CHAPTER iv.

An Act for enabling the Queensland Investment and Land Mortgage Company Limited to pay off capital paid in advance of calls and for other purposes. A.D. 1903.

[30th June 1903.]

WHEREAS on the 24th day of June 1878 the Queensland Investment and Land Mortgage Company Limited (in this Act called "the Company") was incorporated as a company limited by shares under the Companies Acts 1862 and 1867 for the purposes (amongst others) of investment and loan of money at interest on the security of real or other property and the acquisition and establishment of mercantile agencies in Queensland and elsewhere:

And whereas the original capital of the Company was £2,000,000 divided into 200,000 shares of £10 each:

And whereas by virtue of several orders of the High Court of Justice in England reducing the capital of the Company and by virtue of the provisions of the Queensland Investment and Land Mortgage Company's Act 1894 (in this Act called "the Act of 1894") and of special resolutions passed in the terms thereof by the Company the capital of the Company is now £1,132,796 made up as follows (that is to say):—

25,000 shares of £10 each which are unissued;

2,521 preferred ordinary shares of £1 10*s.* 0*d.* each carrying a fixed preferential non-cumulative dividend at the rate of 5 per cent. per annum on the capital paid up thereon and ranking pari passu with the preferred ordinary stock below mentioned Such shares being fully paid up save as to the sum of £1,647 12*s.* 1*d.* representing calls in arrear on 2,202 of such shares;

A.D. 1903.

£218,724 preferred ordinary stock carrying a fixed preferential non-cumulative dividend at the rate of 5 per cent. per annum;

19,749 ordinary A shares of £1 5*s*. 0*d*. each which are fully paid up but £1 per share is capital paid in advance of calls and the amount so paid in advance namely £19,749 carries interest at the rate of £6 per cent. per annum and such interest is payable out of profits and in default out of capital;

19,749 ordinary guarantee shares of £5 5*s*. 0*d*. each which are fully paid up but £5 per share is capital paid in advance of calls and the amount so paid in advance namely £98,745 carries interest at the rate of £6 per cent. per annum and such interest is payable out of profits and in default out of capital;

127,838 ordinary A shares of £1 5*s*. 0*d*. each on which only 5*s*. per share (less calls in arrear to the amount of £1,956 9*s*. 5*d*. on 2,021 shares) has been paid;

127,838 ordinary guarantee shares of £5 5*s*. 0*d*. each on which only 5*s*. per share has been paid;

150 ordinary shares of £6 10*s*. 0*d*. each which have been forfeited but upon which 10*s*. per share has been paid:

And whereas the holders of ordinary A shares are entitled to—

(A) Have divided among them ratcably in proportion to the number of such shares held by them respectively one half of the surplus profits of the Company available for dividend after meeting the dividends on the preferred ordinary stock and preferred ordinary shares of the Company existing on the 7th day of January 1903 And in a winding-up one half of the surplus assets after meeting the capital repayment due to outstanding preferred ordinary stock and preferred ordinary shares then existing;

(B) The right in priority to dividends on the preferred ordinary stock and preferred ordinary shares of the Company existing on the 7th day of January 1903 to a dividend out of the profits of each year at the rate of £5 per cent. per annum on all money paid in pursuance of calls made on such shares beyond the 5*s*. per share so to be credited as called and paid up thereon and also in a winding-up to repayment of all money paid in pursuance

of such further calls in priority to any return of capital upon the said then existing preferred ordinary stock and preferred ordinary shares of the Company;

And the holders of ordinary guarantee shares are entitled to—

(C) Have divided among them rateably in proportion to the number of such shares held by them respectively the other one half of the surplus profits available for dividend after meeting the dividend on the preferred ordinary stock and preferred ordinary shares of the Company existing on the 7th day of January 1903 And in a winding-up one half of the surplus assets after meeting the capital repayment due to then outstanding preferred ordinary stock and preferred ordinary shares;

(D) The right in priority to all other shares and stock in the capital of the Company (including the said ordinary A shares) to a cumulative dividend at the rate of £5 per cent. per annum on all money paid in pursuance of calls made beyond the 5*s*. per share so to be credited as called and paid up thereon And the right in a winding-up to repayment of such calls with an amount equal to such dividends so far as not met out of the profits of the Company in priority to the return of capital on any other stocks or shares of the Company:

And whereas the resolutions creating such ordinary guarantee shares provide—

(1) That the directors shall not have power to call up the sum of £5 per share being the balance of capital of the ordinary guarantee shares until the whole amount has been called up on the ordinary A shares and that the articles of association of the Company shall be altered and are thereby altered accordingly;

(2) That the directors shall not have power hereafter to receive money in advance of calls upon such ordinary guarantee shares at a higher rate of interest than £3 per cent. per annum and that the said articles of association shall be altered and are thereby altered accordingly;

(3) That every member shall have one vote in respect of every two ordinary A shares also one vote in respect of every two ordinary guarantee shares held by and entitling such member to vote save and except that no member shall have a vote in respect of any ordinary A shares upon

A.D. 1903.

any resolution which may after the 7th day of January 1903 be proposed for the reduction of capital on the said ordinary guarantee shares whether by cancellation of the said uncalled £5 or any portion thereof and that the said articles of association shall be altered and are by such resolutions altered accordingly:

And whereas the Company has issued and there are now outstanding perpetual debentures of the Company to the aggregate amount of £400,000 carrying interest at the rate of 4 per cent. per annum:

And whereas the said £400,000 debentures are held by registered holders to the extent of £217,600 and on bearer bonds to the extent of £182,400:

And whereas the Company has also issued and there are now outstanding terminable debentures of the Company to the amount of £67,925 maturing in different amounts in the years 1903 1904 1905 and 1906 respectively:

And whereas each of the said perpetual and terminable debentures contains a floating charge on the undertaking of the Company including future calls on shares:

And whereas the said perpetual and terminable debentures are further secured by a trust deed dated the 6th day of January 1886 and made between the Company of the one part and George Nisbet Marten and George Robert Fife (as trustees) of the other part whereby the Company charged in favour of the said trustees all the capital of the Company for the time being whether called or to be called to the intent that the same might be a security for payment of all principal moneys and interest due or to become due upon the debentures of the Company whether terminable or perpetual then in issue and any further debentures whether terminable or perpetual which might thereafter be issued but so that the charge thereby given should be subject to and without prejudice to the charge contained in the debentures then already in issue and so that in respect of the security thereby given all the debentures for the time being whether terminable or perpetual should rank pari passu in point of charge Provided always that the charge thereby created should be a floating security:

And whereas the provisions for securing such debentures perpetual and terminable provide that the total amount of debt so to be created shall not exceed the amount of the Company's unpaid capital:

A.D. 1903.

And whereas the uncalled capital on which such debentures are charged by way of floating security now amounts to £767,028:

And whereas the Company has consequently the right to borrow on debentures perpetual or terminable but ranking pari passu with those at present outstanding to the amount of £299,103:

And whereas the Company having received money in advance of calls and contracted to pay 6 per cent. interest thereon has to meet such interest on such prepayment of capital whether revenue is available therefor or not so that in effect such interest charge so long as the Company carries on business ranks pari passu with the charge for outstanding debenture interest:

And whereas the assets of the Company consist largely of mortgages on land in Queensland and South Australia and of sugar estates and other agricultural land and also of building sites in or near towns and other landed property in Queensland and South Australia:

And whereas the Company has suffered greatly from the continued depression agricultural and financial in Queensland and South Australia and by the continued drought in Queensland and a considerable part of the Company's assets does not produce any income:

And whereas the Company's income of late years has not been sufficient to pay the interest on the Company's debentures aforesaid and also the interest at the rate of 6 per cent. per annum (amounting to £7,109 and upwards per annum) on the capital paid up in advance of calls as aforesaid At the present time such income though sufficient to pay the interest on the said debentures is not sufficient also to pay in full the interest on the capital paid up in advance of calls and that interest has to a considerable extent to be paid out of capital:

And whereas the Company's obligation to pay interest at the rate of 6 per cent. per annum on the capital so paid up in advance of calls is very onerous and unless the Company's income is largely increased (of which there is no immediate prospect) must deplete the capital assets of the Company and so prejudice the security of the Company's debentures aforesaid and detrimentally affect the Company's credit and its capacity to continue its business:

And whereas the Company could without detriment to its business pay off out of capital the capital paid up in advance of calls on the ordinary guarantee shares (£98,745) and thus save itself upwards of £2,000 per annum:

A.D. 1903.

And whereas the Company is prepared on being authorised to make this repayment and reduction of capital to make arrangement for a large reduction and restriction in future of the amount of debentures and other borrowing powers of the Company so that the debentures will be definitely secured by a much larger proportion of uncalled capital and other assets than hitherto:

And whereas the Company before making such reduction and repayment of capital is willing to repay at par all or any of the terminable debentures the owners of which may not assent to the proposed reduction and repayment:

And whereas the holders of more than 88 per cent. of the amount of the Company's perpetual debentures which are registered and of upwards of 80 per cent. of those which are to bearer making together 85 per cent. of such perpetual debentures have signified in writing their assent to the payment off and cancellation of £5 per share or £98,745 part of the capital paid up in advance of calls conditionally on the execution by the Company of a new trust deed giving to the Company's debenture holders present and future a specific charge on £5 per share or £639,190 of the uncalled ordinary capital of the Company in lieu of the existing floating charge on uncalled capital and on the Company's borrowing powers being reduced to £500,000 and on the Company being placed in a position to redeem at par on six months' notice all or any of its debentures before the maturity thereof respectively:

And whereas it is expedient to provide for the payment off of the capital paid up in advance of calls as aforesaid upon the ordinary guarantee shares and the reduction of the amount of the shares in respect of which such capital is paid up and for the reduction of the Company's borrowing powers and for the execution of a new trust deed to take the place of the existing trust deed aforesaid and that such trust deed shall be framed in accordance with the form set forth in the schedule hereto:

And whereas the objects of this Act cannot be attained without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted and be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Short title.

1. This Act may be cited as the Queensland Investment and Land Mortgage Company's Act 1903.

A.D. 1903.

Payment off of money paid in advance of calls.

2. At any time after the passing of this Act on giving two months' notice the Company may out of its capital assets pay off the sum of ninety-eight thousand seven hundred and forty-five pounds being the capital paid up in advance of calls as aforesaid on the nineteen thousand seven hundred and forty-nine ordinary guarantee shares of five pounds five shillings each that is to say the sum of five pounds per share and the amount of such shares shall by this Act be reduced by that amount so as to be of the nominal value of five shillings per share.

Reduction of borrowing powers.

3. The borrowing powers of the Company shall save as herein specified as from the passing of this Act be reduced to five hundred thousand pounds and accordingly the amount at any one time owing by the Company for principal in respect of moneys borrowed by it whether before or after the passing of this Act shall not at any time exceed five hundred thousand pounds Provided always that the Company may for the purpose of making the authorised payment of ninety-eight thousand seven hundred and forty-five pounds borrow such sum as may not be immediately realisable out of the present assets or its restricted borrowing powers not exceeding thirty thousand pounds and charge the same on any of its assets other than the uncalled capital on the ordinary guarantee shares.

New trust deed to be executed.

4. Forthwith after the passing of this Act the Company shall execute a trust deed giving to its debenture holders present and future a specific charge on six hundred and thirty-nine thousand one hundred and ninety pounds being the existing uncalled capital of the Company on its ordinary guarantee shares and empowering the debenture holders to assent to any modification of their rights and such trust deed shall be in the form set forth in the schedule to this Act and shall have effect in accordance with the tenor thereof and upon the execution of such trust deed the existing trust deed aforesaid dated the sixth day of January one thousand eight hundred and eighty-six shall become void and shall be delivered up to the Company to be cancelled and thenceforth the existing debentures of the Company shall be deemed to refer to the said new trust deed and shall be subject to the provisions thereof and all further debentures for the time being and from time to time issued by the Company shall refer to such new trust deed and shall contain a clause expressly making them subject to the provisions thereof.

A.D. 1903.

As to redemption of debentures.

5. The Company shall be at liberty at any time to give notice in writing to any holder of a debenture of the Company of its intention to pay off such debenture and at the expiration of six calendar months from the service of such notice the principal moneys secured by such debenture shall become payable and shall cease to carry interest unless the Company on presentation of the same for payment makes default in paying such principal moneys.

Notices.

6. For the purposes of this Act and of the new trust deed aforesaid any notice may be given by the Company or by the trustees or trustee of that deed to any debenture holder of the Company as to registered debentures by sending the same through the post in a prepaid letter addressed to such holder at his registered place of address and as regards debentures to bearer by advertising the same and any notice so given shall be deemed to have reached the holder on the day following that on which it is posted or advertised as the case may be and any advertisement aforesaid shall be published at least once in the "Times" and one other London daily newspaper and whenever the trustees or trustee of the said deed think fit a notice by either of them may be given to the debenture holders whether registered or otherwise by advertising the same as aforesaid.

Act to be registered.

7. The Company shall forthwith forward to the Registrar of Joint Stock Companies a printed copy of this Act which shall be recorded by him and if such copy is not so forwarded within three months after the passing of this Act the Company shall incur a penalty not exceeding two pounds for every day after the expiration of those three months during which the copy is omitted to be forwarded and any manager of the Company who knowingly and wilfully authorises or permits such default shall incur a like penalty and every penalty under this section shall be recoverable summarily.

There shall be paid to the Registrar by the Company on such copy being registered the like fee as is for the time being payable under the Companies Act 1862 on registration of any document other than a Memorandum of Association.

Costs of Act.

8. All costs charges and expenses of and incidental to the preparing for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Company.

The SCHEDULE referred to in the foregoing Act.

A.D. 1903.

FORM OF TRUST DEED.

THIS INDENTURE made the day of 1903 between THE QUEENSLAND INVESTMENT AND LAND MORTGAGE COMPANY LIMITED (hereinafter called "the Company") of the one part and GEORGE NISBET MARTEN of Saint Albans in the county of Herts banker and GEORGE ROBERT FIFE of 11 Palace Gardens Terrace Kensington gentleman (hereinafter called "the present trustees") of the other part.

WHEREAS the Company has issued perpetual debentures for securing principal sums amounting to £ and interest and has issued terminable debentures for securing principal sums amounting to £ and interest:

And whereas the Company's borrowing powers have heretofore been limited only to the amount of the Company's unpaid capital and such debentures whether perpetual or terminable rank pari passu:

And whereas by the Queensland Investment and Land Mortgage Company's Act 1903 the Company's borrowing powers (save as therein specified) will henceforth be limited to £500,000:

And whereas the capital of the Company consists in part of 127,838 ordinary guarantee shares of £5 5*s*. 0*d*. each upon which the sum of 5*s*. per share and no more has been paid up:

And whereas the Company pursuant to the provisions of the Queensland Investment and Land Mortgage Company's Act 1903 is desirous of securing the said debentures and any further debentures of the Company in manner following:

Now these presents witness and declare as follows:—

1. In these presents "the trustees or trustee" means the present trustees or other the trustees or trustee for the time being hereof and "the debentures" means the said existing debentures of the Company and all further debentures hereafter issued by the Company within the limits of its borrowing powers as limited by the said Act and referring thereto.

2. The trustees or trustee shall have a first specific charge on the sum of £5 per share uncalled capital aforesaid for securing the payment of the

A.D. 1903.

debentures and all moneys due or to become due in respect thereof and the Company hereby charges the same accordingly.

3. The trustees or trustee shall have a charge by way of floating security on all the other assets of the Company both present and future for securing the debentures and all principal moneys due and to become due in respect thereof and the Company hereby charges the same accordingly.

4. The security hereby constituted shall become enforceable in each and every of the events following (that is to say):—

(1) If the Company makes default for more than six calendar months in the payment of any principal moneys or interest for the time being payable in respect of any of the debentures;

(2) If an order shall be made or an effective resolution shall be passed for the winding up of the Company.

5. When the security hereby constituted becomes enforceable the trustees or trustee may take such steps to enforce the same by application to the court or otherwise as they may deem expedient.

6. When the security hereby constituted becomes enforceable the Company shall forthwith at the request of the trustees or trustee call up the uncalled capital of £5 per share hereby specifically charged or so much thereof as shall in the opinion of the trustees or trustee be requisite and if the Company makes default for more than one month in calling up the same the trustees or trustee may exercise all the powers of the Company's directors in regard to calling up the said uncalled capital.

7. Until the security hereby constituted becomes enforceable the Company is not without the consent in writing of the trustees or trustee to call up the said sum of £5 per share or any part thereof but with such consent and on such terms and conditions as the trustees or trustee think fit to impose the Company may call up the same or any part thereof.

8. Nothing in these presents contained is to derogate from or abridge the Company's right to call up any of its uncalled capital for the time being so long as it leaves £5 per share uncalled on the ordinary guarantee shares the uncalled capital on which is charged as aforesaid.

9. The holders of three-fourths in value of the debentures for the time being outstanding may by writing under their hands (as to bearer debentures notarially certified) assent to any modification of the rights of the debenture holders as such which may be proposed by the Company or to the acceptance of any other or different rights in substitution for the same or to any scheme for the reduction of the Company's capital or to any compromise or arrangement proposed to be made between the Company and the holders of debentures which the court would have jurisdiction to sanction under the Joint Stock Companies Arrangement Act 1870 or any statutory modification thereof if the Company were being wound up and the requisite majority at a meeting of the debenture holders summoned pursuant to that Act had agreed thereto and any such modification substitution compromise or arrangement shall be

binding on all the holders of debentures and notice thereof shall be given to them accordingly. A.D. 1903.

10. In the event of the trustees or trustee ever having to act or take any steps under the security they or he shall be entitled to fair remuneration for their labour and responsibility and the Company shall pay such remuneration.

In witness &c.

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