ANNO VICESIMO SECUNDO

VICTORIÆ REGINÆ.
A.D. 1858.

Private Act.

An Act to remove doubts respecting the title of the lessees and purchasers of certain lands and hereditaments, situate in South Australia, formerly belonging to Matthew Smillie, Esquire, and comprised in a certain settlement made on the marriage of William Smillie, Esquire, with Eliza Jane Farquharson, and to facilitate the carrying into effect the purposes and intentions of such settlement.

[Assented to, 24th December, 1858.]

WHEREAS, by an indenture bearing date the sixth day of April, one thousand eight hundred and forty-four, expressed to be made between Matthew Smillie, of the Vallies, in the Province of South Australia, Esquire, of the one part, and William Smillie, of Adelaide, Advocate-General of the said Province, the son of the said Matthew Smillie, of the other part, it was witnessed that the said Matthew Smillie, in consideration of an intended marriage between the said William Smillie and Eliza Jane Farquharson (a niece of the said Matthew Smillie), and for other good considerations him thereunto moving, did for himself and his heirs covenant with the said William Smillie and his heirs, that he the said Matthew Smillie and his heirs would thenceforth stand seised of all those several Sections of land, that is to say—all those fifteen Sections of land, containing, in the aggregate, one thousand one hundred and seventy-five acres or thereabouts, numbered respectively 5200, 5201, 5202, 5203, 5204, 5205, 5206, 5207, 5208, 5209, 5211, 5216, 5220, 5221, and 5222, being a portion of the combined survey of the Sources of the Onkaparinga, and that other survey to the north of Mount Barker claimed by the said Matthew Smillie; and also all those two Sections of land numbered respectively 3492 and 3485 in the Meadows Special Survey, together with the timber, minerals, and appurtenances to
the said land belonging, excepting certain small portions of land, part thereof, which had been then conveyed by the said Matthew Smillie, and all other his hereditaments whereof the said Matthew Smillie then stood seised, to the use of him, the said Matthew Smillie, for his natural life, without impeachment of waste, with remainder to the use of his wife Elizabeth Smillie, if she should be then living, for her natural life, without impeachment of waste; with remainder to the use of the said William Smillie, if he should be then living, for the term of his natural life, without impeachment of waste; with remainder to the use of the said Eliza Jane, the intended wife of the said William Smillie, if she should be then living, during the term of her natural life, without impeachment of waste; with remainder to the use of all the children of their bodies, and the issue of such children, for such estates, and in such shares as the said William Smillie, and, after his death, the said Eliza Jane, his said intended wife, if surviving him, should, by any deed, or by will lawfully executed, appoint; and in default of any such appointment, to the use of all the said children, male and female, of the bodies of the said William Smillie and Eliza Jane, his said intended wife, equally as tenants in common, the issue of any such child or children as should die during the lifetime of the said William Smillie, or Eliza Jane, his said intended wife, taking their respective parent's share; and in default of any issue of the bodies of the said William Smillie, and his said intended wife, to the use of the right heirs of the said Matthew Smillie, for ever: And in the said indenture is contained a proviso, that it should be lawful to and for the said Matthew Smillie, at any time or times during his life; and, after his decease, it should be lawful for his heirs, during the life of the said Elizabeth Smillie, with her consent only; and, after her death, then with the consent of the said William Smillie only during his life; and, after the decease of the said William Smillie, if the said Eliza Jane, his intended wife, should be still living, then with her consent only, by any deed or deeds lawfully executed by them respectively, with a view to sell or otherwise dispose of the same for valuable consideration, to revoke or alter all or any of the said uses of all or any part of the said lands and hereditaments, and to declare new uses thereof, saving and excepting as regarded the three Sections numbered respectively 5220, 5221, and 5222, known as the Vallies, which should not be sold or disposed of but with the united consent of the said Matthew Smillie, Elizabeth Smillie, William Smillie, and Eliza Jane, the intended wife of the said William Smillie, or the survivors or survivor of them: And whereas, the said Matthew Smillie departed this life on the twelfth day March, one thousand eight hundred and forty-seven: And whereas, by a certain deed-poll, or letter of attorney, under the hand and seal of the said William Smillie, bearing date the thirtieth day of June, one thousand eight hundred and fifty-one, the said William Smillie, after reciting that he was about to proceed to Europe, or elsewhere, appointed Alexander Lang Elder, of Adelaide, merchant, his true and lawful attorney for the said William Smillie, and in his name, by all lawful ways and means, to take possession of
of all lands and hereditaments, belonging, or which should there-

after belong to the said William Smillie, in Australia, and, upon
obtaining possession thereof, to give proper discharges for the
same; and thereupon to let, sell, dispose of, manage, or
employ the same, or any part or parts thereof, in such manner
as he should think proper; and also to sign, seal, deliver, and ex-
cute all such leases, contracts, or agreements for sale, convey-
ances and assurances, with all usual and reasonable covenants
therein, of all or any part or parts of the said estates, property, and

effects, as should be found necessary or expedient, and to receive
the purchase moneys, or other considerations for such parts thereof
as should be sold, and the rents and profits to accrue and become
due for such parts thereof, as should be let for the use of the said
William Smillie, and to sign and give proper receipts for the same
respectively; and also (amongst other powers), to do, perform, and
execute, sign, seal and deliver, and assent to all such acts, matters,
and things, whatsoever, as should or might be requisite or necessary
in or about the premises; and generally to act in the management,
arrangement, and superintendence of all other the concerns, affairs,
and business of the said William Smillie, in such manner as the said
Alexander Lang Elder should think most for the benefit of the said
William Smillie: And whereas, by an indenture bearing date the second
day of August, one thousand eight hundred and fifty-one, expressed
to be made between the said William Smillie of the first part, the
said Elizabeth Smillie of the second part, and the said Alexander Lang
Elder and George Tinline, of Adelaide aforesaid, banker, of the
third part, after reciting the above-mentioned indenture of the sixth
day of April, one thousand eight hundred and forty-four, and that
the said Matthew Smillie had departed this life, leaving the said
William Smillie, his only son, and heir-at-law, him surviving, it is
witnessed that, with a view to sell, or otherwise dispose of the hered-
itaments thereinafter described for valuable consideration, being
part of the hereditaments comprised in the said indenture of the sixth
day of April one thousand eight hundred and forty-four, the said
William Smillie, by virtue, and in execution of the powers given to
him by the said indenture of the sixth day of April, one thousand
eight hundred and forty-four, and of every or any other power enabling
him in that behalf, did, with the consent of the said Elizabeth Smillie,
testified by her being a party to the indenture now in recital, revoke
and make void, all and every the uses limited, declared, and
expressed by the said therein recited indenture of the sixth day of
April, one thousand eight hundred and forty-four, concerning the
hereditaments intended to be assured by the indenture now in recital,
and did limit, declare, and appoint that the same hereditaments
should thenceforth, go, remain, and be to the use of the said Alex-
ander Lang Elder and George Tinline, their heirs and assigns, upon
the trusts and for the ends and purposes thereinafter declared con-
cerning the same; and it is thereby further witnessed that, for the
nominal considerations therein expressed, and for divers good
causes and valuable considerations him thereunto moving, the said
William Smillie did grant, bargain, sell, release, and confirm unto

Indenture of 2nd
August, 1861.
the said Alexander Lang Elder and George Tinline, and their heirs, all those three Sections of land, numbered respectively 5201, 5202, and 5203, being a portion of the combined survey hereinbefore mentioned, except such parts of the same Sections as might have been then already sold and conveyed to the purchasers thereof, and except such part of the same dedicated as a burial place for the public, and appropriated as a family mausoleum, together with all timber, mines, minerals, and appurtenances thereto belonging, to hold unto and to the use of the said Alexander Lang Elder and George Tinline, their heirs and assigns for ever, upon trust, that they, the said Alexander Lang Elder and George Tinline, or the survivor of them, or his heirs, should absolutely sell and dispose of the hereditaments thereby assured or intended to be assured, or any part or parts thereof, by public auction or by private treaty, or partly in one mode and partly in the other, and under and subject to such conditions, as by the trustees or trustee for the time being should be deemed advisable, and for such prices, payable at such times with or without interest, as to them or him should appear to be the most money and the best terms of payment that could be reasonably obtained; and to assure the same hereditaments, when sold, to the purchaser or purchasers thereof, or as he, she, or they should direct; and in the now reciting indenture was contained a proviso to exonerate purchasers from the obligation to see to the application of moneys paid by them to the trustees by virtue thereof, and that the receipts of the trustees, for any moneys payable by virtue of the now reciting indenture, should be good and sufficient discharges for the same; and it was by the said indenture also provided that, until the said hereditaments should be sold in pursuance of the indenture now in recital, it should be lawful for the said trustees or trustee for the time being to let the same, or any part thereof, with the appurtenances, from year to year, or for a term not exceeding fourteen years in possession at rack rent; and it was thereby declared that the said trustees and trustee for the time being, of the said indenture, should stand possessed of all the moneys to arise from the said sale or sales, and also to arise from the rents and profits of the said hereditaments, until such sale or sales upon trust (after payment of all costs, charges, and expenses incidental to the performance of the trusts therein declared), as to the residue thereof, for the said Elizabeth Smillie, during the term of her natural life, and after her decease, upon trust, to pay the same to the said William Smillie, his executors and administrators, as part of his personal estate; and it was thereby also provided that, if the said Alexander Lang Elder and George Tinline, or either of them, or any trustee or trustees to be nominated under that provision, should die or be desirous of being discharged from the trusts of the now reciting indenture, or should become incapable, or be unwilling to act therein, before the same should be fully performed, and it should be deemed advisable to supply the vacancy or vacancies so to be occasioned, it should be lawful for the surviving or continuing trustee or trustees, for which purpose any retiring trustee or trustees should be deemed a trustee or trustees, or for the executors or administrators of the last surviving or con-
tinuing trustee for the time being, by deed to nominate any person or persons to be a trustee or trustees in the place of the dying or retiring trustee or trustees, and that upon any such nomination the hereditaments, subject to the trust of the indenture now in recital, should be assured at the expense of the trust premises, so as to vest in such new trustee or trustees, jointly with the surviving or continuing trustee or trustees, or solely, as the case might require, upon the trusts aforesaid; and that every such new trustee should and might act in the trusts, and be invested with the powers aforesaid, as effectually as if he had been originally appointed a trustee by the now reciting indenture: And whereas the last-mentioned indenture was executed on the part of the said William Smillie, by his attorney, the said Alexander Lang Elder, by virtue of the powers given by the before recited deed poll, of the thirtieth day of June, one thousand eight hundred and fifty-one: And whereas the said William Smillie departed this life in the year one thousand eight hundred and fifty-two: And whereas the said Alexander Lang Elder and George Tinling, in execution of the trusts of the said indenture of the second day of August, one thousand eight hundred and fifty-one, have, from time to time, leased and sold to divers persons different portions of the land and hereditaments so vested in them as aforesaid, and have executed various leases, conveyances, and assurances of the same, and have also entered into contracts to lease and sell other portions thereof: And whereas doubts have been entertained whether the power to revoke and appoint new uses contained in the said indenture of the sixth day of April, one thousand eight hundred and forty-four, could, from the nature of the assurance, take effect as a legal power; and also, whether such power was well executed by the said indenture of the second day of August, one thousand eight hundred and fifty-one; and whether such last-mentioned deed was authorized by the said letter of attorney, of the thirtieth day of June, one thousand eight hundred and fifty-one: And whereas it appears, from the nature of the indenture of the sixth day of April, one thousand eight hundred and forty-four, that it was the intention of the settlor, that a power of sale, in respect of the lands comprised in the said indenture, should always exist; and the lands comprised in the said indenture of the second day of August, one thousand eight hundred and fifty-one, were, in fact, laid out by the settlor in his lifetime, as and for a Township called “Nairne,” for the purpose of selling the same in allotments; and it is solely from the circumstance of the present heir-at-law of the said settlor being incapacitated by infancy that the said intention cannot be carried into effect, and it is therefore expedient and just that such doubts should be removed; and that the titles to all lands and hereditaments which have been disposed of, and agreed to be disposed of under the said indenture of the second day of August, one thousand eight hundred and fifty-one, should, as regards the doubts hereinbefore referred to, be made perfect and marketable; and that the trustees for the time being of the said indenture of the second day of August, one thousand eight hundred and fifty-one, should be enabled to make valid leases, con-

veyances,
veyances, and assurances, of the land and hereditaments comprised in the said indenture not yet conveyed away; but those ends cannot be attained without Legislative enactment: And whereas the lands and hereditaments described in the said indenture of the second day of August, one thousand eight hundred and fifty-one, would be enhanced in value, if the trustees under such indenture were enabled to grant rights of way over portions of the lands therein described, and dedicate roads to the public: And whereas it is expedient that any doubt should be removed as to the power of the said Elizabeth Smillie, and Eliza Jane Smillie, or either of them, to revoke the uses of the said indenture of the sixth day of April, one thousand eight hundred and forty-four, so far as relates to Section No. 5200 therein described, and declare new uses—Be it therefore

Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

1. The said indenture of the second day of August, one thousand eight hundred and fifty-one, shall henceforth, so far as relates to the lands and hereditaments therein comprised, be deemed as valid and effectual as though the same had been executed by the said William Smillie in his own proper person; and such indenture shall be deemed to have effected, so far as relates to such lands, a revocation, both at law and in equity, of the settlement of the sixth day of April, one thousand eight hundred and forty-four, and to have duly vested such lands and hereditaments in the said Alexander Lang Elder and George Tinline, their heirs and assigns, upon the trusts and for the purposes therein set forth, freed, and absolutely discharged of, and from all claims and demands by the said Matthew Smillie, William Smillie, Elizabeth Smillie, and Eliza Jane Smillie, and each and every of them, and every person claiming, or to claim, by, from, through, under, or in trust for them, or any, or either of them, or under the said settlement of the sixth day of April, one thousand eight hundred and forty-four (except as such persons, or any of them, shall be entitled under the said indenture of the second day of August, one thousand eight hundred and fifty-one).

2. Every lease, conveyance, or assurance, heretofore made and executed by the said Alexander Lang Elder and George Tinline, of any part of the lands and hereditaments comprised in the said indenture of the second day of August, one thousand eight hundred and fifty-one; and every lease, conveyance, or assurance hereafter to be made and executed by them, or other the trustees for the time being of such indenture, in pursuance of and execution of the trusts thereof, shall have the effect of vesting the lands and hereditaments described, or to be described in every such lease, conveyance, or assurance in the respective lessees or purchasers thereof; his, her, or their heirs, executors, administrators, and assigns, according to the nature and quality thereof, to the uses and upon the trusts, and for the
the purposes therein respectively declared, freed, and absolutely acquitted, exonerated, and discharged of, and from all and singular the uses, declarations, and agreements in and by the said indenture of the sixth day of April, one thousand eight hundred and forty-four, declared and contained, in as full and ample a manner, both at law and in equity, as if the parties named in such lease, conveyance, or assurance, as the granting and conveying parties had at the time of the execution of such lease, conveyance, or assurance, been seised of the land and hereditaments therein comprised, and thereby demised or assured to their own absolute use and benefit; and all the powers and authorities given to the said Alexander Lang Elder and George Tinline, their heirs, executors, administrators, and assigns, or any of them, by the said indenture of the second day of August, one thousand eight hundred and fifty-one, shall and may be exercised by them, or any of them, in as full and ample a manner, in all respects, as if the person or persons exercising such powers and authorities had been duly appointed a trustee or trustees of such indenture, and had been expressly named therein, and lawfully constituted a trustee or trustees thereof, in respect of the lands therein described.

3. It shall be lawful for the trustees for the time being of the said indenture of the second day of August, one thousand eight hundred and fifty-one, to lay out any part or parts of the lands comprised therein, as and for roads, streets, and other easements, and thereupon to dedicate such roads, streets, and easements to the public, or to grant such rights, privileges, and easements in, upon, and over the same as they, the said trustees, shall think fit.

4. It shall be lawful for the said Elizabeth Smillie and Eliza Jane Smillie, or the survivor of them, by any deed or deeds, lawfully executed, to revoke the uses of the said indenture of the sixth day of April, one thousand eight hundred and forty-four, so far as the same affect the said Section of land No. 5200 in the said first-mentioned Survey, and thereupon to appoint, grant, and release the same unto, and to the use of the said Alexander Lang Elder and George Tinline, their heirs, and assigns, and other the trustees for the time being of the said indenture of the second day of August, one thousand eight hundred and fifty-one, upon the same trusts, and for the same ends, intents, and purposes, and with the same powers, provisos, and agreements as are contained in the last-mentioned indenture, in the same manner, to all intents and purposes, as though the said Section of land had been included therein, along with the lands therein described.

5. The said Section of land, No. 5200, shall, so soon as the same shall be conveyed to the said trustees as aforesaid, be held by such trustees in the manner herein declared concerning the lands and hereditaments comprised in the said indenture of the second day of August, one thousand eight hundred and fifty-one.

6. The Trustees for the time being of the said indenture of the second
second day of August, one thousand eight hundred and fifty-one, shall, in their names, invest the net proceeds of all moneys which shall arise from any sale of the lands and hereditaments vested in them, in any of the Government stocks or funds of Great Britain, or upon South Australian Government securities, and may at any time vary or transpose such stocks, funds, or securities into, or for others of the same or a like nature.

7. A copy of this Act, purporting to be printed by the Government Printer, shall be admitted as evidence thereof, by all Judges, Justices, and others.

8. Nothing in this Act contained shall be deemed to affect or apply to any right, title, or interest of Her Majesty, Her heirs, or successors, or of any body or bodies politic or corporate, or of any person or persons, excepting such as are mentioned herein, or of those claiming by, from, under him, her, or them.

9. This Act may be cited, for all purposes, as the "Smillie Estate Act, 1858."

10. This Act shall commence and take effect from and after the passing thereof.