



ANALYSIS

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1972, No. 3—*Private*

An Act to incorporate The Board of Control of the Orton Bradley Park

[13 October 1972]

WHEREAS Reginald Orton Bradley late of Charteris Bay, farmer, died on the 24th day of January 1943 having first made his Last Will together with one Codicil thereto dated, respectively, the 18th day of March 1939 and the 20th day of September 1941, and the said Will and Codicil were duly proved in the Supreme Court of New Zealand at Christchurch on the 11th day of February 1943 by Lionel Denis Cotterill the executor in the said Will and Codicil named: And whereas, after compliance with certain provisions of the said Will which have been complied with and without prejudice to an annuity which has ceased to be payable and after the death of the last survivor of two sisters and two nephews all of whom have died with the exception of one nephew who now has a life interest in the estate of the said testator, the said Will provides that so much of the residuary estate of the

testator remaining at the death of the last survivor of such sisters and nephews should be held upon trust for the purposes of a National Park for the just benefit and enjoyment of the people of New Zealand to be known as and called the Bradley National Park of Canterbury subject to the provisions thereafter appearing, it being the desire and intention of the testator that the whole of his farm at Charteris Bay comprising 1,612 acres 2 roods 29 perches, being the land comprised and described in certificates of title Volume 9B folio 871 and Volume 446 folio 112, Canterbury Land Registry, should be used as and form a park and that the remainder of his residuary estate should be utilised for improving and maintaining such park as thereafter provided, the said park to be managed by or under the control of a Board of Control consisting of the following persons:

- (a) The Chairman for the time being of the Mount Herbert County Council who should be the permanent Chairman of the Board:
- (b) The President for the time being of the Canterbury Horticultural Society:
- (c) The President for the time being of the Automobile Association of Canterbury:
- (d) The Mayor for the time being of the Borough of Lyttelton:
- (e) The Mayor for the time being of the Borough of Sumner:
- (f) The Mayor for the time being of the Borough of New Brighton:
- (g) The Chairman for the time being of the Akaroa County Council:
- (h) The Curator for the time being of the Botanical Gardens of the City of Christchurch:

And whereas the said Board is to follow the procedure indicated in the said Will which contains an expression of desire that the Board should continue the planting of shrubs and trees or ornamental trees and shrubs for so many years and in such manner as the Board should consider desirable for the improvement of the Park: And whereas the said Will provides that it is the desire of the testator without imposing any legal obligation on the part of the Board or the Trustees so to do that the Board and the Trustees should after the death of the said sisters and nephews apply for leave to introduce a Bill to take all necessary steps to obtain the passing of an Act having for its objects the constitution of the Board as a corporate body, and the vesting of the

Park, funds, and chattels in the Board, and the Will provides that the Trustees shall not sell the said farm property or any part thereof and the Will empowers the Trustees to carry on any farming business for such time as the Trustees think fit: And whereas having regard to the expressed wish of the testator to incorporate a Board of Control as a body corporate with perpetual succession and a common seal but after consideration of the fact that the offices of Mayor of the Borough of Sumner, Mayor of the Borough of New Brighton, and the Curator of the Botanical Gardens of the City of Christchurch have ceased to exist and for better carrying into effect the intentions of the testator it has been deemed advisable that alterations should be made in the constitution of the Board: And whereas the name used in the said Will has been found not to be permissible and the name the Orton Bradley Park has been substituted therefor: And whereas since the death of the said testator the said farm property has been enlarged by the purchase of an area of 21.7 perches comprised and described in certificate of title Volume 455 folio 209, Canterbury Land Registry, and 2 acres 32.5 perches comprised and described in certificate of title Volume 514 folio 247, Canterbury Land Registry: And whereas, although it may be possible for the objects of the Bill to be attained otherwise than by legislation, there is some doubt as to whether the Supreme Court would exercise its powers under the Charitable Trusts Act 1957 to implement all the provisions of this Bill and, even if it did, whether it would be prepared to exercise those powers before the death of the last surviving life tenant: And whereas it is desirable that the appointment of members of the Board be made without delay after the death of the last surviving life tenant: And whereas the last surviving life tenant has consented to the provisions of the Bill:

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 R. O. Bradley Estate Act 1972.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Board” means the Orton Bradley Park Board constituted under this Act:

“Park” means The Orton Bradley Park held by the Board under section 19 of this Act:

“Trustees” means the Trustees for the time being of the Will:

“Will” means the Will and Codicil of the abovenamed Reginald Orton Bradley dated, respectively, the 18th day of March 1939 and the 20th day of September 1941.

3. Constitution of Board—(1) There is hereby constituted, for the purposes of this Act, a Board to be called the Orton Bradley Park Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property, and of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may do and suffer.

4. Membership of Board—The members of the Board shall be permanent residents in the Province of Canterbury appointed as follows:

- (a) A person appointed by the Governor-General on the advice of the Minister of Lands the appointee to be the Chairman of the Board:
- (b) A person appointed by the Christchurch City Council:
- (c) A person appointed by the Lyttelton Borough Council or such other local body or bodies for the time being administering the area at present administered by the Lyttelton Borough Council:
- (d) A person appointed by the Mount Herbert County Council or such other local body or bodies for the time being administering the area at present administered by the Mount Herbert County Council:
- (e) A person appointed by the Akaroa County Council or such other local body or bodies for the time being administering the area at present administered by the Akaroa County Council:
- (f) A person appointed by The Canterbury Horticultural Society Incorporated:
- (g) A person appointed by the Canterbury Automobile Association (Incorporated):
- (h) A person appointed by the Canterbury Branch of the Royal Forest and Bird Protection Society of New Zealand (Incorporated):

- (i) A person appointed by the Canterbury Arboretum Association Incorporated:
- (j) A person appointed by the Committee of the Canterbury (Central) Farm Forestry Association or other such association or corporate body for the time being carrying on the functions at present performed by the said Committee of the Canterbury (Central) Farm Forestry Association:
- (k) Until 1 year after the death of the last surviving life tenant of the said estate, a person appointed by the Trustee or Trustees for the time being of the estate, who may be such a trustee.

5. Committees—(1) The Board may from time to time appoint, discharge, alter, continue, or reconstitute such committees as it thinks fit to advise it on such matters concerning its functions as are referred to them by the Board.

(2) Every person appointed to be a member of such a committee shall be a permanent resident in the Province of Canterbury.

(3) Any person may be appointed to be a member of such a committee notwithstanding that he is not a member of the Board.

6. Chairmen of committees—(1) Each committee shall elect its own chairman annually.

(2) Each committee shall carry out such duties as shall be laid down by the Board and in other respects as the committees shall themselves determine.

7. Term of office of members of the Board—(1) Subject to subsection (3) of this section, every member of the Board appointed pursuant to paragraphs (b), (c), (d), and (e) of section 4 of this Act shall hold office until a new appointment is made.

(2) Every other member of the Board shall hold office for 3 years and shall, unless his seat sooner becomes vacant, continue in office until a successor is appointed.

(3) The office of any member of the Board shall become vacant if the member—

(a) Becomes bankrupt; or

(b) Is convicted of any offence punishable by imprisonment for a term of 1 year or more; or

(c) Becomes mentally disordered within the meaning of the Mental Health Act 1969; or

- (d) Becomes a protected person within the meaning of the Aged and Infirm Persons Protection Act 1912; or
- (e) Resigns his office by notice in writing to the Board; or
- (f) Is absent without leave from four consecutive meetings of the Board; or
- (g) Dies; or
- (h) Ceases to be a permanent resident in the Province of Canterbury.

(4) The powers of the Board shall not be affected by any vacancy in its membership, and the validity of any act of the Board shall not be affected or called into question by reason of any defect or informality in the appointment of any member of the Board.

8. Appointment of members of Board—(1) Within 6 months after the death of the said surviving life tenant of the estate all persons and bodies having the right to appoint a member of the Board shall do so and each notification of every such appointment shall be forwarded to the Trustees of the estate.

(2) Within 1 month after receipt of the last of such appointments a first meeting of the Board shall be called by the Trustees of the estate and a notice posted to each of the said members of the Board at his last known or usual place of abode or business.

9. Meetings of Board—(1) Meetings of the Board shall be held at such times and places as the Board or the Chairman from time to time determines.

(2) All questions before the Board shall be decided by a majority of the votes recorded thereon.

10. Procedure at meetings of Board and committees—(1) The Chairman of the Board and of each committee shall preside at every meeting of the Board or committee at which he is present, but in his absence from any meeting the members present shall appoint one of their number to preside at the meeting.

(2) At any meeting of the Board or of a committee the person presiding shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

(3) At every meeting of the Board five members shall form a quorum and no business shall be transacted at any meeting unless a quorum is present.

(4) Subject to the provisions of this Act, the Board may regulate its procedure in such manner as it thinks fit.

11. Contracts by Board—(1) Any contract which, if made between private persons, must be by deed shall, if made by the Board, be in writing under the seal of the Board.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith shall, if made by the Board, be either in writing under the seal of the Board or in writing signed by any 2 members of the Board on behalf of and by direction of the Board.

(3) Any contract which, if made between private persons, may be made orally may be similarly made by or on behalf of the Board by any member acting by direction of the Board, but no oral contract shall be made involving the payment by the Board of a sum exceeding \$20.

(4) Notwithstanding anything in subsections (1) to (3) of this section, no contract made by or on behalf of the Board shall be invalid by reason only that it is not made in the manner prescribed by this section if it is made pursuant to a resolution of the Board or to give effect to a resolution of the Board.

12. Powers of Board—Subject to the provisions of this Act—

(a) The Board shall have all the powers, authorities, and discretions conferred upon the Trustees by the Will, and the power to accept donations and gifts for the purposes of the Park.

(b) Except as otherwise provided, in this Act, all the provisions of the Will shall, unless the context otherwise requires, enure and take effect as fully in all respects as if they were expressly set out herein and as if references therein to the Board of Control and to the Trustees were references to this Act and to the Board, respectively.

13. Purposes declared charitable—It is hereby declared that the purposes of the Park and of the Board are charitable purposes.

14. Refund of expenditure by Board members—The members of the Board shall be entitled to receive from the funds of the Board a refund of all moneys reasonably expended by them in respect of their attendance at meetings of the Board or otherwise in transacting the business of the Board.

15. Books of account—The Board shall cause proper books of account to be kept in respect of all matters relating to the trust estate.

16. Annual financial report—(1) At the end of each financial year ending with the 31st day of March the Board shall cause to be prepared a report of the operations of the Board for the year.

(2) The report shall contain a statement of the total assets and liabilities as at the end of the year, together with an account of receipts and payments and of income and expenditure showing the financial transactions for the year.

(3) No person shall be qualified for appointment as auditor of the Board unless he would be qualified for appointment as auditor of a company under the Companies Act 1955.

17. Exemption of Board members from personal liability—No member of the Board shall be personally liable for any act done or omitted by the Board or by any member thereof in good faith in the course of the operations of the Board.

18. Power and duties of the trustees—(1) Until the death of the last surviving life tenant of the estate and the appointment of members of the Board and the payment conveyance and delivery to the Board of all real and personal property forming the said estate, all real and personal property of the estate not so paid conveyed and delivered to the Board shall remain vested in the Trustees who shall continue to exercise all the powers and discretions vested in them by the Will in respect thereof.

(2) Within one year after the death of the last surviving life tenant the Trustees shall pay, convey, and deliver to the Board all real and personal property forming the said estate, subject to all liabilities owing by the Trustees including all moneys for the time being owing under Mortgage No. 725218 or any other mortgage charged upon the said land, and subject also to all easements affecting the same; and at the same time the Board shall give to the Trustees a release and discharge from all further liability and the Trustees shall thereupon be discharged from the office of Trustee:

Provided that, if any accounts of the Trustees shall not be approved by the Board, the Trustees shall have the right, within 3 months after the delivery of those accounts to make

application to the Supreme Court for a discharge from the trusteeship either unconditionally or subject to such conditions as the Supreme Court may order:

Provided also that nothing in this Act shall be held to create any liability to fall on the Trustees on account of anything made, done, or omitted, by the Trustees for which the Trustees would not have been liable had this Act not been enacted:

Provided further that nothing herein contained shall be deemed to in any way prejudice any right to apply to the Supreme Court for relief from any liability which would have been open to the Trustees in respect of anything made, done, or omitted by the Trustees had this Act not been enacted.

(3) All contracts made by the Trustees before and after the passing of this Act in the exercise of their powers under the Will and under this Act shall, on the assumption of office by the Board, be deemed to have been made by the Board.

(4) All debts and liabilities incurred by the Trustees before and after the passing of this Act in the exercise of their powers under the Will and under this Act shall, on the assumption of office by the Board, become the debts and liabilities of the Board.

19. Park to be held by Board—When the land included in the estate is transferred to the Board under section 18 of this Act it shall be held by the Board in perpetuity as a park to be known as the Orton Bradley Park.

20. Wishes of the testator—The Trustees, the Board, and the committees, in the carrying out of all powers, duties and discretions vested in them by the said Will and this Act shall at all times take into consideration the wishes of the testator as evidenced by the terms of the Will which refer to the constitution and administration of the Park and also the provision of reasonable amenities for members of the general public such as the provision of facilities for a golf club and the playing of lawn tennis, both of which were provided for by the testator during his life time and are still in existence:

Provided that nothing in this section shall confer any legal liability on the Trustees or the Board or the committees or any fetter on the exercise of the powers and discretions vested in them according to what they may in their absolute

discretion determine to be in the best interests of the estate of the testator, having regard to the provisions of the Will and of this Act.

21. Inclusion of certain land not owned by the testator—
In this Act, references to the estate of the testator shall be deemed to include the two parcels of land comprised and described in certificates of title Volume 455, folio 209, and Volume 514, folio 247, Canterbury Land Registry in the same manner in all respects as if the said land had been owned by the testator at the time of his death.

22. Private Act—This Act is hereby declared to be a private Act.
