



AN BILLE MORTMHAIN (ACHTACHAIN d'ATHGHAIRM),
1954.

MORTMAIN (REPEAL OF ENACTMENTS) BILL, 1954.

EXPLANATORY MEMORANDUM.

I.—PURPOSE OF THE BILL.

1. The purpose of the Bill is the repeal of the Mortmain Acts which for all practical purposes are now a dead letter. This repeal will, in effect, dispense entirely with the need for granting licences in mortmain.

II.—THE MORTMAIN ACTS.

2. Alienation in mortmain, in *mortua manu*, has been defined as an alienation of lands or tenements to any corporation, sole or aggregate, ecclesiastical or temporal. Alienation in mortmain in the strict sense refers only to alienation to corporations and has nothing to do with alienation to charities. But inasmuch as the statutes that dealt with alienation of the former kind also dealt with the latter, the term "mortmain" is sometimes loosely used to cover alienation to charities.

3. The Mortmain Acts in force in the State are—

- (1) the English Mortmain Acts prior to 1495 which were applied in that year to Ireland by 10 Henry 7. c. 22 (Ir.) (Poynings' Law), and
- (2) the pre-Union Irish Statute 32 Geo. 3. c. 31 (Ir.) (1792).

4. The English Mortmain Acts as so applied and now in force in the State are—

- (1) 7 Edw. 1 (1279) (*Statut' de Viris Religiosis*);
- (2) 13 Edw. 1. c. 32 (1285);
- (3) 18 Edw. 3. st. 3. c. 3 (1344);
- (4) 15 Ric. 2. c. 5 (1391).

The Statute 7 Edw. 1. provided that no person, religious or other, should buy, sell or receive of any man by gift, lease or otherwise or appropriate to himself any lands or tenements whereby the same might come into mortmain on pain of forfeiture.

The Statute 13 Edw. 1. c. 32. provided that lands acquired in mortmain by means of collusive judgements should be forfeited.

The Statute 18 Edw. 3. st. 3. c. 3., which provided for the prosecution of religious persons purchasing lands in mortmain, recognised the right of the Crown to grant licences in mortmain.

The Statute 15 Ric. 2. c. 5. extended the provisions of the earlier statutes (which had been directed against ecclesiastical or religious corporations) to civil corporations.

The Mortmain and Charitable Uses Act, 1888 (which did not apply to Scotland or Ireland) repealed the foregoing Acts and re-enacted their provisions in modern form.

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5. The Irish Statute 32 Geo. 3. c. 31 (Ir.) provided for the granting by the King to corporations of licences to hold land in mortmain and that the licences should operate to prevent a forfeiture. Under this Act the Government have granted licences from time to time to foreign corporations which have acquired, or are about to acquire, land which, but for such licences, would be liable to forfeiture under the Mortmain Acts.

6. Alienation to a corporation prevented land in the possession of the corporation from ever being profitable to the King or to the immediate feudal lords of those who had alienated the land, because there was no possibility of escheat, reliefs, wardships, marriage or other feudal aids. The feudal aids (except escheat) were, as regards Ireland, abolished by the Irish Statute 14 & 15 Cha. 2. c. 19 (1662), and escheat now occurs only when a person owning fee-simple land dies intestate leaving no heirs and no widow. Section 3 of the Landlord and Tenant Law Amendment Act, *Ireland*, 1860 (popularly known as Deasy's Act), provides that the relation of landlord and tenant shall be deemed to be founded on the express or implied contract of the parties and not upon tenure or service.

7. The present effect of the Mortmain Acts is that if land is acquired by or on behalf of a corporation in mortmain, otherwise than under the authority of a statute for the time being in force or of a licence granted by the Government under the Irish Statute 32 Geo. 3. c. 31 (Ir.), the land is liable to forfeiture to the State. Alienation in mortmain does not operate to vest the land in the State automatically: it merely gives the State a right to enter, and there is no effective forfeiture unless and until the State enters on the land.

8. The policy underlying the restrictions on alienation of land in mortmain is said to be the same as that which finds expression in the rule against perpetuities, that is to say, the policy of removing where possible all checks to the free circulation of property. The reasons for retaining the mortmain laws on the statute book do not, so far as those laws apply to lay corporations, appear to have much force. At present numerous corporations can hold land without licences in mortmain on the authorisation of public or private statutes. Every joint stock company (incorporated under the Companies Acts) formed "for the acquisition of gain" can hold land for the purposes of the company, though no company formed to promote art, science, religion or charity or for a non-lucrative purpose can hold more than two acres without a licence from the Minister for Industry and Commerce. So far as the laws of mortmain apply to ecclesiastical corporations, they are already obsolete as there are no longer any such corporations in Ireland since the passing of the Irish Church Act, 1869, section 13 of which dissolved every ecclesiastical corporation, whether sole or aggregate, and every cathedral corporation. Article 44. 2. 5° of the Constitution confers on religious denominations the right to own, acquire and administer property, movable and immovable.

PROPOSALS IN THE BILL.

9. The Bill provides for the repeal of the English Mortmain Acts which were applied to Ireland by Poynings' Law (1495) and also for the repeal of the pre-Union Irish Mortmain Statute (1792).

Roinn Dlí agus Cirt.
Samhain, 1954.