

New Zealand.

## ANALYSIS.

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1899, No. 16.

AN ACT to amend "The Government Advances to Settlers Act, 1894." Title  
[19th October, 1899.]

BE IT 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 Government Advances to Settlers Act Amendment Act, 1899"; and it shall form part of and be read together with "The Government Advances to Settlers Act, 1894" (hereinafter called "the principal Act"). Short Title.

## REBATE OF INTEREST.

2. In order to encourage the early payment of the prescribed instalments of interest in the case of fixed loans, and of the prescribed instalments of principal and interest in the case of loans on the instalment system (meaning thereby under the table set forth in the Second Schedule to the principal Act), the following provisions shall apply with respect to every instalment falling due after the thirty-first day of March, one thousand nine hundred:—

Rebate of interest  
when instalment  
paid punctually

- (1.) If the mortgagor (not being in arrear with any previous instalment) pays the instalment on or before its due date, or not later than the fourteenth day thereafter, he shall be entitled to a rebate of one-tenth of so much thereof as consists of interest, thereby reducing the rate of such interest to four and a half per centum in lieu of five per centum per annum.
- (2.) Such rebate may be deducted and retained by the mortgagor from the full nominal amount of the instalment when making the payment.

Notice of due date of instalment to be given

3. Not later than one month before any instalment falls due, the Superintendent shall post to the mortgagor, at his last known address, a notice specifying the due date of the instalment, the full nominal amount thereof, the amount of the rebate, the net amount of the instalment after deducting the rebate, and the date on which the right to the rebate will lapse;

Provided that the rights and liabilities of the mortgagor shall not be affected by the non-posting or non-receipt of such notice or by any error therein.

#### MODE OF DISPOSAL OF MONEYS PAID IN ADVANCE.

Mode of disposal of moneys paid in advance

4. All moneys hereafter paid in advance by a mortgagor in reduction of the mortgage debt shall be disposed of by the Superintendent in manner following, that is to say:—

- (1.) In the case of a fixed loan: in or towards satisfaction of the unpaid principal, or, if the mortgagor so directs, of the future instalments of interest in the order of their due dates.
- (2.) In the case of a loan on the instalment system: in or towards satisfaction of the future instalments in the order of their due dates in Mode A, or, if the mortgagor so directs, in Mode B, as hereinafter set forth.

Under Mode A, moneys to be used to pay instalments of principal.

5. With respect to Mode A, and the moneys to be disposed of thereunder, the following provisions shall apply:—

- (1.) In the case of each instalment of principal which is wholly satisfied, and on which no interest has actually begun to accrue, the corresponding instalment of interest shall not be payable.
- (2.) The instalments unsatisfied in whole or in part shall, as to both principal and interest, be deemed to be due and payable at half-yearly intervals computed from the due date of the instalment next preceding the instalment that is first satisfied in whole or in part, and there shall consequently be no break in the periodical continuity of the payments to be made by the mortgagor.

Under Mode B, for payment of instalments of principal and interest.

6. With respect to Mode B, and the moneys to be disposed of thereunder, the following provisions shall apply:—

- (1.) Such moneys shall be disposed of in or towards satisfaction of the future instalments of principal and interest in the order of their due dates.
- (2.) The due dates of the instalments shall not be affected, and

consequently, in so far as the instalments are wholly satisfied in advance, there shall be a break in the periodical continuity of the payments to be made by the mortgagor.

7. For the purpose of giving the mortgagor the benefit of a due rebate of interest in the case of interest falling due after the thirty-first day of March, one thousand nine hundred, and paid in advance under any of the three last-preceding sections hereof, those sections shall be construed subject to section two hereof.

Rebate of interest  
in respect thereof.

8. Subsections seven and eight of section forty-two of the principal Act shall cease to apply in the case of moneys paid in advance after the commencement of this Act; but in the case of moneys then held thereunder, they may, at the option of the mortgagor, either continue to be held thereunder, or, together with interest thereon from the date of the last yearly rest up to the date of the commencement of this Act, may be deemed to be moneys paid in advance, and be disposed of accordingly under the provisions in that behalf hereinbefore contained.

Disposal of moneys  
paid in advance.

#### READJUSTMENT OF LOANS.

9. For the purpose of giving greater elasticity to the existing provisions affecting loans, whether fixed loans or loans on the instalment system, the following special provisions shall apply in the case of every such loan, whether now current or hereafter granted:—

All loans may be  
readjusted when  
part repaid.

- (1.) On the due date of any instalment, after at least one-tenth of the principal has been repaid, the mortgagor (not being in arrear with any instalment or other payment under the mortgage) may, with the consent of the Superintendent, readjust the loan, by treating the balance of principal then unpaid as a fresh loan duly granted on that date for a fresh term:

Provided that in no case shall any loan be readjusted unless the balance of unpaid principal at the time of readjustment amounts to at least one hundred pounds.

- (2.) Such readjustment shall be effected by memorandum of readjustment, which shall be executed by the Superintendent (but not necessarily under seal) and by the mortgagor.
- (3.) The memorandum of readjustment shall be in the form in the Schedule hereto or to that effect, and shall specify the amount of the fresh loan (being in no case less than one hundred pounds), the date on which it is deemed to be granted (being the due date of an instalment under the original loan), and the amount and due date of the first prescribed instalment of interest, or, as the case may be, of principal and interest.
- (4.) The memorandum of readjustment shall be indorsed on the mortgage executed by the mortgagor in respect of the original loan, and need not be registered.
- (5.) From and after the execution of the memorandum of readjustment, such mortgage shall operate and be construed as applying to the fresh loan, in lieu of the original

Mode and effect  
thereof.

loan, in the same manner in all respects and with the same priorities of security and otherwise as if the mortgage had been originally granted in respect of the fresh loan.

MARGIN OF SECURITY.

Margin of security for fixed loans.

10. In the case of fixed loans the margin of security shall be deemed to be sufficient if the amount of the loan does not exceed three-fifths of the value of the security.

Margin of security for loans under instalment system.

11. In the case of loans under the instalment system, on freehold security of first-class agricultural land, the margin of security shall be deemed to be sufficient if the amount of the loan does not exceed two-thirds of the value of the security.

ADVANCES ON URBAN AND SUBURBAN LANDS.

Provisions for advances on security of urban or suburban land.

12. Notwithstanding anything in section twenty-five of the principal Act to the contrary, advances may be made on the security of urban or suburban land, subject, however, to the following special provisions:—

- (1.) The loan shall in every case be on the instalment system.
- (2.) The amount of the loan shall in no case be less than twenty-five pounds or more than two thousand pounds.
- (3.) In the case of urban land on which buildings exist, the amount of the loan shall not exceed three-fifths of the value of the land apart from the buildings, *plus* one-half of the value of the buildings apart from the land.
- (4.) In the case of suburban land on which buildings exist, the amount of the loan shall not exceed one-half the value of the land apart from the buildings, *plus* one-half of the value of the buildings apart from the land.
- (5.) In the case of urban or suburban land on which no buildings exist, the amount of the loan shall not exceed one-half of the value of the land, and no loan shall be granted except for the erection of buildings on the land; the loan to be advanced by instalments, at the discretion of the Board, as the erection of the buildings proceeds.
- (6.) In no case shall any loan be granted on the security of urban or suburban land that would not constitute a lawful security if it were other than urban or suburban land.

Urban and sub-urban land defined

13. For all the purposes of the principal Act and this Act,—

- (1.) The expression "urban land" means land which is situate in a borough having a population of at least two thousand inhabitants, and is not used for farming, dairying, or market-gardening purposes; and
- (2.) The expression "suburban land" means land which is situate in a borough having a population of less than two thousand inhabitants, or in any town, or in the vicinity of any town or borough, and is not used for farming, dairying, or market-gardening purposes.

Repeal.

14. Section five of "The Government Advances to Settlers Act Amendment Act, 1895," is hereby repealed.

## SPECIAL PROVISIONS AS TO OTHER THAN FREEHOLD SECURITIES.

15. In every case where the security for a loan consists of land of any of the classes numbered two to twelve in section twenty-five of the principal Act, as extended by section six of "The Government Advances to Settlers Act Amendment Act, 1895," the following special provisions shall apply, anything in any of the Acts mentioned or referred to in those sections, or in any other Act, to the contrary notwithstanding:—

Special provisions for protecting Superintendent's interests with respect to other than freehold securities.

- (1.) Except with the consent of the Superintendent, and on such terms as in his interests as mortgagee he thinks fit, it shall not be lawful for the Land Board,—
  - (a.) To recover from the mortgagor any rent or other periodical payment in respect of the land if such payment is more than eighteen months in arrear; nor
  - (b.) To forfeit or cancel the mortgagor's title for breach of conditions, or to accept any surrender thereof, without giving to the Superintendent at least three months' previous notice in writing of intention so to do.
- (2.) Notwithstanding any such forfeiture, cancellation, or surrender, but subject to the prior claim of the Land Board to the extent of the arrears referred to in subsection one hereof, the mortgage shall by force of this Act be deemed to be a charge on the improvements then existing on the land, and on all moneys payable in respect thereof by any incoming tenant or occupier of the land (nevertheless to the extent only to which the mortgagor would have had interest therein if his title to the land had been lawfully determined otherwise than by forfeiture, cancellation, or surrender), and such money shall be payable to the Superintendent accordingly:

Provided that the Superintendent may accept from such tenant or occupier a mortgage of his estate and interest in the land in lieu of cash; and in such case neither subsection one of section eighty-three nor section eighty-five of "The Land Act, 1892," nor any similar limitation in that Act or in any other Act, shall be deemed to apply.

- (3.) In the event of the Superintendent granting any lease or tenancy of the land or of any part thereof as mortgagee in possession (which he is hereby empowered to do without the consent of the Land Board), then for the purpose of preventing forfeiture or cancellation of the mortgagor's title for breach of conditions, but for no other purpose, fulfilment of conditions by the person in actual possession under such tenancy or lease shall count as fulfilment by the mortgagor: Provided that every such tenancy or lease shall in the case of Crown land be subject to the approval of the Minister of Lands.
- (4.) In the event of the Superintendent selling the security in exercise of power of sale, then in so far as concerns the

transfer to the purchaser, or any mortgage of his estate and interest in the land to the Superintendent to secure the whole or any part of the purchase-money, neither subsection one, five, nor six of section eighty-three, nor section eighty-five of "The Land Act, 1892," nor any similar limitation in that Act or in any other Act, shall be deemed to apply.

- (5.) Any such sale may be by public auction or private contract, as the Superintendent in his discretion thinks fit, and in the case of sale by private contract advertising shall not be necessary:

Provided that the sale shall in case of Crown land be subject to the approval of the Minister of Lands.

- (6.) The power of sale shall be deemed to arise and accrue, and may, without the consent of the Land Board, be exercised by the Superintendent, at any time after the expiration of the period limited in that behalf by the mortgage, anything in subsection three of section eighty-three of "The Land Act, 1892," or in any other Act to the contrary notwithstanding.
- (7.) All moneys expended by the Superintendent in exercise of the powers in that behalf conferred by the covenant set forth in the second part of the Fourth Schedule to the principal Act shall be payable to him by the mortgagor on demand, and until paid shall, together with interest at the rate of five per centum per annum computed from the date or dates of such moneys being expended, be deemed to be charged on the land, and be covered by the security accordingly.
- (8.) The foregoing provisions of this section shall apply to mortgages now current or hereafter granted.
- (9.) For the purposes of this section, "Land Board" includes the statutory Board, trustees, Public Trustee, or other authority granting the lease or other title under which the mortgagor holds.

#### GENERAL.

16. The General Board shall at all times have power to determine whether the land offered as security for a loan is or is not first class agricultural land, or urban land, or suburban land.

17. In any case where the Superintendent sells any security or any part thereof in exercise of the power of sale, he may to the extent of the amount owing thereunder accept from the purchaser a mortgage of the land for the whole or any part of the purchase-money, whatever the value of the security, anything in the principal Act or this Act to the contrary notwithstanding.

18. Native lands held under lease under "The West Coast Settlement Reserves Act, 1881," are hereby included, and shall be deemed to have at all times been included, in subsection seven of section twenty-five of the principal Act.

19. The principal Act and every other Act are hereby modified in so far as they are in conflict with this Act.

General Board to determine quality of land.

Mortgage of land for whole or part of purchase-money may be accepted.

Additional Native land on which money may be advanced.

Principal Act and other Acts modified.

## SCHEDULE.

Schedule.

Under "The Government Advances to Settlers Act Amendment Act, 1899."

## MEMORANDUM OF READJUSTMENT OF LOAN

PURSUANT to the provisions of the above-mentioned Act, the original loan of \_\_\_\_\_, secured by the within mortgage, registered as number .. \_\_\_\_\_, is hereby readjusted as follows:—

Amount of fresh loan .

Date on which fresh loan is deemed to be granted .

[In the case of a fixed loan] Term and due date of fresh loan .

Due date and amount of prescribed half-yearly instalment of interest [or, as the case may be, of principal and interest]

In witness whereof this Memorandum of Readjustment has been executed by the mortgagor and the Superintendent this \_\_\_\_\_ day of \_\_\_\_\_, 1899

A.B.,  
Mortgagor.

C D,  
The Government Advances to Settlers  
Office Superintendent.

Signed by the said A.B., as mortgagor,  
in the presence of—

E.F.,  
[Occupation and address].

Signed by the said C D, as Superintendent,  
in the presence of—

G.H.,  
[Occupation and address].