

McLEAN INSTITUTE BILL.

EXPLANATORY MEMORANDUM.

THE operative part of the Bill is contained in clause 3. Subclause (1) of clause 3 removes the disqualification from admission to the Institute of those who have been in receipt of a pension or charitable aid during three years prior to admission. The late Mr. Allan McLean appears by the tenor of his will to have had as his primary object the intention of benefiting women of gentle birth who had been reduced to poverty. There was among this type of person in the past a very considerable disinclination to accept charitable aid in the ordinary sense of the word, and it would appear that the testator, in disqualifying those who had been in receipt of charitable aid shortly before admission, intended to more clearly define those whom he particularly intended to benefit—*i.e.*, the class who would shrink from accepting charitable aid. To-day the outlook is a different one. The waiting list for admission to the Institute is a long one, and necessitates a lapse of years after application is first made, during which time certain applicants have been forced by extreme poverty to take a pension and forego their chance of admission. An examination of these cases has convinced the Board that in some instances the very type of person intended to be benefited has been disqualified. It will be noticed that provision is inserted in the Bill that on admission any pension or charitable aid is to be given up.

Subclause (2) of clause 3 bestows on the Institute a power of sale of the Holly Lea property. The whole tenor of the will is that the centre of the Institution's labours should be Holly Lea, the testator's former residence. It seems to be beyond doubt that Mr. McLean attached a special sentimental value to this property from the point of view of his intended benefactions. The building is, however, a far from suitable one. The rooms are very large, and suitable alterations are impracticable, with the result that the Board feel that, considering the amount of capital involved, the benefits of the will are being restricted to too small a number. The only purpose of sale would be to enable the number of beneficiaries to be increased by the purchase or erection of premises providing accommodation for an increased number of inmates at a reduced capital outlay.

After Mr. McLean died the Holly Lea property was occupied by a Mrs. Phillips, under the provisions made in the will, until her death. During her lifetime the Board of the Institute purchased another property known as "Quamby" to provide accommodation for inmates of the Institution until such time as Holly Lea should be available. Quamby, therefore, was not and is not by any terms of the will restricted to the No. 1 class of beneficiary mentioned below. Actually, however, as nothing else was available it was used solely for the No. 1 class, and is still so used. One possibility is that in the event of the sale of the Holly Lea property additional buildings may be erected on this "Quamby" property with the proceeds received from Holly Lea.

Subclause (3) of clause 3 provides for the conversion of lands held subject to the general trusts for the Institution into lands the use of which is restricted to the trusts declared concerning the Holly Lea property. The difference between the trusts appears in clause 6 of the will, which sets out that the Institution shall be open—

- (1) As to the Holly Lea property only to gentlewomen or women of refinement or education in reduced or straitened circumstances and their children not being over the age of ten years :
- (2) As to the rest of the Institution not represented by the Holly Lea property to persons of the female sex not being under the age of eighteen years and to their children not being over the age of ten years.

One possibility is that the purchase-money of the Holly Lea property shall be devoted to the erection of buildings on other land owned by the Institution. Unless such other land can first be made subject to the Holly Lea trusts, the result would be that the Holly Lea purchase-money would be swallowed up in the trusts declared in No. 2 above, whereas it is the clear intention that the Holly Lea property is to be absolutely restricted to the class of persons defined in No. 1 above. It is, therefore, necessary that steps be taken to ensure that if Holly Lea is sold the identity of the fund derived from its sale shall not be lost sight of.

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This PRIVATE BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed as now printed, is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

Legislative Council.

3rd September, 1930.

Hon. Mr. Smith

MCLEAN INSTITUTE.

[PRIVATE BILL.]

ANALYSIS.

Title.
Preamble.
1. Short Title.
2. Interpretation.

3. Conferring upon the McLean Institute further powers.
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A BILL INTITULED

AN ACT to confer upon the McLean Institute Further Powers for the Purpose of enabling it to carry out more effectually the Trusts of the Will of Allan McLean, Deceased. Title.

5 WHEREAS Allan McLean, late of Christchurch, Gentleman, died on the twelfth day of November, nineteen hundred and seven, having first made his last will and testament, together with one codicil thereto, dated respectively the twentieth day of July, nineteen hundred and four, and the twenty-eight day of November, nineteen hundred and six, which said will and codicil were duly proved in the Supreme Court of New Zealand, at Christchurch, on the twenty-first day of November, nineteen hundred and seven, by Henry Cotterill, Boulton Merlin Molineaux, and George Francis Gee, the executors in the said will and codicil named: And whereas the said will provides, *inter alia*, that the "Holly Lea" property and furniture therein mentioned, and the residue of the trust funds of the testator, subject to the provisions thereinbefore contained, should be held by the trustees of the will upon trust for the purposes of a public institution or benevolent asylum for destitute women to be called the McLean Institute, and that the institution should be open (a) as to the "Holly Lea" property and furniture, only to gentlewomen or women of refinement or education in reduced or straitened circumstances, and the children, not being over the age of ten years, of any such gentlewomen or women, the testator's special intention being that the "Holly Lea" property should be reserved exclusively for the use of gentlewomen or women (including their children as aforesaid) who either by their birth, education, previous life, or manner might be able to live in harmony under the same roof; (b) as to the rest of the institution not represented Preamble.

by the "Holly Lea" property and furniture, to persons of the female sex not being under the age of eighteen years and to the children not being over the age of ten years of any such persons, but no person should be admitted to the institution but such as were poor and of good character and such as had been resident in the colony for a period of three years at least prior to the application for admission and who were not and had not been in receipt of a pension under the Old-age Pensions Act, 1898, or any statutory amendment thereof, at any time during the term of three years immediately before admission or in receipt of aid from the Charitable Aid Board or other public institution having the control of the distribution of charitable aid at any time during the term of three years immediately before admission: And whereas by the McLean Institute Act, 1909, the Board of Governors to the Institute which had been appointed as provided by the said will was thereby incorporated under the name of the McLean Institute as a body corporate with a perpetual succession and a common seal, and it was in the said Act provided that nothing therein contained should prejudice or affect the provisions of the said will and codicil or anything therein contained except so far as the same were expressly altered or modified by or were inconsistent with the said Act, the intention of the Act being that (except to such extent as therein provided) the said will and codicil should remain in full force and virtue: And whereas it has been found by experience that one effect of the disqualification from admission to the institution of those who are or have been in receipt of a pension under the Old-age Pensions Act, 1898, or any statutory amendment thereof, or of charitable aid at any time during the term of three years immediately before admission has been to disqualify from admission persons who apart from such disqualification belong to the particular class which the said testator by the tenor of his said will appears to have intended to benefit, owing to such persons being compelled by extreme poverty to make application for old-age pension or charitable aid while awaiting admission to the institution: And whereas the provisions of the said will do not empower the Institute to sell the said "Holly Lea" property and furniture: And whereas in the event of the opportunity arising to acquire more suitable premises for the purpose of the institution, or in the event of the Institute finding it advisable to erect more suitable premises on other institution lands, it may become more desirable to sell the said "Holly Lea" property and furniture or part thereof:

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

Short Title.

Interpretation.

1. This Act may be cited as the McLean Institute Act, 1930.

2. In this Act, if not inconsistent with the context,—

"Institute" means the McLean Institute as incorporated by the McLean Institute Act, 1909:

"'Holly Lea' property" means all that parcel of land containing by admeasurement five acres and thirty and nine-tenths perches, more or less, being Lot 131 and part Lots 40, 112, 132, and 153, Christchurch Town Reserves, and being the land comprised in certificates of title entered in the Land Transfer Office at Christchurch in register-books, Volume 33, folio 262;

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Volume 184, folio 134; and Volume 242, folio 78, with the messuage or dwellinghouse thereon and the buildings, erections, offices, and gardens and actual and reputed appurtenances belonging thereto:

5 "Institution" means and includes all property subject to the trusts in the said will contained concerning the McLean Institute:

"Will" means the said will and codicil of the said Allen McLean, deceased.

10 3. In addition to and in modification of the powers conferred on the Institute by the will and the McLean Institute Act, 1909, and notwithstanding any of the provisions thereof, the Institute shall have the following powers, that is to say:—

Conferring upon the McLean Institute further powers.

15 (a) Any person may be admitted to the Institution who is or who has been in receipt of a pension under the Pensions Act, 1926, or any statutory amendment thereof, at any time before admission, or who is or has been in receipt of aid from the Charitable Aid Board or other public institution having control of the distribution of charitable aid at any time before admission:

20 Provided that on admission such person surrenders such pension or such charitable aid for the period during which such person shall be an inmate of the institution;

25 (b) The Institute may at any time or times sell and dispose of or exchange all or any part or parts of the "Holly Lea" property and the furniture, books, pictures, prints, musical instruments, plate, linen, china, glass, and other household effects in or about the "Holly Lea" property, and in so doing shall have the same powers and discretions as are contained and declared in the will concerning the sale and disposition of or exchange of any of the institution lands or chattels; and the Institute shall hold the net proceeds of any such sale or sales upon trust to invest the same in the purchase of any freehold lands, buildings, erections, and hereditaments in New Zealand and in the erection, pulling-down, adding to, altering, or in any way improving any buildings and erections on such purchased lands or on any lands for the time being subject to the trusts declared in the will concerning the "Holly Lea" property and furniture, and in the purchase of any furniture, books, pictures, prints, musical instruments, plate, linen, china, glass, and other household effects, such purchased lands, buildings, erections, and hereditaments, furniture, books, pictures, prints, musical instruments, plate, linen, china, glass, and other household effects to be held by the Institute upon the same trusts and with and subject to the same powers and provisions as are declared in the will concerning the "Holly Lea" property and furniture, with and subject to such additions and modifications to such trusts, powers, and provisions as are effected by this Act, and pending such investment as aforesaid the Institute may invest the net proceeds of any such sale or sales or any part thereof upon any of the

investments authorized in the will for the investment of the Institution funds and may apply the income derived from such investments for any of the purposes contained in the will concerning the "Holly Lea" property and furniture; and

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- (c) The Institute may at any time, by resolution of the Board of the Institute, declare that any parcel or parcels of land held by the Institute which are not subject to the trusts declared in the will concerning the "Holly Lea" property and furniture shall from and after the date of such resolution become 10 subject to the trusts in the will declared concerning the "Holly Lea" property and furniture, and in such case the real and personal property held by the Institute subject to the trusts in the will declared concerning the "Holly Lea" 15 property and furniture shall stand charged with such sum of money as shall in the opinion of the Institute as evidenced by such resolution be the fair value of such parcel or parcels of land, together with interest for the same at such rate as may be thought proper by the Institute, computed from the 20 date of such resolution, such sum of money and interest to be held by the Institute upon the trusts and with and subject to the powers and provisions in the will declared concerning such part of the institution as is not represented by the "Holly Lea" property and furniture.

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Private Act.

4. This Act is hereby declared to be a Private Act.