
A BILL

**To authorise the Sale and Exchange of Property held in Trust
for Mrs. Martha Foxlowe Hosking and her issue.**

Preamble **W**HEREAS by an Indenture bearing date the twenty-sixth day of May
in the year one thousand eight hundred and forty-five and made between
Rosetta Terry of the City of Sydney in the Colony of New South Wales
Widow of the first part John Hosking of the same place Esquire and
5 Martha Foxlowe his wife of the second part and Francis Clarke and Henry
Terry Sheldon both of the City of Sydney aforesaid Esquires of the third
part After reciting that the said Rosetta Terry was seized in her demesne
as of fee of and in the lands hereditaments and premises thereafter parti-
cularly described And further reciting that the said Rosetta Terry was
10 desirous of settling the said hereditaments upon her daughter the said
Martha Foxlowe Hosking and the children of the said Martha Foxlowe
Hosking in manner thereafter mentioned in consideration of the natural
love and affection which the said Rosetta Terry bore towards the said
Martha Foxlowe Hosking the said Rosetta Terry did grant bargain sell
15 alien release and confirm unto the said Francis Clarke and Henry Terry
Sheldon and their heirs certain pieces or parcels of land in the Colony of
New South Wales viz:—1105 acres 808 acres 640 acres 1300 acres 640
acres 640 acres 640 acres and 1000 acres of land in the County of Murray
in the said Colony 2 roods 2 roods and 2 roods of land in the Town of
20 Queanbeyan in the said County respectively 80 acres and 100 acres of
land

land in the County of Cumberland respectively 640 acres and 800 acres of
land in the County of Murray and 50 acres in the District of Evan in the
said Colony All which several pieces or parcels of land with their abuttals
and boundaries thereof were in such Indenture particularly mentioned and
described upon trust to receive the rents and profits thereof during the 5
life of the said Martha Foxlowe Hosking and to pay the same unto such
person or persons as she the said Martha Foxlowe Hosking should from
time to time appoint And in default of appointment into her own hands
for her own separate use free from the debts control or engagements of her
then present or any future husband and after the decease of the said Martha 10
Foxlowe Hosking upon trust to stand possessed of the said hereditaments
and premises for the first son of the body of the said Martha Foxlowe
Hosking to be begotten and for the heirs male of the body of such first son
and for default of such issue then upon trust for the second third fourth and
all and every other son and sons of the body of the said Martha Foxlowe 15
Hosking to be begotten severally successively and in remainder one after
another according as they should be in seniority of age and priority of birth
and for the several and respective heirs male of the body and bodies of all and
every such son and sons the elder of such sons and the heirs male of his body
always to be preferred and to take before the younger of such sons and the 20
heirs male of his and their body and bodies and in default of such issue upon
trust for all and every the daughters of the said Martha Foxlowe Hosking
begotten and to be begotten as Tenants in common if more than one and the
heirs of their respective bodies issuing and if any one or more of such
daughter or daughters should depart this life and there should be a failure of 25
issue of her or their body or respective bodies then as to for and concerning
as well the original share or shares of such child or children who should so
die and whose issue should so fail as to the share or shares which should
survive or accrue to any such daughter or daughters or to their or any of
their issue by the decease and failure of issue of any other or others of the 30

said

said daughter or daughters upon trust for the survivors or survivor or others or other of the said daughter or daughters to be divided between or among them (if more than one) in equal shares as tenants in common and the heirs of their respective bodies issuing and if all such daughters (save one) 5 shall die without issue or if there should be but one such daughter then upon trust for such one or only daughter and the heirs of her body issuing and in default of such issue then upon trust for the heirs and assigns of the said Martha Foxlowe Hosking And it was thereby agreed and declared that the said Trustees or Trustee for the time being should after the decease of the 10 said Martha Foxlowe Hosking and during the minority of any child of the said Martha Foxlowe Hosking pay and apply the rents issues and profits of the said hereditaments and premises or of his or her share therein unto and for his or her maintenance education and benefit and should suffer the residue if any of the rents issues and profits of the said hereditaments or 15 share to accumulate in the way of compound interest for the benefit of the person or persons who should become ultimately entitled to the said hereditaments or share from which the same should have proceeded And whereas the said Henry Terry Sheldon one of the Trustees of the said Indenture of Settlement departed this life and the said Martha Foxlowe 20 Hosking by virtue and in exercise of the power reserved to her by such Indenture of Settlement did by Indenture bearing date the sixth day of January one thousand eight hundred and forty-eight and made between the said Martha Foxlowe Hosking of the first part the said Francis Clarke of the second part and Francis Mitchell of Sydney aforesaid Merchant of the 25 third part appoint the said Francis Mitchell to be a Trustee of such Indenture in the place and stead of the said Henry Terry Sheldon deceased and by such Indenture all and singular the said trust premises were conveyed unto the said Francis Mitchell and Francis Clarke their heirs and assigns as joint tenants and as Trustees of the said Indenture of Settlement And 30 whereas the said Indenture of Settlement contains no power enabling the

Trustees

Trustees thereof for the time being to sell the said several pieces or parcels of land or any part or parts thereof and for investing the proceeds of any sale or sales thereof in the purchase of any other lands or hereditaments And whereas the said John Hosking and Martha Foxlowe his wife are both still living and there is issue of their marriage two children only that is to say 5 two daughters both of whom are infants under the age of twenty-one years And whereas the lands comprised in the said Indenture of Settlement have been for many years past rendered available as a Farming and Grazing Establishment under the management of John Hosking the husband of the said Martha Foxlowe Hosking conjointly with adjacent 10 lands belonging to the said John Hosking and which have hitherto formed together therewith one consolidated property under the designation of the Foxlowe Estate And whereas the said lands comprised in the said Settlement and those belonging to the said John Hosking are so connected as to be of much greater value as a whole than in distinct portions and are also 15 greatly dependent on personal management for yielding a profitable return And whereas the said John Hosking being about to relinquish the active management of the said property has determined to sell his own portion thereof And whereas a separate sale of his portion thereof would greatly deteriorate the value of the settled portion and would render the continuance 20 thereof as an investment of trust property far less advantageous than could be obtained through the exercise of the powers of sale and exchange usual in settlements of real estate And whereas the said Martha Foxlowe Hosking is entitled for her separate use and subject to her own absolute control and appointment to other property of much greater pecuniary 25 value than the property comprised in the said recited Settlement and is willing to substitute the same by way of exchange for the lands comprised in the said Settlement in order that the last-mentioned lands may be more advantageously disposed of in connection with the said land of the said John Hosking adjacent thereto And whereas there is good reason 30

to believe that the vesting in the said trustees of power to effect such sale substitution or exchange will be greatly for the advantage of all parties interested in the trusts of the said Indenture of Settlement and it is therefore expedient that the same be sanctioned by Legislative authority.

5 Be it therefore enacted by the Queen's most excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by and with the authority of the same as follows:—

1. It shall be lawful for the said Francis Mitchell and Francis Clarke
 10 or the survivor of them or other the Trustees or Trustee for the time being
 of the said Indenture with the consent in writing of the said Martha Fox-
 lowe Hosking during her life and after her decease and during the minority
 of any person or persons by the said Indenture of Settlement made tenant
 in tail of the hereditaments thereby granted and released at the discretion
 15 of the Trustee or Trustees for the time being of the said Indenture to
 dispose of and convey either by way of absolute sale or in exchange
 for other lands the whole or any part or parts of the said heredi-
 taments either by public auction or private contract and either in one lot
 or in several lots and subject or not at their or his absolute discretion to any
 20 special conditions or stipulations as to title evidence of title expense compen-
 sation indemnity arbitration postponement of payment of and security for
 purchase money or otherwise with power for them or him to buy
 in the said hereditament at any auction or auctions or to rescind
 abandon or vary any contract for sale or exchange and to re-sell any
 25 hereditaments bought in or as to which any contract shall
 be rescinded or abandoned without being answerable for any loss to be
 occasioned thereby and to convey and transfer the same to the purchaser
 or respective purchasers thereof or person or respective persons taking
 the same in exchange freed and discharged from the Trusts created
 30 and declared by the said Indenture and the receipt or receipts in
 writing

*Trustees of
 Mrs Foxlowe's
 Settlement
 authorized to
 sell or exchange*

writing of the said Francis Mitchell and Francis Clarke and the survivor of them or other the Trustees or Trustee for the time being of the said Indenture shall absolutely discharge the purchaser or purchasers of the said hereditaments or any part or parts thereof for the purchase money payable by him or them respectively and shall exonerate him or them 5 from seeing to the application of the said purchase money or moneys and from all liability as to the misapplication or non-application thereof.

Investment of proceeds of sale

2. It shall be lawful for the said Francis Mitchell and Francis Clarke or the survivor of them or other the Trustees or Trustee for the time being of the said Indenture with such consent as aforesaid to invest the moneys 10 to arise from such sale or sales in the purchase of any Freehold Messuages Lands tenements or hereditaments in the said Colony and to cause the same when so purchased to be conveyed and assured unto and to the use of the said Francis Mitchell and Francis Clarke or the survivor of them or other the Trustees or Trustee for the time being of the said Indenture their heirs 15 and assigns to be held by them or him upon trust at any time or times with such consent as aforesaid to sell and absolutely dispose of the whole or any part or parts of the said hereditaments in the manner and the several powers and authorities hereinbefore provided.

Master in Equity to certify value of property purchased &c from separate estate of Mrs. Hosking

3. In case any of the lands and hereditaments to be purchased or 20 taken in exchange as aforesaid shall be purchased or taken in exchange from the said Martha Foxlowe Hosking being parts of her separate estate as aforesaid the sufficiency of the value of the property shall be referred to the Master in Equity for the time being of the Supreme Court of New South Wales whose determination in this behalf certified under his hand 25 shall be a sufficient authority to the said Trustees or Trustee to effect a sale or exchange in conformity therewith.

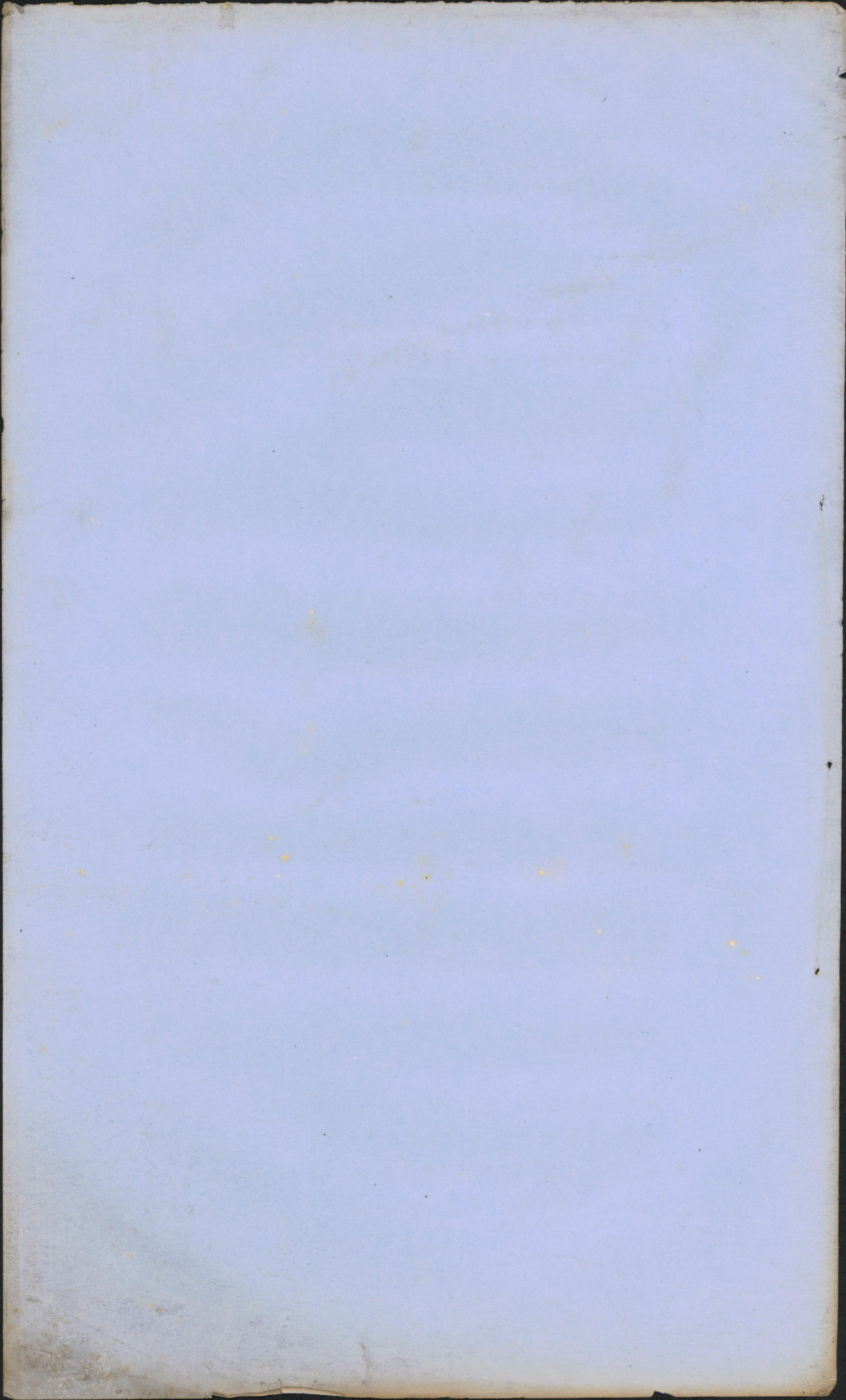
Trusts of lands purchased or exchanged

4. The said Francis Mitchell and Francis Clarke or the survivor of them or other the Trustees or Trustee for the time being of the said Indenture shall hold the said hereditaments so to be purchased or taken in exchange and 30

the

the rents issues and profits thereof in the meantime until the sale thereof and the money to arise from such sales upon and subject to such of the several trusts provisoes and directions of the said Indenture of Settlement as shall be then subsisting or capable of taking effect.

5 In citing this Act in any Instrument Document or other proceeding *Title of Act.* it shall be sufficient to use the expression "Hoskings' Trust Act."

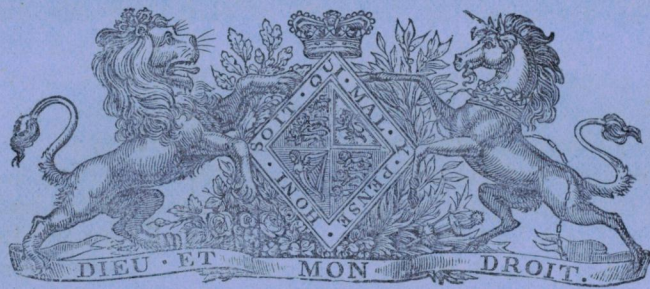


This PRIVATE BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber, }
Sydney, 19 April, 1861.*

CHA. TOMPSON,
Clerk of Legislative Assembly.

New South Wales.



ANNO VICESIMO QUARTO

VICTORIÆ REGINÆ.

An Act to authorize the Sale and Exchange of Property held
in Trust for Mrs. Martha Foxlowe Hosking and her issue.

WHEREAS by an Indenture bearing date the twenty-sixth day of Preamble.
May in the year one thousand eight hundred and forty-five and
made between Rosetta Terry of the City of Sydney in the Colony of New
South Wales Widow now deceased of the first part John Hosking of the
5 same place Esquire and Martha Foxlowe his wife of the second part and
Francis Clarke and Henry Terry Sheldon both of the City of Sydney
aforesaid Esquires of the third part After reciting that the said Rosetta
Terry was seized in her demesne as of fee of and in the lands hereditaments
and premises thereafter particularly described And further reciting
10 that the said Rosetta Terry was desirous of settling the said hereditaments
upon her daughter the said Martha Foxlowe Hosking and the children of
the said Martha Foxlowe Hosking in manner thereafter mentioned in
consideration of the natural love and affection which the said Rosetta
Terry bore towards the said Martha Foxlowe Hosking the said Rosetta
15 Terry did grant bargain sell alien release and confirm unto the said Francis
Clarke and Henry Terry Sheldon and their heirs certain pieces or parcels
of land in the Colony of New South Wales viz:—one thousand one
hundred and five acres eight hundred and eight acres six hundred and
forty acres one thousand three hundred acres six hundred and forty
20 acres six hundred and forty acres six hundred and forty acres and one
214— thousand

Hosking's Trust Act.—1861.

thousand acres of land in the County of Murray in the said Colony two
roods two roods and two roods of land in the Town of Queanbeyan in
the said County respectively eighty acres and one hundred acres of land
in the County of Cumberland respectively six hundred and forty acres
5 and eight hundred acres of land in the County of Murray and fifty acres
in the District of Evan in the said Colony All which several pieces or
parcels of land with their abuttals and boundaries thereof were in such
indenture particularly mentioned and described upon trust to receive the
rents and profits thereof during the life of the said Martha Foxlowe
10 Hosking and to pay the same unto such person or persons as she the said
Martha Foxlowe Hosking should from time to time appoint And in
default of appointment into her own hands for her own separate use
free from the debts control or engagements of her then present or
any future husband and after the decease of the said Martha Foxlowe
15 Hosking upon trust to stand possessed of the said hereditaments and
premises for the first son of the body of the said Martha Foxlowe Hosking
to be begotten and for the heirs male of the body of such first son and
for default of such issue then upon trust for the second third fourth and
all and every other son and sons of the body of the said Martha Foxlowe
20 Hosking to be begotten severally successively and in remainder one after
another according as they should be in seniority of age and priority of birth
and for the several and respective heirs male of the body and bodies of all and
every such son and sons the elder of such sons and the heirs male of his body
always to be preferred and to take before the younger of such sons and the
25 heirs male of his and their body and bodies and in default of such issue upon
trust for all and every the daughters of the said Martha Foxlowe Hosking
begotten and to be begotten as tenants in common if more than one and the
heirs of their respective bodies issuing and if any one or more of such
daughter or daughters should depart this life and there should be a failure of
30 issue of her or their body or respective bodies then as to for and concerning
as well the original share or shares of such child or children who should so
die and whose issue should so fail as to the share or shares which should
survive or accrue to any such daughter or daughters or to their or any of
their issue by the decease and failure of issue of any other or others of the
35 said daughter or daughters upon trust for the survivors or survivor or
others or other of the said daughter or daughters to be divided between or
among them (if more than one) in equal shares as tenants in common and the
heirs of their respective bodies issuing and if all such daughters (save one)
shall die without issue or if there should be but one such daughter then upon
40 trust for such one or only daughter and the heirs of her body issuing and in
default of such issue then upon trust for the heirs and assigns of the said
Martha Foxlowe Hosking And it was thereby agreed and declared that
the said trustees or trustee for the time being should after the decease of the
said Martha Foxlowe Hosking and during the minority of any child of the
45 said Martha Foxlowe Hosking pay and apply the rents issues and profits of
the said hereditaments and premises or of his or her share therein unto and
for his or her maintenance education and benefit and should suffer the
residue if any of the rents issues and profits of the said hereditaments or
share to accumulate in the way of compound interest for the benefit of the
50 person or persons who should become ultimately entitled to the said heredi-
taments or share from which the same should have proceeded And
whereas the said Henry Terry Sheldon one of the trustees of the said
indenture of settlement departed this life and the said Martha Foxlowe
Hosking by virtue and in exercise of the power reserved to her by such
55 indenture of settlement did by indenture bearing date the sixth day of
January one thousand eight hundred and forty-eight and made between the
said Martha Foxlowe Hosking of the first part the said Francis Clarke of
the second part and Francis Mitchell of Sydney aforesaid merchant of the
third

Hosking's Trust Act.—1861.

third part appoint the said Francis Mitchell to be a trustee of such indenture in the place and stead of the said Henry Terry Sheldon deceased and by such indenture all and singular the said trust premises were conveyed unto the said Francis Mitchell and Francis Clarke their heirs and assigns
 5 as joint tenants and as trustees of the said indenture of settlement And whereas the said indenture of settlement contains no power enabling the trustees thereof for the time being to sell the said several pieces or parcels of land or any part or parts thereof and for investing the proceeds of any sale or sales thereof in the purchase of any other lands or hereditaments
 10 And whereas the said John Hosking and Martha Foxlowe his wife are both still living and there is issue of their marriage two children only that is to say two daughters both of whom are infants under the age of twenty-one years And whereas the lands comprised in the said indenture of settlement have been for many years past rendered available as a farming and
 15 grazing establishment under the management of John Hosking the husband of the said Martha Foxlowe Hosking conjointly with adjacent lands belonging to the said John Hosking and which have hitherto formed together therewith one consolidated property under the designation of the Foxlowe Estate And whereas the said lands comprised in the said settle-
 20 ment and those belonging to the said John Hosking are so connected as to be of much greater value as a whole than in distinct portions and are also greatly dependent on personal management for yielding a profitable return And whereas the said John Hosking being about to relinquish the active management of the said property has determined to sell his own portion
 25 thereof And whereas a separate sale of his portion thereof would greatly deteriorate the value of the settled portion and would render the continuance thereof as an investment of trust property far less advantageous than could be obtained through the exercise of the powers of sale and exchange usual in settlements of real estate And whereas the said Martha
 30 Foxlowe Hosking is entitled for her separate use and subject to her own absolute control and appointment to other property of much greater pecuniary value than the property comprised in the said recited settlement and is willing to substitute the same by way of exchange for the lands comprised in the said settlement in order that the last-mentioned lands may be
 35 more advantageously disposed of in connection with the said land of the said John Hosking adjacent thereto And whereas there is good reason to believe that the vesting in the said trustees of power to effect such sale substitution or exchange will be greatly for the advantage of all parties interested in the trusts of the said indenture of settlement and it is
 40 therefore expedient that the same be sanctioned by Legislative authority Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

45 1. It shall be lawful for the said Francis Mitchell and Francis Clarke or the survivor of them or other the trustees or trustee for the time being of the said indenture with the consent in writing of the said Martha Foxlowe Hosking during her life and after her decease and during the minority of any person or persons by the said indenture of settlement
 50 made tenant in tail of the hereditaments thereby granted and released at the discretion of the trustee or trustees for the time being of the said indenture to dispose of and convey either by way of absolute sale or in exchange for other lands the whole or any part or parts of the said hereditaments either by public auction or private contract and either in one lot
 55 or in several lots and subject or not at their or his absolute discretion to any special conditions or stipulations as to title evidence of title expense compensation indemnity arbitration postponement of payment of and security for purchase money or otherwise with power for them or him to buy in the

Trustees of Mrs. Hosking's settlement authorized to sell or exchange.

Hosking's Trust Act.—1861.

the said hereditament at any auction or auctions or to rescind abandon or vary any contract for sale or exchange and to re-sell any hereditaments bought in or as to which any contract shall be rescinded or abandoned without being answerable for any loss to be occasioned thereby and to convey and transfer the same to the purchaser or respective purchasers thereof or person or respective persons taking the same in exchange freed and discharged from the trusts created and declared by the said indenture and the receipt or receipts in writing of the said Francis Mitchell and Francis Clarke and the survivor of them or other the trustees or trustee for the time being of the said indenture shall absolutely discharge the purchaser or purchasers of the said hereditaments or any part or parts thereof for the purchase money payable by him or them respectively and shall exonerate him or them from seeing to the application of the said purchase money or moneys and from all liability as to the misapplication or non-application thereof.

2. It shall be lawful for the said Francis Mitchell and Francis Clarke or the survivor of them or other the trustees or trustee for the time being of the said indenture with such consent as aforesaid to invest the moneys to arise from such sale or sales in the purchase of any freehold messuages lands tenements or hereditaments in the said Colony and to cause the same when so purchased to be conveyed and assured unto and to the use of the said Francis Mitchell and Francis Clarke or the survivor of them or other the trustees or trustee for the time being of the said indenture their heirs and assigns to be held by them or him upon trust at any time or times with such consent as aforesaid to sell and absolutely dispose of the whole or any part or parts of the said hereditaments in the manner and with the several powers and authorities hereinbefore provided.

3. In case any of the lands and hereditaments to be purchased or taken in exchange as aforesaid shall be purchased or taken in exchange from the said Martha Foxlowe Hosking being parts of her separate estate as aforesaid the sufficiency of the value of the property shall be referred to the Master in Equity for the time being of the Supreme Court of New South Wales whose determination in this behalf certified under his hand shall be a sufficient authority to the said trustees or trustee to effect a sale or exchange in conformity therewith.

4. The said Francis Mitchell and Francis Clarke or the survivor of them or other the trustees or trustee for the time being of the said indenture shall hold the said hereditaments so to be purchased or taken in exchange and the rents issues and profits thereof in the meantime until the sale thereof and the money to arise from such sales upon and subject to such of the several trusts provisoes and directions of the said indenture of settlement as shall be then subsisting or capable of taking effect.

5. In citing this Act in any instrument document or other proceeding it shall be sufficient to use the expression "Hosking's Trust Act."

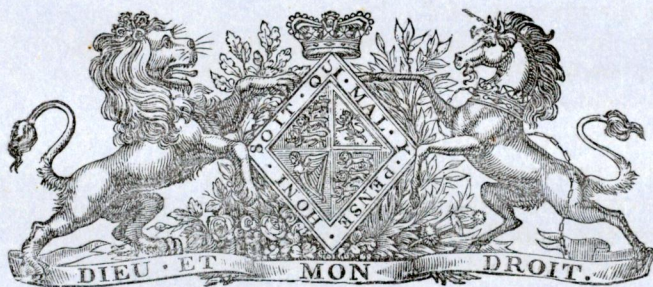
Investment of proceeds of sale.

Master in Equity to certify value of property purchased &c. from separate estate of Mrs. Hosking.

Trusts of lands purchased or exchanged.

Title of Act.

New South Wales.



ANNO VICESIMO QUARTO

VICTORIÆ REGINÆ.

An Act to authorize the Sale and Exchange of Property held
in Trust for Mrs. Martha Foxlowe Hosking and her issue.
[Assented to, 9th May, 1861.]

WHEREAS by an Indenture bearing date the twenty-sixth day of ^{Preamble.}
May in the year one thousand eight hundred and forty-five and
made between Rosetta Terry of the City of Sydney in the Colony of New
South Wales Widow now deceased of the first part John Hosking of the
same place Esquire and Martha Foxlowe his wife of the second part and
Francis Clarke and Henry Terry Sheldon both of the City of Sydney
aforesaid Esquires of the third part After reciting that the said Rosetta
Terry was seized in her demesne as of fee of and in the lands hereditaments
and premises thereafter particularly described And further reciting
that the said Rosetta Terry was desirous of settling the said hereditaments
upon her daughter the said Martha Foxlowe Hosking and the children of
the said Martha Foxlowe Hosking in manner thereafter mentioned in
consideration of the natural love and affection which the said Rosetta
Terry bore towards the said Martha Foxlowe Hosking the said Rosetta
Terry did grant bargain sell alien release and confirm unto the said Francis
Clarke and Henry Terry Sheldon and their heirs certain pieces or parcels
of land in the Colony of New South Wales viz:—one thousand one
hundred and five acres eight hundred and eight acres six hundred and
forty acres one thousand three hundred acres six hundred and forty
acres six hundred and forty acres six hundred and forty acres and one
thousand

Hosking's Trust Act.—1861.

thousand acres of land in the County of Murray in the said Colony two roods two roods and two roods of land in the Town of Queanbeyan in the said County respectively eighty acres and one hundred acres of land in the County of Cumberland respectively six hundred and forty acres and eight hundred acres of land in the County of Murray and fifty acres in the District of Evan in the said Colony All which several pieces or parcels of land with their abuttals and boundaries thereof were in such indenture particularly mentioned and described upon trust to receive the rents and profits thereof during the life of the said Martha Foxlowe Hosking and to pay the same unto such person or persons as she the said Martha Foxlowe Hosking should from time to time appoint And in default of appointment into her own hands for her own seperate use free from the debts control or engagements of her then present or any future husband and after the decease of the said Martha Foxlowe Hosking upon trust to stand possessed of the said hereditaments and premises for the first son of the body of the said Martha Foxlowe Hosking to be begotten and for the heirs male of the body of such first son and for default of such issue then upon trust for the second third fourth and all and every other son and sons of the body of the said Martha Foxlowe Hosking to be begotten severally successively and in remainder one after another according as they should be in seniority of age and priority of birth and for the several and respective heirs male of the body and bodies of all and every such son and sons the elder of such sons and the heirs male of his body always to be preferred and to take before the younger of such sons and the heirs male of his and their body and bodies and in default of such issue upon trust for all and every the daughters of the said Martha Foxlowe Hosking begotten and to be begotten as tenants in common if more than one and the heirs of their respective bodies issuing and if any one or more of such daughter or daughters should depart this life and there should be a failure of issue of her or their body or respective bodies then as to for and concerning as well the original share or shares of such child or children who should so die and whose issue should so fail as to the share or shares which should survive or accrue to any such daughter or daughters or to their or any of their issue by the decease and failure of issue of any other or others of the said daughter or daughters upon trust for the survivors or survivor or others or other of the said daughter or daughters to be divided between or among them (if more than one) in equal shares as tenants in common and the heirs of their respective bodies issuing and if all such daughters (save one) shall die without issue or if there should be but one such daughter then upon trust for such one or only daughter and the heirs of her body issuing and in default of such issue then upon trust for the heirs and assigns of the said Martha Fowlowe Hosking And it was thereby agreed and declared that the said trustees or trustee for the time being should after the decease of the said Martha Foxlowe Hosking and during the minority of any child of the said Martha Foxlowe Hosking pay and apply the rents issues and profits of the said hereditaments and premises or of his or her share therein unto and for his or her maintenance education and benefit and should suffer the residue if any of the rents issues and profits of the said hereditaments or share to accumulate in the way of compound interest for the benefit of the person or persons who should become ultimately entitled to the said hereditaments or share from which the same should have proceeded And whereas the said Henry Terry Sheldon one of the trustees of the said indenture of settlement departed this life and the said Martha Foxlowe Hosking by virtue and in exercise of the power reserved to her by such indenture of settlement did by indenture bearing date the sixth day of January one thousand eight hundred and forty-eight and made between the said Martha Foxlowe Hosking of the first part the said Francis Clarke of the second part and Francis Mitchell of Sydney aforesaid merchant of the
third

Hosking's Trust Act.—1861.

third part appoint the said Francis Mitchell to be a trustee of such indenture in the place and stead of the said Henry Terry Sheldon deceased and by such indenture all and singular the said trust premises were conveyed unto the said Francis Mitchell and Francis Clarke their heirs and assigns as joint tenants and as trustees of the said indenture of settlement And whereas the said indenture of settlement contains no power enabling the trustees thereof for the time being to sell the said several pieces or parcels of land or any part or parts thereof and for investing the proceeds of any sale or sales thereof in the purchase of any other lands or hereditaments And whereas the said John Hosking and Martha Foxlowe his wife are both still living and there is issue of their marriage two children only that is to say two daughters both of whom are infants under the age of twenty-one years And whereas the lands comprised in the said indenture of settlement have been for many years past rendered available as a farming and grazing establishment under the management of John Hosking the husband of the said Martha Foxlowe Hosking conjointly with adjacent lands belonging to the said John Hosking and which have hitherto formed together therewith one consolidated property under the designation of the Foxlowe Estate And whereas the said lands comprised in the said settlement and those belonging to the said John Hosking are so connected as to be of much greater value as a whole than in distinct portions and are also greatly dependent on personal management for yielding a profitable return And whereas the said John Hosking being about to relinquish the active management of the said property has determined to sell his own portion thereof And whereas a separate sale of his portion thereof would greatly deteriorate the value of the settled portion and would render the continuance thereof as an investment of trust property far less advantageous than could be obtained through the exercise of the powers of sale and exchange usual in settlements of real estate And whereas the said Martha Foxlowe Hosking is entitled for her separate use and subject to her own absolute control and appointment to other property of much greater pecuniary value than the property comprised in the said recited settlement and is willing to substitute the same by way of exchange for the lands comprised in the said settlement in order that the last-mentioned lands may be more advantageously disposed of in connection with the said land of the said John Hosking adjacent thereto And whereas there is good reason to believe that the vesting in the said trustees of power to effect such sale substitution or exchange will be greatly for the advantage of all parties interested in the trusts of the said indenture of settlement and it is therefore expedient that the same be sanctioned by Legislative authority Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

1. It shall be lawful for the said Francis Mitchell and Francis Clarke or the survivor of them or other the trustees or trustee for the time being of the said indenture with the consent in writing of the said Martha Foxlowe Hosking during her life and after her decease and during the minority of any person or persons by the said indenture of settlement made tenant in tail of the hereditaments thereby granted and released at the discretion of the trustee or trustees for the time being of the said indenture to dispose of and convey either by way of absolute sale or in exchange for other lands the whole or any part or parts of the said hereditaments either by public auction or private contract and either in one lot or in several lots and subject or not at their or his absolute discretion to any special conditions or stipulations as to title evidence of title expense compensation indemnity arbitration postponement of payment of and security for purchase money or otherwise with power for them or him to buy in the

Trustees of Mrs.
Hosking's settlement
authorized to sell or
exchange.

Hosking's Trust Act.—1861.

the said hereditament at any auction or auctions or to rescind abandon or vary any contract for sale or exchange and to re-sell any hereditaments bought in or as to which any contract shall be rescinded or abandoned without being answerable for any loss to be occasioned thereby and to convey and transfer the same to the purchaser or respective purchasers thereof or person or respective persons taking the same in exchange freed and discharged from the trusts created and declared by the said indenture and the receipt or receipts in writing of the said Francis Mitchell and Francis Clarke and the survivor of them or other the trustees or trustee for the time being of the said indenture shall absolutely discharge the purchaser or purchasers of the said hereditaments or any part or parts thereof for the purchase money payable by him or them respectively and shall exonerate him or them from seeing to the application of the said purchase money or moneys and from all liability as to the misapplication or non-application thereof.

Investment of proceeds of sale.

2. It shall be lawful for the said Francis Mitchell and Francis Clarke or the survivor of them or other the trustees or trustee for the time being of the said indenture with such consent as aforesaid to invest the moneys to arise from such sale or sales in the purchase of any freehold messuages lands tenements or hereditaments in the said Colony and to cause the same when so purchased to be conveyed and assured unto and to the use of the said Francis Mitchell and Francis Clarke or the survivor of them or other the trustees or trustee for the time being of the said indenture their heirs and assigns to be held by them or him upon trust at any time or times with such consent as aforesaid to sell and absolutely dispose of the whole or any part or parts of the said hereditaments in the manner and with the several powers and authorities hereinbefore provided.

Master in Equity to certify value of property purchased &c. from separate estate of Mrs. Hosking.

3. In case any of the lands and hereditaments to be purchased or taken in exchange as aforesaid shall be purchased or taken in exchange from the said Martha Foxlowe Hosking being parts of her separate estate as aforesaid the sufficiency of the value of the property shall be referred to the Master in Equity for the time being of the Supreme Court of New South Wales whose determination in this behalf certified under his hand shall be a sufficient authority to the said trustees or trustee to effect a sale or exchange in conformity therewith.

Trusts of lands purchased or exchanged.

4. The said Francis Mitchell and Francis Clarke or the survivor of them or other the trustees or trustee for the time being of the said indenture shall hold the said hereditaments so to be purchased or taken in exchange and the rents issues and profits thereof in the meantime until the sale thereof and the money to arise from such sales upon and subject to such of the several trusts provisoes and directions of the said indenture of settlement as shall be then subsisting or capable of taking effect.

Title of Act.

5. In citing this Act in any instrument document or other proceeding it shall be sufficient to use the expression "Hosking's Trust Act."