

New South Wales.

A BILL

To repeal part of the Underwood's Estate Act of 1873 and of the Underwood Estate Act Amendment Act of 1874 and to authorise the sale of certain lands and hereditaments devised by the Will of the late JAMES UNDERWOOD and the payment of the proceeds thereof into the Supreme Court.

WHEREAS it is expedient to repeal the Underwood's Estate Act of 1873 and the Underwood Estate Act Amendment Act of 1874 so far as the same relate to the lands and hereditaments in the Schedule hereto described and to vest the said lands and hereditaments in Trustees for the purposes hereinafter declared Preamble. **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. From and after the passing of this Act so much of the "Underwood's Estate Act of 1873" and of the "Underwood Estate Act Amendment Act of 1874" as relates to the lands and hereditaments in the Schedule hereto described shall be repealed Repeal. **PROVIDED** that such repeal shall not affect any deed act or thing properly executed or done under the authority of the said Acts or either of them.

2. From and after the passing of this Act all the said lands and hereditaments in the Schedule hereto described shall be divested out of William Henry Mackenzie John Piper Mackenzie Robert John King William George Pennington and Charles Wye Weekes their heirs and assigns and shall for the purposes of this Act be vested in James Squire Farnell of Gladesville in the Colony of New South Wales Esquire M.L.A. and John Bartholomew Hoare of Sydney in the said Colony Merchant their heirs and assigns as Joint Tenants for an Estate in fee simple in possession. Lands to be vested in new Trustees.

3. The said James Squire Farnell and John Bartholomew Hoare or other the Trustees or Trustee for the time being of this Act (such persons or person whether the present or future Trustees or Trustee being hereinafter designated as the said Trustees or Trustee) shall with all convenient speed sell and dispose of the said lands and hereditaments in the Schedule hereto described or any of them either by Public Auction or by Private Contract. Lands to be sold and conveyed to Purchasers.

and in such parcels or allotments and upon such terms and conditions as they or he shall deem expedient and with such roads streets and rights of way in and over such lands or any portion thereof as they may consider necessary and for such price or prices as can be reasonably obtained for the same with power to buy in the said 5 lands and hereditaments or any part thereof at any sale by Auction and to rescind or vary any contract for sale and to resell without being responsible for any loss occasioned thereby and when sold to convey the said lands and hereditaments to the Purchaser or Purchasers thereof their heirs and assigns or as such Purchaser or Purchasers 10 may direct and thereupon the said lands and hereditaments so conveyed and the legal Estate thereof shall vest in the person or persons to whom the same shall be conveyed either absolutely or for such Estate use trust or limitation as may be created limited or declared in and by such conveyance and freed and discharged from all the uses and 15 trusts created and declared by the said Will and from all claims to dower encumbrances and charges whatsoever.

Credit may be given for part of purchase moneys.

4. It shall be lawful for the said Trustees or Trustee to allow to any Purchaser credit for any number of years not exceeding three 20 years for payment of a part of his purchase money upon such terms as to interest and otherwise as may by them or him be deemed reasonable and proper PROVIDED that the land shall remain unconveyed or be otherwise rendered a security by mortgage for so much of the purchase money thereof as shall remain unpaid together with 25 the interest thereon until the same shall have been paid.

Trustees Receipt.

5. The receipt or receipts in writing of the said Trustees or Trustee shall be a sufficient discharge to any purchaser or purchasers of any of the said lands and hereditaments for any purchase money 30 paid in respect of any such purchase and shall exonerate such purchaser or purchasers from the necessity of seeing to the application of such purchase money and from any liability for the misapplication thereof.

Proceeds, how dealt with.

6. It shall be lawful for the said Trustees or Trustee on the 35 receipt of the proceeds of the sale of any of the said lands and hereditaments sold under the provisions of this Act to deduct the costs and expences of and incidental to such sale and also the costs and expences of and incidental to the procuring and passing of this Act and to retain and pay to themselves an aggregate commission of five pounds 40 per centum calculated upon the moneys arising from every sale made under the authority of this Act And the said Trustees or Trustee shall after deducting such costs and expences of sale and of and incidental to the passing of this Act and commission as aforesaid pay the balance of the said proceeds into the Supreme Court of New South 45 Wales in its Equitable Jurisdiction in the matter of the said Will and to an account to be entitled in the trusts of the said Will as affecting the property out of the sale of which the said proceeds have arisen.

Proceeds to be dealt with under 21 Victoria, No. 7.

7. The certificate of the Master in Equity of the fact of the 50 money being so paid shall be a sufficient discharge for the money so paid and the Court shall have the same power to apply and deal with such moneys in every respect as if the same had been paid into Court under the Act passed in the twenty-first year of Her present Majesty's Reign intituled "An Act for the better securing Trust funds and for 55 relief of Trustees" PROVIDED that on proof of any claim to Dower or of any charge or encumbrance affecting the lands sold or any part thereof provision shall be made by order of the Court for securing out of the proceeds of such sale such payments as shall be equivalent to the right to Dower and for satisfying such charge or encumbrance and

every such claim to Dower shall be limited to the value of one-third of the estimated Rent for the time being of such land considered as if remaining in the state of improvement in which the same shall have been at the time of such sale.

5 8. It shall be lawful for the said Trustees or Trustee for the time being to bring institute and maintain any action at law and suit in Equity that may be necessary or expedient to get or hold possession of the said lands and hereditaments or any of them or any part or parts thereof and to make execute take and do all applications deeds
10 instruments steps and things necessary or expedient for the purpose of bringing under the provisions of the Real Property Act the said lands and hereditaments or any of them or any part or parts thereof and for the purpose of improving their or his title to the said lands and hereditaments and making the same more saleable.

Power to bring actions

and to bring Land under Real Property Act.

15 9. It shall be lawful for the Trustees or Trustee to make and alter and concur in making and altering any road or roads street or streets on and over any part of the said lands and hereditaments and to do and concur in doing any work or thing which in their or his discretion may conduce to the better laying out and selling of the lands
20 and hereditaments or any part thereof or the convenience and enjoyment of those persons who may have purchased any part thereof and all costs and expenses so incurred shall be held to be part of the costs and expenses of and incidental to the sale of the said lands and hereditaments.

To make Roads.

25 10. Whenever any of the Trustees herein named shall die or go to reside out of the Colony of New South Wales or shall desire to be discharged from or refuse or become unfit or incapable to act in the trusts in him reposed before the same shall have been fully discharged and performed he shall be held to have vacated the said trusts and it
30 shall be lawful for the surviving or continuing Trustees or Trustee for the time being or the acting executors or administrators of the last surviving or continuing Trustee or for the last retiring Trustees or Trustee by instrument in writing to appoint any new Trustees or Trustee in the place of the Trustees or Trustee so vacating as aforesaid
35 and as often as any new Trustees or Trustee shall be so appointed as aforesaid all the trust property then remaining unconveyed shall by virtue of such instrument and without other assurance in the law be divested out of the surviving or continuing Trustee or Trustees and the Trustee or Trustees so vacating as aforesaid and shall become and
40 be vested in the new Trustee or Trustees either solely or jointly with the surviving or continuing Trustees or Trustee and every new Trustee to be appointed as aforesaid shall have the same powers authorities and discretions as if he had been originally named a Trustee in this Act.

Provision for appointment of New Trustees.

SCHEDULE.

45 **A**LL THAT piece or parcel of Land situate and lying in the Parish of Petersham in the County of Cumberland Colony of New South Wales being portion of Henry Kable's 75½ acres (in three portions) and portion of 100 acres granted to Rawdon and others and portion of Foveaux's 100 acres grant commencing at the intersection of the
50 side of the Liverpool Road and bounded on the North-west by

the last named Road bearing South-westerly to Banks Street on the West by the Eastern side of that Street bearing Southerly to Campbell's Fence on the South by the said Fence to Long Cove Creek on the East by that Creek downwards to the Parramatta Road and on the North-east by the South-west side of that Road to the point of commencement Excepting such portions of the Land as are included by the fenced Railway Line. 5

ALL THAT piece or parcel of Land situate and lying in the Parish of Concord in the County of Cumberland Colony of New South Wales and be the hereinafter mentioned dimensions all more or less. 10
 being the land comprised in Thomas Rose's 70 acres Grant Edward Powell's 19 acres Grant Simeon Lord's 160 acres Grant and Frederick Meredith's 60 acres Grant commencing at a point on the Western side of Powell's Creek being the North-eastern corner of Thomas Rose's 70 acres Grant and bounded on the North-west by part of D. Wentworth's 920 acres Grant by lines bearing West 25 degrees South 24 chains 50 links on the South-west bearing South 40 degrees East 37 chains to the Parramatta Road thence by a line bearing South 56 degrees West to the South-west side of said Road on the North-east by that Road bearing North-westerly 17 chains 80 links again on the North-west by a fenced line bearing South 20 degrees West 22 chains again on the South-west by a line bearing South 33 degrees 30 minutes East 52 chains on the South-east by a line bearing North-easterly 50 chains again on the North-east by a line bearing North 33 degrees 30 minutes West 52 chains again on the South-east by a line bearing North-easterly 2 chains to Powell's Creek and lastly on the North-east by that Creek downwards to the point of commencement Excepting such portions of the Land as are included in the Parramatta Road and the fenced Railway Line. 15 20 25