

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]
House of Representatives, 1 November 1951

Mr. Connolly

DEMPSEY TRUST AMENDMENT

[LOCAL BILL]

ANALYSIS

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A BILL INTITULED

AN ACT to amend the Dempsey Trust Act 1892. Title.

WHEREAS by section seven of the Dempsey Trust Act 1892 the Dempsey Trustees (hereinafter called the Trustees) were empowered to lease the lands vested in them, and especially were empowered to grant leases similar in terms to that which they were thereby authorized to grant to the New Zealand Loan and Mercantile Agency Company, Limited (hereinafter called the company), with such variations as might appear requisite or desirable in the interests of the trust: And whereas it was provided by section eleven of the said Act that the Trustees should accept from the company a surrender of the lease of the said lands then current and issue to the company a new lease for the balance of the term of the then current lease at the then existing rent, which new lease should be in the form and to the effect set forth in the Schedule to the said Act: And whereas the said lands are at present held by the

company from the Trustees under a certain outstanding deed of lease bearing date the tenth day of December, nineteen hundred and thirty-five, registered number 15497, Otago Deeds Registry, for a term of twenty-one years, computed from the first day of September, 5
nineteen hundred and thirty-five, which said lease is in the said form: And whereas it is desirable to vary the terms upon which the Trustees may lease the said lands to the company and to amend the said form:

BE IT THEREFORE ENACTED by the General Assembly 10
of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. This Act may be cited as the Dempsey Trust Amendment Act 1951, and shall be read together with and deemed part of the Dempsey Trust Act 1892 15
(hereinafter referred to as the principal Act).

Substituting new form of lease.

2. The form of lease set forth in the Schedule to the principal Act is hereby repealed, and the form of lease set forth in the Schedule to this Act is substituted therefor. 20

Authority to issue lease.

3. The Trustees shall, on the passing of this Act, accept from the company a surrender of the said outstanding deed of lease and issue to the company a new lease of the said lands for the balance of the term of the said outstanding deed of lease at the existing rent of 25
four hundred and twenty-five pounds, which new lease shall be in the form and to the effect set forth in the Schedule to this Act.

Schedule.

SCHEDULE

FORM OF LEASE

THE Dempsey Trustees incorporated under the provisions of the Dempsey Trust Act 1892 (hereinafter called the lessors), being registered as the proprietors of an estate in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon, in all that piece of land described in the Schedule hereto, in pursuance and exercise of the powers in that behalf conferred on the lessors by the Dempsey Trust Act 1892 and its amendments and of every other power enabling the lessors in that behalf do hereby lease to the New Zealand Loan and Mercantile Agency Company, Limited, a company incorporated in England and having its head office for New Zealand at Wellington in the Dominion of New Zealand (hereinafter called

the lessee), all the said land to be held by the lessee as tenant for the term of _____, computed from the _____ day of _____, one thousand nine hundred and _____, at the yearly rental of _____, payable by equal half-yearly payments on the _____ day of _____ and the _____ day of _____ in each year, of which the first shall be made on the _____ day of _____ next, subject to the following covenants, conditions, and restrictions. And the lessee doth hereby covenant with the lessors in manner following that is to say:—

1. That the lessee will during the said term pay the said rent on the above mentioned days at Dunedin, free of exchange and without any deduction.

2. That the lessee will pay and discharge all existing and future taxes, rates, and assessments whatsoever chargeable in respect of the said land or on the landlord or tenant thereof, including the cost of erecting and maintaining all party, dividing, and boundary fences, and will bear and perform all other burdens and duties in any way incumbent on the owner or occupier thereof.

3. That the lessee will not without the previous consent in writing of the lessors remove or take away any building for the time being standing on the said land, and will during the said term keep and maintain in good and tenantable condition and repair all buildings, fences, erections, and drains now or hereafter erected or laid upon or under the said land.

4. That the lessee will not assign, sublet, or part with the possession of or in any way further encumber the said land or any part thereof without the previous consent in writing of the lessors first had and obtained.

5. That the lessee will not carry on or permit to be carried on on the said land or any part thereof any offensive business, trade, or manufacture whatsoever: Provided always that the carrying on thereon of all or any of the businesses of stock and station agents, wool and skin brokers or merchants, or produce merchants shall not constitute a breach of this covenant.

6. That the lessee will at its own cost insure and keep the said buildings insured against loss or damage by fire in the full insurable value thereof in the joint names of the lessors and the lessee, and will whenever required by the lessors produce the policies for every such insurance and the receipts for the premium payable thereunder; and that in default thereof the lessors may insure the said buildings in such sum as they shall think fit and pay the premiums payable in respect thereof and recover the same in like manner as if the same were rent in arrear.

And it is hereby agreed and declared as follows:—

7. All moneys received under or by virtue of an insurance of buildings on the said land shall, unless otherwise agreed, be laid out in rebuilding or reinstating the buildings destroyed or damaged, and if in any case such moneys shall be more than sufficient for that purpose the surplus shall belong to the lessee.

8. That if and whenever the said rent or any part thereof shall at any time be in arrear or unpaid for thirty days after the same shall have become due (whether the same shall have been legally or formally demanded or not), or if the lessee shall make default in the due observance or performance of any of the covenants by the lessee herein contained or implied other than the covenant relating to insurance, then and in any such case it shall be lawful for the lessors or any person duly authorized by them in that behalf to re-enter into and upon the said land or any part thereof in the name of the whole, and thereupon this lease and every clause and thing herein contained shall absolutely cease, determine, and become void, but without prejudice to any right of action or remedy of the lessors for or in respect of any rent which shall have then accrued due under these presents or for or in respect of any antecedent breach or non-observance of any of the covenants by the lessee herein contained or implied.

9. On the expiration by effluxion of time of the term hereby granted, the lessee shall have a right to obtain, in accordance with the provisions hereinafter contained, a renewed lease of the said land at a rent to be determined by valuation in accordance with the said provisions, for the term of twenty-one years computed from the expiration of the lease hereby granted, and subject to the same covenants and provisions as this lease, including this present provision for renewal thereof and all provisions ancillary or in relation thereto.

10. Within six calendar months previous to the expiration of the term hereby created, or so soon thereafter as may be, a valuation shall be made of the fair annual rent of the said land without any buildings or improvements for the further term of twenty-one years so that the rent so valued shall be uniform throughout the whole of the term of the renewed lease. The valuation shall be made by two indifferent persons as arbitrators appointed in writing, one by the lessors and the other by the lessee. The arbitrators shall, before entering upon the valuation, together appoint in writing under their respective hands a third person who shall be an umpire as between them. The decision of such two first appointed arbitrators if they agree or in such respects as they agree, or of such umpire if the arbitrators do not agree or in such respects as they do not agree, shall be binding upon all parties. The duty of such umpire, on reference to him of any question, shall be to analyse the respective valuations of the two arbitrators in the matters in which their valuations shall not agree and then to make an independent and substantive valuation, and the last mentioned valuation shall be the decision of the umpire: Provided always that in making such decision on any question referred to him the umpire shall in every case be bound to make a valuation not exceeding the higher or less than the lower of the valuations made by the arbitrators respectively.

11. The provisions herein contained for determination of the annual rent shall be deemed to amount to a submission to arbitration under and within the meaning of the Arbitration

Act 1908, or any enactment for the time being in force in substitution therefor or amendment thereof, and the provisions of the said Act or of any such enactment shall apply accordingly except in any particular in which they are varied by the provisions contained in these presents.

12. Within two calendar months after the making of the said valuation and the giving of notice thereof to the lessee, the lessee shall give notice in writing, signed by the lessee or by its agent duly authorized in that behalf and delivered to the lessors, stating whether the lessee desires to have a renewed lease of the land.

13. Any such notice may be given by the lessee within the time aforesaid although the term hereby granted has already expired by effluxion of time or although the said valuation has not been made or notice thereof has not been given to the lessee until after the expiration of the said term by effluxion of time, unless before the giving of such notice by the lessee it has given up to the lessors the possession of the said land or has been duly ejected therefrom in pursuance of the judgment or order of any Court of competent jurisdiction or the lessors have re-entered upon the said land.

14. Any such notice by the lessee of its desire to have a renewed lease shall be deemed to constitute a contract between the lessors and the lessee for the granting and acceptance of a renewed lease at the rent so valued and for the term and subject to the covenants and provisions referred to in clause 9 hereof.

15. If the lessee fails within the time aforesaid to give any notice as to whether it desires a renewed lease or not, or if the lessee gives notice in writing signed by it or by its agent duly authorized in that behalf that it does not desire a renewed lease, the lessee's right to a renewed lease shall cease on the expiry of the time aforesaid or on the date on which such notice is received by the lessors, as the case may be.

16. The term of any such renewed lease shall run from the date of the expiration of the prior lease, and the rent as so valued shall accrue as from the said date in lieu of the rent reserved in the prior lease, notwithstanding the fact that the renewed lease may not be executed until after that date.

17. All costs and expenses of any such valuation as aforesaid shall be paid by the lessee.

18. If the lease hereby granted is not renewed in accordance with the foregoing provisions, or if it is determined by forfeiture, re-entry, or otherwise, all buildings and improvements on the said land shall absolutely revert to the lessors free from any payment or compensation whatever.

19. Any notice required to be given under these presents may be given to the lessors by serving the same on the secretary of the lessors or by sending the same by post addressed to the said secretary at his place of business, and may be given to the lessee by leaving the same upon the said land or any part thereof or by sending the same by post addressed to the lessee at its last known place of business in New Zealand.

20. Nothing in the foregoing provisions shall exclude or restrict the right of the lessee to obtain relief against any forfeiture or determination of the lease or of the right to a renewal thereof in the same cases and on the same conditions as if the lease had been granted otherwise than in the execution of statutory powers in that behalf.

21. That the covenants and provisions implied in leases by the Land Transfer Act 1915, or any amendment or re-enactment thereof, shall be negatived or modified in respect of this lease in so far as the same are or may be inconsistent with the modifications hereby made or the covenants and provisions herein expressed.

And the above named the New Zealand Loan and Mercantile Agency Company, Limited, doth hereby accept this lease of the said land to be held by it as lessee and subject to the conditions, restrictions, and covenants herein set forth and implied.

In witness whereof these presents have been executed this day of

THE SCHEDULE HEREINBEFORE REFERRED TO

All that parcel of land containing 2 roods and 19.6 perches, be the same a little more or less, situated in the City of Dunedin, being Sections 1, 2, 21, and 22, Block XLVII, Town of Dunedin, and being all the land comprised in certificate of title, Otago Registry Volume 288, folio 61.