



1855-6.

Private Act.

An Act to enable John Finnis, George Stevenson, Charles Mann, and Ludavina Cameron Kingston, Hester Holland Kingston, Charlotte Julia Kingston, Strickland Gough Kingston, and Charles Cameron Kingston (the Five Infant Children of George Strickland Kingston, of Adelaide, in the Province of South Australia, Esquire, by his late Wife Ludavina Catharina da Silva Cameron Kingston, deceased), to convey to Allan Bell, in fee simple, the Section of Land, numbered 4448, in the Special Survey in the said Province, called the Mount Barker Special Survey, and to declare the Trusts of the purchase money for the same land.

[Assented to, June 18, 1856.]

WHEREAS by a deed poll or land grant, dated the third day of Preamble. July, one thousand eight hundred and forty, under the hand and seal of office of George Gawler, Esquire, Commissioner of Public Lands in South Australia, it was witnessed that, for the considerations therein expressed, the said George Gawler did grant unto William Hampden Dutton, all those four thousand acres of land which were delineated and marked out in the map or plan annexed to the said deed poll or land grant now in recital, together with the appurtenances, to hold the same unto the said William Hampden Dutton, his heirs and assigns, for ever: And whereas, by an indenture dated the sixteenth day of October, one thousand eight hundred and forty-one, and made between the said William Hampden Dutton, of the first part, Duncan Macfarlane, Esquire, of the second part, John Finnis, Esquire, of the third part, and Frederick Hansborough Dutton, Esquire, of the fourth part, after reciting (among other things) that although the sum of Four Thousand Pounds, in the aforesaid land grant, was expressed to be paid by the said William Hampden Dutton alone, yet the said sum was the proper moneys of the said William Hampden Dutton, Duncan Macfarlane, and

and John Finnis, and was raised and paid by them in equal portions ; and that the name of the said William Hampden Dutton was made use of in the said deed poll or land grant as respects two undivided equal third parts of and in the said four thousand acres of land in trust for the said Duncan Macfarlane, and John Finnis, their heirs and assigns, the said William Hampden Dutton being beneficially interested in the remaining one undivided third part thereof only, as the said William Hampden Dutton did thereby acknowledge ; and also reciting to the effect that the said William Hampden Dutton, Duncan Macfarlane, and John Finnis, having agreed respectively to make partition amongst themselves of the said lands comprised in the said hereinbefore recited land grant, had respectively selected and appropriated the Sections of land which in the said indenture now in recital were severally numbered and distinguished as the lands thereby respectively intended to be held by each of them, the said William Hampden Dutton, Duncan Macfarlane, and John Finnis, in severalty and not as tenants in common, it was by the said indenture now in recital witnessed, that, in pursuance of the said recited agreement for partition, the said William Hampden Dutton, Duncan Macfarlane, and John Finnis, thereby covenanted with the others and other of them, and with the heirs and assigns of the others and other of them, as follows, that is to say—That as from the day of the date of the said ballot and partition, selection, and appropriation, thereinbefore mentioned to have been made as aforesaid, the said William Hampden Dutton, Duncan Macfarlane, and John Finnis, should have and hold to them and their heirs, the several eighty-acre Sections and portion of Section, and the town and suburban allotments, whereof partition had been so made, and so balloted for, selected, and appropriated, by them respectively, as aforesaid, in severalty and not in common, and that for an estate in fee simple of inheritance in possession, absolutely freed and discharged of all tenancies or rights in common, either at law or equity, and all or any other equities, rights, titles, or incumbrances, whatsoever, whether of the said parties thereto, or of any other person or persons whomsoever ; and it was by the same indenture further agreed that the legal estate in the premises so respectively selected and appropriated, and to be holden by the said parties in severalty as aforesaid, should, as from the period of the partition so made as aforesaid, and the selection and appropriation thereof in severalty, as aforesaid, at the request and costs of the party requiring the same, be conveyed and assured to each of them and their heirs or otherwise, as he or they might require or direct ; and the said William Hampden Dutton, by the same indenture, declared and agreed that he would, upon demand, execute to the said Duncan Macfarlane, his heirs and assigns, and to the said John Finnis, his heirs and assigns, such grant, conveyance, and assurance of the legal estate of the Sections, so selected and appropriated by them as aforesaid, as each of them, the said parties, their heirs and assigns, or his or their Counsel, should require and tender for execution : And whereas, by indenture of lease and release, dated respectively the twenty-second and twenty-third days of April, one thousand eight

eight hundred and forty-two; the release being made between the said William Hampden Dutton, of the first part, the said Duncan Macfarlane, of the second part, the said John Finnis, of the third part, and George Stevenson, Esquire, of the fourth part; it was by the said indenture of release now in recital witnessed that the said William Dutton, at the request, and with the privity and consent of, the said Duncan Macfarlane (testified as therein mentioned), did grant, bargain, sell, and release, unto the said John Finnis, and his heirs, all those thirteen several eighty-acre Sections of land, situate, lying, and being in the district called or known by the name of "The Mount Barker District," in the said Province of South Australia, and which said Sections of land comprise amongst others the Section of land numbered 4448 in the Mount Barker Special Survey, together with the appurtenances, to hold the same unto the said John Finnis, his heirs and assigns, for ever, to such uses, for such estates and purposes, and in such manner as the said John Finnis, by any deed or deeds should appoint, and in default of any such appointment, to the use of the said John Finnis and his assigns, during his life, with a limitation to the use of the said George Stevenson, his executors and administrators, during the life of the said John Finnis, in trust for him and his assigns, with remainder to the use of the said John Finnis, his heirs and assigns, for ever: And whereas, by virtue of certain indentures of lease and release, dated respectively the seventh and eighth days of March, one thousand eight hundred and forty-two, the release being made between the said John Finnis, of the first part, the said George Stevenson and Charles Mann, Esquires, of the second part, and Ludavina Catharina da Silva Cameron Kingston, therein described as the wife of George Strickland Kingston, of Adelaide, aforesaid, Esquire, and the step-daughter of the said John Finnis, of the third part, as evidenced by the memorials of such last-mentioned indentures of lease and release, registered at the Registry Office, at Adelaide, aforesaid, on the twenty-seventh day of April, one thousand eight hundred and forty-two, and numbered 325, Book I, the said John Finnis, in consideration of the natural love and affection which the said John Finnis had and bore for the said Ludavina Catharina da Silva Cameron Kingston, and for the nominal consideration such indenture of release mentioned to be paid to the said John Finnis, by the said George Stevenson and Charles Mann, did release unto the said George Stevenson and Charles Mann, and their heirs, all that Section of country land, numbered 4448 in the Special Survey, in the said Province, called the Mount Barker Special Survey, containing by admeasurement eighty acres more or less, with the appurtenances, to hold the same unto and to the use of the said George Stevenson and Charles Mann, their heirs and assigns, for ever; nevertheless, upon certain trusts in the said indenture of release declared, for the benefit of the said Ludavina Catharina da Silva Cameron Kingston, for her life, and in trust for her children after her decease: And whereas the said lastly hereinbefore recited indentures of lease and release have been lost, and no further evidence of the contents thereof can be procured, than what is afforded

afforded by the said hereinbefore mentioned memorials of such indentures, which have been so registered as aforesaid: And whereas the said Ludavina Catharina da Silva Cameron Kingston, died on or about the twenty-first day of October, one thousand eight hundred and fifty-one, having had five children only, viz.—Ludavina Cameron Kingston, Hester Holland Kingston, Charlotte Julia Kingston, Strickland Gough Kingston, and Charles Cameron Kingston, all of whom are now living and under the age of twenty-one years: And whereas Allan Bell of Mount Barker, in the said Province of South Australia, farmer, has agreed, with the said George Stevenson and Charles Mann, to purchase the said Section of land, numbered 4448 in the Mount Barker Special Survey, for the sum of One Thousand Six Hundred Pounds, in case a good title to such land shall be made by the said George Stevenson and Charles Mann: And whereas the said George Stevenson and Charles Mann being satisfied that the said sum of One Thousand Six Hundred Pounds is the utmost value of the said Section of land, and that the sale thereof to the said Allan Bell would be greatly for the benefit of the said Ludavina Cameron Kingston, Hester Holland Kingston, Charlotte Julia Kingston, Strickland Gough Kingston, and Charles Cameron Kingston, they, the said George Stevenson and Charles Mann, at the request of the said George Strickland Kingston, of Adelaide, aforesaid, Esquire, the father of the said infants, are willing to effect the sale of the said Section, at the price aforesaid, to the said Allan Bell: And whereas, by reason of the loss of the hereinbefore mentioned indentures of lease and release, of the seventh and eighth days of March, one thousand eight hundred and forty-two, and the minority of the said Ludavina Cameron Kingston, Hester Holland Kingston, Charlotte Julia Kingston, Strickland Gough Kingston, and Charles Cameron Kingston, a clear marketable title cannot be shown to the said land comprised in the aforesaid indentures of lease and release, of the seventh and eighth days of March, one thousand eight hundred and forty-two, without the aid and authority of the Legislature of this Province:

All the estate of
Finnis and others to
vest in Allan Bell.

1. Be it therefore Enacted, by the Governor-in-Chief of South Australia, with the advice and consent of the Legislative Council thereof, That, from and immediately after the passing of this Act, all and singular the estate, right, title, and interest whatsoever, at law or in equity, whether in possession, remainder, or reversion, and whether vested or contingent, of the said John Finnis, George Stevenson, Charles Mann, Ludavina Cameron Kingston, Hester Holland Kingston, Charlotte Julia Kingston, Strickland Gough Kingston, and Charles Cameron Kingston, and every of them, in and to the said Section of country land, numbered 4448 in the aforesaid Special Survey in the said Province, called the Mount Barker Special Survey, containing by admeasurement eighty acres, be the same more or less, with the rights, members, and appurtenances thereunto belonging, shall be, and the same is hereby vested in the said Allan Bell, his heirs and assigns, for his and their own absolute use and benefit, freed and absolutely discharged from the said indentures

indentures of lease and release, of the seventh and eighth days of March, one thousand eight hundred and forty-two, and from the trusts, provisions, and agreements therein contained, and in the same, or in like manner, as if the said last-mentioned indentures had never existed; and the said John Finnis had, subsequent to the twenty-third day of April, one thousand eight hundred and forty-two, for a valuable consideration, by a good and valid conveyance, conveyed and assured the same unto the said Allan Bell in fee simple.

2. And for the purpose of declaring the trusts of, and concerning the said purchase money or sum of One Thousand Six Hundred Pounds: Be it further Enacted, That from and after the passing of this Act, the said George Stevenson and Charles Mann, their executors, administrators, and assigns, shall stand and be possessed of and interested in the said purchase money, or sum of One Thousand Six Hundred Pounds, or so much thereof as shall remain, after payment thereof of the costs and expenses incurred by them, in or about the passing of this Act, upon and for the following trusts and purposes, that is to say—upon trust, that they, the said George Stevenson and Charles Mann, or the survivor of them, and the executors and administrators of such survivor, do, and shall, with the consent, in writing, of the said George Strickland Kingston, during his life, and after his decease in their or his discretion, from time to time lay out and invest the same in the names or name of the said George Stevenson and Charles Mann, or the survivor of them, or the executors or administrators of such survivor, at interest upon Government or real securities in Great Britain, or in any of the Australian Colonies, with power for the said George Stevenson and Charles Mann, and the survivor of them, and the executors or administrators of such survivor, with such consent as aforesaid, and after the decease of the said George Strickland Kingston, in their or his discretion, to vary such securities for others of the like kind, as hereinbefore mentioned, and do and shall, during the respective minorities of the said Ludavina Cameron Kingston, Hester Holland Kingston, Charlotte Julia Kingston, Strickland Gough Kingston, and Charles Cameron Kingston, pay the interest and annual income of the expectant shares of such minors respectively, to the said George Strickland Kingston, or other guardian for the time being, of such minors respectively, whose receipt shall be a sufficient discharge to the said trustees or trustee for the time being, for the interest and annual income of the said trust moneys and securities, to the intent that the said interest and annual income may during their respective minorities be applied for, or towards the maintenance, education, and support of the aforesaid minors respectively; and do and shall, from time to time, as they the said Ludavina Cameron Kingston, Hester Holland Kingston, Charlotte Julia Kingston, Strickland Gough Kingston, and Charles Cameron Kingston, shall respectively attain the age of twenty-one years or marry, shall pay, transfer, and assign one equal fifth share of the aforesaid trust moneys and securities, and the interest and annual

Trust on which purchase money to be invested.

income thereof, to each of them, the said Ludavina Cameron Kingston, Hester Holland Kingston, Charlotte Julia Kingston, Strickland Gough Kingston, and Charles Cameron Kingston, who shall so attain his or her age of twenty-one years or marry: And in case any of them, the said Ludavina Cameron Kingston, Hester Holland Kingston, Charlotte Julia Kingston, Strickland Gough Kingston, and Charles Cameron Kingston, shall die before he, she, or they, respectively, shall become absolutely entitled to his, her, or their aforesaid share or shares of the said trust moneys and securities, do, and shall pay, transfer, and assign the said share or shares, as well original as accruing, of such of them as shall so die under the age of twenty-one years and unmarried, to the survivors or survivor, or others or other of them, the said Ludavina Cameron Kingston, Hester Holland Kingston, Charlotte Julia Kingston, Strickland Gough Kingston, and Charles Cameron Kingston, at the like time or times, and in the like manner as hereinbefore mentioned or expressed respecting his, her, or their said original share or shares, or as near thereto as circumstances will admit, and in case all of them, the said Ludavina Cameron Kingston, Hester Holland Kingston, and Charlotte Julia Kingston, Strickland Gough Kingston, and Charles Cameron Kingston shall die under the age of twenty-one years and unmarried, then, and in such event, the said George Stevenson and Charles Mann, or the survivor of them, and the executors or administrators of such survivor, do, and shall pay, transfer, and assign, all and singular the said trust moneys and securities, and the interest and annual income thereof, unto the said George Strickland Kingston, his executors, administrators, and assigns, for his and their sole use and benefit.

Trustees may invest trust moneys.

3. And be it further Enacted, That it shall be lawful for the said George Stevenson and Charles Mann, and the survivor of them, and the executors or administrators of such survivor, with the consent, in writing, of the said George Strickland Kingston, and after his decease in their or his discretion, from time to time to lay out and invest the whole or any part of the moneys for the time being subject to the said trusts hereinbefore declared in the purchase of any messuages, lands, and hereditaments, situate either in Great Britain or in any of the Australian Colonies, for any estate of inheritance to be conveyed to the said trustees or trustee for the time being, acting under, or by virtue of the powers and authorities given to them in this Act, their or his heirs or assigns, with power and authority for the said trustees or trustee for the time being, with the consent, in writing, of the said George Strickland Kingston, during his life, and after his decease of the proper authority of the said trustees or trustee for the time being, acting as aforesaid, to sell and dispose of the said messuages, lands, and hereditaments which shall have been so purchased as aforesaid, either by public auction or private contract, and in such manner as shall be deemed most convenient, and at the best price or prices that can at the time of such sale be reasonably obtained for the same, unto such person or persons as shall be willing to become the purchaser or purchasers thereof

thereof respectively, with power to buy in the same at any such sale by auction, or to rescind any such contract, without being answerable for any loss which may happen in consequence thereof; and upon trust to apply the moneys arising from such sale (after payment of the costs, charges, and expenses attending the same), upon, and for such and the same trusts, intents, and purposes as the money so laid out in the purchase of such messuages, lands, and hereditaments was subject to before such purchase was made, or would have been subject to if the same had not been laid out therein; and also upon trust in the meantime, and until such messuages, lands, and hereditaments shall be resold, to apply the rents and profits thereof in such manner as the interest of the money to be laid out in the purchase thereof would have been applicable under the trusts hereinbefore declared in case such purchase had not been made, it being hereby declared that the said messuages, lands, and hereditaments so to be purchased by the said trustees or trustee, for the time being, under this present power as aforesaid, shall, when so purchased, be considered as money, and be subject to such and the same trusts in all respects, as the money to be laid out in the purchase thereof was subject to before such purchase was made, or would have been subject to if the same had not been laid out: Provided always, that it shall be lawful for the said trustees and trustee, for the time being, acting under or by virtue of the powers and authorities given to them in this Act, at any time or times before the hereditaments so to be purchased as aforesaid shall be sold, in pursuance of the trusts aforesaid, to demise or lease the said hereditaments so to be purchased as aforesaid, or any part thereof respectively, with their appurtenances, either with or without a right of purchase, to any lessee or lessees thereof, for any term not exceeding fourteen years, so as the usual covenants be contained in every such lease, and the full annual rent be reserved, and no fine be taken for granting the same.

4. And be it further Enacted, That the receipt or receipts, in writing, of the said George Stevenson and Charles Mann, or the survivor of them, or the heirs, executors, or administrators of such survivor, or the trustees or trustee for the time being, acting under or by virtue of any of the powers and authorities given to them by this Act, shall be a sufficient and effectual discharge for the money in such receipts respectively expressed or acknowledged to be received respectively, or for so much thereof as in such receipt or receipts respectively shall be expressed or acknowledged to be received, and that the person or persons to whom the same shall be given, his, her, or their executors, administrators, or assigns shall not afterwards be answerable or accountable for any loss, misapplication, or non-application, or be in anywise obliged or concerned to see to the application of the money therein mentioned and acknowledged to be received.

Receipts of Charles Mann and George Stevenson, & others, to be sufficient.

5. And be it further Enacted, That if the said George Stevenson and Charles Mann, or either of them, or any trustee or trustees, to be appointed as hereinafter provided, shall die or go and reside out of

Power to appoint new trustees.

of the said Province of South Australia, or desire to be discharged, or refuse, or become incapable to act as trustee or trustees, then and so often as the same shall happen, it shall be lawful for the surviving or continuing trustee for the time being, or for the acting executors or administrators in this Province of the last surviving or continuing trustee in conjunction with the said George Strickland Kingston, during his life, or other Guardian for the time being of the said minors hereinbefore named, with the approbation of the Judges or a Judge of the Supreme Court of the said Province of South Australia, to appoint a new trustee or new trustees in the place of the trustee or trustees so dying, or permanently residing out of the said Province, or desiring to be discharged, or refusing, or becoming incapable to act as aforesaid: And that, upon every such appointment, all the trust estate, moneys, and securities shall be conveyed, assigned, and transferred in such manner and so as the same may be effectually vested in the new trustee or trustees solely or jointly with the surviving or continuing trustee as the case may require, and that every such new trustee shall have such and the same powers and authorities and discretion, to all intents and purposes, as if he had been originally in and by this Act nominated or constituted trustee: Provided always, that the said trustees herein named, and the trustees to be appointed as aforesaid, and their respective heirs, executors, administrators, and assigns, shall be chargeable respectively only for such moneys as they shall respectively actually receive by virtue of the aforesaid trusts; and any one of them shall not be answerable or accountable for the other of the said trustees, or for any banker or other person with whom or in whose hands any part of the said trust moneys may be deposited for safe custody, or for any other involuntary losses; and that it shall be lawful for such trustees to retain and reimburse themselves all costs and expenses to be incurred in or about the execution of the aforesaid trusts or in relation thereto.

Nothing contained herein shall affect the rights of Her Majesty.

6. Provided always, and be it further Enacted, That nothing herein contained shall affect or be construed to apply to the rights of Her Majesty, Her heirs, successors, or assigns, or of any Bodies Politic or Corporate, or of any of Her Majesty's subjects, save and except such as are mentioned herein, and all persons whomsoever claiming by, from, through, or under them.

Act to be evidence.

7. And be it further Enacted, That a copy of this Act, printed by the Government Printer, shall be admitted as evidence thereof, by all Judges, Justices, and others, without being specially pleaded.