity for the time being payable to my wife or if such annuity or any part thereof shall have been paid out of capital then after replacto ing the capital so used but after the death of my said wife I direct
- 40 ing the capital so used but after the death of my said whe I direct that the said competitions shall be held annually. And I further declare that no competitor shall during the lifetime of my said wife be debarred from securing more than one first or other prize or prizes provided the aggregate amount so won shall not exceed the
- 45 prize which in the opinion of my Trustees (the decision to be in their own absolute discretion) would have been awarded in the first instance to such competitor had the full income which will after the death of my wife be available under The Peter Mitchell Trust already been so available.

available. And I empower my Trustees to strike or fix on an amount to represent the fair average income from time to time likely to be available from such Trust so that the amounts to be distributed under such Trust shall from time to time and particularly after the death of my wife be as nearly as possible equal. And in all respects save as are herein provided to the contrary I confirm my said Will and the First Codicil thereto.

In witness whereof I have hereunto set my hand this fifteenth day of December in the year one thousand nine hundred and seventeen.

Signed and acknowledged by the said Testator as and for a Second 10 Codicil to his last Will and Testament in the presence of us both present at the same time who at his request in his presence and in the presence of each other have hereunto subscribed our names as attesting witnesses.

P. S. MITCHELL. 15

H. K. GERRARD, Accountant, Albury. S. P. BUTCHER, Law Clerk, Albury.

## THIRD CODICIL TO SAID WILL, DATED 24TH MARCH, 1920.

I, Peter Stuckey Mitchell, of Bringenbrong in the State of New South Wales grazier declare this to be a Third Codicil to my last 20 Will which Will and the First and Second Codicils thereto bear date respectively the twenty-third day of October one thousand nine hundred and sixteen the twenty-fifth day of May one thousand nine hundred and seventeen and the fifteen day of December one thousand nine hundred and seventeen Whereas by my said First Codicil I 25 direct that during her life my Trustees shall pay to my wife Jeannie Mitchell in lieu of the net income previously bequeathed to her in annuity of three thousand pounds per annum payable as therein mentioned. I now direct that the said annuity shall subject to the provision in my said Will contained in the event of my leaving children be five 30 thousand pounds per annum instead of three thousand pounds per annum and that the said First Codicil shall in relation thereto be read and construed in all respects as if the words five thousand pounds had been therein originally inserted in lieu of the sum of three thousand pounds and that the sum which my Executors are empowered 35 to raise and set apart for meeting the said annuity may be increased accordingly. And whereas by the said Second Codicil I have bequeathed to Andrew Rixon and George Sexton Evans the sum of one hundred pounds each I now in lieu of the said sums of one hundreds pounds each bequeath to each of them the sum of two 40 hundred and fifty pounds conditionally upon the legatee being in my employ at the time of my decease. I declare that while having the utmost faith in the said George Sexton Evans as a man entirely capable in the matter of effecting improvements and in all other matters relating to the working of my estate known as Bringenbrong 45 excepting the buying and selling of live stock and while regarding him as a man of the most scrupulous integrity I do not desire that he be

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be appointed to manage such live stock for the reason that his methods differ from mine and are in my opinion not conducive to the best results. I revoke the appointment of Thomas Mates as an Executor and Trustee of my said Will and Codicils and in his place and stead

- 5 I appoint James Stephen of Albury in the said State bank manager as an Executor and Trustee thereof conjointly with my remaining Executors Alfred Henry Chesterman and Walter George Henderson. I declare that the commission payable to the Executors and Trustees who actually shall prove my said Will on the net value of my estate
- 10 as valued for the purpose of assessment of stamp duty shall in lieu of one pound per centum be two pounds per centum but the commission on gross income shall remain at five pounds per centum as mentioned in my said Will.

In witness whereof I have hereunto set my hand this twenty-fourth 15 day of March in the year of Our Lord one thousand nine hundred and twenty.

> Signed and acknowledged by the said Testator as and for a Third Codicil to his last Will and Testament in the presence of us both being present at the same time who at his request in his presence and in the presence of each other have hereunto subscribed our names as attesting witnesses:

> > FRANK WILKINS, Law Clerk, Albury. F. ROACH, Law Clerk, Albury.

P. S. MITCHELL.

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Sydney: Alfred James Kent, I.S.O., Government Printer-1934.

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