Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of William James Reid and another v. *The Honourable Thomas Garrett, from the Supreme Court of New South Wales; delivered* 16*th February* 1889.

Present:

LORD WATSON.
LORD FITZGERALD.
LORD HOBHOUSE.
LORD MACNAGHTEN.

[*Delivered by Lord Hobhouse.*]

This is a special case stated in an action brought by the Plaintiffs against the Representative of the Crown to assert their right of holding certain lands at a rent less than is demanded by the Crown. Two questions are put to the Court. Question A relates to a claim made by the Plaintiffs that some expired leases should be extended or renewed. It has not been argued, and all that their Lordships have to say upon it is that, so far as the opinion of this Committee is concerned, the question is an open one.

Question B is as follows:—

"B. Whether the rent of the pastoral lease of the leasehold area, granted to the Plaintiffs under and by virtue of the provisions of the 'Crown Lands Act of 1884,' is to be computed from and be payable from the date of the said notification in the Government Gazette, or from a date calculated with due regard to the mean

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date of determination of the leases of the said runs held by the Plaintiffs before and at the time of the coming into force of the 'Crown Lands 'Act of 1884?'"

On the first of January 1885, when the Crown Lands Act of 1884 came into force, the Plaintiffs held a number of runs upon leases granted under previous statutes, and limited to expire at various later dates. Their claim is to hold what remains to them as the "leasehold area" of such runs at the rents secured by such leases until their expiry by efflux of time, or rather until a time calculated as the mean date of such expiry. The Crown contends that it is entitled to the increased rent determined under the Act of 1884 from the date of the notification issued under that Act.

By Section 2, Sub-section II., of the Act of 1884 it is enacted that the repeal of the earlier Land Acts should not of itself—

"Affect any grant, lease, license, reservation, dedication, proclamation, appointment, or notification lawfully made before the commencement of this Act."

And again,—

"(*b*) All rights accrued and obligations incurred or imposed under or by virtue of the said repealed enactments shall, subject to any express provisions of this Act in relation thereto, remain unaffected by such repeal."

The Plaintiffs therefore are right in saying that their rights as lessees continue until displaced by the express terms of the Act of 1884, and we have to ascertain what those terms are.

By Sections 71 and 74 every runholder is compelled, under peril of losing the benefit of a pastoral lease, to lodge with the Minister a written application for one within a fixed time. For that purpose he is to furnish detailed in-

formation about his holding, and to divide it into two parts, one to be the resumed area and the other the leasehold. When that division has been made to the satisfaction of the Minister, he elects which of the parts shall be resumed and which leasehold. Then come the provisions of Section 76, which are as follows :—

"When the division of the run shall have been determined by the Minister as herein-before provided, a notification thereof shall be published in the Gazette, and the runholder shall thereupon become entitled to a pastoral lease of the lease-hold area; provided that until the rent thereof be determined he shall continue to pay the same rent as before the division of such runs, and when the rent shall be determined as herein-after provided he shall for the time elapsed pay the difference between the rent paid and the rent determined."

Section 70 enacts that all pastoral holdings shall, subject to the provisions of the Act, and until brought thereunder by notification in the Gazette, be subject to the same terms and conditions as before. But after the notification the whole condition of things is altered. One half of the holding is made liable to the treatment prescribed for resumed areas; the other half is to be held on pastoral lease, not at the former amount payable for the whole, but at a new amount to be determined in due course, and when determined to attach as from the date of the notification. So far then it appears to their Lordships that the Act of 1884 imposes the new rent as from the notification, not only in express terms, but in terms not admitting of dispute.

This conclusion indeed was hardly contested at the bar, but it was said that the terms of Section 78 were repugnant to it, and at least created such doubt that the previous rights of the runholders ought not to be disturbed.

Section 78 prescribes the provisions subject to which the Crown may grant pastoral leases of leasehold areas. Lands are divided into three classes, the Western, Central, and Eastern divisions. To the Western division, in which are the Plaintiffs' holdings, some material advantages are given. The leases there are to be for 15 years, whereas leases in the Central division are to be for ten years, and in the Eastern for five. The minimum rent in the Western division, as also in the Eastern, is to be 1*d.* per acre, whereas in the Central it is to be 1½*d.* And whereas in the two other divisions the pastoral lease begins to run from the notification, in the Western division "every such "lease shall commence at the date of de- "termination of the existing lease, or, if more "than one lease be held by the same runholder, "then at a date calculated with due regard to "the mean date of determination of such leases." And, with respect to the same division, it is enacted that the rent determined shall apply to the first five years of the lease, to be increased by one quarter for the next five years, and by one half for the residue of the term.

It is these two latter passages on which the second alternative in Question B is founded, and on which the Appellants contend that the new rent is postponed until the time appointed for the commencement of the new lease. But immediately after the clause postponing the commencement of leases in the Western division, the Act goes on to say that the rent shall in all cases commence with the date of the notification. This, say the Appellants, should be taken as applying to those cases in which the lease runs from the notification, and is calculated to cover only the gap of time intervening between the notification and the determination of the new rent. That however had already

been done by Section 76, and there is no ground for departing from the ordinary meaning of the words "in all cases." Their Lordships are of opinion that all the enactments on this point are consistently conceived and expressed, and that the first alternative in Question B must be answered in the affirmative. The Appellants have the advantage of a longer holding at the determined rent not increased till the end of the first five years of the pastoral lease, but not the advantage of holding on at the old rent. Iu this conclusion their Lordships agree with the Supreme Court. The appeal therefore must be dismissed, and with costs. They will humbly advise Her Majesty to that effect.