

MEMORANDUM BY THE HON. MINISTER OF JUSTICE  
AND PARLIAMENTARY AFFAIRS ON THE BILL RELATING TO  
THE MORTMAIN ACT, 1967

Our Mortmain Law was enacted in 1822 and it is opportune to replace it by a new legislation which takes into account and solves the many difficulties which have been encountered in the application of the said law.

The old law prescribes that, where a Church or other Pious or Religious Institution acquires any immovable property, it is to dispose of such property, in all cases, within one year of acquisition. The new Bill provides that, where the acquired property is subject to the right of usufruct, use or habitation, the said term shall only commence to run as from the cessation of such right. Moreover, where the acquisition of property has taken place by title of legacy, the time for disposal shall be of one year from the day on which such Church or other Institution is given possession of such property or two years from the day of the death of the testator, whichever is the earlier.

The new Bill also introduces some exemptions from the obligation to sell, which are suggested either by common sense or are justified by the scope of the Mortmain Law when it was first introduced in Malta, namely, the necessity of not allowing Churches and other Pious or Religious Institutions to retain in their possession and, therefore, to keep "extra commercium" immovable property which they would have been acquiring after 1822. Within the first category falls the immovable property which, in one form or another, is tied up under the provisions of the Land Acquisition (Public Purposes) Ordinance. Within the second category falls immovable property which the Church or other Institution may have acquired by giving in exchange other immovable property which it held exempt from the provisions of the law, or which it may have acquired from another Church or other Institution who held the transferred property exempt from the provisions of the law, or which it may have acquired by using as purchase money the money paid to it by Government as compensation for property which was held exempt from the provisions of the law and was taken over by Government under the provisions of the said Ordinance. Moreover, exemption is

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also granted from the obligation to sell in the case of the reversion, for any reason, of the 'utile dominium' of any immovable property and consolidation with the 'dominium directus' in favour of any Church or other Pious or Religious Institution, which prior to the granting of such property by title of emphyteusis held it exempt from the provisions of the law.

Section 7 of the Mortmain Law, provides that any immovable property acquired by a Church or other Pious or Religious Institution for a purpose certified by the competent Ecclesiastical Authorities to be the use or the construction or extension of a Church, the construction or extension of the building of an Institute, a convent, a parochial house, a seminary or the construction of a cemetery, shall be exempt from the obligation to sell within one year. Such exemption has been retained in the new Bill but it has been deemed proper to exercise some control over immovable property so exempt, in order to ensure that such property is used for the purpose certified by the Ecclesiastical Authorities within a period specified in the Bill and that, if it ceases to be so used, the obligation to sell within a prescribed period will again revive.

A new provision in the Bill provides that the Prime Minister shall be empowered to grant extensions of the term within which immovable property is to be disposed of, if it is proved to the satisfaction of the Prime Minister that it is not possible for a Church or other Pious or Religious Institution to dispose of the property within the prescribed period. The aggregate of such extensions may not exceed a total period of 3 years, any further extensions being made possible only on recommendation by resolution of the House of Representatives.

The provision in the present law whereby the Prime Minister may, on recommendation by Resolution of the House of Representatives, restore to a Church or other Pious or Religious Institution any property forfeited to the Government for non-compliance with the provisions of the law, as well as the provision whereby the Prime Minister may on recommendation as aforesaid exempt any property from the provisions of the law have been retained in the present Act.

With the Mortmain Law, as it stands at present, there

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are hundreds of immovables, which on the strict legal plane are forfeited to the Government. This is due to the shortcomings of the said law and to the uncertainties to which its interpretation in the past has given place. It has been, therefore, deemed proper, by virtue of an express provision in the new Bill, to restore to Churches and other Pious or Religious Institutions any immovable property which may have been forfeited to the Government (except property which has been declared to have been so forfeited by judgment of the Courts or which has been already disposed of by the Government) up to the coming into force of the new Act, provided that such property will have to be disposed of in accordance with the provisions of the new Act. For the same reason, it has been deemed proper to validate, in the interest of third parties, deeds of transfer from a Church or other Pious or Religious Institution to third parties, which transfers may have been made after that the transferred property had been already forfeited to the Government.

The scope of this Bill is to start in the matter of Mortmain with a clean slate and to enact a more rational law which it will be possible to enforce properly.

Hon. Ministers are requested to approve that the attached Bill be presented to the House of Representatives.

25th April, 1967.



A B I L L  
entitled

AN ACT to make new provision in respect of Mortmain,  
in substitution for the provisions of the Mortmain Law.

BE IT ENACTED by the Queen's most Excellent  
Majesty, by and with the advice and consent of the House  
of Representatives of Malta, in this present Parliament  
assembled and by the authority of the same, as follows:-

Short title

1. This Act may be cited as the Mortmain Act,  
1967.

Interpretation.

2. In this Act, unless the context otherwise  
requires -

"Architect" includes a Civil Engineer;

"certified purpose" means the use specified  
in the certificate issued by the competent Ecclesiastical  
Authorities for the purpose of subsection (1) of section  
8 of this Act;

"competent Ecclesiastical Authorities" means  
the Archbishop of Malta or the Bishop of Gozo according as  
to whether the immovable property is situate within the  
territorial limits of the diocese of Malta or of Gozo;

"extended period" means any period as extended  
under section 4 of this Act or the period which is to  
run from the date of restoration referred to in section  
9 of this Act;

"immovable property" means any land or  
building, and includes the dominium directum, the dominium  
utile, the nuda proprietas or the right of usufruct  
of any land or building;

"Malta" means the Island of Malta, the Island  
of Gozo and the other Islands of the Maltese Archipelago;

"prescribed period" means -

(a) in relation to any immovable property which

is acquired by any Church or other Pious or Religious Institution subject to the temporary right of usufruct in favour of one or more persons not being a Church or other Pious or Religious Institution, one year from the day of the cessation of such usufruct and its consolidation with the "nuda proprietas";

- (b) in relation to any immovable property which is acquired by any Church or other Pious or Religious Institution subject to the right of use in favour of one or more persons not being a Church or other Pious or Religious Institution or subject to the right of habitation in favour of one or more persons, one year from the day of the cessation of such right of use or habitation;
- (c) in relation to any immovable property, not falling under paragraph (a) or (b) of this section, which is acquired by any Church or other Pious or Religious Institution by title of legacy, one year from the day on which such Church or other Institution is given possession of such property or two years from the day of the death of the testator whichever is the earlier;
- (d) in relation to any immovable property not falling under paragraph (a), (b) or (c) of this section, one year from the date of acquisition of such property by the Church or other Pious or Religious Institution.

immovable property acquired by Churches or by other Pious Institutions to be disposed of within prescribed period.

3. No immovable property situate in Malta shall be considered as alienable to, or shall, under any title, be acquired by any Church or other Pious or Religious Institution, except under the express condition that such property shall, within the prescribed period, be definitely and absolutely disposed of, by such Church or Institution, to some person or persons not subject to the above limitation.

extensions of  
prescribed  
period.

4. Where it is proved, to the satisfaction of the Prime Minister, that it is not possible for a Church or other Pious or Religious Institution to dispose of any immovable property falling under the provision of the last preceding section within the prescribed period, the Prime Minister may, on application in writing by the administrator or other lawful representative of such Church or Institution, grant extensions of the prescribed period which do not exceed in the aggregate the total period of three years:

Provided that the Prime Minister may, on recommendation by Resolution of the House of Representatives, grant further extensions beyond the said period of three years.

forfeiture of  
immovable  
property in  
default of  
disposal.

5. Where any immovable property falling under the provisions of section 3 of this Act has not been absolutely sold or disposed of, as laid down in that section, within the prescribed period or, if such period has been extended, within the extended period, then, at the expiration of the prescribed period or of the extended period, as the case may be, such property shall inso facto be forfeited to the Government.

Crown Advocate-  
General entrusted  
with the  
execution of the  
Act.  
Notaries of  
Malta.

6. (1) The Crown Advocate-General is entrusted with the execution of this Act.

(2) Any Notary who receives any deed "inter vivos" purporting to convey or assign any immovable property to a Church or other Pious or Religious Institution, shall, within fifteen days from the date of any such deed, transmit to the Crown Advocate-General a certificate signed by the Notary himself, stating the date on which the deed was received, the nature thereof, the name of the parties thereto and the immovable property to which it relates.

(3) Notwithstanding the provisions of sections 130 and 133 of the Notarial Profession and Notarial Archives Act, any Notary who contravenes the provision of the last preceding subsection shall be liable to a fine (multa), to be awarded by the Court of Revision



of Notarial Acts in the exercise of their functions under that Act, from five to twenty pounds.

Immovable property exempt from the provisions of sections 3 and 5 of the Act.

7. The provisions of sections 3 and 5 of this Act shall not apply -

- (a) to any immovable property acquired by any Church or other Pious or Religious Institution, while there is in force in relation to such property a declaration made by the Governor-General under section 3 of the Land Acquisition (Public Purposes) Ordinance:

Provided that, where the Prime Minister notifies in writing the administrator or other lawful representative of the Church or other Pious or Religious Institution concerned that the property or any part thereof is no longer required under the said declaration, the provisions of sections 3 and 5 of this Act shall apply as if such property or part thereof had been acquired by the Church or other Pious or Religious Institution concerned on the date of the receipt by its administrator or other lawful representative of the said written notice;

- (b) to any immovable property acquired by any Church or other Pious or Religious Institution or part of such property while it is held by the Government by title of possession and use or by title of public tenure under the provisions of the Land Acquisition (Public Purposes) Ordinance:

Provided that, where the property or any part thereof ceases to be held by the Government by title of possession and use, the provisions of sections 3 and 5 shall apply as if such property or part thereof had been acquired by the Church or

other Pious or Religious Institution concerned on the day on which the administrator or other lawful representative of such Church or other Institution has received from the Prime Minister written notice of that cessation;

- (c) to any immovable property acquired by any Church or other Pious or Religious Institution by title of exchange against the transfer of other immovable property and -
- (i) the immovable property given in exchange by such Church or other Institution is exempt from the provisions of sections 3 and 5 of this Act for any reason other than under section 8 of this Act;
  - (ii) the value of the immovable property received in exchange by such Church or other Institution does not exceed the value of the immovable property given in exchange by more than three per centum and there is annexed to the deed of exchange a declaration signed by an Architect certifying such fact and signed also by the Director of Public Works accepting such fact;
  - (iii) the immovable property received in exchange by such Church or other Institution has not been so received from any other Church, or Pious or Religious Institution, except where such property was held by such other Church or Pious or Religious Institution exempt from the provisions of sections 3 and 5 of this Act other than under section 8 of this Act;



- (d) to any immovable property acquired under any title by any Church or other Pious or Religious Institution from another Church, or Pious or Religious Institution, if such property was held by the transferor exempt from the provisions of sections 3 and 5 of this Act other than under section 8 of this Act;
- (e) to the reversion, for any reason, of the utile dominium of any immovable property and consolidation with the dominium directum in favour of any Church or other Pious or Religious Institution which, prior to the granting of such property by title of emphyteusis, held it exempt from the provisions of sections 3 and 5 of this Act other than under section 8 of this Act;
- (f) to any immovable property purchased by a Church or other Pious or Religious Institution, by the payment, as purchase money, of the amount of compensation which such Church or Institution shall have received in respect of the transfer to the Government of any immovable property held by it exempt from the provisions of sections 3 and 5 of this Act other than under section 8 of this Act; provided such compensation is not less than one hundred pounds, and the following provisions are observed -
- (i) the administrator or other lawful representative of the Church or Institution desiring to invest, in the acquisition of any immovable property, the sum so paid to him by way of compensation shall, by an application to Her Majesty's Civil Court, Second Hall, within the time of six months to be reckoned from the day on which he shall have received payment of the compensation,

(which time may, for just cause, be enlarged by the said Court) apply for authority to acquire the immovable property proposed to be purchased on behalf of the Church or other Institution by the payment of the said compensation as purchase money;

- (ii) the application shall be accompanied by a copy of the deed of transfer of the immovable property to the Government and by a valuation, made by an Architect, of the immovable property proposed to be acquired;
- (iii) the Court, being satisfied that the value of the immovable property to be acquired does not exceed the amount of the compensation received by the Church or other Pious or Religious Institution for the transfer to the Government of its immovable property, or that it exceeds it only by five per cent and not more, shall allow the application;
- (iv) in order to ascertain the value of the property proposed to be acquired, the Court may appoint one or more Architects, of its own choice, requiring from them a declaration on oath that they have faithfully and with exactness performed the duty entrusted to them.

Immovable property acquired for certain specified purposes, also exempt.

8. (1) Subject to the provisions of subsections (2), (3) and (4) of this section the provisions of sections 3 and 5 of this Act, shall, also, not apply -

- (a) to any site which has been acquired, under any title whatsoever, by any Church or other Pious or Religious Institution for the purpose of the construction ~~of the~~

thereon of a church or the building of a Pious or Religious Institution, or for the extension thereof of any such church or building, or for the use of churches, or for the construction or extension thereof of a parochial house, a seminary or a house for any religious community or for the construction of cemeteries, provided that a certificate of the approval of the use for any of the said purposes, given by the competent Ecclesiastical Authorities, is received by the Crown Advocate-General within ninety days of the date of publication of the deed by virtue whereof such acquisition was made;

- (b) to any building which has been acquired, under any title whatsoever, by any Church or other Pious or Religious Institution for any of the said purposes, provided that a certificate as referred to in the last preceding paragraph is received by the Crown Advocate-General within the period therein prescribed.

(2) Except where the site or the building referred to in the last preceding subsection has been acquired for the purpose of the construction or the extension thereof of a Church, such site or building shall be forfeited "ipso facto" to the Government unless it has been applied to the use specified in the certificate of the competent Ecclesiastical Authorities within two years, in the case of a site, or within one year, in the case of a building, from the date on which, but for the provision of the said subsection, the prescribed period would commence to run, or within such further period, which may not exceed two years, as the Prime Minister, on application of the administrator or other lawful representative of the Church or other Pious or Religious Institution concerned, may have allowed in writing before the lapse of the original period.

- (3) Where the site or the building referred



to in subsection (1) of this section has been acquired for the purpose of the construction or the extension thereon of a Church, such site or building shall be forfeited "ipso facto" to the Government unless the structure of the Church or the extension thereof has been erected within three years from the date on which, but for the provision of the said subsection, the prescribed period would commence to run, or such longer period, which may not exceed six years, as the competent Ecclesiastical Authorities will have specified for that purpose in its certificate referred to in subsection (1) of this section.

(4) Where a site or building, which is exempt for the provisions of sections 3 and 5 of this Act under subsection (1) of this section, ceases to be used for the certified purpose -

- (i) the administrator or other lawful representative of the Church or other Pious or Religious Institution to which such site or building belongs shall, under penalty of 'ipso facto' forfeiture to the Government, within three months of the date when the site or building has ceased to be so used, notify in writing of such fact the Crown Advocate-General; and
- (ii) except where it has been forfeited to the Government owing to the default of notice in accordance with the provision of the last preceding subparagraph, such site or building shall be deemed, for the purposes of this Act, to have been acquired by the Church or other Pious or Religious Institution to which it belongs on the day on which it has ceased to be used for the certified purpose and, thereupon, the provisions of sections 3 and 5 of this Act shall

apply accordingly.

Power of the  
Prime Minister  
to restore  
forfeited  
property.

9. Where any immovable property has been forfeited to the Government for non-compliance with any of the provisions of this Act and the administrator or other lawful representative of the Church or other Pious or Religious Institution by whom such property has been forfeited shows satisfactorily that such non-compliance was reasonably justified, it shall be lawful for the Prime Minister, on the recommendation by resolution of the House of Representatives, to order the restoration of such property to the Church or other Institution concerned, and in such case the period for compliance with the provisions of this Act shall run from the date of such restoration unless the property be restored as exempt from the provisions of this Act:

Provided that no order for restoration shall be made in respect of the property forfeited and already disposed of by the Government or in respect of profits on property restored under this section which have been already received by the Government up to the day of the restoration.

Power of the  
Prime Minister  
to exempt property  
from the  
operation of this  
Act.

10. It shall be lawful for the Prime Minister, on the recommendation by a resolution of the House of Representatives, and with the concurrence in writing of the competent Ecclesiastical Authorities, to exempt by order any Church or other Pious or Religious Institution from the operation of this Act in respect of any determinate immovable property, and from the date of such order the Church or Institution so exempted shall be free to hold and enjoy such property without the restrictions laid down in this Act.

Restoration of  
forfeited  
property.

11. (1) Any immovable property which, at any time before the coming into force of this Act, has been forfeited to the Government owing to non-compliance with any of the provisions of the Mortmain Law, is by virtue of this Act restored to the Church or other Pious or Religious Institution to which such

property belonged immediately before it was so forfeited and the provisions of this Act shall apply to such property as if it had been acquired by the Church or other Pious or Religious Institution on the coming into force of this Act:

Provided that, where any such property has been disposed of before the coming into force of this Act in accordance with the provisions of the Mortmain Law, although not within the time established therein or thereunder, the provisions of this Act shall be deemed to have been complied with and any such disposal shall be deemed to have been validly made.

(2) The provision of the last preceding subsection shall not apply to any immovable property which was declared to have been forfeited to the Government by a judgement of Her Majesty's Superior Courts or which, having been forfeited to the Government, has been disposed of by the Government before the coming into force of this Act, and such property shall remain so forfeited notwithstanding the provision of subsection (1) of section 12 of this Act.

Repeal of the  
Mortmain Law and  
consequential  
provisions.

12. (1) Saving the provisions of the next following subsection and without prejudice to any penalty incurred by any Notary, the Mortmain Law is hereby repealed.

(2) Any immovable property which was acquired by any Church or other Pious or Religious Institution while the Mortmain Law was in force or which for any other reason was governed by the provisions of the Mortmain Law, shall continue to be governed by the provisions of this Act, and any immovable property which was exempt from the provisions of sections 2 and 4 of the Mortmain Law, under section 7 of the same law shall be deemed for all purposes to be exempt from the provisions of sections 3 and 5 of this Act under subsection (1) of section 8 of this Act.



Objects and Reasons

The object of this Bill is to replace the Mortmain Law, which was enacted in 1822, by new legislation which takes into account and solves the difficulties which have been encountered in the application of the said law.

The Bill provides for certain exemptions which are consistent with the object of the Mortmain Law at the time when it was enacted, such as is the case of the acquisition of immovable property by a Church or other Pious or Religious Institution by the giving in exchange of other immovable property which was held by such Church or other Institution exempt from the provisions of the law, and provides also for other exemptions which are suggested by logic, such as is the case of immovable property which, having been acquired by a Church or other Institution, is declared by the Governor-General to be required for a public purpose or is taken by the Government by title of possession and use or of public tenure.

The Bill also lays down certain rules which are to apply if a given site or building, being exempt from the provisions of the law in view of the purpose for which it was acquired, is not used or ceases to be used for such purpose.

Extensions of the period for the disposal by a Church or other Institution of immovable property acquired by it may be granted by the Prime Minister up to a maximum period of three years, without the need of a Resolution of the House of Representatives.

The Bill, moreover, in order to eliminate many uncertainties which have arisen out of the application of the Mortmain Law, provides for the validation of all transfers made to third parties by Churches and other Institutions in respect of immovable property which <sup>prior to such</sup> may not have transfer been retained by such Churches or Institutions in strict compliance with the provisions of the Mortmain Law, and provides also, saving certain exceptions, for the restoration to Churches and other Institutions of any immovable property which they may have forfeited for failure of strict compliance with the provisions of the Mortmain Law, subject to the condition that such property shall be disposed of in accordance with the provisions of the new law.