

**ROMAN CATHOLIC (SACRED HEART
MISSION) PROPERTY TRUST
ORDINANCE 1937.⁽¹⁾**

No. 21 of 1937.

An Ordinance to provide for the Temporal Affairs of the Mission known as The Catholic Mission Society of the Sacred Heart of Jesus, and for other purposes.

WHEREAS, by section three of the *German Missions Ordinance* 1926 of the Territory, all property, real or personal, which on the tenth day of January, One thousand nine hundred and twenty, belonged to, or was held or managed for or on behalf of, the Katholische Mission vom Heiligsten Herzen Jesu Gesellschaft mit beschraenkter Haftung (Catholic Mission Society of the Sacred Heart of Jesus Limited) (in the said Ordinance referred to as "German Mission property") was vested in the Administrator for the time being of the Territory, and any right, title, or interest of the Mission in or to the property was extinguished:

And whereas, by section four of the said Ordinance, it is provided that the Administrator shall, by order, vest all German Mission property in boards of trustees appointed or approved by the Governor-General, to be held, in respect of any particular property, upon such trusts as are specified in the order appointing or approving the first board of trustees in respect of that property:

And whereas, by order dated the ninth day of March, One thousand nine hundred and twenty-six, and published in the *Gazette* dated the eighteenth day of March, One thousand nine hundred and twenty-six, the Governor-General was pleased to appoint a Board of Trustees in respect of the German Mission

(1) Particulars of this Ordinance are as follows:—

Date of reservation by Administrator.	Date on which assent of Governor-General in Council published in <i>N.G. Gaz.</i>	Date on which came into operation.
3.3.1937	30.4.1937	30.4.1937 (<i>N.G. Gaz.</i> of 30.4.1937)

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property of the said Mission and to declare that the said Board of Trustees shall hold the said German Mission property upon trust—

- (a) to hold, manage, use, invest, mortgage, lease, sell, convert, dispose of, or otherwise deal with such property or any property or assets into which such property may be converted; and
- (b) to re-invest, use, or dispose of the income, profits, and proceeds of the holding, management, use, investment, mortgage, lease, sale, conversion, or disposition of, or dealing with, such property,

in such manner and at such times as the said Board of Trustees shall in their absolute discretion from time to time think fit for the purpose of carrying on or benefiting or advancing or extending or making more effectual the work and objects of Roman Catholic Missions wheresoever carried on:

And whereas it is expedient to provide that all the real and personal property held immediately before the commencement of this Ordinance by the said Board of Trustees shall vest in the Sacred Heart Mission (New Britain) Property Trust incorporated under this Ordinance with the powers and authorities in this Ordinance set forth:

Be it therefore ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1935*, as follows:—

Short title.

1. This Ordinance may be cited as the *Roman Catholic (Sacred Heart Mission) Property Trust Ordinance 1937*.⁽¹⁾

Definitions.

2. In this Ordinance, unless the contrary intention appears—

“Head of the Mission” means the person for the time being administering, in accordance with canon law, the ecclesiastical affairs of the Catholic Mission Society of the Sacred Heart of Jesus, the headquarters of which in the Territory are at Vunapope, and his successors in that office, and includes the person for the time being acting in that office;

“the Board of Trustees” means the Board of Trustees of the German Mission property of the Catholic Mission Society of the Sacred Heart of Jesus Limited appointed by order of the Governor-General dated the ninth day of March, One thousand nine hundred and twenty-six;

“the Mission” means the Mission known as The Catholic Mission Society of the Sacred Heart of Jesus, the headquarters of which in the Territory are at Vunapope;

(1) See footnote (1) printed on p. 199.

“the Trust” means “The Sacred Heart Mission (New Britain) Property Trust” constituted under this Ordinance;

“trustees” means the persons for the time being constituting the Trust.

3.—(1.) The Board of Trustees shall be a body corporate by the name of “The Sacred Heart Mission (New Britain) Property Trust” with perpetual succession and a common seal, with power to acquire, hold, manage, control, and, subject to this Ordinance, grant, transfer, mortgage, charge, demise, sell, dispose of, exchange, create or reserve easements over, or otherwise deal with, any real or personal property, and capable of suing and being sued in its corporate name and doing and suffering all such acts and things as bodies corporate may by law do or suffer. Incorporation.

(2.) All courts, judges, and persons acting judicially shall take judicial notice of the seal of the Trust affixed to any document or notice and shall deem that it was duly affixed.

4.—(1.) The Head of the Mission may, by writing, remove any of the trustees from the office of trustee. Removal and appointment of trustees, &c.

(2.) Where a trustee, either original or substituted, dies or is removed from office under the last preceding sub-section, or declares in writing that he is desirous of being removed from office, or his office has for any other reason become vacant, the Head of the Mission may appoint another person to be a trustee in place of that trustee.

(3.) The continuing trustees may, provided that there are not less than three trustees, act notwithstanding any vacancy in the number of trustees, but each vacancy shall be filled as soon as possible after it occurs.

(4.) At any meeting of the trustees, three trustees shall form a quorum.

5. Any deed or instrument executed or signed, and any other act, matter, or thing done, by any three trustees and in pursuance of a resolution of the Trust and under its common seal, shall be as effectual as if it had been executed, signed, or done by all the trustees. Execution of deed, &c.

6.—(1.) All real and personal property which is held by the Board of Trustees immediately before the commencement of this Ordinance shall without any conveyance or transfer vest in the Trust. Vesting of property in trustees.

(2.) Where any property vested in the Trust in pursuance of this section is land registered under the *Lands Registration Ordinance* 1924-1936,⁽²⁾ the Registrar of Titles shall, without formal transfer and without fee, on application in that behalf by the

(2) Now the *Lands Registration Ordinance* 1924-1939.

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Trust, enter or register the Trust in the Register Book or the Register of Administration Leases kept under that Ordinance and upon the grant, certificate of title, lease, or other instrument evidencing title to the land, as the owner of the land within the meaning of that Ordinance.

Powers of trustees.

7. The trustees may exercise all the powers relating to real and personal property by this Ordinance vested in the Trust, and in respect of all real and personal property which may after the commencement of this Ordinance be acquired by the Trust or which may become vested in the Trust under this Ordinance or otherwise which were immediately before the commencement of this Ordinance exercisable by the Board of Trustees and all other powers exercisable by the Trust under this Ordinance.

Trust property, how held.

8. All property vested in the Trust shall, so far as it is not subject to any express trust, be held upon trust and dealt with for the purpose of carrying on or benefiting or advancing or extending or making more effectual the work and objects of Roman Catholic Missions wheresoever carried on, and no person dealing with the trustees shall be bound to inquire into the propriety or necessity of any such dealing.

Power to mortgage.

9. The Trust may, for the purpose of securing such sums of money as it deems requisite or necessary for the purposes of the Trust, mortgage or charge any real or personal property vested in the Trust.

Power to sell.

10. The Trust may sell by public auction or private contract as the trustees deem expedient, at such price as can be reasonably obtained for it, any real or personal property vested in the Trust and, when sold, convey it, and thereupon it shall vest in the purchasers their heirs, executors, administrators, or assigns according to the estate and interest of the Trust therein absolutely freed and discharged from the trusts affecting it.

Receipts for mortgage and purchase moneys, &c.

11. The receipt in writing of a majority of the trustees or of any person thereto authorized by them in writing to receive such moneys for the mortgage moneys raised on any property mortgaged by the Trust, or for the purchase money of any property sold by the Trust, or for any other moneys payable to the trustees or the Trust, shall exonerate the mortgagee and the purchaser and all other persons for the time being paying such moneys to the trustees, or to the person authorized to receive the moneys, from seeing to the application of the moneys, and from all liability as to the misapplication or non-application thereof, and from inquiring into the propriety or necessity of any mortgage or sale, lease, or other dealing whatsoever.

12.—(1.) A notification⁽³⁾ in the *New Guinea Gazette*, purporting to be signed by the Head of the Mission, of the appointment of a secretary of the Trust or other officer shall be *prima facie* evidence, and, in favour of the Administrator and the Registrar of Titles and every person who deals for value with the Trust, conclusive evidence, of his or their due appointment.

Evidence of resolutions, &c.

(2.) A certificate signed by the secretary for the time being of the Trust as to who are the persons for the time being constituting the Trust, and a certificate of such secretary certifying to any resolution of the trustees shall be *prima facie* evidence, and, in favour of the Administrator and the Registrar of Titles and every person who deals for value with the trustees, conclusive evidence, as to who are the trustees for the time being, and of any such resolution, as the case may be, and judicial notice shall be taken of the signature of the secretary for the time being on every such certificate.

13. Whenever by any will, deed, or other instrument any property, real or personal, has been or is devised, bequeathed, given, granted, released, conveyed, or appointed or has been or is declared or directed to be held upon trust to or for the benefit of the Mission or of any fund, institution, branch, or auxiliary thereof or is recoverable by or payable to the Mission or by or to any fund, institution, branch, or auxiliary thereof or is receivable by or payable to any officer thereof for the benefit of the Mission or any fund, institution, branch, or auxiliary thereof, the will, deed, or instrument shall be construed and operate and take effect as though the Trust were named therein, and the acknowledgement or receipt of the trustees or a majority of them or of any person or persons thereto authorized in writing by the trustees, or a majority of them, for any such property shall be a sufficient discharge to the person liable to deliver or transfer any such property under the will, deed, or instrument, and all property, real or personal, so devised, bequeathed, given, granted, released, conveyed, or appointed, or declared or directed to be held upon trust, shall, subject to the trusts of the will, deed, or other instrument, and subject to any direction to the contrary therein contained so far as it is capable of taking effect, be under the direction and control of the trustees, and they may call for the transfer, conveyance, or delivery thereof to the Trust.

Construction of wills, &c.

14.—(1.) Whenever by any will, deed, or other instrument, or by any gift or disposition of property made before but not taking effect until after the commencement of this Ordinance, or by any will or other instrument or by any gift or other disposition of property made after the commencement of this Ordinance,

Vesting in Trust of property given or devised, &c., for benefit of the Mission.

(3) By notice dated 12th May, 1937, and published in *N.G. Gaz.* of 25th May, 1937, the Head of the Mission known as The Catholic Mission Society of the Sacred Heart of Jesus gave notice of the appointment of Hermann Zwinge as "Secretary of The Sacred Heart Mission (New Guinea) Property Trust."

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any real or personal property has been or is devised, bequeathed, or given to or for the benefit of the Mission or to or for the benefit of any fund, institution, branch, or auxiliary thereof, other than real or personal property devised, bequeathed, or given to specific trustees upon trust for the Mission or for any such fund, institution, branch, or auxiliary thereof, all such real and personal property shall vest in the Trust.

(2.) The Trust shall hold any such real or personal property upon the trusts, if any, declared in respect thereof, and if no such trusts have been declared then subject to the provisions of section eight of this Ordinance.

Preservation of
rights of
claimants.

15. Nothing in this Ordinance contained or that may be done under this Ordinance shall be deemed prejudicially to affect or to deprive any person of any right whatsoever which he now has arising out of contract or tort, and any such right which may immediately before the commencement of this Ordinance have been enforceable against the Board of Trustees and in respect of which right the property by this Ordinance vested in the Trust was liable may be enforced against the trustees.

Vesting of
rights of
the Board of
Trustees in
the trustees.

16. Any rights, including choses in action, arising out of contract or tort relating to the real and personal property by this Ordinance vested in the Trust which were immediately before the commencement of this Ordinance vested in the Board of Trustees, are hereby vested in the trustees and may be enforced by them.