

Dilworth Trustees Act 1902

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An Act to expedite the Establishment of the Dilworth Ulster Institute, and to confer upon the Trustees of the Will of the late James Dilworth further Powers for the Purpose of enabling them to carry out more effectually the Trusts of the said Will.

Preamble

WHEREAS James Dilworth, late of Remuera, Auckland, settler, deceased, by his last will, dated the fifteenth day of November, one thousand eight hundred and ninety-four, probate whereof was granted to the executors and Trustees therein named by the Supreme Court of New Zealand at Auckland on the first day of February, one thousand eight hundred and ninety-five, gave the residue of his real and personal property to his Trustees upon certain trusts: And whereas the said will contains (inter alia) the following clauses, that is to say:—

“And I direct that it shall be the duty of the said Trustees from time to time at their discretion but subject to the restrictions

hereinafter imposed to demise or let all or any part of my land which may be available for the purpose in such manner at such rent and on such conditions as they shall think advisable but without taking any fine or premium for any such lease: And I direct that the power of granting such leases as aforesaid shall be subject to the following directions and restrictions namely:—

- “1. The said Trustees may let any portion of my lands situate in the City of Auckland and the Borough of Parnell and the houses thereon for any term not exceeding ten years.
- “2. Any land situate outside of the said City of Auckland but within the distance of four miles as the crow flies from the General Post Office in the said City of Auckland except the before-mentioned twenty-five acres and subject to the before-mentioned devise may be let in portions not exceeding three acres each and in all not more than twelve acres in any one year for a term not exceeding twenty-five years on condition that each such lessee shall covenant to erect a substantial wooden building and to keep the same insured in an amount not less than would be the cost of rebuilding such house against loss by fire in the name of the said Trustees or if such lessee shall enter into a covenant to erect on the land so let to him and keep insured a substantial building either of brick or stone or concrete cemented then any such lease may be made for any term not exceeding fifty years: And any such land not so let or required to be let for building purposes may be let for grazing or agricultural or horticultural purposes at the discretion of the said Trustees for any term not exceeding ten years.
- “3. Any of my land situate beyond the distance of four miles but within the distance of eight miles as the crow flies from the said General Post Office may be let in the same manner as directed in the next preceding clause and on the same conditions as to buildings except that the area to be included in any lease may be of any extent not exceeding ten acres and the aggregate of the land so let

in one year shall not exceed fifty acres: And any such land not so let or required to be let for building purposes may be let for grazing or agricultural or horticultural purposes at the discretion of the said Trustees for any term not exceeding ten years.

- “3. Any of my land situate beyond the distance of four miles but within the distance of eight miles as the crow flies from the said General Post Office may be let in the same manner as directed in the next preceding clause and on the same conditions as to buildings except that the area to be included in any lease may be of any extent not exceeding ten acres and the aggregate of the land so let in one year shall not exceed fifty acres: And any such land not so let or required to be let for building purposes may be let for grazing or agricultural or horticultural purposes at the discretion of the said Trustees for any term not exceeding ten years.
- “4. Any of my land situate beyond the distance of eight miles but within the distance of thirty miles as the crow flies from the said General Post Office in the said City of Auckland may be let by the said Trustees to be used for any purpose and without restriction of area for any term not exceeding fifteen years.
- “5. Any of my lands situate beyond the distance of thirty miles as the crow flies from the General Post Office may be let by the said Trustees to be used for any purpose and without restriction of area for any term not exceeding twenty-five years. I direct that for the purpose of guarding against the probability of the net income derivable from my estate falling below the sum of five thousand pounds per annum the said Trustees shall before erecting any of the buildings hereinafter mentioned accumulate out of the income of the said real and personal estate such sum of money as they may think sufficient and invest the same at interest either by way of fixed deposit in any bank carrying on business in Auckland or upon first mortgage of freehold estate in the said City of Auckland or in the public stocks funds or securities of the said Colony of New Zealand with

power to vary the investments from time to time for others of the nature aforesaid but the said Trustees shall continue such investments from time to time only as they to the best of their judgment shall think necessary for the purpose aforesaid: And I direct that whenever the net annual income of my said estate shall amount to not less than five thousand pounds and the moneys in the hands of the said Trustees shall amount to not less than ten thousand pounds over and above any sums which may have been invested for the purpose of insuring the net income of five thousand pounds per annum then the said Trustees for the purpose of obtaining the best design for any of the buildings hereinafter mentioned shall offer and pay such premiums for the same as they may think advisable: And I direct them after having selected the best and most suitable of the said designs with all convenient speed to apply the moneys in their hands as aforesaid or a sufficient part thereof to the erection of a substantial building or buildings of cemented either brick or stone or concrete or of all or any of the said materials and of such design and extent as the said Trustees in their discretion shall think fit on that portion of my land which forms part of Allotment Number Two of Section Number Eleven of the Suburbs of Auckland known as Graham's Hill: And I direct that as soon as the first of the buildings hereinbefore directed to be built shall have been completed and all liabilities incurred in the erection thereof shall have been discharged the said Trustees shall as soon as conveniently may be select so many boys of sound bodily and mental health being orphans or sons of persons of good character and of any race as in the opinion of the said Trustees that portion of the income available for the purpose will be sufficient from time to time to support train and educate the boys to be so selected shall be either destitute orphans or children of parents in straitened circumstances resident in the Provincial District of Auckland or in the Province of Ulster in Ireland: And I direct that the boys to be so

selected in the said Provincial District of Auckland shall not be under the age of three years nor over the age of five years and the boys to be so selected in the said Province of Ulster shall not be under the age of four years nor over the age of eight years: And I direct that as soon as the selection of boys to be pupils of the said Institute shall commence to be made then and thereafter the Trustees of the said will and Institute shall set apart the sum of two hundred pounds annually to be expended in defraying the cost of outfit of boys to be so selected in the said Province of Ulster and of conveying them to the said Institute: And I direct that when the net annual income of my said estate shall exceed the sum of five thousand pounds then in proportion to such excess an addition shall be made to the before-mentioned two hundred pounds to be set apart for the aforesaid purpose: And I direct that for the purpose of a reserve fund for making addition when required to the buildings constructed for the accommodation and work of the said Dilworth Ulster Institute the said Trustees shall not be at liberty during the first four years after the opening of the said Institute for the admission of pupils thereunto to expend out of the income of my estate more than the sum of three thousand five hundred pounds in any one year and that during the further period of four years they shall not be at liberty to expend more than the sum of four thousand pounds in any one year:

“That at the said first meeting or as soon afterwards as conveniently may be the said Trustees shall appoint a secretary and shall determine what duties are to be performed by him and at the first meeting to be held in the second and every subsequent year or as soon afterwards as conveniently may be they shall appoint two auditors whose duty it shall be to examine and audit the accounts and books kept in connection with the said estate and Institute during the past year but no auditor shall be appointed twice in successive years.”

And whereas it is desirable that the said Trustees should have power to establish the said Institute as soon as the net annual income of the said estate shall amount to not less than two thousand five hundred pounds, and also to expend the trust funds in erecting buildings upon the lands belonging to the said estate or in otherwise improving such lands, and also to invest such funds upon mortgage of the lessee's interest in any of the said lands and of freehold lands in any part of the Provincial District of Auckland: And whereas it is also desirable that the said Trustees should have extended powers of leasing the said lands and power to sell portions thereof, that the age at which boys may be admitted to the said Institute should be extended, and that the auditors to be appointed under the said will should be appointed before the expiration of the year the accounts of which they are to audit:

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

1 Short Title

The Short Title of this Act is The Dilworth Trustees Act 1902.

2 Interpretation

In this Act the expression **the Trustees** means the Trustees for the time being of the said will.

3 Amendment of directions to Trustees

The said will shall be read as if the directions to the Trustees thereof had been amended as follows, that is to say:—

- (1) In the direction to accumulate the income of the said estate for the purpose of guarding against the probability of the net income falling below the sum of ten thousand dollars per annum, the sum of “five thousand dollars” had been inserted in lieu of the sum of “ten thousand dollars”:
- (2) In the direction to offer and pay premiums for the best designs for buildings, the sum of “five thousand dollars” had been inserted as the net annual income, instead of the sum of “ten thousand dollars,” and the sum of “ten thousand dollars” as the

amount of moneys in the hands of the Trustees, in lieu of the sum of “twenty thousand dollars”: Provided that the Trustees may in their discretion expend the sum of twenty thousand dollars in the erection of such buildings:

- (3) In the direction as to the age at which boys may be selected to be pupils of the said Institute, the word “nine” had been inserted in lieu of each of the words “five” and “eight”:
- (4) In the direction to **set apart the sum of four hundred dollars annually** for the expenses of boys selected in the Province of Ulster, and to increase such sum in due proportion if the income of the said estate shall exceed the sum of ten thousand dollars per annum, the sums of “four hundred dollars” and “five thousand dollars” had been inserted in lieu of the sums of “four hundred dollars” and “ten thousand dollars” respectively:
- (5) In the direction for the accumulation of a reserve fund for addition to the buildings of the Dilworth Ulster Institute, the sums of “three thousand five hundred dollars” and “four thousand dollars” had been inserted therein in lieu of the sums of “seven thousand dollars” and “eight thousand dollars” respectively.

The words “ten thousand dollars” and the words “five thousand dollars”, in subsection (1), were substituted, as from 10 July 1967, for the words “five thousand pounds” and “two thousand five hundred pounds” respectively pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

The words “five thousand dollars”, “ten thousand dollars” and “twenty thousand dollars”, in subsection (3), were substituted, as from 10 July 1967, for the words “two thousand five hundred pounds”, “five thousand pounds” and “ten thousand pounds” respectively pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

The words “four hundred dollars”, “ten thousand dollars”, “two hundred dollars”, “five thousand dollars”, “four hundred dollars” and “ten thousand dollars” in subsection (4), were substituted, as from 10 July 1967, for the words “two hundred pounds”, “five thousand pounds”, and “one hundred pounds”, “two thousand five hundred pounds”, “two hundred pounds” and “five thousand pounds” respectively pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

The words “three thousand five hundred dollars”, “four thousand dollars”, “seven thousand dollars” and “eight thousand dollars”, in subsection (5), were substituted, as from 10 July 1967, for the words “one thousand seven hundred and fifty pounds”, “two thousand pounds”, “three thousand five hundred pounds”, “four thousand pounds” respectively pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

4 Appointment of auditors

The auditors directed by the said will to be appointed may be so appointed at any time before or during the year in respect of which they are to audit the accounts and books.

5 Giving further powers of sale and leasing to the Trustees

Notwithstanding anything to the contrary in the said will contained or implied, the Trustees may sell any part or parts of the lands belonging to the said estate situate more than fifteen miles from the City of Auckland, provided that the proceeds of any such sale or sales shall be expended in the purchase of other lands, which shall be held on the same trusts as affect the lands so dealt with, or otherwise invested on the like trusts: And may also from time to time let all or any part or parts of the lands belonging to the said estate other than lands by the said will directed to be set apart for the use of the Dilworth Ulster Institute, in such areas, at such times, for such rent, and upon such terms and conditions as to them shall seem fit; provided that every such lease shall be for a term not exceeding, for a building lease, or for lease to the Crown or any public local body, ninety-nine years, and for any other lease twenty-one years, but so that any such last-mentioned lease may contain a covenant for renewal for any term not exceeding the term of such lease.

6 Extended powers of investment of trust funds

In addition to the powers of investment conferred upon them by the said will or otherwise, the Trustees may invest any of the trust funds of the said estate upon first mortgage of freehold lands in the Provincial District of Auckland, and upon mortgage of leasehold interests in the lands belonging to the said estate: Provided that no advance under any mortgage of leasehold lands shall exceed two-thirds of the value of the lessee's interest in such lands.

This section was amended, as from 9 October 1946, by section 4 Dilworth Trust Board Act 1946 (1946 No 2(P)) by substituting the words "two-thirds" for the words "three-fifths".

7 Trustees may erect buildings and improvements

The Trustees may from time to time apply any of the trust funds of the said estate in erecting and maintaining buildings or other improvements upon the lands belonging to the said estate.