

**Reprint
as at 12 November 2018**

Dempsey Trust Act 1892

Local Act 1892 No 11
Date of assent 24 September 1892

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An Act to provide for the management of the fund known as the Dempsey Trust Fund, and for other purposes connected therewith.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

Preamble

Whereas William James Dempsey, formerly of Dunedin, solicitor, by his will, dated 17 June 1868, 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 £7 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 22 June 1868, 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, £100:

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 Superintendent of the said Province, did, on or about 22 April 1871, with the said sum of £100, and the residue of the said estate, amounting in all to the sum of £750, purchase from the said Superintendent the piece of land described in the Schedule:

And whereas upon the conveyance to the said Henry Houghton of the said piece of land, he, by a declaration of trust dated 27 August 1872, 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 1 October 1872, 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 21 years from 1 September 1872:

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 21 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 10 December 1873, 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 30 July 1873, 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:

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.

1 Short Title

The Short Title of this Act is the Dempsey Trust Act 1892.

2 Trustees incorporated

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.

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 Power to appoint new Trustees

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.

4 Lands, securities, &c, vested in Trustees

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**.

5 Power to sell lands

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

6 Power to invest surplus funds

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.

7 Power to lease lands

The Trustees shall have power to lease lands vested in them for a period not exceeding 50 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 the said company, with such variations as may appear requisite or desirable in the interests of the said trust.

8 Trustees to hold lands, etc, upon trust

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 4 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.

9 Annual balance sheet

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.

10 Power to contract for services

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.

11 Trustees to issue lease to company

The Trustee 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 £215, which new lease shall be in the form and to the effect set forth in the Schedule.

12 Power to perform and execute requisite acts and deeds

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

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 19.6 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

The Dempsey Trustees incorporated under the provisions of the Dempsey Trust Act 1892 (hereinafter called the **lessors**), being registered as the proprietors of an estate in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon, in all that piece of land described in the Schedule, in pursuance and exercise of the powers in that behalf conferred on the lessors by the Dempsey Trust Act 1892 and its amendments and of every other power enabling the lessors in that behalf do hereby lease to the New Zealand Loan and Mercantile Agency Company, Limited, a company incorporated in England and having its head office for New Zealand at Wellington in the Dominion of New Zealand (hereinafter called the **lessee**), all the said land to be held by the lessee as tenant for the term of [*term*], computed from [*date*], at the yearly rental of [*amount*], payable by equal half-yearly payments on [*day*] and [*day*] in each year, of which the first shall be made on the [*date*] next, subject to the following covenants with the lessors in manner following that is to say:

- 1 That the lessee will during the said term pay the said rent on the above mentioned days at Dunedin, free of exchange and without any deduction.
- 2 That the lessee 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 and duties in any way incumbent on the owner or occupier thereof.
- 3 That the lessee will not without the previous consent in writing of the lessors remove or take away any building for the time being standing on the said land, and will during the said term keep and maintain in good and tenantable condition and repair all buildings, fences, erections, and drains now or hereafter erected or laid upon or under the said land.
- 4 That the lessee will not assign sublet, or part with the possession of or in any way further encumber the said lands or any part thereof without the previous consent in writing of the lessors first had and obtained.

- 5 That the lessee will not carry on or permit to be carried on on the said land or any part thereof any offensive business, trade, or manufacture whatsoever.
provided always that the carrying on thereon of all or any of the business stock and station agents, wool and skin brokers or merchants, or produce merchants shall not constitute a breach of this covenant.
- 6 That the lessee will at its own cost insure and keep the said buildings insured against loss or damage by fire in the full insurable value thereof in the joint names of the lessors and the lessee, and will whenever required by the lessors produce the policies for every such insurance and the receipts for the premium payable thereunder; and that in default thereof the lessors may insure the said buildings in such sum as they shall think fit and pay the premiums payable in respect thereof and recover the same in like manner as if the same were rent in arrear.
- 7 All money received under or by virtue of an insurance of buildings on the said land shall, unless otherwise agreed, be laid out in rebuilding or reinstating the buildings destroyed or damaged, and if in any case such money shall be more than sufficient for that purpose the surplus shall belong to the lessee.
- 8 That if and whenever the said rent or any part thereof shall at any time be in arrear or unpaid for 30 days after the same shall have become due (whether the same shall have been legally or formally demanded or not), or if the lessee shall make default in the due observance or performance of any of the covenants by the lessee herein contained or implied other than the covenant relating to insurance, then and in any such case it shall be lawful for the lessors or any person duly authorised by them in that behalf to reenter into and upon the said land or any part thereof in the name of the whole, and thereupon this lease and every clause and thing herein contained shall absolutely cease, determine, and become void, but without prejudice to any right of action or remedy of the lessors for or in respect of any rent which shall have then accrued due under these presents or for or in respect of any antecedent breach or nonobservance of any of the covenants by the lessee herein contained or implied.
- 9 On the expiration by effluxion of time of the term hereby granted, the lessee shall have a right to obtain, in accordance with the provisions hereinafter contained, a renewed lease of the said land at a rent to be determined by valuation in accordance with the said provisions, for the term of 21 years computed from the expiration of the lease hereby granted, and subject to the same covenants and provisions as this lease, including this present provision for renewal thereof and all provisions ancillary or in relation thereto.
- 10 Within 6 calendar months previous to the expiration of the term hereby created, or so soon thereafter as may be, a valuation shall be made of the fair annual rent of the said land without any buildings or improvements for the further term of 21 years so that the rent so valued shall be uniform throughout the whole of the term of the renewed lease. The valuation shall be made by 2 indifferent persons as arbitrators appointed in writing, one by the lessors and the

other by the lessee. The arbitrators shall, before entering upon the valuation, together appoint in writing under their respective hands a third person who shall be an umpire as between them. The decision of such first 2 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 upon all parties. The Duty of such umpire, on reference to him of any question, shall be to analyse the respective valuations of the 2 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.

- 11 The provisions herein contained for determination of the annual rent shall be deemed to amount to a submission to arbitration under and within the meaning of the Arbitration Act 1908, or any enactment thereof, and the provisions of the said Act or of any such enactment shall apply accordingly except in any particular in which they are varied by the provisions contained in these presents.
- 12 Within 2 calendar months after the making of the said valuation and the giving of notice thereof to the lessee, the lessee shall give notice in writing, signed by the lessee or by its agent duly authorised in that behalf and delivered to the lessors, stating whether the lessee desires to have a renewal lease of the land.
- 13 Any such notice may be given by the lessee within the time aforesaid although the term hereby granted has already expire by effluxion of time or although the said valuation has not been made or notice thereof has not been given to the lessee until after the expiration the said term by effluxion of time, unless before the giving of such notice by the lessee it has given up to the lessors the possession of the said land or had been duly ejected therefrom in pursuance of the judgment or order of any Court of competent jurisdiction or the lessors have re-entered upon the said land.
- 14 Any such notice by the lessee of its desire to have renewed lease shall be deemed to constitute a contract between the lessors and the lessee for the granting and acceptance of a renewed lease at the rent so valued and for the term and subject to the covenants and provisions referred to in clause 9.
- 15 If the lessee fails within the time aforesaid to give any notice as to whether it desires a renewed lease or not, or if the lessee gives notice in writing signed by it or by its agent duly authorised in that behalf that it does not desire a renewed lease, the lessee's right to a renewed lease shall cease on the expiry of the time aforesaid or on the date on which such notice is received by the lessors, as the case may be.

- 16 The term of any such renewed lease shall run from the date of the expiration of the prior lease, and the rent as so valued shall accrue as from the said date in lieu of the rent reserved in the prior lease, notwithstanding the fact that the renewed lease may not be executed until after that date.
- 17 All costs and expenses of any such valuation as aforesaid shall be paid by the lessee.
- 18 If the lease hereby granted is not renewed in accordance with the foregoing provisions, or if it is determined by forfeiture, re-entry, or otherwise, all buildings and improvements on the said land shall absolutely revert to the lessors free from any payment or compensation whatever.
- 19 Any notice required to be given under these presents may be given to the lessors by serving the same on the secretary of the lessors or by sending the same by post addressed to the said secretary at his place of business, and may be given to the lessee by leaving the same upon the said land or any part thereof or by sending the same by post addressed to the lessee at its last known place of business in New Zealand.
- 20 Nothing in the foregoing provisions shall exclude or restrict the right of the lessee to obtain relief against any forfeiture or determination of the lease or of the right to a renewal thereof in the same cases and on the same conditions as if the lease had been granted otherwise than in the execution of statutory powers in that behalf.
- 21 That the covenants and provisions implied in leases by the Land Transfer Act 2017, or any amendment or re-enactment thereof, shall be negatived or modified in respect of this lease in so far as the same are or may be inconsistent with the modifications hereby made or the covenants and provisions herein expressed.

And the above named the New Zealand Loan and Mercantile Agency Company, Limited, doth hereby accept this lease of the said land to be held by it as lessee and subject to the conditions, restrictions, and covenants herein set forth and implied.

In witness whereof these presents have been executed this [*day*].

The Schedule Hereinbefore Referred to

All that parcel of land containing 2 roods and 19.6 perches, be the same a little more or less, situated in the City of Dunedin, being Sections 1, 2, 21, and 22, Block XLVII, Town of Dunedin, and being all the land comprised in record of title, Otago Registry Volume 288, folio 61.

Schedule Form of lease: replaced, on 9 November 1951, by section 2 of the Dempsey Trust Amendment Act 1951 (1951 No 10 (L)).

Schedule clause 21: amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Schedule The Schedule Hereinbefore Referred to: amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Reprints notes

1 *General*

This is a reprint of the Dempsey Trust Act 1892 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Land Transfer Act 2017 (2017 No 30): section 250

Dempsey Trust Amendment Act 1951 (1951 No 10 (L))