

1919
NEW ZEALAND.

SMALL-GRAZING - RUN LEASES HELD UNDER THE LAND ACT, 1892.

Laid on the Table of the House of Representatives by Leave.

STATEMENT AS TO LEGISLATION AFFECTING LEASES OF SMALL GRAZING-RUNS ISSUED UNDER THE LAND ACT, 1892.

I. UNDER LAND ACT, 1892.

(a.) General.

UNDER section 172 *et seq.* of the Land Act, 1892, pastoral lands were set aside as small grazing-runs in areas not exceeding 5,000 acres if first-class runs, or 20,000 acres if second-class runs, and leased for terms of twenty-one years, with right of renewal or valuation for improvements.

Section 174 provided that no person could hold more than one run, and section 176 provided that a lease entitled the lessee to the exclusive right of pasturage over the land included in the lease and to all crops on such land.

Section 177 set out the conditions of lease, which did not confer any right of purchase, but gave the lessee power to select a homestead-site; whilst it was provided that roads and rights-of-way were to remain open to the public, and the lands were to be subject to the mining laws.

Section 178 provided for compulsory residence, and section 179 for the effecting of certain improvements.

Section 180 prescribed the payment of rent on certain conditions, and section 181 empowered the lessee to subdivide the land amongst his family under certain conditions.

(b.) Renewals of Leases.

Section 182 provided that on the expiry or other determination of the lease a new lease was to be offered to the existing lessee at a rent to be ascertained as under:—

(a.) A valuation was to be made, by an appraiser to be appointed by the Land Board, of the value of the fee-simple of the land, and a valuation of the permanent improvements thereon.

(b.) After the publication of such valuation the lessee was to elect whether he would accept a fresh lease for a further term of twenty-one years at a rental equal to not less than $2\frac{1}{2}$ per cent. of the value of the fee-simple as fixed, less the value of improvements by the said valuation, the new lease to be subject to the conditions of the old lease except as regards amount of rent payable thereunder.

If the lessee did not agree to the aforesaid valuations the rent was to be determined by arbitration.

Section 183 provided that if the lessee did not accept a renewal as above, or failed to execute a new lease of said lands, the lease was to be offered by auction for a further term of twenty-one years, and conditions were prescribed as to the procedure in case of the disposal or non-disposal of the land at auction.

Section 184 provided that due notice be given to the lessee of the sale, and section 185 provided that if the lease was not sold the lessee was to remain in occupation, whilst section 186 stated that the Crown and the Land Board were not liable for the value of improvements.

II. ALTERATIONS BY SUBSEQUENT LEGISLATION.

(a.) General.

Section 52 of the Land Laws Amendment Act, 1907, amended section 174 of the Land Act, 1892, and enabled more than one run to be held by one person if the Land Board recommended it and the Minister approved; and section 3, subsection (7), of the Land Laws Amendment Act, 1893, rectified a verbal error in section 182.

On the passing of the Land Act, 1908, the aforesaid provisions were incorporated in Part V thereof, and were subsequently amended as follows :—

Section 22 of the Land Laws Amendment Act, 1912, repealed section 208 (formerly section 172 of the Land Act, 1892) and substituted a new section; whilst section 23 of the Act of 1912 substituted paragraph (1) in section 209.

Section 10 of the Land Laws Amendment Act, 1915, added a proviso to subsection (1) of section 210 of the Land Act, 1908; whilst section 26 of the Land Laws Amendment Act, 1913, amended provisions as to personal residence comprised in section 214 of the Land Act, 1908 (formerly section 178 of the Land Act, 1892).

In addition section 33 of the Land Laws Amendment Act, 1914, authorized the holder of a lease of a small grazing-run not exceeding 5,000 acres to change it to renewable lease. The right to acquire the freehold of their lands was extended by section 31 of the Land Laws Amendment Act, 1913, to the holders of leases of small grazing-runs of Crown land or settlement land, this provision being subsequently amended by sections 20 and 23 of the Land Laws Amendment Act, 1914, and also by section 34 of the Land Laws Amendment Act, 1914. As, however, small grazing-runs under the Land Act, 1892, or the Land Act, 1908, were made part of the national endowment by section 2 of the Land Laws Amendment Act, 1907 (now section 258 of the Land Act, 1908), the provisions as to the right to acquire the freehold do not apply to leases of small grazing-runs under the Land Act, 1892.

(b.) Subdivisions of Leases.

Section 28 of the Land Laws Amendment Act, 1912, as amended by section 37 of the Land Laws Amendment Act, 1913, provided that on the expiry of a lease of a small grazing-run the land might be subdivided and disposed of in new leases for terms of twenty-one years, with right of renewal for further terms under conditions similar to those relating to the renewal of renewable leases. When such leases are subdivided it is enacted that the outgoing lessee shall be entitled to receive a lease of such one of the allotments into which the said land has been subdivided as he elects, and in disposing of the other allotments preference is given to applications by sons of the lessee over twenty-one years who have resided on the land for not less than seven of the ten years immediately preceding the expiry of the lease.

(c.) Renewals of Leases.

It was considered that the rent of a renewed lease of a small grazing-run under the Land Act, 1892, was governed by the provisions of the Land Act, 1908, that the Land Board had power to fix the rent of the new leases, and that the said rent should not be less than $2\frac{1}{2}$ per cent. of the value of the fee-simple, less value of improvements; but the Hon. Hugh St. Leger, the lessee of a small grazing-run under Part V of the Land Act, 1892, dissented from this reading, and held that the renewal of such lease was governed solely by the Land Act, 1892, and that the fixing of the rental was by that Act given to the outgoing lessee. As the Crown did not consider that the reading of the Act was correct an action was brought in the Supreme and Appeal Courts of New Zealand, and the case was subsequently taken to the Privy Council in England, which confirmed the judgment given by the Appeal Court. The note in the "New Zealand Law Reports" of 1917 on the case is as follows :—

"The plaintiff was the lessee of a small grazing-run under Part V of the Land Act, 1892. This Act was repealed by the consolidating Act of 1908, which, however, in s. 349 (b) contained a clause saving all rights under the former Act subject to any special provisions in the repealing Act. Section 182 of the Land Act, 1892, containing provisions as to renewal, was repeated in s. 218 of the consolidating Act, except that s. 218 (c) provided a different mode of arbitration in case of dispute. Section 28 of the Land Laws Amendment Act, 1912, which is incorporated in the principal Act, introduced new terms and a new mode of dealing with leases of small grazing-runs inconsistent with the provisions of the Act of 1892. On an originating summons to determine whether the renewal of the lease of a small grazing-run granted under the Land Act, 1892, was governed solely by that Act or by the Land Act, 1908, and its amendments, and other questions incidental to such renewal,—

"Held, 1. That the Land Laws Amendment Act, 1912, being part of the Land Act, 1908, was subject to the saving clause in s. 349 (b) of the latter Act, and that therefore s. 28 of the former Act could not be applied to leases of small grazing-runs granted under the Land Act, 1892, and renewal of such leases was governed solely by the last-mentioned Act.

"2. That after the valuation prescribed by s. 182 of the Land Act, 1892, had been made, the lessee, if willing to accept a new lease, might fix the rental (subject to the statutory limit) at a percentage on the value of the fee-simple less the value of improvements; and that there was nothing to prevent his fixing it at the minimum percentage laid down by the Act.

"3. That if the valuations were disputed by the lessee the rent must be fixed by arbitration in the manner prescribed by s. 78 of the Act—i.e., in the manner provided for settling compensation under Part III of the Public Works Act, 1882; and that the Compensation Court must arrive at a fair rent after considering all the circumstances, but was not limited to $2\frac{1}{2}$ per cent. on the value of the fee-simple less the value of improvements."

As the judgment of the Court differed from the meaning that had hitherto been attached to the Land Act, 1892, the original intention of the Government was given effect to by the passing of section 6 of the Land Laws Amendment Act, 1918, which interpreted the meanings of section 182 of the Land Act, 1892, and section 218 of the Land Act, 1908; whilst section 7 of the Act of 1918 made the provisions of section 28 of the Land Laws Amendment Act, 1912, applicable to the leasing of small grazing-runs granted under the Land Act, 1892. The provisions of section 6 aforesaid are as follows:—

“Whereas by section one hundred and eighty-two of the Land Act, 1892 (relative to the renewal of leases of small grazing-runs under that Act), provision is made whereby a lessee is entitled, on the termination of his lease, to obtain a new lease of the lands comprised therein at a rental equal to not less than two and a half per centum of the value of the fee-simple, less the value of improvements, as determined by a valuation to be made in pursuance of that section (such value being hereinafter in this section referred to as the unimproved value): And whereas by section two hundred and eighteen of the Land Act, 1908, the same provision is made with respect to the renewal of leases of small grazing-runs under that Act: And whereas the effect of the said sections has recently been judicially determined in certain proceedings instituted in the Supreme Court by the Honourable Hugh St. Leger against His Majesty's Attorney-General relative to the renewal of a lease of the small grazing-run No. 35 in the Hawke's Bay Land District: And whereas the effect of the said sections as so determined is contrary to the true intent of the Legislature and to the public interest: Be it therefore enacted as follows:—

“(1.) It is hereby declared that by virtue of section one hundred and eighty-two of the Land Act, 1892, and by virtue of section two hundred and eighteen of the Land Act, 1908, the Land Board, on offering a renewed lease of a small grazing-run, has and at all times since the commencement of each of those Acts respectively has had the exclusive power and right (subject to the provisions of those sections as to arbitration) to determine the proportion which the annual rent under the new lease shall bear to the unimproved value of the land comprised in that lease, such proportion being in no case less than two and a half per centum of that value.

“(2.) It is hereby further declared that the term ‘valuations’ where last appearing in section one hundred and eighty-two of the Land Act, 1892, and in section two hundred and eighteen of the Land Act, 1908, includes and at all times since the commencement of each of those Acts respectively has included not only the valuations of the land and of the improvements thereon as provided by those sections, but also the determination by the Land Board of the proportion hereinbefore referred to.

“(3.) Nothing in this section shall affect the judicial determination hereinbefore recited in its application to the renewal of the lease in respect of which the hereinbefore-recited proceedings were instituted.”

D. H. GUTHRIE,
Minister of Lands.

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