

No. , 1949.

A BILL

To make certain provisions relating to property held upon trust for or for the use, benefit or purposes of the Reorganised Church of Jesus Christ of Latter Day Saints in New South Wales; and for purposes connected therewith.

[MR. C. E. MARTIN;—17 *March*, 1949.]

WHEREAS lands held on trust for or for the use, Preamble.
benefit or purposes of the Reorganised Church
of Jesus Christ of Latter Day Saints in New South
Wales are now vested in many different bodies of
93029 352—A trustees,

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trustees, and owing to deaths and other causes, the necessity for the appointment of new trustees frequently arises: And whereas it is deemed expedient by the proper authorities of the said church that a body corporate should be created for the purpose of holding, managing and dealing with lands so held, that provision should be made for the vesting in such body corporate of lands so held, and that conveyancing transactions in respect of lands so held should be facilitated and rendered less expensive: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

15 **1.** (1) This Act may be cited as the "Reorganised Church of Jesus Christ of Latter Day Saints Trust Property Act, 1949." Short title and commencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

20 **2.** In this Act, unless the context or subject matter otherwise indicates or requires— Definitions.

25 "Bishop" means the person for the time being administering the finances of the Australasian Mission of the church whether as Bishop or Bishop's Agent and appointed as Bishop or Bishop's Agent by the Presiding Bishop.

"Body corporate" means the body corporate created by this Act.

30 "Church" means the religious organisation with headquarters situated at Independence, Missouri, in the United States of America, known as the Reorganised Church of Jesus Christ of Latter Day Saints, which adheres to the doctrines and tenets of the original Church of Jesus Christ of Latter Day Saints as organised on the sixth day of April, one thousand eight hundred and thirty, and later reorganised.

"Church

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5 "Church trust property" means land situated in New South Wales and for the time being subject to any trust created before or after the commencement of this Act for the church or for the use, benefit or any purpose of the church.

10 "First President" means the person who is appointed and elected or sustained by the General Conference to the office of President of the church in accordance with the rules and regulations of the church.

"General Conference" means the General Conference of the church which is the representative and legislative body of the church for all branches of the church wherever situated.

15 "Land" includes tenements and hereditaments, corporeal and incorporeal, and every estate and interest therein whether vested or contingent, freehold or leasehold, and whether at law or in equity.

20 "Mission Conference" means the Mission Delegate Assembly for the time being of the church in Australasia.

25 "Mission President" means the person appointed to administer the Australasian Mission by the First Presidency of the church in the United States of America.

30 "Presiding Bishop" means the person who is appointed and elected or sustained by the General Conference to the office of Presiding Bishop of the church in accordance with the rules and regulations of the church.

35 3. There shall be for the State of New South Wales five trustees of church trust property, of whom one shall be the Bishop and the remaining four shall be nominated by the Mission President and approved by the First President and Presiding Bishop.

Trustees
for the
State.

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4. (1) The trustees of church trust property referred to in section three of this Act shall by virtue of this Act be a body corporate, having perpetual succession and a common seal and being capable of acquiring, holding and disposing of any property real or personal, and of suing and being sued in its corporate name and of doing and suffering all such acts and things as bodies corporate may by law do or suffer.

Trustees to be body corporate. cf. Act No. 23, 1942, s. 4; Act No. 15, 1938, s. 6; Act No. 2, 1947, ss. 5, 12.

(2) The corporate name of the said trustees shall be "The Reorganised Church of Jesus Christ of Latter Day Saints (New South Wales) Property Trust."

5. The members for the time being of the body corporate shall have the custody of its common seal, and the form of such seal and all other matters relating thereto shall, subject as in this section mentioned, be from time to time determined at a meeting of the body corporate.

Common seal and quorum. cf. Act No. 21, 1917, ss. 7 and 8; Act No. 15, 1938, s. 7; Act No. 23, 1942, s. 5; Act No. 2, 1947, s. 6.

At any meeting of the body corporate, three members, one of whom shall be the Bishop or a member appointed by the Bishop to act in his place at that meeting, shall constitute a quorum.

Every meeting of the body corporate at which a quorum is present shall be competent to transact any business of the body corporate.

25 The common seal of the body corporate shall not be affixed to any instrument except in pursuance of a resolution passed at a meeting of the body corporate.

Every instrument to which the common seal is so affixed shall be signed by the Bishop and two other members of the body corporate.

6. (1) Except as in this section mentioned, no capacity or power of the body corporate shall be affected by the existence of vacancies in its membership.

Vacancies and membership. cf. Act No. 24, 1936, s. 7; Act No. 15, 1938, s. 7; Act No. 23, 1942, s. 6; Act No. 2, 1947, s. 6.

(2) Where for any reason a quorum of the body corporate cannot be constituted, all powers exercisable by the body corporate and its capacity for doing any act or thing shall be suspended, but shall by virtue of this Act revive as soon as a quorum of the body corporate is capable of being constituted.

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7. At any meeting of the body corporate, the Bishop or the member appointed by the Bishop to act in his place at that meeting shall preside. Meetings of body corporate.

At any meeting of the body corporate, the decision of the majority of the members present shall be the decision of the body corporate.

If at any meeting of the body corporate the members present are equally divided in opinion upon any matter the matter may be decided upon the casting vote of the Bishop or the member presiding at the meeting as the case may be.

8. (1) All church trust property which at the date of the commencement of this Act is situated within the State of New South Wales shall by virtue of this Act— Vesting of church trust property.

15 (a) vest in the body corporate;

(b) be thereupon divested from the person in whom it was vested before the commencement of this Act. cf. Act No. 24, 1936, s. 8; Act No. 23, 1942, s. 8.

(2) No vesting by virtue of this Act shall affect any encumbrance, lien, estate or interest to which at the time of the vesting the property so vested was subject in the hands of the person from whom it was divested.

The body corporate shall become, jointly with the person liable at the time of the vesting, and severally, liable under every contract, engagement and cause of action in relation to the property vested, under which the person from whom the property was divested was liable at the time of the vesting.

The body corporate shall be liable to indemnify the person from whom the property was divested, his executors and administrators against every claim, action, suit and other proceeding which shall be made or taken in respect of any such contract, engagement or cause of action.

The person from whom the property was divested shall have a charge or lien on the property divested to the extent to which and in the circumstances in which the charge or lien would have attached if the property had not

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not been divested; but the charge or lien or possibility thereof shall, in favour of a person dealing for value with the body corporate, be deemed to have been extinguished unless the person entitled thereto has after the
5 commencement of this Act and before such dealing given written notice to the body corporate of its existence or of the possibility of its arising.

A statement under the common seal of the body corporate that no such notice has been received before such
10 dealing shall be conclusive evidence of the fact so stated in favour of any person dealing for value with the body corporate in respect of the divested property.

9. The body corporate shall have power, from time to time—

- 15 (a) to purchase, take on lease, or acquire by gift, devise, bequest, exchange or otherwise any real or personal property; and
- (b) in relation to any church trust property at any time vested in it—
- 20 (i) to sell it and to exchange it for other land and to transfer or convey church trust property so sold or exchanged to the purchaser or person taking in exchange, freed and discharged from all trusts affecting the same in the hands
25 of the body corporate; and
- (ii) to demise or let it for such term at such rent and with or without taking a premium, fine or foregift and subject to such provisions as to the body corporate shall appear desirable; and
30
- (iii) to accept surrender of leases, upon such terms and subject to such conditions as to the body corporate shall appear desirable; and
35
- (iv) to raise money on the security of it on such terms and conditions as to the body corporate shall appear desirable; and
(v)

Powers of the body corporate.
cf. Act No. 24,
1936, s. 9;
Act No. 23,
1942, s. 10;
Act No. 2,
1947, s. 19.

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5 (v) to declare trusts of it or of any estate
or interest in it created by the body
corporate for any association of mem-
bers of the church or for the use or
benefit of or for any purpose of any
such association and either to retain
the property in relation to which trusts
are so declared, or to vest it, or any
estate or interest so created, in other
10 trustees upon the trusts so declared;
and

(c) for any purpose mentioned in this section to
execute all such instruments as to the body
corporate shall appear proper.

15 **10.** (1) Every instrument bearing what purports to
be the common seal of the body corporate and purporting
to be signed by the Bishop and two other members of
the body corporate shall, in favour of every person
claiming, for value and in good faith, under or through
20 that instrument, be conclusively presumed to have been
duly executed by the body corporate.

Execution of
instruments.
cf. Act No. 24,
1936, s. 10 ;
Act No. 23,
1942, s. 7.

(2) Section 51A of the Conveyancing Acts, 1919-
1943, shall not apply to or in respect of any instrument
executed by the body corporate.

25 **11.** (1) No purchaser, mortgagee, lessee or other
person dealing with the body corporate and neither the
Registrar-General nor the Crown Solicitor nor any other
person registering or certifying title shall, upon any sale,
exchange, mortgage, lease or other dealing purporting
30 to be made under a power conferred by this Act, be
concerned to see or enquire into the necessity for or
propriety thereof, or the mode of exercising the same,
or be affected by notice that the exercise of the power
is unauthorised, irregular or improper, and a receipt for
35 any money payable to the body corporate, signed by any
three members of the body corporate, shall be a sufficient
discharge in favour of, and shall exonerate the person
paying such money from all responsibility for the
application of such money.

Protection of
purchasers, etc.
cf. Act No. 21,
1917, ss. 29
and 30 ; Act
No. 24, 1936,
s. 11 ; Act No.
23, 1942, ss.
12 and 13 ;
Great Syna-
gogue, Sydney,
Act (Private),
1931, ss. 7 and
8 ; Act No. 2,
1947, s. 20.

(2)

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(2) Where—

- 5 (a) an instrument purports to exercise a power conferred by this Act, and to pass or create an estate or interest in land described in the instrument as being church trust property; and
- (b) the land which the instrument purports to pass or affect is not, in fact, under the provisions of the Real Property Act, 1900; and
- 10 (c) the instrument is executed in accordance with the requirements of this Act by the body corporate; and
- (d) the instrument is registered under the provisions of the Registration of Deeds Act, 1897;

such instrument shall—

- 15 (i) in favour of every person claiming any estate or interest under or through the instrument, be conclusive evidence against the body corporate claiming any estate or interest against that person, that the land described in the instrument as being church trust property was church trust property at the time of the execution of the instrument, and that the body corporate had
- 20 at the time of the execution thereof an estate or interest in the land so described sufficient to make the instrument effective to pass or create the estate or interest which the instrument purported to pass or create; and
- 25 (ii) in favour of every person claiming any estate or interest under or through the instrument and having taken for value, without notice that the land in which the instrument purports to create an estate or interest was not church trust property or that the body corporate had not an
- 30 estate

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estate or interest sufficient to make the instrument effective to pass or create the estate or interest which the instrument purported to pass or create, and in favour of every person claiming under or through any person having so taken, as against every person claiming under or through an instrument executed before the commencement of this Act or under or through an instrument executed by the body corporate, and not in either such case registered under the Registration of Deeds Act, 1897, before the registration under that Act of the instrument by this subsection made evidence, be conclusive evidence that the land described in the instrument so made evidence as being church trust property was at the time of the execution of that instrument church trust property and that at such time the body corporate had an estate or interest in the land so described sufficient to make that instrument effective to pass or create the estate or interest which that instrument purported to pass or create.

(3) Any person, not being the body corporate, deprived of any estate or interest in land by any such instrument as is mentioned in subsection two of this section may bring and prosecute an action for damages against the body corporate and any judgment recovered by the plaintiff in any such action shall be enforceable by execution against any real or personal property for the time being vested in the defendant body corporate, whether church trust property or not, and any real or personal property taken by a purchaser on a sale in any such execution shall be free of all trusts affecting the same while vested in the execution debtor, except a trust created by the Crown, and the proceeds of every such sale shall in the hands of the Sheriff and of the execution creditor be free of all trusts to which it would be subject in the hands of the execution debtor.

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12. A certificate under the common seal of the body corporate that the land described in the certificate is situated within the State and is church trust property shall—

Evidence.
cf. Act No.
23, 1942,
s. 14; Act
No. 24,
1936, s. 12.

5 (a) for the purpose of any application by the body corporate to be registered as the proprietor, pursuant to a vesting by this Act, of any land under the provisions of the Real Property Act, 1900, of which the body corporate is not the registered proprietor, be conclusive evidence,
10 and

(b) in any action, suit or other proceeding, whether civil or criminal, be prima facie evidence,

of the facts so certified.

15 **13.** All church trust property for the time being vested in the body corporate shall be held by it on the trusts, if any, expressly declared in respect thereof, and if no such trusts have been expressly declared, on trust for the church: Provided, however, that the powers
20 conferred by section nine of this Act shall be exercisable in relation to all church trust property notwithstanding any trust or provision affecting it in the hands of the body corporate.

Trusts
preserved.
cf. Act No.
24, 1936,
s. 13; Act
No. 23,
1942, s. 15.