
A BILL

To enable Charles Boydell or the Trustees or Trustee for the time being under a certain indenture of settlement bearing date the second day of January one thousand eight hundred and thirty-eight made between James Mitchell and Georgina Hely of the first part Gother Kerr Mann of the second part and Mary Hely of the third part and Robert Scott and Charles Boydell of the fourth part to sell and dispose of certain lands mentioned and referred to in the said settlement and to invest the money to arise from such sale in Government or real securities upon the trusts of the said settlement.

(As amended in Select Committee.)

WHEREAS one Frederick Augustus Hely now deceased did on the Preamble.
third day of December one thousand eight hundred and thirty being then
seised in fee of the lands messuage hereditaments and premises hereinafter
mentioned and referred to duly make his last will and testament and
5 thereby after bequeathing as therein mentioned gave devised and bequeathed
all and singular other his property whether real or personal unto James
Mitchell and Robert Futter (in the said will described) their heirs
executors and administrators upon trust to pay the rents issues and profits
thereof to his said wife until some or one of his children being a son
10 should have attained the age of twenty-one years or being a daughter
should have attained that age or be married with the consent of his said
wife and from and after the happening of either of the two last-mentioned
events then as to two full third parts of the value of his said property
both real and personal (the whole into three parts being divided) in trust
15 to pay and transfer one-fifth share of the said two full third parts unto and
for the use of each of his five children on attaining the age of twenty-one
years or being married with such consent as aforesaid if a daughter And
whereas subject to the life-interest of the said Georgina Hely in the
remaining one-third part of the said real and personal estate the same is
20 by the testator's said will limited and made payable to and amongst the
said five children of the said Frederick Augustus Hely and Georgina his
wife in the same manner and proportions as are limited and devised as to
the said two full third parts of the said property And whereas the said
Frederick Augustus Hely duly made and published a codicil to his said
will

NOTE.—The words printed in *black letter* have been added; the words *ruled through* have been expunged.

will bearing date on or about the thirtieth day of November one thousand eight hundred and thirty-five and thereby devised to the said Georgina Hely for her life all that messuage called Engehurst and also all those nine acres of land more or less whereon the same is built and which is situated on the north side of the South Head Road with remainder to the said 5 James Mitchell and Thomas Robert Futter their heirs and assigns upon the same trusts and for the same ends and purposes as are in the said will mentioned limited and appointed with respect to the rest of his real and personal property And whereas the said Frederick Augustus Hely departed this life some time in the month of September one thousand eight 10 hundred and thirty-six without having revoked or altered his said will except by his said codicil And whereas the said Robert Futter disclaimed and refused to act under the trusts of the said will and codicil And whereas the said testator left five children him surviving that is to say Mary Johanna Hely (now Mary Johanna Mann) Georgina Fanny 15 Hely (now Georgina Fanny Strickland) Hovenden Hely Gertrude Jane Hely (now Gertrude Jane Drew) and Henry Lindsey Hely And whereas by a certain indenture of settlement bearing date the second day of January one thousand eight hundred and thirty-eight and made between James Mitchell and the said Georgina Hely of the first part Gother Kerr Mann 20 of the second part the said Mary Johanna Hely (therein described as Mary Hely) of the third part and Robert Scott and Charles Boydell of the fourth part (after reciting that upon a treaty for a marriage between the said Gother Kerr Mann and the said Mary Hely it was agreed that the whole of the real and personal property to which the said Mary Hely was entitled 25 under the will of her said father should be settled upon her for life with remainder to the said Gother Kerr Mann her intended husband for his life with remainder to the issue of the said intended marriage in equal shares and after further reciting that the said Mary Hely as one of the five children of the said Frederick and Georgina Hely was entitled to one-fifth 30 part of two undivided parts of the real and personal property of her said father deceased) the said James Mitchell at the request of the said Mary Johanna Hely and Gother Kerr Mann and with the consent of the said Georgina Hely granted assigned and transferred unto the said Robert Scott and Charles Boydell their heirs executors administrators and assigns 35 All that one undivided equal fifth part or share of and in all the real and personal property of the said Frederick Augustus Hely deceased devised and bequeathed by his will to the said James Mitchell and Robert Futter as aforesaid (subject nevertheless to the said life interest of the said Georgina Hely therein) upon the trusts in the said indenture of settlement 40 particularly mentioned And whereas the said intended marriage was afterwards

afterwards duly had and solemnized with the consent of the said Georgina Hely and there is issue of the said marriage nine children that is to say Gother Frederick, Georgina Alice, Mary Caroline, Fanny Maria, Theresa Elsie, Leslie Gordon, Kate Emily Ellen, Reginald Fyers, and Gertrude
5 Bessie infants under the age of twenty-one years And whereas by an indenture of partition bearing date the third day of January one thousand eight hundred and forty-eight and made between the said James Mitchell of the first part the said Georgina Hely of the second part the said Gother Kerr Mann and Mary Johanna his wife of the third part the said Edward
10 Strickland and Georgina Fanny his wife of the fourth part Robert Ramsay the younger of the fifth part the said Hovenden Hely of the sixth part the said Charles Boydell of the seventh part and Campbell Drummond Riddell of the eighth part after in part reciting a decree pronounced in the Supreme Court of New South Wales in Equity bearing date on or about the twenty-
15 first day of October one thousand eight hundred and forty-six whereby it was amongst other things ordered and decreed that subject to the estate which the said Georgina Hely had for her life in the messuage and hereditaments known as Engehurst aforesaid a partition should be made of all the lands tenements and hereditaments (except those situate in the
20 town or district of Maitland Hunter's River containing one hundred acres or thereabouts) of which the said Frederick Augustus Hely died possessed into three equal parts and that a division should be made of two of such three parts in five equal parts the said parties to the said indenture of partition of the first second third fourth fifth sixth and eighth parts
25 granted released and confirmed unto the said Charles Boydell (party thereto of the seventh part) and his heirs all the lands hereditaments and premises with the appurtenances particularly mentioned and described in the Schedule marked (A) to this Act annexed to hold the same upon the trusts mentioned in and declared by the aforesaid indenture of settlement of the
30 second day of January one thousand eight hundred and thirty-eight of and concerning the said undivided one-fifth part or share of all the real and personal property of the said Frederick Augustus Hely deceased so devised and bequeathed by his said will as aforesaid And whereas by the same indenture of partition the parties thereto of the second third fourth fifth
35 sixth seventh and eighth parts granted released and confirmed unto the said James Mitchell and his heirs all the lands hereditaments and premises with the appurtenances particularly mentioned and described in the Schedule (B) to this Act annexed to hold the same upon the trusts declared concerning the residue of the said lands and hereditaments devised
40 by the said will after deducting therefrom the said two-third parts or shares by the testator directed to be limited to his children And
whereas

whereas the said Robert Scott departed this life sometime in the month of November one thousand eight hundred and forty-four And whereas the messuage lands and hereditaments known as Engehurst as aforesaid have become of considerable value and it would be greatly to the advantage of all parties beneficially interested under the afore- 5 said marriage settlement as well therein as in the lands hereditaments and premises described in the Schedules to this Act annexed if the Trustee or Trustees for the time being of the said marriage settlement were authorized and empowered to sell and dispose of the said messuage lands hereditaments and premises according to the respective estates 10 and interests of the *cestuis que* trust under the said marriage settlement in the said messuage lands hereditaments and premises and to invest the money to arise from such sale in Government or real securities upon the trusts of the said settlement but the said Trustee or Trustees have no power to sell the same Be it therefore enacted by the Queen's most 15 Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled **and by the authority of the same** as follows:—

Trustees may sell lands.

1. It shall be lawful for the said Charles Boydell as such surviving Trustee as aforesaid or the Trustees or Trustee for the time being of the 20 said indenture of settlement with the consent in writing of the said Gother Kerr Mann and Mary Johanna Mann or the survivor of them to sell and dispose of the lands hereditaments and premises in the Schedule (A) to this Act annexed and all the estate right title and interest of the said Gother Kerr Mann and Mary Johanna Mann and their issue in and to the 25 lands hereditaments and premises described in the Schedule (B) to this Act annexed and in and to the messuage hereditaments and premises known as Engehurst by public auction or private contract and either in one lot or in several lots as he or they shall think most expedient for such price or prices as can be reasonably obtained for the same and when sold to 30 convey the same or any part or parts thereof to the purchaser or purchasers their his or her heirs and assigns freed and discharged from the trusts created and declared by the said indenture of settlement and the receipt of the said Charles Boydell ~~and~~ or of the Trustee or Trustees for the time being of the said settlement shall be a sufficient discharge to the purchaser 35 or purchasers of the said lands hereditaments and premises or of any estate or interest therein or any part thereof for the purchase money payable by him or them respectively and shall wholly exonerate him or them from seeing to the application thereof and from all liability as to the misapplication or non-application thereof.

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2. It shall be lawful for the said Charles Boydell or the Trustees or Trustee for the time being of the said settlement with the consent in writing of the said Gother Kerr Mann and the said Mary Johanna Mann or the survivor of them to allow to any purchaser or purchasers of the 5 said lands hereditaments premises estates and interests or any part thereof credit for any number of years not exceeding years for payment of his her or their purchase money or any part thereof upon such terms as to interest or otherwise as may seem expedient Provided that no conveyance shall be executed of the said lands hereditaments and 10 premises or any part thereof or of any estate or interest therein or in any part thereof until the whole of the purchase money together with the interest due thereon shall have been paid Provided further nevertheless that either as a part of the contract of purchase or otherwise it shall be lawful for the said Charles Boydell or the Trustees or Trustee for the 15 time being of the said settlement with such consent as aforesaid to lay out and invest any part of the proceeds of the sale of the said lands hereditaments and premises estates and interests or of any other lands originally comprised in the trusts of the said settlement upon mortgage of the same or of any part of the said lands hereditaments and premises to 20 be taken from any purchaser or purchasers thereof or his her or their heirs or assigns.

Trustees may allow a limited credit for the purchase money and may invest on mortgage.

3. It shall be lawful for the said Charles Boydell or the Trustees or Trustee for the time being of the said settlement with such consent as aforesaid to invest the money to arise from such sale or sales as aforesaid 25 either at interest upon other real securities or upon securities of the Government of New South Wales and also from time to time with such consent as aforesaid to alter vary and transpose such securities for other securities of the same or a like nature And the dividends interest annual profits and proceeds which shall from time to time arise in respect of such securities 30 shall go and be payable and be paid to such person and persons and be applied to and for such uses interests and purposes as may be payable or applicable under and by virtue of the trusts declared in the said indenture of settlement.

Trustees may invest moneys to arise from sale in other real or in Government securities.

(SCHEDULE A.)

ALL that piece or parcel of land being lot number thirteen on a plan prepared by Commissioners of Partition duly appointed under and by virtue of a decree of the Supreme Court bearing date the twenty-first October one thousand eight hundred and forty-six marked A containing by admeasurement three hundred acres more or less lying and situate at Brisbane Water in the County of Northumberland and Colony of New South Wales commencing at a point on the west side of Narara Creek at the south-east corner of Wilson's now Hely's land and bounded on the north by that land being a line bearing west ninety-seven chains on the west by a line bearing south forty-one chains and on the south by a line bearing east fifty-three chains to Narara Creek and on the east by that creek to the commencing point Also all that piece or parcel of land being lot fourteen on the said plan marked A containing by admeasurement one hundred acres more or less lying and situate at Brisbane Water aforesaid commencing on the small creek and bounded on the north by that creek to its confluence with Narara Creek on the east by Narara Creek aforesaid on the south by a line west thirty-seven chains and on the west by a line bearing north forty-one chains to the commencing point And also all that piece or parcel of land being lot number fifteen on the said plan marked A containing by admeasurement twelve acres more or less lying and situate at Brisbane Water aforesaid commencing on Narara Creek at a point sixteen chains south from the south-east corner of lot fourteen and bounded on the north by a line west three chains on the west by a line south sixteen chains on the south by a line east fourteen chains to Narara Creek and on the east by that creek to the commencing point And also all that piece or parcel of land being lot number four on the said plan marked B containing by admeasurement seven hundred and thirty acres more or less being portion of one thousand one hundred and thirty-two acres lying and situate at Wyong in the County of Northumberland aforesaid commencing on Wyong Creek at the north-west corner of the one thousand one hundred and thirty-two acres and bounded on the west by a line south one hundred and twenty-six chains on the south by a line east fifty-one chains seventy-five links on the east by a line north one hundred and thirty-six chains to Wyong Creek and on the north by Wyong Creek to the commencing point.

(SCHEDULE B.)

ALL that piece or parcel of land being lot number seven on a plan prepared by Commissioners of Partition duly appointed under and by virtue of a decree of the Supreme Court bearing date the twenty-first October one thousand eight hundred and forty-six marked A containing by admeasurement three hundred and forty acres more or less being portion of one thousand three hundred and forty acres granted to the said Frederick Augustus Hely lying and situate at Brisbane Water in the County of Northumberland and Colony of New South Wales commencing at a point on the east side of Narara Creek opposite the north-east corner of the said Frederick Augustus Hely's three hundred acres and bounded on the south by a line bearing east sixty-seven chains on the east by a line bearing north eighty-six chains to the south-west corner of Cox's grant on the north by a line bearing west seventy-six chains to Narara Creek and thence by the said creek to the commencing point Also all that piece or parcel of land being lot number sixteen on the plan marked D containing by admeasurement twenty acres more or less lying and situate at Manly Cove at the North Harbour in the County of Cumberland and Colony aforesaid commencing at a marked tree at the North Harbour and bounded on the west by a line south twenty chains fifty links on the south by a line east twenty chains to Dobroyd Point North Harbour and on the north by the waters of that harbour to the marked tree aforesaid.