

No. 17, 1919.]

ACT

To provide for the assignment of commonages in the Province of the Cape of Good Hope to agricultural settlements or immigrant locations and to certain local authorities; for the sub-division of such commonages; for the conditions of the allocation of any such sub-division; and for the conditions of alienation by such local authorities of land assigned to them as commonages.

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Assignment of Crown land for commonage purposes.

1. The Governor-General may assign as commonages for the use of owners of allotments within agricultural settlements or immigrant locations established under any law relating to land settlement in the Province of the Cape of Good Hope, such portions of Crown Land as are, at the commencement of this Act, being used with the concurrence of the Government by such owners for commonage purposes.

Sub-division of commonages among owners of arable allotments and allotment of commonage sections.

2. (1) The Governor-General may, upon the petition of not less than three fourths of the registered owners of the allotments (hereinafter referred to as arable allotments) in any agricultural settlement or immigrant location established as aforesaid, authorize the subdivision of any commonage already assigned to such settlement or location or which may hereafter be assigned thereto by the Governor-General in accordance with this Act, into sections equal in number to the arable allotments in such settlement or location: Provided that the Governor-General may, prior to subdivision, exclude from any commonage such portions thereof as are required for public purposes. Every such subdivision is hereinafter referred to as a commonage section. Any arable allotment which may be vested in the Crown, shall, on subdivision of the commonage as herein provided, have attached to it such commonage section as would be allocated to the owner thereof if such allotment were owned by a private person. For the purposes of the petition praying for subdivision of the commonage, the Crown shall be regarded as consenting to the subdivision.

(2) Every subdivision of a commonage authorized under sub-section (1) as well as the allocation of a commonage section to an arable allotment, shall be carried out by a committee consisting of—

- (a) a member of the land board constituted under the Land Settlement Act, 1912, for the area in which the commonage to be subdivided is situate;
- (b) the magistrate of the district in which the said commonage is situate;
- (c) a duly qualified land surveyor appointed by the Minister of Lands; and
- (d) two owners of land elected by the registered owners of the allotments and appointed by the Minister of Lands.

The decision of the majority of the committee shall be the decision of the committee and shall be final and conclusive.

(3) The committee shall make provisions safeguarding all right conferred on any owner by any existing title deed and, for the purpose of effecting a fair and equitable division and

allocation, the committee shall take into consideration the value as well as the extent of each portion of the commonage so to be divided and allocated.

(4) Every allocation of a commonage section by the committee shall be notified in three consecutive issues of the *Gazette* and in a newspaper circulating in the district, and at the expiry of two months from the date of the *Gazette* in which the notice is first published the communal rights hitherto exercised by virtue of the conditions of the title deed of the arable allotment or otherwise over the land subdivided shall cease and determine.

(5) If it shall appear to the satisfaction of the Surveyor-General that the existing diagram of a commonage about to be subdivided as provided by this Act is erroneous, he may, notwithstanding anything contained in any other law, cause an amended title to be issued in respect of such commonage before any subdivision of such commonage is effected.

3. The person registered as the owner of any arable allotment at the date of the first publication in the *Gazette* of the allocation of a commonage section to such allotment shall have the right to purchase that commonage section at an annual quitrent to be fixed by the Governor-General: Provided that an owner who is entitled to purchase more than one commonage section may, in the discretion of the committee and if he so desires, have the sections which he may be so entitled to purchase surveyed in one block. Title deeds to commonage sections shall be issued subject to the conditions contained in the First Schedule to this Act.

Provided further that there may be inserted in any title deed to a commonage section such special conditions as may appear to the Minister of Lands to be necessary: Provided also that, in the event of an owner being under this Act entitled to purchase more than one commonage section, he may take out one title deed in respect of all such commonage sections.

4. The expenditure incurred by the Government in effecting the subdivision of a commonage in accordance with section two shall be apportioned among and be payable by the persons to whom the commonage sections are allocated and no title deed of a commonage section shall be issued unless the amount of the expenditure apportioned thereto (including any expenditure in connection with such land which may have been incurred by Government or for which it may have become liable under any law relating to fencing) and the registration fees and other charges incidental to the issue of a Crown grant have been paid.

5. The annual quitrent payable in accordance with section three shall be redeemable in the manner provided by section two of Act No. 40 of 1895 of the Cape of Good Hope.

6. If the registered owner of an arable allotment at the date of the first publication in the *Gazette* of the notice under subsection (4) of section two, within a period of five years after the date of that publication fails to submit a written application to the Minister of Lands to purchase the commonage section allocated to such arable allotment, or fails to pay the expenditure referred to in section four, the right of such owner to purchase the said commonage section shall determine and such commonage section shall thereupon become available.

for disposal under the laws regulating the disposal of Crown Land: Provided that no compensation shall be payable by the Government for any improvements which may have been erected on or effected to the said commonage section.

Saving.

7. Nothing in this Act contained shall be construed as affecting the provisions of Act No. 38 of 1905 of the Cape of Good Hope.

Grant of commonage to certain village management boards.

8. (1) Notwithstanding anything to the contrary contained in any law or in the conditions of title under which lots at Zuurbrak, in the Division of Swellendam and at Dysselsdorp, in the Division of Oudtshoorn, are held, the Governor-General may grant—

- (a) to the village management board of Zuurbrak, the area known as the Zuurbrak Commonage, in extent 5,270 morgen or thereabouts; and
- (b) to the village management board of Dysselsdorp, portion of the area known as the Dysselsdorp Commonage, in extent 1,432 morgen or thereabouts.

(2) The title deeds issued under this section, which shall be subject to the conditions set out in the Second Schedule to this Act, shall be exempt from payment of survey expenses and of registration fees and charges.

Conditions of allocation, etc., of commonage referred to in section eight.

9. No commonage referred to in the last preceding section shall be alienated or leased by the village management board concerned until such commonage has been divided into areas suitable for grazing and of sufficient extent to satisfy the grazing requirements of the inhabitants of Zuurbrak and Dysselsdorp (as the case may be) and into areas suitable for cultivation or residential sites. The apportionment of the commonage shall, in the event of any such division, be entrusted to a committee consisting of—

- (a) an officer appointed by the Administrator of the Province of the Cape of Good Hope;
- (b) a representative elected by the registered owners of lots at Zuurbrak or Dysselsdorp (as the case may be);
- (c) a representative of the squatters to whom leases were granted under regulations promulgated, in the case of Zuurbrak, under Government Notice No. 788 of 1882, dated the 18th July, 1882, and in the case of Dysselsdorp, under Government Notice No. 142 of 1894, dated the 27th January, 1894. The election of those representatives shall be conducted in such manner as may be prescribed by the said Administrator.

The decision of a majority of the committee shall be the decision of the committee and shall be final and conclusive.

Restrictions in alienation of lands allocated to village management board.

10. No such village management board aforesaid shall in any way alienate the areas allocated for grazing purposes by the committee in accordance with the provisions of the last preceding section, but each such board may lease the lands which have been allocated as suitable for cultivation or for residential sites, for such period or periods and in such manner and subject to such conditions as may be prescribed by the said Administrator: Provided that, in the leasing of such lands, preferential consideration shall be given to persons who have been occupying dwelling or ploughing lots under leases or permissions granted by any such village management board under the regulations referred to in paragraph (c) of the last preceding section with a view to placing such persons in legal possession of the land they have hitherto occupied.

Any proceeds which may be derived by any such village management board from the leasing of the lands referred to in this section shall be devoted to such purposes as may be approved by the said Administrator.

Short title and commencement of Act.

11. This Act may be cited for all purposes as the Commonages (Cape of Good Hope) Act, 1919, and shall commence and come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

First Schedule.

1. All roads and thoroughfares being or existing on the land, described in the plan or diagram of the same, shall remain free and uninterrupted, unless the same be closed or altered by competent authority.

2. The Governor-General shall, at all times have the right to make roads, railways, dams, aqueducts, drains, and to conduct telegraphs over the land for the benefit of the public, and to take materials for these purposes, also to establish convenient outspans for the use of travellers on payment to the owner of such sum of money as compensation as may be determined by arbitration: Provided that the arbitrators may set off against the loss or damage caused to the owner, the benefit instant or prospective, which he shall or may derive in consequence of the construction of any of the said works.

3. The Governor-General shall at all times have the right of resuming the whole or a portion of the land hereby granted if required for public purposes, on payment to the owner of such sum of money in compensation as may be mutually agreed upon by the parties concerned, or failing such agreement, as may be determined by arbitration.

4. All rights to gold, silver, precious stones and mineral oils found or discovered at any time on or in the land hereby granted shall be reserved to the Crown together with a right of ingress to and egress from any mines or works undertaken for mining or prospecting purposes by any person or persons, but subject always to the provisions of any law for the time being regulating the prospecting and mining for precious stones, minerals and mineral oils.

5. If at any time any adjacent or neighbouring owner requires a right of way or road of necessity to or from his land over the land hereby granted the grantee and his successors in title shall be bound to allow him without compensation such way or road of necessity, and to point out the direction and width thereof: Provided that in case of a dispute or difference regarding such road or its sufficiency, the direction and width of the road shall be decided upon by a board, consisting of the magistrate of the district in which the land is situate, as chairman, and two landowners resident in the said district, to be nominated by the Minister of Lands.

6. The owner of every allotment on being required so to do by the local authority shall erect and at all times maintain a sufficient fence around his allotment. "Sufficient fence" for the purposes of this section shall mean when applied to wire fences a fence of not fewer than six wires and not less than four feet high, in other cases any fence, wall or hedge through which no stock could pass without breaking the same.

Second Schedule.

1. The Government shall have the right at all times of resuming for public purposes such portion or portions of the land hereby granted as may not have been alienated by the village management board. In the event of resumption as aforesaid, no compensation shall be payable by the Government except in respect of substantial improvements of a permanent nature erected or made on the land resumed, whether by the village management board or by any other person or body acting under the express authority of the said board.

2. All roads and thoroughfares over the land, whether or not described in the plan or diagram thereof, shall remain free and uninterrupted, unless closed, diverted or altered by competent authority.

3. All rights to minerals, mineral products, mineral oils and precious stones, precious or base metals on or under the land hereby granted are expressly reserved to the Crown, together with the right of access to any mines or works undertaken for mining or prospecting purposes by any person duly authorized in that behalf. The land is subject to such further rights as the public or the Government now may or may hereafter have or be entitled to obtain under or by virtue of any law relating to the prospecting, digging, mining or exploitation of minerals, mineral products, mineral oils, precious stones, precious or base metals, on or under the land hereby granted, which rights shall not be impaired or in any way affected by the title deed.

4. The land shall be subject to all rights and servitudes which now affect or at any time hereafter may be found to affect the title of the land hereby granted, or which may be binding on the Government in respect of the said land as at the date of the grant.