



ANALYSIS

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1962, No. 3—*Private*

An Act to amend the Church Property Trust (Canterbury) Act 1879 to confer upon the Church Property Trustees certain powers to provide for other incidental matters and to facilitate the management and administration of certain real and personal property vested in the Church Property Trustees
[7 December 1962]

WHEREAS the Church Property Trustees is a body corporate constituted under and by virtue of certain Ordinances of the Superintendent and Provincial Council of the late Province of Canterbury intituled respectively the Church Property Trust Ordinance Session II No. 3 and the Church Property Trust Amendment Ordinance 1867: And whereas the said body corporate holds certain real and personal property upon trust for ecclesiastical and educational purposes in the Diocese of Christchurch in the Church of the Province of New Zealand commonly called the Church of England which property and which trust for convenience of record is referred to in the accounts and the books of the Church Property Trustees and hereinafter in this Act as the General Trust Estate: And whereas by the Church Property Trust (Canterbury) Act

1879 provision was made *inter alia* for the better defining of the trusts and purposes upon which the said property should be held, for the giving of certain powers to the said trustees, and for the regulation and management of all property then or thereafter vested in the said Church Property Trustees: And whereas the Church Property Trustees have subsequently by assignment, conveyance, or transfer or in other ways become the trustees of numerous other funds for ecclesiastical, educational, and other charitable purposes in the said diocese: And whereas by the Church Property Trust (Canterbury) Amendment Act 1934 the powers of the Church Property Trustees were extended so as to enable the said trustees to amalgamate investments of trust funds then or thereafter held by or vested in them in one investment fund to be called in the books of the said trustees "Amalgamated Mortgages and Securities Investment Fund" and that such amalgamation should extend to and include the amalgamation of the investments (in the said Act specified) but subject as therein set forth of all the trust funds which under the Ordinances and Acts affecting or regulating Church property in Canterbury are under the control of the Synod of the diocese and of all other trust funds then or thereafter held by the Church Property Trustees with the sanction of the said Synod or of the Standing Committee thereof, and also the like investments of all diocesan, local, parochial, and other trust funds then or thereafter held by the said trustees for the benefit of the diocese or any part thereof, or of any church or church institution therein or any diocesan or local church purpose: And whereas it is desirable that the Church Property Trustees should be empowered to advance by way of loan from the said Amalgamated Mortgages and Securities Investment Fund to itself as trustee of the General Trust Estate and to pledge or charge assets held by it as trustee of the General Trust Estate to secure the repayment of any such advances: And whereas the Church Property Trustees is the registered proprietor of several parcels of land held by it upon trust for ecclesiastical and other purposes in the said diocese and for the better administration of the said trust have on occasion regarded it as desirable rather than sell the said lands to demise same upon lease: And whereas it is desirable in order to facilitate such leasing as aforesaid and to assist lessees in erecting dwellinghouses or other buildings upon the lands so leased or effecting improvements thereon to make advances by way of loan to the lessees thereof: And whereas the

Church Property Trustees is frequently the recipient of gifts testamentary or otherwise for educational, ecclesiastical, or other charitable purposes in the diocese, such gifts comprising both real and personal property and, in particular shares, stocks, bonds, and debentures of companies incorporated in New Zealand, Australia, and in the United Kingdom and it is desirable that the said trustee should when it considers it expedient be empowered to accept, receive, and hold such property in specie for the purposes for which the same have been accepted, received, or given: And whereas the Church Property Trustees consider it desirable that it should be empowered to acquire by way of purchase as an investment of its funds other than funds forming part of the above-mentioned Amalgamated Mortgages and Securities Investment Fund shares, stocks, bonds, convertible notes, debentures, or other securities of any company incorporated in New Zealand, in the United Kingdom, or in the Commonwealth of Australia or of any State thereof or of any building society established under the Building Societies Act 1908: And whereas the Church Property Trustees is by virtue of section 18 of the Church Property Trust (Canterbury) Act 1879 the trustee of certain assets which in the said section 18 are said to be commonly known as the Dean and Chapter Estate which the said Church Property Trustees is directed to hold upon the trusts, intents, and purposes thereafter in the said Act declared concerning the same: And whereas by sections 19 and 20 of the said Act certain purposes to which the income of the said assets are to be applied are set out in order of priority: And whereas by section 21 of the said Act certain other purposes to which the income of the said assets may be applied are set out but such purposes are subject to the priorities prescribed in the said sections 19 and 20 of the said Act: And whereas it is desirable in the interests of forwarding the purposes set out in the said section 21 that the said trustee be permitted as hereinafter set out to employ not only the income but also the capital of the Dean and Chapter Estate, it being impracticable in regard to certain of those purposes to carry out the same from income only: And whereas the Standing Committee of the Synod of the Diocese of Christchurch has by resolution decided that in the best interests of the said diocese the powers hereinbefore mentioned should be conferred upon the Church Property Trustees and has approved of the introduction of a Bill to this end: And whereas it is expedient that all costs, charges, and expenses of and incidental

to the preparation for obtaining and passing of this Act should be paid out of the income of the General Trust Estate:

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 Church Property Trust (Canterbury) Amendment Act 1962 and shall be read together with and be deemed to form part of the Church Property Trust (Canterbury) Act 1879 (hereinafter referred to as the principal Act).

2. Power for trustees to mortgage to themselves—(a) Notwithstanding anything in the Land Transfer Act 1952 or the Property Law Act 1952 or the Deeds Registration Act 1908, or any rule of law or other statutory provision to the contrary, it shall be lawful for the Church Property Trustees where as trustee of the fund known in the records of the said trustee as the General Trust Estate it is registered as the proprietor of any estate or interest in land by virtue of such trusteeship, to mortgage to itself in the capacity of trustee of the Amalgamated Mortgages and Securities Investment Fund established by the said trustee in pursuance of and in accordance with the provisions of the Church Property Trust (Canterbury) Amendment Act 1934, and to enter into covenants and agreements in respect of any such transactions with itself in the one capacity, so as to bind itself in the other capacity as fully and effectually in all respects as if it were a separate person in each capacity, and every such covenant and agreement shall be binding upon or (as the case may be) operative in favour of any assignee of the Church Property Trustees taking from it in any such capacity.

(b) Upon any such mortgage being presented for registration under the Land Transfer Act 1952, the District Land Registrar shall, if the same is otherwise in order for registration, register the same under the provisions of the said Act.

(c) Upon any such mortgage being registered under the Land Transfer Act 1952 or the Deeds Registration Act 1908, no person thereafter having dealings in respect of the estate or interest affected or in respect of the mortgage, shall be affected by any notice of trust contained in or evidenced by the mortgage, nor shall any person be concerned to see or inquire whether the Church Property Trustees possessed lawful authority to enter into the transaction.

3. Power to lend on leasehold property—The Church Property Trustees is empowered to make advances by way of loan secured by mortgage upon the leases of property leased by the said trustee; provided that no such advance shall be made except upon a lease which provides either in its original term or by way of optional or compulsory renewals of such term for a tenure of not less than twenty-one years; and provided further that no such advance shall be made except upon a report as to the value of the property made by a person reasonably believed to be competent to value the property being a person instructed and employed independently of the applicant lessee and under the advice of the valuer so employed expressed in his report, and no such advance shall exceed the amount recommended in his report. No such advance shall be made except where the following further conditions are satisfied:

- (a) That the amount of such advance shall be secured by a registered first mortgage of the lease upon which the advance is made.
- (b) That the money so lent by way of advance shall be used in erecting buildings or other permanent improvements on the land so leased.
- (c) That the amount to be lent on security of such lease shall not exceed two-thirds of the value of the lessee's interest in the said land, and in such buildings and improvements as aforesaid as determined by the valuer employed to make the valuation hereinbefore referred to.
- (d) That the amount so lent shall be wholly repayable within seven years, or by the date on which the current lease expires, whichever period is the shorter.

4. Power to acquire shares, etc., by way of gift—The Church Property Trustees is empowered notwithstanding the provisions of the principal Act or of any other enactment to accept by way of gift, testamentary or otherwise, for ecclesiastical, educational, or other charitable purposes and to hold for the purposes of such gift and the trusts, if any, affecting the same such shares, stocks, bonds, convertible notes, debentures, or other securities of any company incorporated in New Zealand or in the United Kingdom or in the Commonwealth of Australia or any State thereof or of any building society established in New Zealand under the Building Societies Act 1908 as it shall determine are a desirable investment.

5. Power to acquire shares, etc., by way of purchase—The Church Property Trustees is empowered notwithstanding the provisions of the principal Act or of any other enactment to acquire by way of purchase such shares, stocks, bonds, convertible notes, debentures, or other securities as are hereinbefore set out in section 4 hereof as it deems necessary or expedient in whole or in part for the purpose of obtaining the use or occupancy of any land or buildings but the authority conferred by this section shall not enable the investment of any funds forming part of the Amalgamated Mortgages and Securities Investment Fund established by the Church Property Trustees in pursuance of and in accordance with the Church Property Trust (Canterbury) Amendment Act 1934, which funds shall remain subject to the provisions of the last-mentioned amendment Act in pursuance of which it was created nor shall the authority hereby given enable the inclusion in the said Amalgamated Mortgages and Securities Investment Fund of any investments other than those permitted by the said Church Property Trust (Canterbury) Amendment Act 1934.

6. Power to apply capital to purposes of trust—Section 21 of the principal Act is hereby amended by inserting after the word “thereof” where such word first appears in the said section the following words: “or such part of the said estate as they in their discretion shall think fit over and above such amount as is sufficient to provide out of the income thereof for the payments prescribed by sections 19 and 20 hereof”.

7. Power to purchase realty or personalty and to advance moneys—The principal Act is further amended by adding thereto after section 21 a further section to be known as section 21A providing as follows:

“21A. The said trustees may in furtherance of any of the purposes set out in section 21 expend moneys forming part of the said estate in the purchase of real or personal property or advance moneys by way of mortgage upon real or leasehold property or upon such other security as they shall determine to any person or persons or body corporate who or which in the opinion of the said trustees is or are carrying out in part or in whole any one or more of the purposes set out in section 21 hereof such sum or sums as the said trustees shall determine.”

8. Costs and charges of Act, how to be paid—All costs, charges, disbursements, and expenses of and incidental to the preparing, obtaining, and passing of this Act or otherwise in relation thereto shall be paid by the Church Property Trustees out of the income of the General Trust Estate hereinbefore referred to.

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