

WESTERN AUSTRALIA.



ANNO OCTAVO

EDWARDI SEPTIMI REGIS,

II.

No. 2 of 1908.

AN ACT to repeal the Law relating to the Management of the Real and Personal Estate of the Presbyterian Church in the State of Western Australia, and to make other provisions in lieu thereof.

[Assented to 12th August, 1908.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Presbyterian Church Act*, Short title. 1908.

2. The Presbyterian Church Act, 1884, is hereby repealed, but Repeal. until Commissioners shall have been elected by the General Assembly as provided by Section four of this Act, the present Commissioners under the said repealed Act shall continue in office and be deemed to be The Commissioners of the Presbyterian Church in Western Australia under this Act.

3. In the construction and for the purposes of this Act the Interpretation. following terms shall, if not inconsistent with the context or subject matter, have the respective meanings hereby assigned to them, that is to say :—

- “Governor” shall mean the person administering the Government acting by and with the advice of the Executive Council.
- “Church” shall mean and apply to the Church now known as the Presbyterian Church in Western Australia, and hereinafter referred to as “the said Church.”
- “General Assembly” shall mean the General Assembly of the said Church convened in accordance with the rules, practice, and usages of the said Church.
- “Moderator” shall mean the Moderator for the time being of the General Assembly of the said Church, and include any person temporarily discharging the duties of such office in accordance with the rules, practice, and usages of the said Church.
- “Presbytery” shall mean any Church Court under this name duly formed by the authority of the General Assembly of the said Church.
- “Congregation” shall mean any number of persons duly recognised as a congregation by any Presbytery of the said Church.
- “Minister” shall mean the person who has been duly inducted as Minister of a congregation and is exercising the functions of his office.
- “Elder” shall mean a person duly inducted and acting as such.
- “Members” shall mean all persons whose names are on the Roll of Communicants of any congregation of the said Church.
- Adherents” shall mean all persons whose names are on the Roll of Adherents of any congregation and have the right of voting at any congregational meeting under the rules of the said Church.
- “Committee of Management” shall mean the persons charged with the secular affairs of a congregation in accordance with the rules of the said Church.

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body.

4. The Moderator for the time being of the General Assembly and one Minister and two Elders from each Presbytery to be from time to time elected by the General Assembly as occasion may require, shall be and are hereby constituted a body corporate for the better holding and management of the property of the said Church or of any congregation or institution connected therewith, whether the same shall have been already acquired or may hereafter be acquired in any way howsoever; and for the better regulation and management of the affairs thereof, and under and by the name, style, and title of “The Commissioners of the Presbyterian Church in Western Australia” (hereinafter called “the Commissioners”) shall have continuance and succession for ever, and may have and use a Common Seal for the business of the

said corporation and change and alter the same at their will and pleasure, and shall and may have, hold, purchase, receive, take, enjoy, and in the proper execution, and for the better fulfilment of the trusts of the said Church or corporation, and for the benefit and advantage thereof, manage, sell, lease, exchange, grant, transfer, and otherwise dispose of all manner of real and personal property whatsoever, and every part and parcel thereof, and exercise over the same all the powers of leasing and accepting surrenders of leases conferred on a tenant for life by "The Settled Land Act of 1892" or any Acts for the time being in force amending or re-enacting the same, and shall also have power to borrow and take up at interest any sum or sums of money for the purpose of erecting or improving or aiding in erecting or improving churches, manses, or other buildings, or in the improvement of any property, whether freehold or leasehold, or in otherwise promoting as the General Assembly may direct, the objects of the said Church, and, in addition to the matters herein expressly provided for, shall in respect of the property of the said Church, exercise all the powers and perform all the functions and duties which the General Assembly may from time to time confer upon them, or in anywise direct by resolution to be passed in conformity with its recognised practice and procedure, and for any of such purposes may mortgage by deed or other instrument, under the said corporate seal, such portions of the property of the said Church as may be necessary for securing the repayment of such moneys with interest thereon; and the property so to be sold, exchanged, or mortgaged shall thenceforth be held and enjoyed by the purchaser or by the mortgagee thereof or his executors, administrators, and assigns, freed and absolutely discharged from the trusts upon which the Commissioners may theretofore have held the same, and the Commissioners shall and may, by the corporate name, style, and title aforesaid, sue and implead, be sued and impleaded, answer and be answered unto, in any Court of Record, or elsewhere, in law or equity, in all actions and causes whatsoever for, touching, or concerning any matter or thing appertaining to the said Church or corporation.

5. All lands, tenements, hereditaments, and personal property at present belonging to or vested in the Commissioners, as constituted under the Presbyterian Church Act, 1884 (hereby repealed), and the full benefit of, and all rights, benefits, powers, and privileges to which such Commissioners may be entitled under any deeds, writings, or instruments, shall be, and the same are hereby vested in the Commissioners as constituted under this Act, subject to all rights, trusts, and equities affecting the same, and subject also to the provisions of this Act; and the Commissioners hereby constituted shall be bound by and be liable as a body corporate under all such deeds, writings, and instruments in place of and substitution for the Commissioners under the said repealed Act.

Vesting of property.

Register of property.

6. The Commissioners shall keep a Register of all lands, tenements, and hereditaments, and personal property, held or registered now or hereafter in their name, and shall enter in such Register particulars to identify such lands, tenements, and hereditaments, and personal property, and shall, in a column to be set apart for such purpose, set forth whether such lands, tenements, hereditaments, and personal property are held generally or for any specific purpose for the benefit of the said Church, or generally or for any specific purpose in trust or otherwise for any congregation, mission, or institution, belonging to or in connection with the said Church, or under the control thereof, and such lands, tenements, hereditaments, and personal property shall be deemed to be and shall be held by the Commissioners accordingly; provided always that where any lands, tenements, hereditaments, or personal property are or is held generally for the benefit of the said Church the same may be altered to a special purpose by a resolution to be passed by a majority of the members of the General Assembly present at any meeting thereof, or whether held generally or for any special purpose for the said Church the same may be altered by a resolution as aforesaid to any trust for any congregation, mission, or institution thereof; provided further that where any trusts are set forth in the said Register in respect of any lands, tenements, hereditaments, or personal property the same may be altered or varied by a resolution to be passed as aforesaid, but in the case of any lands, tenements, hereditaments, or personal property held subject to any trust for any congregation (other than a congregation ceasing to exist) such trusts shall not be altered, except with the approval of a two-thirds majority of the members and adherents present at a meeting to be specially called for the purpose, as provided for in Section eleven hereof, of the particular congregation entitled to the benefit of the said trust. All lands held or to be held as aforesaid shall be subject to the provisions of Section twenty hereof.

Property held for specific purposes.

7. All lands, tenements, and hereditaments upon which any church, school, manse, or other building thereto belonging are now or shall hereafter be erected and any lands, tenements, and hereditaments, and personal property purchased, devised, bequeathed, or given for the erection, endowment or benefit of any church, school, or manse shall, subject to the provisions of Section twenty hereof, be held by the Commissioners in trust for the congregation of such Church; and if such congregation shall cease to exist, then subject as aforesaid in trust for the maintenance or advancement or other purposes of the said Church as may be determined by the General Assembly by any resolution to be passed as aforesaid.

Property held for general purposes.

8. All lands, tenements, and hereditaments and personal property held in trust by the Commissioners for other than

congregational purposes shall, subject to the provisions of this Act, be held by the Commissioners in trust for the maintenance or advancement or other purposes of the said Church, and shall be duly entered in the said Register of properties, and shall not be sold, exchanged, mortgaged or leased except as the General Assembly may direct, such direction to be evidenced by a resolution to be passed as aforesaid. A certificate signed or purporting to be signed by the clerk for the time being of the General Assembly shall be conclusive proof of the due passing of any Resolution of the said Assembly.

9. All lands, tenements, and hereditaments, and personal property which shall be given, devised, or bequeathed to the said Church, or to any particular congregation or mission or institution thereof, or to the Commissioners for or upon any special purpose or trust, shall vest in and be held and applied by the Commissioners, subject to the carrying out of such purpose or the performance of such trust.

Property given subject to any trust to be held by Commissioners subject thereto.

10. No lands which shall have been acquired or may hereafter be acquired by the said Church or by the Commissioners by gift from the Crown without pecuniary consideration therefor shall be sold, demised, mortgaged or otherwise disposed of, charged or dealt with except with the consent in writing of the Governor for the time being endorsed as hereinafter provided for.

Property acquired by gift from Crown.

11. The Commissioners shall, whenever directed or requested so to do by a resolution passed by a two-thirds majority of the members and adherents of any congregation present at a Special Meeting called for the purpose by intimation from the pulpit during Divine Service on two successive Sabbaths immediately preceding the day of meeting, and subject to obtaining when necessary the consent of the Governor as aforesaid, and also the consent of the Presbytery within whose bounds the lands, tenements, hereditaments, or personal property affected are situate, sell, exchange, or mortgage all or any part of the lands, tenements, and hereditaments, or personal property held in trust for such congregation, for such price, sum, and upon such terms as the said majority of such congregation may direct; and the Commissioners shall, whenever directed or requested so to do by a resolution passed by a majority of the members of the Committee of Management of any congregation present at a Special Meeting called for that purpose (subject to the approval of the Presbytery within whose bounds such lands, tenements, and hereditaments are situate), let or lease all or any part of the lands, tenements and hereditaments held in trust for such congregation for such period, at such rent, and upon such terms as the said majority of the members of such Committee of Management may direct. Provided always that no such sale, exchange, mortgage,

Dealing with property held for congregational purposes.

letting, or lease shall be made by the Commissioners until the said respective resolutions have been passed, and the consent, where required, of the Governor and Presbytery has been obtained. A certificate signed by the Chairman presiding at any such meeting of a congregation, or of the Committee of Management, and a certificate signed by the Clerk of the Presbytery, shall be conclusive proof of the passing of the said respective resolutions and of the approval of the Presbytery.

Application of trust moneys for benefit of congregation.

12. All moneys arising from the sale or mortgage, calling in or conversion of any lands, tenements, and hereditaments, and personal property held by the Commissioners in trust for any congregation, and the net rents, profits, and income of such lands, tenements, hereditaments, and personal property, and all other moneys coming to the hands of the Commissioners for the benefit of, or in trust for any congregation, shall from time to time be paid or applied in accordance with the directions of the Committee of Management of the congregation for which such lands, tenements, and hereditaments, personal property, and moneys are held in trust, and the receipt of the Treasurer for the time being of such Committee of Management for any such moneys, rents, profits, and income shall effectually discharge the Commissioners therefrom, and from being bound to see to the application or being answerable for the loss or misapplication thereof.

Application of trust moneys for general purposes.

13. All moneys arising from the sale or mortgage, calling in, or conversion of lands, tenements, and hereditaments, and personal property held by the Commissioners other than in trust for any congregation, mission, or institution, and the income thereof and the net rents, profits, and income of such lands, tenements, and hereditaments, and personal property, and all other moneys coming to the hands of the Commissioners for the general purposes of the said Church shall be devoted to whatever purpose the General Assembly may determine, and the receipt of the Treasurer for the time being of such Fund for any such moneys, rents, profits, and income shall effectually discharge the Commissioners therefrom, and from being bound to see to the application or being answerable for the non-application thereof.

Authorised investments.

14. The Commissioners may, from time to time, invest all moneys that shall come to their hands in any of the Public Stocks or Government securities of the United Kingdom, or of the Commonwealth of Australia, or of this State, or of any other Australian State, or upon purchase or mortgage of any real or personal property, or on deposit with any Bank carrying on business in this State, and no Commissioner shall be liable for any loss occasioned by the depreciation or failure of any such investment or otherwise, save by his own wilful default; and the Commissioners, from time

to time, at their discretion may vary or transfer such stocks, funds, and securities into or for others of the same or a like nature.

15. It shall be lawful for the Commissioners, from time to time, to appoint a Treasurer, who shall hold his office on such terms as they may determine ; and the receipt in writing of the Treasurer, or of any of the Commissioners duly authorised in that behalf for any moneys paid, and for any stocks, funds, shares, or securities transferred, shall effectually discharge the person paying or transferring the same therefrom, and from being bound to see to the application. or being answerable for the loss or misapplication thereof.

16. No order, resolution, or proceeding of the Commissioners, nor any power by this Act conferred, nor any gift, devise, or bequest to them, or to any Minister, or person, for the benefit of the said Church, or any congregation, mission, institution, or charity connected therewith, shall be invalidated by reason only of there being a vacancy in the office of Moderator or Minister, or any vacancy in the number of Commissioners.

17. The corporate seal of the Commissioners, which shall be and remain in the custody of the Treasurer for the time being, shall be affixed to every deed or instrument executed in exercise of the powers conferred by this Act at a General Meeting of the Commissioners, by the chairman of such meeting, and every such deed or instrument shall also be signed by two of the Commissioners.

18. For a General Meeting of the Commissioners not less than seven days' notice shall be given, and for the transaction of business thereat a quorum of three Commissioners, one of whom shall be a Minister, shall be necessary. The decision on any matter of a majority of the Commissioners present at any General Meeting shall be deemed to be the decision of the whole body of the Commissioners, and shall be binding on all absent or dissenting Commissioners, who shall, if required, execute and do all such instruments and acts as may be requisite for giving effect to such decision.

19. It shall not be necessary for any purchaser, transferee, lessee, or mortgagee to inquire whether the Commissioners, or any of them signing any deed or instrument, or affixing the said seal as aforesaid, were or was duly or regularly appointed or whether the approval of the majority of the congregation or of the Committee of Management present at a Special Meeting or of the Presbytery as aforesaid has been duly or properly obtained to the sale, exchange, transfer, conveyance, mortgage, or lease of the lands, tenements, and hereditaments purporting to be sold, ex-

Treasurer.

Vacancies not to invalidate gifts, etc.

Corporate seal to be affixed to deeds, etc.

General meetings—quorum.

Purchasers, etc., protected.

changed, transferred, conveyed, mortgaged, or leased by such deed or instrument, or whether the said power of sale, exchange, mortgage, or leasing was duly or regularly exercised, or in any wise to see to the application of any moneys raised under authority of this Act, or to inquire into the necessity, regularity, or propriety of any such conveyance, transfer, mortgage or lease ; nor shall any purchaser, transferee, mortgagee, or lessee be affected by notice that the Commissioners, or any of them, have not been regularly appointed, or that such approval as aforesaid has not been obtained or that any such conveyance, transfer, mortgage, or lease, is in anywise irregular, unnecessary, or improper ; and any such conveyance, transfer, mortgage, or lease duly executed in manner aforesaid (and endorsed with the Governor's consent, in writing, in the case of the sale or mortgage of lands acquired by gift from the Crown without pecuniary consideration therefor), shall be valid and effectual to all intents and purposes whatsoever.

Properties to be held subject to scheme of Union.

20. Notwithstanding anything contained in this Act, or in any deed, declaration, or statement of trust, all lands, tenements, hereditaments, personal property, estates, and temporal privileges, and all equitable rights belonging to the said Church and the congregations thereof, or held in trust for or on behalf of, or in connection with the said Church and congregations, missions or institutions connected therewith (in this section called "properties of the said Church,") shall be held subject to the provisions of the Scheme of Union set forth in the Schedule to the Presbyterian Church of Australia Act, 1901, and all decisions of the General Assembly of the Presbyterian Church of Australia or the Judicial Commission thereof, given or come to in accordance with the said Scheme of Union shall be binding on all properties of the said Church.