

New Zealand.



ANALYSIS.

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| <p>Title.
Preamble</p> <ol style="list-style-type: none"> 1. Short Title. 2. Trustees incorporated. 3. Power to appoint new Trustees. 4. Lands, securities, &c., vested in Trustees. 5. Power to sell lands. 6. Power to invest surplus funds. | <ol style="list-style-type: none"> 7. Power to lease lands. 8. Trustees to hold lands, &c., upon trust. 9. Annual balance-sheet. 10. Power to contract for services. 11. Trustees to issue lease to company. 12. Power to perform and execute requisite acts and deeds. <p style="text-align: center;">Schedule.</p> |
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1892, No. 11.—*Local.*

AN ACT to provide for the Management of the Fund known as the "Dempsey Trust Fund," and for other Purposes connected therewith. Title.
[24th September, 1892.]

WHEREAS William James Dempsey, formerly of Dunedin, solicitor, by his will, dated the seventeenth day of June, one thousand eight hundred and sixty-eight, gave, devised, and bequeathed his estate to Henry Houghton, then of Dunedin, merchant, upon certain trusts therein declared; and by the said will the said testator, as to the residue of his estate, expressed his desire that the proceeds should be invested, and the proceeds thereof paid over to the Dunedin Hospital, but upon condition precedent that the Trustees of that institution should expend annually a sum not exceeding seven pounds in keeping in repair the tomb over his wife in East Brighton Cemetery, in Victoria, and his own at Dunedin: And by a codicil to the said will, dated the twenty-second day of June, one thousand eight hundred and sixty-eight, the said testator declared that the gift to the Dunedin Hospital by his said will should be paid as soon as might be after his death, and not invested as directed by the said will: And whereas by the said codicil the said testator further bequeathed to the Trustees of the Reformatory School, Dunedin, one hundred pounds: And whereas it was, by Henry Samuel Chapman, Esquire, a Judge of the Supreme Court of New Zealand, decided that the Otago Industrial School was entitled to the said bequest: And whereas the said Dunedin Hospital and Industrial School were then Provincial Government institutions, supported by annual votes of the Provincial Council of Otago, and there were then no Trustees or other persons appointed specially to manage the said Hospital and Industrial school: And whereas the said Henry Houghton, with the advice and by direction of James Macandrew, Esquire, the then Superinten- Preamble.

dent of the said Province, did, on or about the twenty-second day of April, one thousand eight hundred and seventy-one, with the said sum of one hundred pounds, and the residue of the said estate, amounting in all to the sum of seven hundred and fifty pounds, purchase from the said Superintendent the piece of land described in the Schedule hereto: And whereas upon the conveyance to the said Henry Houghton of the said piece of land, he, by a declaration of trust dated the twenty-seventh day of August, one thousand eight hundred and seventy-two, with the concurrence of the said Superintendent and Provincial Executive, did thereby declare certain trusts as to granting leases and other trusts concerning the same: And whereas it was by the said declaration of trust declared that in the event of any ordinance or Act being passed thereafter by the Provincial Council of Otago, or the General Assembly of New Zealand, appointing, or under which there should be appointed, a Trustee or Trustees for the said Hospital, to convey the said piece of land to such Trustee or Trustees, subject to any lease or leases that may have been made or executed by the said Henry Houghton: And whereas the said Henry Houghton, by a deed of lease bearing date the first day of October, one thousand eight hundred and seventy-two, made between himself of the one part, and Charles Stewart and Hugh John Maclean therein described of the other part, did demise and lease the said piece of land to them for the term of twenty-one years from the first day of September, one thousand eight hundred and seventy-two: And whereas in and by the said lease are contained covenants for the payment at the expiration by effluxion of time of the said lease, or any renewal thereof, of a sum of money equal to the then value of all buildings, erections, or improvements then on the said land, or for taking a renewal of the said term of twenty-one years at a rent to be agreed upon by the parties, or fixed by arbitration, as the value of the ground, irrespective of the permanent buildings thereon, such renewed lease to contain all the covenants and conditions contained in the said existing lease, including the covenants for renewal: And whereas the said lease is now vested in the New Zealand Loan and Mercantile Agency Company (Limited), and they or their predecessors have erected valuable buildings thereon; and the said land was, by suitable conveyances, on the tenth day of December, one thousand eight hundred and seventy-three, conveyed to and vested in the Trustees hereinafter mentioned: And whereas by an ordinance of the Superintendent and Provincial Council of the late province of Otago passed on the thirtieth day of July, one thousand eight hundred and seventy-three, and intituled "The Dempsey Trust Ordinance, 1873," the said James Macandrew, Esquire, Superintendent of the said Province of Otago, the said Henry Houghton, Alfred Rowland Chetham Strode, and George Duncan were appointed Trustees of the said Hospital and Industrial School, for the purpose of receiving and investing the above-mentioned bequest, and disbursing the income thereof, and of giving effect to the purposes of the testator; and the said ordinance made further provisions for the appointment of new Trustees, and for the management of the said trust, and for the disposal of the income thereof: And whereas the Trustees hereinbefore named are now

dead, and appointments have from time to time been made to fill their respective places: And whereas differences have arisen between the Trustees so appointed, herein called "the present Trustees," and the New Zealand Loan and Mercantile Agency Company (Limited), herein called "the said company," as to the rights of the respective parties under the said lease: And whereas an agreement has been arrived at between the present Trustees and the said company (without prejudice) that if the Trustees obtain sufficient statutory authority in that behalf such differences shall be settled by exchanging the said lease for a lease in the form and to the effect set forth in the Schedule hereto: And whereas it is for the benefit of the said trust that the said agreement should be carried into effect, but the powers of the Trustees are insufficient for that purpose: And whereas the present Trustees have other funds arising out of the accumulation of surplus income, and may in future have further funds, and it is desirable to provide for the administration thereof:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Dempsey Trust Act, Short Title. 1892."

2. The present Trustees are hereby incorporated under the name of the "Dempsey Trustees," and shall by that name have perpetual succession and a common seal, and shall have power to acquire and hold land of any tenure. Trustees incorporated.

The Chairman for the time being of the Dunedin Hospital Contributors shall, from and after the passing of this Act, be *ex officio* one of the Dempsey Trustees and a member of the corporation hereby constituted.

3. The power to appoint new Trustees conferred by the said ordinance shall be exercised as heretofore by the Governor, and upon every such appointment the person appointed shall become a member of the corporation by the last-foregoing section constituted. Power to appoint new Trustees.

4. The lands, securities, funds, and moneys now held or managed by the present Trustees, including the piece of land in the Schedule hereto described, shall, upon the passing of this Act, be and they are hereby vested in the Dempsey Trustees, hereinafter called "the Trustees." Lands, securities, &c., vested in Trustees.

5. The Trustees shall have power to sell any lands vested in them with the sanction of the Governor. Power to sell lands.

6. The Trustees shall have power to invest all surplus funds in the purchase of land, or upon real securities, or in the purchase of Government securities, or the securities of any local governing bodies established by law in New Zealand, or of any Harbour Board, River Board, university college, or other similar statutory body having borrowing-powers. Power to invest surplus funds.

7. The Trustees shall have power to lease lands vested in them for a period not exceeding fifty years upon such terms and conditions and with such covenants on their part and on the part of any lessee thereof as to them may seem fit, including provisions for the periodical revaluation of rent, and especially shall have power to grant leases similar in terms to that which they are hereby authorised to grant to Power to lease lands.

the said company, with such variations as may appear requisite or desirable in the interests of the said trust.

Trustees to hold lands, &c., upon trust.

8. The Trustees shall in other respects hold the lands, securities, funds, and moneys forming the Dempsey Trust Fund, and the revenues thereof, upon and subject to the trusts upon and subject to which they are now held in terms of section four of the said ordinance, and they shall have the power to accumulate such of the surplus income as they shall not require for the purposes to which the income is applicable, with power to resort to the accumulations as if they were part of the income until the same shall have been capitalised, but not after the same have been capitalised.

Annual balance-sheet.

9. The Trustees shall submit to the Auditor-General an annual balance-sheet, showing their receipts and expenditure for the past year, and showing, amongst other things, the amounts which they have from time to time capitalised, and the date of the minute or resolution, or minutes or resolutions, capitalising the same. Such balance-sheet, when certified by the Auditor-General, shall be published in a newspaper circulating in Dunedin.

Power to contract for services.

10. The Trustees shall have power to contract for all services which they may require, and to pay all expenses incurred in the administration of the trust.

Trustees to issue lease to company.

11. The Trustees shall, on the passing of this Act, accept from the said company a surrender of the said lease, and shall issue to the said company a new lease for the balance of the term of the said lease at the existing rent of two hundred and fifteen pounds, which new lease shall be in the form and to the effect set forth in the Schedule hereto.

Power to perform and execute requisite acts and deeds.

12. The Trustees shall have full power to do, perform, and execute all such acts, deeds, instruments, and things as shall be requisite for giving effect to the covenants and provisions contained in any lease granted by them under this Act.

Schedule.

SCHEDULE.

DESCRIPTION OF LAND.

ALL that piece of land situated in the City of Dunedin, in the Colony of New Zealand, containing by admeasurement 2 roods $19\frac{6}{10}$ perches, more or less, being part of area reclaimed from Otago Harbour, and known as Sections 1, 2, 21 and 22, Block XLVII., of the City of Dunedin, which said piece of land commences at the south-west corner of said Section 1, Block XLVII. aforesaid, and is bounded towards the north-west by Castle Street, 400 links; towards the north-east by Willis Street, 156 links; towards the south-east by Sections 3 and 20, Block XLVII. aforesaid, 400 links; and towards the south-west by Rattray Street, 156 links: as the same is delineated on the public map of the said city.

FORM OF LEASE.

This deed, made the day of , 1892, between the Dempsey Trustees incorporated under the provisions of "The Dempsey Trust Act, 1892," hereinafter called "the lessors," of the one part, and the New Zealand Loan and Mercantile Agency Company (Limited), hereinafter called "the lessee," of the other part, witnesseth that, in pursuance and exercise of the powers in this behalf conferred on the lessors by "The Dempsey Trust Act, 1892," and of every other power enabling the lessors in this behalf, and in consideration of the rent hereby reserved, and of the covenants on the part of the lessee herein contained and implied, the lessors do hereby demise unto the lessee and its assigns all that piece of land situated in the City of Dunedin, in the Colony of New Zealand, con-

taining, by admeasurement, 2 roods 19 $\frac{6}{10}$ perches, more or less, being part of area reclaimed from Otago Harbour, and known as Sections 1, 2, 21, and 22, Block XLVII., of the City of Dunedin, which said piece of land commences at the south-west corner of said Section 1, Block XLVII. aforesaid, and is bounded towards the north-west by Castle Street, 400 links; towards the north-east by Willis Street, 156 links; towards the south-east by Sections 3 and 20, Block XLVII. aforesaid, 400 links; and towards the south-west by Rattray Street, 156 links: as the same is delineated on the plan drawn hereon, it being therein distinguished by a red colour, together with all the buildings and improvements, rights, easements, and appurtenances thereto belonging: to hold the land and premises hereby demised or expressed so to be unto the lessee and its assigns for the term of _____ from the _____ day of _____, 1892: yielding and paying therefor the yearly rent or sum of £ _____ by a payment on the _____ day of _____ next of so much rent as shall then have accrued, and thereafter by equal half-yearly payments on the _____ day of _____ and the _____ day of _____ in each year, of which the first shall be made on the _____ day of _____ next. And the lessee doth hereby, for itself and its assigns, covenant with the lessors, their successors and assigns, that the lessee or its assigns will, during the said term, pay the said rent on the above-mentioned days at Dunedin, and will pay and discharge all existing and future taxes, rates, and assessments whatsoever chargeable in respect of the said land, or on the landlord or tenant thereof, including the cost of erecting and maintaining all party, dividing, and boundary fences, and will bear and perform all other burdens or duties in any way incumbent on the owner or occupier thereof. And also will not, without the consent in writing of the lessors, remove or take away any building for the time being standing on the said demised land. And will keep the said buildings in a good state of repair, and will at its own cost insure the same against loss or damage by fire in a sum not less than two-thirds of the full insurable value thereof, in the joint names of the lessors, their successors or assigns, and lessee or its assigns. And will, whenever required by the lessors, produce the policies for every such insurance, and the receipts for the premiums payable thereunder, or furnish other good and sufficient evidence that such insurance exists. And if default shall be made in effecting or keeping on foot any such insurance, or in producing when so required as aforesaid any such policy or receipt as aforesaid, or furnishing such evidence as aforesaid, it shall be lawful for the lessors, their successors or assigns, to insure the said buildings in such sum as they shall think fit, and recover the amount expended in effecting such insurance from the lessee or its assigns in the same manner as if it were rent in arrear. And it is hereby agreed and declared as follows:—

1. All moneys received under or by virtue of an insurance of buildings on the demised premises shall, unless otherwise agreed, be laid out in rebuilding or reinstating the buildings destroyed or damaged; and if in any case such moneys shall be more than sufficient for that purpose the surplus shall belong to the lessee or its assigns.

2. Within six calendar months previous to the expiration of the term hereby created two separate valuations shall be made—namely, one of all the buildings and improvements then on the land hereby demised, and whether erected or made during the term hereby granted by the lessee or its immediate predecessors in title, or during the term granted by deed of lease dated the first day of October, 1872 (registered No. 31,437), and made between Henry Houghton of the one part, and Charles Stewart and Hugh John Maclean of the other part; and the other valuation of the fair annual ground-rent of the said land, only without such buildings or improvements, for a further term of twenty-one years from the expiration of the term hereby granted, so as such rent shall be an even annual sum payable throughout the term, without increasing or decreasing during the term. The valuations shall be made by two indifferent persons as arbitrators, appointed in writing—one by the lessors, their successors or assigns, and the other by the lessee or its assigns. The arbitrators shall, before entering upon the valuations, together appoint, in writing under their respective hands, a third person who shall be an umpire as between them. The decision of such two first-appointed arbitrators, if they agree, or in such respects as they agree, or of such umpire if the arbitrators do not agree, or in such respects as they do not agree, shall be binding on all parties. The duty of such umpire, on reference to him of any question, shall be to analyse the respective valuations of the two arbitrators in the matters in which their valuations shall not agree, and then to make an independent and substantive valuation, and the last-mentioned valuation shall be the decision of the umpire: Provided always that in making such decision on any question referred to him the umpire shall

in every case be bound to make a valuation not exceeding the higher or less than the lower of the valuations made by the arbitrators respectively.

3. The provisions herein contained for determination of annual ground-rent and value of buildings and improvements respectively shall be deemed to amount to a submission to arbitration under and within the meaning of "The Arbitration Act, 1890," or any enactment for the time being in force in substitution therefor or amendment thereof, and the provisions of the said Act, and of any such enactment, all hereinafter referred to as "the said Act," shall apply accordingly, except in any particular in which they are varied by the provisions contained in these presents.

4. Before the expiration of the term hereby granted, the right to a lease of the said land and premises for a further term of twenty-one years from the expiration of the term hereby granted, containing the same covenants and provisions as are contained in these presents (including the provisions herein contained for valuation and renewal, and all clauses auxiliary or in relation thereto), shall be put up by the lessors, their successors or assigns, to public auction in Dunedin at the upset annual rent of the said land fixed by the arbitrators or the umpire as aforesaid, without buildings and improvements, subject to the payment by the purchaser of such right of the value of the said buildings and improvements as fixed by the arbitrators or the umpire as aforesaid. And in the event of any company or person other than the lessee or its assigns becoming the purchaser at such auction of the right to such lease for the said further term of twenty-one years, such company or person shall forthwith pay in cash to the lessors, their successors or assigns, in trust for the lessee or its assigns, the amount of the value of the buildings and improvements so fixed as aforesaid, and shall enter into a lease of the said premises for the said further term at the annual ground-rent at which the right to such lease shall have been so purchased. And the lessors, their successors or assigns (all rent and outgoings payable by the lessee or its assigns having previously been paid); shall on demand pay over to the lessee or its assigns the amount of the value of the said buildings and improvements paid to the lessors, their successors or assigns, by the purchaser, without any deduction whatever: Provided always, and it is hereby expressly declared, that nothing in these presents contained shall be deemed to render the lessors, their successors or assigns, liable to pay to the lessee or its assigns all or any part of the value of any buildings or improvements upon any valuation made under the foregoing provisions, save after having received the amount thereof as aforesaid.

5. Any notice required to be given for the purposes of the said Act, or any such enactment as aforesaid, may be given to the lessors, their successors or assigns, by leaving the same at their last-known place of business or abode, or by advertising the same twice in any daily morning newspaper published in Dunedin, and may be given to the lessee or its assigns by being left at its or their last-known place of business or abode in Dunedin, or sent addressed to it or them or any of them at such place as aforesaid, through the post, or by advertising as aforesaid.

6. Upon any sale as aforesaid of the right of a lease by auction, the lessors, their successors or assigns, shall provide by written conditions of sale for the payment by the purchaser at the auction of a deposit, not being less, unless otherwise agreed, than £20 per cent. on the amount of the valuation of the buildings and improvements so fixed as aforesaid, and that, in the event of the purchaser refusing or neglecting to complete his purchase according to such conditions of sale, he shall forfeit such deposit to the lessors, their successors or assigns, for the benefit of the lessee or its assigns; and the lessors, their successors or assigns, may, if they think fit, thereby provide, in addition, that in either of the events last mentioned the purchaser shall pay to the lessors, their successors or assigns, for their own benefit, as liquidated damages, a sum not exceeding one-half of the total deficiency (if any) during the term of years of the rent agreed to be paid by the new purchaser at a subsequent sale by auction held in consequence of the default of the original purchaser as compared with the rent that would have been reserved had such original purchaser not made default, together with all expenses attending the sale; and the lessors may make fair and reasonable conditions otherwise for the purpose of carrying into effect the intention of these presents.

7. If, owing to delay on the part of the arbitrators or the umpire, or otherwise, the right to a new lease is not put up to auction before the expiration of the said term hereby granted, or if, owing to the purchaser at any auction (whether the original auction or a subsequent one held on account of the default of the purchaser to complete as hereinafter mentioned) refusing or neglecting to complete his purchase according to the terms and conditions thereof, the purchase shall not be completed, then, and in

any of the said cases, the right to the new lease shall be put up to auction as soon as conveniently can be after the expiration of the term hereby granted, or (as the case may be), such refusal or neglect to complete notwithstanding, the term hereby granted shall have expired; and if the purchaser at such last-mentioned auction shall make default as aforesaid, the right to such new lease shall again be put up as soon as conveniently can be after such default, and so on, but in every such case the new term shall run from the date of the expiration of the term hereby granted, though the rent shall not begin to run until the purchaser obtains possession.

8. The lessee or its assigns shall have a right to bid for and become the purchaser or purchasers of the right to a new lease at any such auction thereof.

9. If at any auction there shall be no bid of or over the upset annual ground-rent as valued as aforesaid, then at or (as the case may be) as from the expiration of the said term hereby granted the said land hereby leased, with all buildings and improvements thereon, shall absolutely revert to the lessors, their successors or assigns, free from any payment or compensation whatever.

10. In the event of the term hereby created being determined by forfeiture, or otherwise than by effluxion of time, the lessee or its assigns shall not, unless relieved from such forfeiture by any Court of competent jurisdiction, be entitled to any compensation whatever for buildings or improvements.

And it is hereby agreed and declared that if the rent hereby reserved, or any part thereof, shall at any time be in arrear for the space of thirty days after any of the days hereinbefore appointed for payment thereof, although no formal or other demand for payment thereof shall have been made, or if the lessee or its assigns shall commit a breach of any of the covenants on its part herein contained or implied, other than the covenants relating to insurance, it shall be lawful for the lessors, their successors or assigns, to re-enter upon the said demised premises and repossess and hold the same as if this demise had not been made.

In witness whereof these presents have been executed by or on behalf of the parties hereto the day and year first before written.