

ADDITIONAL MEMORANDUM

by

The Hon Minister of Justice and Parliamentary Affairs
on the Bill relating to the Mortmain Act, 1967.

The following suggestions have been made in regard
to the said Bill:-

Clause 4.

1. The said clause provides that the Prime Minister may grant extensions, which are not to exceed in the aggregate the total period of three years, for the sale of property acquired by a Church or any other Pious or Religious Institution, where it is proved to the Prime Minister's satisfaction that it is not possible for a Church or other Pious or Religious Institution to dispose of such property within the legal time.

2. It has been suggested that the Prime Minister should be enabled to exercise the said power of extension when he is satisfied that it is not possible for the Church or other Institution to dispose of the property within the legal time at a fair price. It was stressed, when the said suggestion was made, that the decision as to what would be the fair price in any particular case would always rest solely within the discretion of the Prime Minister.

3. It is, however, pointed out that the introduction in clause 4 of the element of "a fair price being obtainable", although it would directly only affect extensions of the time within which property is to be disposed of and not the final obligation to sell, might gradually lead to the said element permeating the application of the whole law, thus substituting, for the principle that the Church is to dispose of acquired property in any case, the principle that it is only to dispose of such property when it can fetch a fair price.

Clause 5.

4. This clause provides that, unless property is sold within the prescribed or extended period, it is ipso facto forfeited to the Government.

5. A suggestion has been made to the effect that the property should only be forfeited to the Government after that notice of the imminent forfeiture has been given by the Government to the competent Ecclesiastical Authorities, the reason given for such suggestion being that, on the appointment of a new administrator of a Church or an Institution, the outgoing administrator might

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forget or omit to inform his successor in the administration about the existing obligation to sell certain property within a specified time.

6. The implementation of this suggestion could encourage administrators to relax in their compliance with the law, relying as they would on the final notice to be given by the Government. Moreover, this would involve imposing on a Department of the Government a burden and a responsibility which should not be borne by it but by the administrators of the Church or other Institutions whose duty it is to comply with the law in the interest of their administration.

7. An eventual amendment of clause 5 in the sense suggested would render necessary a re-draft as follows:-

"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, after the expiration of the prescribed period or of the extended period, as the case may be, such property shall ipso facto be forfeited to the Government on the sixtieth day from the receipt by the competent Ecclesiastical Authorities of a notice of the imminent forfeiture given by the Crown Advocate-General unless such property is absolutely sold or disposed of as aforesaid before the forfeiture takes place."

Clause 7 (c) (ii)

8. It has been suggested that the excess marginal value allowable under this provision should be 5% instead of 3%.

This may be reasonable.

Clause 8(1)

9. This clause deals with immovable property which becomes exempt from the obligation to sell in accordance with the provisions of the law on its being certified by the competent Ecclesiastical Authorities as being required for the purpose of the construction

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of or use as a Church, Convent, Religious Institution, etc.

10. It has been suggested that "open spaces" used for purposes connected with the activities of a Church or other Pious or Religious Institution, should be included within the scope of this clause, subject in each particular case to the approval of the Prime Minister.

11. This suggestion, conditioned as it is to the Prime Minister's approval, is acceptable and, indeed, even necessary in order to avoid open spaces being incorporated in "Exempted buildings" on the sole authority of the certificate of the competent Ecclesiastical Authorities. Its implementation would render necessary the addition of the following new subclause after subclause (4) of clause 8:-

"(5) Without prejudice to the provisions of subsections (2), (3) and (4) of this section, the expressions "building", "parochial house", "seminary" and "house for any religious community", in subsection (1) of this section, shall be deemed to include any such open land annexed to any of the said constructions and included in the certificate of the competent Ecclesiastical Authorities as the Prime Minister in his discretion may approve:

Provided that the Prime Minister's approval shall not be required in respect of any courtyard or other similar open space which may normally form part of a building".

Clause 7(3)

12. This clause provides that, where any land has qualified for exemption from the provisions of the law anent the obligation to sell because there has been issued in respect thereof a certificate by the competent Ecclesiastical Authorities to the effect that such land is to serve for the construction thereon of a Church, such exemption shall no longer apply if the structure of the Church has not been erected within three years of acquisition, etc. or within "such longer period, which may not exceed six years, as the competent Ecclesiastical Authorities will have specified for that purpose in their certificate referred to in subsection (1) of this section".

13. It has been suggested that the underlined words should be substituted by the words "or within such longer period as the Prime Minister may allow".

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This suggestion seems to be acceptable.

14. Hon. Ministers, while considering approval of the Bill submitted to them, may also wish to consider which of the above suggestions should be adopted.

15th June, 1967.

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