

New Zealand.



ANALYSIS.

- | | |
|---|---|
| <p>Title.</p> <p>Preamble.</p> <p>1. Short Title.</p> <p>2. Interpretation.</p> <p>3. Lessors to auction lease of land in Second Schedule.</p> <p>4. Lessors to auction lease of land in Third Schedule.</p> <p>5. Lessors to auction lease of land in Fourth Schedule.</p> <p>6. Lessors to auction lease of land in Fifth Schedule.</p> | <p>7. Lessors authorised and empowered to grant lease of other lands.</p> <p>8. Preparation of leases.</p> <p>9. Lessors empowered and directed to grant such leases.</p> <p>10. Leases to be good and valid leases, notwithstanding no consent by life-tenant.</p> <p>11. Lessors to have full power to do, perform, and execute such leases. Schedules.</p> |
|---|---|

1899, No. 3.—*Private.*

Title.

AN ACT enabling and directing the Trustees for the time being of and under certain Deeds of Settlement by one William Walter Cargill, of Sections One, Two, Three, Four, Eight, and Sixty-four, Block Sixteen, Dunedin, to grant Leases providing for the Payment of Valuation to Outgoing Tenants, or Perpetual Renewal. [9th October, 1899.]

Preamble.

WHEREAS by an indenture bearing date the thirty-first day of December, one thousand eight hundred and sixty-six, made between one William Walter Cargill, of the first part, Edward Bowes Cargill and David John Napier, therein described, of the second part, and the said Edward Bowes Cargill and David John Napier, of the third part, the said William Walter Cargill did, for the considerations therein mentioned, grant, convey, and assure unto the said Edward Bowes Cargill and David John Napier, their heirs and assigns, Sections numbered respectively One, Two, Three, and Four, Block Sixteen, Dunedin, aforesaid, to hold the same unto the said Edward Bowes Cargill and David John Napier, their heirs and assigns, for ever, nevertheless upon the trusts and with and under and subject to the powers and provisions thereafter declared and contained concerning the same, that is to say: upon trust that the said Edward Bowes Cargill and David John Napier, or the survivor of them, or the heirs of such survivor, should, *inter alia*, upon the request in writing of William Henry Cutten and Christiana Dorothea Cutten, during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the Trustees or Trustee for the time being of the deed now in recital,

sell the said hereditaments and premises as therein mentioned, and stand possessed of the rents and profits of the said hereditaments and premises until the same should be sold, upon such trusts and with and subject to such powers and provisions as were or should be expressed and declared concerning the same by an indenture then already prepared and engrossed, and bearing or intended to bear even date with the indenture now in recital, and made or intended to be made between the said William Walter Cargill, of the first part, the said William Henry Cutten and Christiana Dorothea Cutten, his wife, of the second part, and the said Edward Bowes Cargill and David John Napier, of the third part, and the said Edward Bowes Cargill and David John Napier, of the fourth part; and it was by the said indenture agreed and declared that, until the said hereditaments and premises should be sold, it should be lawful for the Trustees or Trustee for the time being of the said indenture, upon such request, or at such discretion as aforesaid, to demise or let the same or any part or parts thereof, either from year to year or upon building or other leases for any term or number of years not exceeding twenty-one years, to take effect in possession, at the best rent that could be reasonably obtained for the same, without taking anything in the nature of a fine or premium, and under and subject to such covenants and conditions as the said Trustees or Trustee should think proper:

And whereas by deed made between the said Edward Bowes Cargill and David John Napier, of the one part, and Charles Henry Street and Edward Hulme Hart, the then Trustees under the said indentures, of the other part, after reciting that those parcels of land being Sections Eight and Sixty-four, Block Sixteen, had been purchased by them out of the trust funds coming to their hands, the said Edward Bowes Cargill and David John Napier conveyed and assured unto the said Charles Henry Street and Edward Hulme Hart, their heirs and assigns, the said Sections Eight and Sixty-four, Block Sixteen, Dunedin, to hold the same unto the said Charles Henry Street and Edward Hulme Hart, their heirs and assigns, to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations expressed and contained in the hereinbefore set forth indentures of the thirty-first day of December, one thousand eight hundred and sixty-six:

And whereas by a deed of lease, registered number "44026," dated the twenty-eighth day of May, one thousand eight hundred and seventy-seven, and made between the said Charles Henry Street and Edward Hulme Hart, of the first part, the said William Henry Cutten and Christiana Dorothea Cutten, of the second part, and the Otago Co-operative Store Company (Limited), of the third part, part of the parcel of land described in the Second Schedule hereto was demised unto the said company and its assigns for twenty-one years from the first day of July, one thousand eight hundred and seventy-six, at the rent, and upon and subject to the covenants, agreements, terms, and provisions therein mentioned, including a covenant for renewal of the said term as therein mentioned:

And whereas the said last-recited lease is now vested in Robert Martin, of Dunedin, aforesaid, medical practitioner :

And whereas by another deed of lease, registered number "60656," dated the twenty-fourth day of April, one thousand eight hundred and eighty-four, and made between the said Edward Hulme Hart and one Archibald Cargill, of the first part, the said Christiana Dorothea Cutten, of the second part, and the said Robert Martin, of the third part, the balance of the said parcel of land described in the said Second Schedule hereto was demised unto the said Robert Martin, his executors, administrators, and assigns, for the term of thirteen years and six calendar months, from the first day of January, one thousand eight hundred and eighty-four, at the rent, and upon and subject to the covenants, agreements, terms, and provisions therein mentioned, including a covenant for a renewal of the said term, as therein mentioned :

And whereas by another deed of lease, dated the twenty-sixth day of August, one thousand eight hundred and seventy-six, made between the said Charles Henry Street and Edward Hulme Hart, of the first part, the said William Henry Cutten and Christiana Dorothea Cutten, of the second part, and one Walter George Geddes, of the third part, the parcel of land described in the Fourth Schedule hereto was demised and leased unto the said Walter George Geddes, his executors, administrators, and assigns, for twenty-one years from the first day of July, one thousand eight hundred and seventy-six, at the rent, and upon and subject to the covenants, agreements, terms, and provisions therein mentioned, including a covenant for renewal of the said term as therein mentioned :

And whereas by another deed of lease, dated the twentieth day of January, one thousand eight hundred and seventy-seven, and made between the said Charles Henry Street and Edward Hulme Hart, of the first part, the said William Henry Cutten and Christiana Dorothea Cutten, of the second part, and William Barnard McIntosh, Thomas Gordon, and George Gale, therein described, of the third part, the parcel of land described in the Third Schedule hereto was demised and leased unto the said William Barnard McIntosh, Thomas Gordon, and George Gale for twenty-one years from the first day of July, one thousand eight hundred and seventy-six, at the rent, and upon and subject to the covenants, agreements, terms, and provisions therein mentioned, including a covenant for a renewal of the term as therein mentioned :

And whereas the said last-recited lease is now vested in the New Zealand Tablet Printing and Publishing Company (Limited), subject to a mortgage thereof in favour of one Michael Tynan :

And whereas by another deed of lease, dated the eighteenth day of February, one thousand eight hundred and seventy-nine, and made between the said Charles Henry Street and Edward Hulme Hart, of the first part, the said William Henry Cutten and Christiana Dorothea Cutten, of the second part, and one William Gilchrist, of the third part, all that parcel of land described in the Fifth Schedule hereto was demised unto the said William Gilchrist, his executors, administrators, and assigns, for twenty-one years from the first day of January, one thousand eight hundred and seventy-nine, at the

rent, and upon and subject to the terms, covenants, agreements, and provisions therein mentioned, and including a covenant for the renewal of the said term as therein mentioned :

And whereas the said last-recited lease is now vested in Elizabeth Gilchrist, of Dunedin, widow :

And whereas, by the agreements under which the said recited deeds of lease were granted, it was agreed that the terms of the leases as to valuation and renewal should be similar to those then commonly known in Dunedin as Corporation leases, being leases granted by the Corporation of the City of Dunedin :

And whereas the terms as to valuation and renewal of the leases, commonly known as Corporation leases, granted by the said Corporation at the time the said agreements were entered into provided for valuation and renewal not only at the end of the first twenty-one years, but at the end of every subsequent twenty-one years, as set out in the form of lease in the First Schedule hereto :

And whereas the said Edward Hulme Hart and Francis Arthur Cutten, of Dunedin, aforesaid, engineer, are the present Trustees of and under the said deeds of the thirty-first day of December, one thousand eight hundred and sixty-six :

And whereas the said William Henry Cutten died at Anderson's Bay, near Dunedin aforesaid, on the thirtieth day of June, one thousand eight hundred and eighty-three :

And whereas the several persons and bodies in whom the said deeds of lease respectively are vested as aforesaid have expended large sums of money in erecting buildings and improvements on the lands demised by such deeds of lease, or in purchasing such leases after such buildings and improvements had been made, under the belief that they would from time to time be entitled to a renewed lease or leases of the lands demised on the same terms as are given by the form of lease set out in the First Schedule hereto :

And whereas two separate valuations were respectively duly made under each of the said deeds of lease now vested in Robert Martin, the said Walter George Geddes, and the New Zealand Tablet Printing and Publishing Company (Limited), the first of such valuations being of the erections, buildings, and improvements standing on the lands respectively demised by each of the said respective deeds of lease, and now vested in them as aforesaid ; and the second of such valuations, of the fair annual ground-rent of the lands demised by each of such deeds of lease, without any buildings or improvements thereon :

And whereas on the twenty-ninth day of June, one thousand eight hundred and ninety-seven, leases for the term of twenty-one years from the first day of July, one thousand eight hundred and ninety-seven, of the lands respectively demised by each of the said respective last-mentioned deed of lease, were offered by auction, in separate lots, at the upset annual rental determined by such valuation, subject to the payment by the purchaser of each lot to the outgoing tenant of the value of the buildings and improvements standing and being upon such lot, determined as aforesaid, but at such auction there was no competition, owing to the fact that there was no covenant for any further renewal ;

And whereas the said Christiana Dorothea Cutten is entitled to the receipt of the rents and profits of all the lands, subject to the said settlement :

And whereas, on the seventeenth day of August, one thousand eight hundred and ninety-one, the said Christiana Dorothea Cutten by deed exercised the power of appointment contained in the said settlement, and absolutely and irrevocably appointed and directed that, from and after her death, the Trustees for the time being of the said settlement should stand possessed of the said trust premises as follows: As to one-eleventh share, in trust for Athelberta Mary Cutten and Elsie Muriel Cutten, children of Charles William Cutten, late of Wellington, in the Provincial District of Wellington, solicitor, deceased, in equal shares, on their respectively attaining the age of twenty-one years or marrying; and in trust, as to the remaining ten equal shares, for Frances Mary Hart, wife of the said Edward Hulme Hart; Walter Cutten, of Dunedin aforesaid, engineer; Frederick Alfred Cutten, of Dunedin aforesaid, surveyor; Alice Jane Johnston, wife of Alfred Bruce Johnston, of Dunedin aforesaid, accountant; William Henry Cutten, of Dunedin aforesaid, engineer; Rebecca Cargill, wife of the said Archibald Cargill; Edward Cutten, of Temuka, near Timaru, in the Provincial District of Canterbury, in the said colony, bank agent; Francis Arthur Cutten, of Dunedin aforesaid, engineer; Ernest Cargill Cutten, of Naseby, in the Provincial District of Otago, solicitor; and Catherine May Cutten, of Anderson's Bay aforesaid, spinster, in equal shares :

And whereas the said Athelberta Mary Cutten and Elsie Muriel Cutten are still under the age of twenty-one years :

And whereas the objects of this Act are not attainable otherwise than by legislation :

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—

1. The Short Title of this Act is "The Cutten Trust Act, 1899."

2. In this Act the expression "the lessors" means the Trustees for the time being of the said deed of settlement.

3. The lessors shall, within one calendar month after the passing of this Act, put up to public auction a lease in the form or to the effect set forth in the First Schedule hereto, of the parcel of land described in the Second Schedule hereto, for the term of twenty-one years, from the first day of July, one thousand eight hundred and ninety-seven, at the upset annual ground-rent of fifty-nine pounds, subject to the payment by any purchaser other than the said Robert Martin, his executors, administrators, or assigns, of the sum of two thousand and fifty pounds, being the value fixed as aforesaid of the erections, buildings, and improvements on such land, and subject also to the condition that, in the event of any person other than the said Robert Martin, his executors, administrators, or assigns, becoming the purchaser thereof, such person shall forthwith pay in cash to the lessors, for the benefit of and in trust for the said Robert Martin, his executors, administrators, or assigns, the amount of the value of the erections, buildings, and improvements

Short Title.

Interpretation.

Lessors to auction
lease of land in
Second Schedule.

thereon fixed as aforesaid, and the lessor shall pay over to the said Robert Martin, his executors, administrators, or assigns, the amount so received from the purchaser without any deduction whatsoever; but if there be no bidding at the said auction, or if the said Robert Martin, his executors, administrators, or assigns, shall be the highest bidder, then the lessors shall grant to the said Robert Martin, his executors, administrators, or assigns, and he or they shall accept the lease at the upset annual rent aforesaid, or the rent bid by him or them therefor as the case may be. If any person other than the said Robert Martin, his executors, administrators, or assigns, shall become the purchaser of the said lease, such person shall pay rent for the said parcel of land from the date of the said auction, and the said Robert Martin, his executors, administrators, or assigns, shall pay rent for the same up to the date of such auction at the yearly rent bid at such auction, or, if there be no such bid at such auction, then at the said upset annual ground-rent so fixed as aforesaid.

4. The lessors shall within one calendar month after the passing of this Act put up to public auction a lease in the form or to the effect set forth in the First Schedule hereto, of the parcel of land described in the Third Schedule hereto, for the term of twenty-one years from the first day of July, one thousand eight hundred and ninety-seven, at the upset annual ground-rent of sixty pounds fifteen shillings, subject to the payment by any purchaser other than the said New Zealand Tablet Printing and Publishing Company (Limited), or its assigns, of the sum of one thousand two hundred pounds, being the value fixed as aforesaid of the erections, buildings, and improvements on such land, and subject also to the condition that, in the event of any person other than the said New Zealand Tablet Printing and Publishing Company (Limited), or its assigns becoming the purchaser thereof, such person shall forthwith pay in cash to the lessors for the benefit of and in trust for the said New Zealand Tablet Printing and Publishing Company (Limited), or its assigns, the amount of the value of the erections, buildings, and improvements thereon fixed as aforesaid; and the lessor shall pay over to the said New Zealand Tablet Printing and Publishing Company (Limited), or its assigns, the amount so received from the purchaser without any deduction whatsoever; but if there be no bidding at the said auction, or if the said New Zealand Tablet Printing and Publishing Company (Limited), or its assigns, shall be the highest bidder, then the lessors shall grant to the said New Zealand Tablet Printing and Publishing Company (Limited), or its assigns, and it or they shall accept, the lease at the upset annual rent aforesaid, or the rent bid by it or them therefor, as the case may be. If any person, other than the said New Zealand Tablet Printing and Publishing Company (Limited), or its assigns, shall become the purchaser of the said lease, such person shall pay rent for the said parcel of land from the date of the said auction, and the said New Zealand Tablet Printing and Publishing Company (Limited), or its assigns, shall pay rent for the same up to the date of such auction, at the yearly rent bid at such auction, or, if there be no bid at such auction, then at the said upset annual ground-rent so fixed as aforesaid.

Lessors to auction
lease of land in
Third Schedule.

Lessors to auction
lease of land in
Fourth Schedule.

5. The lessors shall, within one calendar month after the passing of this Act, put up to public auction a lease, in the form or to the effect set forth in the First Schedule hereto, of the parcel of land described in the Fourth Schedule hereto for the term of twenty-one years from the first day of July, one thousand eight hundred and ninety-seven, at the upset annual ground-rent of seventy-eight pounds fifteen shillings, subject to the payment by any purchaser other than the said Walter George Geddes, his executors, administrators, or assigns, of the sum of two thousand five hundred pounds, being the value fixed as aforesaid of the erections, buildings, and improvements on such land, and subject also to the condition that, in the event of any person other than the said Walter George Geddes, his executors, administrators, or assigns becoming the purchaser thereof, such person shall forthwith pay in cash to the lessors, for the benefit of and in trust for the said Walter George Geddes, his executors, administrators, or assigns, the amount of the value of the erections, buildings, and improvements thereon fixed as aforesaid; and the lessors shall pay over to the said Walter George Geddes, his executors, administrators, or assigns the amount so received from the purchaser, without any deduction whatsoever; but, if there be no bidding at the said auction, or if the said Walter George Geddes, his executors, administrators, or assigns shall be the highest bidder, then the lessor shall grant to the said Walter George Geddes, his executors, administrators, or assigns, and he or they shall accept a lease at the upset annual rent aforesaid, or the rent bid by him or them therefor, as the case may be. If any person other than the said Walter George Geddes, his executors, administrators, or assigns shall become the purchaser of the said lease, such person shall pay rent for the said parcel of land from the date of the said auction, and the said Walter George Geddes, his executors, administrators, or assigns shall pay rent for the same up to the date of such auction, at the yearly rent bid at such auction; or, if there be no bid at such auction, then at the said upset annual ground-rent so fixed as aforesaid.

Lessors to auction
lease of land in
Fifth Schedule.

6. The lessors shall put up to public auction a lease in the form or to the effect set forth in the First Schedule hereto of the parcel of land described in the Fifth Schedule hereto for a term of twenty-one years from the first day of January, one thousand nine hundred, and for that purpose valuations shall, during the month of November, one thousand eight hundred and ninety-nine, be made, one of such valuations to be of the fair annual ground-rent of the said parcel of land without any buildings or improvements for such further term, and the other of the then value of the buildings and improvements on the said parcel of land. And before the said first day of January, one thousand nine hundred, the lease of the said parcel of land for the said term shall be put up to public auction at the upset price of the annual rent thereof, fixed as aforesaid, subject to the payment by any purchaser other than the said Elizabeth Gilchrist, her executors, administrators, or assigns of the value of the buildings and improvements thereon fixed as aforesaid. And subject also to the condition that, in the event of any person other than the said Elizabeth Gil-

christ, her executors, administrators, or assigns becoming the purchaser, such person shall forthwith pay in cash to the lessors for the benefit of and in trust for the said Elizabeth Gilchrist, her executors, administrators, and assigns the amount of the value of the buildings and improvements so fixed as aforesaid. And the lessors shall pay over to the said Elizabeth Gilchrist, her executors, administrators, or assigns the amounts so received from the purchaser without any deduction whatsoever. But, if there be no bidding at the said auction, or if the said Elizabeth Gilchrist, her executors, administrators, or assigns shall be the highest bidder, then the lessors shall grant to the said Elizabeth Gilchrist, her executors, administrators, or assigns, and the said Elizabeth Gilchrist, her executors administrators, or assigns shall accept, such lease at the upset price aforesaid, or the rent bid by the said Elizabeth Gilchrist, her executors, administrators, or assigns therefor, as the case may be. The valuation hereinbefore provided for shall respectively be made by three indifferent persons, to be appointed in writing, as follows: One by the lessors, one by the said Elizabeth Gilchrist, her executors, administrators, or assigns, and the third by the two arbitrators so to be appointed; and the decision in writing of such three arbitrators, or any two of them, shall be binding on all parties: Provided that if either party shall, for seven days, refuse or neglect to appoint an arbitrator as aforesaid, after having been requested in writing so to do by the other party, or shall appoint an arbitrator who shall, for seven days after his appointment, refuse or neglect to join in appointing a third arbitrator as aforesaid, then, and in any such case, the aforesaid arbitration shall be made by the arbitrator appointed by the other party, and shall be binding on all parties, and every reference to arbitration under this section shall be deemed a reference to arbitration within the provisions of "The Arbitration Act, 1890," or any then subsisting statutory modification thereof, and shall have all the incidents and consequences of an arbitration under that Act and modification thereof (if any).

7. The lessors are hereby authorised and empowered to grant leases in the form or to the effect set forth in the First Schedule hereto of any part or parts of said Sections One, Two, Three, Four, Eight, and Sixty-four, Block Sixteen, in the Town of Dunedin not included in any of the leases referred to in sections three, four, five and six of this Act.

Lessors authorised and empowered to grant lease of other lands.

8. All such leases shall be prepared by the solicitors of the lessors, and the respective lessees shall pay and bear the costs of and incidental to the preparation thereof.

Preparation of leases.

9. Notwithstanding any act, deed, matter, or thing done or purporting to have been done under any of the said leases referred to in the preamble to this Act, or under any order of the Supreme Court of New Zealand, made or purporting to be made under "The Leases and Sales of Settled Estates Act, 1865," and the Act or Acts amending the same, the lessors are hereby empowered and directed to do all acts, matters, and things, and grant such leases as are referred to in sections numbered respectively three, four, five, and six hereof.

Lessors empowered and directed to grant such leases.

Leases to be good and valid leases, notwithstanding no consent by life-tenant.

10. Notwithstanding anything contained or implied in the said indentures and deeds referred to in the preamble to this Act, the said leases hereby authorised and directed to be granted shall be good and valid leases, and notwithstanding the same may not have been or may not be consented to by the said Christiana Dorothea Cutten or any other person or persons whomsoever.

Lessors to have power to do, perform, and execute such leases.

11. The lessors shall have full power to do, perform, and execute all such leases as aforesaid, and all such acts, deeds, instruments, and things as shall be required for giving effect to this Act and to the covenants, agreements, terms, and provisions contained in any lease granted or issued by them under this Act.

Schedules.

SCHEDULES.

FIRST SCHEDULE.

THIS DEED, made the day of , one thousand eight hundred and ninety- , between (hereinafter referred to as "the lessors"), of the one part, and (hereinafter referred to as "the lessee") of the other part, witnesseth that, in pursuance and exercise of the powers and directions in this behalf conferred on the lessors by "The Cutten Trust Act, 1899," and of every other power enabling the lessors in that behalf, and in consideration of the rent hereby reserved, and of the covenants on the part of the lessee herein contained and implied, the lessors do hereby demise unto the lessee all the piece of land described in the Schedule hereunder written, with all appurtenances thereunto belonging, to hold the premises hereby demised unto the lessee for the term of twenty-one years computed from the first day of July, one thousand eight hundred and ninety-seven, yielding and paying therefor unto the lessors during the said term the clear yearly rent of , by equal payments on the first day of January and the first day of July in every year, and also yielding and paying, in the event of and immediately upon the said term being determined by re-entry under the proviso for re-entry hereinafter contained, a proportionate part of the said rent for the period (if any) between the last-preceding day for payment of the said rent and the day of such re-entry: And the lessee doth hereby for self, executors, administrators, and assigns, covenant with the lessors, their executors, administrators, and assigns, that the lessee will during the said term pay the rent hereby reserved, at the times and in the manner hereinbefore appointed for payment thereof, and will during the said term pay all rates, taxes, and other outgoings which now are or during the said term may become payable, whether by the landlord or tenant, in respect of the demised premises or any improvements thereon, or of the said rent reserved, or any part thereof respectively: And will pay all costs, charges, and expenses which now are or during the said term may become payable in respect of the formation, maintenance, or repair of footpaths, boundary-walls, party-walls, or fences, which now are or at any time during the said term may be formed or erected in front of, upon, through, about, or under the said demised premises or any part thereof, and for the formation and maintenance of drains, sinks, and sewers: And will during the said term, at his or their own expense, maintain and keep the said demised premises, and the buildings for the time being thereon, with the walls, fences, drains, sinks, and sewers, in good and tenantable repair and condition, reasonable wear-and-tear thereof and damage by fire only excepted: And will at the lessee's own cost forthwith insure and at all times during the said term keep insured in the joint names of the lessors and the lessee against loss or damage by fire all buildings which now are or at any time during the said term may be on the said demised land in the full insurable value thereof in some insurance office or offices in Otago to be approved of in writing by the lessors: And will whenever required produce and deliver to the lessors the policy of every such insurance, and the receipt for every payment of premium therefor, and that in default thereof the lessors may insure the said buildings in any sum in manner

aforesaid, and pay the premiums payable in respect thereof, and recover the same and all incidental expenses from the lessee, by action, distress, or otherwise, in like manner as if the same had been rent in arrear: And all moneys received in respect of any insurance on the said buildings, whether effected in manner aforesaid or not, shall with all convenient speed be laid out in rebuilding, repairing, or otherwise reinstating the same in a good and substantial manner, but the lessors shall not be liable to see to such laying-out of such moneys or any part thereof: And will not carry on or permit to be carried on on the said demised premises any noisy, noisome, noxious, or offensive trade, business, or calling: Provided always, and it is hereby agreed and declared, that if the said yearly rent or any part thereof shall be in arrear for twenty-eight days after any of the days hereinbefore appointed for payment thereof (whether the same shall or shall not have been legally or formally demanded), or if there shall be a breach, whether from non-performance or non-observance of any of the covenants or agreements herein contained or herein implied, then and in any of the said cases it shall be lawful for the lessors, notwithstanding any omission to take advantage of any previous default of the same or a like nature, to re-enter upon the said demised premises or any part thereof in the name of the whole, and the same to have again, re-possess, and enjoy as if this demise had not been made: And it is hereby agreed that, unless the lessors and the lessee shall have previously to the last three calendar months of the said term agreed in writing upon the terms and provisions of a new lease, the said piece of land shall, at a time fixed by the lessors, be leased by public auction for a further term of twenty-one years from the expiration of the term hereby granted, and for that purpose valuations shall during the last three calendar months of the said term be made; one of such valuations to be of the fair annual ground-rent of the said piece of land without any buildings or improvements, for such further term, and the other of the then value of the buildings and improvements on the said piece of land, whether erected or made during the term hereby granted or previous thereto: And before the expiration of the said term a lease of the said piece of land for such further term shall be put up to public auction, at the upset price of the annual rent thereof fixed as aforesaid, subject to the payment by any purchaser other than the lessee of the value of the buildings and improvements thereon fixed as aforesaid; and, in the event of any person other than the lessee becoming the purchaser, such person shall forthwith pay in cash to the lessors, for the benefit of and in trust for the lessee (subject as hereinafter mentioned), the amount of the value of the buildings and improvements so fixed as aforesaid: And the lessors shall (if and when all covenants and conditions herein contained or implied shall have been complied with, and all rent and other outgoings as aforesaid shall have been paid) pay over to the lessee the amounts so received from the purchaser without any deduction whatsoever; but if there be no bidding at the said auction, or if the lessee shall be the highest bidder, then the lessors shall grant to the lessee and the lessee shall accept such lease at the upset price aforesaid, or the rent bid by the lessee therefor, as the case may be: And any lease which shall be granted under the foregoing provisions shall be subject to the same covenants and provisions as are contained or implied in this present lease, including the foregoing covenants, and provisions for valuation and renewal. The valuations hereinbefore provided for shall respectively be made by three indifferent persons, to be appointed in writing as follows: One by the lessors, one by the lessee, and the third by the two arbitrators so to be appointed; and the decision in writing of such three arbitrators, or any two of them, shall be binding on all parties: Provided that if either party shall for seven days refuse or neglect to appoint an arbitrator as aforesaid, after having been requested in writing so to do by the other party, or shall appoint an arbitrator who shall for seven days after his appointment refuse or neglect to join in appointing a third arbitrator as aforesaid, then and in any such case the aforesaid arbitration shall be made by the arbitrator appointed by the other party, and shall be binding on all parties. And every reference to arbitration under these presents shall be deemed a reference to arbitration within the provisions of "The Arbitration Act, 1890," or any then subsisting statutory modification thereof, and shall have all the incidents and consequences of an arbitration under that Act and modification thereof (if any). And it is hereby also agreed that any notice required to be given to the lessee under these presents may be served on the lessee or left at or delivered on the demised premises or any part thereof: Provided that nothing herein contained shall render the lessors liable to pay to the lessee any part of the value of the aforesaid buildings and improve-

ments unless and until the same shall have been received by the lessors from such purchaser as aforesaid; and it shall not be obligatory or in any way incumbent upon the lessors to take any proceedings whatsoever to compel such purchaser to pay the said value or any part thereof in case such purchaser shall make default in payment thereof or any part thereof, unless the lessee shall indemnify the lessors to its or their satisfaction against the expenses of such proceedings. The express covenants herein contained shall supersede those referring to the same subjects directed to be implied in leases by "The Property Law Consolidation Act, 1883." And provided, lastly, and it is hereby declared that the expression "the lessors" and "the lessee," or any similar expression in substance hereinbefore used, shall, unless inconsistent with the context, include the executors, administrators, and assigns of the lessors and lessee respectively.

In witness whereof these presents have been executed by or on behalf of the parties the day and year first before written.

THE SCHEDULE ABOVE REFERRED TO.

SECOND SCHEDULE.

ALL that parcel of land situate in the Town of Dunedin, being parts of Sections numbered respectively 2 and 3, Block XVI., on the record map of the said town, bounded as follows: Commencing at a point on the south-western boundary-line of said Section 2, distant 6 feet 9 inches in a north-westerly direction from the north-west corner or angle of said Section 3, running thence in a north-easterly direction a distance of 135 feet 6 inches; and bounded towards the north-west by other part of said Section 2, running thence in a south-easterly direction along parts of the north-easterly boundary-lines of said Sections 2 and 3, and at right angles to the last line, a distance of 28 feet; and bounded towards the north-east by Bath Street, running thence in a south-west direction in a line at right angles to the last line, a distance of 55 feet 6 inches; and bounded towards the south-east by other parts of Section 3, running thence in a line at right angles to the last line in a south-easterly direction, a distance of 2 feet; and bounded towards the north-east by other part of said Section 3, running thence in a south-westerly direction, in a line at right angles to the last line, a distance of 80 feet; and bounded towards the south-east by other part of said Section 3, 80 feet, running thence along part of the south-western boundary-line of said Sections 2 and 3, a distance of 30 feet, home to the commencing point; and towards the south-west by the Octagon.

THIRD SCHEDULE.

ALL that parcel of land, situate in the Town of Dunedin, being part of Section 3, Block XVI., on the record map of the said town: Commencing at a point on the western boundary of aforesaid Section 3, distant 3 feet 9 inches from the south-western corner of said Section 3, running thence along the south-western boundary-line a distance of 45 feet; and bounded towards the west by the Octagon, running thence in an easterly direction at right angles to the last line, a distance of 80 feet; and bounded towards the north by other part of said Section 3, running thence in a line at right angles to the last line in a southerly direction a distance of 45 feet; and bounded towards the east by other part of said Section 3, running thence in a line at right angles to the last line home to the commencing point, a distance of 80 feet; and bounded towards the south by other part of said Section 3.

FOURTH SCHEDULE.

ALL that parcel of land situate in the Town of Dunedin, being parts of Sections numbered respectively 3 and 4, Block XVI., on the record map of the said Town of Dunedin: Commencing at a point on the south-west corner or angle of said Section 4, and running thence along the western boundary-line of the said section 45 feet; towards the west by the Octagon, running thence in an easterly direction a distance of 135 feet 6 inches; and bounded towards the north by other part of said Section 3, running thence in a line at right angles to the last line in a southerly direction a distance of 101 feet; and bounded towards the east by Bath Street, running thence home to the commencing point, a distance of 146 feet 8 inches.

FIFTH SCHEDULE.

ALL that parcel of land situate in the Town of Dunedin aforesaid, being part of Section 2, Block XVI., on the record map of the said town. Bounded as follows: Commencing at a point on the western boundary-line of said Section 2, distant 6 feet 9 inches from the most southern point of the said boundary-line, thence along the said western boundary-line a distance of 34 feet 6 inches; and bounded towards the west by the Octagon, running thence in a line at right angles to the last line in an easterly direction a distance of 135 feet; and bounded towards the north by other part of said Section 2, running thence in a southerly direction in a line at right angles to the last line a distance of 34 feet 6 inches; and bounded towards the east by Bath Street, running thence to the commencing point a distance of 135 feet; and bounded towards the south by other part of said Section 2.