

Confidential

1908

No.

C.7.

Sec. of State

(SUBJECT).

1908

12th October

Previous Papers.

Sealing Rights of Landowners
 where no reservation was made
 at time of sale of land, - also
 question of acreage, etc.

(MINUTES).

Copy of S/S's despatch found loose in
 Confidential Cupboard filed herein.

C.P.S.
 /s.

22.2.16.

Subsequent Papers.

FALKLAND ISLANDS.

DOWNING STREET,

CONFIDENTIAL.

12th October, 1908.

Sir,

I have the honour to acknowledge the receipt of your confidential despatch of the 13th of July, in which you transmitted a copy of a Memorandum by Mr. Grant on certain points which have recently arisen with regard to the law relating to sealing.

2. I have consulted my legal advisers and they inform me that, in their opinion, the answers to the questions raised in the Memorandum are as follows:-

(a) The grant to the Falkland Islands Company, which was in issue in their appeal to the Privy Council in 1865, carries with it the right to take seals, as would any other grant from the Crown, without a reservation of this right, made prior to the passing of any general legislation on the subject.

(b) Section 4 of the Seal Fishery Ordinance, 1899, preserves this right to the holders of the Falkland Islands Company's grant and other grants without an express reservation of seals. The 37th section of the Ordinance of 1853, the effect of which was considered by the Privy Council in 1865, appears to be an exact parallel to section 4 of the Seal Fishery Ordinance

(c) Section 21 (h) of the Land Ordinance, 1903, has no retrospective effect.

(d) Grantees or leaseholders who are entitled to the benefit of section 4 of the Seal Fishery Ordinance, 1899, are not under a legal obligation to pay royalties if payment of royalties is not an express condition of their grants or leases.

(e) The reservation of the right to take seals necessarily carries with it the legal means of exercising it by agents or licensees. The Crown can grant a license to kill seals to any person in respect of lands granted or leased under section 2I of the Land Ordinance 1903, as that section is now worded. If previous Ordinances have contained a provision on the same lines as condition (r) in section 2I but differently worded, due regard must be had in the case of each lease to the exact terms of the Ordinance under which it was granted.

The Crown could not of course grant a license to take seals to any person other than the grantee or lessee in respect of lands granted or leased under the Ordinance of 1903 without a reservation of sealing rights- i.e. grants where condition (h) is expressly excluded.

3. In regard to the last question (e) I am advised that Lord Ripon's despatch No.43 of the 23rd May, 1893, was intended to apply only to leases which included sealing rights and could not apply to leases, such as those now granted under the Land Ordinance, 1903, in which the Crown reserves the sealing rights.

4. Your despatch also raises the administrative question of the price at which land is sold. The price has varied from time to time, but, as it was fixed at 3/- as recently as 1903 after discussion and consideration, I do not think any immediate alteration would be advisable. It could not in any case be altered so as to affect existing holders who have taken leases

leases from the Crown on the faith of the condition embodied in the Ordinance that they are to have the privilege of buying the freehold at that price. The same argument applies to the acreage, and apart from the provisions of section 14 of the Land Ordinance, if the Government has granted leases containing incorrect figures, it must still be bound by its own figures when the tenant wishes to exercise his right of purchase.

The Government must be content to correct the acreage so far as possible when opportunities offer.

I have &c.,

(Signed) Crewe.

OR

L.ALLARDYCE, ESQUIRE, C.M.G.

&c., &c., &c.