

Laws of His Majesty's Province of Upper Canada, passed in the year 1838. York: Robert Stanton, 1838.

7 William IV – Chapter 118

An Act to provide for the disposal of the Public Lands in this Province, and for other purposes therein-mentioned. Royal Assent promulgated by Proclamation, 17th May, 1838.

Whereas it is expedient to provide greater facilities for the disposal of the Public Lands in this Province, and for the issuing of Patent Deeds for the same: Be it therefore enacted, by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That from and after the passing of this Act, no free grant shall be made of any of the Public Lands in this Province, to any person or persons whomsoever, except U. E. Loyalists and their children, and such other persons as are now entitled to a free grant of Public Land, under or by virtue of any Order in Council, or other regulation of Government now in force and effect.

II. And be it further enacted by the authority aforesaid, That it shall be the duty of the Surveyor General, so soon as conveniently may be after an Order in Council shall have been issued for the allowance of any claim for a free grant of land, to locate the party or parties entitled thereto, or the assignee or assignees of such party or parties, his, her or their heirs or assigns, on such lands open for location in any District within this Province, under the authority of the Government, as he, she or they, shall think proper to select, and as shall not have been previously located to any other person or persons, or shall not have been otherwise specially reserved and the patent Deed or patent Deeds of the lands so located, shall be issued to the parties free of expense, or upon the payment of such patent fees only as are now payable under any present regulation respecting, grants of a similar nature.

III. And be it further enacted by the authority aforesaid, That after, the allowance of any such claims, under or by virtue of any order in Council to be issued in respect thereof, such claims shall be assignable and transferable by the parties entitled thereto, to any purchaser or purchasers thereof, and such purchaser or purchasers his, her or their, heirs or assigns, shall be entitled to locate in respect thereof, and to have the patent Deed or patent Deeds of the same to be issued in his, her or their, name or names.

IV. And be it further enacted by the authority aforesaid, That all claims for free grants of public lands shall, after the passing of this Act, be made and set forth by memorial or petition to the Governor, Lieutenant Governor, or Person Administering the Government of this Province, in Council, and shall be accompanied by the requisite documentary proofs and evidence, and shall be signed by the claimant or claimants, his, her or their, attorney or agent, and shall be duly

considered and disposed of in Council only, and in no other manner, (except as is hereinafter provided.)

V. And be it further enacted by the authority aforesaid, That it shall be the duty of His Majesty's Commissioner for the sale of Crown Lands, for the time being, to keep a book for the entry (at the option of the parties interested) of the particulars of any assignment made by as well the original nominee or locatee, as also by any subsequent assignee or assignees, of any such claims on the lands located in respect thereof, such assignment or assignments being first produced and exhibited to the Commissioner aforesaid, together with an affidavit of the due execution thereof, sworn before any Justice of the Peace, who is hereby fully authorised to administer the oath in this behalf, and such affidavit shall truly express the time of the execution of such assignment or assignments, and thereupon it shall be the duty of the said Commissioner to cause the material parts of every such assignment to be entered or registered in such book of entry or registry, and to endorse on every such assignment a certificate of such entry or registration; and every such assignment so entered and registered, shall be valid against any other of a previous date or execution, but not then entered or registered, except in cases of express notice.

VI. And be it further enacted by the authority aforesaid, That after any Order in Council shall be made in respect to free grants of land as aforesaid, the party or parties interested therein, or the assignee or assignees of such party or parties, and the heirs or assigns of such assignee or assignees, shall, at their option, be entitled to locate lands in respect thereof, or to claim an allowance in lieu thereof, at the rate of four shillings per acre, in the purchase of any other public lands, upon the sale thereof, under the provisions of this Act, and whether the same consist of Crown Lands, Clergy Reserves, School Lands or other public lands.

VII. And be it further enacted by the authority aforesaid, That any Military or Naval Officer, or other person entitled to an allowance in money in lieu of lands, under any existing order or regulation, shall be entitled to purchase any of the public lands aforesaid, and shall receive credit upon any such purchase to the full extent of the said allowance.

VIII. And be it further enacted by the authority aforesaid, That in case of the sale of any Clergy Reserves, or other lands, appropriated for a specific public purpose, to any person or persons entitled under the provisions of this Act to purchase the same, in lieu of locating or purchasing other lands as aforesaid, the proper funds to which the proceeds of the lands so sold shall belong, shall be re-imbursed the full amount of such sale from and out of the proceeds of the sale of Crown Lands, not so appropriated to any specific purpose, and it shall be the duty of the Commissioner of Crown Lands to regulate his accounts accordingly.

IX. And be it farther enacted by the authority aforesaid, That except as aforesaid, and as hereinafter is further provided, none of the public lands aforesaid shall be sold by private sale, unless the same shall have been first offered at public auction for sale at an upset price; after which it shall be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, for the time being, to direct the sale of such lands at the upset price

thereof named at such public auction, to any person willing to purchase the same by private contract.

X. And be it further enacted by the authority aforesaid, That the upset price of such public lands shall be from time to time fixed by the Governor, Lieutenant Governor, or Person Administering the Government of this Province, in Council only, and not otherwise, as also the terms and conditions of sale, and such other regulations respecting the same, not contrary to the provision of this Act, as shall be deemed necessary.

XI. And be it further enacted by the authority aforesaid, That the management of such public sales, and the time and place of holding the same, shall be under the control and direction of the Commissioner of Crown Lands, subject to any general or special order in Council that shall from time to time be made to regulate the same; and the proceeds of such sales, as also of sales by private contract, shall be received by the Commissioner of Crown Lands, and be duly accounted for, and paid over by him to the Receiver General of the Province.

XII. And for the purpose of encouraging actual settlement on the lands purchased from the Crown, under the provisions of this Act: Be it further enacted by the authority aforesaid, That it shall be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, to order and direct reservations to be made of such portions of land adjoining or adjacent to lands intended for immediate sale, as the Governor, Lieutenant Governor, or the Person Administering the Government of this Province, by and with the advice and consent of the Executive Council, shall deem requisite and advisable to order and direct; and the land so reserved shall, upon application, be granted free of expense to the purchaser or purchasers of the adjoining or adjacent lot so sold: Provided, the quantity in no case shall exceed fifty acres, upon its appearing, upon inspection and other sufficient proof, that such purchaser or purchasers, his, her or their assignee or assignees, shall have been bona fide settled and resident upon the land so purchased for the space of five years, and shall have made such improvements thereon as shall be required by any order in Council respecting the same: Provided always, that such reservation shall not in any case exceed in quantity the lot or parcel of purchased land, in respect of which such reserved land shall have been made; and also, that the whole of such residence shall have been within ten years from the time of such original purchase.

XIII. And be it further enacted by the authority aforesaid, That it shall be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, by and with the consent of the Executive Council, to nominate and appoint fit and proper persons in each District in the Province to be resident Agents of the Commissioner of Crown Lands, for the sale of public lands, in the manner hereinafter provided; and also to appoint the time and place in each District where such Agents shall keep their offices.

XIV. And be it further enacted by the authority aforesaid, That it shall be the duty of such resident Agents, and they are hereby authorised and empowered, under the direction of the Commissioner of Crown Lands, to make sales, as well by auction as also by private contract, of the

public lands within their respective divisions, at such upset prices as shall have been, under the provisions of this Act, duly fixed and ascertained.

XV. And be it further enacted by the authority aforesaid, That every such District Agent shall be furnished by the Commissioners of Crown Lands with correct lists and maps of the lands for sale, from time to time, in his division, and with such other means as may be necessary to enable him to give full and requisite information to purchasers; and the division allotted to each District Agent shall be assigned and limited by the Commissioner of Crown Lands, and such District Agent shall not have any power to act out of such division, and shall keep regular accounts of sales, and make the same distinctly to appear on his plan or map.

XVI. And be it further enacted by the authority aforesaid, That no sale of public lands, by auction or otherwise, shall be effected out of the District and division in which such lands are situate, unless under a special order in Council.

XVII. And be it further enacted by the authority aforesaid, That the purchase money upon the sale of any such public lands, shall, in the first instance, be paid to the resident District Agent, who shall transmit the same to the Commissioner of Crown Lands, whenever the same shall amount to the sum of twenty-five pounds, deducting therefrom his per centage, as hereinafter provided; and in default of such remittance, shall be liable to be charged penalty thereon, at the rate of fifteen per cent for the time he shall retain the same in his hands after the amount shall become remittable as aforesaid; and upon the receipt of any such purchase monies by the District Agent, such District Agent shall give the purchaser or purchasers a receipt for the same, specifying therein the number of the lot, or quantity of land purchased, and otherwise sufficiently describing the same, which receipt shall bear date the day on which it was actually signed; and the receipts so given, shall authorise the purchaser to take immediate possession of the lot so sold, and to maintain actions of ejectment, or for trespass, against any wrongful possessor or trespasser thereon, in his own name, as fully and effectually as if the Patent Deed had been issued to such purchaser.

XVIII. And be it further enacted by the authority aforesaid, That so soon as the purchase money of any particular lot or quantify of land shall have been paid up in the manner aforesaid, the purchaser or purchasers thereof shall thereupon become entitled to have and receive a free grant of the same, by His Majesty's Letters Patent, under the Great Seal of the Province, granting the same to such purchaser or purchasers, his, her or their heirs and assigns, in free and common soccage, and subject only to such reservations as are now usually reserved in Letters Patent of the same description; and such Letters Patent shall be transmitted by the Commissioner of Crown Lands, to the District Agent of the division in which the lands are situate, within the space of thirty days after the whole of the purchase money shall have been paid, and duly notified to the Commissioner of Crown Lands, unless by any unforeseen event or unavoidable necessity the same cannot be transmitted; and it shall be the duty of the District Agent, upon the receipt of such Letters Patent, to deliver the same to the owner or owners, upon demand, without charge.

XIX. And be it further enacted by the authority aforesaid, That it shall also be the duty of the Commissioner of Crown Lands to furnish every District Agent with a correct list of all lands which

shall be, from time to time, open for location within his division, to any claimant or claimants entitled to free grants; and it shall be the duty of such District Agent to afford the requisite information to any such claimant or claimants, and also to receive and transmit to the Office of the Commissioner of Crown Lands, any petition or application for location, to be laid before the Executive Government; and such District Agent shall also receive and distribute to the parties concerned, the necessary location tickets, orders in Council, Letters Patent, and other documents relative to grants of land, free of expense.

XX. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of the Province, by and with the advice and consent of the Executive Council, to authorise and direct the expenditure, by the Commissioner of Crown Lands, of any sum not exceeding one thousand pounds, in each Township in which the same shall be considered necessary and advisable, in the erection of one grist-mill, and one saw-mill, or either of them, at such place in the Township as shall be deemed most advisable and beneficial, and the money expended in the building of the same shall be paid by the Commissioner of Crown Lands, out of the proceeds of the sales of Crown Lands in his hands, and shall be allowed in the accounts of the said Commissioner; and such saw-mill and grist-mill, or either of them, shall afterwards be disposed of and sold, at such time, and upon such terms and conditions, as the Governor, Lieutenant Governor, or Person Administering the Government for the time being, shall, by and with the advice and consent of the Executive Council, authorise and approve; and the proceeds of any such sale shall be paid to the Commissioner of Crown Lands direct, and be accounted for by him in the same manner as the proceeds of sales of Crown Lands.

XXI. And be it further enacted by the authority aforesaid, That the Commissioner for the sale of Crown Lands, for the time being, as also every District Agent, shall, before entering upon the duties of their respective offices, give good and sufficient security, to the satisfaction of the Executive Government, for the faithful discharge of their respective duties, and for the due payment of all public monies that shall come into their hands respectively, that is to say— For the payment of such monies that shall come into the hands of the District Agent, to the Commissioner for the sale of Crown Lands, and for the payment of such monies that shall be received by such Commissioner of Crown Lands, or the balance remaining unexpended in his hands, to the Receiver General of the Province.

XXII. And be it further enacted by the authority aforesaid, That each of the District Agents shall receive such a per centage on the sale of lands made by them, under the authority of this Act, as the Governor, Lieutenant Governor, or Person Administering the Government of this Province for the time being, with the advice of the Executive Council, shall think reasonable for the service so performed.

XXIII. And be it further enacted by the authority aforesaid, That it shall be the duty of the Commissioner for the sale of Crown Lands, to render his account, in writing, to the Receiver General every three months, of all public monies in hand, or received or paid by him, in which account shall be included the amount paid to District Agents for their services, and for the inspection and sale of lands, and locating lands; and the said Commissioner shall pay over to the

Receiver General the balance of all public monies remaining in his hands at the time of rendering such half-yearly account, after retaining thereout a sufficient amount to meet contingent expenses of the Crown Land Department, not exceeding the sum of five hundred pounds.

XXIV. And be it further enacted by the authority aforesaid, That it shall be the duty of the said Commissioner of Crown Lands, once in every year, within ten days after the meeting of any Session of the Legislature, to transmit to the Governor, Lieutenant Governor, or Person Administering the Government of the Province, a true copy or copies of the accounts or lists of all sales and expenditure respecting the public lands of the Province under his control or management, and of all monies in hand; such accounts being brought up to within thirty days of the delivery of the same, in order that such accounts may be laid before Parliament.

XXV. And be it further enacted by the authority aforesaid, That it shall also be the duty of the said Commissioner of Crown Lands to cause a correct list and description of the names and residences of the District Agents throughout the Districts, as also a list of all lands intended to be offered for sale and location, with the upset prices and conditions of sale, to be published in the Upper Canada Gazette, and in one newspaper of the District in which the lands are situate.

XXVI. And be it further enacted by the authority aforesaid, That it shall be lawful for the Governor, Lieutenant Governor, or other Person Administering the Government of the Province, by and with the advice and consent of the Executive Council, to authorise and direct the Commissioner of Crown Lands, from time to time, to make private sales, at a fair valuation, to any lessee or occupant of Crown Lands, or to other individuals, who, from the peculiar situation of the property applied for, may be liable to injury by the disposal thereof to any other person or persons than such lessees or occupants, or other individuals interested as aforesaid.

XXVII. And be it further enacted by the authority aforesaid, That if any person shall make oath or affirmation, under the provisions of this Act, and such oath or affirmation shall be wilfully false, he shall be deemed guilty of wilful and corrupt perjury, and on conviction thereof, shall suffer as in other cases of wilful and corrupt perjury.

XXVIII. And be it further enacted by the authority aforesaid, That this Act shall continue in force for two years, and from thence to the end of the then next Session of the Provincial Parliament, and no longer.