ANNO UNDECIMO

GEORGII V REGIS.

A.D. 1920.

Private Act.

An Act to confer upon Executor Trustee and Agency Company of South Australia, Limited, as Trustee, certain powers of and respecting sale and disposal of real estate devised by the Will of David Bower, late of St. Clair, Woodville, in the State of South Australia, gentleman, deceased, and of and respecting investment of moneys which shall be subject to the trusts of the said Will, and for other purposes incidental to the aforesaid purposes.

[Assented to, November 18th, 1920.]

WHEREAS David Bower, late of St. Clair, Woodville, in the State (then the Province) of South Australia, gentleman, deceased, by his last Will and Testament, bearing date the 14th day of January, 1898, did appoint the Executor Trustee and Agency Company of South Australia, Limited, Trustees and Executors thereof, and did devise to the said Company all his real and personal estate upon trust, subject to certain restrictions as to certain chattels to convert the testator’s personal estate into money, and, after payment thereout of his funeral and testamentary expenses and debts, to pay certain legacies: And whereas by the said Will the Testator made certain declarations and dispositions concerning and of some specific parts of his real estate being (so far as is now material), first, the house belonging to the Testator in which one Fanny Kezia Quin was living at the death of the Testator; second, the Testator’s dwelling-house at St. Clair, Woodville, and certain land which the Testator occupied therewith, and being part of section 405, survey B; third, a certain house near the railway station, Woodville; fourth, the land in Arthur Street, Unley, with the dwelling-houses
dwellings thereon and the appurtenances, where one Lydia Rowley was residing at the time of the making of the said Will; 

fifth, a certain freehold messuage or dwelling-house in the Township of Queenstown, where one Richard Jonas was residing at the time of making of the said Will: And whereas by the said Will the Testator also declared that one Francis Charlotte Beaton should in certain events and upon certain conditions have the use rent free of such dwelling-house belonging to the Testator as the said Trustees might in their discretion consider a suitable residence for herself and family: And the said Francis Charlotte Beaton is now residing in and using in accordance with the said Will a certain house which belonged to the said Testator: And whereas by the said Will the Testator also declared that one Ellen Maria White should in certain events and on certain terms be entitled to reside in a house in South Australia belonging to the Testator at the then rental of the said house near the railway station to be selected by her, but the said events have not yet happened: And whereas, except as aforesaid, the Testator did not by his said Will make any dispositions of or declare any trusts concerning any specific real estate: And whereas by his said Will the Testator did direct that his Trustees should not under any circumstances be at liberty to mortgage, charge, or encumber any part of his real estate, and did declare that it should be lawful for his said Trustees from time to time to sell any portion of his real estate, being vacant land, excepting only his real estate at Woodville, as to which he directed that his said Trustees might sell any portion, being vacant land, not exceeding two-thirds thereof in building blocks upon terms that the purchaser or purchasers of any such land should erect good and substantial buildings on the same and should apply the money arising from such sale or sales, after payment of all expenses connected with such sale or sales, to building on the unsold portion of the said estate, or, in the discretion of his said Trustees, should invest the same moneys in or upon any of the investments or securities authorized by that his Will, but not in or upon any other investments or securities: And should his Trustees exercise the power of sale hereby lastly given to them, the Testator desired, but did not make it a condition, that they should retain blocks interspersed among such blocks as might be sold, but so that one-third of the vacant land in Woodville Estate, and also of section 68, Hundred of Yatala and Port Adelaide, be left for sale at the period of distribution thereafter mentioned: And as to his real estate the Testator did declare that his Trustees should apply the income arising from his estate, howsoever constituted, in providing for the legacies and annuities given and bequeathed by that his Will, but so that none of his real property should be sold or dealt with except as therein was authorized and might from time to time in their discretion make advances in respect of any vested shares pending final settlement, and when all the legacies so bequeathed by him the Testator were paid, and the before specified annuities provided for, then he directed his Trustees to stand possessed of his estate, howsoever constituted, upon trust, after providing in their uncontrolled discretion for all outgoings of what nature or kind soever in respect of
of the said estate to pay the income arising therefrom in certain named annual sums to the Testator's nieces and nephews—Sarah Edith Hill, Emma Bower, Joseph Bower, Richard Bower, David Bower, David Rowley, George Rowley, Amos Rowley, and Albert Rowley, and their children respectively after their respective deaths: and after the death of one Ellen Maria White and the said nieces and nephews of the Testator then upon trust to sell the Testator's residuary real estate and convert into money his residuary personal estate (if any): And after payment of all expenses attendant thereon to divide the proceeds of such sale and conversion of the Testator's said residuary estate of whatsoever the same might consist, and any income accrued thereon, amongst the children then living of the said Ellen Maria White and the Testator's said nephews and nieces—Joseph Bower, Richard Bower, David Bower, David Rowley, George Rowley, Amos Rowley, Albert Rowley, Emma Bower, and Sarah Edith Hill in equal shares: And whereas the Testator by his said Will did further declare (inter alia) that until a sale of his real estate his Trustees should repair and keep the same in good and tenantable repair, or should cause the same to be so repaired and kept in repair; but that it should be lawful for his Trustees to take down and remove any of the houses, buildings, and erections (not thereinbefore specifically devised), and without prejudice to the trusts thereinbefore contained, which at the time of his death may be standing upon any of the said lands: And either to sell and dispose of together or in parcels and by public auction or private contract all or any of the said materials comprising all or any of the said houses, buildings, fences, and erections which should be so taken down and removed, or else to use and apply the said materials, or any part or parts thereof, respectively in such manner as should be thought most beneficial for effectuating the objects and purposes of that his Will, or any of them: And the Testator did declare that the preceding trust should apply to any houses which under that his Will might be occupied by life tenants, but be by them vacated for other houses: And also to sell and dispose of together or in parcels, or by public auction or private contract, all or any materials comprising any house or houses, building, or buildings, or other erection or erections, which at the time of his death might be standing on any of his said lands, with such provisions for pulling down the house or houses, building or buildings, or other erection or erections, the materials whereof should be sold and disposed of, and removing the materials thereof as should be thought proper, and to erect buildings on any of his said lands in lieu of those pulled down as aforesaid or on any part of his freehold lands: Subject as aforesaid, and generally from time to time to manage, alter, and improve his said lands, hereditaments, and premises, or any of them or any part thereof, in such manner as his said Trustees should in their discretion deem to be most advantageous to his estate: And whereas the said Testator did direct that all investments to be made pursuant to that his Will, except where otherwise specifically mentioned, should be upon first mortgages of real property in the said Province, and failing
and pending such securities offering by deposit for short periods in any one or more of the chartered or incorporated banks in the said Province at current rates of interest, or in the building upon his estate or in the purchase of buildings, and not otherwise or elsewhere, with power for his said Trustees at any time to vary and transpose such investments for any other or others of the nature authorized thereby: And also that his said Trustees might in their uncontrolled discretion accumulate the unapplied surplus (if any) of such income by laying out and investing the same on any one of the securities thereinbefore mentioned, including rebuilding any erections pulled down as aforesaid, with power to vary and transfer such investments into others of a similar nature at the discretion of his said Trustees, or in the exercise of such discretion should be at liberty to apply the accumulations thereof in like manner as income, namely, by distributing the same to the persons for the time being entitled to the income of his said estate: And whereas the said Testator made and executed a Codicil, dated the first day of July, 1898, to his said Will, and thereby made certain declarations and dispositions not necessary to be here set forth or further recited: And whereas the Testator died on the sixth day of July, 1898: And whereas the said Will and Codicil were proved in the Supreme Court of South Australia by the said Executor, Trustee, and Agency Company of South Australia, Limited, the Executors thereof, on the fourth day of August, 1898, and the said Company from the Testator's death acted and is still acting in the execution of the trusts of the said Will and Codicil: And whereas at the time of his death the said Testator was the owner in fee simple of many pieces of land in the City of Adelaide and in and about Port Adelaide and Woodville and other suburbs of Adelaide: And whereas the said Company as Trustee of the said Will and Codicil holds in fee simple (subject to leases and tenancies), as parts of the real estate of the Testator, considerable areas of vacant land at Woodville, and also a large number of dwelling-houses and also shops and other places of business in the City of Adelaide and the suburbs thereof, all of which are subject to the trusts of the said Will: And whereas the said Fanny Kezia Quin, Richard Jonas, Francis Charlotte Beaton, and Ellen Maria White (now Ellen Maria White Bower), and the Testator's nieces and nephews—Sarah Edith Hill, Emma Bower, Joseph Bower, Richard Bower, David Bower Rowley (in the said Will called David Rowley), George James Jonas Rowley (in the said Will called George Rowley), Amos Arnold Longley Rowley (in the said Will called Amos Rowley), and Albert Ernest Rowley (in the said Will called Albert Rowley), are still living, and the said Lydia Rowley and the Testator's nephew, David Bower, have died since the death of the said Testator: And whereas it is expedient that power should be conferred upon the said Executor Trustee and Agency Company of South Australia, Limited, as Trustee of the said Will, to sell and dispose of any real estate of the said Testator at any time, saving the rights of any persons in specific portions of such real estate: And that wider powers of investment than are contained in the said Will should also be conferred on the said Company as such Trustees.
Be it therefore Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited for all purposes as "The David Bower Estate Act, 1920."

2. In this Act the expression—

"The Testator" shall mean the said David Bower, late of St. Clair, Woodville aforesaid, gentleman, deceased, who died on the sixth day of July, 1898:

"The Trustee" shall mean the Executor Trustee and Agency Company of South Australia, Limited:

"The Will" shall mean and include the aforesaid Will dated the fourteenth day of January, 1898, and the aforesaid Codicil dated the first day of July, 1898:

"Real estate" shall mean and include any and every estate and interest in lands, tenements, messuages, and hereditaments (wherever situate and whether the lands be vacant or not) of or devised by the Testator or subject to any trusts or provisions of the Will.

3. Notwithstanding the provisions of the Will, it shall be lawful for the Trustee at any time or times, and from time to time, to sell and convert into money all or any real estate, either together or in parcels, by public auction or private contract, or partly by both such methods, and either for cash or on credit, or partly for cash and partly on credit, with liberty to make any special or other conditions as to title or evidence of title, or as to the time or mode of payment of the purchase-money, or as to any other matter relating to the sale as the Trustee shall think expedient, including liberty to sell without any terms that the purchaser shall erect any building on the land sold, and to fix reserved biddings and to buy in the premises at any sale by public auction, and to rescind or vary any contract for sale, and to resell without being responsible for any loss occasioned thereby.

4. The moneys to arise from any sale of real estate by the Trustee under the power contained in section 3 hereof shall be subject to the same trusts, powers, and provisions as if such moneys arose from sales of vacant land under the power of sale contained in the Will.

5. The Trustee shall not under the powers conferred by section 3 hereof sell any property specifically mentioned in the Will while any person shall be entitled under the Will to any vested or contingent benefit in, from, or concerning the same specifically, except with the consent of such person.

6. The
6. The Trustee shall not sell the house now used by the said Francis Charlotte Beaton during her life, and she shall be entitled to use the same so long and so often as she shall be entitled under the Will to use a house belonging to the Testator.

7. If and whenever the said Ellen Maria White Bower shall, after any house shall have been sold by the Trustee, become entitled under the Will to reside in a house in South Australia belonging to the Testator, to be selected by her, she shall be entitled at her option, to be exercised within three months of her so becoming entitled, to either reside in a house in South Australia then belonging to the Testator's Estate, and selected by her, or to payment out of the income of the Testator's residuary estate of an annual sum (computed from the time of her exercising her option) equal to the net annual value of the said house near the railway station, Woodville, specifically mentioned in the said Will.

8. No purchaser from the Trustee shall be bound or concerned to see or inquire into the propriety or legality of any sale of real estate by the Trustee, or be affected or prejudiced by any notice, actual or constructive, that any such sale is unauthorized or improper, whether by reason of sections 5 and 6 hereof, or for any other reason.

9. Notwithstanding anything contained in the Will, it shall be lawful for the Trustee to invest any moneys which shall be subject to the trusts of the said Will and available for investment either in manner expressly authorized by the Will, or in any other manner authorized by the general law for the investment of trust moneys: And from time to time to vary and transpose any investment for or into any other or others of an authorized nature.

10. The Trustee shall pay out of the residuary estate of the Testator all the costs, charges, and expenses incurred in and incidental to the application for and promotion and passing of this Act.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

W. E. G. A. WEIGALL, Governor.