

New Zealand.



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1911, No. 7.—*Local.*

Title.

AN ACT to vest in the Mayor, Councillors, and Burgesses of the Borough of Napier certain Land for the Purposes of a Public Recreation-ground. [21st October, 1911.]

Preamble.

WHEREAS the pieces of land described in the First Schedule hereto are vested in Robert Donald Douglas McLean, of Napier, sheep-farmer; Charles Dugald Kennedy, of Napier, solicitor; Archibald McLean, of Greenhill, sheep-farmer; George Tait, formerly of Rakamoana but now of Eskdale, sheep-farmer; and Patrick Stirling McLean, of Napier, solicitor (all hereinafter referred to as the Trustees), for an estate in fee-simple, but subject to the trusts concerning the same declared in a declaration of trust dated the tenth day of March, nineteen hundred and ten, executed by the Trustees, a copy of which is set out in the Second Schedule hereto: And whereas the Trustees, deeming it to be in the interests of the Town of Napier that they should so do, have offered the said lands to the Mayor, Councillors, and Burgesses of the Borough of Napier (hereinafter referred to as the Corporation) as a free gift, to be held by the Corporation in trust for the inhabitants of the said town upon the trusts hereinafter declared, and have also offered to the Corporation the sum of one thousand pounds (less such sums of money as may, since the first day of February, nineteen hundred and eleven, have been expended by the Trustees in improving the said lands, not exceeding one hundred pounds) as a gift to be applied by the Corporation in the improvement and ornamentation of the said land as a public recreation-ground; and the Corporation are desirous of accepting the said offers of the Trustees: And whereas in

the interests of the said town and the inhabitants thereof it is expedient that the Corporation should be empowered to accept the said offers :

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

1. This Act may be cited as the Sir Donald McLean Memorial Park Act, 1911. Short Title.

2. In this Act, if not inconsistent with the context,— Interpretation.

“ The Corporation ” means the Mayor, Councillors, and Burgesses of the Borough of Napier :

“ The Trustees ” means and includes the persons named as parties to the aforesaid declaration of trust and the registered proprietors at the time of the coming into operation of this Act of the land described in the said First Schedule hereto.

3. Immediately upon the registration in the District Land Registration Office at Napier of a certificate by a Judge of the Supreme Court that he has, after hearing the parties, satisfied himself that the conditions of the gift by the Trustees to the Corporation have been sufficiently complied with to the satisfaction of the Trustees, and that the Trustees have paid or accounted for to the Corporation the said sum of one thousand pounds, the land described in the First Schedule hereto shall by this Act become vested in the Corporation for an estate in fee-simple, and shall be held by the Corporation upon and with the same trusts and powers and for the same purposes as those respectively declared and provided in the declaration of trust set out in the Second Schedule hereto, and for the purpose of this Act the said declaration of trust shall be read and construed throughout as if the words “ the Corporation ” were substituted in place of the words “ the Trustees ”: Vesting the park in the Corporation in trust.

Provided that, notwithstanding anything to the contrary in the said declaration of trust.—

(a.) The said land shall be inalienable by the Corporation by mortgage or by sale, except under and subject to the powers and conditions set out in paragraph 4 of the said declaration of trust :

(b.) The said declaration of trust shall hereafter be read and construed as if paragraphs 8, 9, 10, 11, 13, 14, 15, 16, 17, and 18 thereof respectively were struck out and deleted therefrom.

4. A Judge of the Supreme Court may, on summary application in that behalf, hear and determine the question whether the conditions of the gift by the Trustees to the Corporation have been sufficiently complied with to the satisfaction of the Trustees, and whether the Trustees have paid or accounted for to the Corporation the said sum of one thousand pounds, and on being satisfied that the said conditions have been so complied with and the said money so paid or accounted for he shall grant his certificate to that effect. The District Land Registrar of the Hawke's Bay Land Registration District shall, upon production to him of a duplicate of the said certificate under the hand of the Judge granting the same, forth- Certificate of Judge.

with register the same against the title to the land comprised in the First Schedule hereto.

Leasing-powers.

5. Notwithstanding anything in this Act or in the said declaration of trust contained, the Corporation may exercise in respect of the said land described in the First Schedule hereto, or any lands which may be purchased in substitution therefor under the powers conferred in paragraph 4 of the said declaration of trust, or any part thereof, all or any powers of leasing which are now or which may at any time hereafter be vested in the Corporation by any Act for the time being in force in New Zealand.

Acts declared inapplicable.

6. Notwithstanding anything in any other Act contained to the contrary, the provisions of the Municipal Corporations Act, 1908, and the Public Reserves and Domains Act, 1908, in so far as the same are repugnant to or inconsistent with the provisions of this Act, shall not apply to the lands described in the First Schedule hereto or to any lands which may be purchased in substitution therefor under the powers contained in paragraph 4 of the said declaration of trust.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

ALL that piece or parcel of land situate in the Land District of Hawke's Bay, containing 10 acres and 35½ perches, more or less, being portion of Te Whare-o-Maraenui Block, and being the lot numbered 697 on a plan deposited in the Land Transfer Office, at Napier, under No. 2172, and being all the land comprised in certificate of title, Volume 52, folio 202 (Hawke's Bay District Land Registry).

And also all those pieces or parcels of land situate as aforesaid, containing together 2 roods, more or less, being other portion of Te Whare-o-Maraenui Block, and being the lots numbered 519 and 520 respectively on deposited plan No. 2451, and being part of the land comprised in certificate of title, Volume 50, folio 295 (Hawke's Bay District Land Registry).

SECOND SCHEDULE.

To ALL to whom these presents shall come. Robert Donald Douglas McLean, of Maraekakaho, in the Provincial District of Hawke's Bay and Dominion of New Zealand, sheep-farmer; Charles Dugald Kennedy, of Napier, in the said provincial district, solicitor; Archibald McLean, of Greenhill, in the said provincial district, sheep-farmer; George Tait, of Rakamoana, in the said provincial district, sheep-farmer; and Patrick Stirling McLean, of Napier aforesaid, solicitor (hereinafter called "the Trustees," which term shall include them and the survivors and survivor of them, their and his heirs, executors, administrators, and assigns, or other the Trustees for the time being of the trust funds and trust estate hereinafter referred to), send greeting: Whereas certain funds have been raised by public subscription in the aforesaid Provincial District of Hawke's Bay and elsewhere for the purpose of establishing a memorial to perpetuate the memory of the late Sir Donald McLean: And whereas at a meeting of subscribers to the said funds held at Napier aforesaid on the eighteenth day of December, one thousand nine hundred and five, it was resolved that the respective pieces of land more particularly described in the first and second parts of the Schedule hereinafter written should be acquired for the purposes aforesaid, and should be vested in Trustees in that behalf; and it was further resolved that the said Robert Donald Douglas McLean, Charles Dugald Kennedy, Archibald McLean, George Tait, and Patrick Stirling McLean should be the Trustees of the

said funds and of the said lands: And whereas the piece of land more particularly described in the first part of the Schedule hereinafter written has been purchased for the purpose aforesaid out of the said funds, and the Trustees are registered as proprietors of an estate of freehold in fee-simple in possession as joint tenants therein: And whereas the registered proprietors of the piece of land more particularly described in the second part of the said Schedule have agreed to sell the same to the Trustees, but no assurance thereof has yet been executed: And whereas it is expedient to set out the trusts upon which the said respective pieces of land are held by the Trustees: Now these presents witness and it is hereby declared as follows:—

1. The Trustees shall stand possessed of the said respective pieces of land described in the first and second parts of the Schedule hereinafter written, and of any lands which may be substituted therefor, under the powers hereinafter contained and of any other property, real or personal, of whatsoever nature and wheresoever situated which may hereafter be acquired by or vested in the Trustees or otherwise become subject to the trusts hereby declared (all hereinafter referred to as and included in the term "the trust property"), upon trust to employ the same in ways that shall perpetuate the memory of the late Sir Donald McLean.

2. In particular, the Trustees shall stand possessed of the said respective pieces of land described in the first and second parts of the Schedule hereinafter written in trust for the purposes of a public recreation-ground.

3. The said lands shall be called by the name of "The Sir Donald McLean Memorial Park."

4. It shall be lawful for the Trustees at any time to sell the said lands, provided always that the net moneys arising from such sale shall be expended, as soon as the Trustees in their discretion shall think fit, in the purchase of other lands, which other lands shall be held by the Trustees in trust for the purposes of a public recreation-ground, and subject as far as may be, *mutatis mutandis*, to the trusts herein declared concerning the said lands: Provided also that no purchaser from the Trustees shall be bound to see to the application or be responsible for the non-application or misapplication of any purchase-money paid by him to the Trustees.

5. It shall be lawful for the Trustees to mortgage the said lands by any instrument of mortgage containing a power of sale and such other powers as the Trustees in their discretion shall think fit.

6. It shall be lawful for the Trustees to lease the said land or any portion thereof for any period not exceeding three years at a rack-rent, every such lease to take effect in possession from the date thereof.

7. It shall be lawful for the Trustees to grant the exclusive use of the said lands or any portion thereof to any person, body, or society for any period or periods for the purposes of any particular sport, game, or recreation, either gratuitously or at such rental (whether by way of percentage on gate-money or otherwise), and generally upon such terms and conditions as the Trustees in their discretion may think fit.

8. It shall be lawful for the Trustees, if they consider it expedient, to depute to a committee of management of five persons appointed from time to time by the Hawke's Bay Highland Society the management of the said lands, the regulation of ordinary expenditure and income, the maintenance and upkeep of the said lands as a recreation-ground, and the granting of the exclusive use of the same or any portion thereof under the powers declared in the last preceding clause hereof: Provided that such committee of management shall pay over to the Trustees the net annual profits received from the said lands, and shall not have power to make any arrangement as to the use of the said lands or otherwise extending over a longer period than twelve months, or for a time more than twelve months in advance, and shall not spend money on any permanent improvements to the said lands.

9. If at any time the Hawke's Bay Highland Society shall fail when so requested by or on behalf of the Trustees to appoint such a committee of management, or if at any time the Trustees shall not approve any committee so appointed, it shall be lawful for the Trustees either to appoint a committee of five persons with the same or less powers, or to dispense with such committee.

10. It shall be lawful for the Trustees to employ solicitors, secretaries, clerks, workmen, and others for all or any of the purposes of the trust, and to pay them such salaries or commissions or otherwise to remunerate them as the Trustees may think fit: Provided that nothing herein contained shall be deemed to authorize any Trustee to receive any pecuniary benefit from the trust property, except, however, that

every Trustee under these presents being a solicitor or engaged in any other profession or business shall be entitled to make and receive all such charges and emoluments for business, whether of an ordinary or strictly professional character or not, done by him or his firm in relation to the execution of the trusts of these presents as he would have been entitled to make and receive if he had not been a Trustee.

11. It shall be lawful for the Trustees to raise moneys by means of debentures, or by giving any other security over the trust property or any portion thereof, or otherwise, as the Trustees may think fit; and such moneys may be borrowed from and such securities given to all or any of the Trustees who may advance the same, and shall contain and confer all such provisions, stipulations, and powers as are usual or expedient in securities of a like nature.

12. It shall be lawful for the Trustees to apply any moneys borrowed by them under the powers contained in clauses 5 and 11 hereof, or any moneys coming to their hands under clauses 6 and 7 hereof, or any other rents, profits, interest, or income arising out of the trust property, for all or any of the following purposes, namely:—

- (a.) The repayment of any existing mortgages, loans, debentures, or other securities, debts, or liabilities:
- (b.) The erection and construction and repairing of buildings, stands, tracks, apparatus, or other improvements in, upon, or around the said lands:
- (c.) The purchase and erection of a cairn, statue, or similar permanent memorial of the late Sir Donald McLean, either on the said lands or elsewhere, and, if elsewhere, the purchase of a site for the same:
- (d.) The granting of prizes, premiums, or donations for any competition, sport, or pastime, or for any educational, social, civic, or charitable purpose:
- (e.) To set aside and accumulate from year to year such proportion (if any) as to the Trustees may from time to time seem expedient of the income to enable the Trustees to give effect to all or any of the purposes of the trust, and to invest such accumulation on such securities as to the Trustees may seem proper: Provided that the interest or income derived from such investments or securities shall be applied only towards carrying out the purposes of the trust.

13. The Trustees shall be five in number, and one of them shall be the eldest male descendant alive of the late Sir Donald McLean or a son of such descendant (as the Trustees may decide), and one of them shall be the Chief for the time being of the Hawke's Bay Highland Society.

14. If at any time any descendant of Sir Donald McLean, being on that account a Trustee hereunder, shall be the Chief for the time being of the Hawke's Bay Highland Society, the Trustees shall appoint some other person to be a Trustee for so long as such descendant shall continue to be the Chief of the said society.

15. If at any time such descendant or such Chief for the time being shall refuse or be unwilling to act as a Trustee, or if there be no such descendant or Chief respectively, or any vacancy in their number shall otherwise arise, it shall be lawful for the surviving or continuing Trustees to appoint some other person to be a Trustee in the place of the person so refusing to act, or to fill any vacancy arising through there being no such descendant or Chief respectively or otherwise arising.

16. Upon receipt by the Trustees of a notification signed by any officer of the Hawke's Bay Highland Society stating that any person has been duly elected Chief of the said society, then such person shall *ipso facto* become a Trustee, and the former Chief of the said society or the person holding office as a Trustee while a descendant of the said Sir Donald McLean shall be Chief, as the case may be, shall thereupon cease to be a Trustee, and shall execute and do all such deeds, assurances, acts, and things as shall be necessary or proper for vesting the trust property in the continuing and new Trustees.

17. Of the present Trustees the aforesaid Robert Donald Douglas McLean is the eldest male descendant of the late Sir Donald McLean, and is at present Chief of the Hawke's Bay Highland Society, and the aforesaid Charles Dugald Kennedy is the Trustee holding office so long as such descendant of Sir Donald McLean shall continue to be Chief of the said society.

18. If at any time hereafter the Trustees shall consider it to be in the interests of the trust estate or for the public good, they may assign and transfer the whole or any portion of the trust property to some suitable Board, local body, or institution, or to the members or some of the members of any such local body or institution, or

to a company or society, as to the Trustees shall seem fit: Provided that the trust property so transferred shall be held upon trusts as nearly the same as the trusts herein declared as the circumstances will permit: Provided also that the Trustees so assigning or transferring such trust property shall be the judges of the details of such trusts.

In witness whereof these presents have been executed, the tenth day of March, one thousand nine hundred and ten.

THE SCHEDULE HEREINBEFORE REFERRED TO.

The First Part.

ALL that parcel of land situated in the Provincial District of Hawke's Bay, containing 10 acres and 35½ perches, more or less, with the appurtenances, being portion of Te Whare-o-Maraenui Block of the Ahuriri Lagoon, and being the lot numbered 697 on plan deposited in the Hawke's Bay District Land Registry, under No. 2172, and being the whole of the land comprised in certificate of title recorded in the said Registry in Register-book, Volume 52, folio 202.

The Second Part.

All those parcels of land situated as aforesaid, containing together 2 roods, more or less, with the appurtenances, being other portion of the block aforesaid, and being lots numbered 519 and 520 respectively on the plan aforesaid, and being part of the land comprised in certificate of title recorded in the said Registry in Register-book, Volume 50, folio 295.

Signed by the said Robert Donald Douglas } R. D. DOUGLAS McLEAN.
McLean in the presence of— }
A. Coleman, Law Clerk, Napier.

Signed by the said Charles Dugald Kennedy } C. D. KENNEDY.
in the presence of— }
H. Bradley, Accountant, Napier.

Signed by the said Archibald McLean in } ARCH. McLEAN.
the presence of— }
A. Coleman, Law Clerk, Napier.

Signed by the said George Tait in the } GEORGE TAIT.
presence of— }
A. Coleman, Law Clerk, Napier.

Signed by the said Patrick Stirling McLean } P. S. McLEAN.
in the presence of— }
A. Coleman, Law Clerk, Napier.