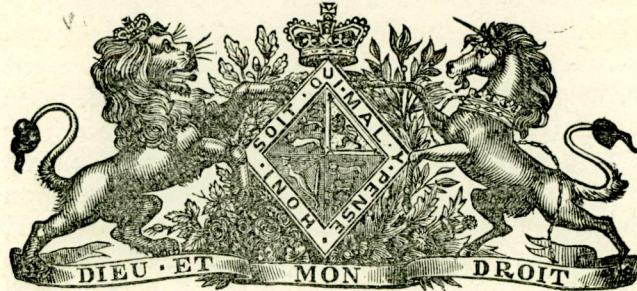


*This PRIVATE BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

*Legislative Council Chamber,  
Sydney, 18th December, 1901. }*

JOHN J. CALVERT,  
*Clerk of the Parliaments.*

## New South Wales.



ANNO PRIMO

## EDWARDI VII REGIS.

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An Act to enable the Trustees of the Will of the late William Franklin Whitney to sell, give credit on sales, mortgage, partition, divide, exchange, lease, grant mining leases, make applications under the Mining on Private Lands Acts, and make applications to bring land under the Real Property Act; and for other purposes.

**W**HEREAS at the respective dates of his will, codicil, and death, Preamble.  
hereinafter mentioned, William Franklin Whitney, late of Coombing Park, near Carcoar, in the Colony of New South Wales (since deceased), was carrying on the business of coach proprietors, railway contractors, mail contractors, general graziers, and such other matters, including mining, as might be determined, in partnership with James Rutherford, of Bathurst, in the said Colony, under the name or style of "Cobb and Company": And whereas at the date



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*Whitney Estate.*

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of the death of the said William Franklin Whitney certain lands and hereditaments (forming portion of the assets of the said partnership, and more particularly described in the indenture of mortgage next hereinafter mentioned) were subject to an indenture of mortgage, 5 dated the twenty-seventh day of December, one thousand eight hundred and eighty-nine, made between the said James Rutherford, of the first part, the said William Franklin Whitney, of the second part, and Walter Russell Hall, of the third part, to secure the repayment of the sum of fifty thousand pounds and interest thereon as therein mentioned: 10 And whereas at the date aforesaid certain other assets of the said partnership therein more particularly described were subject to a bill of sale and stock mortgage in favour of the said Walter Russell Hall, and dated the thirtieth day of June, one thousand eight hundred and ninety-three, to secure the repayment of the sum of thirty thousand 15 pounds, and interest thereon as therein mentioned: And whereas the said William Franklin Whitney duly made and executed his last will and testament, dated the fourth day of September, one thousand eight hundred and ninety-four, whereby, after appointing his wife, Isabella Whitney, sole executrix and trustee thereof, he gave his share in the 20 said business so carried on by him in partnership with the said James Rutherford as aforesaid to his said trustee, Isabella Whitney, upon trust, in the words following, that is to say:—"Upon trust, to convert the same into money, and after such conversion in the first place to hold the sum of two thousand pounds in trust for my son, Glassford 25 Franklin Whitney, and to invest the same in the name of my said trustee, and to apply the whole or such part as my said trustee shall in her discretion think sufficient of the annual income derived from such investment in or towards the maintenance or otherwise for the benefit of my said son, Glassford Franklin Whitney; and in the next 30 place to pay to Arthur Leeds, of Cunnamulla, in the Colony of Queensland, station manager, the sum of two thousand pounds; and in the next place to hold the balance of the money derived from such conversion as aforesaid upon trust in equal shares, share and share alike, for my said wife, Isabella Whitney, and my children next hereinafter 35 named, that is to say, Isabella Rachel Kely, Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, Emily Margaret Whitney, and Evelyn Frances Amelia Whitney, and to pay on demand, but subject as hereinafter mentioned, the said legacies to my children now of age (excepting Glassford Franklin Whitney); and the shares of 40 my daughters are to be enjoyed and disposed of by them respectively as separate property free from marital control, and their respective receipts to be sufficient discharges to my said trustee for the same. I empower my said trustee, during the minority of any of my said children, to hold the share or shares of such children during their respective 45 minorities, and to invest the same in the name of my said trustee, and to



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*Whitney Estate.*

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to apply the whole or such part as my trustee shall in her discretion think sufficient of the annual income derived from such investments respectively in and towards the maintenance and education or otherwise for the benefit of such children respectively, and to pay their  
5 respective legacies to them when they come of age, as is provided herein for payment of the legacies to my children now of age; but my said trustee need not pay any of the legacies bequeathed in this my will until after the expiration of two years from the date of my death, but she may, if she thinks fit, pay the same at any time  
10 at her discretion." And the said testator thereby devised and bequeathed the residue of his real and personal property whatsoever and wheresoever situate to his wife, Isabella Whitney: And whereas by a codicil to his said will, bearing date the fourth day of September, one thousand eight hundred and ninety-four, the said William Franklin  
15 Whitney appointed Arthur Leeds, of Cunnamulla, in the Colony of Queensland, station manager, and William Kelty, of Orange, in the Colony of New South Wales, surgeon, to be joint executors and trustees of his said will, together with his wife, Isabella Whitney; and he declared that each of the said Isabella Whitney, Arthur Leeds, and  
20 William Kelty should be responsible for her and his own actions only; and in all other respects the said testator confirmed his said will: And whereas the said William Franklin Whitney died on or about the thirty-first day of October, one thousand eight hundred and ninety-four, without having otherwise altered or revoked his said will and  
25 codicil, and leaving him surviving his said widow, Isabella Whitney, and seven children and no more, that is to say, Isabella Rachel Kelty (the wife of the said William Kelty), Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, and Emily Margaret Whitney, and Evelyn Frances Amelia Whitney (the two last named of  
30 whom are infants), and Glassford Franklin Whitney: And whereas probate of the said will and codicil was, on the twenty-third day of May, one thousand eight hundred and ninety-five, granted to the said Isabella Whitney, William Kelty, and Arthur Leeds: And whereas the assets of the said partnership at the date of the death of the said William  
35 Franklin Whitney comprised real and personal property situate both within the Colony of New South Wales and out of the said Colony: And whereas after the death of the said William Franklin Whitney it was ascertained that if the said executrix and executors were to convert into money the share of the said William Franklin Whitney  
40 in the said partnership business great losses would be occasioned to the said beneficiaries other than the said Glassford Franklin Whitney and Arthur Leeds: And whereas by an agreement dated the fifteenth day of April, one thousand eight hundred and ninety-seven, made between the said James Rutherford of the one part and the said  
45 Isabella Whitney, Arthur Leeds, and William Kelty of the other part,



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*Whitney Estate.*

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a partition of certain of the properties of the said partnership was agreed to between the parties thereto, and it was agreed that the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, should take (*inter alia*) the  
5 properties known as Coombing Park, James Park, Pine Mount, and Waugoola and Claverton, and the stock and chattels thereon respectively, part of which properties are comprised and described or expressed so to be in the hereinbefore recited indenture of mortgage dated the twenty-seventh December, one thousand eight hundred and  
10 eighty-nine; and the said James Rutherford should take certain other properties, and that in order to equalise the said division the said executrix and executors should pay to the said James Rutherford certain moneys; and that the said executrix and executors and the said James Rutherford respectively should assume the liabilities of the  
15 said partnership business in the proportions therein mentioned. And it was further (*inter alia*) agreed that as regards the whole of the remaining properties belonging to the said partnership business, not mentioned or referred to in the First and Second Schedules to the said agreement of the fifteenth day of April, one thousand eight hundred  
20 and ninety-seven, the same were to be continued and carried on with a view to speedy realisation by the said James Rutherford, Isabella Whitney, Arthur Leeds, and William Kelty, under their joint management: And whereas by an agreement dated the thirtieth day of August, one thousand eight hundred and ninety-seven, made between  
25 the same parties as the parties to the hereinbefore lastly recited agreement, the time within which the aforesaid liabilities of the said partnership business were to be assumed was extended to the thirty-first day of December, one thousand eight hundred and ninety-seven, and in all other respects the said agreement of the fifteenth day of  
30 April, one thousand eight hundred and ninety-seven, was ratified and confirmed: And whereas the said Isabella Whitney, Arthur Leeds, and William Kelty having been advised that they could not legally give a mortgage over such properties, stock, chattels, and effects coming to them under such partition as aforesaid, it was agreed that  
35 the said indenture of mortgage dated the twenty-seventh day of December, one thousand eight hundred and eighty-nine, and the said bill of sale and stock mortgage dated the thirtieth day of June, one thousand eight hundred and ninety-three, should not be discharged so far as regards the covenants of the said William Franklin Whitney  
40 and the property, stock, chattels, and assets taken by the said Isabella Whitney, Arthur Leeds, and William Kelty as such executrix and executors as aforesaid, under such partition, but that the said James Rutherford should be released from his personal covenants contained in the said indenture of mortgage and bill of sale and stock mortgage  
45 but without prejudice to or in any other way affecting the said indenture



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*Whitney Estate.*

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indenture of mortgage and bill of sale and stock mortgage and the covenants of the said William Franklin Whitney therein contained, except as hereinafter provided : And whereas the said Walter Russell Hall, at the request of the said Isabella Whitney, Arthur Leeds, and  
5 William Kelty, agreed to enter into and did execute a certain indenture of agreement bearing date the twenty-ninth day of December, one thousand eight hundred and ninety-seven, and expressed to be made between the said Isabella Whitney, Arthur Leeds, and William Kelty of the one part, and the said Walter Russell Hall, hereinafter called  
10 the said mortgagee, of the other part : And whereas by the last-mentioned indenture of agreement after certain recitals therein contained and after reciting that the said Walter Russell Hall, at the request of the said Isabella Whitney, Arthur Leeds, and William Kelty, had agreed to enter into and execute those presents for the  
15 purpose of acknowledging that the sum of sixty-three thousand pounds only and interest thereon, calculated from the first day of January, one thousand eight hundred and ninety-eight, remained owing on the security of the hereinbefore recited indenture of mortgage, and the sum of thirty thousand pounds (part of the said  
20 sum of sixty-three thousand pounds) and interest thereon, calculated from the first day of January, one thousand eight hundred and ninety-eight, was secured by the said bill of sale and stock mortgage ; and after reciting that it had been agreed that the time for the repayment of the said sum of sixty-three thousand pounds should be  
25 extended in manner hereinafter provided ; and after reciting that the said Isabella Whitney, Arthur Leeds, and William Kelty had, at the request of the said Walter Russell Hall, agreed to enter into and execute the indenture of agreement now in recital for the further purpose of consenting to the release of the said James Rutherford  
30 from his covenants contained in the said indenture of mortgage and the said bill of sale and stock mortgage, and to the release of certain other property, stock, and chattels, and also for the purpose of better securing to the said Walter Russell Hall repayment of the said sum of sixty three thousand pounds and interest thereon, and enabling  
35 him to obtain such further assurance as he might thereafter require in manner hereinafter appearing : It was witnessed (*inter alia*) that in pursuance of the said agreement, and in consideration of the premises, they, the said Isabella Whitney, Arthur Leeds, and William Kelty, and as separate covenants every two of them, did thereby for  
40 themselves, their heirs, executors, and administrators, jointly and every one of them did thereby for herself and himself, her and his heirs, executors, and administrators severally covenant with the said Walter Russell Hall, his heirs, executors, administrators, and assigns that the heirs, executors, and administrators of the said William Franklin  
45 Whitney, and they the said Isabella Whitney, Arthur Leeds, and  
William



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*Whitney Estate.*

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William Kelty, and their respective heirs, executors, and administrators, and every other person having or lawfully or equitably claiming by, through, under, or in trust for the said William Franklin Whitney, deceased, any estate, right, title, or interest in or to the lands, stock,  
5 and chattels comprised in the said indenture of mortgage and bill of sale and stock mortgage, or in or to any other property, stock, chattels, and assets coming to the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, under the division of the properties of the said partnership, or any of them,  
10 or any part thereof respectively, should and would at all times (at the cost, until foreclosure or sale, of the estate of the said William Franklin Whitney, or of them the said Isabella Whitney, Arthur Leeds, and William Kelty, and afterwards at the cost of the person or persons requiring the same) execute and do every such lawful assurance and  
15 thing for the further or more perfectly assuring the said premises, and every or any part thereof, to the use of the said Walter Russell Hall, his heirs, executors, administrators, and assigns, as by the said Walter Russell Hall, his heirs, executors, administrators, or assigns should be reasonably required; and would obtain the consent and approval to  
20 those presents of such of the children of the said William Franklin Whitney as were then infants immediately on their respectively attaining the age of twenty-one years; and would indemnify and keep indemnified the said Walter Russell Hall, his heirs, executors, administrators, and assigns, and his and their estates and effects, against all  
25 actions, suits, claims, and demands whatsoever that might be brought by the said infants on or at any time after their attaining the age of twenty-one years respectively against the said Walter Russell Hall, his heirs, executors, administrators, or assigns, and also against all losses, charges, damages, costs, and expenses that the said Walter  
30 Russell Hall, his heirs, executors, administrators, or assigns might sustain or incur by reason of the said infants, or either of them, not consenting to or approving of those presents; and generally against all results and consequences of the said infants not consenting and approving as aforesaid; and would within one month after being  
35 requested in writing by the said mortgagee, his heirs, executors, administrators, or assigns so to do, make all necessary applications to (*inter alia*) the Supreme Court of New South Wales for leave to mortgage to the said Walter Russell Hall, his heirs, executors, administrators, or assigns the whole of the said properties, stock,  
40 chattels, and assets coming to them, the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, under the said division of properties of the said partnership to secure the repayment of the said sum of sixty-three thousand pounds and interest thereon, or for the confirmation of the arrangement made in  
45 respect of the thereinbefore recited indenture of mortgage and bill of sale



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*Whitney Estate.*

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sale and stock mortgage, and would within one month after being requested as aforesaid commence and institute all necessary steps and proceedings requisite or necessary for obtaining a Private Act or Acts (*inter alia*) in the Colony of New South Wales, authorising the said  
5 Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, to mortgage such properties, stock, chattels, and assets coming to them under such division of properties as aforesaid for the amount aforesaid or otherwise confirming the arrangement made in respect of the said indenture of mortgage and bill of sale and  
10 stock mortgage, and would whenever called upon so to do execute all such mortgages, transfers, assignments, and securities over such properties, stock, chattels, and assets coming to them as aforesaid under the division of properties of the said partnership as the said Walter Russell Hall, his heirs, executors, administrators, or assigns, or  
15 his or their attorney or attorneys, agent or agents might from time to time require for the purpose of securing payment of the said principal sum of sixty-three thousand pounds and interest, such mortgages and securities to be prepared by the solicitors for the said Walter Russell Hall, his heirs, executors, administrators, or assigns, or his or their  
20 attorney or attorneys, agent or agents, and the same to contain all such reasonable powers (including powers of sale), provisions, covenants, clauses, and agreements as might be thought desirable by the said Walter Russell Hall, his heirs, executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or his or their  
25 solicitors; and that in the event of the said Isabella Whitney, Arthur Leeds, and William Kelty, or any or either of them, their or any or either of their executors, administrators, or assigns making default for the space of one month as aforesaid in making such application (*inter alia*) to the Supreme Court of New South Wales, or in doing all that  
30 might be necessary to obtain such Private Act or Acts as aforesaid, after having been requested as aforesaid, or in executing to the said Walter Russell Hall, his heirs, executors, administrators, or assigns any such mortgages, transfers, assignments, or securities as aforesaid, after the same should have been handed to them, or left at, or sent  
35 through the medium of the post office addressed to them or any or either of them to the usual place of abode or business of them or any or either of them in the Colony of New South Wales last known to the said mortgagee, his heirs, executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or left upon any  
40 part of the said properties, then all such applications to the said courts or either of them might be made, and all necessary proceedings to obtain such Private Act or Acts might be taken, and all such mortgages and securities might be executed by the said mortgagee, his heirs, executors, administrators, or assigns in his or their own name  
45 or names, or in the name or names of the said William Franklin Whitney,



*Whitney Estate.*

Whitney, his executors or administrators, or in the names and when necessary as the act and deed of the said Isabella Whitney, Arthur Leeds, and William Kelty, or any or either of them, their or any or either of their heirs, executors, administrators, or assigns; and would  
5 pay all costs, charges, fees, and expenses arising out of or incidental to or connected with such application to the Court as aforesaid, and such mortgages and securities, and obtaining such Private Act or Acts as aforesaid, and all other costs, charges, fees, and expenses in any way connected with or arising out of those  
10 presents or the arrangement therein set forth: And whereas by an indenture of agreement bearing date the twenty-ninth day of December, one thousand eight hundred and ninety-seven, expressed to be made between the said Isabella Whitney, Isabella Rachel Kelty (wife of the said William Kelty), Adeline Thirza Whitney,  
15 spinster, Arthur William Whitney, Esquire, Louisa Katie Whitney, spinster, Emily Margaret Whitney, spinster, and Evelyn Frances Amelia Whitney, spinster, all of Coombing Park aforesaid, beneficiaries under the will of the said William Franklin Whitney, of the one part, and the said Walter Russell Hall of the other part, after reciting that  
20 the said James Rutherford and the said William Franklin Whitney carried on business in partnership as coach proprietors, railway contractors, mail contractors, and graziers, and for such other purposes as were determined upon by the said partners, the said James Rutherford being entitled to two-thirds of the property of the partner-  
25 ship, including gains and profits, and the said William Franklin Whitney to one-third thereof; and that it was therein provided that on the death of either partner, if the executors of the deceased partner declined to continue in the business and the surviving partner did not purchase the share of the deceased partner, the assets of the partner-  
30 ship should be sold and divided; and after reciting the said indenture of mortgage, dated the twenty-seventh day of December one thousand eight hundred and eighty-nine, registered number five hundred and thirty-four, book four hundred and twenty-nine; and after reciting the said bill of sale and stock mortgage; and after reciting that by his  
35 will and codicil, each bearing date the fourth day of September, one thousand eight hundred and ninety-four, the said William Franklin Whitney appointed the said Isabella Whitney, Arthur Leeds, and William Kelty executrix and executors thereof; and after reciting that the said William Franklin Whitney died on about the thirty-first  
40 day of October, one thousand eight hundred and ninety-four, without having altered or revoked his said will and codicil, and that probate thereof, was, on the twenty-third day of May, one thousand eight hundred and ninety-five, granted to the said Isabella Whitney, Arthur Leeds, and William Kelty; and after reciting that ancillary probate of  
45 the said will and codicil was, on the thirtieth day of November, one thousand



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*Whitney Estate.*

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thousand eight hundred and ninety-seven, granted by the Supreme Court of Queensland to the said Arthur Leeds, one of the executors in the said will and codocil named, power being reserved to make the like grant to Isabella Whitney and William Kelty, the executrix and  
5 other executor in the said will and codicil named; and after reciting the said agreement dated the fifteenth day of April, one thousand eight hundred and ninety-seven; and after reciting the said agreement dated the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that in order to enable the said  
10 Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, to carry out the said agreements and to assume their portion of the liabilities of the late partnership in the terms of the thereinbefore recited indenture of mortgage of the twenty-seventh day of December, one thousand eight hundred and eighty-  
15 nine, and the thereinbefore recited bill of sale and stock mortgage of the thirtieth day of June, one thousand eight hundred and ninety-three, should be discharged, and the said Walter Russell Hall should advance to the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, the sum of sixty-  
20 three thousand pounds upon the security of the whole of the properties, stock, chattels, and assets coming to the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, under the division of the properties of the said partnership; and after reciting that the said Walter  
25 Russell Hall had agreed to advance to the said James Rutherford a certain sum of money upon certain securities; and after reciting (*inter alia*) that the parties thereto having been advised that the thereinbefore recited agreements of the fifteenth day of April, one thousand eight hundred and ninty-seven, and the thirtieth day of  
30 August, one thousand eight hundred and ninty-seven, were not in conformity with the provisions of the deed of partnership, and that the said agreements constituted a breach of the trusts of the will of the said William Franklin Whitney, deceased, and that the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and  
35 executors as aforesaid, could not legally give a mortgage over such properties, stock, chattels, and assets coming to them as aforesaid: It had been agreed that the thereinbefore recited indenture of mortgage of the twenty-seventh day of December, one thousand eight hundred and eighty-nine, and the thereinbefore recited bill of sale and stock  
40 mortgage should not be discharged as far as regarded the covenants of the said William Franklin Whitney and the properties, stock, chattels, and assets taken by the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, under the division of properties of the said partnership were concerned, but  
45 that the said James Rutherford should be released from his personal covenants



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*Whitney Estate.*

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covenants contained in the said indenture of mortgage, and bill of sale and stock mortgage, and that the Cunnamulla property and stock and chattels thereon should be discharged from the thereinbefore recited bill of sale and stock mortgage, but without prejudice to or in  
5 any other way affecting the said indenture of mortgage and bill of sale and stock mortgage and the covenants of the said William Franklin Whitney therein contained except as hereinafter provided; and after reciting that the sum of sixty-three thousand pounds only was the  
10 principal sum due to the said Walter Russell Hall from the said executrix and executors as aforesaid; and after reciting that the said Isabella Whitney, Isabella Rachel Kilty, Adeline Thirza Whitney, Arthur William Whitney, and Louisa Katie Whitney had, at the request of the said Walter Russell Hall, agreed to enter into and execute the indenture of agreement now in recital for the better  
15 securing to the said Walter Russell Hall the repayment of the said sum of sixty-three thousand pounds and interest thereon, and enabling him to obtain such further assurances as he might thereafter require in manner hereinafter appearing, and for the purpose of indemnifying him against any loss he might incur by reason of the title of the said  
20 securities from the said executrix and executors as aforesaid, and from the said James Rutherford, or any of them being defective: It was witnessed that in pursuance of the said agreement, and in consideration of the premises they, the said Isabella Whitney, Isabella Rachel Kilty, Adeline Thirza Whitney, Arthur William Whitney, and Louisa Katie  
25 Whitney, and as separate covenants every five, four, three, and two of them did thereby for themselves, their heirs, executors, and administrators jointly, and every one of them did thereby for herself and himself, her and his heirs, executors, and administrators, severally covenant with the said Walter Russell Hall, his heirs, executors, administrators,  
30 and assigns that they the said covenanting parties respectively, and their respective heirs, executors, administrators, and assigns, and every other person having or lawfully or equitably claiming any estate, right, title, or interest through them, or any of them, or through Emily Margaret Whitney, or Evelyn Frances Amelia Whitney, children of  
35 the said William Franklin Whitney, deceased, or either of them, or by, through, under, or in trust for the said William Franklin Whitney, deceased, in or to the land, stock, and chattels, and effects forming or intended to form security of the said Walter Russell Hall as aforesaid, or any of them, or any part thereof respectively, should,  
40 and would at all times (at the cost until foreclosure or sale of the said covenanting parties respectively, and their respective heirs, executors, administrators, or assigns, and afterwards at the cost of the person or persons requiring the same), execute and do every such assurance and thing for the further or more perfectly assuring the said  
45 premises and every or any part thereof to the use of the said Walter Russell



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*Whitney Estate.*

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Russell Hall, his heirs, executors, administrators, and assigns as by the said Walter Russell Hall, his heirs, executors, administrators, or assigns should be reasonably required, and would obtain the execution of the indenture of agreement now in recital by such of the children  
5 of the said William Franklin Whitney as were then infants, that is to say, Emily Margaret Whitney and Evelyn Frances Amelia Whitney, within six months of their respectively attaining the age of twenty-one years, and would indemnify and keep indemnified the said Walter Russell Hall, his heirs, executors, administrators and assigns, and  
10 his and their estates and effects against all actions, suits, claims, and demands whatsoever that might be brought by the said infants on or at any time after their attaining the age of twenty-one years respectively against the said Walter Russell Hall, his heirs, executors, administrators or assigns, and also against all losses, charges, damages,  
15 costs, and expenses that the said Walter Russell Hall, his heirs, executors, administrators, or assigns might sustain or incur by reason of the said infants or either of them not consenting to or approving of the indenture of agreement now in recital, and generally against all results and consequences of the said infants not consenting and  
20 approving as aforesaid; and would, whenever called upon so to do, execute all such mortgages, transfers and assignments, and securities over such properties, stock, chattels, and assets as aforesaid as the said mortgagee, his heirs, executors, administrators or assigns, or his or their attorney or attorneys, agent or agents might from time to time  
25 require for the purpose of securing payment of the said principal sum of sixty-three thousand pounds and interest; and would obtain the execution by the said infants on their attaining the age of twenty-one years of all such mortgages, transfers, assignments, and securities if requested so to do; all such mortgages, transfers, assignments, and  
30 securities to be prepared by the solicitors for the said Walter Russell Hall, his heirs, executors, administrators or assigns, or his or their attorney or attorneys, agent or agents, and the same to contain all such powers (including powers of sale), provisions, covenants, clauses, and agreements as might be thought desirable by the said Walter  
35 Russell Hall, his heirs, executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or his or their solicitors; and that in the event of the said covenanting parties, or any or either of them, their or any or either of their heirs, executors, administrators, or assigns making default for the space of one month as aforesaid in  
40 executing to the said Walter Russell Hall, his heirs, executors, administrators, or assigns any such assurances, mortgages, transfers, assignments, or securities as aforesaid after the same should have been handed to them or left at or sent through the medium of the post office, addressed to them or any or either of them to the usual place  
45 of abode or business of them or any or either of them in the said Colony



*Whitney Estate.*

Colony of New South Wales last known to the said Walter Russell Hall, his heirs, executors, administrators or assigns, or his or their attorney or attorneys, agent or agents, or left upon any part of the said properties, then all such assurances, mortgages, transfers, assignments, and securities might be executed by the said Walter Russell Hall, his heirs, executors, administrators, or assigns in his or their own name or names, or in the names, and when necessary as the act and deed, of the said covenanting parties respectively, or any or either of them, their or any or either of their heirs, executors, administrators, or assigns, and would pay all costs, charges, fees, and expenses arising out of or incidental to or connected with such assurances, mortgages, transfers, assignments, and securities as aforesaid, and all other costs, charges fees, and expenses in any way connected with or arising out of the indenture of agreement now in recital or the arrangement therein set forth; and for the purposes aforesaid and to give full effect to the indenture of agreement now in recital, the said covenanting parties did and each of them did thereby irrevocably appoint the said Walter Russell Hall, his executors, administrators, and assigns, the attorney and attorneys, agent and agents of them the said covenanting parties respectively, and of their respective executors and administrators, with power in his or their own name or names, or in the names or name of the said covenanting parties, or any or either of them respectively, their or any or either of their respective executors, administrators, or assigns, to execute all such mortgages, transfers, assignments, securities, and other assurances, and accept any of the same as aforesaid, and to pay all costs, fees, charges, and expenses necessary for or in any way connected with the carrying out of the objects aforesaid or any of them, and until repaid with interest at the rate of six pounds per centum per annum the same should be a charge upon the lands and premises comprised in the said indenture of mortgage and bill of sale; and for all or any of the purposes aforesaid from time to time to nominate or appoint one or more substitute or substitutes, agent or agents, under him or them in his or their place or places, and such nomination or appointment at pleasure to revoke the said covenanting parties respectively, thereby ratifying, confirming, and allowing, and agreeing at all times to ratify, confirm, and allow all and whatsoever the said Walter Russell Hall, his executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or their substitute or substitutes, agent or agents, should do or cause to be done in and about the premises by virtue of the indenture of agreement now in recital; and it was thereby agreed and declared that a statutory declaration by the said Walter Russell Hall, his heirs, executors, administrators, or assigns, or by his or their attorney or attorneys, agent or agents, or their substitute or substitutes, that default had been made by the said Isabella Whitney, Isabella Rachel Kelty, Adeline



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*Whitney Estate.*

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Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, Emily Margaret Whitney, and Evelyn Frances Amelia Whitney, or any or either of them, in executing any such assurances, mortgages, transfers, and securities as aforesaid, or any of them, should  
5 be conclusive evidence of that fact and of the right of the said Walter Russell Hall, his executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or their substitute or substitutes, to execute such assurances, mortgages, transfers, and securities as  
10 aforesaid in the names and name, and as the act and deed, of the said covenanting parties respectively, or any or either of them, their or any or either of their executors, administrators, or assigns: Provided further, and it was thereby agreed and declared that default by the said Isabella Whitney, Isabella Rachel Kelty, Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, Emily Margaret  
15 Whitney, and Evelyn Frances Amelia Whitney, or any or either of them, their or any or either of their heirs, executors, administrators, or assigns thereunder, should be equivalent to default under the thereinbefore recited indenture of mortgage and bill of sale; and thereupon or at any time thereafter the said mortgagee, his heirs,  
20 executors, administrators, or assigns might exercise all or any of the powers contained in the said indenture of mortgage and bill of sale or either of them and powers incidental thereto; and it was also witnessed that in further pursuance of the said agreement, and in consideration of the premises, they, the said Isabella Whitney, Isabella Rachel Kelty, Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, Emily Margaret Whitney, and Evelyn Frances Amelia Whitney, and as separate covenants every  
25 seven, six, five, four, three, and two of them did thereby for themselves, their heirs, executors, and administrators, jointly and each of them, did thereby for herself and himself, her and his heirs, executors,  
30 and administrators, severally covenant with the said Walter Russell Hall, his heirs, executors, administrators, and assigns that they the said covenanting parties, and every of them, their and every of their heirs, executors, and administrators would from time to time and at all times  
35 thereafter indemnify and keep indemnified the said Walter Russell Hall, his heirs, executors, administrators, and assigns from and against all losses, costs, charges, and expenses which the said Walter Russell Hall, his heirs, executors, administrators, or assigns might at any time thereafter incur or become liable to pay by reason or in consequence  
40 of the illegality of the thereinbefore recited agreements, or the aforesaid breaches of trust, or the defects in the title to the securities both from the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, and from the said James Rutherford, or any or either of them, or by reason of such defects, or  
45 by reason of or in consequence of any actions, proceedings, claims, and demands to be made, set up, or instituted at any time or times thereafter



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*Whitney Estate.*

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thereafter by any person or persons, company or companies in respect of the same or any of them, and from and against all costs, damages, and expenses to be occasioned by any such action, proceeding, claim, or demand as aforesaid, or otherwise in respect of the premises; 5 and it was thereby declared that upon the execution of the indenture of agreement now in recital by the said Emily Margaret Whitney and Evelyn Frances Amelia Whitney respectively, then all the covenants therein contained should be binding on them respectively, and their respective heirs, executors, administrators, and assigns: And whereas 10 by indenture of confirmation bearing date the twenty-ninth day of December, one thousand eight hundred and ninety-seven, made between the said James Rutherford of the one part, and the said Isabella Whitney, Arthur Leeds, and William Kelty of the other part, after reciting that by a certain indenture of conveyance dated the 15 twenty-fourth day of December, one thousand eight hundred and eighty-nine, registered number five hundred and thirty-three, book four hundred and twenty-nine, made between the said Walter Russell Hall of the first part, and the said James Rutherford and William Franklin Whitney of the second part, and Elliott Meyer of the third 20 part, the lands and hereditaments thereafter described were conveyed and assured unto the said Elliott Meyer and his heirs to the use of the said James Rutherford and William Franklin Whitney, their heirs, executors, administrators, and assigns for ever as tenants in common in unequal shares; and after reciting the said indenture of mortgage 25 bearing date the twenty-seventh day of December, one thousand eight hundred and eighty-nine; and after reciting that the said James Rutherford and William Franklin Whitney, in the lifetime of the said William Franklin Whitney, carried on business in partnership as coach proprietors, railway contractors, mail contractors, and graziers, 30 and for such other purposes as were determined upon by the said partners, the said James Rutherford being entitled to two-thirds of the property of the partnership including gains and profits, and the said William Franklin Whitney to one-third thereof; and after reciting that the lands and hereditaments thereafter described formed part of 35 the property of the said partnership; and after reciting that the said William Franklin Whitney died on or about the thirty-first day of October, one thousand eight hundred and ninety-four, having first duly made his last will and codicil thereto whereby he appointed the said Isabella Whitney, Arthur Leeds, and William Kelty executrix and 40 executors thereof; and after reciting that probate of the said will and codicil was, on the twenty-third day of May, one thousand eight hundred and ninety-five, granted by the Supreme Court of New South Wales to the said Isabella Whitney, Arthur Leeds, and William Kelty, the executrix and executors therein named; and 45 after reciting the said agreement of the fifteenth day of April, one



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*Whitney Estate.*

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one thousand eight hundred and ninety-seven; and after reciting the said agreement bearing date the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said Isabella Whitney, Arthur Leeds, and William Kelty, as  
5 such executrix and executors as aforesaid, in pursuance of the said agreement had assumed and become solely liable for such portions of the liabilities of the late partnership as were by the said agreement to be assumed by them within the time mentioned in the said agreement of the thirtieth day of August, one thousand eight hundred and  
10 ninety-seven; and after reciting that the said James Rutherford, for the purpose of confirming and carrying into effect the thereinbefore recited agreements, had agreed to enter into and execute those presents in manner hereinafter appearing: It was witnessed that in pursuance of the said agreement and in consideration of the premises, he, the  
15 said James Rutherford, did thereby grant release and confirm unto the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, and their heirs, all that the undivided share and interest both legal and equitable of him, the said James Rutherford, of and in all those pieces or parcels of lands com-  
20 prised and described in the Schedule thereunder written, and of and in all other lands of whatever tenure forming, or reputed to form, part of the Coombing Park Estate, or held, used, occupied, or enjoyed therewith, or intended or reputed so to be, to have and to hold the said undivided share and interest and all and singular other the premises  
25 thereby granted or expressed so to be with the appurtenances unto and to the use of the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, their heirs and assigns for ever subject to the thereinbefore recited indenture of mortgage: And whereas by indenture of confirmation bearing date  
30 the twenty-ninth day of December, one thousand eight hundred and ninety-seven, made between the said James Rutherford of the one part and the said Isabella Whitney, Arthur Leeds, and William Kelty of the other part, after reciting that by an indenture bearing date the fifteenth day of November, one thousand eight hundred and eighty-  
35 three, registered number seven hundred and forty-seven, book two hundred and eighty, made between William Lachlan Macquarie Redfern of the one part and the said James Rutherford of the other part, the lands and hereditaments therein (and in the indenture now in recital) described were conveyed and assured unto and to the use of  
40 the said James Rutherford, his heirs, and assigns for ever, and after reciting the said indenture of mortgage bearing date the twenty-seventh day of December, one thousand eight hundred and eighty-nine; and after reciting that the said James Rutherford and William Franklin Whitney, in the lifetime of the said William Franklin  
45 Whitney, carried on business in partnership as coach proprietors,  
railway



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*Whitney Estate.*

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railway contractors, mail contractors, and graziers, and for such other purposes as were determined upon by the said partners, the said James Rutherford being entitled to two-thirds of the property of the partnership including gains and profits, and the said William Franklin Whitney to one-third thereof; and after reciting that the lands and hereditaments thereafter described formed part of the property of the said partnership; and after reciting that the said William Franklin Whitney died on or about the thirty-first day of October, one thousand eight hundred and ninety-four, having first duly made his last will and codocil thereto, whereby he appointed the said Isabella Whitney, Arthur Leeds, and William Kelty executrix and executors thereof; and after reciting that probate of the said will and codocil was, on the twenty-third day of May, one thousand eight hundred and ninety-five, granted by the Supreme Court of New South Wales, in its Probate Jurisdiction, to the said Isabella Whitney, Arthur Leeds, and William Kelty, the executrix and executors therein named; and after reciting the said agreement of the fifteenth day of April, one thousand eight hundred and ninety-seven; and after reciting the said agreement bearing date the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, in pursuance of the said agreement, had assumed and become solely liable for such portions of the liabilities of the late partnership as were, by the said agreement to be assumed by them within the time mentioned in the said agreement of the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said James Rutherford, for the purpose of confirming and carrying into effect the thereinbefore recited agreements, had agreed to enter into and execute those presents in manner thereafter appearing: It was witnessed that, in pursuance of he said agreement, and in consideration of the premises he, the said James Rutherford, did thereby grant, release, and confirm unto the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, and their heirs, all those pieces or parcels of land comprised and described in the Schedule thereunder written, and also all other lands (if any) of whatever tenure forming or reputed to form part of the Coombing Park Estate, Waugoola, James Park, and Pine Mount, or any or either of them, or held, used, occupied, or enjoyed with them or any or either of them, or intended or reputed so to be, and all the estate, share, and interest, both legal and equitable, of him, the said James Rutherford, of and in all other lands of whatever tenure forming or reputed to form part of the Coombing Park Estate, Waugoola, James Park, and Pine Mount, or any or either of them, or held, used, occupied, or enjoyed with them, or any or either of them, or intended or reputed so to be, to have and

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*Whitney Estate.*

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to hold the said lands, messuages, and hereditaments, estate, share and interest, and all and singular other the premises thereinbefore described and intended so to be thereby assured with the appurtenances unto and to the use of the said Isabella Whitney, Arthur Leeds, and  
5 William Kelty, as such executrix and executors as aforesaid, their heirs and assigns for ever, subject to the thereinbefore recited indenture of mortgage: And whereas by an indenture of confirmation bearing date the twenty-ninth day of December, one thousand eight hundred and ninety-seven, made between the said James Rutherford  
10 of the one part and the said Isabella Whitney, Arthur Leeds, and William Kelty of the other part, after reciting that by an indenture bearing date the twenty-seventh day of March, one thousand eight hundred and eighty-nine, registered number nine hundred and fourteen, book four hundred and eleven, made between Thomas Hilliar of  
15 the one part and the said James Rutherford of the other part, the lands and the hereditaments therein (and in the indenture now in recital) described in the First Schedule thereto, were conveyed and assured unto and to the use of the said James Rutherford, his heirs, and assigns for ever; and after reciting that by the said indenture of  
20 mortgage of the twenty-seventh day of December, one thousand eight hundred and eighty-nine, the lands and hereditaments described in the First Schedule thereto (*inter alia*) were conveyed and assured unto the said Walter Russell Hall to secure the repayment of the said sum of fifty thousand pounds and interest thereon, as therein men-  
25 tioned, subject to the proviso for redemption therein contained; and after reciting that the said James Rutherford and William Franklin Whitney in the lifetime of the said William Franklin Whitney carried on business in partnership as coach proprietors, railway contractors, mail contractors and graziers, and for such other purposes as were  
30 determined upon by the said partners, the said James Rutherford being entitled to two-thirds of the property of the partnership, including gains and profits, and the said William Franklin Whitney to one-third thereof; and after reciting that the lands and hereditaments thereafter described in the First and Second Schedules thereto  
35 formed part of the property of the said partnership, the lands in the First Schedule forming part of the estate known as James Park, and the lands in the Second Schedule forming part of the estate known as Pine Mount; and after reciting that the said William Franklin Whitney died on or about the thirty-first day of October, one  
40 thousand eight hundred and ninety-four, having first duly made his last will and codicil thereto, whereby he appointed the said Isabella Whitney, Arthur Leeds and William Kelty executrix and executors thereof; and after reciting that probate of the said will and codicil was on the  
45 twenty-third day of May, one thousand eight hundred and ninety-five, granted by the Supreme Court of New South Wales, in its Probate  
c 188—B Jurisdiction



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*Whitney Estate.*

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Jurisdiction to the said Isabella Whitney, Arthur Leeds, and William Kelty, the executrix and executors therein named; and after reciting the said agreement of the fifteenth day of April, one thousand eight hundred and ninety-seven; and after reciting the said agreement, 5 bearing date the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, in pursuance of the said agreement, had assumed and become solely liable for such portions of the liabilities of the late partnership 10 as were by the said agreement to be assumed by them within the time mentioned in the said agreement of the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said James Rutherford, for the purpose of confirming and carrying into effect the thereinbefore recited agreements, had agreed to enter into 15 and execute those presents in manner hereinafter appearing: It was witnessed that, in pursuance of the said agreement, and in consideration of the premises, he, the said James Rutherford, did thereby grant, release, assign, transfer, and confirm unto the said Isabella Whitney, Arthur Leeds, and William Kelty (as such executrix and executors as 20 aforesaid), their heirs, executors, administrators and assigns, all those pieces or parcels of land comprised and described in the first part of the First Schedule thereto; and also all those conditionally purchased and conditionally leased lands, comprised and described in the second part of the First Schedule thereto, and also all those conditionally 25 purchased lands, comprised and described in the Second Schedule thereto; and also all other lands (if any) of whatever tenure forming or reputed to form part of the Coombing Park Estate, Waugoola, James Park, and Pine Mount, or any or either of them, or held, used, occupied, and enjoyed with them, or any or either of them, or intended 30 or reputed so to be; and also all the estate share and interest, both legal and equitable of him, the said James Rutherford, of and in all other lands of whatever tenure forming or reputed to form part of the Coombing Park Estate, Waugoola, James Park, and Pine Mount, or any or either of them, or held, used, occupied or enjoyed with them, 35 or any or either of them, or intended or reputed so to be, to have and to hold the said lands, messuages, and hereditaments, estate, share, and interest, and all and singular other the premises thereinbefore described, and intended to be thereby assured with the appurtenances unto, and to the use of the said Isabella Whitney, Arthur Leeds, and 40 William Kelty, as such executrix and executors as aforesaid, their heirs, executors, administrators and assigns, according to the nature and tenure thereof respectively, subject to the thereinbefore recited indenture of mortgage: And whereas the sum of two thousand pounds has been set apart and is now invested by the said executrix and 45 executors, upon trust for the said Glassford Franklin Whitney, in terms



*Whitney Estate.*

terms of the said bequest to him: And whereas the said will and codicil of the said William Franklin Whitney, do not contain power to postpone the sale of his share of the assets of the said partnership, or to partition or divide, or concur in the partition or division of the

5 assets of the said partnership, or to mortgage or concur in mortgaging any portion of the said testator's share in the said assets, or to carry on any portion of the same, and any of the other powers contained in this Act: And whereas certain of the aforesaid lands are supposed to contain valuable deposits of metals and minerals: And whereas it is

10 desirable in the interest of all persons beneficially interested under the said will and codicil of the said William Franklin Whitney in the said lands that the said agreements of the fifteenth day of April, one thousand eight hundred and ninety-seven, and the thirtieth day of August, one thousand eight hundred and ninety-seven, and the

15 said two indentures of agreement and three indentures of confirmation all dated the twenty-ninth day of December, one thousand eight hundred and ninety-seven, should be ratified and confirmed. And that the powers contained in this Act should be conferred upon the said Isabella Whitney, Arthur Leeds, and William Kelty, or other

20 the trustees or trustee for the time being of the said will and codicil: Be it therefore enacted by the King'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:—

25 1. The words "the said trustees" whenever hereinafter used shall extend to and include not only the said Isabella Whitney, Arthur Leeds, and William Kelty, but also the trustees or trustee for the time being of the said will and codicil. Interpretation of word "trustees."

30 2. It shall be lawful for the said trustees (subject nevertheless to all or any securities or security held by the said Walter Russell Hall if then subsisting or any other then subsisting security) to sell and absolutely dispose of or concur or join in selling or absolutely disposing of all and singular the lands and hereditaments which are or may be subject to the trusts of the said will and codicil, or which have been

35 or hereafter may be allotted as the share of the said William Franklin Whitney or of the said trustees in the said partnership business, or may otherwise become vested in them as such trustees or any part or parts of such lands and hereditaments, by public auction or private contract, either in one or more lot or lots, and in such manner generally

40 and upon and subject to such terms and conditions and at such price or prices in money or for such other equivalent or consideration as the said trustees shall deem expedient, with power to buy in the said lands and hereditaments or any or either of them or any part thereof at any sale by auction, and to rescind or vary any contract for sale

45 either on terms or gratuitously, and to re-sell without being responsible for



*Whitney Estate.*

for any loss occasioned thereby, and upon any such sale or sales to convey or transfer the land so sold to the purchaser or purchasers thereof, his, her, or their heirs and assigns, or as such purchaser or purchasers may direct, freed and discharged (subject as aforesaid) from  
 5 all trusts affecting the same, and the receipts in writing of the said trustees for the purchase money of any lands and hereditaments so sold shall be full and sufficient discharges to any purchasers for the same and from being bound to see to the application of the same and from  
 10 any liability for the loss, non-application, or misapplication of the same, or any part thereof. The said trustees shall be entitled to pay the whole of the costs, charges, and expenses of such sales or sale out of the whole or any part of the proceeds of any sale made under this section.

3. It shall be lawful for the said trustees from time to time to  
 15 postpone such sale or sales as aforesaid as they in their discretion shall think fit. <sup>Power to postpone sales.</sup>

4. Subject to the said securities or security of the said Walter  
 Russell Hall, if then subsisting, or any other then subsisting security as  
 20 aforesaid, it shall be lawful for the said trustees to allow any purchaser or purchasers credit for the payment of the whole or any part of his, her, or their purchase money, upon such terms as to interest or otherwise and generally as the said trustees may deem reasonable and expedient: Provided that the land in respect of which such credit  
 25 shall be given shall remain unconveyed or untransferred, or shall by a proper mortgage with full powers of entry and sale and other usual and proper provisions be made a security for the payment of the purchase money remaining unpaid: Provided further, that in the event of any such security being taken, the vendor's lien for the said  
 30 purchase money, and every part thereof, shall not be affected thereby or lost: Provided further, that the said trustees shall only be liable or responsible for so much of the said purchase money as such purchaser or purchasers shall actually pay, and shall not be liable for any loss arising from the default of any purchaser on the completion of his or her purchase.

5. It shall be lawful for the said trustees from time to time to  
 35 borrow and raise at interest any sum or sums of money with power from time to time to pay off any mortgage or mortgages or any part or parts thereof, and to re-borrow any sum or sums thereby secured or any greater or less sum or sums; and to execute any mortgage or  
 40 mortgages of any real or personal estate which is for the time being subject to the trusts of the said will and codicil, with or without power of sale for securing payment of the sum or sums so borrowed, and to give effectual receipts and discharges for the moneys advanced by any mortgagee, and to do and execute all such other acts, deeds, and things  
 45 as may be necessary or expedient for the purpose of effectuating such mortgage



*Whitney Estate.*

mortgage or mortgages: Provided that no mortgagee advancing money upon the security of any such mortgage as aforesaid purporting to be made under the power herein conferred shall be bound to enquire whether such money is required for the purposes of the trusts of the said will and codicil or this Act, or in any way concerned to see to the application of such money when so advanced, or be liable for the loss, non-application, or misapplication thereof.

6. It shall be lawful for the said trustees to purchase or acquire lands whether freehold, leasehold, or Crown lands, or lands held under the existing Crown Lands Acts or any Acts amending or repealing the same, at such price or prices in money, or for such other equivalent or consideration as to them shall seem reasonable, and to apply in the purchase or acquiring of the same any part of the moneys subject to the trusts of the said will and codicil, and to sign, execute and accept all or any deeds, documents, or other writings necessary for the purchase or acquiring of the same. Power to purchase.

7. It shall be lawful for the said trustees (subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid), to execute or join in executing any deed or deeds, transfer or transfers, or other document for the purpose of effecting or obtaining a partition or division of any lands, hereditaments, and premises forming portion of the assets of the said partnership business. And for the like purpose to take or join with any person or persons in taking, and to join as parties in all necessary proceedings in any Court or Courts of law, equity, or other jurisdiction in the State of New South Wales or elsewhere. Power to make partition.

8. It shall be lawful for the said trustees to join or concur with the said James Rutherford, his executors, administrators, or assigns, in any partition or division of the real or personal assets of the said partnership business of Cobb and Company remaining undivided, and to accept from the said James Rutherford, his executors, administrators, or assigns, and to give him or them a complete and valid receipt and discharge for such portion of the said real or personal assets as may be allotted to the said trustees. Power to accept partnership assets.

9. It shall be lawful for the said trustee until sale thereof to carry on and manage any sheep or cattle stations, and the sheep, cattle, horses, or other stock or chattels belonging thereto, and any other properties which have been or may hereafter be allotted as the share of the said William Franklin Whitney in the said partnership business, and for that purpose to sell any of the said sheep, cattle, horses, or other stock or chattels from time to time, and to purchase other sheep, cattle, horses, or other stock or chattels, and (subject to the said securities aforesaid) to obtain money upon overdraft, mortgage, stock mortgage, or bill of sale; and (subject as aforesaid) to lodge or give as security therefor all or any of the real and personal estate which is for the time being subject to the trusts of the said will and codicil. Power to carry on and manage station properties.



*Whitney Estate.*

10. It shall be lawful for the said trustees (subject to the said Power to exchange. securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid), from time to time to exchange for other lands or hereditaments all or any of the lands  
 5 and hereditaments for the time being subject to the trusts of the said will and codicil, and to give or receive any money for equality of exchange.

11. It shall be lawful for the said trustees (subject to the said Power to grant leases. securities or security of the said Walter Russell Hall, if then subsisting,  
 10 or any other then subsisting security as aforesaid), from time to time, by deed or writing, to demise and lease all or any part of the lands and hereditaments for the time being subject to the trusts of the said will and codicil to any person or persons for any term of years, to take  
 15 effect in possession, at the best yearly rent that can be reasonably obtained for the same without any fine, premium, or foregift; and also from time to time by deed to demise and lease any part of the said lands and hereditaments to any person or persons who shall covenant  
 20 to improve the same by repairing any building or buildings now standing, or which shall hereafter be standing, on any part of the land thereby leased, or by erecting and building any house or houses,  
 25 building or buildings, on such land or part thereof, or by otherwise expending in improvement such moneys as shall be deemed by the said trustees adequate to the interest to be parted with, at such rent as the said trustees shall, having regard to the terms and conditions of such  
 30 lease, think reasonable and proper—so, however, that nothing be taken by way of fine, premium, or foregift: Provided that every indenture of lease made under the provisions of this section shall contain a covenant by the lessee to pay the rent thereby reserved, and for insurance against fire of any building erected, or to be erected, on the  
 35 land thereby demised, and also a condition of re-entry on non-payment of rent within a time to be therein specified; and also that a counterpart of such lease be executed by the lessee. Any lessee paying any rent reserved by any such lease to the trustees shall not be bound to see to the application thereof, and shall be free from any liability for  
 40 the non-application or misapplication of the same, or any part thereof.

12. Subject to the said securities or security of the said Walter Power to grant mining leases. Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, and subject to the reservations and conditions, if any, contained in the grants under which the said lands are holden, and  
 40 subject to the mining laws of New South Wales for the time being, it shall be lawful for the said trustees to enter into mining agreements, or grant mining leases for any term of years, to take effect in possession and not in reversion or by way of future interest, of all and every and  
 45 any of the mines, lodes, ores, quarries, veins, strata, and seams of gold, silver, lead, tin, antimony, copper, ironstone, clay, coal, and all  
 other



*Whitney Estate.*

other metals and minerals whatsoever, in one or more block or blocks, unopened as well as opened, in, under, or upon any of the lands for the time being subject to the trusts of the said will and codicil, or any part thereof, together with any part of the surface of the said lands  
 5 which may be thought necessary or convenient to be held for buildings, roads, or ways, or other purposes, with such mines, quarries, or premises, together with full liberty and authority for the lessee or lessees to search for, work, win, take, use, and dispose of all such metals and minerals as shall be found therein; and to sink and make shafts, levels,  
 10 pits, drives, trenches, air-gates, way-gates, and water-courses; and erect and use any smelting, refining, or other furnaces or mills, fire, steam, or other engines and machinery, workmen's and other houses, buildings, sheds, or other conveniences, and to use all other lawful means and ways whatsoever not only for finding, separating, and  
 15 cleaning such metals and minerals, but for converting any of them into a manufactured and merchantable condition, and also to take and use sufficient ground room, heap room, and pit room for placing or manufacturing any of such metals and minerals and for laying the waste refuse or rubbish to be from time to time produced from the  
 20 said mines, quarries, and premises, and also with full and free liberty to use or make and use all proper and convenient railways, tramways, and other ways for the carriage of materials and articles to such mines, quarries, or premises, and for the carriage or delivery of any of the said metals and minerals with horses, carts, waggons, and other  
 25 carriages, and generally upon such terms and with such stipulations as shall be reasonable, necessary, or usual for the purposes aforesaid, so that there be contained in every such lease proper and reasonable covenants and agreements by the lessee or lessees for the due payments of the rents, dues, duties, tolls, or royalties thereby secured, and for  
 30 the proper working, construction, and management of the said mines, quarries, and works, and a power of re-entry for non-payment of such rents, dues, duties, tolls, or royalties, and so that every lessee duly execute a duplicate or counterpart of the lease granted to or agreement made with him.

35       **13.** Subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, it shall be lawful for the said trustees to make, execute, sign, take, and do, or join with any other person or persons in making, executing, signing, taking, and doing all applications, deeds, agree-  
 40 ments, instruments, matters, and things necessary or expedient for the purpose of themselves mining in, under, or upon any of the lands for the time being subject to the trusts of the said will and codicil, or otherwise acting in respect of such lands under and in accordance with or for the purpose of any other person or persons mining in, under, or  
 45 upon such lands, or otherwise acting in respect thereof under and in accordance with the Mining on Private Lands Act of 1894, or any Act amending or repealing the same.

To make applications  
 under the Mining on  
 Private Lands Acts.



*Whitney Estate.*

14. Subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, it shall be lawful for the said trustees to make, execute, sign, take, and do, or join with any other person or persons in making, 5 executing, signing, taking, and doing all applications, deeds, instruments, matters, and things necessary or expedient for the purpose of bringing under the provisions of the "Real Property Act" or of any Act amending or repealing the same, the whole or any part or parts of the lands and hereditaments for the time being subject to the trusts of 10 the said will and codicil, and may deduct and retain out of the trust funds in their, his, or her hands the costs and expenses of and incidental thereto.

Power to bring lands under the Real Property Act.

15. Subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, it shall be lawful for the said trustees to make or concur in the making of any roads, streets, or ways, on, through, and over any part or parts of the lands and hereditaments for the time being subject to the trusts of the said will and codicil; and also to erect, make, and carry out, and concur in the erecting, making, and carrying 20 out of any walls, sewers, drains, water-courses, or other works which may, in the discretion of the said trustees, conduce to the better laying out, improving, or selling of the said lands and hereditaments, or the convenience or enjoyment of those persons who shall have purchased or shall purchase any part thereof. The cost of any such works on the 25 part of the said trustees or their, his, or her proportions of any costs for such works may be deducted and retained by them, him, or her, in the same way as they, he, or she, are or is hereby authorised to deduct and retain the costs, charges, and expenses of and incidental to sales hereunder, and for any of the purposes of this section the said trustee 30 may reserve and dedicate, either absolutely or upon any conditions, any part or parts of the said lands and hereditaments.

Power to make roads.

16. The said agreements dated the fifteenth day of April, one thousand eight hundred and ninety-seven, and the thirtieth day of August, one thousand eight hundred and ninety-seven, and the said 35 two indentures of agreement, and three indentures of confirmation, all dated the twenty-ninth day of December, one thousand eight hundred and ninety-seven, are hereby ratified and confirmed, and shall take effect from the respective dates thereof in the same manner as though the said trustees had been fully empowered by the said will and codicil 40 to enter into and make the same, and shall be binding upon all or any of the parties thereto.

Ratification clause.

17. Notwithstanding that the said trustees have, without being authorised in that behalf by the said will and codicil, postponed the sale and realisation of the real and personal estate subject to the trusts 45 thereof, and have, without being authorised as aforesaid, carried on and

Further ratification clause.



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*Whitney Estate.*

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and managed the same, such postponement and carrying on and management are hereby as effectually and fully confirmed as though the same had been authorised by the provisions of the said will and codicil.

5 18. This Act may be cited as the "Whitney Estate Act of Short title.  
1901."

[1s. 3d.]

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Sydney: William Applegate Gullick, Government Printer.—1901.



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Legislative Council.

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## A BILL

To enable the Trustees of the Will of the late William Franklin Whitney to sell, give credit on sales, mortgage, partition, divide, exchange, lease, grant mining leases, make applications under the Mining on Private Lands Acts, and make applications to bring land under the Real Property Act; and for other purposes.

*(As agreed to in Select Committee.)*

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**W**HEREAS at the respective dates of his will, codicil, and death, Preamble.  
hereinafter mentioned, William Franklin Whitney, late of Coombing Park, near Carcoar, in the Colony of New South Wales (since deceased), was carrying on the business of coach proprietors, railway contractors, mail contractors, general graziers, and such other matters, including mining, as might be determined, in partnership with James Rutherford, of Bathurst, in the said Colony, under the name or style of "Cobb and Company": And whereas at the date  
5 of



of the death of the said William Franklin Whitney certain lands and hereditaments (forming portion of the assets of the said partnership, and more particularly described in the indenture of mortgage next hereinafter mentioned) were subject to an indenture of mortgage, dated the twenty-seventh day of December, one thousand eight hundred and eighty-nine, made between the said James Rutherford, of the first part, the said William Franklin Whitney, of the second part, and Walter Russell Hall, of the third part, to secure the repayment of the sum of fifty thousand pounds and interest thereon as therein mentioned: And whereas at the date aforesaid certain other assets of the said partnership therein more particularly described were subject to a bill of sale and stock mortgage in favour of the said Walter Russell Hall, and dated the thirtieth day of June, one thousand eight hundred and ninety-three, to secure the repayment of the sum of thirty thousand pounds, and interest thereon as therein mentioned: And whereas the said William Franklin Whitney duly made and executed his last will and testament, dated the fourth day of September, one thousand eight hundred and ninety-four, whereby, after appointing his wife, Isabella Whitney, sole executrix and trustee thereof, he gave his share in the said business so carried on by him in partnership with the said James Rutherford as aforesaid to his said trustee, Isabella Whitney, upon trust, in the words following, that is to say:—"Upon trust, to convert the same into money, and after such conversion in the first place to hold the sum of two thousand pounds in trust for my son, Glassford Franklin Whitney, and to invest the same in the name of my said trustee, and to apply the whole or such part as my said trustee shall in her discretion think sufficient of the annual income derived from such investment in or towards the maintenance or otherwise for the benefit of my said son, Glassford Franklin Whitney; and in the next place to pay to Arthur Leeds, of Cunnamulla, in the Colony of Queensland, station manager, the sum of two thousand pounds; and in the next place to hold the balance of the money derived from such conversion as aforesaid upon trust in equal shares, share and share alike, for my said wife, Isabella Whitney, and my children next hereinafter named, that is to say, Isabella Rachel Keltly, Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, Emily Margaret Whitney, and Evelyn Frances Amelia Whitney, and to pay on demand, but subject as hereinafter mentioned, the said legacies to my children now of age (excepting Glassford Franklin Whitney); and the shares of my daughters are to be enjoyed and disposed of by them respectively as separate property free from marital control, and their respective receipts to be sufficient discharges to my said trustee for the same. I empower my said trustee, during the minority of any of my said children, to hold the share or shares of such children during their respective minorities, and to invest the same in the name of my said trustee, and

45  
to



to apply the whole or such part as my trustee shall in her discretion think sufficient of the annual income derived from such investments respectively in and towards the maintenance and education or otherwise for the benefit of such children respectively, and to pay their  
5 respective legacies to them when they come of age, as is provided herein for payment of the legacies to my children now of age; but my said trustee need not pay any of the legacies bequeathed in this my will until after the expiration of two years from the date of my death, but she may, if she thinks fit, pay the same at any time  
10 at her discretion." And the said testator thereby devised and bequeathed the residue of his real and personal property whatsoever and wheresoever situate to his wife, Isabella Whitney: And whereas by a codicil to his said will, bearing date the fourth day of September, one thousand eight hundred and ninety-four, the said William Franklin  
15 Whitney appointed Arthur Leeds, of Cunnamulla, in the Colony of Queensland, station manager, and William Kelty, of Orange, in the Colony of New South Wales, surgeon, to be joint executors and trustees of his said will, together with his wife, Isabella Whitney; and he declared that each of the said Isabella Whitney, Arthur Leeds, and  
20 William Kelty should be responsible for her and his own actions only; and in all other respects the said testator confirmed his said will: And whereas the said William Franklin Whitney died on or about the thirty-first day of October, one thousand eight hundred and ninety-four, without having otherwise altered or revoked his said will and  
25 codicil, and leaving him surviving his said widow, Isabella Whitney, and seven children and no more, that is to say, Isabella Rachel Kelty (the wife of the said William Kelty), Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, and Emily Margaret Whitney, and Evelyn Frances Amelia Whitney (the two last named of  
30 whom are infants), and Glassford Franklin Whitney: And whereas probate of the said will and codicil was, on the twenty-third day of May, one thousand eight hundred and ninety-five, granted to the said Isabella Whitney, William Kelty, and Arthur Leeds: And whereas the assets of the said partnership at the date of the death of the said William  
35 Franklin Whitney comprised real and personal property situate both within the Colony of New South Wales and out of the said Colony: And whereas after the death of the said William Franklin Whitney it was ascertained that if the said executrix and executors were to convert into money the share of the said William Franklin Whitney  
40 in the said partnership business great losses would be occasioned to the said beneficiaries other than the said Glassford Franklin Whitney and Arthur Leeds: And whereas by an agreement dated the fifteenth day of April, one thousand eight hundred and ninety-seven, made between the said James Rutherford of the one part and the said  
45 Isabella Whitney, Arthur Leeds, and William Kelty of the other part,



a partition of certain of the properties of the said partnership was agreed to between the parties thereto, and it was agreed that the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, should take (*inter alia*) the properties known as Coombing Park, James Park, Pine Mount, 5 and Waugoola and Claverton, and the stock and chattels thereon respectively, part of which properties are comprised and described or expressed so to be in the hereinbefore recited indenture of mortgage dated the twenty-seventh December, one thousand eight hundred and eighty-nine; and the said James Rutherford should take certain other 10 properties, and that in order to equalise the said division the said executrix and executors should pay to the said James Rutherford certain moneys; and that the said executrix and executors and the said James Rutherford respectively should assume the liabilities of the said partnership business in the proportions therein mentioned. And 15 it was further (*inter alia*) agreed that as regards the whole of the remaining properties belonging to the said partnership business, not mentioned or referred to in the First and Second Schedules to the said agreement of the fifteenth day of April, one thousand eight hundred and ninety-seven, the same were to be continued and carried on with 20 a view to speedy realisation by the said James Rutherford, Isabella Whitney, Arthur Leeds, and William Kelty, under their joint management: And whereas by an agreement dated the thirtieth day of August, one thousand eight hundred and ninety-seven, made between the same parties as the parties to the hereinbefore lastly recited agree- 25 ment, the time within which the aforesaid liabilities of the said partnership business were to be assumed was extended to the thirty-first day of December, one thousand eight hundred and ninety-seven, and in all other respects the said agreement of the fifteenth day of April, one thousand eight hundred and ninety-seven, was ratified and 30 confirmed: And whereas the said Isabella Whitney, Arthur Leeds, and William Kelty having been advised that they could not legally give a mortgage over such properties, stock, chattels, and effects coming to them under such partition as aforesaid, it was agreed that the said indenture of mortgage dated the twenty-seventh day of 35 December, one thousand eight hundred and eighty-nine, and the said bill of sale and stock mortgage dated the thirtieth day of June, one thousand eight hundred and ninety-three, should not be discharged so far as regards the covenants of the said William Franklin Whitney and the property, stock, chattels, and assets taken by the said Isabella 40 Whitney, Arthur Leeds, and William Kelty as such executrix and executors as aforesaid, under such partition, but that the said James Rutherford should be released from his personal covenants contained in the said indenture of mortgage and bill of sale and stock mortgage but without prejudice to or in any other way affecting the said 45 indenture



indenture of mortgage and bill of sale and stock mortgage and the covenants of the said William Franklin Whitney therein contained, except as hereinafter provided: And whereas the said Walter Russell Hall, at the request of the said Isabella Whitney, Arthur Leeds, and  
5 William Kelty, agreed to enter into and did execute a certain indenture of agreement bearing date the twenty-ninth day of December, one thousand eight hundred and ninety-seven, and expressed to be made between the said Isabella Whitney, Arthur Leeds, and William Kelty of the one part, and the said Walter Russell Hall, hereinafter called  
10 the said mortgagee, of the other part: And whereas by the last-mentioned indenture of agreement after certain recitals therein contained and after reciting that the said Walter Russell Hall, at the request of the said Isabella Whitney, Arthur Leeds, and William Kelty, had agreed to enter into and execute those presents for the  
15 purpose of acknowledging that the sum of sixty-three thousand pounds only and interest thereon, calculated from the first day of January, one thousand eight hundred and ninety-eight, remained owing on the security of the hereinbefore recited indenture of mortgage, and the sum of thirty thousand pounds (part of the said  
20 sum of sixty-three thousand pounds) and interest thereon, calculated from the first day of January, one thousand eight hundred and ninety-eight, was secured by the said bill of sale and stock mortgage; and after reciting that it had been agreed that the time for the repayment of the said sum of sixty-three thousand pounds should be  
25 extended in manner hereinafter provided; and after reciting that the said Isabella Whitney, Arthur Leeds, and William Kelty had, at the request of the said Walter Russell Hall, agreed to enter into and execute the indenture of agreement now in recital for the further purpose of consenting to the release of the said James Rutherford  
30 from his covenants contained in the said indenture of mortgage and the said bill of sale and stock mortgage, and to the release of certain other property, stock, and chattels, and also for the purpose of better securing to the said Walter Russell Hall repayment of the said sum of sixty three thousand pounds and interest thereon, and enabling  
35 him to obtain such further assurance as he might thereafter require in manner hereinafter appearing: It was witnessed (*inter alia*) that in pursuance of the said agreement, and in consideration of the premises, they, the said Isabella Whitney, Arthur Leeds, and William Kelty, and as separate covenants every two of them, did thereby for  
40 themselves, their heirs, executors, and administrators, jointly and every one of them did thereby for herself and himself, her and his heirs, executors, and administrators severally covenant with the said Walter Russell Hall, his heirs, executors, administrators, and assigns that the heirs, executors, and administrators of the said William Franklin  
45 Whitney, and they the said Isabella Whitney, Arthur Leeds, and  
William



William Kelty, and their respective heirs, executors, and administrators, and every other person having or lawfully or equitably claiming by, through, under, or in trust for the said William Franklin Whitney, deceased, any estate, right, title, or interest in or to the lands, stock, and chattels comprised in the said indenture of mortgage and bill of sale and stock mortgage, or in or to any other property, stock, chattels, and assets coming to the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, under the division of the properties of the said partnership, or any of them, or any part thereof respectively, should and would at all times (at the cost, until foreclosure or sale, of the estate of the said William Franklin Whitney, or of them the said Isabella Whitney, Arthur Leeds, and William Kelty, and afterwards at the cost of the person or persons requiring the same) execute and do every such lawful assurance and thing for the further or more perfectly assuring the said premises, and every or any part thereof, to the use of the said Walter Russell Hall, his heirs, executors, administrators, and assigns, as by the said Walter Russell Hall, his heirs, executors, administrators, or assigns should be reasonably required; and would obtain the consent and approval to those presents of such of the children of the said William Franklin Whitney as were then infants immediately on their respectively attaining the age of twenty-one years; and would indemnify and keep indemnified the said Walter Russell Hall, his heirs, executors, administrators, and assigns, and his and their estates and effects, against all actions, suits, claims, and demands whatsoever that might be brought by the said infants on or at any time after their attaining the age of twenty-one years respectively against the said Walter Russell Hall, his heirs, executors, administrators, or assigns, and also against all losses, charges, damages, costs, and expenses that the said Walter Russell Hall, his heirs, executors, administrators, or assigns might sustain or incur by reason of the said infants, or either of them, not consenting to or approving of those presents; and generally against all results and consequences of the said infants not consenting and approving as aforesaid; and would within one month after being requested in writing by the said mortgagee, his heirs, executors, administrators, or assigns so to do, make all necessary applications to (*inter alia*) the Supreme Court of New South Wales for leave to mortgage to the said Walter Russell Hall, his heirs, executors, administrators, or assigns the whole of the said properties, stock, chattels, and assets coming to them, the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, under the said division of properties of the said partnership to secure the repayment of the said sum of sixty-three thousand pounds and interest thereon, or for the confirmation of the arrangement made in respect of the thereinbefore recited indenture of mortgage and bill of sale



sale and stock mortgage, and would within one month after being requested as aforesaid commence and institute all necessary steps and proceedings requisite or necessary for obtaining a Private Act or Acts (*inter alia*) in the Colony of New South Wales, authorising the said  
5 Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, to mortgage such properties, stock, chattels, and assets coming to them under such division of properties as aforesaid for the amount aforesaid or otherwise confirming the arrangement made in respect of the said indenture of mortgage and bill of sale and  
10 stock mortgage, and would whenever called upon so to do execute all such mortgages, transfers, assignments, and securities over such properties, stock, chattels, and assets coming to them as aforesaid under the division of properties of the said partnership as the said Walter Russell Hall, his heirs, executors, administrators, or assigns, or  
15 his or their attorney or attorneys, agent or agents might from time to time require for the purpose of securing payment of the said principal sum of sixty-three thousand pounds and interest, such mortgages and securities to be prepared by the solicitors for the said Walter Russell Hall, his heirs, executors, administrators, or assigns, or his or their  
20 attorney or attorneys, agent or agents, and the same to contain all such reasonable powers (including powers of sale), provisions, covenants, clauses, and agreements as might be thought desirable by the said Walter Russell Hall, his heirs, executors, administrators, or assigns, or  
25 his or their attorney or attorneys, agent or agents, or his or their solicitors; and that in the event of the said Isabella Whitney, Arthur Leeds, and William Kelty, or any or either of them, their or any or either of their executors, administrators, or assigns making default for the space of one month as aforesaid in making such application (*inter alia*) to the Supreme Court of New South Wales, or in doing all that  
30 might be necessary to obtain such Private Act or Acts as aforesaid, after having been requested as aforesaid, or in executing to the said Walter Russell Hall, his heirs, executors, administrators, or assigns any such mortgages, transfers, assignments, or securities as aforesaid, after the same should have been handed to them, or left at, or sent  
35 through the medium of the post office addressed to them or any or either of them to the usual place of abode or business of them or any or either of them in the Colony of New South Wales last known to the said mortgagee, his heirs, executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or left upon any  
40 part of the said properties, then all such applications to the said courts or either of them might be made, and all necessary proceedings to obtain such Private Act or Acts might be taken, and all such mortgages and securities might be executed by the said mortgagee, his heirs, executors, administrators, or assigns in his or their own name  
45 or names, or in the name or names of the said William Franklin  
Whitney,



Whitney, his executors or administrators, or in the names and when necessary as the act and deed of the said Isabella Whitney, Arthur Leeds, and William Kelty, or any or either of them, their or any or either of their heirs, executors, administrators, or assigns; and would pay all costs, charges, fees, and expenses arising out of or incidental to or connected with such application to the Court as aforesaid, and such mortgages and securities, and obtaining such Private Act or Acts as aforesaid, and all other costs, charges, fees, and expenses in any way connected with or arising out of those presents or the arrangement therein set forth: And whereas by an indenture of agreement bearing date the twenty-ninth day of December, one thousand eight hundred and ninety-seven, expressed to be made between the said Isabella Whitney, Isabella Rachel Kelty (wife of the said William Kelty), Adeline Thirza Whitney, spinster, Arthur William Whitney, Esquire, Louisa Katie Whitney, spinster, Emily Margaret Whitney, spinster, and Evelyn Frances Amelia Whitney, spinster, all of Coombing Park aforesaid, beneficiaries under the will of the said William Franklin Whitney, of the one part, and the said Walter Russell Hall of the other part, after reciting that the said James Rutherford and the said William Franklin Whitney carried on business in partnership as coach proprietors, railway contractors, mail contractors, and graziers, and for such other purposes as were determined upon by the said partners, the said James Rutherford being entitled to two-thirds of the property of the partnership, including gains and profits, and the said William Franklin Whitney to one-third thereof; and that it was therein provided that on the death of either partner, if the executors of the deceased partner declined to continue in the business and the surviving partner did not purchase the share of the deceased partner, the assets of the partnership should be sold and divided; and after reciting the said indenture of mortgage, dated the twenty-seventh day of December one thousand eight hundred and eighty-nine, registered number five hundred and thirty-four, book four hundred and twenty-nine; and after reciting the said bill of sale and stock mortgage; and after reciting that by his will and codicil, each bearing date the fourth day of September, one thousand eight hundred and ninety-four, the said William Franklin Whitney appointed the said Isabella Whitney, Arthur Leeds, and William Kelty executrix and executors thereof; and after reciting that the said William Franklin Whitney died on about the thirty-first day of October, one thousand eight hundred and ninety-four, without having altered or revoked his said will and codicil, and that probate thereof, was, on the twenty-third day of May, one thousand eight hundred and ninety-five, granted to the said Isabella Whitney, Arthur Leeds, and William Kelty; and after reciting that ancillary probate of the said will and codicil was, on the thirtieth day of November, one thousand



thousand eight hundred and ninety-seven, granted by the Supreme Court of Queensland to the said Arthur Leeds, one of the executors in the said will and codocil named, power being reserved to make the like grant to Isabella Whitney and William Kelty, the executrix and  
5 other executor in the said will and codicil named; and after reciting the said agreement dated the fifteenth day of April, one thousand eight hundred and ninety-seven; and after reciting the said agreement dated the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that in order to enable the said  
10 Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, to carry out the said agreements and to assume their portion of the liabilities of the late partnership in the terms of the thereinbefore recited indenture of mortgage of the twenty-seventh day of December, one thousand eight hundred and eighty-  
15 nine, and the thereinbefore recited bill of sale and stock mortgage of the thirtieth day of June, one thousand eight hundred and ninety-three, should be discharged, and the said Walter Russell Hall should advance to the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, the sum of sixty-  
20 three thousand pounds upon the security of the whole of the properties, stock, chattels, and assets coming to the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, under the division of the properties of the said partnership; and after reciting that the said Walter  
25 Russell Hall had agreed to advance to the said James Rutherford a certain sum of money upon certain securities; and after reciting (*inter alia*) that the parties thereto having been advised that the thereinbefore recited agreements of the fifteenth day of April, one thousand eight hundred and ninty-seven, and the thirtieth day of  
30 August, one thousand eight hundred and ninty-seven, were not in conformity with the provisions of the deed of partnership, and that the said agreements constituted a breach of the trusts of the will of the said William Franklin Whitney, deceased, and that the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and  
35 executors as aforesaid, could not legally give a mortgage over such properties, stock, chattels, and assets coming to them as aforesaid: It had been agreed that the thereinbefore recited indenture of mortgage of the twenty-seventh day of December, one thousand eight hundred and eighty-nine, and the thereinbefore recited bill of sale and stock  
40 mortgage should not be discharged as far as regarded the covenants of the said William Franklin Whitney and the properties, stock, chattels, and assets taken by the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, under the division of properties of the said partnership were concerned, but  
45 that the said James Rutherford should be released from his personal covenants



covenants contained in the said indenture of mortgage, and bill of sale and stock mortgage, and that the Cunnamulla property and stock and chattels thereon should be discharged from the thereinbefore recited bill of sale and stock mortgage, but without prejudice to or in any other way affecting the said indenture of mortgage and bill of sale 5 and stock mortgage and the covenants of the said William Franklin Whitney therein contained except as hereinafter provided; and after reciting that the sum of sixty-three thousand pounds only was the principal sum due to the said Walter Russell Hall from the said executrix and executors as aforesaid; and after reciting that the said 10 Isabella Whitney, Isabella Rachel Kelty, Adeline Thirza Whitney, Arthur William Whitney, and Louisa Katie Whitney had, at the request of the said Walter Russell Hall, agreed to enter into and execute the indenture of agreement now in recital for the better securing to the said Walter Russell Hall the repayment of the said 15 sum of sixty-three thousand pounds and interest thereon, and enabling him to obtain such further assurances as he might thereafter require in manner hereinafter appearing, and for the purpose of indemnifying him against any loss he might incur by reason of the title of the said securities from the said executrix and executors as aforesaid, and from 20 the said James Rutherford, or any of them being defective: It was witnessed that in pursuance of the said agreement, and in consideration of the premises they, the said Isabella Whitney, Isabella Rachel Kelty, Adeline Thirza Whitney, Arthur William Whitney, and Louisa Katie Whitney, and as separate covenants every five, four, three, and two of 25 them did thereby for themselves, their heirs, executors, and administrators jointly, and every one of them did thereby for herself and himself, her and his heirs, executors, and administrators, severally covenant with the said Walter Russell Hall, his heirs, executors, administrators, and assigns that they the said covenanting parties respectively, and 30 their respective heirs, executors, administrators, and assigns, and every other person having or lawfully or equitably claiming any estate, right, title, or interest through them, or any of them, or through Emily Margaret Whitney, or Evelyn Frances Amelia Whitney, children of the said William Franklin Whitney, deceased, or either of them, or by, 35 through, under, or in trust for the said William Franklin Whitney, deceased, in or to the land, stock, and chattels, and effects forming or intended to form security of the said Walter Russell Hall as aforesaid, or any of them, or any part thereof respectively, should, and would at all times (at the cost until foreclosure or sale of the 40 said covenanting parties respectively, and their respective heirs, executors, administrators, or assigns, and afterwards at the cost of the person or persons requiring the same), execute and do every such assurance and thing for the further or more perfectly assuring the said premises and every or any part thereof to the use of the said Walter 45 Russell



Russell Hall, his heirs, executors, administrators, and assigns as by the said Walter Russell Hall, his heirs, executors, administrators, or assigns should be reasonably required, and would obtain the execution of the indenture of agreement now in recital by such of the children  
5 of the said William Franklin Whitney as were then infants, that is to say, Emily Margaret Whitney and Evelyn Frances Amelia Whitney, within six months of their respectively attaining the age of twenty-one years, and would indemnify and keep indemnified the said Walter Russell Hall, his heirs, executors, administrators and assigns, and  
10 his and their estates and effects against all actions, suits, claims, and demands whatsoever that might be brought by the said infants on or at any time after their attaining the age of twenty-one years respectively against the said Walter Russell Hall, his heirs, executors, administrators or assigns, and also against all losses, charges, damages,  
15 costs, and expenses that the said Walter Russell Hall, his heirs, executors, administrators, or assigns might sustain or incur by reason of the said infants or either of them not consenting to or approving of the indenture of agreement now in recital, and generally against all results and consequences of the said infants not consenting and  
20 approving as aforesaid; and would, whenever called upon so to do, execute all such mortgages, transfers and assignments, and securities over such properties, stock, chattels, and assets as aforesaid as the said mortgagee, his heirs, executors, administrators or assigns, or his or their attorney or attorneys, agent or agents might from time to time  
25 require for the purpose of securing payment of the said principal sum of sixty-three thousand pounds and interest; and would obtain the execution by the said infants on their attaining the age of twenty-one years of all such mortgages, transfers, assignments, and securities if requested so to do; all such mortgages, transfers, assignments, and  
30 securities to be prepared by the solicitors for the said Walter Russell Hall, his heirs, executors, administrators or assigns, or his or their attorney or attorneys, agent or agents, and the same to contain all such powers (including powers of sale), provisions, covenants, clauses, and agreements as might be thought desirable by the said Walter  
35 Russell Hall, his heirs, executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or his or their solicitors; and that in the event of the said covenanting parties, or any or either of them, their or any or either of their heirs, executors, administrators, or assigns making default for the space of one month as aforesaid in  
40 executing to the said Walter Russell Hall, his heirs, executors, administrators, or assigns any such assurances, mortgages, transfers, assignments, or securities as aforesaid after the same should have been handed to them or left at or sent through the medium of the post office, addressed to them or any or either of them to the usual place  
45 of abode or business of them or any or either of them in the said Colony



Colony of New South Wales last known to the said Walter Russell Hall, his heirs, executors, administrators or assigns, or his or their attorney or attorneys, agent or agents, or left upon any part of the said properties, then all such assurances, mortgages, transfers, assignments, and securities might be executed by the said Walter Russell 5 Hall, his heirs, executors, administrators, or assigns in his or their own name or names, or in the names, and when necessary as the act and deed, of the said covenanting parties respectively, or any or either of them, their or any or either of their heirs, executors, administrators, or assigns, and would pay all costs, charges, fees, and expenses arising 10 out of or incidental to or connected with such assurances, mortgages, transfers, assignments, and securities as aforesaid, and all other costs, charges fees, and expenses in any way connected with or arising out of the indenture of agreement now in recital or the arrangement therein set forth; and for the purposes aforesaid and to give full effect to 15 the indenture of agreement now in recital, the said covenanting parties did and each of them did thereby irrevocably appoint the said Walter Russell Hall, his executors, administrators, and assigns, the attorney and attorneys, agent and agents of them the said covenanting parties respectively, and of their respective executors and administrators, with 20 power in his or their own name or names, or in the names or name of the said covenanting parties, or any or either of them respectively, their or any or either of their respective executors, administrators, or assigns, to execute all such mortgages, transfers, assignments, securities, and other assurances, and accept any of the same as aforesaid, and to 25 pay all costs, fees, charges, and expenses necessary for or in any way connected with the carrying out of the objects aforesaid or any of them, and until repaid with interest at the rate of six pounds per centum per annum the same should be a charge upon the lands and premises comprised in the said indenture of mortgage and bill of sale; 30 and for all or any of the purposes aforesaid from time to time to nominate or appoint one or more substitute or substitutes, agent or agents, under him or them in his or their place or places, and such nomination or appointment at pleasure to revoke the said covenanting parties respectively, thereby ratifying, confirming, and allowing, and 35 agreeing at all times to ratify, confirm, and allow all and whatsoever the said Walter Russell Hall, his executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or their substitute or substitutes, agent or agents, should do or cause to be done in and about the premises by virtue of the indenture of agreement now in 40 recital; and it was thereby agreed and declared that a statutory declaration by the said Walter Russell Hall, his heirs, executors, administrators, or assigns, or by his or their attorney or attorneys, agent or agents, or their substitute or substitutes, that default had been made by the said Isabella Whitney, Isabella Rachel Kelty, 45 Adeline



Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, Emily Margaret Whitney, and Evelyn Frances Amelia Whitney, or any or either of them, in executing any such assurances, mortgages, transfers, and securities as aforesaid, or any of them, should  
5 be conclusive evidence of that fact and of the right of the said Walter Russell Hall, his executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or their substitute or substitutes, to execute such assurances, mortgages, transfers, and securities as aforesaid in the names and name, and as the act and deed, of the said  
10 covenanting parties respectively, or any or either of them, their or any or either of their executors, administrators, or assigns: Provided further, and it was thereby agreed and declared that default by the said Isabella Whitney, Isabella Rachel Kelty, Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, Emily Margaret  
15 Whitney, and Evelyn Frances Amelia Whitney, or any or either of them, their or any or either of their heirs, executors, administrators, or assigns thereunder, should be equivalent to default under the thereinbefore recited indenture of mortgage and bill of sale; and thereupon or at any time thereafter the said mortgagee, his heirs,  
20 executors, administrators, or assigns might exercise all or any of the powers contained in the said indenture of mortgage and bill of sale or either of them and powers incidental thereto; and it was also witnessed that in further pursuance of the said agreement, and in consideration of the premises, they, the said Isabella Whitney,  
25 Isabella Rachel Kelty, Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, Emily Margaret Whitney, and Evelyn Frances Amelia Whitney, and as separate covenants every seven, six, five, four, three, and two of them did thereby for themselves, their heirs, executors, and administrators, jointly and each of  
30 them, did thereby for herself and himself, her and his heirs, executors, and administrators, severally covenant with the said Walter Russell Hall, his heirs, executors, administrators, and assigns that they the said covenanting parties, and every of them, their and every of their heirs, executors, and administrators would from time to time and at all times  
35 thereafter indemnify and keep indemnified the said Walter Russell Hall, his heirs, executors, administrators, and assigns from and against all losses, costs, charges, and expenses which the said Walter Russell Hall, his heirs, executors, administrators, or assigns might at any time thereafter incur or become liable to pay by reason or in consequence  
40 of the illegality of the thereinbefore recited agreements, or the aforesaid breaches of trust, or the defects in the title to the securities both from the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, and from the said James Rutherford, or any or either of them, or by reason of such defects, or  
45 by reason of or in consequence of any actions, proceedings, claims, and demands to be made, set up, or instituted at any time or times thereafter



thereafter by any person or persons, company or companies in respect of the same or any of them, and from and against all costs, damages, and expenses to be occasioned by any such action, proceeding, claim, or demand as aforesaid, or otherwise in respect of the premises; and it was thereby declared that upon the execution of the indenture of agreement now in recital by the said Emily Margaret Whitney and Evelyn Frances Amelia Whitney respectively, then all the covenants therein contained should be binding on them respectively, and their respective heirs, executors, administrators, and assigns: And whereas by indenture of confirmation bearing date the twenty-ninth day of December, one thousand eight hundred and ninety-seven, made between the said James Rutherford of the one part, and the said Isabella Whitney, Arthur Leeds, and William Kelty of the other part, after reciting that by a certain indenture of conveyance dated the twenty-fourth day of December, one thousand eight hundred and eighty-nine, registered number five hundred and thirty-three, book four hundred and twenty-nine, made between the said Walter Russell Hall of the first part, and the said James Rutherford and William Franklin Whitney of the second part, and Elliott Meyer of the third part, the lands and hereditaments thereafter described were conveyed and assured unto the said Elliott Meyer and his heirs to the use of the said James Rutherford and William Franklin Whitney, their heirs, executors, administrators, and assigns for ever as tenants in common in unequal shares; and after reciting the said indenture of mortgage bearing date the twenty-seventh day of December, one thousand eight hundred and eighty-nine; and after reciting that the said James Rutherford and William Franklin Whitney, in the lifetime of the said William Franklin Whitney, carried on business in partnership as coach proprietors, railway contractors, mail contractors, and graziers, and for such other purposes as were determined upon by the said partners, the said James Rutherford being entitled to two-thirds of the property of the partnership including gains and profits, and the said William Franklin Whitney to one-third thereof; and after reciting that the lands and hereditaments thereafter described formed part of the property of the said partnership; and after reciting that the said William Franklin Whitney died on or about the thirty-first day of October, one thousand eight hundred and ninety-four, having first duly made his last will and codicil thereto whereby he appointed the said Isabella Whitney, Arthur Leeds, and William Kelty executrix and executors thereof; and after reciting that probate of the said will and codicil was, on the twenty-third day of May, one thousand eight hundred and ninety-five, granted by the Supreme Court of New South Wales to the said Isabella Whitney, Arthur Leeds, and William Kelty, the executrix and executors therein named; and after reciting the said agreement of the fifteenth day of April,

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one



one thousand eight hundred and ninety-seven; and after reciting the said agreement bearing date the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said Isabella Whitney, Arthur Leeds, and William Kelty, as  
5 such executrix and executors as aforesaid, in pursuance of the said agreement had assumed and become solely liable for such portions of the liabilities of the late partnership as were by the said agreement to be assumed by them within the time mentioned in the said agreement of the thirtieth day of August, one thousand eight hundred and  
10 ninety-seven; and after reciting that the said James Rutherford, for the purpose of confirming and carrying into effect the thereinbefore recited agreements, had agreed to enter into and execute those presents in manner hereinafter appearing: It was witnessed that in pursuance of the said agreement and in consideration of the premises, he, the  
15 said James Rutherford, did thereby grant release and confirm unto the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, and their heirs, all that the undivided share and interest both legal and equitable of him, the said James Rutherford, of and in all those pieces or parcels of lands com-  
20 prised and described in the Schedule thereunder written, and of and in all other lands of whatever tenure forming, or reputed to form, part of the Coombing Park Estate, or held, used, occupied, or enjoyed therewith, or intended or reputed so to be, to have and to hold the said undivided share and interest and all and singular other the premises  
25 thereby granted or expressed so to be with the appurtenances unto and to the use of the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, their heirs and assigns for ever subject to the thereinbefore recited indenture of mortgage: And whereas by indenture of confirmation bearing date  
30 the twenty-ninth day of December, one thousand eight hundred and ninety-seven, made between the said James Rutherford of the one part and the said Isabella Whitney, Arthur Leeds, and William Kelty of the other part, after reciting that by an indenture bearing date the fifteenth day of November, one thousand eight hundred and eighty-  
35 three, registered number seven hundred and forty-seven, book two hundred and eighty, made between William Lachlan Macquarie Redfern of the one part and the said James Rutherford of the other part, the lands and hereditaments therein (and in the indenture now in recital) described were conveyed and assured unto and to the use of  
40 the said James Rutherford, his heirs, and assigns for ever, and after reciting the said indenture of mortgage bearing date the twenty-seventh day of December, one thousand eight hundred and eighty-nine; and after reciting that the said James Rutherford and William Franklin Whitney, in the lifetime of the said William Franklin  
45 Whitney, carried on business in partnership as coach proprietors,  
railway



railway contractors, mail contractors, and graziers, and for such other purposes as were determined upon by the said partners, the said James Rutherford being entitled to two-thirds of the property of the partnership including gains and profits, and the said William Franklin Whitney to one-third thereof; and after reciting that the lands and hereditaments thereafter described formed part of the property of the said partnership; and after reciting that the said William Franklin Whitney died on or about the thirty-first day of October, one thousand eight hundred and ninety-four, having first duly made his last will and codocil thereto, whereby he appointed the said Isabella Whitney, Arthur Leeds, and William Kelty executrix and executors thereof; and after reciting that probate of the said will and codocil was, on the twenty-third day of May, one thousand eight hundred and ninety-five, granted by the Supreme Court of New South Wales, in its Probate Jurisdiction, to the said Isabella Whitney, Arthur Leeds, and William Kelty, the executrix and executors therein named; and after reciting the said agreement of the fifteenth day of April, one thousand eight hundred and ninety-seven; and after reciting the said agreement bearing date the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, in pursuance of the said agreement, had assumed and become solely liable for such portions of the liabilities of the late partnership as were, by the said agreement to be assumed by them within the time mentioned in the said agreement of the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said James Rutherford, for the purpose of confirming and carrying into effect the thereinbefore recited agreements, had agreed to enter into and execute those presents in manner thereafter appearing: It was witnessed that, in pursuance of the said agreement, and in consideration of the premises he, the said James Rutherford, did thereby grant, release, and confirm unto the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, and their heirs, all those pieces or parcels of land comprised and described in the Schedule thereunder written, and also all other lands (if any) of whatever tenure forming or reputed to form part of the Coombing Park Estate, Waugoola, James Park, and Pine Mount, or any or either of them, or held, used, occupied, or enjoyed with them or any or either of them, or intended or reputed so to be, and all the estate, share, and interest, both legal and equitable, of him, the said James Rutherford, of and in all other lands of whatever tenure forming or reputed to form part of the Coombing Park Estate, Waugoola, James Park, and Pine Mount, or any or either of them, or held, used, occupied, or enjoyed with them, or any or either of them, or intended or reputed so to be, to have and  
to



to hold the said lands, messuages, and hereditaments, estate, share and interest, and all and singular other the premises thereinbefore described and intended so to be thereby assured with the appurtenances unto and to the use of the said Isabella Whitney, Arthur Leeds, and  
5 William Kelty, as such executrix and executors as aforesaid, their heirs and assigns for ever, subject to the thereinbefore recited indenture of mortgage: And whereas by an indenture of confirmation bearing date the twenty-ninth day of December, one thousand eight hundred and ninety-seven, made between the said James Rutherford  
10 of the one part and the said Isabella Whitney, Arthur Leeds, and William Kelty of the other part, after reciting that by an indenture bearing date the twenty-seventh day of March, one thousand eight hundred and eighty-nine, registered number nine hundred and fourteen, book four hundred and eleven, made between Thomas Hilliar of  
15 the one part and the said James Rutherford of the other part, the lands and the hereditaments therein (and in the indenture now in recital) described in the First Schedule thereto, were conveyed and assured unto and to the use of the said James Rutherford, his heirs, and assigns for ever; and after reciting that by the said indenture of  
20 mortgage of the twenty-seventh day of December, one thousand eight hundred and eighty-nine, the lands and hereditaments described in the First Schedule thereto (*inter alia*) were conveyed and assured unto the said Walter Russell Hall to secure the repayment of the said sum of fifty thousand pounds and interest thereon, as therein men-  
25 tioned, subject to the proviso for redemption therein contained; and after reciting that the said James Rutherford and William Franklin Whitney in the lifetime of the said William Franklin Whitney carried on business in partnership as coach proprietors, railway contractors, mail contractors and graziers, and for such other purposes as were  
30 determined upon by the said partners, the said James Rutherford being entitled to two-thirds of the property of the partnership, including gains and profits, and the said William Franklin Whitney to one-third thereof; and after reciting that the lands and hereditaments thereafter described in the First and Second Schedules thereto  
35 formed part of the property of the said partnership, the lands in the First Schedule forming part of the estate known as James Park, and the lands in the Second Schedule forming part of the estate known as Pine Mount; and after reciting that the said William Franklin Whitney died on or about the thirty-first day of October, one  
40 thousand eight hundred and ninety-four, having first duly made his last will and codicil thereto, whereby he appointed the said Isabella Whitney, Arthur Leeds and William Kelty executrix and executors thereof; and after reciting that probate of the said will and codicil was on the twenty-third day of May, one thousand eight hundred and ninety-five,  
45 granted by the Supreme Court of New South Wales, in its Probate



Jurisdiction to the said Isabella Whitney, Arthur Leeds, and William Kelty, the executrix and executors therein named; and after reciting the said agreement of the fifteenth day of April, one thousand eight hundred and ninety-seven; and after reciting the said agreement, bearing date the thirtieth day of August, one thousand eight hundred 5 and ninety-seven; and after reciting that the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, in pursuance of the said agreement, had assumed and become solely liable for such portions of the liabilities of the late partnership as were by the said agreement to be assumed by them within the time 10 mentioned in the said agreement of the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said James Rutherford, for the purpose of confirming and carrying into effect the thereinbefore recited agreements, had agreed to enter into and execute those presents in manner hereinafter appearing: It was 15 witnessed that, in pursuance of the said agreement, and in consideration of the premises, he, the said James Rutherford, did thereby grant, release, assign, transfer, and confirm unto the said Isabella Whitney, Arthur Leeds, and William Kelty (as such executrix and executors as aforesaid), their heirs, executors, administrators and assigns, all those 20 pieces or parcels of land comprised and described in the first part of the First Schedule thereto; and also all those conditionally purchased and conditionally leased lands, comprised and described in the second part of the First Schedule thereto, and also all those conditionally purchased lands, comprised and described in the Second Schedule 25 thereto; and also all other lands (if any) of whatever tenure forming or reputed to form part of the Coombing Park Estate, Waugoola, James Park, and Pine Mount, or any or either of them, or held, used, occupied, and enjoyed with them, or any or either of them, or intended or reputed so to be; and also all the estate share and interest, both 30 legal and equitable of him, the said James Rutherford, of and in all other lands of whatever tenure forming or reputed to form part of the Coombing Park Estate, Waugoola, James Park, and Pine Mount, or any or either of them, or held, used, occupied or enjoyed with them, or any or either of them, or intended or reputed so to be, to have and 35 to hold the said lands, messuages, and hereditaments, estate, share, and interest, and all and singular other the premises thereinbefore described, and intended to be thereby assured with the appurtenances unto, and to the use of the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, their 40 heirs, executors, administrators and assigns, according to the nature and tenure thereof respectively, subject to the thereinbefore recited indenture of mortgage: And whereas the sum of two thousand pounds has been set apart and is now invested by the said executrix and executors, upon trust for the said Glassford Franklin Whitney, in 45 terms



terms of the said bequest to him: And whereas the said will and codicil of the said William Franklin Whitney, do not contain power to postpone the sale of his share of the assets of the said partnership, or to partition or divide, or concur in the partition or division of the  
5 assets of the said partnership, or to mortgage or concur in mortgaging any portion of the said testator's share in the said assets, or to carry on any portion of the same, and any of the other powers contained in this Act: And whereas certain of the aforesaid lands are supposed to contain valuable deposits of metals and minerals: And whereas it is  
10 desirable in the interest of all persons beneficially interested under the said will and codicil of the said William Franklin Whitney in the said lands that the said agreements of the fifteenth day of April, one thousand eight hundred and ninety-seven, and the thirtieth day of August, one thousand eight hundred and ninety-seven, and the  
15 said two indentures of agreement and three indentures of confirmation all dated the twenty-ninth day of December, one thousand eight hundred and ninety-seven, should be ratified and confirmed. And that the powers contained in this Act should be conferred upon the said Isabella Whitney, Arthur Leeds, and William Kelty, or other  
20 the trustees or trustee for the time being of the said will and codicil: Be it therefore enacted by the King'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:—

25 1. The words "the said trustees" whenever hereinafter used shall extend to and include not only the said Isabella Whitney, Arthur Leeds, and William Kelty, but also the trustees or trustee for the time being of the said will and codicil. Interpretation of word "trustees."

2. It shall be lawful for the said trustees (subject nevertheless  
30 to all or any securities or security held by the said Walter Russell Hall if then subsisting or any other then subsisting security) to sell and absolutely dispose of or concur or join in selling or absolutely disposing of all and singular the lands and hereditaments which are or may be subject to the trusts of the said will and codicil, or which have been  
35 or hereafter may be allotted as the share of the said William Franklin Whitney or of the said trustees in the said partnership business, or may otherwise become vested in them as such trustees or any part or parts of such lands and hereditaments, by public auction or private contract, either in one or more lot or lots, and in such manner generally  
40 and upon and subject to such terms and conditions and at such price or prices in money or for such other equivalent or consideration as the said trustees shall deem expedient, with power to buy in the said lands and hereditaments or any or either of them or any part thereof at any sale by auction, and to rescind or vary any contract for sale  
45 either on terms or gratuitously, and to re-sell without being responsible for



for any loss occasioned thereby, and upon any such sale or sales to convey or transfer the land so sold to the purchaser or purchasers thereof, his, her, or their heirs and assigns, or as such purchaser or purchasers may direct, freed and discharged (subject as aforesaid) from all trusts affecting the same, and the receipts in writing of the said trustees for the purchase money of any lands and hereditaments so sold shall be full and sufficient discharges to any purchasers for the same and from being bound to see to the application of the same and from any liability for the loss, non-application, or misapplication of the same, or any part thereof. The said trustees shall be entitled to pay the whole of the costs, charges, and expenses of such sales or sale out of the whole or any part of the proceeds of any sale made under this section.

Power to postpone sales.

3. It shall be lawful for the said trustees from time to time to postpone such sale or sales as aforesaid as they in their discretion shall think fit.

Power to give credit to purchasers.

4. Subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, it shall be lawful for the said trustees to allow any purchaser or purchasers credit for the payment of the whole or any part of his, her, or their purchase money, upon such terms as to interest or otherwise and generally as the said trustees may deem reasonable and expedient: Provided that the land in respect of which such credit shall be given shall remain unconveyed or untransferred, or shall by a proper mortgage with full powers of entry and sale and other usual and proper provisions be made a security for the payment of the purchase money remaining unpaid: Provided further, that in the event of any such security being taken, the vendor's lien for the said purchase money, and every part thereof, shall not be affected thereby or lost: Provided further, that the said trustees shall only be liable or responsible for so much of the said purchase money as such purchaser or purchasers shall actually pay, and shall not be liable for any loss arising from the default of any purchaser on the completion of his or her purchase.

Power to mortgage.

5. It shall be lawful for the said trustees from time to time to borrow and raise at interest any sum or sums of money with power from time to time to pay off any mortgage or mortgages or any part or parts thereof, and to re-borrow any sum or sums thereby secured or any greater or less sum or sums; and to execute any mortgage or mortgages of any real or personal estate which is for the time being subject to the trusts of the said will and codicil, with or without power of sale for securing payment of the sum or sums so borrowed, and to give effectual receipts and discharges for the moneys advanced by any mortgagee, and to do and execute all such other acts, deeds, and things as may be necessary or expedient for the purpose of effectuating such mortgage



mortgage or mortgages : Provided that no mortgagee advancing money upon the security of any such mortgage as aforesaid purporting to be made under the power herein conferred shall be bound to enquire whether such money is required for the purposes of the trusts of the said will and codicil or this Act, or in any way concerned to see to the application of such money when so advanced, or be liable for the loss, non-application, or misapplication thereof.

6. It shall be lawful for the said trustees to purchase or acquire lands whether freehold, leasehold, or Crown lands, or lands held under the existing Crown Lands Acts or any Acts amending or repealing the same, at such price or prices in money, or for such other equivalent or consideration as to them shall seem reasonable, and to apply in the purchase or acquiring of the same any part of the moneys subject to the trusts of the said will and codicil, and to sign, execute and accept all or any deeds, documents, or other writings necessary for the purchase or acquiring of the same.

Power to purchase.

7. It shall be lawful for the said trustees (subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid), to execute or join in executing any deed or deeds, transfer or transfers, or other document for the purpose of effecting or obtaining a partition or division of any lands, hereditaments, and premises forming portion of the assets of the said partnership business. And for the like purpose to take or join with any person or persons in taking, and to join as parties in all necessary proceedings in any Court or Courts of law, equity, or other jurisdiction in the Colony of New South Wales or elsewhere.

Power to make partition.

8. It shall be lawful for the said trustees to join or concur with the said James Rutherford, his executors, administrators, or assigns, in any partition or division of the real or personal assets of the said partnership business of Cobb and Company remaining undivided, and to accept from the said James Rutherford, his executors, administrators, or assigns, and to give him or them a complete and valid receipt and discharge for such portion of the said real or personal assets as may be allotted to the said trustees.

Power to accept partnership assets.

9. It shall be lawful for the said trustee until sale thereof to carry on and manage any sheep or cattle stations, and the sheep, cattle, horses, or other stock or chattels belonging thereto, and any other properties which have been or may hereafter be allotted as the share of the said William Franklin Whitney in the said partnership business, and for that purpose to sell any of the said sheep, cattle, horses, or other stock or chattels from time to time, and to purchase other sheep, cattle, horses, or other stock or chattels, and (subject to the said securities aforesaid) to obtain money upon overdraft, mortgage, stock mortgage, or bill of sale ; and (subject as aforesaid) to lodge or give as security therefor all or any of the real and personal estate which is for the time being subject to the trusts of the said will and codicil.

Power to carry on and manage station properties.



Power to exchange.

10. It shall be lawful for the said trustees (subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid), from time to time to exchange for other lands or hereditaments all or any of the lands and hereditaments for the time being subject to the trusts of the said will and codicil, and to give or receive any money for equality of exchange. 5

Power to grant leases.

11. It shall be lawful for the said trustees (subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid), from time to time, 10 by deed or writing, to demise and lease all or any part of the lands and hereditaments for the time being subject to the trusts of the said will and codicil to any person or persons for any term of years, to take effect in possession, at the best yearly rent that can be reasonably obtained for the same without any fine, premium, or foregift; and also 15 from time to time by deed to demise and lease any part of the said lands and hereditaments to any person or persons who shall covenant to improve the same by repairing any building or buildings now standing, or which shall hereafter be standing, on any part of the land thereby leased, or by erecting and building any house or houses, 20 building or buildings, on such land or part thereof, or by otherwise expending in improvement such moneys as shall be deemed by the said trustees adequate to the interest to be parted with, at such rent as the said trustees shall, having regard to the terms and conditions of such lease, think reasonable and proper—so, however, that nothing be taken 25 by way of fine, premium, or foregift: Provided that every indenture of lease made under the provisions of this section shall contain a covenant by the lessee to pay the rent thereby reserved, and for insurance against fire of any building erected, or to be erected, on the land thereby demised, and also a condition of re-entry on non-payment 30 of rent within a time to be therein specified; and also that a counterpart of such lease be executed by the lessee. Any lessee paying any rent reserved by any such lease to the trustees shall not be bound to see to the application thereof, and shall be free from any liability for the non-application or misapplication of the same, or any part thereof. 35

Power to grant mining leases.

12. Subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, and subject to the reservations and conditions, if any, contained in the grants under which the said lands are holden, and subject to the mining laws of New South Wales for the time being, 40 it shall be lawful for the said trustees to enter into mining agreements, or grant mining leases for any term of years, to take effect in possession and not in reversion or by way of future interest, of all and every and any of the mines, lodes, ores, quarries, veins, strata, and seams of gold, silver, lead, tin, antimony, copper, ironstone, clay, coal, and all 45 other



other metals and minerals whatsoever, in one or more block or blocks, unopened as well as opened, in, under, or upon any of the lands for the time being subject to the trusts of the said will and codicil, or any part thereof, together with any part of the surface of the said lands  
5 which may be thought necessary or convenient to be held for buildings, roads, or ways, or other purposes, with such mines, quarries, or premises, together with full liberty and authority for the lessee or lessees to search for, work, win, take, use, and dispose of all such metals and minerals as shall be found therein; and to sink and make shafts, levels,  
10 pits, drives, trenches, air-gates, way-gates, and water-courses; and erect and use any smelting, refining, or other furnaces or mills, fire, steam, or other engines and machinery, workmen's and other houses, buildings, sheds, or other conveniences, and to use all other lawful means and ways whatsoever not only for finding, separating, and  
15 cleaning such metals and minerals, but for converting any of them into a manufactured and merchantable condition, and also to take and use sufficient ground room, heap room, and pit room for placing or manufacturing any of such metals and minerals and for laying the waste refuse or rubbish to be from time to time produced from the  
20 said mines, quarries, and premises, and also with full and free liberty to use or make and use all proper and convenient railways, tramways, and other ways for the carriage of materials and articles to such mines, quarries, or premises, and for the carriage or delivery of any of the said metals and minerals with horses, carts, waggons, and other  
25 carriages, and generally upon such terms and with such stipulations as shall be reasonable, necessary, or usual for the purposes aforesaid, so that there be contained in every such lease proper and reasonable covenants and agreements by the lessee or lessees for the due payments of the rents, dues, duties, tolls, or royalties thereby secured, and for  
30 the proper working, construction, and management of the said mines, quarries, and works, and a power of re-entry for non-payment of such rents, dues, duties, tolls, or royalties, and so that every lessee duly execute a duplicate or counterpart of the lease granted to or agreement made with him.

35       **13.** Subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, it shall be lawful for the said trustees to make, execute, sign, take, and do, or join with any other person or persons in making, executing, signing, taking, and doing all applications, deeds, agree-  
40 ments, instruments, matters, and things necessary or expedient for the purpose of themselves mining in, under, or upon any of the lands for the time being subject to the trusts of the said will and codicil, or otherwise acting in respect of such lands under and in accordance with or for the purpose of any other person or persons mining in, under, or  
45 upon such lands, or otherwise acting in respect thereof under and in accordance with the Mining on Private Lands Act of 1894, or any Act amending or repealing the same.

To make applications under the Mining on Private Lands Acts.



Power to bring lands  
under the Real  
Property Act.

14. Subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, it shall be lawful for the said trustees to make, execute, sign, take, and do, or join with any other person or persons in making, executing, signing, taking, and doing all applications, deeds, instruments, matters, and things necessary or expedient for the purpose of bringing under the provisions of the "Real Property Act" or of any Act amending or repealing the same, the whole or any part or parts of the lands and hereditaments for the time being subject to the trusts of the said will and codicil, and may deduct and retain out of the trust funds in their, his, or her hands the costs and expenses of and incidental thereto. 5 10

Power to make roads.

15. Subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, it shall be lawful for the said trustees to make or concur in the making of any roads, streets, or ways, on, through, and over any part or parts of the lands and hereditaments for the time being subject to the trusts of the said will and codicil; and also to erect, make, and carry out, and concur in the erecting, making, and carrying out of any walls, sewers, drains, water-courses, or other works which may, in the discretion of the said trustees, conduce to the better laying out, improving, or selling of the said lands and hereditaments, or the convenience or enjoyment of those persons who shall have purchased or shall purchase any part thereof. The cost of any such works on the part of the said trustees or their, his, or her proportions of any costs for such works may be deducted and retained by them, him, or her, in the same way as they, he, or she, are or is hereby authorised to deduct and retain the costs, charges, and expenses of and incidental to sales hereunder, and for any of the purposes of this section the said trustee may reserve and dedicate, either absolutely or upon any conditions, any part or parts of the said lands and hereditaments. 15 20 25 30

Ratification clause.

16. The said agreements dated the fifteenth day of April, one thousand eight hundred and ninety-seven, and the thirtieth day of August, one thousand eight hundred and ninety-seven, and the said two indentures of agreement, and three indentures of confirmation, all dated the twenty-ninth day of December, one thousand eight hundred and ninety-seven, are hereby ratified and confirmed, and shall take effect from the respective dates thereof in the same manner as though the said trustees had been fully empowered by the said will and codicil to enter into and make the same, and shall be binding upon all or any of the parties thereto. 35 40

Further ratification  
clause.

17. Notwithstanding that the said trustees have, without being authorised in that behalf by the said will and codicil, postponed the sale and realisation of the real and personal estate subject to the trusts thereof, and have, without being authorised as aforesaid, carried on and 45 and



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and managed the same, such postponement and carrying on and management are hereby as effectually and fully confirmed as though the same had been authorised by the provisions of the said will and codicil.

5     **18.** This Act may be cited as the “Whitney Estate Act of Short title. 1901.”

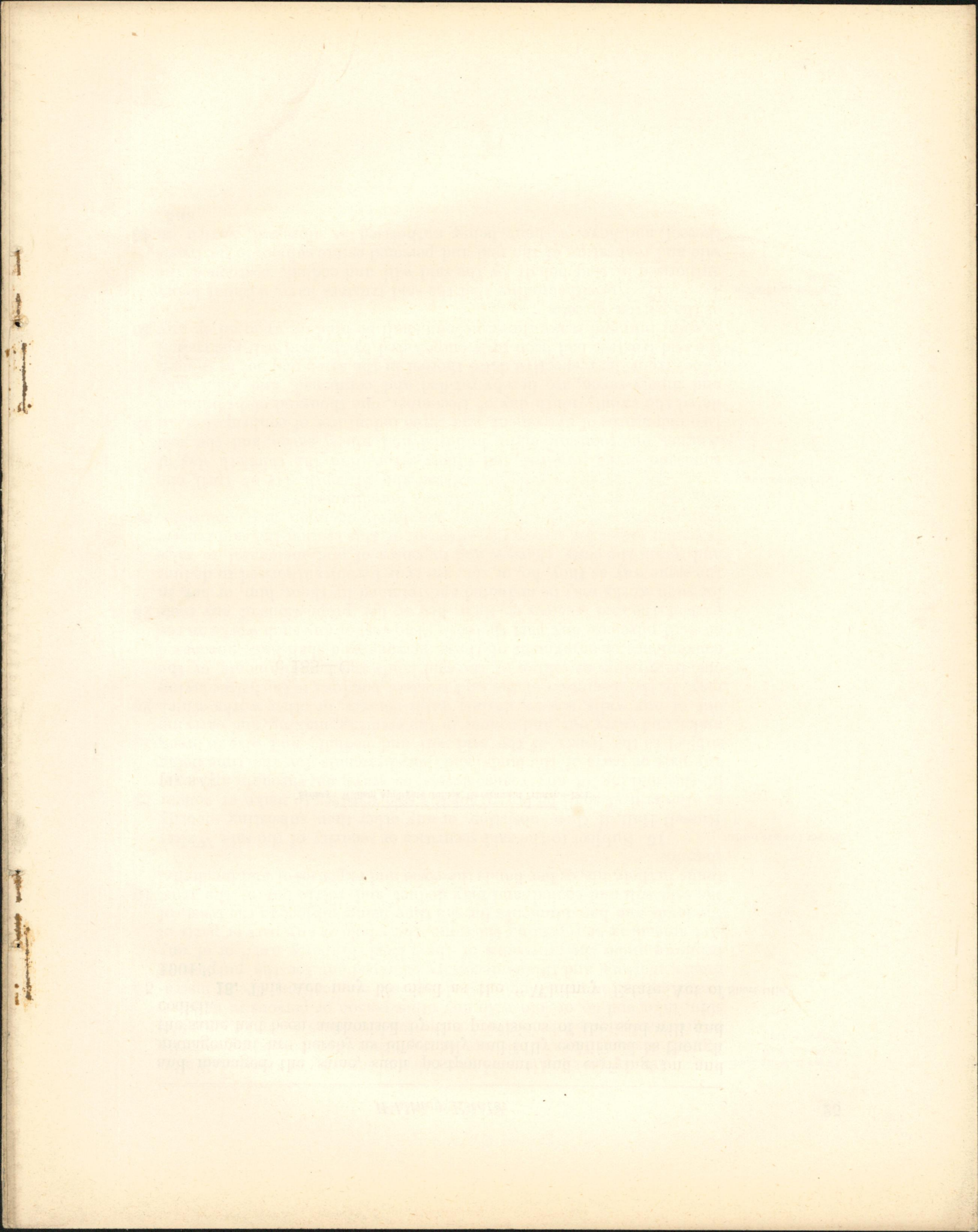
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Sydney: William Applegate Gullick, Government Printer.—1901.

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## A BILL

To enable the Trustees of the Will of the late William Franklin Whitney to sell, give credit on sales, mortgage, partition, divide, exchange, lease, grant mining leases, make applications under the Mining on Private Lands Acts, and make applications to bring land under the Real Property Act ; and for other purposes.

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**W**HEREAS at the respective dates of his will, codicil, and death, Preamble.  
hereinafter mentioned, William Franklin Whitney, late of Coombing Park, near Carcoar, in the Colony of New South Wales (since deceased), was carrying on the business of coach proprietors, 5 railway contractors, mail contractors, general graziers, and such other matters, including mining, as might be determined, in partnership with James Rutherford, of Bathurst, in the said Colony, under the name or style of "Cobb and Company" : And whereas at the date  
63—A of



of the death of the said William Franklin Whitney certain lands and hereditaments (forming portion of the assets of the said partnership, and more particularly described in the indenture of mortgage next hereinafter mentioned) were subject to an indenture of mortgage, dated the twenty-seventh day of December, one thousand eight hundred and eighty-nine, made between the said James Rutherford, of the first part, the said William Franklin Whitney, of the second part, and Walter Russell Hall, of the third part, to secure the repayment of the sum of fifty thousand pounds and interest thereon as therein mentioned: And whereas at the date aforesaid certain other assets of the said partnership therein more particularly described were subject to a bill of sale and stock mortgage in favour of the said Walter Russell Hall, and dated the thirtieth day of June, one thousand eight hundred and ninety-three, to secure the repayment of the sum of thirty thousand pounds, and interest thereon as therein mentioned: And whereas the said William Franklin Whitney duly made and executed his last will and testament, dated the fourth day of September, one thousand eight hundred and ninety-four, whereby, after appointing his wife, Isabella Whitney, sole executrix and trustee thereof, he gave his share in the said business so carried on by him in partnership with the said James Rutherford as aforesaid to his said trustee, Isabella Whitney, upon trust, in the words following, that is to say:—"Upon trust, to convert the same into money, and after such conversion in the first place to hold the sum of two thousand pounds in trust for my son, Glassford Franklin Whitney, and to invest the same in the name of my said trustee, and to apply the whole or such part as my said trustee shall in her discretion think sufficient of the annual income derived from such investment in or towards the maintenance or otherwise for the benefit of my said son, Glassford Franklin Whitney; and in the next place to pay to Arthur Leeds, of Cunnamulla, in the Colony of Queensland, station manager, the sum of two thousand pounds; and in the next place to hold the balance of the money derived from such conversion as aforesaid upon trust in equal shares, share and share alike, for my said wife, Isabella Whitney, and my children next hereinafter named, that is to say, Isabella Rachel Kilty, Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, Emily Margaret Whitney, and Evelyn Frances Amelia Whitney, and to pay on demand, but subject as hereinafter mentioned, the said legacies to my children now of age (excepting Glassford Franklin Whitney); and the shares of my daughters are to be enjoyed and disposed of by them respectively as separate property free from marital control, and their respective receipts to be sufficient discharges to my said trustee for the same. I empower my said trustee, during the minority of any of my said children, to hold the share or shares of such children during their respective minorities, and to invest the same in the name of my said trustee, and

45  
to



to apply the whole or such part as my trustee shall in her discretion think sufficient of the annual income derived from such investments respectively in and towards the maintenance and education or otherwise for the benefit of such children respectively, and to pay their  
5 respective legacies to them when they come of age, as is provided herein for payment of the legacies to my children now of age; but my said trustee need not pay any of the legacies bequeathed in this my will until after the expiration of two years from the date of my death, but she may, if she thinks fit, pay the same at any time  
10 at her discretion." And the said testator thereby devised and bequeathed the residue of his real and personal property whatsoever and wheresoever situate to his wife, Isabella Whitney: And whereas by a codicil to his said will, bearing date the fourth day of September, one thousand eight hundred and ninety-four, the said William Franklin  
15 Whitney appointed Arthur Leeds, of Cunnamulla, in the Colony of Queensland, station manager, and William Kelty, of Orange, in the Colony of New South Wales, surgeon, to be joint executors and trustees of his said will, together with his wife, Isabella Whitney; and he declared that each of the said Isabella Whitney, Arthur Leeds, and  
20 William Kelty should be responsible for her and his own actions only; and in all other respects the said testator confirmed his said will: And whereas the said William Franklin Whitney died on or about the thirty-first day of October, one thousand eight hundred and ninety-four, without having otherwise altered or revoked his said will and  
25 codicil, and leaving him surviving his said widow, Isabella Whitney, and seven children and no more, that is to say, Isabella Rachel Kelty (the wife of the said William Kelty), Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, and Emily Margaret Whitney, and Evelyn Frances Amelia Whitney (the two last named of  
30 whom are infants), and Glassford Franklin Whitney: And whereas probate of the said will and codicil was, on the twenty-third day of May, one thousand eight hundred and ninety-five, granted to the said Isabella Whitney, William Kelty, and Arthur Leeds: And whereas the assets  
35 of the said partnership at the date of the death of the said William Franklin Whitney comprised real and personal property situate both within the Colony of New South Wales and out of the said Colony: And whereas after the death of the said William Franklin Whitney it was ascertained that if the said executrix and executors were to convert into money the share of the said William Franklin Whitney  
40 in the said partnership business great losses would be occasioned to the said beneficiaries other than the said Glassford Franklin Whitney and Arthur Leeds: And whereas by an agreement dated the fifteenth day of April, one thousand eight hundred and ninety-seven, made between the said James Rutherford of the one part and the said  
45 Isabella Whitney, Arthur Leeds, and William Kelty of the other part,



a partition of certain of the properties of the said partnership was agreed to between the parties thereto, and it was agreed that the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, should take (*inter alia*) the properties known as Coombing Park, James Park, Pine Mount, 5 and Waugoola and Claverton, and the stock and chattels thereon respectively, part of which properties are comprised and described or expressed so to be in the hereinbefore recited indenture of mortgage dated the twenty-seventh December, one thousand eight hundred and eighty-nine; and the said James Rutherford should take certain other 10 properties, and that in order to equalise the said division the said executrix and executors should pay to the said James Rutherford certain moneys; and that the said executrix and executors and the said James Rutherford respectively should assume the liabilities of the said partnership business in the proportions therein mentioned. And 15 it was further (*inter alia*) agreed that as regards the whole of the remaining properties belonging to the said partnership business, not mentioned or referred to in the First and Second Schedules to the said agreement of the fifteenth day of April, one thousand eight hundred and ninety-seven, the same were to be continued and carried on with 20 a view to speedy realisation by the said James Rutherford, Isabella Whitney, Arthur Leeds, and William Kelty, under their joint management: And whereas by an agreement dated the thirtieth day of August, one thousand eight hundred and ninety-seven, made between the same parties as the parties to the hereinbefore lastly recited agree- 25 ment, the time within which the aforesaid liabilities of the said partnership business were to be assumed was extended to the thirty-first day of December, one thousand eight hundred and ninety-seven, and in all other respects the said agreement of the fifteenth day of April, one thousand eight hundred and ninety-seven, was ratified and 30 confirmed: And whereas the said Isabella Whitney, Arthur Leeds, and William Kelty having been advised that they could not legally give a mortgage over such properties, stock, chattels, and effects coming to them under such partition as aforesaid, it was agreed that the said indenture of mortgage dated the twenty-seventh day of 35 December, one thousand eight hundred and eighty-nine, and the said bill of sale and stock mortgage dated the thirtieth day of June, one thousand eight hundred and ninety-three, should not be discharged so far as regards the covenants of the said William Franklin Whitney and the property, stock, chattels, and assets taken by the said Isabella 40 Whitney, Arthur Leeds, and William Kelty as such executrix and executors as aforesaid, under such partition, but that the said James Rutherford should be released from his personal covenants contained in the said indenture of mortgage and bill of sale and stock mortgage but without prejudice to or in any other way affecting the said 45 indenture



indenture of mortgage and bill of sale and stock mortgage and the covenants of the said William Franklin Whitney therein contained, except as hereinafter provided : And whereas the said Walter Russell Hall, at the request of the said Isabella Whitney, Arthur Leeds, and  
5 William Kelty, agreed to enter into and did execute a certain indenture of agreement bearing date the twenty-ninth day of December, one thousand eight hundred and ninety-seven, and expressed to be made between the said Isabella Whitney, Arthur Leeds, and William Kelty of the one part, and the said Walter Russell Hall, hereinafter called  
10 the said mortgagee, of the other part : And whereas by the last-mentioned indenture of agreement after certain recitals therein contained and after reciting that the said Walter Russell Hall, at the request of the said Isabella Whitney, Arthur Leeds, and William Kelty, had agreed to enter into and execute those presents for the  
15 purpose of acknowledging that the sum of sixty-three thousand pounds only and interest thereon, calculated from the first day of January, one thousand eight hundred and ninety-eight, remained owing on the security of the hereinbefore recited indenture of mortgage, and the sum of thirty thousand pounds (part of the said  
20 sum of sixty-three thousand pounds) and interest thereon, calculated from the first day of January, one thousand eight hundred and ninety-eight, was secured by the said bill of sale and stock mortgage ; and after reciting that it had been agreed that the time for the repayment of the said sum of sixty-three thousand pounds should be  
25 extended in manner hereinafter provided ; and after reciting that the said Isabella Whitney, Arthur Leeds, and William Kelty had, at the request of the said Walter Russell Hall, agreed to enter into and execute the indenture of agreement now in recital for the further purpose of consenting to the release of the said James Rutherford  
30 from his covenants contained in the said indenture of mortgage and the said bill of sale and stock mortgage, and to the release of certain other property, stock, and chattels, and also for the purpose of better securing to the said Walter Russell Hall repayment of the said sum of sixty three thousand pounds and interest thereon, and enabling  
35 him to obtain such further assurance as he might thereafter require in manner hereinafter appearing : It was witnessed (*inter alia*) that in pursuance of the said agreement, and in consideration of the premises, they, the said Isabella Whitney, Arthur Leeds, and William Kelty, and as separate covenants every two of them, did thereby for  
40 themselves, their heirs, executors, and administrators, jointly and every one of them did thereby for herself and himself, her and his heirs, executors, and administrators severally covenant with the said Walter Russell Hall, his heirs, executors, administrators, and assigns that the heirs, executors, and administrators of the said William Franklin  
45 Whitney, and they the said Isabella Whitney, Arthur Leeds, and  
William



William Kelty, and their respective heirs, executors, and administrators, and every other person having or lawfully or equitably claiming by, through, under, or in trust for the said William Franklin Whitney, deceased, any estate, right, title, or interest in or to the lands, stock, and chattels comprised in the said indenture of mortgage and bill of sale and stock mortgage, or in or to any other property, stock, chattels, and assets coming to the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, under the division of the properties of the said partnership, or any of them, or any part thereof respectively, should and would at all times (at the cost, until foreclosure or sale, of the estate of the said William Franklin Whitney, or of them the said Isabella Whitney, Arthur Leeds, and William Kelty, and afterwards at the cost of the person or persons requiring the same) execute and do every such lawful assurance and thing for the further or more perfectly assuring the said premises, and every or any part thereof, to the use of the said Walter Russell Hall, his heirs, executors, administrators, and assigns, as by the said Walter Russell Hall, his heirs, executors, administrators, or assigns should be reasonably required; and would obtain the consent and approval to those presents of such of the children of the said William Franklin Whitney as were then infants immediately on their respectively attaining the age of twenty-one years; and would indemnify and keep indemnified the said Walter Russell Hall, his heirs, executors, administrators, and assigns, and his and their estates and effects, against all actions, suits, claims, and demands whatsoever that might be brought by the said infants on or at any time after their attaining the age of twenty-one years respectively against the said Walter Russell Hall, his heirs, executors, administrators, or assigns, and also against all losses, charges, damages, costs, and expenses that the said Walter Russell Hall, his heirs, executors, administrators, or assigns might sustain or incur by reason of the said infants, or either of them, not consenting to or approving of those presents; and generally against all results and consequences of the said infants not consenting and approving as aforesaid; and would within one month after being requested in writing by the said mortgagee, his heirs, executors, administrators, or assigns so to do, make all necessary applications to (*inter alia*) the Supreme Court of New South Wales for leave to mortgage to the said Walter Russell Hall, his heirs, executors, administrators, or assigns the whole of the said properties, stock, chattels, and assets coming to them, the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, under the said division of properties of the said partnership to secure the repayment of the said sum of sixty-three thousand pounds and interest thereon, or for the confirmation of the arrangement made in respect of the thereinbefore recited indenture of mortgage and bill of sale



sale and stock mortgage, and would within one month after being requested as aforesaid commence and institute all necessary steps and proceedings requisite or necessary for obtaining a Private Act or Acts (*inter alia*) in the Colony of New South Wales, authorising the said  
5 Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, to mortgage such properties, stock, chattels, and assets coming to them under such division of properties as aforesaid for the amount aforesaid or otherwise confirming the arrangement made in respect of the said indenture of mortgage and bill of sale and  
10 stock mortgage, and would whenever called upon so to do execute all such mortgages, transfers, assignments, and securities over such properties, stock, chattels, and assets coming to them as aforesaid under the division of properties of the said partnership as the said Walter Russell Hall, his heirs, executors, administrators, or assigns, or  
15 his or their attorney or attorneys, agent or agents might from time to time require for the purpose of securing payment of the said principal sum of sixty-three thousand pounds and interest, such mortgages and securities to be prepared by the solicitors for the said Walter Russell Hall, his heirs, executors, administrators, or assigns, or his or their  
20 attorney or attorneys, agent or agents, and the same to contain all such reasonable powers (including powers of sale), provisions, covenants, clauses, and agreements as might be thought desirable by the said Walter Russell Hall, his heirs, executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or his or their  
25 solicitors; and that in the event of the said Isabella Whitney, Arthur Leeds, and William Kelty, or any or either of them, their or any or either of their executors, administrators, or assigns making default for the space of one month as aforesaid in making such application (*inter alia*) to the Supreme Court of New South Wales, or in doing all that  
30 might be necessary to obtain such Private Act or Acts as aforesaid, after having been requested as aforesaid, or in executing to the said Walter Russell Hall, his heirs, executors, administrators, or assigns any such mortgages, transfers, assignments, or securities as aforesaid, after the same should have been handed to them, or left at, or sent  
35 through the medium of the post office addressed to them or any or either of them to the usual place of abode or business of them or any or either of them in the Colony of New South Wales last known to the said mortgagee, his heirs, executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or left upon any  
40 part of the said properties, then all such applications to the said courts or either of them might be made, and all necessary proceedings to obtain such Private Act or Acts might be taken, and all such mortgages and securities might be executed by the said mortgagee, his heirs, executors, administrators, or assigns in his or their own name  
45 or names, or in the name or names of the said William Franklin Whitney,



Whitney, his executors or administrators, or in the names and when necessary as the act and deed of the said Isabella Whitney, Arthur Leeds, and William Kelty, or any or either of them, their or any or either of their heirs, executors, administrators, or assigns; and would pay all costs, charges, fees, and expenses arising out of or incidental to or connected with such application to the Court as aforesaid, and such mortgages and securities, and obtaining such Private Act or Acts as aforesaid, and all other costs, charges, fees, and expenses in any way connected with or arising out of those presents or the arrangement therein set forth: And whereas by an indenture of agreement bearing date the twenty-ninth day of December, one thousand eight hundred and ninety-seven, expressed to be made between the said Isabella Whitney, Isabella Rachel Kelty (wife of the said William Kelty), Adeline Thirza Whitney, spinster, Arthur William Whitney, Esquire, Louisa Katie Whitney, spinster, Emily Margaret Whitney, spinster, and Evelyn Frances Amelia Whitney, spinster, all of Coombing Park aforesaid, beneficiaries under the will of the said William Franklin Whitney, of the one part, and the said Walter Russell Hall of the other part, after reciting that the said James Rutherford and the said William Franklin Whitney carried on business in partnership as coach proprietors, railway contractors, mail contractors, and graziers, and for such other purposes as were determined upon by the said partners, the said James Rutherford being entitled to two-thirds of the property of the partnership, including gains and profits, and the said William Franklin Whitney to one-third thereof; and that it was therein provided that on the death of either partner, if the executors of the deceased partner declined to continue in the business and the surviving partner did not purchase the share of the deceased partner, the assets of the partnership should be sold and divided; and after reciting the said indenture of mortgage, dated the twenty-seventh day of December one thousand eight hundred and eighty-nine, registered number five hundred and thirty-four, book four hundred and twenty-nine; and after reciting the said bill of sale and stock mortgage; and after reciting that by his will and codicil, each bearing date the fourth day of September, one thousand eight hundred and ninety-four, the said William Franklin Whitney appointed the said Isabella Whitney, Arthur Leeds, and William Kelty executrix and executors thereof; and after reciting that the said William Franklin Whitney died on about the thirty-first day of October, one thousand eight hundred and ninety-four, without having altered or revoked his said will and codicil, and that probate thereof, was, on the twenty-third day of May, one thousand eight hundred and ninety-five, granted to the said Isabella Whitney, Arthur Leeds, and William Kelty; and after reciting that ancillary probate of the said will and codicil was, on the thirtieth day of November, one thousand



thousand eight hundred and ninety-seven, granted by the Supreme Court of Queensland to the said Arthur Leeds, one of the executors in the said will and codocil named, power being reserved to make the like grant to Isabella Whitney and William Kelty, the executrix and  
5 other executor in the said will and codicil named; and after reciting the said agreement dated the fifteenth day of April, one thousand eight hundred and ninety-seven; and after reciting the said agreement dated the thirtieth day of August, one thousand eight hundred and  
10 ninety-seven; and after reciting that in order to enable the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, to carry out the said agreements and to assume their portion of the liabilities of the late partnership in the terms of the thereinbefore recited indenture of mortgage of the twenty-  
15 seventh day of December, one thousand eight hundred and eighty-nine, and the thereinbefore recited bill of sale and stock mortgage of the thirtieth day of June, one thousand eight hundred and ninety-three, should be discharged, and the said Walter Russell Hall should advance to the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, the sum of sixty-  
20 three thousand pounds upon the security of the whole of the properties, stock, chattels, and assets coming to the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, under the division of the properties of the said partnership; and after reciting that the said Walter  
25 Russell Hall had agreed to advance to the said James Rutherford a certain sum of money upon certain securities; and after reciting (*inter alia*) that the parties thereto having been advised that the thereinbefore recited agreements of the fifteenth day of April, one thousand eight hundred and ninty-seven, and the thirtieth day of  
30 August, one thousand eight hundred and ninty-seven, were not in conformity with the provisions of the deed of partnership, and that the said agreements constituted a breach of the trusts of the will of the said William Franklin Whitney, deceased, and that the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and  
35 executors as aforesaid, could not legally give a mortgage over such properties, stock, chattels, and assets coming to them as aforesaid: It had been agreed that the thereinbefore recited indenture of mortgage of the twenty-seventh day of December, one thousand eight hundred and eighty-nine, and the thereinbefore recited bill of sale and stock  
40 mortgage should not be discharged as far as regarded the covenants of the said William Franklin Whitney and the properties, stock, chattels, and assets taken by the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, under the division of properties of the said partnership were concerned, but  
45 that the said James Rutherford should be released from his personal covenants



covenants contained in the said indenture of mortgage, and bill of sale and stock mortgage, and that the Cunnamulla property and stock and chattels thereon should be discharged from the thereinbefore recited bill of sale and stock mortgage, but without prejudice to or in any other way affecting the said indenture of mortgage and bill of sale 5 and stock mortgage and the covenants of the said William Franklin Whitney therein contained except as hereinafter provided; and after reciting that the sum of sixty-three thousand pounds only was the principal sum due to the said Walter Russell Hall from the said executrix and executors as aforesaid; and after reciting that the said 10 Isabella Whitney, Isabella Rachel Kelty, Adeline Thirza Whitney, Arthur William Whitney, and Louisa Katie Whitney had, at the request of the said Walter Russell Hall, agreed to enter into and execute the indenture of agreement now in recital for the better securing to the said Walter Russell Hall the repayment of the said 15 sum of sixty-three thousand pounds and interest thereon, and enabling him to obtain such further assurances as he might thereafter require in manner hereinafter appearing, and for the purpose of indemnifying him against any loss he might incur by reason of the title of the said securities from the said executrix and executors as aforesaid, and from 20 the said James Rutherford, or any of them being defective: It was witnessed that in pursuance of the said agreement, and in consideration of the premises they, the said Isabella Whitney, Isabella Rachel Kelty, Adeline Thirza Whitney, Arthur William Whitney, and Louisa Katie Whitney, and as separate covenants every five, four, three, and two of 25 them did thereby for themselves, their heirs, executors, and administrators jointly, and every one of them did thereby for herself and himself, her and his heirs, executors, and administrators, severally covenant with the said Walter Russell Hall, his heirs, executors, administrators, and assigns that they the said covenanting parties respectively, and 30 their respective heirs, executors, administrators, and assigns, and every other person having or lawfully or equitably claiming any estate, right, title, or interest through them, or any of them, or through Emily Margaret Whitney, or Evelyn Frances Amelia Whitney, children of the said William Franklin Whitney, deceased, or either of them, or by, 35 through, under, or in trust for the said William Franklin Whitney, deceased, in or to the land, stock, and chattels, and effects forming or intended to form security of the said Walter Russell Hall as aforesaid, or any of them, or any part thereof respectively, should, and would at all times (at the cost until foreclosure or sale of the 40 said covenanting parties respectively, and their respective heirs, executors, administrators, or assigns, and afterwards at the cost of the person or persons requiring the same), execute and do every such assurance and thing for the further or more perfectly assuring the said premises and every or any part thereof to the use of the said Walter 45 Russell



Russell Hall, his heirs, executors, administrators, and assigns as by the said Walter Russell Hall, his heirs, executors, administrators, or assigns should be reasonably required, and would obtain the execution of the indenture of agreement now in recital by such of the children  
5 of the said William Franklin Whitney as were then infants, that is to say, Emily Margaret Whitney and Evelyn Frances Amelia Whitney, within six months of their respectively attaining the age of twenty-one years, and would indemnify and keep indemnified the said Walter Russell Hall, his heirs, executors, administrators and assigns, and  
10 his and their estates and effects against all actions, suits, claims, and demands whatsoever that might be brought by the said infants on or at any time after their attaining the age of twenty-one years respectively against the said Walter Russell Hall, his heirs, executors, administrators or assigns, and also against all losses, charges, damages,  
15 costs, and expenses that the said Walter Russell Hall, his heirs, executors, administrators, or assigns might sustain or incur by reason of the said infants or either of them not consenting to or approving of the indenture of agreement now in recital, and generally against all results and consequences of the said infants not consenting and  
20 approving as aforesaid; and would, whenever called upon so to do, execute all such mortgages, transfers and assignments, and securities over such properties, stock, chattels, and assets as aforesaid as the said mortgagee, his heirs, executors, administrators or assigns, or his or their attorney or attorneys, agent or agents might from time to time  
25 require for the purpose of securing payment of the said principal sum of sixty-three thousand pounds and interest; and would obtain the execution by the said infants on their attaining the age of twenty-one years of all such mortgages, transfers, assignments, and securities if requested so to do; all such mortgages, transfers, assignments, and  
30 securities to be prepared by the solicitors for the said Walter Russell Hall, his heirs, executors, administrators or assigns, or his or their attorney or attorneys, agent or agents, and the same to contain all such powers (including powers of sale), provisions, covenants, clauses, and agreements as might be thought desirable by the said Walter  
35 Russell Hall, his heirs, executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or his or their solicitors; and that in the event of the said covenanting parties, or any or either of them, their or any or either of their heirs, executors, administrators, or assigns making default for the space of one month as aforesaid in  
40 executing to the said Walter Russell Hall, his heirs, executors, administrators, or assigns any such assurances, mortgages, transfers, assignments, or securities as aforesaid after the same should have been handed to them or left at or sent through the medium of the post office, addressed to them or any or either of them to the usual place  
45 of abode or business of them or any or either of them in the said Colony



Colony of New South Wales last known to the said Walter Russell Hall, his heirs, executors, administrators or assigns, or his or their attorney or attorneys, agent or agents, or left upon any part of the said properties, then all such assurances, mortgages, transfers, assignments, and securities might be executed by the said Walter Russell 5 Hall, his heirs, executors, administrators, or assigns in his or their own name or names, or in the names, and when necessary as the act and deed, of the said covenanting parties respectively, or any or either of them, their or any or either of their heirs, executors, administrators, or assigns, and would pay all costs, charges, fees, and expenses arising 10 out of or incidental to or connected with such assurances, mortgages, transfers, assignments, and securities as aforesaid, and all other costs, charges fees, and expenses in any way connected with or arising out of the indenture of agreement now in recital or the arrangement therein set forth; and for the purposes aforesaid and to give full effect to 15 the indenture of agreement now in recital, the said covenanting parties did and each of them did thereby irrevocably appoint the said Walter Russell Hall, his executors, administrators, and assigns, the attorney and attorneys, agent and agents of them the said covenanting parties respectively, and of their respective executors and administrators, with 20 power in his or their own name or names, or in the names or name of the said covenanting parties, or any or either of them respectively, their or any or either of their respective executors, administrators, or assigns, to execute all such mortgages, transfers, assignments, securities, and other assurances, and accept any of the same as aforesaid, and to 25 pay all costs, fees, charges, and expenses necessary for or in any way connected with the carrying out of the objects aforesaid or any of them, and until repaid with interest at the rate of six pounds per centum per annum the same should be a charge upon the lands and premises comprised in the said indenture of mortgage and bill of sale; 30 and for all or any of the purposes aforesaid from time to time to nominate or appoint one or more substitute or substitutes, agent or agents, under him or them in his or their place or places, and such nomination or appointment at pleasure to revoke the said covenanting parties respectively, thereby ratifying, confirming, and allowing, and 35 agreeing at all times to ratify, confirm, and allow all and whatsoever the said Walter Russell Hall, his executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or their substitute or substitutes, agent or agents, should do or cause to be done in and about the premises by virtue of the indenture of agreement now in 40 recital; and it was thereby agreed and declared that a statutory declaration by the said Walter Russell Hall, his heirs, executors, administrators, or assigns, or by his or their attorney or attorneys, agent or agents, or their substitute or substitutes, that default had been made by the said Isabella Whitney, Isabella Rachel Kelty, 45 Adeline



Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, Emily Margaret Whitney, and Evelyn Frances Amelia Whitney, or any or either of them, in executing any such assurances, mortgages, transfers, and securities as aforesaid, or any of them, should  
5 be conclusive evidence of that fact and of the right of the said Walter Russell Hall, his executors, administrators, or assigns, or his or their attorney or attorneys, agent or agents, or their substitute or substitutes, to execute such assurances, mortgages, transfers, and securities as aforesaid in the names and name, and as the act and deed, of the said  
10 covenanting parties respectively, or any or either of them, their or any or either of their executors, administrators, or assigns: Provided further, and it was thereby agreed and declared that default by the said Isabella Whitney, Isabella Rachel Kelty, Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, Emily Margaret  
15 Whitney, and Evelyn Frances Amelia Whitney, or any or either of them, their or any or either of their heirs, executors, administrators, or assigns thereunder, should be equivalent to default under the thereinbefore recited indenture of mortgage and bill of sale; and thereupon or at any time thereafter the said mortgagee, his heirs,  
20 executors, administrators, or assigns might exercise all or any of the powers contained in the said indenture of mortgage and bill of sale or either of them and powers incidental thereto; and it was also witnessed that in further pursuance of the said agreement, and in consideration of the premises, they, the said Isabella Whitney,  
25 Isabella Rachel Kelty, Adeline Thirza Whitney, Arthur William Whitney, Louisa Katie Whitney, Emily Margaret Whitney, and Evelyn Frances Amelia Whitney, and as separate covenants every seven, six, five, four, three, and two of them did thereby for themselves, their heirs, executors, and administrators, jointly and each of  
30 them, did thereby for herself and himself, her and his heirs, executors, and administrators, severally covenant with the said Walter Russell Hall, his heirs, executors, administrators, and assigns that they the said covenanting parties, and every of them, their and every of their heirs, executors, and administrators would from time to time and at all times  
35 thereafter indemnify and keep indemnified the said Walter Russell Hall, his heirs, executors, administrators, and assigns from and against all losses, costs, charges, and expenses which the said Walter Russell Hall, his heirs, executors, administrators, or assigns might at any time thereafter incur or become liable to pay by reason or in consequence  
40 of the illegality of the thereinbefore recited agreements, or the aforesaid breaches of trust, or the defects in the title to the securities both from the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, and from the said James Rutherford, or any or either of them, or by reason of such defects, or  
45 by reason of or in consequence of any actions, proceedings, claims, and demands to be made, set up, or instituted at any time or times thereafter



thereafter by any person or persons, company or companies in respect of the same or any of them, and from and against all costs, damages, and expenses to be occasioned by any such action, proceeding, claim, or demand as aforesaid, or otherwise in respect of the premises; and it was thereby declared that upon the execution of the indenture 5 of agreement now in recital by the said Emily Margaret Whitney and Evelyn Frances Amelia Whitney respectively, then all the covenants therein contained should be binding on them respectively, and their respective heirs, executors, administrators, and assigns: And whereas by indenture of confirmation bearing date the twenty-ninth day of 10 December, one thousand eight hundred and ninety-seven, made between the said James Rutherford of the one part, and the said Isabella Whitney, Arthur Leeds, and William Kelty of the other part, after reciting that by a certain indenture of conveyance dated the twenty-fourth day of December, one thousand eight hundred and 15 eighty-nine, registered number five hundred and thirty-three, book four hundred and twenty-nine, made between the said Walter Russell Hall of the first part, and the said James Rutherford and William Franklin Whitney of the second part, and Elliott Meyer of the third part, the lands and hereditaments thereafter described were conveyed 20 and assured unto the said Elliott Meyer and his heirs to the use of the said James Rutherford and William Franklin Whitney, their heirs, executors, administrators, and assigns for ever as tenants in common in unequal shares; and after reciting the said indenture of mortgage bearing date the twenty-seventh day of December, one thousand eight 25 hundred and eighty-nine; and after reciting that the said James Rutherford and William Franklin Whitney, in the lifetime of the said William Franklin Whitney, carried on business in partnership as coach proprietors, railway contractors, mail contractors, and graziers, and for such other purposes as were determined upon by the said 30 partners, the said James Rutherford being entitled to two-thirds of the property of the partnership including gains and profits, and the said William Franklin Whitney to one-third thereof; and after reciting that the lands and hereditaments thereafter described formed part of the property of the said partnership; and after reciting that the said 35 William Franklin Whitney died on or about the thirty-first day of October, one thousand eight hundred and ninety-four, having first duly made his last will and codicil thereto whereby he appointed the said Isabella Whitney, Arthur Leeds, and William Kelty executrix and executors thereof; and after reciting that probate of the said will and 40 codicil was, on the twenty-third day of May, one thousand eight hundred and ninety-five, granted by the Supreme Court of New South Wales to the said Isabella Whitney, Arthur Leeds, and William Kelty, the executrix and executors therein named; and after reciting the said agreement of the fifteenth day of April, 45 one



one thousand eight hundred and ninety-seven; and after reciting the said agreement bearing date the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said Isabella Whitney, Arthur Leeds, and William Kelty, as  
5 such executrix and executors as aforesaid, in pursuance of the said agreement had assumed and become solely liable for such portions of the liabilities of the late partnership as were by the said agreement to be assumed by them within the time mentioned in the said agreement of the thirtieth day of August, one thousand eight hundred and  
10 ninety-seven; and after reciting that the said James Rutherford, for the purpose of confirming and carrying into effect the thereinbefore recited agreements, had agreed to enter into and execute those presents in manner thereinafter appearing: It was witnessed that in pursuance of the said agreement and in consideration of the premises, he, the  
15 said James Rutherford, did thereby grant release and confirm unto the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, and their heirs, all that the undivided share and interest both legal and equitable of him, the said James Rutherford, of and in all those pieces or parcels of lands com-  
20 prised and described in the Schedule thereunder written, and of and in all other lands of whatever tenure forming, or reputed to form, part of the Coombing Park Estate, or held, used, occupied, or enjoyed therewith, or intended or reputed so to be, to have and to hold the said undivided share and interest and all and singular other the premises  
25 thereby granted or expressed so to be with the appurtenances unto and to the use of the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, their heirs and assigns for ever subject to the thereinbefore recited indenture of mortgage: And whereas by indenture of confirmation bearing date  
30 the twenty-ninth day of December, one thousand eight hundred and ninety-seven, made between the said James Rutherford of the one part and the said Isabella Whitney, Arthur Leeds, and William Kelty of the other part, after reciting that by an indenture bearing date the fifteenth day of November, one thousand eight hundred and eighty-  
35 three, registered number seven hundred and forty-seven, book two hundred and eighty, made between William Lachlan Macquarie Redfern of the one part and the said James Rutherford of the other part, the lands and hereditaments therein (and in the indenture now in recital) described were conveyed and assured unto and to the use of  
40 the said James Rutherford, his heirs, and assigns for ever, and after reciting the said indenture of mortgage bearing date the twenty-seventh day of December, one thousand eight hundred and eighty-nine; and after reciting that the said James Rutherford and William Franklin Whitney, in the lifetime of the said William Franklin  
45 Whitney, carried on business in partnership as coach proprietors,  
railway



railway contractors, mail contractors, and graziers, and for such other purposes as were determined upon by the said partners, the said James Rutherford being entitled to two-thirds of the property of the partnership including gains and profits, and the said William Franklin Whitney to one-third thereof; and after reciting that the lands and hereditaments thereafter described formed part of the property of the said partnership; and after reciting that the said William Franklin Whitney died on or about the thirty-first day of October, one thousand eight hundred and ninety-four, having first duly made his last will and codocil thereto, whereby he appointed the said Isabella Whitney, Arthur Leeds, and William Kelty executrix and executors thereof; and after reciting that probate of the said will and codocil was, on the twenty-third day of May, one thousand eight hundred and ninety-five, granted by the Supreme Court of New South Wales, in its Probate Jurisdiction, to the said Isabella Whitney, Arthur Leeds, and William Kelty, the executrix and executors therein named; and after reciting the said agreement of the fifteenth day of April, one thousand eight hundred and ninety-seven; and after reciting the said agreement bearing date the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, in pursuance of the said agreement, had assumed and become solely liable for such portions of the liabilities of the late partnership as were, by the said agreement to be assumed by them within the time mentioned in the said agreement of the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said James Rutherford, for the purpose of confirming and carrying into effect the thereinbefore recited agreements, had agreed to enter into and execute those presents in manner thereafter appearing: It was witnessed that, in pursuance of the said agreement, and in consideration of the premises he, the said James Rutherford, did thereby grant, release, and confirm unto the said Isabella Whitney, Arthur Leeds, and William Kelty, as such executrix and executors as aforesaid, and their heirs, all those pieces or parcels of land comprised and described in the Schedule thereunder written, and also all other lands (if any) of whatever tenure forming or reputed to form part of the Coombing Park Estate, Waugoola, James Park, and Pine Mount, or any or either of them, or held, used, occupied, or enjoyed with them or any or either of them, or intended or reputed so to be, and all the estate, share, and interest, both legal and equitable, of him, the said James Rutherford, of and in all other lands of whatever tenure forming or reputed to form part of the Coombing Park Estate, Waugoola, James Park, and Pine Mount, or any or either of them, or held, used, occupied, or enjoyed with them, or any or either of them, or intended or reputed so to be, to have and to



to hold the said lands, messuages, and hereditaments, estate, share and interest, and all and singular other the premises thereinbefore described and intended so to be thereby assured with the appurtenances unto and to the use of the said Isabella Whitney, Arthur Leeds, and  
5 William Kelty, as such executrix and executors as aforesaid, their heirs and assigns for ever, subject to the thereinbefore recited indenture of mortgage : And whereas by an indenture of confirmation bearing date the twenty-ninth day of December, one thousand eight hundred and ninety-seven, made between the said James Rutherford  
10 of the one part and the said Isabella Whitney, Arthur Leeds, and William Kelty of the other part, after reciting that by an indenture bearing date the twenty-seventh day of March, one thousand eight hundred and eighty-nine, registered number nine hundred and fourteen, book four hundred and eleven, made between Thomas Hilliar of  
15 the one part and the said James Rutherford of the other part, the lands and the hereditaments therein (and in the indenture now in recital) described in the First Schedule thereto, were conveyed and assured unto and to the use of the said James Rutherford, his heirs, and assigns for ever ; and after reciting that by the said indenture of  
20 mortgage of the twenty-seventh day of December, one thousand eight hundred and eighty-nine, the lands and hereditaments described in the First Schedule thereto (*inter alia*) were conveyed and assured unto the said Walter Russell Hall to secure the repayment of the said sum of fifty thousand pounds and interest thereon, as therein men-  
25 tioned, subject to the proviso for redemption therein contained ; and after reciting that the said James Rutherford and William Franklin Whitney in the lifetime of the said William Franklin Whitney carried on business in partnership as coach proprietors, railway contractors, mail contractors and graziers, and for such other purposes as were  
30 determined upon by the said partners, the said James Rutherford being entitled to two-thirds of the property of the partnership, including gains and profits, and the said William Franklin Whitney to one-third thereof ; and after reciting that the lands and hereditaments thereafter described in the First and Second Schedules thereto  
35 formed part of the property of the said partnership, the lands in the First Schedule forming part of the estate known as James Park, and the lands in the Second Schedule forming part of the estate known as Pine Mount ; and after reciting that the said William Franklin Whitney died on or about the thirty-first day of October, one  
40 thousand eight hundred and ninety-four, having first duly made his last will and codicil thereto, whereby he appointed the said Isabella Whitney, Arthur Leeds and William Kelty executrix and executors thereof ; and after reciting that probate of the said will and codicil was on the  
45 twenty-third day of May, one thousand eight hundred and ninety-five, granted by the Supreme Court of New South Wales, in its Probate



Jurisdiction to the said Isabella Whitney, Arthur Leeds, and William Kely, the executrix and executors therein named; and after reciting the said agreement of the fifteenth day of April, one thousand eight hundred and ninety-seven; and after reciting the said agreement, bearing date the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said Isabella Whitney, Arthur Leeds, and William Kely, as such executrix and executors as aforesaid, in pursuance of the said agreement, had assumed and become solely liable for such portions of the liabilities of the late partnership as were by the said agreement to be assumed by them within the time mentioned in the said agreement of the thirtieth day of August, one thousand eight hundred and ninety-seven; and after reciting that the said James Rutherford, for the purpose of confirming and carrying into effect the thereinbefore recited agreements, had agreed to enter into and execute those presents in manner hereinafter appearing: It was witnessed that, in pursuance of the said agreement, and in consideration of the premises, he, the said James Rutherford, did thereby grant, release, assign, transfer, and confirm unto the said Isabella Whitney, Arthur Leeds, and William Kely (as such executrix and executors as aforesaid), their heirs, executors, administrators and assigns, all those pieces or parcels of land comprised and described in the first part of the First Schedule thereto; and also all those conditionally purchased and conditionally leased lands, comprised and described in the second part of the First Schedule thereto, and also all those conditionally purchased lands, comprised and described in the Second Schedule thereto; and also all other lands (if any) of whatever tenure forming or reputed to form part of the Coombing Park Estate, Waugoola, James Park, and Pine Mount, or any or either of them, or held, used, occupied, and enjoyed with them, or any or either of them, or intended or reputed so to be; and also all the estate share and interest, both legal and equitable of him, the said James Rutherford, of and in all other lands of whatever tenure forming or reputed to form part of the Coombing Park Estate, Waugoola, James Park, and Pine Mount, or any or either of them, or held, used, occupied or enjoyed with them, or any or either of them, or intended or reputed so to be, to have and to hold the said lands, messuages, and hereditaments, estate, share, and interest, and all and singular other the premises thereinbefore described, and intended to be thereby assured with the appurtenances unto, and to the use of the said Isabella Whitney, Arthur Leeds, and William Kely, as such executrix and executors as aforesaid, their heirs, executors, administrators and assigns, according to the nature and tenure thereof respectively, subject to the thereinbefore recited indenture of mortgage: And whereas the sum of two thousand pounds has been set apart and is now invested by the said executrix and executors, upon trust for the said Glassford Franklin Whitney, in terms



terms of the said bequest to him: And whereas the said will and codicil of the said William Franklin Whitney, do not contain power to postpone the sale of his share of the assets of the said partnership, or to partition or divide, or concur in the partition or division of the  
5 assets of the said partnership, or to mortgage or concur in mortgaging any portion of the said testator's share in the said assets, or to carry on any portion of the same, and any of the other powers contained in this Act: And whereas certain of the aforesaid lands are supposed to contain valuable deposits of metals and minerals: And whereas it is  
10 desirable in the interest of all persons beneficially interested under the said will and codicil of the said William Franklin Whitney in the said lands that the said agreements of the fifteenth day of April, one thousand eight hundred and ninety-seven, and the thirtieth day of August, one thousand eight hundred and ninety-seven, and the  
15 said two indentures of agreement and three indentures of confirmation all dated the twenty-ninth day of December, one thousand eight hundred and ninety-seven, should be ratified and confirmed. And that the powers contained in this Act should be conferred upon the said Isabella Whitney, Arthur Leeds, and William Kelty, or other  
20 the trustees or trustee for the time being of the said will and codicil: 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:—

25 1. The words "the said trustees" whenever hereinafter used shall extend to and include not only the said Isabella Whitney, Arthur Leeds, and William Kelty, but also the trustees or trustee for the time being of the said will and codicil.

Interpretation of word "trustees."

2. It shall be lawful for the said trustees (subject nevertheless  
30 to all or any securities or security held by the said Walter Russell Hall if then subsisting or any other then subsisting security) to sell and absolutely dispose of or concur or join in selling or absolutely disposing of all and singular the lands and hereditaments which are or may be subject to the trusts of the said will and codicil, or which have been  
35 or hereafter may be allotted as the share of the said William Franklin Whitney or of the said trustees in the said partnership business, or may otherwise become vested in them as such trustees or any part or parts of such lands and hereditaments, by public auction or private contract, either in one or more lot or lots, and in such manner generally  
40 and upon and subject to such terms and conditions and at such price or prices in money or for such other equivalent or consideration as the said trustees shall deem expedient, with power to buy in the said lands and hereditaments or any or either of them or any part thereof at any sale by auction, and to rescind or vary any contract for sale  
45 either on terms or gratuitously, and to re-sell without being responsible for

Trustees empowered to sell and convey.



for any loss occasioned thereby, and upon any such sale or sales to convey or transfer the land so sold to the purchaser or purchasers thereof, his, her, or their heirs and assigns, or as such purchaser or purchasers may direct, freed and discharged (subject as aforesaid) from all trusts affecting the same, and the receipts in writing of the said trustees for the purchase money of any lands and hereditaments so sold shall be full and sufficient discharges to any purchasers for the same and from being bound to see to the application of the same and from any liability for the loss, non-application, or misapplication of the same, or any part thereof. The said trustees shall be entitled to pay the whole of the costs, charges, and expenses of such sales or sale out of the whole or any part of the proceeds of any sale made under this section. 5

Power to postpone sales.

3. It shall be lawful for the said trustees from time to time to postpone such sale or sales as aforesaid as they in their discretion shall think fit. 15

Power to give credit to purchasers.

4. Subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, it shall be lawful for the said trustees to allow any purchaser or purchasers credit for the payment of the whole or any part of his, her, or their purchase money, upon such terms as to interest or otherwise and generally as the said trustees may deem reasonable and expedient: Provided that the land in respect of which such credit shall be given shall remain unconveyed or untransferred, or shall by a proper mortgage with full powers of entry and sale and other usual and proper provisions be made a security for the payment of the purchase money remaining unpaid: Provided further, that in the event of any such security being taken, the vendor's lien for the said purchase money, and every part thereof, shall not be affected thereby or lost: Provided further, that the said trustees shall only be liable or responsible for so much of the said purchase money as such purchaser or purchasers shall actually pay, and shall not be liable for any loss arising from the default of any purchaser on the completion of his or her purchase. 25 30

Power to mortgage.

5. It shall be lawful for the said trustees from time to time to borrow and raise at interest any sum or sums of money with power from time to time to pay off any mortgage or mortgages or any part or parts thereof, and to re-borrow any sum or sums thereby secured or any greater or less sum or sums; and to execute any mortgage or mortgages of any real or personal estate which is for the time being subject to the trusts of the said will and codicil, with or without power of sale for securing payment of the sum or sums so borrowed, and to give effectual receipts and discharges for the moneys advanced by any mortgagee, and to do and execute all such other acts, deeds, and things as may be necessary or expedient for the purpose of effectuating such mortgage 35 40 45



mortgage or mortgages : Provided that no mortgagee advancing money upon the security of any such mortgage as aforesaid purporting to be made under the power herein conferred shall be bound to enquire whether such money is required for the purposes of the trusts of the said will and codicil or this Act, or in any way concerned to see to the application of such money when so advanced, or be liable for the loss, non-application, or misapplication thereof.

6. It shall be lawful for the said trustees to purchase or acquire lands whether freehold, leasehold, or Crown lands, or lands held under the existing Crown Lands Acts or any Acts amending or repealing the same, at such price or prices in money, or for such other equivalent or consideration as to them shall seem reasonable, and to apply in the purchase or acquiring of the same any part of the moneys subject to the trusts of the said will and codicil, and to sign, execute and accept all or any deeds, documents, or other writings necessary for the purchase or acquiring of the same. Power to purchase.

7. It shall be lawful for the said trustees (subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid), to execute or join in executing any deed or deeds, transfer or transfers, or other document for the purpose of effecting or obtaining a partition or division of any lands, hereditaments, and premises forming portion of the assets of the said partnership business. And for the like purpose to take or join with any person or persons in taking, and to join as parties in all necessary proceedings in any Court or Courts of law, equity, or other jurisdiction in the Colony of New South Wales or elsewhere. Power to make partition.

8. It shall be lawful for the said trustees to join or concur with the said James Rutherford, his executors, administrators, or assigns, in any partition or division of the real or personal assets of the said partnership business of Cobb and Company remaining undivided, and to accept from the said James Rutherford, his executors, administrators, or assigns, and to give him or them a complete and valid receipt and discharge for such portion of the said real or personal assets as may be allotted to the said trustees. Power to accept partnership assets.

9. It shall be lawful for the said trustee until sale thereof to carry on and manage any sheep or cattle stations, and the sheep, cattle, horses, or other stock or chattels belonging thereto, and any other properties which have been or may hereafter be allotted as the share of the said William Franklin Whitney in the said partnership business, and for that purpose to sell any of the said sheep, cattle, horses, or other stock or chattels from time to time, and to purchase other sheep, cattle, horses, or other stock or chattels, and (subject to the said securities aforesaid) to obtain money upon overdraft, mortgage, stock mortgage, or bill of sale ; and (subject as aforesaid) to lodge or give as security therefor all or any of the real and personal estate which is for the time being subject to the trusts of the said will and codicil. Power to carry on and manage station properties.



Power to exchange.

10. It shall be lawful for the said trustees (subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid), from time to time to exchange for other lands or hereditaments all or any of the lands and hereditaments for the time being subject to the trusts of the said will and codicil, and to give or receive any money for equality of exchange. 5

Power to grant leases.

11. It shall be lawful for the said trustees (subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid), from time to time, 10 by deed or writing, to demise and lease all or any part of the lands and hereditaments for the time being subject to the trusts of the said will and codicil to any person or persons for any term of years, to take effect in possession, at the best yearly rent that can be reasonably obtained for the same without any fine, premium, or foregift; and also 15 from time to time by deed to demise and lease any part of the said lands and hereditaments to any person or persons who shall covenant to improve the same by repairing any building or buildings now standing, or which shall hereafter be standing, on any part of the land thereby leased, or by erecting and building any house or houses, 20 building or buildings, on such land or part thereof, or by otherwise expending in improvement such moneys as shall be deemed by the said trustees adequate to the interest to be parted with, at such rent as the said trustees shall, having regard to the terms and conditions of such lease, think reasonable and proper—so, however, that nothing be taken 25 by way of fine, premium, or foregift: Provided that every indenture of lease made under the provisions of this section shall contain a covenant by the lessee to pay the rent thereby reserved, and for insurance against fire of any building erected, or to be erected, on the land thereby demised, and also a condition of re-entry on non-payment 30 of rent within a time to be therein specified; and also that a counterpart of such lease be executed by the lessee. Any lessee paying any rent reserved by any such lease to the trustees shall not be bound to see to the application thereof, and shall be free from any liability for the non-application or misapplication of the same, or any part thereof. 35

Power to grant mining leases.

12. Subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, and subject to the reservations and conditions, if any, contained in the grants under which the said lands are holden, and subject to the mining laws of New South Wales for the time being, 40 it shall be lawful for the said trustees to enter into mining agreements, or grant mining leases for any term of years, to take effect in possession and not in reversion or by way of future interest, of all and every and any of the mines, lodes, ores, quarries, veins, strata, and seams of gold, silver, lead, tin, antimony, copper, ironstone, clay, coal, and all 45 other



other metals and minerals whatsoever, in one or more block or blocks, unopened as well as opened, in, under, or upon any of the lands for the time being subject to the trusts of the said will and codicil, or any part thereof, together with any part of the surface of the said lands  
5 which may be thought necessary or convenient to be held for buildings, roads, or ways, or other purposes, with such mines, quarries, or premises, together with full liberty and authority for the lessee or lessees to search for, work, win, take, use, and dispose of all such metals and minerals as shall be found therein; and to sink and make shafts, levels,  
10 pits, drives, trenches, air-gates, way-gates, and water-courses; and to erect and use any smelting, refining, or other furnaces or mills, fire, steam, or other engines and machinery, workmen's and other houses, buildings, sheds, or other conveniences, and to use all other lawful means and ways whatsoever not only for finding, separating, and  
15 cleaning such metals and minerals, but for converting any of them into a manufactured and merchantable condition, and also to take and use sufficient ground room, heap room, and pit room for placing or manufacturing any of such metals and minerals and for laying the waste refuse or rubbish to be from time to time produced from the  
20 said mines, quarries, and premises, and also with full and free liberty to use or make and use all proper and convenient railways, tramways, and other ways for the carriage of materials and articles to such mines, quarries, or premises, and for the carriage or delivery of any of the said metals and minerals with horses, carts, waggons, and other  
25 carriages, and generally upon such terms and with such stipulations as shall be reasonable, necessary, or usual for the purposes aforesaid, so that there be contained in every such lease proper and reasonable covenants and agreements by the lessee or lessees for the due payments of the rents, dues, duties, tolls, or royalties thereby secured, and for  
30 the proper working, construction, and management of the said mines, quarries, and works, and a power of re-entry for non-payment of such rents, dues, duties, tolls, or royalties, and so that every lessee duly execute a duplicate or counterpart of the lease granted to or agreement made with him.

35       13. Subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, it shall be lawful for the said trustees to make, execute, sign, take, and do, or join with any other person or persons in making, executing, signing, taking, and doing all applications, deeds, agree-  
40 ments, instruments, matters, and things necessary or expedient for the purpose of themselves mining in, under, or upon any of the lands for the time being subject to the trusts of the said will and codicil, or otherwise acting in respect of such lands under and in accordance with or for the purpose of any other person or persons mining in, under, or  
45 upon such lands, or otherwise acting in respect thereof under and in accordance with the Mining on Private Lands Act of 1894, or any Act amending or repealing the same.

To make applications  
under the Mining on  
Private Lands Acts.



Power to bring lands  
under the Real  
Property Act.

14. Subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, it shall be lawful for the said trustees to make, execute, sign, take, and do, or join with any other person or persons in making, executing, signing, taking, and doing all applications, deeds, instruments, matters, and things necessary or expedient for the purpose of bringing under the provisions of the "Real Property Act" or of any Act amending or repealing the same, the whole or any part or parts of the lands and hereditaments for the time being subject to the trusts of the said will and codicil, and may deduct and retain out of the trust funds in their, his, or her hands the costs and expenses of and incidental thereto. 5 10

Power to make roads.

15. Subject to the said securities or security of the said Walter Russell Hall, if then subsisting, or any other then subsisting security as aforesaid, it shall be lawful for the said trustees to make or concur in the making of any roads, streets, or ways, on, through, and over any part or parts of the lands and hereditaments for the time being subject to the trusts of the said will and codicil; and also to erect, make, and carry out, and concur in the erecting, making, and carrying out of any walls, sewers, drains, water-courses, or other works which may, in the discretion of the said trustees, conduce to the better laying out, improving, or selling of the said lands and hereditaments, or the convenience or enjoyment of those persons who shall have purchased or shall purchase any part thereof. The cost of any such works on the part of the said trustees or their, his, or her proportions of any costs for such works may be deducted and retained by them, him, or her, in the same way as they, he, or she, are or is hereby authorised to deduct and retain the costs, charges, and expenses of and incidental to sales hereunder, and for any of the purposes of this section the said trustee may reserve and dedicate, either absolutely or upon any conditions, any part or parts of the said lands and hereditaments. 15 20 25 30

Ratification clause.

16. The said agreements dated the fifteenth day of April, one thousand eight hundred and ninety-seven, and the thirtieth day of August, one thousand eight hundred and ninety-seven, and the said two indentures of agreement, and three indentures of confirmation, all dated the twenty-ninth day of December, one thousand eight hundred and ninety-seven, are hereby ratified and confirmed, and shall take effect from the respective dates thereof in the same manner as though the said trustees had been fully empowered by the said will and codicil to enter into and make the same, and shall be binding upon all or any of the parties thereto. 35 40

Further ratification  
clause.

17. Notwithstanding that the said trustees have, without being authorised in that behalf by the said will and codicil, postponed the sale and realisation of the real and personal estate subject to the trusts thereof, and have, without being authorised as aforesaid, carried on and 45 and



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and managed the same, such postponement and carrying on and management are hereby as effectually and fully confirmed as though the same had been authorised by the provisions of the said will and codicil.

5      **18.** This Act may be cited as the "Whitney Estate Act of Short title.  
1900."



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