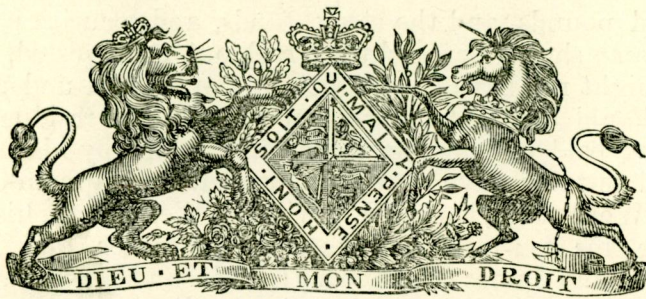


New South Wales.



ANNO SEXAGESIMO TERTIO

VICTORIÆ REGINÆ.

An Act to declare the trusts of certain property passing under the will of William Charles Wentworth, late of Vacluse, near Sydney, in the Colony of New South Wales, Esquire, deceased, in trust for his daughter Thomasine Cox Fisher, her husband and children. [Assented to, 29th December, 1899.]

WHEREAS William Charles Wentworth, late of Vacluse, near Sydney, in the Colony of New South Wales, but at the date of his will hereinafter mentioned, residing in England, on the nineteenth day of October, one thousand eight hundred and seventy, made and executed his last will and testament by which after giving directions for payment of his just debts, funeral, and testamentary expenses, and after making certain specific devises and bequests, and in particular after directing his said trustees with all convenient speed after his decease to raise from and out of his residuary estates or the proceeds thereof

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thereof the sum of ten thousand pounds sterling together with interest for the same half-yearly after the rate of six pounds per centum per annum from the date of his death until the actual payment thereof, and to invest the said sum of ten thousand pounds as therein mentioned and to stand possessed of the said sum of ten thousand pounds and the securities for the same and the dividends, interest, and yearly income thereof respectively upon certain trusts for the benefit of the said testator's son D'Arcy and the children or child of his said son D'Arcy, the said testator declared that if there should be no child or issue of his said son D'Arcy who should become entitled to an absolute vested interest in the said trust premises, then and in such case subject and without prejudice to the trusts thereinbefore declared and to any payment which might be made in pursuance thereof the said sum of ten thousand pounds, and the stock, funds, and securities in or upon which the same should or might be laid out or invested, or so much thereof as might not have been effectually appointed under the powers aforesaid, should sink into and form part of his residuary personal estate and be paid and applied accordingly, and by his now reciting will the said testator gave, devised, limited, and appointed unto his wife Sarah Wentworth, his son Fitzwilliam Wentworth, his son-in-law John Reeve, his son-in-law Thomas John Fisher, and his friends, James Milson and James Alexander (therein and hereafter referred to as "trustees"), their heirs and assigns, all the rest, residue, and remainder of his messuages, lands, tenements, and hereditaments and real estates in the colony or territory of New South Wales, including his mansion-house, called "Vaucluse," and the lands within the fences from and after the decease of his said wife and the marriage or death of all his three unmarried daughters, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth, and also including such part of his Vaucluse estate as lies outside the fences thereof, from and after his (the testator's) death (subject to such leases as might be granted thereof), and including all estates the devises whereof therein contained might lapse or determine by any means whatsoever, and generally all and singular other the messuages, lands, tenements, and hereditaments and real estates whatsoever and wheresoever, either in Great Britain, Australia, or elsewhere, or any estate or interest therein (not therein otherwise disposed of, except such hereditaments as were vested in him as a trustee or mortgagee) with their appurtenances, to hold the same unto and to the use of them his trustees their heirs and assigns for ever, subject and without prejudice to a clause thereinbefore contained restricting the sale of his Vaucluse estate upon trust as soon as conveniently might be after his decease to make sale and absolutely dispose thereof, either altogether or in parcels, and either by public auction or private sale, or partly in the one mode and partly in the other, and at such price or prices as his trustees or trustee should think
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proper, with liberty, if deemed expedient, for such trustees or trustee from time to time to buy in all or any part or parts of the hereditaments which should be offered for sale by public auction, and upon trust to sell and absolutely dispose of the premises so bought in at any future auction or auctions, or by private sale or sales, or partly by one mode and partly by the other, and with all such powers as were thereinbefore given in regard to any original sale or sales, auction or auctions without being liable for any loss or diminution in price in consequence thereof. And the said testator declared that the said trustees or trustee for the time being of his will should stand possessed of the moneys which should arise from the sale or sales thereinbefore directed to be made upon trust in the first place to deduct, retain, or pay all costs and expenses which they, he, or she should have disbursed or incurred in the performance of the aforesaid trusts, or in relation thereto, and to hold, apply, and dispose of the residue or surplus of the said moneys upon the trusts and for the ends, intents, and purposes thereafter expressed of and concerning the same, and as to and concerning all the residue and remainder of his personal estate, property, and effects whatsoever and wheresoever not thereinbefore disposed of (including leasehold estates and also any personal estate over which he then had a power of appointment) the said testator gave and bequeathed the same and every part thereof unto his said trustees, their executors, administrators, and assigns, upon the trusts following, that was to say:—Upon trust to sell or dispose of, collect, get in, and convert into money so much and such parts of the same residuary personal estate and effects as should not consist of money or securities for money. And the said testator thereby declared that (subject to the provision for accumulation thereafter contained) the unsold real estate and the outstanding personal estate should be subject to the trusts thereafter declared concerning the proceeds of his residuary real, and personal estates, and that the rents, interest, and yearly produce thereof should be deemed income for the purposes of such trusts, and such real estate should be transmissible as personal estate and be considered as converted in equity: Provided also, and the said testator thereby further declared and directed that notwithstanding the trusts for sale and conversion, or any of the trusts or powers therein contained, it should be lawful for the said trustees or trustee for the time being to postpone and defer the sale and conversion of any part of his said real or personal estates for such period or periods not exceeding twenty-one years from his death, as to them, her, or him should seem expedient, and that until such sale or conversion and until the money to be produced thereby should be invested in the manner thereby directed. The testator directed that the income arising from the said real or personal estates so from time to time remaining unsold and unconverted should, during such period of twenty-one years, be
received

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received by the trustees or trustee and applied (as far as necessary) to the payment of his just debts, funeral and testamentary expenses, and the rent, charges, annuities, yearly sums, and other payments thereinbefore directed to be paid out of his residuary estates, or out of the interests, dividends, and annual proceeds thereof respectively, or so much thereof as the proceeds of any sold or converted residuary estates, or the income thereof should be insufficient to pay, and that subject thereto the surplus (if any) of the said rents, interest, dividends, and annual proceeds of his unsold and unconverted real and personal estates for the time being during the said period of twenty-one years, and all accumulations thereof should go and be applied in augmentation of the principal or capital of his residuary estates, and be paid, applied, and disposed of as part thereof; but notwithstanding the provision last aforesaid, the postponement of every or any such sale or conversion should be in the absolute discretion of his trustees or trustee for the time being. And further, that such part of his personal estate as at his decease might consist of any of the stock funds or securities thereby authorised should for the purposes of his will be considered as duly converted and invested from his decease, and the said testator directed that no such delay in any sale or conversion as aforesaid should operate so as to delay the raising of the three sums of twenty-five thousand pounds each, or any smaller sums in lieu thereof, thereafter directed to be raised for his unmarried daughters (if otherwise payable), except upon the terms of paying interest at the rate of four pounds per centum per annum on the amount of such sums respectively so remaining unpaid by equal half-yearly payments in every year. And the said testator thereby directed and declared that the trustees or trustee for the time being of his said will should stand possessed as well of the moneys arising from the sale or sales of his said residuary real estates thereinbefore devised to his said trustees, as also the moneys arising from the sale and conversion of his said residuary personal estate and effects thereinbefore bequeathed to them; and also of such part of his estate as should consist of money upon trust by, with, and out of the same moneys respectively, to pay or satisfy or retain all his just debts, funeral and testamentary expenses, and the money legacies therein bequeathed and actually payable, and all expenses incident to the trusts thereby created. And upon further trust to lay out and invest the net residue or surplus of the same moneys in the names or name of his said trustees or trustee for the time being in or upon Government or real securities in England, or upon such Government or public securities or debentures in the Colony of New South Wales, or any other colony of the Australian group, or any of the provinces of New Zealand, or otherwise as his said trustees or trustee should think most expedient, with power for his said trustees or trustee to vary or transpose as well the securities whereon

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whereon such investment should be originally made as the securities which should at his decease compose part of his personal estate from time to time as often as occasion should require, or as should be found expedient; and as to all and singular the said trust moneys and securities or debentures, proceeds, and premises the said testator directed and declared that his said trustees or trustee for the time being should stand possessed thereof upon the trusts following (that was to say): Upon trust when and as his three unmarried daughters, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth should respectively attain the age of thirty years or previously marry to raise or appropriate from and out of the said trust moneys, securities, and premises, three several sums of twenty-five thousand pounds sterling each as and for a portion or fortune for each of them, his said three daughters respectively, as and when they should respectively attain the age of thirty years, or previously marry, but subject to deduction as thereafter mentioned. And the said testator declared and directed that his said trustees or trustee should stand and be possessed of and interested in the said three several portions or sums thereby provided or intended for them his said three unmarried daughters respectively, upon trust to invest or continue the same as thereinbefore mentioned, and with the like discretionary powers as to the nature of the security, and with the like powers to vary and transpose the same as occasion should require, and the said testator directed that his trustees or trustee should stand possessed of one of the three sums of twenty-five thousand pounds, and the investments thereof as and when the same should become raisable by reason of his said daughter Eliza Sophia Wentworth having attained the age of thirty years or having previously married upon trust during the life of his said daughter Eliza Sophia Wentworth to pay the interest, dividends, or annual income thereof as the same should become due, and not by way of anticipation, into her hands for her separate and inalienable use and benefit free from marital control and without power to anticipate or incumber the same, and after the decease of the said Eliza Sophia Wentworth in case she should leave any husband her surviving then during his life upon trust to pay and apply the whole or any part or parts of the said interest, dividends, and annual income as they, she, or he, the said trustees or trustee, should think fit for the maintenance and education of the child or children (if any) of her the said Eliza Sophia Wentworth, and as to the residue or surplus of such interest, dividends, and annual income (if any) if and so long as there should be any such child in existence, and as to the whole of such interest, dividends, and annual income in case there should be no such child living at the decease of his said daughter Eliza Sophia Wentworth or there should be a failure of all such children after her decease upon trust to pay over the same unto the surviving husband (if any) of his
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same daughter during his life, and after the decease of his same daughter in case she should leave no husband surviving her, or from and after the decease of such surviving husband (if any), as the case might be, upon trust to pay transfer and make over the said last mentioned sum of twenty-five thousand pounds and all future increase thereof unto and amongst the child, if only one, or all the children, if more than one, of his said daughter Eliza Sophia Wentworth, who either before or after the determination of the previous trusts should, being a son or sons, attain the age of twenty-one years, and being a daughter or daughters attain that age or marry, and if more than one equally between them with power for the said trustees after the death of his last named daughter and of her surviving husband (if any) to apply the whole or any part of the annual income of the share of each child while such share should be contingent for his and her maintenance and education, accumulating the unapplied income by investing the same and disposing of the accumulations as part of the same share. And as to one other of the said sums of twenty-five thousand pounds and the investment thereof, as and when the same should become raisable by reason of his said daughter Laura Wentworth having attained the age of thirty years, or having previously married, the said testator directed that his trustees or trustee should stand possessed thereof, upon such trusts and powers in favour of his said daughter Laura Wentworth and her surviving husband (if any) and her child and children as mutatis mutandis should correspond with the trusts and powers thereinbefore declared in favour of his daughter Eliza Sophia Wentworth and her surviving husband (if any) and her child and children, concerning the sum of twenty-five thousand pounds, the trusts whereof are hereinbefore lastly declared, and as to the other or remaining sum of twenty-five thousand pounds and the investment thereof as and when the same should become raisable by reason of his said daughter Edith Wentworth having attained the age of thirty years or previously married the said testator, directed that his said trustees or trustee should stand possessed thereof and of the dividends, interest, and annual income thereof upon such trusts and powers in favour of his said daughter Edith Wentworth and her surviving husband (if any), and her child or children as mutatis mutandis should correspond with the trusts and powers thereinbefore contained in favour of his said daughter Eliza Sophia Wentworth and her surviving husband (if any), and her surviving child or children (if any) concerning the sum of twenty-five thousand pounds, the trusts whereof are hereinbefore declared in her or their favour as aforesaid; and the said testator further declared that on failure of the trusts thereinbefore declared of any one or more of such three several sums of twenty-five thousand pounds such sum or sums the trusts whereof should fail should sink into and form part of his residuary

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residuary estate and be paid and applied accordingly, and that in case any one or more of his said three unmarried daughters should die under the age of thirty years and without having been married as aforesaid, the portion or portions or sum or sums thereinbefore provided for her or them so dying should not be raised or payable but should continue part of his residuary estate; and the said testator by his now reciting will directed his trustees or trustee for the time being with all convenient speed after the decease of his said son Fitzwilliam Wentworth, in case his present wife should survive him and he should not in his lifetime or by his will have made provision for her out of his own property, to the amount of three hundred pounds per annum during the remainder of her life or she should not then become entitled to an income of that amount from or out of his real and personal estate during the remainder of her life to levy and raise from and out of the testator's residuary real and personal estate, or the proceeds or income thereof, such a yearly sum of money as would be sufficient, together with and including the provision (if any) so to be made for her or to which she would become entitled as aforesaid, to yield and produce to her during her life a clear yearly income or provision of three hundred pounds per annum, and from time to time to pay and apply the yearly sum so to be levied or raised from or out of his the said testator's estate unto her the said testator's said daughter-in-law during the remainder of her life for her own separate use and benefit. And as to the net residue or surplus of the moneys which should come to the hands of his said trustees by the sale of his said residuary real estates and by collecting, getting in, and receiving his personal estate and of the securities whereon the same or any part thereof might be invested as thereinbefore directed and which should remain after answering and satisfying the trusts and purposes thereinbefore declared of and concerning the same and raising the said portions or fortunes of his three unmarried daughters as thereinbefore mentioned, the said testator directed and declared that the same ultimate residue or surplus should be divided between such of his then present children, namely, Thomasine Cox, the wife of the said Thomas John Fisher, Fanny Catherine, the wife of the said John Reeve, Fitzwilliam Wentworth, Eliza Sophia Wentworth, Laura Wentworth, Edith Wentworth, and D'Arcy Wentworth, as should be living at the time of his decease, in equal proportions and share and share alike as tenants in common: Nevertheless, the said testator directed that the share of each of them his two married daughters, Thomasine Cox Fisher and Fanny Catherine Reeve, and of his said three unmarried daughters should be invested and held by his said trustees upon such terms in favour of each such daughter of his and her surviving husband (if any) and her child or children as mutatis mutandis should correspond with the trusts thereinbefore declared in favour of his said daughter Eliza Sophia Wentworth and
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her surviving husband (if any), and her child or children, concerning the said sum of twenty-five thousand pounds, the trusts whereof were thereinbefore declared, but so nevertheless that such trusts should be read for the purposes of this clause as if the same sum of twenty-five thousand pounds were raisable immediately for his said daughter Eliza Sophia Wentworth, instead of being raisable upon her attaining the age of thirty years, or previously marrying as aforesaid. And the said testator also directed that the share of his said son D'Arcy Wentworth should be invested and held by his trustees upon such trusts in favour of his same son and his child, children, or issue, and otherwise during his life, and after his decease upon trust in favour of his child, children, or issue, as were thereinbefore declared of or concerning the said sum of ten thousand pounds thereinbefore directed to be raised as aforesaid. And the said testator further directed that on failure of the trusts thereinbefore declared by reference of any of the said shares of his said five daughters and of his said son D'Arcy Wentworth, of or in his residuary estates, or such ultimate or net residue or surplus as aforesaid, the share or shares the trusts whereof should fail with all accretions thereto (if any) under the now reciting clause should go and be divided to and amongst the survivors or survivor of them his said five daughters and his said sons, Fitzwilliam Wentworth and D'Arcy Wentworth, living at the time or respective times of the failure or respective failures of the trusts of any such share or shares as aforesaid, so that upon failure of the aforesaid trusts of each share such share should go and accrue to such of them, his said five daughters and his said sons Fitzwilliam Wentworth and D'Arcy Wentworth, as should be living at the time when the trusts of such share should so fail, and the said testator directed that all the trusts and powers thereinbefore declared by reference as aforesaid of the share of any of his daughters in his said residuary estate in favour of such daughter and her child or children should have failed, then the trusts of such share should, for the purposes of the now reciting clause of accruer and of ascertaining the objects thereof, be deemed to have failed at the time when such last-mentioned trusts should have so failed or determined, although there should be a surviving husband of such daughter in existence, but in that case the interest of such surviving husband should not be affected; and the said testator directed that every such surviving or accruing share or shares, or part or parts thereof, which should revert or accrue to any of his said daughters under the provisions or trusts aforesaid, should be held by his trustees or trustee upon the same trusts and subject to the same powers and provisions (including provision for accruer or survivorship) as thereinbefore expressed and declared or referred to concerning the said original parts or shares of such daughters or daughter respectively of or in his said residuary estate and the interest thereof or as near and conformable thereto as might
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be and circumstances would then permit or allow of: And the said testator nominated and appointed his said wife Sarah Wentworth, his said son Fitzwilliam Wentworth, his said sons-in-law John Reeve and Thomas John Fisher, and the said James Milson and James Alexander, executrix and executors of that his will: And whereas the said testator duly made a codicil to his said will on the twenty-second day of February, one thousand eight hundred and seventy-two, and thereby revoked the appointment of the said James Alexander as executor and trustee of his said will: And whereas the said testator departed this life on or about the twentieth day of March, one thousand eight hundred and seventy-two, without having altered or revoked his said will, except as appears by the said codicil, and the said will and codicil were duly proved by the said Sarah Wentworth and Fitzwilliam Wentworth in Her Majesty's Court of Probate in England, on the eleventh day of May, one thousand eight hundred and seventy-two, and probate of an exemplified copy of the said will was afterwards on the seventeenth day of October, one thousand eight hundred and seventy-two, granted by the Supreme Court of New South Wales to the said Thomas John Fisher, leave being reserved for the executrix and other executors to come in and prove the same, which the said Fitzwilliam Wentworth on the twenty-fifth day of March, one thousand eight hundred and seventy-three, and the said Sarah Wentworth, on the twenty-eighth day of April then next following afterwards did, with the like reservations for the other executors to come in and prove the said will and codicil: And whereas by a certain deed-poll of date the tenth day of May, one thousand eight hundred and seventy-two, under the hand and seal of the said John Reeve, after reciting that the said John Reeve had not intermeddled with the estate of the said William Charles Wentworth, deceased, nor acted in the trusts or powers of the said will and codicil, he, the said John Reeve, did thereby renounce and disclaim all the real and personal estates respectively devised and bequeathed to him as a trustee or executor of the said will and codicil, and also the said offices of trustee and executor of the said will and codicil respectively: And whereas by a certain deed-poll of date the tenth day of July, one thousand eight hundred and seventy-two, under the hand and seal of the said James Milson, after reciting that the said James Milson had not intermeddled with the said estate of the said William Charles Wentworth, deceased, nor acted in the trusts or powers of the said will and codicil, he, the said James Milson, did renounce and disclaim all the real and personal estate respectively devised and bequeathed to him as a trustee or executor of the said will and codicil, and also the offices of trustee and executor thereof: And whereas the said testator left him surviving his widow, the said Sarah Wentworth, and the following children, namely, the said Fitzwilliam Wentworth, D'Arcy Bland Wentworth,

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Thomasine Cox Fisher, Fanny Catherine Reeve, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth: And whereas the said Thomas John Fisher departed this life on or about the sixteenth day of November, one thousand eight hundred and seventy-five: And whereas the said John Reeve died on the twenty-first November, one thousand eight hundred and seventy-five: And whereas the said Sarah Wentworth died on the fourteenth day of July, one thousand eight hundred and eighty: And whereas the said Edith Wentworth on the seventeenth day of October, one thousand eight hundred and seventy-two, intermarried with Charles Gordon Cumming Dunbar, and died in the year one thousand eight hundred and ninety-one, leaving one daughter, who attained the age of twenty-one years on the twenty-second day of July, one thousand eight hundred and ninety-four: And whereas the said Laura Wentworth on the seventeenth day of December, one thousand eight hundred and seventy-two, intermarried with Henry William Keays Young, and died on the tenth day of November, one thousand eight hundred and eighty-seven, leaving her husband the said Henry William Keays Young, but no issue her surviving: And whereas the said Thomasine Cox Fisher has had four children and no more, three of whom, namely, Alice Fisher, Robert Fisher, and Donnelly Fisher, survived the said testator and attained their full age of twenty-one years: And whereas by an indenture dated the twenty-ninth day of July, one thousand eight hundred and ninety-three, made between the said Robert Fisher of the one part, and the said Thomasine Cox Fisher of the other part, the said Robert Fisher assigned and transferred all his interest under the will of the said testator to the said Thomasine Cox Fisher absolutely: And whereas by an indenture dated the nineteenth day of March, one thousand eight hundred and ninety-four, made between the said Donnelly Fisher of the one part, and the said Thomasine Cox Fisher of the other part, the said Donnelly Fisher assigned and transferred all his interest under the will of the said testator to the said Thomasine Cox Fisher absolutely: And whereas the share of the said Thomasine Cox Fisher is charged by way of mortgage in favour of the said Fitzwilliam Wentworth with the repayment of a certain sum of principal money and interest: And whereas the said Alice Fisher died on the twenty-fifth day of March, one thousand eight hundred and ninety-eight, unmarried and intestate, and leaving her mother, the said Thomasine Cox Fisher, and her two brothers, the said Robert Fisher and Donnelly Fisher, her only next of kin her surviving, and letters of administration of the estate and effects of the said Alice Fisher were on the second day of December, one thousand eight hundred and ninety-eight, granted by the Supreme Court of New South Wales in its Probate Jurisdiction to the said Thomasine Cox Fisher, Robert Fisher, and Donnelly Fisher: And whereas the share
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of the said Robert Fisher is charged by way of mortgage in favour of the Mutual Life Association of Australasia with the repayment of certain principal money and interest: And whereas the said Eliza Sophia Wentworth died on the twentieth day of December, one thousand eight hundred and ninety-eight: And whereas it is extremely improbable that the said Thomasine Cox Fisher, who is upwards of seventy-three years of age, will marry again: And whereas it would be advantageous to the interests as well of the said Thomasine Cox Fisher as of the said Robert Fisher and Donnelly Fisher, and the said parties are each of them desirous that all and every part or share, parts or shares, and interests whatsoever to which the said Thomasine Cox Fisher is now in anywise entitled in possession, reversion, expectancy, contingency, or otherwise, under or by virtue of the said will and codicil of the said William Charles Wentworth, of or in the residuary personal estate and the proceeds of the sale of the real and leasehold estate of the said testator, and the investments and property now or hereafter representing the same respectively, and of or in all existing or future accumulations thereof, together with all remainders of interests therein after the death of the said Thomasine Cox Fisher should be wholly released from the said contingent right therein to which any husband whom the said Thomasine Cox Fisher may leave her surviving, is entitled as aforesaid, and that the corpus of the same part or share, parts or shares should be held by the trustees or trustee for the time being of the said will and codicil of the said William Charles Wentworth upon the trusts following, that is to say, upon trust as to seven-ninths equal parts or shares thereof, subject to the said mortgage in favour of the said Fitzwilliam Wentworth for the said Thomasine Cox Fisher absolutely, and as to the remaining two-ninths equal parts or shares thereof, upon trust for the said Thomasine Cox Fisher for life, and after her death as to one moiety upon trust for the said Robert Fisher, subject, however, to the said mortgage in favour of the said Mutual Life Association of Australasia, and as to the other moiety upon trust for the said Donnelly Fisher: 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, all and every the part or share, parts or shares and interest whatsoever to which the said Thomasine Cox Fisher is now in anywise entitled in possession, reversion, expectancy, contingency, or otherwise, under or by virtue of the said will and codicil of the said William Charles Wentworth of or in the residuary personal estate and the proceeds of the sale of the real and leasehold estate of the said testator and the investments and property now or hereafter representing the same respectively and of

Trusts declared as to shares and interests of Thomasine Cox Fisher and others under will and codicil of William Charles Wentworth.

or

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or in all existing or future accumulations thereof together with all remainders or interests therein after the death of the said Thomasine Cox Fisher shall be wholly released from the contingent right therein to which any husband whom the said Thomasine Cox Fisher may leave her surviving would but for the passing of this Act be entitled under and by virtue of the said will and codicil of the said William Charles Wentworth, deceased, and the corpus of the same part or share, parts or shares, shall be held by the trustees or trustee for the time being of the said will and codicil of the said William Charles Wentworth upon the trusts following, that is to say, as to seven-ninths thereof, subject to the said mortgage in favour of the said Fitzwilliam Wentworth, upon trust for the said Thomasine Cox Fisher absolutely, and as to the remaining two-ninths thereof upon trust for the said Thomasine Cox Fisher for life, and after her death as to one moiety upon trust for the said Robert Fisher, subject however to the said mortgage in favour of the Mutual Life Association of Australasia and as to the other moiety upon trust for the said Donnelly Fisher.

Short title.

2. This Act may be cited as the "Fisher Trusts Declaratory Act, 1899."

By Authority : WILLIAM APPLGATE GULLICK, Government Printer, Sydney, 1900.

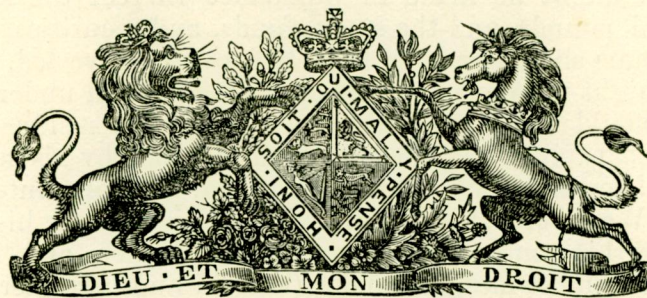
[9d.]

I Certify that this PRIVATE BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Legislative Council Chamber,
Sydney, 22nd December, 1899.* }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SEXAGESIMO TERTIO

VICTORIÆ REGINÆ.

An Act to declare the trusts of certain property passing under the will of William Charles Wentworth, late of Vacluse, near Sydney, in the Colony of New South Wales, Esquire, deceased, in trust for his daughter Thomasine Cox Fisher, her husband and children. [Assented to, 29th December, 1899.]

WHEREAS William Charles Wentworth, late of Vacluse, near Sydney, in the Colony of New South Wales, but at the date of his will hereinafter mentioned, residing in England, on the nineteenth day of October, one thousand eight hundred and seventy, made and executed his last will and testament by which after giving directions for payment of his just debts, funeral, and testamentary expenses, and after making certain specific devises and bequests, and in particular after directing his said trustees with all convenient speed after his decease to raise from and out of his residuary estates or the proceeds thereof

Preamble.

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thereof the sum of ten thousand pounds sterling together with interest for the same half-yearly after the rate of six pounds per centum per annum from the date of his death until the actual payment thereof, and to invest the said sum of ten thousand pounds as therein mentioned and to stand possessed of the said sum of ten thousand pounds and the securities for the same and the dividends, interest, and yearly income thereof respectively upon certain trusts for the benefit of the said testator's son D'Arcy and the children or child of his said son D'Arcy, the said testator declared that if there should be no child or issue of his said son D'Arcy who should become entitled to an absolute vested interest in the said trust premises, then and in such case subject and without prejudice to the trusts thereinbefore declared and to any payment which might be made in pursuance thereof the said sum of ten thousand pounds, and the stock, funds, and securities in or upon which the same should or might be laid out or invested, or so much thereof as might not have been effectually appointed under the powers aforesaid, should sink into and form part of his residuary personal estate and be paid and applied accordingly, and by his now reciting will the said testator gave, devised, limited, and appointed unto his wife Sarah Wentworth, his son Fitzwilliam Wentworth, his son-in-law John Reeve, his son-in-law Thomas John Fisher, and his friends, James Milson and James Alexander (therein and hereafter referred to as "trustees"), their heirs and assigns, all the rest, residue, and remainder of his messuages, lands, tenements, and hereditaments and real estates in the colony or territory of New South Wales, including his mansion-house, called "Vaucluse," and the lands within the fences from and after the decease of his said wife and the marriage or death of all his three unmarried daughters, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth, and also including such part of his Vaucluse estate as lies outside the fences thereof, from and after his (the testator's) death (subject to such leases as might be granted thereof), and including all estates the devises whereof therein contained might lapse or determine by any means whatsoever, and generally all and singular other the messuages, lands, tenements, and hereditaments and real estates whatsoever and wheresoever, either in Great Britain, Australia, or elsewhere, or any estate or interest therein (not therein otherwise disposed of, except such hereditaments as were vested in him as a trustee or mortgagee) with their appurtenances, to hold the same unto and to the use of them his trustees their heirs and assigns for ever, subject and without prejudice to a clause thereinbefore contained restricting the sale of his Vaucluse estate upon trust as soon as conveniently might be after his decease to make sale and absolutely dispose thereof, either altogether or in parcels, and either by public auction or private sale, or partly in the one mode and partly in the other, and at such price or prices as his trustees or trustee should think proper,

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proper, with liberty, if deemed expedient, for such trustees or trustee from time to time to buy in all or any part or parts of the hereditaments which should be offered for sale by public auction, and upon trust to sell and absolutely dispose of the premises so bought in at any future auction or auctions, or by private sale or sales, or partly by one mode and partly by the other, and with all such powers as were thereinbefore given in regard to any original sale or sales, auction or auctions without being liable for any loss or diminution in price in consequence thereof. And the said testator declared that the said trustees or trustee for the time being of his will should stand possessed of the moneys which should arise from the sale or sales thereinbefore directed to be made upon trust in the first place to deduct, retain, or pay all costs and expenses which they, he, or she should have disbursed or incurred in the performance of the aforesaid trusts, or in relation thereto, and to hold, apply, and dispose of the residue or surplus of the said moneys upon the trusts and for the ends, intents, and purposes thereinafter expressed of and concerning the same, and as to and concerning all the residue and remainder of his personal estate, property, and effects whatsoever and wheresoever not thereinbefore disposed of (including leasehold estates and also any personal estate over which he then had a power of appointment) the said testator gave and bequeathed the same and every part thereof unto his said trustees, their executors, administrators, and assigns, upon the trusts following, that was to say:—Upon trust to sell or dispose of, collect, get in, and convert into money so much and such parts of the same residuary personal estate and effects as should not consist of money or securities for money. And the said testator thereby declared that (subject to the provision for accumulation thereinafter contained) the unsold real estate and the outstanding personal estate should be subject to the trusts thereinafter declared concerning the proceeds of his residuary real, and personal estates, and that the rents, interest, and yearly produce thereof should be deemed income for the purposes of such trusts, and such real estate should be transmissible as personal estate and be considered as converted in equity: Provided also, and the said testator thereby further declared and directed that notwithstanding the trusts for sale and conversion, or any of the trusts or powers therein contained, it should be lawful for the said trustees or trustee for the time being to postpone and defer the sale and conversion of any part of his said real or personal estates for such period or periods not exceeding twenty-one years from his death, as to them, her, or him should seem expedient, and that until such sale or conversion and until the money to be produced thereby should be invested in the manner thereby directed. The testator directed that the income arising from the said real or personal estates so from time to time remaining unsold and unconverted should, during such period of twenty-one years, be
received

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received by the trustees or trustee and applied (as far as necessary) to the payment of his just debts, funeral and testamentary expenses, and the rent, charges, annuities, yearly sums, and other payments thereinbefore directed to be paid out of his residuary estates, or out of the interests, dividends, and annual proceeds thereof respectively, or so much thereof as the proceeds of any sold or converted residuary estates, or the income thereof should be insufficient to pay, and that subject thereto the surplus (if any) of the said rents, interest, dividends, and annual proceeds of his unsold and unconverted real and personal estates for the time being during the said period of twenty-one years, and all accumulations thereof should go and be applied in augmentation of the principal or capital of his residuary estates, and be paid, applied, and disposed of as part thereof; but notwithstanding the provision last aforesaid, the postponement of every or any such sale or conversion should be in the absolute discretion of his trustees or trustee for the time being. And further, that such part of his personal estate as at his decease might consist of any of the stock funds or securities thereby authorised should for the purposes of his will be considered as duly converted and invested from his decease, and the said testator directed that no such delay in any sale or conversion as aforesaid should operate so as to delay the raising of the three sums of twenty-five thousand pounds each, or any smaller sums in lieu thereof, thereafter directed to be raised for his unmarried daughters (if otherwise payable), except upon the terms of paying interest at the rate of four pounds per centum per annum on the amount of such sums respectively so remaining unpaid by equal half-yearly payments in every year. And the said testator thereby directed and declared that the trustees or trustee for the time being of his said will should stand possessed as well of the moneys arising from the sale or sales of his said residuary real estates thereinbefore devised to his said trustees, as also the moneys arising from the sale and conversion of his said residuary personal estate and effects thereinbefore bequeathed to them; and also of such part of his estate as should consist of money upon trust by, with, and out of the same moneys respectively, to pay or satisfy or retain all his just debts, funeral and testamentary expenses, and the money legacies therein bequeathed and actually payable, and all expenses incident to the trusts thereby created. And upon further trust to lay out and invest the net residue or surplus of the same moneys in the names or name of his said trustees or trustee for the time being in or upon Government or real securities in England, or upon such Government or public securities or debentures in the Colony of New South Wales, or any other colony of the Australian group, or any of the provinces of New Zealand, or otherwise as his said trustees or trustee should think most expedient, with power for his said trustees or trustee to vary or transpose as well the securities whereon

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whereon such investment should be originally made as the securities which should at his decease compose part of his personal estate from time to time as often as occasion should require, or as should be found expedient; and as to all and singular the said trust moneys and securities or debentures, proceeds, and premises the said testator directed and declared that his said trustees or trustee for the time being should stand possessed thereof upon the trusts following (that was to say): Upon trust when and as his three unmarried daughters, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth should respectively attain the age of thirty years or previously marry to raise or appropriate from and out of the said trust moneys, securities, and premises, three several sums of twenty-five thousand pounds sterling each as and for a portion or fortune for each of them, his said three daughters respectively, as and when they should respectively attain the age of thirty years, or previously marry, but subject to deduction as thereafter mentioned. And the said testator declared and directed that his said trustees or trustee should stand and be possessed of and interested in the said three several portions or sums thereby provided or intended for them his said three unmarried daughters respectively, upon trust to invest or continue the same as thereinbefore mentioned, and with the like discretionary powers as to the nature of the security, and with the like powers to vary and transpose the same as occasion should require, and the said testator directed that his trustees or trustee should stand possessed of one of the three sums of twenty-five thousand pounds, and the investments thereof as and when the same should become raisable by reason of his said daughter Eliza Sophia Wentworth having attained the age of thirty years or having previously married upon trust during the life of his said daughter Eliza Sophia Wentworth to pay the interest, dividends, or annual income thereof as the same should become due, and not by way of anticipation, into her hands for her separate and inalienable use and benefit free from marital control and without power to anticipate or incumber the same, and after the decease of the said Eliza Sophia Wentworth in case she should leave any husband her surviving then during his life upon trust to pay and apply the whole or any part or parts of the said interest, dividends, and annual income as they, she, or he, the said trustees or trustee, should think fit for the maintenance and education of the child or children (if any) of her the said Eliza Sophia Wentworth, and as to the residue or surplus of such interest, dividends, and annual income (if any) if and so long as there should be any such child in existence, and as to the whole of such interest, dividends, and annual income in case there should be no such child living at the decease of his said daughter Eliza Sophia Wentworth or there should be a failure of all such children after her decease upon trust to pay over the same unto the surviving husband (if any) of his
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same daughter during his life, and after the decease of his same daughter in case she should leave no husband surviving her, or from and after the decease of such surviving husband (if any), as the case might be, upon trust to pay transfer and make over the said last mentioned sum of twenty-five thousand pounds and all future increase thereof unto and amongst the child, if only one, or all the children, if more than one, of his said daughter Eliza Sophia Wentworth, who either before or after the determination of the previous trusts should, being a son or sons, attain the age of twenty-one years, and being a daughter or daughters attain that age or marry, and if more than one equally between them with power for the said trustees after the death of his last named daughter and of her surviving husband (if any) to apply the whole or any part of the annual income of the share of each child while such share should be contingent for his and her maintenance and education, accumulating the unapplied income by investing the same and disposing of the accumulations as part of the same share. And as to one other of the said sums of twenty-five thousand pounds and the investment thereof, as and when the same should become raisable by reason of his said daughter Laura Wentworth having attained the age of thirty years, or having previously married, the said testator directed that his trustees or trustee should stand possessed thereof, upon such trusts and powers in favour of his said daughter Laura Wentworth and her surviving husband (if any) and her child and children as mutatis mutandis should correspond with the trusts and powers thereinbefore declared in favour of his daughter Eliza Sophia Wentworth and her surviving husband (if any) and her child and children, concerning the sum of twenty-five thousand pounds, the trusts whereof are hereinbefore lastly declared, and as to the other or remaining sum of twenty-five thousand pounds and the investment thereof as and when the same should become raisable by reason of his said daughter Edith Wentworth having attained the age of thirty years or previously married the said testator, directed that his trustees or trustee should stand possessed thereof and of the dividends, interest, and annual income thereof upon such trusts and powers in favour of his said daughter Edith Wentworth and her surviving husband (if any), and her child or children as mutatis mutandis should correspond with the trusts and powers thereinbefore contained in favour of his said daughter Eliza Sophia Wentworth and her surviving husband (if any), and her surviving child or children (if any) concerning the sum of twenty-five thousand pounds, the trusts whereof are hereinbefore declared in her or their favour as aforesaid; and the said testator further declared that on failure of the trusts thereinbefore declared of any one or more of such three several sums of twenty-five thousand pounds such sum or sums the trusts whereof should fail should sink into and form part of his residuary

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residuary estate and be paid and applied accordingly, and that in case any one or more of his said three unmarried daughters should die under the age of thirty years and without having been married as aforesaid, the portion or portions or sum or sums thereinbefore provided for her or them so dying should not be raised or payable but should continue part of his residuary estate; and the said testator by his now reciting will directed his trustees or trustee for the time being with all convenient speed after the decease of his said son Fitzwilliam Wentworth, in case his present wife should survive him and he should not in his lifetime or by his will have made provision for her out of his own property, to the amount of three hundred pounds per annum during the remainder of her life or she should not then become entitled to an income of that amount from or out of his real and personal estate during the remainder of her life to levy and raise from and out of the testator's residuary real and personal estate, or the proceeds or income thereof, such a yearly sum of money as would be sufficient, together with and including the provision (if any) so to be made for her or to which she would become entitled as aforesaid, to yield and produce to her during her life a clear yearly income or provision of three hundred pounds per annum, and from time to time to pay and apply the yearly sum so to be levied or raised from or out of his the said testator's estate unto her the said testator's said daughter-in-law during the remainder of her life for her own separate use and benefit. And as to the net residue or surplus of the moneys which should come to the hands of his said trustees by the sale of his said residuary real estates and by collecting, getting in, and receiving his personal estate and of the securities whereon the same or any part thereof might be invested as thereinbefore directed and which should remain after answering and satisfying the trusts and purposes thereinbefore declared of and concerning the same and raising the said portions or fortunes of his three unmarried daughters as thereinbefore mentioned, the said testator directed and declared that the same ultimate residue or surplus should be divided between such of his then present children, namely, Thomasine Cox, the wife of the said Thomas John Fisher, Fanny Catherine, the wife of the said John Reeve, Fitzwilliam Wentworth, Eliza Sophia Wentworth, Laura Wentworth, Edith Wentworth, and D'Arcy Wentworth, as should be living at the time of his decease, in equal proportions and share and share alike as tenants in common; Nevertheless, the said testator directed that the share of each of them his two married daughters, Thomasine Cox Fisher and Fanny Catherine Reeve, and of his said three unmarried daughters should be invested and held by his said trustees upon such terms in favour of each such daughter of his and her surviving husband (if any) and her child or children as mutatis mutandis should correspond with the trusts thereinbefore declared in favour of his said daughter Eliza Sophia Wentworth and
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her surviving husband (if any), and her child or children, concerning the said sum of twenty-five thousand pounds, the trusts whereof were thereinbefore declared, but so nevertheless that such trusts should be read for the purposes of this clause as if the same sum of twenty-five thousand pounds were raisable immediately for his said daughter Eliza Sophia Wentworth, instead of being raisable upon her attaining the age of thirty years, or previously marrying as aforesaid. And the said testator also directed that the share of his said son D'Arcy Wentworth should be invested and held by his trustees upon such trusts in favour of his same son and his child, children, or issue, and otherwise during his life, and after his decease upon trust in favour of his child, children, or issue, as were thereinbefore declared of or concerning the said sum of ten thousand pounds thereinbefore directed to be raised as aforesaid. And the said testator further directed that on failure of the trusts thereinbefore declared by reference of any of the said shares of his said five daughters and of his said son D'Arcy Wentworth, of or in his residuary estates, or such ultimate or net residue or surplus as aforesaid, the share or shares the trusts whereof should fail with all accretions thereto (if any) under the now reciting clause should go and be divided to and amongst the survivors or survivor of them his said five daughters and his said sons, Fitzwilliam Wentworth and D'Arcy Wentworth, living at the time or respective times of the failure or respective failures of the trusts of any such share or shares as aforesaid, so that upon failure of the aforesaid trusts of each share such share should go and accrue to such of them, his said five daughters and his said sons Fitzwilliam Wentworth and D'Arcy Wentworth, as should be living at the time when the trusts of such share should so fail, and the said testator directed that all the trusts and powers thereinbefore declared by reference as aforesaid of the share of any of his daughters in his said residuary estate in favour of such daughter and her child or children should have failed, then the trusts of such share should, for the purposes of the now reciting clause of accruer and of ascertaining the objects thereof, be deemed to have failed at the time when such last-mentioned trusts should have so failed or determined, although there should be a surviving husband of such daughter in existence, but in that case the interest of such surviving husband should not be affected; and the said testator directed that every such surviving or accruing share or shares, or part or parts thereof, which should revert or accrue to any of his said daughters under the provisions or trusts aforesaid, should be held by his trustees or trustee upon the same trusts and subject to the same powers and provisions (including provision for accruer or survivorship) as thereinbefore expressed and declared or referred to concerning the said original parts or shares of such daughters or daughter respectively of or in his said residuary estate and the interest thereof or as near and conformable thereto as might
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be and circumstances would then permit or allow of: And the said testator nominated and appointed his said wife Sarah Wentworth, his said son Fitzwilliam Wentworth, his said sons-in-law John Reeve and Thomas John Fisher, and the said James Milson and James Alexander, executrix and executors of that his will: And whereas the said testator duly made a codicil to his said will on the twenty-second day of February, one thousand eight hundred and seventy-two, and thereby revoked the appointment of the said James Alexander as executor and trustee of his said will: And whereas the said testator departed this life on or about the twentieth day of March, one thousand eight hundred and seventy-two, without having altered or revoked his said will, except as appears by the said codicil, and the said will and codicil were duly proved by the said Sarah Wentworth and Fitzwilliam Wentworth in Her Majesty's Court of Probate in England, on the eleventh day of May, one thousand eight hundred and seventy-two, and probate of an exemplified copy of the said will was afterwards on the seventeenth day of October, one thousand eight hundred and seventy-two, granted by the Supreme Court of New South Wales to the said Thomas John Fisher, leave being reserved for the executrix and other executors to come in and prove the same, which the said Fitzwilliam Wentworth on the twenty-fifth day of March, one thousand eight hundred and seventy-three, and the said Sarah Wentworth, on the twenty-eighth day of April then next following afterwards did, with the like reservations for the other executors to come in and prove the said will and codicil: And whereas by a certain deed-poll of date the tenth day of May, one thousand eight hundred and seventy-two, under the hand and seal of the said John Reeve, after reciting that the said John Reeve had not intermeddled with the estate of the said William Charles Wentworth, deceased, nor acted in the trusts or powers of the said will and codicil, he, the said John Reeve, did thereby renounce and disclaim all the real and personal estates respectively devised and bequeathed to him as a trustee or executor of the said will and codicil, and also the said offices of trustee and executor of the said will and codicil respectively: And whereas by a certain deed-poll of date the tenth day of July, one thousand eight hundred and seventy-two, under the hand and seal of the said James Milson, after reciting that the said James Milson had not intermeddled with the said estate of the said William Charles Wentworth, deceased, nor acted in the trusts or powers of the said will and codicil, he, the said James Milson, did renounce and disclaim all the real and personal estate respectively devised and bequeathed to him as a trustee or executor of the said will and codicil, and also the offices of trustee and executor thereof: And whereas the said testator left him surviving his widow, the said Sarah Wentworth, and the following children, namely, the said Fitzwilliam Wentworth, D'Arcy Bland Wentworth,

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Thomasine Cox Fisher, Fanny Catherine Reeve, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth: And whereas the said Thomas John Fisher departed this life on or about the sixteenth day of November, one thousand eight hundred and seventy-five: And whereas the said John Reeve died on the twenty-first November, one thousand eight hundred and seventy-five: And whereas the said Sarah Wentworth died on the fourteenth day of July, one thousand eight hundred and eighty: And whereas the said Edith Wentworth on the seventeenth day of October, one thousand eight hundred and seventy-two, intermarried with Charles Gordon Cumming Dunbar, and died in the year one thousand eight hundred and ninety-one, leaving one daughter, who attained the age of twenty-one years on the twenty-second day of July, one thousand eight hundred and ninety-four: And whereas the said Laura Wentworth on the seventeenth day of December, one thousand eight hundred and seventy-two, intermarried with Henry William Keays Young, and died on the tenth day of November, one thousand eight hundred and eighty-seven, leaving her husband the said Henry William Keays Young, but no issue her surviving: And whereas the said Thomasine Cox Fisher has had four children and no more, three of whom, namely, Alice Fisher, Robert Fisher, and Donnelly Fisher, survived the said testator and attained their full age of twenty-one years: And whereas by an indenture dated the twenty-ninth day of July, one thousand eight hundred and ninety-three, made between the said Robert Fisher of the one part, and the said Thomasine Cox Fisher of the other part, the said Robert Fisher assigned and transferred all his interest under the will of the said testator to the said Thomasine Cox Fisher absolutely: And whereas by an indenture dated the nineteenth day of March, one thousand eight hundred and ninety-four, made between the said Donnelly Fisher of the one part, and the said Thomasine Cox Fisher of the other part, the said Donnelly Fisher assigned and transferred all his interest under the will of the said testator to the said Thomasine Cox Fisher absolutely: And whereas the share of the said Thomasine Cox Fisher is charged by way of mortgage in favour of the said Fitzwilliam Wentworth with the repayment of a certain sum of principal money and interest: And whereas the said Alice Fisher died on the twenty-fifth day of March, one thousand eight hundred and ninety-eight, unmarried and intestate, and leaving her mother, the said Thomasine Cox Fisher, and her two brothers, the said Robert Fisher and Donnelly Fisher, her only next of kin her surviving, and letters of administration of the estate and effects of the said Alice Fisher were on the second day of December, one thousand eight hundred and ninety-eight, granted by the Supreme Court of New South Wales in its Probate Jurisdiction to the said Thomasine Cox Fisher, Robert Fisher, and Donnelly Fisher: And whereas the share
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of the said Robert Fisher is charged by way of mortgage in favour of the Mutual Life Association of Australasia with the repayment of certain principal money and interest: And whereas the said Eliza Sophia Wentworth died on the twentieth day of December, one thousand eight hundred and ninety-eight: And whereas it is extremely improbable that the said Thomasine Cox Fisher, who is upwards of seventy-three years of age, will marry again: And whereas it would be advantageous to the interests as well of the said Thomasine Cox Fisher as of the said Robert Fisher and Donnelly Fisher, and the said parties are each of them desirous that all and every part or share, parts or shares, and interests whatsoever to which the said Thomasine Cox Fisher is now in anywise entitled in possession, reversion, expectancy, contingency, or otherwise, under or by virtue of the said will and codicil of the said William Charles Wentworth, of or in the residuary personal estate and the proceeds of the sale of the real and leasehold estate of the said testator, and the investments and property now or hereafter representing the same respectively, and of or in all existing or future accumulations thereof, together with all remainders of interests therein after the death of the said Thomasine Cox Fisher should be wholly released from the said contingent right therein to which any husband whom the said Thomasine Cox Fisher may leave her surviving, is entitled as aforesaid, and that the corpus of the same part or share, parts or shares should be held by the trustees or trustee for the time being of the said will and codicil of the said William Charles Wentworth upon the trusts following, that is to say, upon trust as to seven-ninths equal parts or shares thereof, subject to the said mortgage in favour of the said Fitzwilliam Wentworth for the said Thomasine Cox Fisher absolutely, and as to the remaining two-ninths equal parts or shares thereof, upon trust for the said Thomasine Cox Fisher for life, and after her death as to one moiety upon trust for the said Robert Fisher, subject, however, to the said mortgage in favour of the said Mutual Life Association of Australasia, and as to the other moiety upon trust for the said Donnelly Fisher: 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, all and every the part or share, parts or shares and interest whatsoever to which the said Thomasine Cox Fisher is now in anywise entitled in possession, reversion, expectancy, contingency, or otherwise, under or by virtue of the said will and codicil of the said William Charles Wentworth of or in the residuary personal estate and the proceeds of the sale of the real and leasehold estate of the said testator and the investments and property now or hereafter representing the same respectively and of

Trusts declared as to shares and interests of Thomasine Cox Fisher and others under will and codicil of William Charles Wentworth.

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or in all existing or future accumulations thereof together with all remainders or interests therein after the death of the said Thomasine Cox Fisher shall be wholly released from the contingent right therein to which any husband whom the said Thomasine Cox Fisher may leave her surviving would but for the passing of this Act be entitled under and by virtue of the said will and codicil of the said William Charles Wentworth, deceased, and the corpus of the same part or share, parts or shares, shall be held by the trustees or trustee for the time being of the said will and codicil of the said William Charles Wentworth upon the trusts following, that is to say, as to seven-ninths thereof, subject to the said mortgage in favour of the said Fitzwilliam Wentworth, upon trust for the said Thomasine Cox Fisher absolutely, and as to the remaining two-ninths thereof upon trust for the said Thomasine Cox Fisher for life, and after her death as to one moiety upon trust for the said Robert Fisher, subject however to the said mortgage in favour of the Mutual Life Association of Australasia and as to the other moiety upon trust for the said Donnelly Fisher.

Short title.

2. This Act may be cited as the "Fisher Trusts Declaratory Act, 1899."

In the name and on the behalf of Her Majesty I assent to this Act.

Government House,
Sydney, 29th December, 1899.

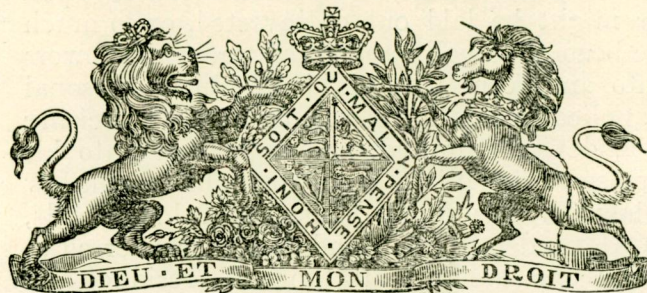
BEAUCHAMP,
Governor.

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

*Legislative Council Chamber,
Sydney, 22nd November, 1899. }*

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SEXAGESIMO TERTIO

VICTORIÆ REGINÆ.

An Act to declare the trusts of certain property passing under the will of William Charles Wentworth, late of Vacluse, near Sydney, in the Colony of New South Wales, Esquire, deceased, in trust for his daughter Thomasine Cox Fisher, her husband and children.

WHEREAS William Charles Wentworth, late of Vacluse, near Sydney, in the Colony of New South Wales, but at the date of his will hereinafter mentioned, residing in England, on the nineteenth day of October, one thousand eight hundred and seventy, made and executed his last will and testament by which after giving directions for payment of his just debts, funeral, and testamentary expenses, and after making certain specific devises and bequests, and in particular after directing his said trustees with all convenient speed after his decease to raise from and out of his residuary estates or the proceeds thereof

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thereof the sum of ten thousand pounds sterling together with interest for the same half-yearly after the rate of six pounds per centum per annum from the date of his death until the actual payment thereof, and to invest the said sum of ten thousand pounds as therein mentioned
5 and to stand possessed of the said sum of ten thousand pounds and the securities for the same and the dividends, interest, and yearly income thereof respectively upon certain trusts for the benefit of the said testator's son D'Arcy and the children or child of his said son D'Arcy, the said testator declared that if there should be no child or issue of
10 his said son D'Arcy who should become entitled to an absolute vested interest in the said trust premises, then and in such case subject and without prejudice to the trusts thereinbefore declared and to any payment which might be made in pursuance thereof the said sum of ten thousand pounds, and the stock, funds, and securities in or upon
15 which the same should or might be laid out or invested, or so much thereof as might not have been effectually appointed under the powers aforesaid, should sink into and form part of his residuary personal estate and be paid and applied accordingly, and by his now reciting will the said testator gave, devised, limited, and appointed unto his
20 wife Sarah Wentworth, his son Fitzwilliam Wentworth, his son-in-law John Reeve, his son-in-law Thomas John Fisher, and his friends, James Milson and James Alexander (therein and hereafter referred to as "trustees"), their heirs and assigns, all the rest, residue, and remainder of his messuages, lands, tenements, and hereditaments and
25 real estates in the colony or territory of New South Wales, including his mansion-house, called "Vaucluse," and the lands within the fences from and after the decease of his said wife and the marriage or death of all his three unmarried daughters, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth, and also including such part of
30 his Vaucluse estate as lies outside the fences thereof, from and after his (the testator's) death (subject to such leases as might be granted thereof), and including all estates the devises whereof therein contained might lapse or determine by any means whatsoever, and generally all and singular other the messuages, lands, tenements, and hereditaments
35 and real estates whatsoever and wheresoever, either in Great Britain, Australia, or elsewhere, or any estate or interest therein (not therein otherwise disposed of, except such hereditaments as were vested in him as a trustee or mortgagee) with their appurtenances, to hold the same unto and to the use of them his trustees their heirs and assigns
40 for ever, subject and without prejudice to a clause thereinbefore contained restricting the sale of his Vaucluse estate upon trust as soon as conveniently might be after his decease to make sale and absolutely dispose thereof, either altogether or in parcels, and either by public auction or private sale, or partly in the one mode and partly in the
45 other, and at such price or prices as his trustees or trustee should think
proper,

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proper, with liberty, if deemed expedient, for such trustees or trustee from time to time to buy in all or any part or parts of the hereditaments which should be offered for sale by public auction, and upon trust to sell and absolutely dispose of the premises so bought in at
5 any future auction or auctions, or by private sale or sales, or partly by one mode and partly by the other, and with all such powers as were thereinbefore given in regard to any original sale or sales, auction or auctions without being liable for any loss or diminution in price in consequence thereof. And the said testator declared that the said
10 trustees or trustee for the time being of his will should stand possessed of the moneys which should arise from the sale or sales thereinbefore directed to be made upon trust in the first place to deduct, retain, or pay all costs and expenses which they, he, or she should have disbursed or incurred in the performance of the aforesaid trusts, or in
15 relation thereto, and to hold, apply, and dispose of the residue or surplus of the said moneys upon the trusts and for the ends, intents, and purposes thereinafter expressed of and concerning the same, and as to and concerning all the residue and remainder of his personal estate, property, and effects whatsoever and wheresoever not thereinbefore
20 disposed of (including leasehold estates and also any personal estate over which he then had a power of appointment) the said testator gave and bequeathed the same and every part thereof unto his said trustees, their executors, administrators, and assigns, upon the trusts following, that was to say:—Upon trust to sell or dispose of, collect, get in, and
25 convert into money so much and such parts of the same residuary personal estate and effects as should not consist of money or securities for money. And the said testator thereby declared that (subject to the provision for accumulation thereinafter contained) the unsold real estate and the outstanding personal estate should be subject to the
30 trusts thereinafter declared concerning the proceeds of his residuary real, and personal estates, and that the rents, interest, and yearly produce thereof should be deemed income for the purposes of such trusts, and such real estate should be transmissible as personal estate and be considered as converted in equity: Provided also, and the said
35 testator thereby further declared and directed that notwithstanding the trusts for sale and conversion, or any of the trusts or powers therein contained, it should be lawful for the said trustees or trustee for the time being to postpone and defer the sale and conversion of any part of his said real or personal estates for such period or periods not
40 exceeding twenty-one years from his death, as to them, her, or him should seem expedient, and that until such sale or conversion and until the money to be produced thereby should be invested in the manner thereby directed. The testator directed that the income arising from the said real or personal estates so from time to time remaining unsold
45 and unconverted should, during such period of twenty-one years, be received

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received by the trustees or trustee and applied (as far as necessary) to the payment of his just debts, funeral and testamentary expenses, and the rent, charges, annuities, yearly sums, and other payments thereinbefore directed to be paid out of his residuary estates, or out of the
5 interests, dividends, and annual proceeds thereof respectively, or so much thereof as the proceeds of any sold or converted residuary estates, or the income thereof should be insufficient to pay, and that subject thereto the surplus (if any) of the said rents, interest, dividends, and annual proceeds of his unsold and unconverted real and personal estates
10 for the time being during the said period of twenty-one years, and all accumulations thereof should go and be applied in augmentation of the principal or capital of his residuary estates, and be paid, applied, and disposed of as part thereof; but notwithstanding the provision last aforesaid, the postponement of every or any such sale or conversion
15 should be in the absolute discretion of his trustees or trustee for the time being. And further, that such part of his personal estate as at his decease might consist of any of the stock funds or securities thereby authorised should for the purposes of his will be considered as duly converted and invested from his decease, and the said testator directed
20 that no such delay in any sale or conversion as aforesaid should operate so as to delay the raising of the three sums of twenty-five thousand pounds each, or any smaller sums in lieu thereof, hereinafter directed to be raised for his unmarried daughters (if otherwise payable), except upon the terms of paying interest at the rate of four pounds
25 per centum per annum on the amount of such sums respectively so remaining unpaid by equal half-yearly payments in every year. And the said testator thereby directed and declared that the trustees or trustee for the time being of his said will should stand possessed as well of the moneys arising from the sale or sales of his said
30 residuary real estates thereinbefore devised to his said trustees, as also the moneys arising from the sale and conversion of his said residuary personal estate and effects thereinbefore bequeathed to them; and also of such part of his estate as should consist of money upon trust by, with, and out of the same moneys respectively,
35 to pay or satisfy or retain all his just debts, funeral and testamentary expenses, and the money legacies therein bequeathed and actually payable, and all expenses incident to the trusts thereby created. And upon further trust to lay out and invest the net residue or surplus of the same moneys in the names or name of his said trustees or trustee
40 for the time being in or upon Government or real securities in England, or upon such Government or public securities or debentures in the Colony of New South Wales, or any other colony of the Australian group, or any of the provinces of New Zealand, or otherwise as his said trustees or trustee should think most expedient, with power for
45 his said trustees or trustee to vary or transpose as well the securities whereon

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whereon such investment should be originally made as the securities which should at his decease compose part of his personal estate from time to time as often as occasion should require, or as should be found expedient; and as to all and singular the said trust moneys and securities or debentures, proceeds, and premises the said testator directed and declared that his said trustees or trustee for the time being should stand possessed thereof upon the trusts following (that was to say): Upon trust when and as his three unmarried daughters, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth should respectively attain the age of thirty years or previously marry to raise or appropriate from and out of the said trust moneys, securities, and premises, three several sums of twenty-five thousand pounds sterling each as and for a portion or fortune for each of them, his same three daughters respectively, as and when they should respectively attain the age of thirty years, or previously marry, but subject to deduction as thereafter mentioned. And the said testator declared and directed that his said trustees or trustee should stand and be possessed of and interested in the said three several portions or sums thereby provided or intended for them his said three unmarried daughters respectively, upon trust to invest or continue the same as thereinbefore mentioned, and with the like discretionary powers as to the nature of the security, and with the like powers to vary and transpose the same as occasion should require, and the said testator directed that his trustees or trustee should stand possessed of one of the three sums of twenty-five thousand pounds, and the investments thereof as and when the same should become raisable by reason of his said daughter Eliza Sophia Wentworth having attained the age of thirty years or having previously married upon trust during the life of his said daughter Eliza Sophia Wentworth to pay the interest, dividends, or annual income thereof as the same should become due, and not by way of anticipation, into her hands for her separate and inalienable use and benefit free from marital control and without power to anticipate or incumber the same, and after the decease of the said Eliza Sophia Wentworth in case she should leave any husband her surviving then during his life upon trust to pay and apply the whole or any part or parts of the said interest, dividends, and annual income as they, she, or he, the said trustees or trustee, should think fit for the maintenance and education of the child or children (if any) of her the said Eliza Sophia Wentworth, and as to the residue or surplus of such interest, dividends, and annual income (if any) if and so long as there should be any such child in existence, and as to the whole of such interest, dividends, and annual income in case there should be no such child living at the decease of his said daughter Eliza Sophia Wentworth or there should be a failure of all such children after her decease upon trust to pay over the same unto the surviving husband (if any) of his same

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same daughter during his life, and after the decease of his same daughter in case she should leave no husband surviving her, or from and after the decease of such surviving husband (if any), as the case might be, upon trust to pay transfer and make over the said last mentioned sum
5 of twenty-five thousand pounds and all future increase thereof unto and amongst the child, if only one, or all the children, if more than one, of his said daughter Eliza Sophia Wentworth, who either before or after the determination of the previous trusts should, being a son or sons, attain the age of twenty-one years, and being a daughter or
10 daughters attain that age or marry, and if more than one equally between them with power for the said trustees after the death of his last named daughter and of her surviving husband (if any) to apply the whole or any part of the annual income of the share of each child while such share should be contingent for his and her maintenance
15 and education, accumulating the unapplied income by investing the same and disposing of the accumulations as part of the same share. And as to one other of the said sums of twenty-five thousand pounds and the investment thereof, as and when the same should become raisable by reason of his said daughter Laura Wentworth having
20 attained the age of thirty years, or having previously married, the said testator directed that his trustees or trustee should stand possessed thereof, upon such trusts and powers in favour of his said daughter Laura Wentworth and her surviving husband (if any) and her child and children as mutatis mutandis should correspond with the trusts
25 and powers thereinbefore declared in favour of his daughter Eliza Sophia Wentworth and her surviving husband (if any) and her child and children, concerning the sum of twenty-five thousand pounds, the trusts whereof are hereinbefore lastly declared, and as to the other or remaining sum of twenty-five thousand pounds and
30 the investment thereof as and when the same should become raisable by reason of his said daughter Edith Wentworth having attained the age of thirty years or previously married the said testator, directed that his said trustees or trustee should stand possessed thereof and of the dividends, interest, and annual income thereof upon such
35 trusts and powers in favour of his said daughter Edith Wentworth and her surviving husband (if any), and her child or children as mutatis mutandis should correspond with the trusts and powers thereinbefore contained in favour of his said daughter Eliza Sophia Wentworth and her surviving husband (if any), and her surviving
40 child or children (if any) concerning the sum of twenty-five thousand pounds, the trusts whereof are hereinbefore declared in her or their favour as aforesaid; and the said testator further declared that on failure of the trusts thereinbefore declared of any one or more of such three several sums of twenty-five thousand pounds such sum or sums
45 the trusts whereof should fail should sink into and form part of his residuary

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residuary estate and be paid and applied accordingly, and that in case any one or more of his said three unmarried daughters should die under the age of thirty years and without having been married as aforesaid, the portion or portions or sum or sums thereinbefore provided for her or them so dying should not be raised or payable but should
5 continue part of his residuary estate; and the said testator by his now reciting will directed his trustees or trustee for the time being with all convenient speed after the decease of his said son Fitzwilliam Wentworth, in case his present wife should survive him and he should not in
10 his lifetime or by his will have made provision for her out of his own property, to the amount of three hundred pounds per annum during the remainder of her life or she should not then become entitled to an income of that amount from or out of his real and personal estate during the remainder of her life to levy and raise from and out of the testator's
15 residuary real and personal estate, or the proceeds or income thereof, such a yearly sum of money as would be sufficient, together with and including the provision (if any) so to be made for her or to which she would become entitled as aforesaid, to yield and produce to her during her life a clear yearly income or provision of three hundred pounds
20 per annum, and from time to time to pay and apply the yearly sum so to be levied or raised from or out of his the said testator's estate unto her the said testator's said daughter-in-law during the remainder of her life for her own separate use and benefit. And as to the net residue or surplus of the moneys which should come to the hands of
25 his said trustees by the sale of his said residuary real estates and by collecting, getting in, and receiving his personal estate and of the securities whereon the same or any part thereof might be invested as thereinbefore directed and which should remain after answering and satisfying the trusts and purposes thereinbefore declared of and concerning the same and raising the said portions or fortunes of his three
30 unmarried daughters as thereinbefore mentioned, the said testator directed and declared that the same ultimate residue or surplus should be divided between such of his then present children, namely, Thomasine Cox, the wife of the said Thomas John Fisher, Fanny
35 Catherine, the wife of the said John Reeve, Fitzwilliam Wentworth, Eliza Sophia Wentworth, Laura Wentworth, Edith Wentworth, and D'Arcy Wentworth, as should be living at the time of his decease, in equal proportions and share and share alike as tenants in common: Nevertheless, the said testator directed that the share of each of them
40 his two married daughters, Thomasine Cox Fisher and Fanny Catherine Reeve, and of his said three unmarried daughters should be invested and held by his said trustees upon such terms in favour of each such daughter
45 of his and her surviving husband (if any) and her child or children as mutatis mutandis should correspond with the trusts thereinbefore declared in favour of his said daughter Eliza Sophia Wentworth and
her

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her surviving husband (if any), and her child or children, concerning the said sum of twenty-five thousand pounds, the trusts whereof were thereinbefore declared, but so nevertheless that such trusts should be read for the purposes of this clause as if the same sum of twenty-five
5 thousand pounds were raisable immediately for his said daughter Eliza Sophia Wentworth, instead of being raisable upon her attaining the age of thirty years, or previously marrying as aforesaid. And the said testator also directed that the share of his said son D'Arcy Wentworth should be invested and held by his trustees upon such
10 trusts in favour of his same son and his child, children, or issue, and otherwise during his life, and after his decease upon trust in favour of his child, children, or issue, as were thereinbefore declared of or concerning the said sum of ten thousand pounds thereinbefore directed to be raised as aforesaid. And the said testator further directed that
15 on failure of the trusts thereinbefore declared by reference of any of the said shares of his said five daughters and of his said son D'Arcy Wentworth, of or in his residuary estates, or such ultimate or net residue or surplus as aforesaid, the share or shares the trusts whereof should fail with all accretions thereto (if any) under the now reciting clause
20 should go and be divided to and amongst the survivors or survivor of them his said five daughters and his said sons, Fitzwilliam Wentworth and D'Arcy Wentworth, living at the time or respective times of the failure or respective failures of the trusts of any such share or shares as aforesaid, so that upon failure of the aforesaid trusts of each share such share
25 should go and accrue to such of them, his said five daughters and his said sons Fitzwilliam Wentworth and D'Arcy Wentworth, as should be living at the time when the trusts of such share should so fail, and the said testator directed that all the trusts and powers thereinbefore declared by reference as aforesaid of the share of any of his daughters
30 in his said residuary estate in favour of such daughter and her child or children should have failed, then the trusts of such share should, for the purposes of the now reciting clause of accruer and of ascertaining the objects thereof, be deemed to have failed at the time when such last-mentioned trusts should have so failed or determined, although
35 there should be a surviving husband of such daughter in existence, but in that case the interest of such surviving husband should not be affected; and the said testator directed that every such surviving or accruing share or shares, or part or parts thereof, which should revert or accrue to any of his said daughters under the provisions or trusts
40 aforesaid, should be held by his trustees or trustee upon the same trusts and subject to the same powers and provisions (including provision for accruer or survivorship) as thereinbefore expressed and declared or referred to concerning the said original parts or shares of such daughters or daughter respectively of or in his said residuary estate
45 and the interest thereof or as near and conformable thereto as might
be

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be and circumstances would then permit or allow of: And the said testator nominated and appointed his said wife Sarah Wentworth, his said son Fitzwilliam Wentworth, his said sons-in-law John Reeve and Thomas John Fisher, and the said James Milson and James Alexander, 5 executrix and executors of that his will: And whereas the said testator duly made a codicil to his said will on the twenty-second day of February, one thousand eight hundred and seventy-two, and thereby revoked the appointment of the said James Alexander as executor and trustee of his said will: And whereas the said testator departed this life on or about the 10 twentieth day of March, one thousand eight hundred and seventy-two, without having altered or revoked his said will, except as appears by the said codicil, and the said will and codicil were duly proved by the said Sarah Wentworth and Fitzwilliam Wentworth in Her Majesty's Court of Probate in England, on the eleventh day of May, one thousand 15 eight hundred and seventy-two, and probate of an exemplified copy of the said will was afterwards on the seventeenth day of October, one thousand eight hundred and seventy-two, granted by the Supreme Court of New South Wales to the said Thomas John Fisher, leave being reserved for the executrix and other executors to come in and 20 prove the same, which the said Fitzwilliam Wentworth on the twenty-fifth day of March, one thousand eight hundred and seventy-three, and the said Sarah Wentworth, on the twenty-eighth day of April then next following afterwards did, with the like reservations for the other executors to come in and prove the said will and codicil: And 25 whereas by a certain deed-poll of date the tenth day of May, one thousand eight hundred and seventy-two, under the hand and seal of the said John Reeve, after reciting that the said John Reeve had not intermeddled with the estate of the said William Charles Wentworth, deceased, nor acted in the trusts or powers of the said will and codicil, 30 he, the said John Reeve, did thereby renounce and disclaim all the real and personal estates respectively devised and bequeathed to him as a trustee or executor of the said will and codicil, and also the said offices of trustee and executor of the said will and codicil respectively: And whereas by a certain deed-poll of date the 35 tenth day of July, one thousand eight hundred and seventy-two, under the hand and seal of the said James Milson, after reciting that the said James Milson had not intermeddled with the said estate of the said William Charles Wentworth, deceased, nor acted in the trusts or powers of the said will and codicil, he, the said 40 James Milson, did renounce and disclaim all the real and personal estate respectively devised and bequeathed to him as a trustee or executor of the said will and codicil, and also the offices of trustee and executor thereof: And whereas the said testator left him surviving his widow, the said Sarah Wentworth, and the following children, 45 namely, the said Fitzwilliam Wentworth, D'Arcy Bland Wentworth,

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Thomasine Cox Fisher, Fanny Catherine Reeve, Eliza Sophia
Wentworth, Laura Wentworth, and Edith Wentworth: And whereas
the said Thomas John Fisher departed this life on or about the sixteenth
day of November, one thousand eight hundred and seventy-five: And
5 whereas the said John Reeve died on the twenty-first November, one
thousand eight hundred and seventy-five: And whereas the said Sarah
Wentworth died on the fourteenth day of July, one thousand eight
hundred and eighty: And whereas the said Edith Wentworth on the
10 seventeenth day of October, one thousand eight hundred and seventy-
two, intermarried with Charles Gordon Cumming Dunbar, and died in
the year one thousand eight hundred and ninety-one, leaving one
daughter, who attained the age of twenty-one years on the twenty-
second day of July, one thousand eight hundred and ninety-four:
And whereas the said Laura Wentworth on the seventeenth day of
15 December, one thousand eight hundred and seventy-two, intermarried
with Henry William Keays Young, and died on the tenth day of
November, one thousand eight hundred and eighty-seven, leaving her
husband the said Henry William Keays Young, but no issue her
surviving: And whereas the said Thomasine Cox Fisher has had
20 four children and no more, three of whom, namely, Alice Fisher,
Robert Fisher, and Donnelly Fisher, survived the said testator
and attained their full age of twenty-one years: And whereas
by an indenture dated the twenty-ninth day of July, one thousand
eight hundred and ninety-three, made between the said Robert
25 Fisher of the one part, and the said Thomasine Cox Fisher of
the other part, the said Robert Fisher assigned and transferred all
his interest under the will of the said testator to the said Thomasine
Cox Fisher absolutely: And whereas by an indenture dated the
nineteenth day of March, one thousand eight hundred and ninety-four,
30 made between the said Donnelly Fisher of the one part, and the said
Thomasine Cox Fisher of the other part, the said Donnelly Fisher
assigned and transferred all his interest under the will of the said testator
to the said Thomasine Cox Fisher absolutely: And whereas the share
of the said Thomasine Cox Fisher is charged by way of mortgage in
35 favour of the said Fitzwilliam Wentworth with the repayment of a
certain sum of principal money and interest: And whereas the said
Alice Fisher died on the twenty-fifth day of March, one thousand eight
hundred and ninety-eight, unmarried and intestate, and leaving her
mother, the said Thomasine Cox Fisher, and her two brothers, the said
40 Robert Fisher and Donnelly Fisher, her only next of kin her surviving,
and letters of administration of the estate and effects of the said Alice
Fisher were on the second day of December, one thousand eight
hundred and ninety-eight, granted by the Supreme Court of New
South Wales in its Probate Jurisdiction to the said Thomasine Cox
45 Fisher, Robert Fisher, and Donnelly Fisher: And whereas the share
of

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of the said Robert Fisher is charged by way of mortgage in favour of the Mutual Life Association of Australasia with the repayment of certain principal money and interest: And whereas the said Eliza Sophia Wentworth died on the twentieth day of December, one thousand eight hundred and ninety-eight: And whereas it is extremely improbable that the said Thomasine Cox Fisher, who is upwards of seventy-three years of age, will marry again: And whereas it would be advantageous to the interests as well of the said Thomasine Cox Fisher as of the said Robert Fisher and Donnelly Fisher, and the said parties are each of them desirous that all and every part or share, parts or shares, and interests whatsoever to which the said Thomasine Cox Fisher is now in anywise entitled in possession, reversion, expectancy, contingency, or otherwise, under or by virtue of the said will and codicil of the said William Charles Wentworth, of or in the residuary personal estate and the proceeds of the sale of the real and leasehold estate of the said testator, and the investments and property now or hereafter representing the same respectively, and of or in all existing or future accumulations thereof, together with all remainders of interests therein after the death of the said Thomasine Cox Fisher should be wholly released from the said contingent right therein to which any husband whom the said Thomasine Cox Fisher may leave her surviving, is entitled as aforesaid, and that the corpus of the same part or share, parts or shares should be held by the trustees or trustee for the time being of the said will and codicil of the said William Charles Wentworth upon the trusts following, that is to say, upon trust as to seven-ninths equal parts or shares thereof, subject to the said mortgage in favour of the said Fitzwilliam Wentworth for the said Thomasine Cox Fisher absolutely, and as to the remaining two-ninths equal parts or shares thereof, upon trust for the said Thomasine Cox Fisher for life, and after her death as to one moiety upon trust for the said Robert Fisher, subject, however, to the said mortgage in favour of the said Mutual Life Association of Australasia, and as to the other moiety upon trust for the said Donnelly Fisher: 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, all and every the part or share, parts or shares and interest whatsoever to which the said Thomasine Cox Fisher is now in anywise entitled in possession, reversion, expectancy, contingency, or otherwise, under or by virtue of the said will and codicil of the said William Charles Wentworth of or in the residuary personal estate and the proceeds of the sale of the real and leasehold estate of the said testator and the investments and property now or hereafter representing the same respectively and of

Trusts declared as to shares and interests of Thomasine Cox Fisher and others under will and codicil of William Charles Wentworth.

or

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or in all existing or future accumulations thereof together with all remainders or interests therein after the death of the said Thomasine Cox Fisher shall be wholly released from the contingent right therein to which any husband whom the said Thomasine Cox Fisher may
5 leave her surviving would but for the passing of this Act be entitled under and by virtue of the said will and codicil of the said William Charles Wentworth, deceased, and the corpus of the same part or share, parts or shares, shall be held by the trustees or trustee for the time
10 being of the said will and codicil of the said William Charles Wentworth upon the trusts following, that is to say, as to seven-ninths thereof, subject to the said mortgage in favour of the said Fitzwilliam Wentworth, upon trust for the said Thomasine Cox Fisher absolutely, and as to the remaining two-ninths thereof upon trust for the said
15 Thomasine Cox Fisher for life, and after her death as to one moiety upon trust for the said Robert Fisher, subject however to the said mortgage in favour of the Mutual Life Association of Australasia and as to the other moiety upon trust for the said Donnelly Fisher.

2. This Act may be cited as the "Fisher Trusts Declaratory Act, Short title. 1899."

Legislative Council.

1899.

A BILL

To declare the trusts of certain property passing under the will of William Charles Wentworth, late of Vacluse, near Sydney, in the Colony of New South Wales, Esquire, deceased, in trust for his daughter Thomasine Cox Fisher, her husband and children.

(As amended and agreed to in Select Committee.)

WHEREAS William Charles Wentworth, late of Vacluse, near Sydney, in the Colony of New South Wales, but at the date of his will hereinafter mentioned, residing in England, on the nineteenth day of October, one thousand eight hundred and seventy, made and executed his last will and testament by which after giving directions for payment of his just debts, funeral, and testamentary expenses, and after making certain specific devises and bequests, and in particular after directing his said trustees with all convenient speed after his decease to raise from and out of his residuary estates or the proceeds thereof

c 36—A

Preamble.

NOTE.—The words to be omitted are ruled through ; those to be inserted are printed in black letter.

thereof the sum of ten thousand pounds sterling together with interest for the same half-yearly after the rate of six pounds per centum per annum from the date of his death until the actual payment thereof, and to invest the said sum of ten thousand pounds as therein mentioned and to stand possessed of the said sum of ten thousand pounds and the securities for the same and the dividends, interest, and yearly income thereof respectively upon certain trusts for the benefit of the said testator's son D'Arcy and the children or child of his said son D'Arcy, the said testator declared that if there should be no child or issue of his said son D'Arcy who should become entitled to an absolute vested interest in the said trust premises, then and in such case subject and without prejudice to the trusts thereinbefore declared and to any payment which might be made in pursuance thereof the said sum of ten thousand pounds, and the stock, funds, and securities in or upon which the same should or might be laid out or invested, or so much thereof as might not have been effectually appointed under the powers aforesaid, should sink into and form part of his residuary personal estate and be paid and applied accordingly, and by his now reciting will the said testator gave, devised, limited, and appointed unto his wife Sarah Wentworth, his son Fitzwilliam Wentworth, his son-in-law John Reeve, his son-in-law Thomas John Fisher, and his friends, James Milson and James Alexander (therein and hereafter referred to as "trustees"), their heirs and assigns, all the rest, residue, and remainder of his messuages, lands, tenements, and hereditaments and real estates in the colony or territory of New South Wales, including his mansion-house, called "Vaucluse," and the lands within the fences from and after the decease of his said wife and the marriage or death of all his three unmarried daughters, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth, and also including such part of his Vaucluse estate as lies outside the fences thereof, from and after his (the testator's) death (subject to such leases as might be granted thereof), and including all estates the devises whereof therein contained might lapse or determine by any means whatsoever, and generally all and singular other the messuages, lands, tenements, and hereditaments and real estates whatsoever and wheresoever, either in Great Britain, Australia, or elsewhere, or any estate or interest therein (not therein otherwise disposed of, except such hereditaments as were vested in him as a trustee or mortgagee) with their appurtenances, to hold the same unto and to the use of them his trustees their heirs and assigns for ever, subject and without prejudice to a clause thereinbefore contained restricting the sale of his Vaucluse estate upon trust as soon as conveniently might be after his decease to make sale and absolutely dispose thereof, either altogether or in parcels, and either by public auction or private sale, or partly in the one mode and partly in the other, and at such price or prices as his trustees or trustee should think proper,

proper, with liberty, if deemed expedient, for such trustees or trustee from time to time to buy in all or any part or parts of the hereditaments which should be offered for sale by public auction, and upon trust to sell and absolutely dispose of the premises so bought in at
5 any future auction or auctions, or by private sale or sales, or partly by one mode and partly by the other, and with all such powers as were thereinbefore given in regard to any original sale or sales, auction or auctions without being liable for any loss or diminution in price in consequence thereof. And the said testator declared that the said
10 trustees or trustee for the time being of his will should stand possessed of the moneys which should arise from the sale or sales thereinbefore directed to be made upon trust in the first place to deduct, retain, or pay all costs and expenses which they, he, or she should have disbursed or incurred in the performance of the aforesaid trusts, or in
15 relation thereto, and to hold, apply, and dispose of the residue or surplus of the said moneys upon the trusts and for the ends, intents, and purposes thereafter expressed of and concerning the same, and as to and concerning all the residue and remainder of his personal estate, property, and effects whatsoever and wheresoever not thereinbefore
20 disposed of (including leasehold estates and also any personal estate over which he then had a power of appointment) the said testator gave and bequeathed the same and every part thereof unto his said trustees, their executors, administrators, and assigns, upon the trusts following, that was to say:—Upon trust to sell or dispose of, collect, get in, and
25 convert into money so much and such parts of the same residuary personal estate and effects as should not consist of money or securities for money. And the said testator thereby declared that (subject to the provision for accumulation thereafter contained) the unsold real estate and the outstanding personal estate should be subject to the
30 trusts thereafter declared concerning the proceeds of his residuary real, and personal estates, and that the rents, interest, and yearly produce thereof should be deemed income for the purposes of such trusts, and such real estate should be transmissible as personal estate and be considered as converted in equity: Provided also, and the said
35 testator thereby further declared and directed that notwithstanding the trusts for sale and conversion, or any of the trusts or powers therein contained, it should be lawful for the said trustees or trustee for the time being to postpone and defer the sale and conversion of any part of his said real or personal estates for such period or periods not
40 exceeding twenty-one years from his death, as to them, her, or him should seem expedient, and that until such sale or conversion and until the money to be produced thereby should be invested in the manner thereby directed. The testator directed that the income arising from the said real or personal estates so from time to time remaining unsold
45 and unconverted should, during such period of twenty-one years, be received

received by the trustees or trustee and applied (as far as necessary) to the payment of his just debts, funeral and testamentary expenses, and the rent, charges, annuities, yearly sums, and other payments thereinbefore directed to be paid out of his residuary estates, or out of the interests, dividends, and annual proceeds thereof respectively, or so 5 much thereof as the proceeds of any sold or converted residuary estates, or the income thereof should be insufficient to pay, and that subject thereto the surplus (if any) of the said rents, interest, dividends, and annual proceeds of his unsold and unconverted real and personal estates for the time being during the said period of twenty-one years, and all 10 accumulations thereof should go and be applied in augmentation of the principal or capital of his residuary estates, and be paid, applied, and disposed of as part thereof; but notwithstanding the provision last aforesaid, the postponement of every or any such sale or conversion should be in the absolute discretion of his trustees or trustee for the 15 time being. And further, that such part of his personal estate as at his decease might consist of any of the stock funds or securities thereby authorised should for the purposes of his will be considered as duly converted and invested from his decease, and the said testator directed that no such delay in any sale or conversion as aforesaid should operate 20 so as to delay the raising of the three sums of twenty-five thousand pounds each, or any smaller sums in lieu thereof, thereafter directed to be raised for his unmarried daughters (if otherwise payable), except upon the terms of paying interest at the rate of four pounds per centum per annum on the amount of such sums respectively so 25 remaining unpaid by equal half-yearly payments in every year. And the said testator thereby directed and declared that the trustees or trustee for the time being of his said will should stand possessed as well of the moneys arising from the sale or sales of his said residuary real estates thereinbefore devised to his said trustees, as 30 also the moneys arising from the sale and conversion of his said residuary personal estate and effects thereinbefore bequeathed to them; and also of such part of his estate as should consist of money upon trust by, with, and out of the same moneys respectively, to pay or satisfy or retain all his just debts, funeral and testamentary 35 expenses, and the money legacies therein bequeathed and actually payable, and all expenses incident to the trusts thereby created. And upon further trust to lay out and invest the net residue or surplus of the same moneys in the names or name of his said trustees or trustee for the time being in or upon Government or real securities in England, 40 or upon such Government or public securities or debentures in the Colony of New South Wales, or any other colony of the Australian group, or any of the provinces of New Zealand, or otherwise as his said trustees or trustee should think most expedient, with power for his said trustees or trustee to vary or transpose as well the securities 45 whereon

whereon such investment should be originally made as the securities which should at his decease compose part of his personal estate from time to time as often as occasion should require, or as should be found expedient; and as to all and singular the said trust moneys and
5 securities or debentures, proceeds, and premises the said testator directed and declared that his said trustees or trustee for the time being should stand possessed thereof upon the trusts following (that was to say): Upon trust when and as his three unmarried daughters, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth
10 should respectively attain the age of thirty years or previously marry to raise or appropriate from and out of the said trust moneys, securities, and premises, three several sums of twenty-five thousand pounds sterling each as and for a portion or fortune for each of them, his same three daughters respectively, as and when they should respectively
15 attain the age of thirty years, or previously marry, but subject to deduction as hereinafter mentioned. And the said testator declared and directed that his said trustees or trustee should stand and be possessed of and interested in the said three several portions or sums thereby provided or intended for them his said three unmarried
20 daughters respectively, upon trust to invest or continue the same as thereinbefore mentioned, and with the like discretionary powers as to the nature of the security, and with the like powers to vary and transpose the same as occasion should require, and the said testator directed that his trustees or trustee should stand possessed of one of
25 the three sums of twenty-five thousand pounds, and the investments thereof as and when the same should become raisable by reason of his said daughter Eliza Sophia Wentworth having attained the age of thirty years or having previously married upon trust during the life of his said daughter Eliza Sophia Wentworth to pay the interest,
30 dividends, or annual income thereof as the same should become due, and not by way of anticipation, into her hands for her separate and inalienable use and benefit free from marital control and without power to anticipate or incumber the same, and after the decease of the said Eliza Sophia Wentworth in case she should leave any husband her
35 surviving then during his life upon trust to pay and apply the whole or any part or parts of the said interest, dividends, and annual income as they, she, or he, the said trustees or trustee, should think fit for the maintenance and education of the child or children (if any) of her the said Eliza Sophia Wentworth, and as to the residue or surplus of
40 such interest, dividends, and annual income (if any) if and so long as there should be any such child in existence, and as to the whole of such interest, dividends, and annual income in case there should be no such child living at the decease of his said daughter Eliza Sophia Wentworth or there should be a failure of all such children after her decease upon
45 trust to pay over the same unto the surviving husband (if any) of his
same

same daughter during his life, and after the decease of his same daughter in case she should leave no husband surviving her, or from and after the decease of such surviving husband (if any), as the case might be, upon trust to pay transfer and make over the said last mentioned sum of twenty-five thousand pounds and all future increase thereof unto 5 and amongst the child, if only one, or all the children, if more than one, of his said daughter Eliza Sophia Wentworth, who either before or after the determination of the previous trusts should, being a son or sons, attain the age of twenty-one years, and being a daughter or daughters attain that age or marry, and if more than one equally 10 between them with power for the said trustees after the death of his last named daughter and of her surviving husband (if any) to apply the whole or any part of the annual income of the share of each child while such share should be contingent for his and her maintenance and education, accumulating the unapplied income by investing the 15 same and disposing of the accumulations as part of the same share. And as to one other of the said sums of twenty-five thousand pounds and the investment thereof, as and when the same should become raisable by reason of his said daughter Laura Wentworth having attained the age of thirty years, or having previously married, the said 20 testator directed that his trustees or trustee should stand possessed thereof, upon such trusts and powers in favour of his said daughter Laura Wentworth and her surviving husband (if any) and her child and children as mutatis mutandis should correspond with the trusts and powers thereinbefore declared in favour of his daughter Eliza 25 Sophia Wentworth and her surviving husband (if any) and her child and children, concerning the sum of twenty-five thousand pounds, the trusts whereof are hereinbefore lastly declared, and as to the other or remaining sum of twenty-five thousand pounds and the investment thereof as and when the same should become raisable 30 by reason of his said daughter Edith Wentworth having attained the age of thirty years or previously married the said testator, directed that his said trustees or trustee should stand possessed thereof and of the dividends, interest, and annual income thereof upon such trusts and powers in favour of his said daughter Edith Wentworth 35 and her surviving husband (if any), and her child or children as mutatis mutandis should correspond with the trusts and powers thereinbefore contained in favour of his said daughter Eliza Sophia Wentworth and her surviving husband (if any), and her surviving child or children (if any) concerning the sum of twenty-five thousand 40 pounds, the trusts whereof are hereinbefore declared in her or their favour as aforesaid; and the said testator further declared that on failure of the trusts thereinbefore declared of any one or more of such three several sums of twenty-five thousand pounds such sum or sums the trusts whereof should fail should sink into and form part of his 45 residuary

residuary estate and be paid and applied accordingly, and that in case any one or more of his said three unmarried daughters should die under the age of thirty years and without having been married as aforesaid, the portion or portions or sum or sums thereinbefore provided for
5 her or them so dying should not be raised or payable but should continue part of his residuary estate; and the said testator by his now reciting will directed his trustees or trustee for the time being with all convenient speed after the decease of his said son Fitzwilliam Wentworth, in case his present wife should survive him and he should not in
10 his lifetime or by his will have made provision for her out of his own property, to the amount of three hundred pounds per annum during the remainder of her life or she should not then become entitled to an income of that amount from or out of his real and personal estate during the remainder of her life to levy and raise from and out of the testator's
15 residuary real and personal estate, or the proceeds or income thereof, such a yearly sum of money as would be sufficient, together with and including the provision (if any) so to be made for her or to which she would become entitled as aforesaid, to yield and produce to her during her life a clear yearly income or provision of three hundred pounds
20 per annum, and from time to time to pay and apply the yearly sum so to be levied or raised from or out of his the said testator's estate unto her the said testator's said daughter-in-law during the remainder of her life for her own separate use and benefit. And as to the net residue or surplus of the moneys which should come to the hands of
25 his said trustees by the sale of his said residuary real estates and by collecting, getting in, and receiving his personal estate and of the securities whereon the same or any part thereof might be invested as thereinbefore directed and which should remain after answering and satisfying the trusts and purposes thereinbefore declared of and concerning the same and raising the said portions or fortunes of his three
30 unmarried daughters as thereinbefore mentioned, the said testator directed and declared that the same ultimate residue or surplus should be divided between such of his then present children, namely, Thomasine Cox, the wife of the said Thomas John Fisher, Fanny Catherine, the wife of the said John Reeve, Fitzwilliam Wentworth,
35 Eliza Sophia Wentworth, Laura Wentworth, Edith Wentworth, and D'Arcy Wentworth, as should be living at the time of his decease, in equal proportions and share and share alike as tenants in common: Nevertheless, the said testator directed that the share of each of them
40 his two married daughters, Thomasine Cox Fisher and Fanny Catherine Reeve, and of his said three unmarried daughters should be invested and held by his said trustees upon such terms in favour of each such daughter of his and her surviving husband (if any) and her child or children as mutatis mutandis should correspond with the trusts thereinbefore
45 declared in favour of his said daughter Eliza Sophia Wentworth and
her

her surviving husband (if any), and her child or children, concerning the said sum of twenty-five thousand pounds, the trusts whereof were thereinbefore declared, but so nevertheless that such trusts should be read for the purposes of this clause as if the same sum of twenty-five thousand pounds were raisable immediately for his said daughter 5 Eliza Sophia Wentworth, instead of being raisable upon her attaining the age of thirty years, or previously marrying as aforesaid. And the said testator also directed that the share of his said son D'Arcy Wentworth should be invested and held by his trustees upon such trusts in favour of his same son and his child, children, or issue, and 10 otherwise during his life, and after his decease upon trust in favour of his child, children, or issue, as were thereinbefore declared of or concerning the said sum of ten thousand pounds thereinbefore directed to be raised as aforesaid. And the said testator further directed that on failure of the trusts thereinbefore declared by reference of any of 15 the said shares of his said five daughters and of his said son D'Arcy Wentworth, of or in his residuary estates, or such ultimate or net residue or surplus as aforesaid, the share or shares the trusts whereof should fail with all accretions thereto (if any) under the now reciting clause should go and be divided to and amongst the survivors or survivor of them 20 his said five daughters and his said sons, Fitzwilliam Wentworth and D'Arcy Wentworth, living at the time or respective times of the failure or respective failures of the trusts of any such share or shares as aforesaid, so that upon failure of the aforesaid trusts of each share such share should go and accrue to such of them, his said five daughters and his 25 said sons Fitzwilliam Wentworth and D'Arcy Wentworth, as should be living at the time when the trusts of such share should so fail, and the said testator directed that all the trusts and powers thereinbefore declared by reference as aforesaid of the share of any of his daughters in his said residuary estate in favour of such daughter and her child or 30 children should have failed, then the trusts of such share should, for the purposes of the now reciting clause of accruer and of ascertaining the objects thereof, be deemed to have failed at the time when such last-mentioned trusts should have so failed or determined, although there should be a surviving husband of such daughter in existence, 35 but in that case the interest of such surviving husband should not be affected; and the said testator directed that every such surviving or accruing share or shares, or part or parts thereof, which should revert or accrue to any of his said daughters under the provisions or trusts aforesaid, should be held by his trustees or trustee upon the same 40 trusts and subject to the same powers and provisions (including provision for accruer or survivorship) as thereinbefore expressed and declared or referred to concerning the said original parts or shares of such daughters or daughter respectively of or in his said residuary estate and the interest thereof or as near and conformable thereto as might 45 be

be and circumstances would then permit or allow of: And the said testator nominated and appointed his said wife Sarah Wentworth, his said son Fitzwilliam Wentworth, his said sons-in-law John Reeve and Thomas John Fisher, and the said James Milson and James Alexander, 5 executrix and executors of that his will: And whereas the said testator duly made a codicil to his said will on the twenty-second day of February, one thousand eight hundred and seventy-two, and thereby revoked the appointment of the said James Alexander as executor and trustee of his said will: And whereas the said testator departed this life on or about the 10 twentieth day of March, one thousand eight hundred and seventy-two, without having altered or revoked his said will, except as appears by the said codicil, and the said will and codicil were duly proved by the said Sarah Wentworth and Fitzwilliam Wentworth in Her Majesty's Court of Probate in England, on the eleventh day of May, one thousand 15 eight hundred and seventy-two, and probate of an exemplified copy of the said will was afterwards on the seventeenth day of October, one thousand eight hundred and seventy-two, granted by the Supreme Court of New South Wales to the said Thomas John Fisher, leave being reserved for the executrix and other executors to come in and 20 prove the same, which the said Fitzwilliam Wentworth on the twenty-fifth day of March, one thousand eight hundred and seventy-three, and the said Sarah Wentworth, on the twenty-eighth day of April then next following afterwards did, with the like reservations for the other executors to come in and prove the said will and codicil: And 25 whereas by a certain deed-poll of date the tenth day of May, one thousand eight hundred and seventy-two, under the hand and seal of the said John Reeve, after reciting that the said John Reeve had not intermeddled with the estate of the said William Charles Wentworth, deceased, nor acted in the trusts or powers of the said will and codicil, 30 he, the said John Reeve, did thereby renounce and disclaim all the real and personal estates respectively devised and bequeathed to him as a trustee or executor of the said will and codicil, and also the said offices of trustee and executor of the said will and codicil respectively: And whereas by a certain deed-poll of date the 35 tenth day of ~~May~~, July, one thousand eight hundred and seventy-two, under the hand and seal of the said James Milson, after reciting that the said James Milson had not intermeddled with the said estate of the said William Charles Wentworth, deceased, nor acted in the trusts or powers of the said will and codicil, he, the said 40 James Milson, did renounce and disclaim all the real and personal estate respectively devised and bequeathed to him as a trustee or executor of the said will and codicil, and also the offices of trustee and executor thereof: And whereas the said testator left him surviving his widow, the said Sarah Wentworth, and the following children, 45 namely, the said Fitzwilliam Wentworth, D'Arcy Bland Wentworth,
c 36—B Thomasine

Thomasine Cox Fisher, Fanny Catherine Reeve, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth: And whereas the said Thomas John Fisher departed this life on or about the sixteenth day of November, one thousand eight hundred and seventy-five: And whereas the said John Reeve died on the twenty-first November, one thousand eight hundred and seventy-five: And whereas the said Sarah Wentworth died on the ~~fourth~~ fourteenth day of July, one thousand eight hundred and eighty: And whereas the said Edith Wentworth on the seventeenth day of October, one thousand eight hundred and seventy-two, intermarried with Charles Gordon Cumming Dunbar, and died in the year one thousand eight hundred and ninety-one, leaving one daughter, who attained the age of twenty-one years on the ~~seventeenth~~ **twenty-second** day of July, one thousand eight hundred and ninety-four: And whereas the said Laura Wentworth on the seventeenth day of December, one thousand eight hundred and seventy-two, intermarried with Henry William Keays Young, and died on the tenth day of November, one thousand eight hundred and eighty-seven, leaving her husband the said Henry William Keays Young, but no issue her surviving: And whereas the said Thomasine Cox Fisher has had four children and no more, three of whom, namely, Alice Fisher, Robert Fisher, and Donnelly Fisher, survived the said testator and attained their full age of twenty-one years: And whereas by an indenture dated the twenty-ninth day of July, one thousand eight hundred and ninety-three, made between the said Robert Fisher of the one part, and the said Thomasine Cox Fisher of the other part, the said Robert Fisher assigned and transferred all his interest under the will of the said testator to the said Thomasine Cox Fisher absolutely: And whereas by an indenture dated the nineteenth day of March, one thousand eight hundred and ninety-four, made between the said Donnelly Fisher of the one part, and the said Thomasine Cox Fisher of the other part, the said Donnelly Fisher assigned and transferred all his interest under the will of the said testator to the said Thomasine Cox Fisher absolutely: And whereas the share of the said Thomasine Cox Fisher is charged by way of mortgage in favour of the said Fitzwilliam Wentworth with the repayment of a certain sum of principal money and interest: And whereas the said Alice Fisher died on the twenty-fifth day of March, one thousand eight hundred and ninety-eight, unmarried and intestate, and leaving her mother, the said Thomasine Cox Fisher, and her two brothers, the said Robert Fisher and Donnelly Fisher, her only next of kin her surviving, and letters of administration of the estate and effects of the said Alice Fisher were on the second day of December, one thousand eight hundred and ninety-eight, granted by the Supreme Court of New South Wales in its Probate Jurisdiction to the said Thomasine Cox Fisher, Robert Fisher, and Donnelly Fisher: And whereas the share of

of the said Robert Fisher is charged by way of mortgage in favour of the Mutual Life Association of Australasia with the repayment of certain principal money and interest: And whereas the said Eliza Sophia Wentworth died on the twentieth day of December, one
5 thousand eight hundred and ninety-eight: And whereas it is extremely improbable that the said Thomasine Cox Fisher, who is upwards of seventy-~~four~~ three years of age, will marry again: And whereas it would be advantageous to the interests as well of the said Thomasine Cox Fisher as of the said Robert Fisher and Donnelly Fisher, and the
10 said parties are each of them desirous that all and every part or share, parts or shares, and interests whatsoever to which the said Thomasine Cox Fisher is now in anywise entitled in possession, reversion, expectancy, contingency, or otherwise, under or by virtue of the said will and codicil of the said William Charles Went-
15 worth, of or in the residuary personal estate and the proceeds of the sale of the real and leasehold estate of the said testator, and the investments and property now or hereafter representing the same respectively, and of or in all existing or future accumulations thereof, together with all remainders of interests therein after the death of the said Thomasine
20 Cox Fisher should be wholly released from the said contingent right therein to which any husband whom the said Thomasine Cox Fisher may leave her surviving, is entitled as aforesaid, and that the corpus of the same part or share, parts or shares should be held by the trustees or trustee for the time being of the said will and codicil of the said
25 William Charles Wentworth upon the trusts following, that is to say, upon trust as to seven-ninths equal parts or shares thereof, subject to the said mortgage in favour of the said Fitzwilliam Wentworth for the said Thomasine Cox Fisher absolutely, and as to the remaining two-ninths equal parts or shares thereof, upon trust for the said Thomasine
30 Cox Fisher for life, and after her death as to one moiety upon trust for the said Robert Fisher, subject, however, to the said mortgage in favour of the said Mutual Life Association of Australasia, and as to the other moiety upon trust for the said Donnelly Fisher: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the
35 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, all and every the part or share, parts or shares and interest whatsoever to which the said
40 Thomasine Cox Fisher is now in anywise entitled in possession, reversion, expectancy, contingency, or otherwise, under or by virtue of the said will and codicil of the said William Charles Wentworth of or in the residuary personal estate and the proceeds of the sale of the real and leasehold estate of the said testator and the investments and
45 property now or hereafter representing the same respectively and of

Trusts declared as to shares and interests of Thomasine Cox Fisher and others under will and codicil of William Charles Wentworth.

or

or in all existing or future accumulations thereof together with all remainders or interests therein after the death of the said Thomasine Cox Fisher shall be wholly released from the contingent right therein to which any husband whom the said Thomasine Cox Fisher may leave her surviving would but for the passing of this Act be entitled 5 under and by virtue of the said will and codicil of the said William Charles Wentworth, deceased, and the corpus of the same part or share, parts or shares, shall be held by the trustees or trustee for the time being of the said will and codicil of the said William Charles Wentworth upon the trusts following, that is to say, as to seven-ninths 10 thereof, subject to the said mortgage in favour of the said Fitzwilliam Wentworth, upon trust for the said Thomasine Cox Fisher absolutely, and as to the remaining two-ninths thereof upon trust for the said Thomasine Cox Fisher for life, and after her death as to one moiety upon trust for the said Robert Fisher, subject however to the said 15 mortgage in favour of the Mutual Life Association of Australasia and as to the other moiety upon trust for the said Donnelly Fisher.

Short title.

2. This Act may be cited as the "Fisher Trusts Declaratory Act, 1899."

[9d.]

Legislative Council.

No. , 1899.

A BILL

To declare the trusts of certain property passing under the will of William Charles Wentworth, late of Vacluse, near Sydney, in the Colony of New South Wales, Esquire, deceased, in trust for his daughter Thomasine Cox Fisher, her husband and children.

WHEREAS William Charles Wentworth, late of Vacluse, near Preamble.
Sydney, in the Colony of New South Wales, but at the date of his will hereinafter mentioned, residing in England, on the nineteenth day of October, one thousand eight hundred and seventy, made and
5 executed his last will and testament by which after giving directions for payment of his just debts, funeral, and testamentary expenses, and after making certain specific devises and bequests, and in particular after directing his said trustees with all convenient speed after his decease to raise from and out of his residuary estates or the proceeds thereof

c 36—A

thereof the sum of ten thousand pounds sterling together with interest for the same half-yearly after the rate of six pounds per centum per annum from the date of his death until the actual payment thereof, and to invest the said sum of ten thousand pounds as therein mentioned and to stand possessed of the said sum of ten thousand pounds and the securities for the same and the dividends, interest, and yearly income thereof respectively upon certain trusts for the benefit of the said testator's son D'Arcy and the children or child of his said son D'Arcy, the said testator declared that if there should be no child or issue of his said son D'Arcy who should become entitled to an absolute vested interest in the said trust premises, then and in such case subject and without prejudice to the trusts thereinbefore declared and to any payment which might be made in pursuance thereof the said sum of ten thousand pounds, and the stock, funds, and securities in or upon which the same should or might be laid out or invested, or so much thereof as might not have been effectually appointed under the powers aforesaid, should sink into and form part of his residuary personal estate and be paid and applied accordingly, and by his now reciting will the said testator gave, devised, limited, and appointed unto his wife Sarah Wentworth, his son Fitzwilliam Wentworth, his son-in-law John Reeve, his son-in-law Thomas John Fisher, and his friends, James Milson and James Alexander (therein and hereafter referred to as "trustees"), their heirs and assigns, all the rest, residue, and remainder of his messuages, lands, tenements, and hereditaments and real estates in the colony or territory of New South Wales, including his mansion-house, called "Vaucluse," and the lands within the fences from and after the decease of his said wife and the marriage or death of all his three unmarried daughters, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth, and also including such part of his Vaucluse estate as lies outside the fences thereof, from and after his (the testator's) death (subject to such leases as might be granted thereof), and including all estates the devises whereof therein contained might lapse or determine by any means whatsoever, and generally all and singular other the messuages, lands, tenements, and hereditaments and real estates whatsoever and wheresoever, either in Great Britain, Australia, or elsewhere, or any estate or interest therein (not therein otherwise disposed of, except such hereditaments as were vested in him as a trustee or mortgagee) with their appurtenances, to hold the same unto and to the use of them his trustees their heirs and assigns for ever, subject and without prejudice to a clause thereinbefore contained restricting the sale of his Vaucluse estate upon trust as soon as conveniently might be after his decease to make sale and absolutely dispose thereof, either altogether or in parcels, and either by public auction or private sale, or partly in the one mode and partly in the other, and at such price or prices as his trustees or trustee should think proper,

proper, with liberty, if deemed expedient, for such trustees or trustee from time to time to buy in all or any part or parts of the hereditaments which should be offered for sale by public auction, and upon trust to sell and absolutely dispose of the premises so bought in at
5 any future auction or auctions, or by private sale or sales, or partly by one mode and partly by the other, and with all such powers as were thereinbefore given in regard to any original sale or sales, auction or auctions without being liable for any loss or diminution in price in consequence thereof. And the said testator declared that the said
10 trustees or trustee for the time being of his will should stand possessed of the moneys which should arise from the sale or sales thereinbefore directed to be made upon trust in the first place to deduct, retain, or pay all costs and expenses which they, he, or she should have disbursed or incurred in the performance of the aforesaid trusts, or in
15 relation thereto, and to hold, apply, and dispose of the residue or surplus of the said moneys upon the trusts and for the ends, intents, and purposes thereafter expressed of and concerning the same, and as to and concerning all the residue and remainder of his personal estate, property, and effects whatsoever and wheresoever not thereinbefore
20 disposed of (including leasehold estates and also any personal estate over which he then had a power of appointment) the said testator gave and bequeathed the same and every part thereof unto his said trustees, their executors, administrators, and assigns, upon the trusts following, that was to say:—Upon trust to sell or dispose of, collect, get in, and
25 convert into money so much and such parts of the same residuary personal estate and effects as should not consist of money or securities for money. And the said testator thereby declared that (subject to the provision for accumulation thereafter contained) the unsold real estate and the outstanding personal estate should be subject to the
30 trusts thereafter declared concerning the proceeds of his residuary real, and personal estates, and that the rents, interest, and yearly produce thereof should be deemed income for the purposes of such trusts, and such real estate should be transmissible as personal estate and be considered as converted in equity: Provided also, and the said
35 testator thereby further declared and directed that notwithstanding the trusts for sale and conversion, or any of the trusts or powers therein contained, it should be lawful for the said trustees or trustee for the time being to postpone and defer the sale and conversion of any part of his said real or personal estates for such period or periods not
40 exceeding twenty-one years from his death, as to them, her, or him should seem expedient, and that until such sale or conversion and until the money to be produced thereby should be invested in the manner thereby directed. The testator directed that the income arising from the said real or personal estates so from time to time remaining unsold
45 and unconverted should, during such period of twenty-one years, be received

received by the trustees or trustee and applied (as far as necessary) to the payment of his just debts, funeral and testamentary expenses, and the rent, charges, annuities, yearly sums, and other payments thereinbefore directed to be paid out of his residuary estates, or out of the interests, dividends, and annual proceeds thereof respectively, or so much thereof as the proceeds of any sold or converted residuary estates, or the income thereof should be insufficient to pay, and that subject thereto the surplus (if any) of the said rents, interest, dividends, and annual proceeds of his unsold and unconverted real and personal estates for the time being during the said period of twenty-one years, and all accumulations thereof should go and be applied in augmentation of the principal or capital of his residuary estates, and be paid, applied, and disposed of as part thereof; but notwithstanding the provision last aforesaid, the postponement of every or any such sale or conversion should be in the absolute discretion of his trustees or trustee for the time being. And further, that such part of his personal estate as at his decease might consist of any of the stock funds or securities thereby authorised should for the purposes of his will be considered as duly converted and invested from his decease, and the said testator directed that no such delay in any sale or conversion as aforesaid should operate so as to delay the raising of the three sums of twenty-five thousand pounds each, or any smaller sums in lieu thereof, thereafter directed to be raised for his unmarried daughters (if otherwise payable), except upon the terms of paying interest at the rate of four pounds per centum per annum on the amount of such sums respectively so remaining unpaid by equal half-yearly payments in every year. And the said testator thereby directed and declared that the trustees or trustee for the time being of his said will should stand possessed as well of the moneys arising from the sale or sales of his said residuary real estates thereinbefore devised to his said trustees, as also the moneys arising from the sale and conversion of his said residuary personal estate and effects thereinbefore bequeathed to them; and also of such part of his estate as should consist of money upon trust by, with, and out of the same moneys respectively, to pay or satisfy or retain all his just debts, funeral and testamentary expenses, and the money legacies therein bequeathed and actually payable, and all expenses incident to the trusts thereby created. And upon further trust to lay out and invest the net residue or surplus of the same moneys in the names or name of his said trustees or trustee for the time being in or upon Government or real securities in England, or upon such Government or public securities or debentures in the Colony of New South Wales, or any other colony of the Australian group, or any of the provinces of New Zealand, or otherwise as his said trustees or trustee should think most expedient, with power for his said trustees or trustee to vary or transpose as well the securities whereon

whereon such investment should be originally made as the securities which should at his decease compose part of his personal estate from time to time as often as occasion should require, or as should be found expedient; and as to all and singular the said trust moneys and securities or debentures, proceeds, and premises the said testator
5 directed and declared that his said trustees or trustee for the time being should stand possessed thereof upon the trusts following (that was to say): Upon trust when and as his three unmarried daughters, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth
10 should respectively attain the age of thirty years or previously marry to raise or appropriate from and out of the said trust moneys, securities, and premises, three several sums of twenty-five thousand pounds sterling each as and for a portion or fortune for each of them, his same three daughters respectively, as and when they should respectively
15 attain the age of thirty years, or previously marry, but subject to deduction as thereafter mentioned. And the said testator declared and directed that his said trustees or trustee should stand and be possessed of and interested in the said three several portions or sums thereby provided or intended for them his said three unmarried
20 daughters respectively, upon trust to invest or continue the same as thereinbefore mentioned, and with the like discretionary powers as to the nature of the security, and with the like powers to vary and transpose the same as occasion should require, and the said testator directed that his trustees or trustee should stand possessed of one of
25 the three sums of twenty-five thousand pounds, and the investments thereof as and when the same should become raisable by reason of his said daughter Eliza Sophia Wentworth having attained the age of thirty years or having previously married upon trust during the life of his said daughter Eliza Sophia Wentworth to pay the interest,
30 dividends, or annual income thereof as the same should become due, and not by way of anticipation, into her hands for her separate and inalienable use and benefit free from marital control and without power to anticipate or incumber the same, and after the decease of the said Eliza Sophia Wentworth in case she should leave any husband her
35 surviving then during his life upon trust to pay and apply the whole or any part or parts of the said interest, dividends, and annual income as they, she, or he, the said trustees or trustee, should think fit for the maintenance and education of the child or children (if any) of her the said Eliza Sophia Wentworth, and as to the residue or surplus of
40 such interest, dividends, and annual income (if any) if and so long as there should be any such child in existence, and as to the whole of such interest, dividends, and annual income in case there should be no such child living at the decease of his said daughter Eliza Sophia Wentworth or there should be a failure of all such children after her decease upon
45 trust to pay over the same unto the surviving husband (if any) of his
same

same daughter during his life, and after the decease of his same daughter in case she should leave no husband surviving her, or from and after the decease of such surviving husband (if any), as the case might be, upon trust to pay transfer and make over the said last mentioned sum of twenty-five thousand pounds and all future increase thereof unto 5 and amongst the child, if only one, or all the children, if more than one, of his said daughter Eliza Sophia Wentworth, who either before or after the determination of the previous trusts should, being a son or sons, attain the age of twenty-one years, and being a daughter or daughters attain that age or marry, and if more than one equally 10 between them with power for the said trustees after the death of his last named daughter and of her surviving husband (if any) to apply the whole or any part of the annual income of the share of each child while such share should be contingent for his and her maintenance and education, accumulating the unapplied income by investing the 15 same and disposing of the accumulations as part of the same share. And as to one other of the said sums of twenty-five thousand pounds and the investment thereof, as and when the same should become raisable by reason of his said daughter Laura Wentworth having attained the age of thirty years, or having previously married, the said 20 testator directed that his trustees or trustee should stand possessed thereof, upon such trusts and powers in favour of his said daughter Laura Wentworth and her surviving husband (if any) and her child and children as mutatis mutandis should correspond with the trusts and powers thereinbefore declared in favour of his daughter Eliza 25 Sophia Wentworth and her surviving husband (if any) and her child and children, concerning the sum of twenty-five thousand pounds, the trusts whereof are hereinbefore lastly declared, and as to the other or remaining sum of twenty-five thousand pounds and the investment thereof as and when the same should become raisable 30 by reason of his said daughter Edith Wentworth having attained the age of thirty years or previously married the said testator, directed that his said trustees or trustee should stand possessed thereof and of the dividends, interest, and annual income thereof upon such trusts and powers in favour of his said daughter Edith Wentworth 35 and her surviving husband (if any), and her child or children as mutatis mutandis should correspond with the trusts and powers thereinbefore contained in favour of his said daughter Eliza Sophia Wentworth and her surviving husband (if any), and her surviving child or children (if any) concerning the sum of twenty-five thousand 40 pounds, the trusts whereof are hereinbefore declared in her or their favour as aforesaid; and the said testator further declared that on failure of the trusts thereinbefore declared of any one or more of such three several sums of twenty-five thousand pounds such sum or sums the trusts whereof should fail should sink into and form part of his 45 residuary

residuary estate and be paid and applied accordingly, and that in case any one or more of his said three unmarried daughters should die under the age of thirty years and without having been married as aforesaid, the portion or portions or sum or sums thereinbefore provided for her or them so dying should not be raised or payable but should
5 continue part of his residuary estate; and the said testator by his now reciting will directed his trustees or trustee for the time being with all convenient speed after the decease of his said son Fitzwilliam Wentworth, in case his present wife should survive him and he should not in
10 his lifetime or by his will have made provision for her out of his own property, to the amount of three hundred pounds per annum during the remainder of her life or she should not then become entitled to an income of that amount from or out of his real and personal estate during the remainder of her life to levy and raise from and out of the testator's
15 residuary real and personal estate, or the proceeds or income thereof, such a yearly sum of money as would be sufficient, together with and including the provision (if any) so to be made for her or to which she would become entitled as aforesaid, to yield and produce to her during her life a clear yearly income or provision of three hundred pounds
20 per annum, and from time to time to pay and apply the yearly sum so to be levied or raised from or out of his the said testator's estate unto her the said testator's said daughter-in-law during the remainder of her life for her own separate use and benefit. And as to the net residue or surplus of the moneys which should come to the hands of
25 his said trustees by the sale of his said residuary real estates and by collecting, getting in, and receiving his personal estate and of the securities whereon the same or any part thereof might be invested as thereinbefore directed and which should remain after answering and satisfying the trusts and purposes thereinbefore declared of and con-
30 cerning the same and raising the said portions or fortunes of his three unmarried daughters as thereinbefore mentioned, the said testator directed and declared that the same ultimate residue or surplus should be divided between such of his then present children, namely, Thomasine Cox, the wife of the said Thomas John Fisher, Fanny
35 Catherine, the wife of the said John Reeve, Fitzwilliam Wentworth, Eliza Sophia Wentworth, Laura Wentworth, Edith Wentworth, and D'Arcy Wentworth, as should be living at the time of his decease, in equal proportions and share and share alike as tenants in common: Nevertheless, the said testator directed that the share of each of them
40 his two married daughters, Thomasine Cox Fisher and Fanny Catherine Reeve, and of his said three unmarried daughters should be invested and held by his said trustees upon such terms in favour of each such daughter of his and her surviving husband (if any) and her child or children as mutatis mutandis should correspond with the trusts thereinbefore
45 declared in favour of his said daughter Eliza Sophia Wentworth and
her

her surviving husband (if any), and her child or children, concerning the said sum of twenty-five thousand pounds, the trusts whereof were thereinbefore declared, but so nevertheless that such trusts should be read for the purposes of this clause as if the same sum of twenty-five thousand pounds were raisable immediately for his said daughter 5 Eliza Sophia Wentworth, instead of being raisable upon her attaining the age of thirty years, or previously marrying as aforesaid. And the said testator also directed that the share of his said son D'Arcy Wentworth should be invested and held by his trustees upon such trusts in favour of his same son and his child, children, or issue, and 10 otherwise during his life, and after his decease upon trust in favour of his child, children, or issue, as were thereinbefore declared of or concerning the said sum of ten thousand pounds thereinbefore directed to be raised as aforesaid. And the said testator further directed that on failure of the trusts thereinbefore declared by reference of any of 15 the said shares of his said five daughters and of his said son D'Arcy Wentworth, of or in his residuary estates, or such ultimate or net residue or surplus as aforesaid, the share or shares the trusts whereof should fail with all accretions thereto (if any) under the now reciting clause should go and be divided to and amongst the survivors or survivor of them 20 his said five daughters and his said sons, Fitzwilliam Wentworth and D'Arcy Wentworth, living at the time or respective times of the failure or respective failures of the trusts of any such share or shares as aforesaid, so that upon failure of the aforesaid trusts of each share such share should go and accrue to such of them, his said five daughters and his 25 said sons Fitzwilliam Wentworth and D'Arcy Wentworth, as should be living at the time when the trusts of such share should so fail, and the said testator directed that all the trusts and powers thereinbefore declared by reference as aforesaid of the share of any of his daughters in his said residuary estate in favour of such daughter and her child or 30 children should have failed, then the trusts of such share should, for the purposes of the now reciting clause of accruer and of ascertaining the objects thereof, be deemed to have failed at the time when such last-mentioned trusts should have so failed or determined, although there should be a surviving husband of such daughter in existence, 35 but in that case the interest of such surviving husband should not be affected; and the said testator directed that every such surviving or accruing share or shares, or part or parts thereof, which should revert or accrue to any of his said daughters under the provisions or trusts aforesaid, should be held by his trustees or trustee upon the same 40 trusts and subject to the same powers and provisions (including provision for accruer or survivorship) as thereinbefore expressed and declared or referred to concerning the said original parts or shares of such daughters or daughter respectively of or in his said residuary estate and the interest thereof or as near and conformable thereto as might 45 be

be and circumstances would then permit or allow of: And the said testator nominated and appointed his said wife Sarah Wentworth, his said son Fitzwilliam Wentworth, his said sons-in-law John Reeve and Thomas John Fisher, and the said James Milson and James Alexander, 5 executrix and executors of that his will: And whereas the said testator duly made a codicil to his said will on the twenty-second day of February, one thousand eight hundred and seventy-two, and thereby revoked the appointment of the said James Alexander as executor and trustee of his said will: And whereas the said testator departed this life on or about the 10 twentieth day of March, one thousand eight hundred and seventy-two, without having altered or revoked his said will, except as appears by the said codicil, and the said will and codicil were duly proved by the said Sarah Wentworth and Fitzwilliam Wentworth in Her Majesty's Court of Probate in England, on the eleventh day of May, one thousand 15 eight hundred and seventy-two, and probate of an exemplified copy of the said will was afterwards on the seventeenth day of October, one thousand eight hundred and seventy-two, granted by the Supreme Court of New South Wales to the said Thomas John Fisher, leave being reserved for the executrix and other executors to come in and 20 prove the same, which the said Fitzwilliam Wentworth on the twenty-fifth day of March, one thousand eight hundred and seventy-three, and the said Sarah Wentworth, on the twenty-eighth day of April then next following afterwards did, with the like reservations for the other executors to come in and prove the said will and codicil: And 25 whereas by a certain deed-poll of date the tenth day of May, one thousand eight hundred and seventy-two, under the hand and seal of the said John Reeve, after reciting that the said John Reeve had not intermeddled with the estate of the said William Charles Wentworth, deceased, nor acted in the trusts or powers of the said will and codicil, 30 he, the said John Reeve, did thereby renounce and disclaim all the real and personal estates respectively devised and bequeathed to him as a trustee or executor of the said will and codicil, and also the said offices of trustee and executor of the said will and codicil respectively: And whereas by a certain deed-poll of date the 35 tenth day of May, one thousand eight hundred and seventy-two, under the hand and seal of the said James Milson, after reciting that the said James Milson had not intermeddled with the said estate of the said William Charles Wentworth, deceased, nor acted in the trusts or powers of the said will and codicil, he, the said 40 James Milson, did renounce and disclaim all the real and personal estate respectively devised and bequeathed to him as a trustee or executor of the said will and codicil, and also the offices of trustee and executor thereof: And whereas the said testator left him surviving his widow, the said Sarah Wentworth, and the following children, 45 namely, the said Fitzwilliam Wentworth, D'Arcy Bland Wentworth,

Thomasine Cox Fisher, Fanny Catherine Reeve, Eliza Sophia Wentworth, Laura Wentworth, and Edith Wentworth: And whereas the said Thomas John Fisher departed this life on or about the sixteenth day of November, one thousand eight hundred and seventy-five: And whereas the said John Reeve died on the twenty-first November, one thousand eight hundred and seventy-five: And whereas the said Sarah Wentworth died on the fourth day of July, one thousand eight hundred and eighty: And whereas the said Edith Wentworth on the seventeenth day of October, one thousand eight hundred and seventy-two, intermarried with Charles Gordon Cumming Dunbar, and died in the year one thousand eight hundred and ninety-one, leaving one daughter, who attained the age of twenty-one years on the seventeenth day of July, one thousand eight hundred and ninety-four: And whereas the said Laura Wentworth on the seventeenth day of December, one thousand eight hundred and seventy-two, intermarried with Henry William Keays Young, and died on the tenth day of November, one thousand eight hundred and eighty-seven, leaving her husband the said Henry William Keays Young, but no issue her surviving: And whereas the said Thomasine Cox Fisher has had four children and no more, three of whom, namely, Alice Fisher, Robert Fisher, and Donnelly Fisher, survived the said testator and attained their full age of twenty-one years: And whereas by an indenture dated the twenty-ninth day of July, one thousand eight hundred and ninety-three, made between the said Robert Fisher of the one part, and the said Thomasine Cox Fisher of the other part, the said Robert Fisher assigned and transferred all his interest under the will of the said testator to the said Thomasine Cox Fisher absolutely: And whereas by an indenture dated the nineteenth day of March, one thousand eight hundred and ninety-four, made between the said Donnelly Fisher of the one part, and the said Thomasine Cox Fisher of the other part, the said Donnelly Fisher assigned and transferred all his interest under the will of the said testator to the said Thomasine Cox Fisher absolutely: And whereas the share of the said Thomasine Cox Fisher is charged by way of mortgage in favour of the said Fitzwilliam Wentworth with the repayment of a certain sum of principal money and interest: And whereas the said Alice Fisher died on the twenty-fifth day of March, one thousand eight hundred and ninety-eight, unmarried and intestate, and leaving her mother, the said Thomasine Cox Fisher, and her two brothers, the said Robert Fisher and Donnelly Fisher, her only next of kin her surviving, and letters of administration of the estate and effects of the said Alice Fisher were on the second day of December, one thousand eight hundred and ninety-eight, granted by the Supreme Court of New South Wales in its Probate Jurisdiction to the said Thomasine Cox Fisher, Robert Fisher, and Donnelly Fisher: And whereas the share of

of the said Robert Fisher is charged by way of mortgage in favour of the Mutual Life Association of Australasia with the repayment of certain principal money and interest: And whereas the said Eliza Sophia Wentworth died on the twentieth day of December, one
5 thousand eight hundred and ninety-eight: And whereas it is extremely improbable that the said Thomasine Cox Fisher, who is upwards of seventy-four years of age, will marry again: And whereas it would be advantageous to the interests as well of the said Thomasine Cox Fisher as of the said Robert Fisher and Donnelly Fisher, and the
10 said parties are each of them desirous that all and every part or share, parts or shares, and interests whatsoever to which the said Thomasine Cox Fisher is now in anywise entitled in possession, reversion, expectancy, contingency, or otherwise, under or by virtue of the said will and codicil of the said William Charles Went-
15 worth, of or in the residuary personal estate and the proceeds of the sale of the real and leasehold estate of the said testator, and the investments and property now or hereafter representing the same respectively, and of or in all existing or future accumulations thereof, together with all remainders of interests therein after the death of the said Thomasine
20 Cox Fisher should be wholly released from the said contingent right therein to which any husband whom the said Thomasine Cox Fisher may leave her surviving, is entitled as aforesaid, and that the corpus of the same part or share, parts or shares should be held by the trustees or trustee for the time being of the said will and codicil of the said
25 William Charles Wentworth upon the trusts following, that is to say, upon trust as to seven-ninths equal parts or shares thereof, subject to the said mortgage in favour of the said Fitzwilliam Wentworth for the said Thomasine Cox Fisher absolutely, and as to the remaining two-ninths equal parts or shares thereof, upon trust for the said Thomasine
30 Cox Fisher for life, and after her death as to one moiety upon trust for the said Robert Fisher, subject, however, to the said mortgage in favour of the said Mutual Life Association of Australasia, and as to the other moiety upon trust for the said Donnelly Fisher: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the
35 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, all and every the part or share, parts or shares and interest whatsoever to which the said
40 Thomasine Cox Fisher is now in anywise entitled in possession, reversion, expectancy, contingency, or otherwise, under or by virtue of the said will and codicil of the said William Charles Wentworth of or in the residuary personal estate and the proceeds of the sale of the real and leasehold estate of the said testator and the investments and
45 property now or hereafter representing the same respectively and of

Trusts declared as to shares and interests of Thomasine Cox Fisher and others under will and codicil of William Charles Wentworth.

or

or in all existing or future accumulations thereof together with all remainders or interests therein after the death of the said Thomasine Cox Fisher shall be wholly released from the contingent right therein to which any husband whom the said Thomasine Cox Fisher may leave her surviving would but for the passing of this Act be entitled under and by virtue of the said will and codicil of the said William Charles Wentworth, deceased, and the corpus of the same part or share, parts or shares, shall be held by the trustees or trustee for the time being of the said will and codicil of the said William Charles Wentworth upon the trusts following, that is to say, as to seven-ninths thereof, subject to the said mortgage in favour of the said Fitzwilliam Wentworth, upon trust for the said Thomasine Cox Fisher absolutely, and as to the remaining two-ninths thereof upon trust for the said Thomasine Cox Fisher for life, and after her death as to one moiety upon trust for the said Robert Fisher, subject however to the said mortgage in favour of the Mutual Life Association of Australasia and as to the other moiety upon trust for the said Donnelly Fisher.

Short title.

2. This Act may be cited as the "Fisher Trusts Declaratory Act, 1899."