1899.

A BILL

To reduce and alter the rents and royalties payable by the lessees of the Sutherland estate, their successors and assigns, under certain memoranda of lease from Thomas Holt to the Holt-Sutherland Estate Land Company (Limited), to extend the term granted by the said memoranda of lease, and to make certain concessions and give certain powers to the lessees thereunder; and for other purposes mentioned therein.

WHEREAS the Honorable Thomas Holt, of Sydney, in the Colony of New South Wales, by certain memoranda of lease, dated respectively the first day of September, one thousand eight hundred and eighty-one, the twenty-eighth day of July, one thousand eight hundred and eighty-four, and the twentieth day of September, one thousand eight hundred and eighty-seven, leased to the Holt-Sutherland Estate Land Company (Limited) (hereinafter called the old company) certain lands (amongst others) therein described, being Preamble.

part

part of the lands known as the Sutherland estate, for a term of fifty-six years from the first day of July, one thousand eight hundred and eighty-one, at a yearly rent in respect of the said, being part of the said Sutherland estate of the sum of one thousand pounds for the first year of the said term, the sum of one thousand five hundred pounds for the second year of the said term, the sum of two thousand pounds for the third year of the said term, the yearly sum of three thousand pounds during the twenty-five years next following, and the yearly sum of five thousand pounds during the residue of the said term, subject to the observance and performance of the covenants and conditions therein contained: And whereas by the said memoranda of lease it was provided that the lessees should pay during the said term a royalty of six-pence for every ton of screened coal raised or obtained from the said land, and a royalty of three-pence for every ton of screenings of the coal so raised or obtained: And whereas by the said memoranda of lease it was agreed and declared that it should be lawful for the old company, during the continuance of the said term, by deed, to appoint by way of lease any part of the said lands thereby demised for any term of years exceeding the said term, but not exceeding the residue then unexpired of the term of ninety-nine years, computed from the date of the said memorandum of lease of the first day of September, one thousand eight hundred and eighty-one, to take effect in possession within six calendar months after the date of such appointment, subject to the conditions, stipulations, and provisos in the said memoranda of lease contained: And whereas the said Thomas Holt duly made and executed his last will and testament in writing bearing date the sixth day of March, one thousand eight hundred and eighty-eight, whereby (subject to the payment of certain annuities) he devised the said Sutherland estate, subject to the said lease, to his Australian trustees to the use of his son Frederick Samuel Ellis Holt for life, with remainder to the use of Thomas Samuel Holt, the eldest son of the said Frederick Samuel Ellis Holt, for his life, with remainder to the use of the first and every other son of the said Thomas Samuel Holt successively in remainder according to their respective seniorities in tail male, with remainder to the use of the first and every other daughters of the said Thomas Samuel Holt successively according to their seniorities in tail male, with certain remainders over as fully set out in the said will: And whereas the said Thomas Holt died on the fifth day of September, one thousand eight hundred and eighty-eight, without having revoked or altered the said will so far as related to the devise of the said lands: And whereas the old company have exhausted their capital, and on the thirtieth day of June last past were indebted to the said Frederick Samuel Ellis Holt in the sum of five thousand four hundred and eighty pounds twelve shillings and six pence, which they are wholly unable to pay: And whereas

negotiations

negotiations have been for some time pending between the old company and the said Frederick Samuel Ellis Holt and Thomas Samuel Holt for the reduction of the said rent and royalties, and for the release by the said Frederick Samuel Ellis Holt of all claims which he has against the old company for rents up to the thirtieth day of June last: And whereas the Holt-Sutherland Estate Company (Limited) (hereinafter called the new company) has been formed for (*inter alia*) the purpose of acquiring, and has acquired, from the old company the whole of its assets and property of every kind, including the benefit of the lease of the said lands so demised as aforesaid, but the new company has refused to make itself liable for the performance of the covenants and conditions contained in the said memoranda of lease for a longer period than during the lives of the said Frederick Samuel Ellis Holt and Thomas Samuel Holt or the survivor of them unless the said term be extended and the said rent be reduced for the whole of such extended period as hereinafter provided: And whereas it is for the benefit of all persons interested in the receipt of the rents reserved by the said memoranda of lease that the new company should take over the said lease at the said reduced rent and subject to such reduced royalties as are hereinafter mentioned; but under the will of the said Thomas Holt neither the said Frederick Samuel Ellis Holt nor Thomas Samuel Holt nor any other person or persons has or have power to reduce the said rents or royalties except so far as their respective life interests are concerned: And whereas it is also for the benefit of all persons interested in the receipt of the said rents that the term granted by the said memoranda of lease should be extended as hereinafter mentioned, and that the several other modifications and alterations hereinafter mentioned should be made in the provisions of the said memoranda of lease, and that the several concessions hereinafter mentioned should be made, and the several powers hereinafter mentioned should be given to the lessees, and the value of the said lease and of the reversion of the said demised lands will be greatly enhanced thereby, but under the will of the said Thomas Holt neither the said Frederick Samuel Ellis Holt nor Thomas Samuel Holt, nor any other person or persons, has or have any power to grant such extension or to make such modifications or alterations or to make such concessions or confer such powers: And whereas by agreement dated the day of , one thousand eight hundred and ninety-nine, between the said Frederick Samuel Ellis Holt, of the first part, the said Thomas Samuel Holt, of the second part, the old company, of the third part, and the new company, of the fourth part, for the considerations therein mentioned the said Frederick Samuel Ellis Holt agreed to release the old company, its successors and assigns, from the said sum of five thousand four hundred and eighty pounds twelve shillings and six pence, and the said Frederick Samuel Ellis Holt and

Thomas

Thomas Samuel Holt (so far as they legally could, but not further or otherwise) agreed with the old company and the new company that the rents reserved in the said lease should be reduced to the extent and in the manner hereinafter provided, and the said Frederick Samuel Ellis Holt and Thomas Samuel Holt also agreed to join with the new company or the old company at the cost and expense of the new company in making the necessary application to Parliament to extend the term of years granted by the said memoranda of lease and to reduce the said rents as aforesaid so that such extension and reduction should be legally binding on those entitled to receive the rents of the said Sutherland estate for the whole residue of the said term of fifty-six years, or of any extension thereof which may be granted as hereinafter mentioned; and also agreed to join with the old company and the new company at the cost and expense of the new company in applying for Parliamentary sanction to enable the new company, its successors and assigns, to make appointments by way of lease in respect of the said Sutherland estate for a period of ninety-nine years from the first day of July, one thousand eight hundred and ninety-nine, or at the expense of the new company to apply themselves to Parliament to grant the extension and make the concessions, and to enable the said new company and its assigns to make the appointments by way of lease aforesaid; and the said Frederick Samuel Ellis Holt and Thomas Samuel Holt also agreed to consent to the statutory extension of the term granted by the said memoranda of lease of the said Sutherland estate, so that the said term shall endure for fifty-six years from the said first day of July, one thousand eight hundred and ninety-nine, inclusive, subject to the new company agreeing to pay the proposed reduced rentals for the full term of such period of fifty-six years; and the said Frederick Samuel Ellis Holt and Thomas Samuel Holt also agreed that they would consent to statutory powers being conferred on the lessees or appointees, by way of lease, of the old company or the new company or their respective assigns, to convert their leaseholds into freeholds upon such terms and conditions as might be authorised by Parliament and approved by the person or persons for the time being entitled to receive the rents and profits payable by the new company and its assigns, but so that such conversion should be based on a capitalisation of the rentals reserved under such appointment by way of lease at an interest return of four pounds per centum per annum; and the new company undertook to execute any deed or other document necessary to render the new company liable to the said Frederick Samuel Ellis Holt, and on his death to the said Thomas Samuel Holt, for the said reduced rent and (subject to such reduction and to the other provisions of the now reciting agreement) for the performance and observance of the covenants, clauses, and provisos contained in the said

said memoranda or lease; and in the event of statutory extension of the said term and reduction of the said rents and other statutory powers being procured as aforesaid, the new company agreed to execute any deed or document necessary to make the new company liable, not only 5 during the lives of the said Frederick Samuel Ellis Holt and Thomas Samuel Holt, but also to the persons who, under the will of the said Thomas Holt, would be legally entitled to receive the rentals reserved under the said memoranda of lease during the said term and during any such statutory extension thereof as aforesaid; and the said 10 Frederick Samuel Ellis Holt and Thomas Samuel Holt also agreed to consent to statutory powers being conferred upon the said new company (subject to such provisions as the said Frederick Samuel Ellis Holt and Thomas Samuel Holt might require for the protection of the interests of the tenant for life for the time being of the 15 Sutherland estate) to lease the said lands privately instead of by public auction, as in the said memoranda of lease provided: And whereas the old company have duly passed a special resolution requiring the old company to be wound up voluntarily, and has been appointed liquidator thereof: And whereas by agreement dated the 20 day of , one thousand eight hundred and ninety-nine, between the old company of the one part and the new company of the other part, it was agreed that the old company should sell and transfer, and the new company should purchase and take over, all the business, goodwill, and real and personal estate and property of the 25 old company, and that as part of the consideration for the said sale and transfer the new company should undertake all the obligations of the old company, and in particular should covenant with the said Frederick Samuel Ellis Holt or other the owner of the reversion expectant on the said lease for payment of the reduced rent thereunder 30 and the observance and performance of the covenants therein on the lessee's part contained: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as 35 follows:—

1. This Act may be cited as the "Holt-Sutherland Estate Act, 1899." Short title.

2. From the first day of July one thousand eight hundred and ninety-nine inclusive, the yearly rent payable under the said 40 memorandum of lease of the first day of September, one thousand eight hundred and eighty-one, in respect of the said lands forming part of the said Sutherland estate, shall be reduced and altered so that the said rent shall be for a period of five years from the said first day of July, one thousand eight hundred and ninety-nine, inclusive, the 45 yearly sum of one thousand two hundred and fifty pounds, together with Reduction of rent.

with ten per centum of the clear net annual profits to be made by the new company and its assigns in each of such years respectively without making any appropriations, and thereafter, for the residue of the said term as extended by this Act, the yearly sum of one thousand two hundred and fifty pounds, together with fifteen per centum of the clear net annual profits of the new company, its successors, or assigns, without making any appropriations, and so much of such rent as consists of a percentage of such clear net annual profit shall be ascertainable in such manner and payable at such times as shall be agreed between the said Frederick Samuel Ellis Holt and Thomas Samuel Holt, or the survivor of them, or the tenant for life, or tenant in tail in possession for the time being, of the said Sutherland estate, and the new company, its successors, or assigns, or if they are unable to agree as shall be finally determined by arbitration in the method provided by the Arbitration Act, 1892, or by any statutory modification thereof for the time being in force, and such reduction and alteration of the said rents shall be binding on all persons who, under the will of the said Thomas Holt, may during the whole residue of said term as extended by this Act be successively entitled to receive the rents reserved under the said memorandum of lease, and as regards rent becoming payable on or after the said first day of July, one thousand eight hundred and ninety-nine, the said memorandum of lease and the covenants and conditions therein shall be read as though the said reduced rents in this section mentioned were the rents reserved thereunder in respect of the said lands forming part of the said Sutherland estate; and notwithstanding anything contained in the said memorandum of lease, neither the old company nor the new company, nor their respective successors or assigns shall be liable to pay in respect of the said lease of the said lands forming part of the said Sutherland estate any further or other rent than as provided in this section.

The new company and its assigns shall at all times comply with such provisions for the furnishing of returns by, and the inspection of the books and records of the new company and its assigns on behalf of the tenant for life or tenant in tail in possession for the time being of the said Sutherland estate, and for the verification thereof as may be required by the said Frederick Samuel Ellis Holt and Thomas Samuel Holt, or either of them, or in the event of the death of both of them before such requirement may have been made, then by the tenant for life or tenant in tail in possession for the time being of the said Sutherland estate, or during his infancy by the Australian trustees for the time being of the said will.

Reduction of royalties.

3. From and after the commencement of this Act the royalties reserved under the said memorandum of lease of the first day of September, one thousand eight hundred and eighty-one, in respect of coal

coal raised or obtained from the said demised lands shall be reduced to twopence for every ton of screened coal, and one penny for every ton of screenings of coal in lieu of the amounts reserved by the said memorandum of lease, and thereupon such reduction of the said 5 royalties shall be binding on all persons who, under the will of the said Thomas Holt, may during the whole residue of the said term as extended by this Act be successively entitled to receive the said rent and royalties, and the said memorandum of lease and the covenants and conditions therein shall be read as though the said reduced 10 royalties in this section mentioned were the royalties reserved therein on coal raised or obtained from the said demised lands.

Power to appoint by way of lease.

4. The new company and its assigns may during the continuance of the said term as extended by this Act, by deed appoint by way of lease any part of the said Sutherland estate for any term of years 15 exceeding the said term as extended by this Act, but not exceeding the residue then unexpired of ninety-nine years, computed from the first day of July, one thousand eight hundred and ninety-nine inclusive: Provided, however, that nothing shall be taken in the way of a fine, premium, or foregift, and that all rents reserved by any such appoint- 20 ment of lease shall be fixed at the same rate for every year, and shall be made payable at least once in each year and not more than six months in advance.

All rents reserved by such appointments by way of lease shall be payable to the new company and its assigns during the residue of 25 the said term as extended by this Act, and after the expiration or sooner determination of the said extended term shall be incident to the reversion.

Extension of lease.

5. The said term of years of the said lands forming part of the said Sutherland estate granted by the said memorandum of lease shall 30 be and is hereby extended for the term of fifty-six years from the first day of July, one thousand eight hundred and ninety-nine inclusive, and the said memoranda of lease and all the covenants and conditions therein shall be read as though the said extended term of fifty-six years from the said first day of July, one thousand eight hundred and 35 ninety-nine, inclusive, were the terms granted by the said memoranda of lease in respect of the said lands forming part of the said Sutherland estate, and all the provisions of this Act relating to the said term shall be taken and construed to extend and apply to such extended term.

Power to lease privately.

40 **6.** Notwithstanding anything contained in the said memoranda of lease the new company and its assigns may, subject to such provisions as may be required by the said Frederick Samuel Ellis Holt and Thomas Samuel Holt or the survivor of them, or in the event of the death of both of them before such requirement may have been 45 made, then by the tenant for life or tenant in tail in possession for the

the time being of the said Sutherland estate, or during his infancy by the Australian trustee for the time being of the said will, may require for the protection of the interests of the persons entitled under the will of the said Thomas Holt, make such appointments by way of lease as aforesaid by private contract without submitting such leases to sale by public auction as by the said memoranda of lease required.

Power to convert leaseholds into freeholds.

7. The new company and its assigns may, subject to the conditions hereinafter expressed, appoint for an estate in fee simple to any appointee by way of lease of the old company or of the new company or of their respective successors or assigns, or to any person claiming through such appointee, any lands comprised in the said lands forming part of the said Sutherland estate and demised or appointed by way of lease either by the old company or the new company or by their respective assigns to such appointee.

Such appointee or other person shall, by way of purchase money for the said land, pay to the Australian trustees for the time being of the will of the said Thomas Holt, a sum calculated upon a capitalisation of the rent reserved by such appointment by way of lease at an interest return of four per centum per annum.

Application of purchase money.

Such purchase money shall be invested, deposited, and applied by the Australian trustees for the time being of the said will in any manner in which money received on a sale of a settled estate effected under the authority of Part IV of the Conveyancing and Law of Property Act, 1898, may be invested, deposited, or applied, and such purchase money while remaining uninvested or unapplied, and securities on which any investment of any such purchase money is made shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same person successively in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the said will, and the income of such purchase money and of such securities shall, during the period for which the new company and its assigns were entitled to the benefit of such appointments by way of lease, be paid to the new company and its assigns, and shall thereafter be paid or applied as the income of that land, if not disposed of in fee simple, would have been payable or applicable under the said will.

Until such purchase money can be applied as aforesaid, the same shall be invested at the discretion of the Australian trustees for the time being of the said will in some or one of the investments in which cash under the control of the Supreme Court in its equitable jurisdiction is for the time being authorised to be invested; and the interest and dividends of such investments shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land: Provided that the

the said Australian trustees shall be entitled to the same remuneration, in respect of the said purchase money and the income thereof, as the Perpetual Trustee Company (Limited) would be entitled to under the Perpetual Trustee Company (Limited) Act.

Power to reclaim land.

5 **8.** The new company and its assigns may, during the said term as extended by this Act, make application to the Governor or other proper authority, with the consent in writing of the tenant for life or tenant in tail in possession for the time being of the said Sutherland estate or of the Australian trustees for the time being of the said will 10 in case the tenant for life or tenant in tail in possession for the time being is under the age of twenty-one years, for authority to reclaim any land adjoining any water frontage of the said lands forming part of the said Sutherland estate and lying beyond or below high-water mark, and the Governor may, on such application, authorise the new 15 company and its assigns to reclaim such land as though the new company, its successors and assigns, were the proprietors in fee simple of the said Sutherland estate, and the new company and its assigns may at their own cost and expense reclaim such land.

On completion of such reclamation and payment of the appraised 20 value of the said land in the prescribed manner by the new company and its assigns, the land to be reclaimed shall be granted to the Australian trustees for the time being of the said will. The said reclaimed land so granted as aforesaid and any other reclaimed land adjoining, and lands forming part of the said Sutherland estate which 25 during the said term as extended by this Act may be granted to the Australian trustees for the time being of the said will, whether the authority to reclaim such lands was applied for or granted in pursuance of this section or otherwise shall be held by the Australian trustees for the time being of the said will on the trusts declared in the said will with 30 regard to the said Sutherland estate, and shall be deemed thenceforth to be included in the said memorandum of lease of the first day of September, one thousand eight hundred and eighty-one, of the said lands forming part of the said Sutherland estate, and to be part of the same lands, and to be subject to all the clauses, covenants, and 35 provisions of the said memorandum of lease as modified by this Act, but the new company and its assigns shall not be liable to pay any increased or additional rent in respect of the said land so reclaimed.

Sydney: William Applegate Gullick, Government Printer.—1899.

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