

John Darnell Estate, Etc., Act. 1 EDW. VIII. No. 29,

DARNELL, JOHN, DECEASED, TRUSTS.

See TRUSTS.

QUEENSLAND NATIONAL ART GALLERY.

See TRUSTS.

TRUSTEES.

1 EDW. VIII. No. 29.
THE JOHN DARNELL ESTATE AND QUEENSLAND NATIONAL ART GALLERY ACT OF 1936.

An Act relating to Certain Trusts under the Will and Codicils of John Darnell, late of Wynnum South, in the State of Queensland, Gentleman, Deceased.

[ASSENTED TO 11TH DECEMBER, 1936.]

Preamble.

WHEREAS John Darnell (hereinafter referred to as "the Testator"), late of Wynnum South, within the City of Brisbane, in the State of Queensland, deceased, by his last Will and Testament dated the tenth day of March, one thousand nine hundred and twenty-five, appointed the Honourable Thomas Murray Hall, of Brisbane, Accountant; Wilfred Manning Hall, of Brisbane, Accountant; Reginald MacDonnell King, of Brisbane, Solicitor; and George Roydon Howard Gill, of Brisbane, Solicitor, to be Executors and Trustees of such Will:

And whereas the Testator by a Second Codicil to his said last Will and Testament dated the eighth day of April, one thousand nine hundred and twenty-seven, appointed Albert Edward Harte, of Brisbane, Share-broker, to be an additional Executor and Trustee of his said Will:

And whereas the said the Honourable Thomas Murray Hall predeceased the Testator leaving him surviving the other four Trustees abovementioned (hereinafter referred to as "the original Trustees"):

And whereas the Testator, by his said Will and Testament, among other things, directed the Trustees to stand possessed of the sum of Ten thousand pounds

1936.

John Darnell Estate, Etc., Act.

upon trust for and to and for the use of the establishment and maintenance of a National Picture Gallery in the City of Brisbane, that part of which said sum of Ten thousand pounds, namely, the sum of Five thousand pounds thereof, should be used for the maintenance and support of the Randall Art Gallery in the City of South Brisbane, in the said State :

Provided, however, that the said bequest of Ten thousand pounds should be conditional upon a similar amount of Ten thousand pounds being raised by public subscription or otherwise within five years from the date of the decease of the Testator, and that in default thereof the said sum of Ten thousand pounds should fall into his residuary estate and should follow the destination thereof :

And whereas the Testator died at Wynnum South, in Brisbane, in the said State, on the tenth day of June, one thousand nine hundred and thirty :

And whereas by means of public subscriptions and by grants made by the Government of Queensland and the Brisbane City Council the full amount of the sum of Ten thousand pounds above referred to was raised within the said period of five years from the date of the decease of the said Testator :

And whereas pursuant to an Order of the Supreme Court of Queensland dated the thirty-first day of July, one thousand nine hundred and thirty-five, made by the Honourable Mr. Acting Justice Hart, it was ordered that Sir James William Blair, William Nathaniel Robertson, Maurice Stanley Herring, William Bustard, Edward Colcough, Samuel Roberts, Frederick Gould, Jeremiah Joseph Stable, and George Comrie Smith (hereinafter collectively referred to as "the substituted Trustees"), be appointed separate Trustees and in substitution for the original Trustees of the sum of Five thousand pounds, part of the sum of Ten thousand pounds directed by the said Will of the Testator to be held upon trust for and to and for the use of the establishment and maintenance of a National Picture Gallery in the City of Brisbane, and upon the terms and subject to the trusts of a draft Indenture as amended by the said Acting Justice marked "A" dated the thirty-first day of July, one thousand nine hundred and thirty-five, and signed by and directed to be filed as of record by the said Acting Justice :

John Darnell Estate, Etc., Act. 1 Edw. VIII. No. 29,

And whereas it is considered that it would be inexpedient for various sound and sufficient reasons that—

- (a) The sum of Five thousand pounds being the sum directed by the Testator that the original Trustees should stand possessed of upon trust for and to and for the use of the establishment and maintenance of a National Picture Gallery in the City of Brisbane, and now vested in the substituted Trustees as hereinbefore referred to ; and
- (b) The sum of Ten thousand pounds, being the amount raised by public subscription and by grants from the Government of Queensland and Brisbane City Council,

being in all the sum of Fifteen thousand pounds should be possessed of upon trust for and to and for the use of the establishment and maintenance of a National Picture Gallery in the City of Brisbane, but that it is desirable that the primary intention of the Testator should be carried into effect according to the equitable doctrine of *Cy-près* :

And whereas there is in existence in Brisbane an Art Gallery called “ Queensland National Art Gallery ” the Trustees of which are and have been appointed by the Governor in Council, and which Trustees are the same persons as the persons who were appointed by the Supreme Court of Queensland to be the substituted Trustees as hereinbefore mentioned :

And whereas the sum of Ten thousand pounds being the sum referred to in paragraph (b) aforesaid of this preamble has already been paid over to and is now possessed by the Trustees of the Queensland National Art Gallery :

And whereas it is deemed desirable and expedient that the necessary power and authority be granted whereby the said sum of Five thousand pounds be transferred and divested from the said the substituted Trustees and shall be transferred to and vested in the Trustees of the Queensland National Art Gallery (hereinafter with their successors in office referred to as “ the new Trustees ”), being the following persons, namely:— Sir James William Blair, William Nathaniel Robertson,

1936.

John Darnell Estate, Etc., Act.

Maurice Stanley Herring, William Bustard, Edward Colcough, Samuel Roberts, Frederick Gould, Jeremiah Joseph Stable, and George Comrie Smith, and their successors in office :

And whereas the Testator and an association called "The Commercial Travellers' Association of Queensland" (an association together with its rules and by-laws registered under and in pursuance of **"The Friendly Societies Acts, 1913 to 1935"*), hereinafter called "the Association," had prior to the year one thousand nine hundred and twenty-nine contributed sums towards a fund known as the "Annuity Section—Aged, Infirm, and Indigent Members' Fund" (hereinafter referred to as "the Fund"), particulars whereof are contained in rules 126 to 131 of the aforesaid rules of the Association :

And whereas on the fifth day of June, one thousand nine hundred and twenty-nine, the Testator and the Trustees of the Association entered into a trust deed wherein was set forth the matter of the further contributions to the Fund and the proper application and administration of the Fund, which deed has since that date governed and still governs the trusts of the Fund :

And whereas by the last Will and Testament of the Testator he directed the Trustees thereof to stand possessed of the sum of Four thousand pounds, which said sum was in addition to the sum of One thousand pounds already given by the Testator to the Association, and to invest the same in such manner as may be authorised by any laws in the State of Queensland for the time being and pay the income arising from such investments towards the maintenance and support of necessitous and indigent commercial travellers in the State of Queensland, provided, however, that the said bequest of Four thousand pounds should be conditional upon the Commercial Travellers' Association of Queensland raising an amount equal to the said sum of Four thousand pounds within five years from the date of his decease, and in default thereof the said sum of Four thousand pounds should fall into his residuary estate and should follow the destination thereof :

And whereas by the said Second Codicil to his last Will and Testament the Testator directed his Trustees that so far as related to the said sum of Four thousand

* 4 Geo. V. No. 13 and amending Acts, *supra*, pages 5991 *et seq.*

John Darnell Estate, Etc., Act. 1 Edw. VIII. No. 29,

pounds hereinbefore referred to they should deduct from the said sum of Four thousand pounds such sums which appeared by his ledger to have been paid by him towards the said sum of Four thousand pounds during his life-time, but excluding the sum of One thousand pounds already given by him to the Association for investment, and should invest the balance of the said sum of Four thousand pounds (if any), as directed by his said Will :

And whereas the Fund has been invested in the Association buildings, the Fund account being credited with five per cent. per annum on the capital amount standing to the credit of the Fund :

And whereas by the terms of the aforesaid trust deed all income of the Fund not expended in any one year is required to be added to the capital Fund and form part thereof :

And whereas the state of the Fund as at the thirtieth day of June, one thousand nine hundred and thirty-six, was as follows :—

	£	s.	d.
Direct subscriptions from members..	5,310	9	1
Received from the Testator ..	3,438	14	7
Accumulated interest and other sources	4,949	19	2
	£13,699	2	10

And whereas by the said trust deed the beneficiaries under the Fund are limited to members of the Association who are over the age of sixty years and have been members of the Association for ten years and who are not in receipt of an income of more than fifty-two pounds per annum, and that as a result of these limitations there is presently one member only who is a beneficiary under the Fund (the extent of his benefit being one pound per week), and further that the said limitations preclude and will at all future times preclude a number of persons obtaining benefits under the Fund sufficient to expend or nearly expend the annual income thereof :

And whereas the Association views with considerable anxiety the annual increase of the capital of the Fund consequent on the addition thereto of the unexpended income therefrom, which increase in the opinion of the

1936.

John Darnell Estate, Etc., Act.

Association is seriously endangering the other benefit funds thereof, the interference of the activities of which other benefit funds would operate disadvantageously to the beneficiaries thereunder :

And whereas both the Association and the Trustees of the estate of the Testator are of opinion that the trusts in respect of the Fund have by reason of the above limitations failed and should be terminated :

And whereas it is desirable that such trusts in reference to the Fund should be terminated subject to the provisions hereinafter set forth—

Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as "*The John Darnell* Short title.
Estate and Queensland National Art Gallery Act of 1936."

2. In this Act, unless the context otherwise Definitions.
indicates or requires, the following terms have the meanings set opposite them respectively, that is to say :—

"Association"—The Association.
Commercial Travellers' Association of Queensland : in respect of the trust and trusts referred to in section eight of this Act, the term includes the persons appointed by the Association as trustees of the funds appertaining to each and every such trust and trusts ;

"Original Trustees"—Albert Edward Harte, Original
Wilfred Manning Hall, Reginald MacDonnell Trustees.
King, George Roydon Howard Gill, referred to and described in the preamble ;

"Queensland National Art Gallery"—The Queensland
institution commonly known as "The National
Queensland National Art Gallery" in existence Art Gallery.
at the commencement of this Act ;

"Substituted Trustees"—The Trustees appointed Substituted
pursuant to the Order of the Supreme Court Trustees.
of Queensland of the thirty-first day of July, one thousand nine hundred and thirty-five, as referred to in the preamble, in lieu of the original Trustees in respect of the trust moneys as hereinafter defined ;

John Darnell Estate, Etc., Act. 1 Edw. VIII. No. 29,

New
Trustees.

“ New Trustees ”—The Trustees for the time being of the Queensland National Art Gallery, the names of whom are set forth in the preamble, and the successor or successors of any or all of them ;

Trust
moneys.

“ Trust moneys ”—The amount of Five thousand pounds with accrued interest thereon (less any amount expended therefrom) held in trust by the substituted Trustees, being part of the sum of Ten thousand pounds directed by the Will of the Testator to be held upon trust for and to and for the use of the establishment and maintenance of a National Picture Gallery in the City of Brisbane.

Transfer and
divesting of
trust
moneys.

3. Notwithstanding any Act, or law, or rule, or process of law to the contrary, it is hereby declared that the trust moneys held by the substituted Trustees are, without any conveyance, assignment, notice, or transfer other than the authority of this Act, forthwith on the passing of this Act transferred and divested from the said the substituted Trustees and are hereby, without any conveyance, assignment, notice or transfer other than the authority of this Act, forthwith on the passing of this Act transferred to and vested in the new Trustees.

And the said trust moneys shall be held by the said the new Trustees upon trust for and to and for the use, maintenance, and extension of the Queensland National Art Gallery.

Vesting of
further
property.

4. Any property (if any), acquired by the substituted Trustees prior to the passing of this Act by means of the trust moneys is hereby without any conveyance, assignment, or transfer other than the authority of this Act, forthwith upon the passing of this Act transferred and divested from the said the substituted Trustees and is hereby, without any conveyance, assignment, or transfer other than the authority of this Act, transferred to and vested in the new Trustees, and such property shall be held by the said the new Trustees upon trust for and to and for the use and purposes of the Queensland National Art Gallery.

Approval of
diversion
from
original
trust.

5. (1.) The trust moneys and property by this Act transferred to and vested in the new Trustees, together with the sum of Ten thousand pounds, being the amount referred to in paragraph (b) of the preamble, and which

1936.

John Darnell Estate, Etc., Act.

amount of Ten thousand pounds has been paid over to the new Trustees prior to the passing of this Act (being in all the amount of Fifteen thousand pounds more or less), shall notwithstanding any Act, or law, or rule, or process of law to the contrary, be possessed of by the new Trustees upon trust for and to and for the use, maintenance, and extension of the Queensland National Art Gallery and shall be and form part of the funds of the said Queensland National Art Gallery, instead of being possessed of upon trust for and to and for the use of the establishment and maintenance of a National Picture Gallery in the City of Brisbane, as originally declared by the Testator in his Will, and all acts, matters, and things done or to be done in connection with and for or in aid of the fulfilment of these provisions are approved, ratified, and confirmed.

(2.) The new Trustees are hereby empowered and authorised to expend the moneys transferred to and vested in them pursuant to this Act and paid over to them prior to the passing of this Act (being the said sum of Fifteen thousand pounds more or less) as referred to in subsection one, and whether such expenditure shall be from the capital sum or from the income to be derived therefrom, in and towards the general maintenance and upkeep of the Queensland National Art Gallery and/or in and towards the purchase of pictures and other works of art from time to time and in such manner as the Trustees shall think fit.

Expenditure
of moneys by
new
Trustees.

6. All persons and bodies of persons, including the original Trustees and the substituted Trustees, shall upon demand by the new Trustees give to the new Trustees immediate possession of all such trust moneys and property as aforesaid which shall be in their, his, or its possession, custody, or power, and shall do and execute all such acts, matters, and things as the new Trustees may consider necessary to give effect to the objects of this Act.

Trusts
moneys and
property to
be handed
over.

7. The Governor in Council may in the event of the death, resignation, or removal of a new Trustee (being a Trustee of the Queensland National Art Gallery) appoint a person to be a Trustee in his place.

Appoint-
ment by
Governor in
Council of
Trustees.

The said new Trustees and any person hereafter appointed as such and each and every one of them shall hold their office as Trustee during the pleasure of the Governor in Council.

John Darnell Estate, Etc., Act. 1 EDW. VIII. No. 29,

Commercial
Travellers'
Association
and Fund.

8. (1.) From and after the passing of this Act the following trust created by the last Will and Testament of the Testator and the Second Codicil to such last Will and Testament, namely—

The trust whereby in his said last Will and Testament the Testator directed the original Trustees to stand possessed of the sum of Four thousand pounds, which said sum was in addition to the sum of One thousand pounds already given by the Testator to the Association, and to invest the same in such manner as may be authorised by any laws in the State of Queensland for the time being and pay the income arising from such investments towards the maintenance and support of necessitous and indigent commercial travellers in the State of Queensland: provided, however, that the said bequest of Four thousand pounds should be conditional upon the Commercial Travellers' Association of Queensland raising an amount equal to the said sum of Four thousand pounds within five years from the date of the decease of the said the Testator, and in default thereof the said sum of Four thousand pounds should fall into his residuary estate and should follow the destination thereof, and whereby in the said Second Codicil the Testator directed the original Trustees that so far as related to the said sum of Four thousand pounds hereinbefore referred to (being the abovementioned sum of Four thousand pounds) they should deduct from the said sum of Four thousand pounds such sums as appeared by his ledger to have been paid by him towards the said sum of Four thousand pounds during his life-time, but excluding the sum of One thousand pounds already given by him to the Association for investment, and should invest the balance of the sum of Four thousand pounds (if any) as directed by his said Will—

together with and also each and every the trusts created under and by the said deed of the fifth day of June, one thousand nine hundred and twenty-nine,

1936.

John Darnell Estate, Etc., Act.

hereinbefore referred to, and each and every the trusts in rules 126 to 131 of the rules of the Association particularised is and are rescinded absolutely and to the intent that—

- (a) That part of the said sum of Four thousand pounds of which the original Trustees stand possessed at the date of the passing of this Act under and in pursuance of the trust hereby rescinded shall forthwith fall into and form part of the residuary estate of the said the Testator and shall follow the destination of such residuary estate ; and
- (b) Income which from and after the first day of July, one thousand nine hundred and thirty-six, may be derived from the investment of the sum mentioned in paragraph (a) of this section shall no longer be paid to the said the Association by the said the original Trustees but shall fall into and form part of the residuary estate of the said the Testator and shall follow the destination of such residuary estate ; and
- (c) The sum of Three thousand four hundred and thirty-eight pounds fourteen shillings and seven pence mentioned in the preamble to this Act, being the amount received by the said the Association as at the thirtieth day of June, one thousand nine hundred and thirty-six, under and in pursuance of the trusts and each of them hereby rescinded, and whether so received wholly or partly from the said the original Trustees or wholly or partly from the said the Testator shall forthwith become and be a debt due and payable by the said the Association to the original Trustees and shall, subject as hereinafter provided, be repaid in full by the said the Association to the said the original Trustees and thereupon shall fall into and form part of the residuary estate of the said the Testator and shall follow the destination of such residuary estate ; and
- (d) The sums of Five thousand three hundred and ten pounds nine shillings and one penny and Four thousand nine hundred and forty-nine

John Darnell Estate, Etc., Act. 1 Edw. VIII. No. 29,

pounds nineteen shillings and two pence mentioned in the preamble to this Act, being the sums raised by the said the Association to comply with the condition imposed by the trusts hereby rescinded together with income accrued in respect of all sums received by the said the Association under and in pursuance of such trusts shall forthwith, but subject as is hereinafter provided, be absolutely freed from all and any conditions of each and every such trust and trusts and such sums shall hereafter be held and applied by the said the Association for such purposes as to it shall seem fit.

(2.) The sum of Three thousand four hundred and thirty-eight pounds fourteen shillings and seven pence, being the debt due and payable by the said the Association to the estate of the said the Testator under and in pursuance of this Act shall not be so due and payable forthwith but shall become and be due and payable upon such terms and conditions as may be agreed upon between the said the original Trustees and the said the Association :

Provided that such terms and conditions may provide—

- (a) The period within which payment thereof shall be duly completed ;
- (b) The instalments thereof to be paid from time to time, which instalments may be of equal or of different amounts according as may be agreed upon ;
- (c) The dates upon which the different instalments shall become due and payable respectively, which dates may be for equal or varying periods according as may be agreed upon ;
- (d) The interest payable in respect of the unpaid balance of the debt, which interest may be capitalised or may be added to the different instalments according as may be agreed upon ;

1936.

John Darnell Estate, Etc., Act.

- (e) The rights and remedies of the said the original Trustees upon failure of the said the Association to pay any sum (and whether of capital, or interest, or of capital and interest), upon the due date of payment thereof, which rights and remedies may include power to demand and/or recover the whole of the debt upon failure to duly pay any such sum ;
- (f) The doing and executing by the parties to the agreement or either of them of all such other acts, matters, and things as they may agree to be necessary and expedient for due compliance with this section and/or the due performance of such agreement :

Provided further that, should the aforesaid parties fail to agree as aforesaid the Supreme Court of Queensland may, upon the application of either party, order and direct the insertion of such terms and conditions as to it shall seem just.

(3.) Notwithstanding the rescission of the trust hereby rescinded, nothing in this Act shall allow or be deemed to allow the said the Association to refuse to or take away from any person any benefit to which such person is entitled under and in pursuance of such trust (and whether such person is presently so entitled as at the date of the passing of this Act or may become so entitled at a date subsequent to the passing of this Act) but the said the Association shall, in lieu of discharging its obligation to such person under and in pursuance of such trust, discharge same by giving to such person an equal benefit under some other of its funds and the said the Association by so doing shall for all purposes discharge and be deemed to discharge its obligations to such person under and in pursuance of the trust hereby rescinded.

9. No action, suit, indictment, information, or Indemnity. other proceeding shall be commenced, presented, prosecuted, or maintained against the Government of Queensland, or against any Minister of the Crown, or against any officer or servant of the Crown, or against the original Trustees, or against the substituted Trustees, or against the new Trustees, or against any officer of any of such classes of Trustees, or against the Association

John Darnell Estate, Etc., Act. 1 Edw. VIII. No. 29, 1936.

or any trustee, officer, or member thereof for or in respect of any act or matter done or to be done in and for and in aid of the provisions and purposes of this Act :

• Provided that in respect of the matters and things to be done under and in pursuance of section eight of this Act, the Association shall be liable at the suit of the original Trustees for neglect or failure on the part of the Association to comply with the provisions of the said section eight.

Ratification
of previous
acts.

10. All acts, matters, and things done or executed prior to the passing of this Act which, if done or executed subsequent to the passing of this Act would be valid and lawful, are hereby approved, validated, ratified, and confirmed.
