

An Act to authorise and enable the trustee or trustees for the time being of a certain indenture of settlement bearing date the twenty-second day of November, one thousand eight hundred and sixty-one, made between Theophilus Paton of the first part, Mary Ann Paton (then Mary Ann Allison) of the second part, and the Reverend John Dunmore Lang and Robert Watson of the third part; and under a certain instrument of transfer under the Real Property Act dated the fifth day of November, one thousand eight hundred and ninety-four; and under a certain declaration of trust dated the twenty-second day of April, one thousand eight hundred and ninety-five, under the hands and seals of Henry Elliott and Andrew Fenwick, to obtain payment out of Court of certain money now standing to the credit of the said trust estate in the Supreme Court of New South Wales, in its equitable jurisdiction; and to provide for making certain payments thereout; and for the investment of the balance thereof; and to declare and determine the trusts thereof; and to provide for the ultimate distribution thereof; and for other purposes. [5th November, 1900.]

PATON'S
SETTLEMENT.
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WHEREAS in and previously to the year one thousand eight hundred and sixty-one Theophilus Paton of Sydney, in the Colony of New South Wales, was seised of or well entitled to the equity of redemption in and to certain lands, tenements, and hereditaments, Preamble.
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more particularly described in Schedule A to this Act, subject to a mortgage over the said lands, tenements, and hereditaments to Adolphus William Young, to secure the payment of the sum of one thousand pounds and interest: And whereas by an indenture of marriage settlement, dated the twenty-second day of November, one thousand eight hundred and sixty-one, made between the said Theophilus Paton of the first part, Mary Ann Paton (then Mary Ann Allison) of the second part, and the Reverend John Dunmore Lang and Robert Watson, trustees, of the third part, the said lands, tenements, and hereditaments were conveyed to the said trustees subject to the said mortgage upon trust from and after the solemnisation of the marriage between the said Theophilus Paton and Mary Ann Paton, which took place on the twenty-sixth day of November, one thousand eight hundred and sixty-one, to receive the rents, profits, and proceeds thereof and to pay the same to the said Mary Ann Paton during her life for her sole and separate use, without power of anticipation, subject to her maintaining and educating thereout every child of the said marriage, and on the decease of the said Mary Ann Paton to pay the said rents, proceeds, and profits to the said Theophilus Paton for his life, and from and after his decease to apply the said rents, profits, and proceeds to the support, maintenance, and education of every such child of the said marriage until the youngest child should attain the age of twenty-one years, or being a daughter should marry under that age; and upon that complete event, upon trust, to sell and dispose of the said land, and to divide and pay over the proceeds equally share and share alike to between and among such children then living, and the child or the children per stirpes of any of such children who might have died leaving lawful issue: And whereas there were issue of the said marriage eleven children and no more, namely:—Theophilus James Paton, Claude Stephen Paton, George Kerr Paton, Maude Helen Elliott (formerly Maude Helen Paton), now the wife of James Augustus Elliott, of Rockhampton, Queensland, Ernest David Paton, and Arthur Lang Paton (hereinafter called “the adult beneficiaries,”) and Eva Gertrude Paton, Herbert Septimus Paton, and John Robert Paton (hereinafter called “the infant beneficiaries,”) the last three being infants who are now living, and Bertha Alice Paton, born in the year one thousand eight hundred and seventy-six, and died in January, one thousand eight hundred and seventy-eight, aged about eighteen months, and John Dunmore Paton, born in April, one thousand eight hundred and seventy-eight, and died in October, one thousand eight hundred and seventy-eight: And whereas the said Reverend John Dunmore Lang died in the year one thousand eight hundred and seventy-eight, and by a deed dated the fifteenth day of February, one thousand eight hundred and eighty-three, the said Mary Ann Paton appointed the said Theophilus Paton a trustee in his place and stead under and by virtue of a power contained in the said settlement: And whereas the said Robert Watson died on the fifth day

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day of August, one thousand eight hundred and ninety-three, and by an indenture dated the fifth day of November, one thousand eight hundred and ninety-four, and made between the said Theophilus Paton, of the first part, the said Mary Ann Paton of the second part, and Henry Elliott and Andrew Fenwick of the third part, the said parties of the third part were duly appointed trustees of the said settlement under and by virtue of a power contained in the said settlement in the place and stead of the said Reverend John Dummore Lang, the said Robert Watson, and the said Theophilus Paton: And whereas on or about the third day of September, in the year one thousand eight hundred and eighty-one, the said mortgage to the said Adolphus William Young was discharged, and the said lands, tenements, and hereditaments were reconveyed to, and the legal estate in the same became vested in, the said Theophilus Paton for an estate in fee simple: And whereas in or about the year one thousand eight hundred and seventy-nine, the said Theophilus Paton, by virtue of his said estate in the said lands, acquired under the Real Property Act the water frontage to Darling Harbour and certain lands below high-water mark, and obtained a grant thereof in his own name, dated the twenty-second day of March, one thousand eight hundred and eighty, volume four hundred and ninety-three, folio two hundred and forty-two, the said lands, hereinafter called the reclamation area, are more particularly described in Schedule B to this Act: And whereas the said Theophilus Paton subsequently mortgaged the said reclamation area, and afterwards by a memorandum of transfer dated the fifth day of November, one thousand eight hundred and ninety-four, the said Theophilus Paton transferred the said reclamation area to the said Henry Elliott and the said Andrew Fenwick, subject to the said mortgage: And whereas the said Henry Elliott and Andrew Fenwick executed a declaration of trust, dated the twenty-second day of April, one thousand eight hundred and ninety-five, declaring that they held the said reclamation area upon the trusts of the said marriage settlement: And whereas the said Theophilus Paton, but without disclosing the said settlement, subsequently mortgaged the said settled land described in Schedule A hereto to raise money to effect improvements on the said lands and the said reclamation area, and the value of the said land was greatly enhanced by the said expenditure: And whereas the legal estate in the said lands described in the Schedule A thereby became vested in the said mortgagees: And whereas disputes subsequently arose as to the respective priorities of the said mentioned mortgage and the said marriage settlement: And whereas the said disputes were compromised in the manner following, that is to say, by the said Mary Ann Paton insuring her life for the benefit of the said mortgagees, and by their conveying the said lands described in the said Schedule A for all their right, title, and interest therein to the said adult beneficiaries, their heirs and assigns, as tenants in common during but subject to the life estate

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estate of the said Mary Ann Paton, limited by the said settlement of the twenty-second day of November, one thousand eight hundred and sixty-one, and after the death of both of them, the said Mary Ann Paton and Theophilus Paton, to the use of the trustees for the time being of the said settlement, and their heirs, upon the trusts declared by the said settlement, or such and so many of them as should be then subsisting and capable of taking effect; and further, by the said adult beneficiaries mortgaging their respective interests under the said settlement and the last-mentioned conveyance back to the mortgagees aforesaid for the sum of two thousand seven hundred and fifty pounds, payable on the first day of October, one thousand nine hundred and five, with interest at the rate of four pounds per centum per annum until payment: And whereas the said Mary Ann Paton joined in the last-mentioned mortgage for the purpose of guaranteeing the payment of interest in the said sums of money, and of charging, so far as she legally might, her life interest in the said settled lands: And whereas the effect of the said various indentures hereinbefore recited is to make the interests of the said adult and infant beneficiaries contingent upon their surviving the said Theophilus Paton and the said Mary Ann Paton: And whereas the said reclamation area adjoining the said lands originally mortgaged to the said mortgagees was at the time of the sale hereinafter mentioned mortgaged to one Jane Foreman, to secure the repayment of the sum of one thousand pounds and interest at the rate of six pounds per centum per annum: And whereas on or about the twenty-fifth day of November, one thousand eight hundred and ninety-eight, the said Mary Ann Paton, the said Claude Stephen Paton, the said George Kerr Paton, the said Maude Helen Paton (now Maude Ellen Elliott), and the said Arthur Lang Paton, under and by virtue of the Conveyancing and Law of Property Act, 1898, and the Married Women's Property Act, 1893, presented their petition to the Honorable Archibald Henry Simpson, Esquire, Chief Justice in Equity of the Supreme Court of New South Wales: And whereas, upon the fourteenth day of December, in the year one thousand eight hundred and ninety-eight, the said Chief Judge in Equity did duly order upon the said petition that the Court, being of opinion that it was proper and consistent with a due regard for the interests of all parties entitled under the said indenture, a sale should be authorised of the lands and hereditaments situated in the parish of Saint Phillip, in the county of Cumberland, and Colony of New South Wales, being the land referred to in Schedules A and B to this Act, and being the settled estates subject to the trusts of the said indentures of settlement; and it appearing to the Court to be for the benefit of the said Mary Ann Paton that, notwithstanding the restraint against anticipation imposed by the said indenture of settlement, the said estates should be sold out of Court, and the proceeds thereof applied as hereinafter appears, it was ordered that the said estate be sold and conveyed in the manner and on

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the terms and subject to the conditions in the said order appearing free from the said mortgages; and it was further ordered that the said trustees, out of the proceeds of such sale when the same should be received by them, should retain and pay to the said Jane Foreman what should appear due to her on account of principal and interest, and any costs incurred by her in consequence of any default by the mortgagors under the said memorandum of mortgage without prejudice to any rights the said infant petitioners might have against the trustees of the said settlement in respect of the said mortgage; and it was further ordered that the costs as between solicitor and client of all parties to the said application and the said order, including the costs, charges, and expenses of and incidental to the said sale and discharge of the said mortgages, should be taxed by the Master in Equity, and that the same when so taxed should be paid by the said trustees to the said parties or their respective solicitors, and after such payments as aforesaid the balance of such proceeds should be paid into Court to the credit of the said matter; and it was lastly ordered that the restraint against anticipation so removed as aforesaid should attach to the said balance so paid into Court as thereinbefore ordered: And whereas the said lands described in Schedules A and B hereto were duly sold under and by virtue of the said order, and realised the sum of seven thousand one hundred pounds, and the said trustees received the purchase money, and thereout paid off the said mortgage to the said Jane Foreman, and all interest and costs in connection therewith, and paid the costs of the said petition and order. And on the first day of June, one thousand eight hundred and ninety-nine, the said trustees paid into Court, to the credit of the Master in Equity to the account of the hereinbefore mentioned matter, the sum of five thousand five hundred and seventy-eight pounds sixteen shillings and sixpence, being the balance of the said purchase money remaining in their hands after such payment as aforesaid: And whereas the said Theophilus James Paton sequestrated his estate on or about the twenty-sixth day of May, one thousand eight hundred and ninety-nine, and Norman Frederick Giblin was duly appointed his official assignee: And whereas a sum of two thousand seven hundred and fifty pounds is now due and owing to Douglas Hamilton MacLean in respect of the said mortgage made by the said adult beneficiaries: And whereas the said adult beneficiaries, and the said Mary Ann Paton, and the said official assignee are willing that the sum of two thousand pounds should be paid off out of the said sum of five thousand five hundred and seventy-eight pounds sixteen shillings and sixpence, and that the balance thereof should be settled in such a manner as to give the said infant beneficiaries absolutely vested estates in their respective proportionate parts of the balance remaining of the said sum after paying the said sum of two thousand pounds to the said Douglas Hamilton MacLean, subject, however, to the life estate of the said Mary Ann Paton, and have con-
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tracted and agreed accordingly: And whereas the said Douglas Hamilton MacLean has agreed to accept the said sum of two thousand pounds so to be paid as aforesaid in full satisfaction and discharge of the said mortgage of two thousand seven hundred and fifty pounds: And whereas it is just and expedient that the said contract and agreement should be carried into effect, and it is impossible to do so without obtaining the sanction of Parliament thereto: 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:—

Interpretation.

1. In construing this Act, the following words shall have the meanings herein assigned to them, unless the context otherwise requires:—

“ Paton's settlement ” shall mean and include the indenture of settlement of the twenty-second day of November, one thousand eight hundred and sixty-one; the instrument of transfer under the Real Property Act, dated the fifth day of November, one thousand eight hundred and ninety-four; and the declaration of trust, dated the twenty-second day of April, one thousand eight hundred and ninety-five, hereinbefore mentioned.

“ The said trustees ” shall mean the trustee or trustees for the time being of Paton's settlement.

“ The settled fund ” shall mean the sum of five thousand five hundred and seventy-eight pounds sixteen shillings and sixpence now in Court standing to the credit of an account intituled, “ In the matter of the estates settled by Theophilus Paton by indenture dated the twenty-second day of November, one thousand eight hundred and sixty-one, and by an instrument of transfer under the Real Property Act, dated the fifth day of November, one thousand eight hundred and ninety-four, and by a declaration of trust dated the twenty-second day of April, one thousand eight hundred and ninety-five, situated in the parish of Saint Phillip, in the county of Cumberland, and Colony of New South Wales; ” “ And in the matter of the Conveyancing and Law of Property Act, 1898; ” and in the matter of the “ Married Women's Property Act, 1893, ” together with all interest thereon, or the balance remaining after making thereout the payments hereinafter authorised, and shall be taken to include all investments by which the said balance may from time to time be represented.

2. It shall be lawful for the Supreme Court, in its equitable jurisdiction, on the application of the said trustees, to order payment out of the

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the settled fund of the sum of two thousand pounds to Douglas Hamilton MacLean, or his assigns, in full satisfaction and discharge of his said mortgage.

3. The said Douglas Hamilton MacLean, or his assigns, shall accept the said sum of two thousand pounds in full satisfaction and discharge of all his claim, demand, charge, lien, and security against, over, to, and upon the said sum of five thousand five hundred and seventy-eight pounds sixteen shillings and sixpence, now in Court as aforesaid, and against, over, to, and upon the individual shares of the beneficiaries therein, and of all their claim and demand against the said Mary Ann Paton and the said individual beneficiaries and their respective estates under the covenants in the said mortgage hereinbefore mentioned, and otherwise in respect thereof; and upon such payment being made to the said Douglas Hamilton MacLean, or his assigns, all such claims, demands, charges, liens, and securities of the said Douglas Hamilton MacLean, or his assigns, against, over, and to the said sum of five thousand five hundred and seventy-eight pounds sixteen shillings and sixpence, and the shares of individual beneficiaries therein, and against the said Mary Ann Paton and the said individual beneficiaries and their respective estates, shall cease and determine accordingly. And the said Douglas Hamilton MacLean, or his assigns, shall deliver up to the said trustees the said mortgage duly discharged, and all documents in his possession or power relating thereto.

4. It shall be lawful for the Supreme Court, in its equitable jurisdiction, from time to time on the application of the said trustees, with the consent of the said Mary Ann Paton during her life, to direct payment out of Court of the said settled fund, or any part thereof, to the said trustees for investment by them on any investments authorised for trust funds by the Supreme Court of New South Wales, and the said trustees shall have power out of such funds to defray all necessary costs and expenses occasioned by such investments, and from time to time to vary the said investments for others of a like character.

5. The income of the balance of the said settled fund shall be paid to the said Mary Ann Paton during her life for her separate use, without power of anticipation, and upon her death the said balance of the said fund shall be converted into money and the proceeds divided in equal shares amongst and between Norman Frederick Giblin, as such official assignee as aforesaid, the said Claude Stephen Paton, the said George Kerr Paton, the said Maude Helen Paton (now Maude Helen Elliott), the said Ernest David Paton, the said Arthur Lang Paton, the said Eva Gertrude Paton, the said Herbert Septimus Paton, and the said John Robert Paton, and such shares shall be absolutely vested in them.

6. The said Eva Gertrude Paton, Herbert Septimus Paton, and John Robert Paton, and their respective executors, administrators, and assigns,

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assigns, shall accept the shares coming to them in the said settled fund under the provisions of this Act in full satisfaction and discharge of any money or share which, but for the passing of this Act, might have come or been due to them under Paton's settlement, and in full satisfaction and discharge of any right of action, claim, or demand which they may have, or might have had, against the trustee or trustees of Paton's settlements in respect of any of the trusts therein contained.

7. This Act may be cited as the "Paton's Settlement Act of 1900."

SCHEDULES.

SCHEDULE A.

All that parcel of land containing by admeasurement one rood and thirty-four perches, and situated in the town of Sydney, parish of Saint Phillip, county of Cumberland, and Colony of New South Wales, allotment number three of section number ninety-three, bounded on the south by allotment number two bearing east eleven degrees forty-five minutes north four hundred and forty links; on the east by Kent-street North bearing north fifteen degrees west one hundred and eight and a half links; on the north by allotment number four bearing west thirteen degrees thirty minutes south ninety-six links, then west ten degrees fifteen minutes south three hundred and fifteen links; and on the west by the high-water mark of Darling Harbour.

SCHEDULE B.

That piece of land situated at Darling Harbour, in the city of Sydney, parish of Saint Phillip, and county of Cumberland, containing seventeen perches or thereabouts, as shown on the plan hereon and therein edged with dotted lines, and delineated in the public map of the said city deposited in the office of the Surveyor-General as originally granted to Theophilus Paton by Crown grant, dated the twenty-second day of March, one thousand eight hundred and eighty, registered in the Land Titles Office, Sydney, volume four hundred and ninety-three, folio two hundred and forty-two.

