

The Provincial Statutes of Canada, passed in the year 1841. Kingston: Stewart Derbishire & George Desbarats, 1841.

4 & 5 Victoria – Chapter 100

An Act for the disposal of Public Lands.

18th September, 1841.—Presented for Her Majesty’s Assent and reserved “for the signification of her Majesty’s pleasure thereon.”

27th April, 1842.—Assented by Her Majesty, in Her Privy Council.

30th May, 1842.—The Royal Assent signified by the Proclamation of his Excellency Sir Charles Bagot, Governor General.

Whereas it is expedient to provide by a Law applicable to all parts of this Province for the disposal of Public Lands therein; Be it therefore enacted by the Queen’s Most Excellent Majesty by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled *An Act to Re-unite the Provinces of Upper and Lower Canada and for the government of Canada*; And it is hereby enacted by the authority of the same, that the Act of the Parliament of the late Province of Upper Canada, passed in the second year of the Reign of Her Majesty, and intituled *An Act to extend and continue for a limited period the provisions of an Act passed in the first year of Her Majesty’s Reign, intituled An Act to provide for the disposal of the Public Lands in this Province*, and the Act thereby continued be and the same are hereby repealed.

II. And be it enacted, that except as hereinafter provided no free grant of Public Land shall be made to any person or persons whomsoever.

III. And be it enacted, that all claims to free grants of Land arising out of or under the authority of any order in Council or other regulation of the Government now in force, shall be adjudged upon and determined by the Governor of this Province, by and with the advice of the Executive Council.

IV. And be it enacted, that all claims for Land under any Order in Council or other regulation of the Government now in force, heretofore allowed by competent authority, or which shall hereafter be allowed by the Governor in Council, shall be commuted for land scrip or orders for nominal sum of money, to be issued by the Commissioner of Crown Lands; and such scrip shall be received as money upon all sales of Lands of the Crown in this Province, the proceeds of the sales of which Lands are not or shall not be set apart for any specific purpose.

V. And be it enacted, that upon payment of the fees chargeable upon any such grant of Land in cases where the grant is subject to such fees, and free of any expense where the grant is free of fees, the Commissioner of Crown Lands, in lieu of locating the claimant, shall issue to him or her scrip or orders for nominal amounts in money equal to the amount of his or her grant, calculating the value of such grant in that part of Canada formerly called Upper Canada at the price of four

shillings currency per acre, and that the said scrip shall be issued in amounts not greater than five pounds in any one note, and that such notes shall be assignable by delivery.

VI. And be it enacted, that the Militia scrip or orders for nominal amounts in money heretofore issued in that part of this Province formerly called Lower Canada, under the authority of the Proclamation of the Governor General of that Province, bearing date the eleventh day of December in the year of our Lord one thousand eight hundred and thirty eight, shall be assignable by delivery, and shall be received in payment upon all sales of Public Land in this Province, the proceeds of which are not or shall not then be appropriated for any specific purpose, and shall be received at and for the nominal rate at which the same were issued.

VII. And be it enacted, that the Commissioner of Crown Lands shall take receipts for any such scrip which may be issued, and shall issue the said scrip to the claimant or his or her legal representative in full discharge of the claim: And such scrip may be paid by delivery upon any sale of the Public Land aforesaid: And that the receipts to be given for payments upon sales of the said Public Land shall specify the amount received in money or in the scrip aforesaid respectively.

VIII. And be it enacted, that the said Scrip shall be received for deferred payments or instalments upon sales of Public Lands heretofore made as well as upon sales to be made under the authority of this Act.

IX. And be it enacted, that all rights and claims to land assigned under the authority of the Acts hereby repealed, shall be exchanged for the Scrip aforesaid by the Commissioner of Crown Lands upon application of the assignee or his or her authorized agent, and such scrip shall thereafter be assignable by delivery.

X. And be it enacted, that no assignment of any right or claim to Land assigned under the authority of the said above repealed Acts, which shall have been made by any married woman conjointly with her husband, shall be considered void or voidable by reason of the coverture of such married woman.

XI. And be it enacted, that from and after the passing of this Act all unlocated rights or claims to Public Land shall be held and considered to be personal goods and chattels and not liable to be governed or adjudged upon by the Laws relating to real or landed property.

XII. Provided always and be it enacted, that nothing in this Act contained shall be held to alter the Law as respects rights to Land located, or to make the same personal property, or to alter the descent or disposition thereof, or the adjudication of claims thereto arising from assignment, devise, bequest or other disposition thereof, or the rights of the owners thereof in any respect whatsoever, or to make good any claims thereto forfeited, or held to be forfeited, by reason of the non-performance of the conditions upon which the same have been assigned or located.

XIII. And be it enacted, that no new claims to Land founded upon any regulation or order of the Government, shall be allowed or entertained, unless made before the first day of January, which

will be in the year of our Lord one thousand eight hundred and forty three, except where the parties originally interested and claiming shall be under the age of twenty one years on the said day.

XIV. And be it enacted, that the price of such public Lands shall from time to time be fixed and ascertained by authority of the Governor of this province by and with the advice of the Executive Council thereof.

XV. And be it enacted, that it shall and may be lawful for the Governor of this Province in Council to appoint in each Municipal District a Resident Agent for the sale of Public Lands, who shall be authorized and empowered under the direction of the Commissioner of Crown Lands to make sale of Public Lands within the District for which he acts, at such prices as shall have been under the authority of this Act duly fixed and ascertained.

XVI. And be it enacted, that every such District Agent shall keep regular accounts of sales of Land within his division, and make the said sales appear in the plans or maps in his Office.

XVII. And be it enacted that it shall not be lawful for any District Agent appointed under the authority of this Act, directly or indirectly, to purchase any Land which such District Agent shall be appointed to sell as aforesaid, and if such District Agent shall offend in the premises he shall forfeit his said Office.

XVIII. And be it enacted, that the purchase money upon the sale of such public Land or the scrip paid in therefor, shall in the first instance be paid to the District Agent who shall transmit the same to the Commissioner of Crown Lands, whenever the amount in the hands of such agent shall exceed fifty pounds, currency, deducting therefrom his percentage as hereinafter provided, and in default of such remittance, he shall be liable to be charged at the rate of fifteen pounds per cent as a penalty *per annum*, for the time he shall become remittable as aforesaid, and the District Agents, upon the receipt of any purchase monies or scrip, shall give the purchaser or purchasers a receipt for the same, specifying therein the number of the Lot or the Land purchased, or otherwise sufficiently describing the same; And such receipt shall bear date on the day on which it is actually signed, and shall authorize the purchaser to take immediate possession of the Lot so sold, and to maintain actions and suits in Law or Equity against any wrongful possessor or trespasser on such land, as fully and effectually as if the Patent deed had issued on the day of the date of such receipt.

XIX. And be it enacted that so soon as the purchase money of any particular lot or quantity of Land shall have been paid up in the manner aforesaid, the purchaser or purchasers shall thereupon become entitled to receive Letters Patent for the same free of further expense, and subject only to such reservations as are usually made in Letters Patent of the same description; And such Letters Patent shall be transmitted by the Commissioner of Crown Lands to the Agent for the District in which the Lands are situate within thirty days after the purchase money shall have been paid, and the payment duly notified to the Commissioner of Crown Lands, unless by reason of any unforeseen event or unavoidable necessity, the same cannot be so 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 thereof upon demand without charge.

XX. And be it enacted, that the Commissioner of Crown Lands for the time being, and also every District Agent shall, before entering upon the duties of his Office, give good and sufficient security to the satisfaction of the Governor this Province, in Council, for the faithful discharge of his duty and for the due payment of all monies which shall in the course thereof come into his hands, that is to say: for the payment of such monies or scrip as shall come into the hands of the Commissioner of Crown Lands, or the balance remaining unexpended in his hands, to the Receiver General of this Province.

XXI. And be it enacted that the District Agents shall receive such a percentage upon the amounts received by them, as well as such payment for inspection of lands and other extraordinary duties performed under the direction of the Commissioner of Crown Lands, as the Governor of this Province in Council shall direct and appoint.

XXII. And be it enacted, that it shall be the duty of the Commissioner of Crown Lands to pay over once in three months to the Receiver General of this Province, all sums remaining in his hands arising from the sale of the Public Lands aforesaid, retaining a sum sufficient to meet the contingent expenses of the department, but not exceeding five hundred pounds.

XXIII. And be it enacted, that the accounts of the Commissioner of Crown Lands shall be rendered to the Government of this Province, for half yearly periods, and that copies of the said accounts containing the particulars of the receipts and expenditure of the office, with lists of all sled made up to the period of accounting ending next before the commencement of each Session of the Provincial Parliament, shall be laid before both Houses within ten days next after the commencement of each Session of the Legislature.

XXIV. And be it enacted, that it shall be the duty of the Commissioner of Crown Lands, at least thirty days before any sale shall be made under the authority of this Act, to cause printed Lists of the Lands open for sale to be exhibited in the Office of Crown Lands and in the Offices of the respective Agents in whose Districts the Lands shall respectively be for sale, specifying the prices of such Lands and the terms of payment, and copies of such printed lists shall be published in the Official Gazette, and in one public Newspaper in the Districts in which the Lands are respectively situate; and such lists shall be revised once in each year under the direction of the Commissioners of Crown Lands.

XXV. And be it enacted, that it shall and may lawful for the Governor of this Province in Council, without any such publication, to direct sales of Public Land to be made at a fair valuation to any lessee or occupant, or to any individual who from the peculiar situation of the property applied for, would be liable to injury by the disposal of the Land to any other person or persons than such lessees or occupants, or other individuals interested as aforesaid.

XXVI. And be it enacted, that notwithstanding any thing in this Act contained, it shall and may be lawful for the Governor of this Province, with the advice of the Executive Council, to appropriate as free grants any Public Lands in this Province to actual Settlers, upon or in the vicinity of any public roads in any new settlements which shall or may be opened through the Lands of the Crown, under such regulations respecting such settlements as shall from time to time be made and declared by the Governor of this Province in Council: Provided always that such grants shall not be made to any person or persons who shall have heretofore received any grant of Land from the Crown: And provided also that the extend of any grant so to be made shall not exceed fifty acres, nor shall any such grant be made to any other than Natural Born or Naturalized male Subjects of Her Majesty of the full age of twenty one years.

XXVII. And be it enacted, that it shall and may be lawful for the Governor of this Province, by and with the advice of the Executive Council, to set apart and appropriate such of the said Public Lands as shall be deemed expedient to be so set apart and appropriated for the site of Market places, gaols, court houses, places of public worship, burying grounds, schools, and for other like public purposes, and at any time before the issue of Letters Patent therefor to revoke such appropriation and setting apart as may seem expedient, and to make free grants for the purposes aforesaid, the trusts and uses for which the grants shall be made being expressed in the Letters Patent granting the Lands therein specified: Provided always, that no such grant for any such purpose shall be for a greater quantity of Land than ten acres for every one of the purposes aforesaid, in any one instance in which, or for any one occasion for which Land shall be granted as aforesaid.

XXVIII. And be it enacted, that in all cases in which Grants or Letters Patent for Land shall have issued for the same Land inconsistent with each other, through error or mistake, and in all cases of sales or appropriations of Land inconsistent with each other for the same Land, and in all cases wherein by reason of false survey the land supposed to be conceded shall be found wanting in the whole or part, it shall and may be lawful for the Governor of this Province in Council to decree and order a new grant equal in extent, or equivalent to the Land lost, according to the discretion of the said Governor in Council: Provided always, that no such claim, on account of any error in survey, shall be entertained or granted unless the Land found wanting shall be equal to one fifth of the whole quantity described to be contained in the particular lot or parcel of Land granted or conceded: And provided also that no such claim for indemnity shall be entertained after the space of five years from the issue of the Letters Patent granting or conceding such lot or parcel of Land, or shall extend to cover the value of any improvements made by the grantees in error or mistake under any such grant.

XXIX. And be it enacted, that it shall and may be lawful for the Court of Chancery in that part of this Province formerly called Upper Canada, and for the Court of King's Bench, in that part of this Province, formerly called Lower Canada, upon action, bill or plaint, to be exhibited in either of the said Courts, respecting grants of Land situate in the said parts of this Province, respectively, and upon hearing of the parties interested, or upon default of the said parties, after such notice of proceeding as the said Courts shall respectively order, in all cases wherein patents for Land have or shall have issued through fraud, or in error or mistake, or decree the same to be void; and upon the registry of such decree in the Office of the Provincial Registrar of this Province, such Patents

shall be deemed void, and of none effect to all intents and purposes whatsoever, and that the practice and proceeding in Court in such cases shall be regulated by orders to be from time to time made and issued by the said Courts respectively.

XXX. And be it enacted, that it shall be the duty of Her 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 assignments made as well by the original nominee or locatee, as also by any subsequent assignee or assignees, of any such claim on Lands heretofore located in respect thereof, such assignment or assignments being first produced or 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 authorized 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 duty of the said Commissioner to cause the material parts of every such assignment to be entered or registered in such book or entry or registry, and to endorse on every such assignment a certificate of such entry or registration, and every such assignment so entered or registered shall be valid against any one of a previous date or execution, but not then entered or registered, except in cases of express notice; and in all cases of such assignments being duly registered, it shall and may be lawful that the patent issue in the name of such assignee or assignees: Provided always that in case the subscribing witness or witnesses to any such assignment shall be deceased, or shall have left the Province, it shall and may be lawful for the said Commissioner to register any such assignment upon the production of an affidavit or affidavits proving the death or absence of such witness or witnesses, and provided also the handwriting of such witness or witnesses.

XXXI. And be it enacted, that any person or persons wilfully swearing falsely to the execution of any such assignment, or to the hand writing, or to the death or absence of any such witness or witnesses, shall be liable to the pains and penalties of wilful and corrupt perjury.

XXXII. And whereas by reason of the receipt of Land rights in lieu of money in payment upon sales of Clergy Reserves in that part of the Province lately called Upper Canada, a certain sum of money is due and owing to the fund arising from the proceeds of Clergy Reserves, which under the said Act hereby repealed was to be repaid out of the proceeds of the Land of the Crown; Be it therefore enacted, that it shall and may be lawful for the Governor of this Province to direct and order the Commissioner of Crown Lands to pay over all proceeds of sales of Crown Lands, over and above the expenses attending the sale thereof, in like manner as proceeds of sales of Clergy Reserves, until the debt or sum due and owing to the Clergy Reserve Fund shall be fully discharged.