

Georgetti Trust Estate Act 1915

Private Act 1915 No 2
Date of assent 18 September 1915

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An Act to vary and declare the Interests taken by the Children and Grandchildren of one Augustin Georgetti under the Last Will of the said Augustin Georgetti, and to authorize the Sale and Disposal of the Real and Personal Estate of the said Augustin Georgetti.

Preamble

WHEREAS Augustin Georgetti, late of Wanganui, in the Provincial District of Wellington, farmer, deceased, duly made and executed his last will and testament, bearing date the twelfth day of February, eighteen hundred and ninety-five, and appointed Freeman Rayney Jackson, of Wanganui; David Peat, of the same place, farmer; Robert Charles Earle, of the same place, medical doctor; and his eldest son, Antoni Mark Georgetti (in the said will now in recital called Antoine Georgetti), executors and trustees thereof: And whereas in and by the said will the said Augustin Georgetti, after the devise of a certain dwellinghouse and land to his wife, Ellen Georgetti, for her life, without impeachment of waste, with remainder over to his trustees, gave, devised, and bequeathed all his property, both

real and personal (including the reversionary estate expectant on the death of his wife), to his trustees in the said will mentioned, upon trust to manage the same to the best advantage, and to apply the rents and profits thereof as they might arise (in the said will called the yearly income), firstly, in payment to his wife, the said Ellen Georgetti, during her life, of the annual sum of three hundred dollars, and to each of his infant children the sum of one hundred dollars during their minority; secondly, to divide the residue of the yearly income annually amongst his children who should be over the age of twenty-one years, in such manner that his sons should have equal shares and each of his daughters one-half of the share of a son; and, as to his daughters, the testator directed that the shares of his daughters should be paid to them respectively for life for their sole and separate use without power of anticipation, and that upon the death of each daughter his trustees should pay to the male issue of each daughter equally during their joint lives or to the only or surviving son of each such daughter, as the case might be, the share of the yearly income to which such daughter was entitled at the time of her decease; and the testator expressly declared that no further descendants of his daughters should take any benefit under his will; and, as to his sons, the testator directed that the shares of his sons should be paid to them respectively for life, and that upon the death of each one of his sons his trustees should pay annually to the male issue of such son equally during their joint lives or to his only or surviving son, as the case might be, the share of the yearly income to which such son of the testator might be entitled at the time of his decease; and the testator further directed that after the death of such of his grandsons or grandson, as the case might be, the said yearly share of the yearly income which each such son of the testator might be entitled to at the time of his decease, together with any further yearly share or portion which under the next provision of the said will or in any other way might have become payable to such his grandsons or grandson, should be divided annually equally amongst the male descendants on the male side being twenty-one years of age and upwards of such son of the testator for ever; and the testator further provided that, in the event of any of the yearly income being released in consequence of there being a failure of persons or person to take the same, such portion of the yearly income as might be so released should be divided annually *pro*

rata amongst the surviving beneficiaries of his will: And whereas the said Augustin Georgetti died on or about the twenty-fourth day of December, eighteen hundred and ninety-nine, without having altered or revoked his said will, and the same was duly proved in the District Court of Wanganui, holden at Wanganui on the twenty-ninth day of January, nineteen hundred, by the said Antoni Mark Georgetti (in the said will called Antoine Georgetti), one of the executors in the said will, named, the other executors in the said will, named, having renounced probate thereof: And whereas by an order of the High Court of New Zealand made on the twenty-third day of February, nineteen hundred and ten, Ewen Alexander Campbell, of Wanganui, farmer, and William Alexander D'Arcy, of Wanganui, produce-manager at Wanganui of the New Zealand Loan and Mercantile Agency Company (Limited), were appointed trustees of the will of the said Augustin Georgetti in addition to and jointly with the said Antoni Mark Georgetti, the continuing trustee thereof: And whereas by an order of the Supreme Court of New Zealand made on the twenty-seventh day of June, nineteen hundred, it was declared that the devises, bequests, and limitations of the said will of the said Augustin Georgetti, deceased, subsequent to the gifts to the sons of the testator and their sons are void for remoteness; and that the proviso in the said will providing that, in the event of any of the yearly income being released in consequence of there being a failure of persons or person to take the same, such portion of the yearly income as might be so released should be divided annually *pro rata* amongst the surviving beneficiaries is also void for remoteness; and that, subject to all devises, bequests, and limitations not subsequent to such gifts to the sons of the testator and their sons, the real and personal estate of the testator is undisposed-of and is vested in the trustees of the said will upon trust for the persons who at the death of the testator were under the law of New Zealand regulating the distribution of the estates of intestates entitled thereto; and that upon the death of any daughter of the testator without any son or sons, and upon the death of any such son or sons or the survivor of them, and also upon the death of any son of the testator without son or sons, and upon the death of any such son or sons or the survivor of them, an amount of capital representing the sum producing the income payable to each such daughter or her son or sons, or such son or his son or sons (as the case may be), is undisposed-of, and

shall be held by the said trustees upon trust for the persons who at the death of the testator were under the law of New Zealand regulating the distribution of the estates of intestates entitled thereto: And whereas the said Augustin Georgetti left him surviving his wife, the said Ellen Georgetti, and nine children—namely, the said Antoni Mark Georgetti, James Georgetti, Charles Georgetti, William Georgetti, John Georgetti, Augustin Georgetti, Mary Georgetti, Sophia Georgetti, and Isabel Ann Missen—all of whom attained the age of twenty-one years some time since: And whereas Ellen Georgetti, the wife of the said Augustin Georgetti, duly made and executed her last will and testament bearing date the second day of November, nineteen hundred and eight, and appointed the Public Trustee of the Dominion of New Zealand trustee and executor thereof: And whereas by her said will the said Ellen Georgetti devised and bequeathed unto her trustee all her estate, right, title, claim, and interest in and to the estate, property, and effects of the said Augustin Georgetti, on account of his partial intestacy, upon trust for such of her children, the said Antoni Mark Georgetti, William Georgetti, Charles Georgetti, James Georgetti, John Georgetti, Augustin Georgetti, Mary Georgetti, and Isabel Ann Missen, as should survive her, in such shares that the said Antoni Mark Georgetti, William Georgetti, Charles Georgetti, James Georgetti, John Georgetti, Augustin Georgetti, and Mary Georgetti may each receive equal shares, and that the said Isabel Ann Missen may receive a share equal to double the share of any of her said other children: And whereas the said Ellen Georgetti died on or about the twelfth day of August, nineteen hundred and nine, without having altered or revoked her said will, and probate of the same was duly granted to the Public Trustee of the Dominion of New Zealand by the High Court of New Zealand on the eighth day of September, nineteen hundred and nine: And whereas the said Sophia Georgetti died on or about the third day of September, nineteen hundred and twelve, intestate and unmarried: And whereas all the children of the said Augustin Georgetti, with the exception of the said Sophia Georgetti, are now alive: And whereas of the children of the said Augustin Georgetti the following are married and have issue: Antoni Mark Georgetti, one son, Augustin Georgetti the younger; James Georgetti, one son, James Wyatt Georgetti; Charles Georgetti, one son, Charles Georgetti the younger, and four

daughters, Ethel Georgetti, Marie Georgetti, Margaret Georgetti, and Helen May Georgetti; William Georgetti no issue; John Georgetti, two daughters, Patricia Georgetti and Dorothy Georgetti; and Isabel Ann Missen, one son, Leon Missen, and three daughters, Helen Missen, Mary Missen, and Marjory Missen: And whereas all the said grandchildren are under the age of twenty-one years, except Augustin Georgetti the younger: And whereas by an order of the High Court of New Zealand made on the twenty-third day of February, nineteen hundred and fourteen, upon an originating summons issued in the said Court for the purpose of determining who are the persons entitled to the share of the said Sophia Georgetti in the estate of the said Augustin Georgetti, it was declared that the persons so entitled are the persons who at the date of the death of the testator (the said Augustin Georgetti) were the persons entitled thereto under the law of New Zealand regulating the distribution of estates of deceased intestates; and that the Public Trustee as executor and trustee of the will of the testator's widow, Ellen Georgetti, deceased, is therefore entitled to receive one-third of the capital representing the income payable under the said will to the said Sophia Georgetti; and that the remaining two-thirds of the capital are divisible among all the children of the deceased Augustin Georgetti living at the time of his decease, including the next-of-kin of the said Sophia Georgetti; and that the next-of-kin of the said Sophia Georgetti are entitled to the income accrued due in respect of the share of the said Sophia Georgetti up to the date of her death and at such date undisposed-of, and that the persons who are declared entitled to the share in the capital representing the income payable under the said will to the said Sophia Georgetti are the persons entitled to the income accruing due in respect of the share of the said Sophia Georgetti, deceased, since the date of her death, and in the same proportions as they are declared entitled to such capital: And whereas it is impracticable without realizing the whole of the estate of the said Augustin Georgetti to ascertain the share in the capital of the said estate representing the income payable to the said Sophia Georgetti, deceased: And whereas it is the desire of all parties that the whole of the real and personal estate of the said Augustin Georgetti should be realized; and that, after payment of the costs, charges, and expenses incident to such realization, one-half of the proceeds of such realization should be divided equally among

the children of the said Augustin Georgetti—namely, Antoni Mark Georgetti, James Georgetti, Charles Georgetti, William Georgetti, John Georgetti, Augustin Georgetti, Mary Georgetti, and Isabel Ann Missen—and that the other half of the proceeds of such realization should be set aside upon trust to invest the same upon mortgage of real estate in New Zealand, and not in or upon any other kind of security; and that the income arising from such investments should be paid to the said Antoni Mark Georgetti, James Georgetti, Charles Georgetti, William Georgetti, John Georgetti, Augustin Georgetti, Mary Georgetti, and Isabel Ann Missen during their lives in equal shares; and from and after the death of the said Antoni Mark Georgetti, James Georgetti, Charles Georgetti, William Georgetti, John Georgetti, Augustin Georgetti, Mary Georgetti, and Isabel Ann Missen that the capital should be divided among all the grandchildren of the said Augustin Georgetti, whether born before or after the passing of this Act, who either before or after the death of their parents attain the age of twenty-one years, in equal shares: And whereas it is the desire of all parties, in the event of any of the children of the said Augustin Georgetti dying leaving issue before the period of distribution arrives, that such issue should take, and, if more than one, in equal shares, the share in the income which his, her, or their parent would have taken if alive, and that in the event of any of the testator's children dying without leaving issue before the period of distribution the share of such child so dying should be divided in equal shares among the surviving children of the testator: And whereas such objects are not attainable otherwise than by legislation:

The references to “three hundred dollars”, and “one hundred dollars” were substituted, as from 10 July 1967, for references to “one hundred and fifty pounds”, and “fifty pounds” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

The words “High Court” were substituted, as from 1 April 1980, for the words “Supreme Court” pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

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

This Act may be cited as the Georgetti Trust Estate Act 1915.

2 Power to sell

The trustees for the time being of the will of the said Augustin Georgetti, deceased, may and they are hereby expressly authorized to sell and dispose of the whole of the real and personal estate of the said Augustin Georgetti affected by the will of the said Augustin Georgetti dated the twelfth day of February, eighteen hundred and ninety-five.

3 Manner of sale

Any sale made under the last preceding section may be by public auction or private contract, in one or more lots, and subject to such terms and conditions as the trustees may in their absolute discretion deem desirable.

4 Disposal of proceeds

The trustees may fix reserve prices for any lot or lots, and may buy in any lot or lots, and may resell without being liable for any consequential loss. Half the purchase-money shall be paid in cash. The other half of the purchase-money may remain upon first mortgage of the lot or lots sold for a term not exceeding five years at a rate of interest not less than five dollars per centum per annum.

The reference to “five dollars” was substituted, as from 10 July 1967, for a reference to “five pounds” pursuant to section 7(1) and (2) Decimal Currency Act 1964 (1964 No 27).

5 Trusts declared

The proceeds of such sale shall be received by the trustees and applied in manner following, that is to say:—

Firstly, in payment of all costs, charges, and expenses of and incidental to the promoting and passing of this Act and the

realization and disposal of the real and personal estate of the said Augustin Georgetti:

Secondly, in payment to the children of the said Augustin Georgetti—namely, Antoni Mark Georgetti, James Georgetti, Charles Georgetti, John Georgetti, Augustin Georgetti, William Georgetti, Mary Georgetti, and Isabel Ann Missen—in equal shares, of one-half of the balance of the proceeds of such realization:

Thirdly, the trustees shall stand possessed of the other half of the balance of the proceeds of such realization upon the trusts following, that is to say:—

- (a.) Upon trust to invest the same at a rate of interest not less than five dollars per centum per annum upon mortgage of freehold estate in New Zealand (including the real estate of the said Augustin Georgetti), or upon such other securities as trustees are authorized by law to invest trust funds upon in New Zealand.
- (b.) To pay the annual income arising from such investments to the children of the said Augustin Georgetti—namely, Antoni Mark Georgetti, James Georgetti, Charles Georgetti, William Georgetti, John Georgetti, Augustin Georgetti, Mary Georgetti, and Isabel Ann Missen—during their lives in equal shares.
- (c.) In the event of any of the said Antoni Mark Georgetti, James Georgetti, Charles Georgetti, William Georgetti, John Georgetti, Augustin Georgetti, Mary Georgetti, or Isabel Ann Missen dying leaving issue, to pay to or apply for the maintenance, education, and support of such issue the share in such income which his, her, or their parent would have taken if alive, and, if more than one, in equal shares.
- (d.) In the event of any of the said Antoni Mark Georgetti, James Georgetti, Charles Georgetti, William Georgetti, John Georgetti, Augustin Georgetti, Mary Georgetti, or Isabel Ann Missen dying without leaving issue, to pay the share in such income of such child so dying to and among his other surviving brothers or sisters in equal shares.

- (e.) To stand possessed of the capital of the said investments upon trust for all the grandchildren of the said Augustin Georgetti (whether born before or after the passing of this Act) who either before or after the death of his, her, or their parent attain the age of twenty-one years, and, if more than one, in equal shares.

The reference to “five dollars” was substituted, as from 10 July 1967, for a reference to “five pounds” pursuant to section 7(1) and (2) Decimal Currency Act 1964 (1964 No 27).

6 Will varied accordingly

The will of the said Augustin Georgetti shall be read and construed and be deemed to take effect in accordance with the provisions hereinbefore set forth.