



ANALYSIS

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1954, No. 2—*Private*

Title.

AN ACT to empower the Roman Catholic Archbishops and Bishops in New Zealand to sell, exchange, mortgage, and lease hereditaments vested in them, and to exercise certain other powers, and to become registered as proprietors of other hereditaments now registered in the names of predecessors and others.

[17 September 1954]

Preamble.

WHEREAS by various Acts the Roman Catholic Archbishops and Bishops in New Zealand were individually empowered to exercise certain powers specified therein over certain specified lands and hereditaments vested in them and specified in the said Acts: And whereas certain other lands and hereditaments are vested in the said Archbishops and Bishops for certain religious, charitable, and educational or other purposes in connection with the

Roman Catholic Church, and it is anticipated that additional lands and hereditaments will hereafter become so vested in them: And whereas it is expedient that with regard to all lands and hereditaments now vested or hereafter to become so vested in the said Archbishops and Bishops all such Archbishops and Bishops should have the powers of selling, exchanging, mortgaging, leasing, acceptance of surrenders of leases, varying contracts, laying off and dedicating roads, and other powers hereinafter given which powers at the present time are held by only some of them: And whereas certain lands and hereditaments vested in the present and previous holders of the offices of the Archbishops and Bishops of the Roman Catholic Church in New Zealand or vested in some other person or persons now deceased in trust for divers purposes of the Roman Catholic Church and situate within the Dominion of New Zealand are still vested or registered in the personal name of a holder of such an office and/or in the names of such other person or persons now deceased: And whereas it is expedient that the Roman Catholic Archbishops and Bishops in New Zealand should now and hereafter be enabled to exercise in respect of those lands and hereditaments last mentioned the same powers and authorities as they would be entitled to exercise if such lands and hereditaments were registered in the name of a Roman Catholic Archbishop or Bishop as such of a particular archdiocese or diocese in New Zealand pursuant to the Roman Catholic Lands Act 1876 and the Roman Catholic Lands Extension Act 1890.

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

1. This Act may be cited as the Roman Catholic Bishops Empowering Act 1954. Short Title.

2. In this Act, if not inconsistent with the context,— Interpretation.
 “ Bishop ” means and includes any Roman Catholic Archbishop or Bishop for the time being of any Roman Catholic archdiocese or diocese in New Zealand:

“ Hereditaments ” means any legal or beneficial estate or interest in any land of any tenure now or hereafter vested in a Bishop, whether solely or jointly or in common with any other person or persons, and includes chattel interests

in land now or hereafter vested as aforesaid, whether or not such land or chattel interests in land are subject to any trust, express or implied; but does not include any land in respect of which such Bishop may lawfully at the date of the passing of this Act exercise all the powers hereby conferred:

“Registered proprietor”, in relation to any estate or interest in land, means the person registered as proprietor of such estate or interest under the Land Transfer Act 1952 or the person entitled to such estate or interest under any instrument under the Deeds Registration Act 1908:

“Registrar”, in relation to any land, means the District Land Registrar or the Registrar of Deeds for the land registration district in which the land is situated.

Power to sell and dispose of hereditaments.

3. Any Bishop may sell and dispose of any hereditaments by public auction, public tender, or private contract, except in cases where a sale is expressly forbidden by the terms of the trust on which the hereditaments are or are intended to be vested in such Bishop, and any such sale may be for cash or on credit, or partly for cash and partly on credit.

Power to exchange hereditaments.

4. Any Bishop may exchange any hereditaments which are or are intended to be vested in him for other freehold hereditaments in New Zealand, with power to pay out of any moneys applicable for that purpose or to receive any money for equality of exchange.

Mode of application of moneys received.

5. The net proceeds of any sale and the net moneys received for equality of exchange shall be dealt with in any one or more of the following ways—that is to say, they shall be laid out in the purchase of other freehold hereditaments in New Zealand, or expended in effecting permanent improvements to any other hereditaments held or to be held on the same trusts as affected the hereditaments sold or given in exchange, or they shall be invested in any securities for the time being permitted by the law of New Zealand for the investment of trust funds.

Trusts affecting hereditaments acquired.

6. All hereditaments purchased or received in exchange, and all such investments and the income arising therefrom, shall be held upon the trusts that affected the hereditaments sold or given in exchange.

7. Any Bishop shall have the power to borrow money on the security of mortgage of any hereditaments, but so that all moneys so borrowed shall be expended only in effecting permanent improvements to the hereditaments mortgaged or to other hereditaments held on the same trusts as those mortgaged, or in paying off any mortgage theretofore effected over any such hereditaments; and any such mortgage may confer upon the mortgagee a power authorizing him to sell the mortgaged hereditaments for default in the payment of principal and interest or in the observance or performance of any of the covenants contained or implied in any such mortgage.

Power to borrow on mortgage.

8. Any Bishop shall have power to lease any hereditaments for a period not exceeding ninety-nine years, but so, nevertheless, that every lease shall take effect in possession or within six calendar months from the date thereof, and shall reserve such rent and contain such covenants and provisions as such Bishop may deem reasonable, and so also that no fine, forfeit, or premium shall be payable in respect of any such lease.

Power to lease.

9. Any Bishop may accept the surrender of any lease on such terms and conditions as he shall think fit.

Power to accept surrender of leases.

10. Any Bishop may from time to time rescind or vary any contract of sale or any contract to effect an exchange or to grant a lease.

Power to rescind or vary contracts.

11. No purchaser of any hereditaments, no person giving to a Bishop any money by way of exchange, no person from whom a Bishop shall borrow any money, and no lessee paying any rent to a Bishop shall be bound or concerned to inquire into or to see to the application of any money paid by him to such Bishop or be responsible for the misapplication thereof, and no person effecting an exchange shall be concerned to see to the vesting of any land exchanged by him.

Protection of purchasers and others.

12. Any Bishop shall have power in respect of any hereditaments to lay off, form, construct, and dedicate roads, and to pay the costs and expenses in connection therewith, out of any money subject to the same trusts as those upon which the hereditaments so to be dedicated were held, or out of any other money applicable for the purpose.

Power to lay off and dedicate roads.

Power to dedicate reserves.

13. Any Bishop shall have power to set apart such reserves as may be required by any legislation or the regulations thereunder for the time being in force, or by lawful authority, to be set apart in the event of any hereditaments being subdivided for sale, lease, or other disposition.

Delegation of powers.

14. Any Bishop may from time to time empower by deed any person or persons to exercise during his absence from New Zealand all or any of the powers and authorities conferred upon him by this Act, and the exercise of such powers and authorities by such person or persons shall be as valid and effectual to all intents and purposes as if the same had been exercised by the Bishop himself.

Application of proceeds of property vested in Bishops.

15. Nothing contained in any Act conferring powers upon a Bishop relating to hereditaments acquired by purchase, gift, devise, or in any manner howsoever shall, in the case of hereditaments not acquired exclusively for parish purposes, require or be deemed to require that—

- (a) Such hereditaments or any of them; or
- (b) The proceeds of any sale of such hereditaments or of any part thereof; or
- (c) The proceeds of any moneys received from equality of exchange in respect of such hereditaments or of any part thereof; or
- (d) Any moneys borrowed on the security of any mortgage in respect of such hereditaments or of any part thereof; or
- (e) Any moneys received by way of rent in respect of such hereditaments or of any part thereof; or
- (f) Any freehold hereditaments or any part thereof received by way of exchange,—

shall be applied, utilized, or expended in favour of the ecclesiastical parish in which the hereditaments sold, exchanged, mortgaged, leased, or received by way of exchange shall be respectively situated.

Power to apply for registration of Bishops as proprietors of trust lands.

16. Where any legal or beneficial estate or interest in any land of any tenure or in any chattel interest in such land is vested in, held by, or registered in the personal name or names of the present or any future holder or holders of the office of an Archbishop or Bishop of a Roman Catholic archdiocese or diocese in New Zealand,

whether alone or jointly or in common with any other person or persons, or by or in the name or names of any person or persons now deceased, including a deceased Archbishop or Bishop, whether alone or jointly or in common with any other person or persons, and the Bishop in whose archdiocese or diocese the said land or chattel interest in land is situate is of the opinion that the said legal or beneficial estate or interest does not form part of the beneficial estate of such holder or holders of the said office or of such deceased person or persons, and that such estate or interest is vested in, held by, or registered in the name of such holder or holders of the said office or such deceased person or persons in trust for a religious, charitable, educational, or other purpose of the Roman Catholic Church in New Zealand or of any body, society, or organization associated with such church or forming part thereof, such Bishop may apply to the Registrar to register the Bishop as proprietor of such estate or interest, in lieu of such holder or holders of the said office or deceased person or persons, to be held by such Bishop pursuant to the Roman Catholic Lands Act 1876, the Roman Catholic Lands Extension Act 1890, and this Act.

17. Every application to the Registrar under section sixteen of this Act shall be in such form as shall be required by the Registrar and shall be accompanied by—

Form of application.

- (a) A statutory declaration by the Bishop that he has investigated the beneficial ownership of such estate or interest as is referred to in the application and that in his opinion and belief the said estate or interest is held by the registered proprietor thereof in trust for a religious, charitable, or educational or other purpose of the Roman Catholic Church in New Zealand or of some body, society, or organization associated therewith or forming part thereof:
- (b) An undertaking under the seal of the Bishop to indemnify the Crown, the Registrar-General of Land, and the Registrar in respect of all claims, suits, or demands which may be brought or made against or upon all or any of them by reason of the steps required by such application being taken:

- (c) Payment of such fees and expenses as may be fixed by the Registrar-General of Land from time to time as applying to such an application and to the documents and steps required in connection therewith.

Registrar to advertise.

18. On receipt of an application under section sixteen hereof accompanied by the documents and payment referred to in section seventeen hereof the Registrar shall as soon as practicable thereafter give notice thereof in such newspaper or newspapers and on such occasions as he thinks desirable for the purpose of bringing the application to the notice of all persons likely to be affected by the said application. Such notice shall be in a form approved by the Registrar.

Caveats against registration.

19. (1) Any person claiming the beneficial ownership of any estate or interest affected by any such applications may within two months after the date of the first publication of the notice lodge with the Registrar a caveat forbidding the registration of the Bishop as the registered proprietor of the estate or interest to which the said application applies.

(2) On receipt of any caveat within the time limited therefor the Registrar shall cause notice thereof to be served on the Bishop, and shall not proceed further with the application until the caveat is withdrawn or removed.

(3) Any caveat may be withdrawn by the caveator by written notice to the Registrar.

(4) Where a caveat has been lodged, the Bishop may withdraw the application by written notice to the Registrar or may apply to the Supreme Court on motion for an order that the caveat be removed.

(5) Upon the hearing of the motion and on proof of the service thereof, the Supreme Court may make such order in the premises, either *ex parte* or otherwise, as to the Court seems meet.

(6) Without limiting the generality of the last preceding subsection, the Court may order the caveat to be removed as to the whole or any part of the land affected by the application, and in any case the Bishop may amend the application in terms of the order.

(7) If for a space of three months after receipt of notice of the lodging of a caveat, or such extended time as the Supreme Court on summary application may direct, the Bishop does not apply to the Supreme Court

for an order that the caveat be removed as hereinbefore provided, the application shall be deemed to have lapsed and the Registrar shall proceed no further therewith.

20. When the time limited for lodging a caveat against any such application has expired and all caveats so lodged have been withdrawn or removed, and the Registrar is satisfied that the application, as originally submitted or later amended, has been duly made under this Act, the Registrar shall proceed to carry out the steps required by such application and to register the Bishop as the registered proprietor of the estate or interest affected thereby, and shall, if necessary, issue a new certificate of title in respect thereof. Registration.

21. Nothing in this Act shall be deemed to limit, modify, or abridge any provision of the Roman Catholic Bishops Empowering Act 1951, which Act shall be deemed to apply in all respects to this Act in the same manner as if this Act had been in force prior to the coming into force of the Roman Catholic Bishops Empowering Act 1951, so that a Coadjutor Archbishop or Bishop and any other person or persons included in the expression "Coadjutor Bishop" by section two of such last-mentioned Act shall be deemed to have all the powers, authorities, and discretions given to a Bishop by this Act. Roman Catholic Bishops Empowering Act 1951.

22. The Roman Catholic Bishop of Auckland Empowering Act 1924, the Roman Catholic Bishop of Auckland Empowering Act 1929, and the Roman Catholic Bishop of Dunedin Empowering Act 1940 are hereby repealed. Repeals.

23. This Act is hereby declared to be a private Act. Private Act.