

Laws of Her Majesty's Province of United Canada, passed in the year 1851. Quebec: Stewart Derbyshire and George Desbarts, 1852.

16 Victoria – Chapter 159

An Act to amend the Law for the Sale and the Settlement of the Public Lands. Assented to 14th June, 1853.

Whereas it is expedient to amend the Law concerning the Sale and Settlement of the Public Lands: 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, and 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 passed in the Session held in the fourth and fifth years of Her Majesty's Reign, intituled, *An Act for the disposal of Public Lands*, and the Act passed in the twelfth year of Her Majesty's Reign, and intituled, *An Act to amend an Act therein mentioned and to make other provisions for the management and disposal of the Public Lands, and to limit the period for making free grants*, shall be and the said Acts are hereby repealed, together with so much of any other Act or Law as may be inconsistent with this Act.

II. Except as hereinafter provided, no free grant of Public Land shall be made to any person whomsoever.

III. Any claim or claims to land arising out of any Act hereby repealed, or out of and under the authority of any Order in Council or other regulation of the Government heretofore or now in force, shall be adjudged and determined by the Governor, by and with the advice of the Executive Council, or by the Commissioner of Crown Lands in cases or classes of cases referred to his decision by the Governor in Council: Provided always, that hereafter no claim for land not now actually located, shall be entertained whether arising from Militia, United Empire Loyalist, or Military Rights.

IV. The Governor in Council may from time to time fix the price per acre of the Public Lands, and the terms of settlement and payment.

V. It shall not be lawful for any County or Resident Agent for the sale of Public Lands within his division, directly or indirectly, to purchase any land which such Agent shall be appointed to sell as aforesaid, and if such Agent shall offend in the premises he shall forfeit his office.

VI. It shall be lawful for the Commissioner of Crown Lands to issue, under his hand and seal, to any person wishing to purchase and become a settler on any public land, an Instrument in the form of a License of Occupation, and such settler may take and occupy the land therein mentioned and described, subject to the terms and conditions specified in such License, and may maintain actions or suits in Law or Equity against any wrongdoer or trespasser as fully and

effectually as he could or might do under a Patent from the Crown, and the said License of Occupation shall be *primâ facie* evidence of possession by the settler or his recognized Assignee for the purpose of any such action or suit; and every settler or his assignee, upon the fulfilment of the terms and conditions of his License, shall be entitled to a deed in fee for the land comprised therein, which deed shall, upon his application, be transmitted to him free of expense.

VII. It shall be the duty of the Commissioner 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, purchaser or locatee, as also by any subsequent assignee or assignees, of any such claim on Lands heretofore located or hereafter purchased 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 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 or registered shall be valid against any one of a previous date or execution, but not then entered or registered; 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 proving also the handwriting of such witness or witnesses.

VIII. The duties imposed upon the Commissioner of Crown Lands by the preceding Section of this Act, for the registration of assignments of located claims, shall be held to extend to the registration of assignments of claims heretofore located or located hereafter; and all assignments of such locations in Lower Canada executed before Notaries, or before one Notary and two witnesses, shall be deemed sufficient, and shall be registered accordingly; Provided always, that all such assignments shall be unconditional; Provided also, that all Commissioners for taking affidavits in the Superior Courts of Law either in Upper or Lower Canada, shall have the same power and authority for administering oaths in matters relating to the Crown, Clergy and School Lands, as are now exercised by Justices of the Peace.

IX. 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 no free grant shall exceed one hundred acres.

X. It shall be lawful for the Governor, 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.

XI. It shall be lawful for the Governor in Council, if he shall be satisfied that any such settler, or his recognized Assignee, has been guilty of fraud, or has violated any of the terms or conditions of his License of Occupation, to revoke such License, and resume the land therein mentioned and dispose of the said land, as if such License had never been issued; and no claim in Equity by any settler, or the Assignee of any settler shall be pleadable in any Court against a forfeiture and revocation under this Act, but the settler shall be deemed and taken to be as against the Governor in Council, or Commissioner of Crown Lands, or any person claiming under the said Commissioner a mere tenant at will.

XII. When any settler or other person shall refuse or neglect to deliver up possession of any land after the revocation by the Governor in Council of the License of Occupation as aforesaid, it shall be lawful for the Commissioner of Crown Lands to make or cause to be made an application to the County Judge of the County or to a Circuit Judge in the Circuit in which the land lies for an Order in the form of a Writ of Ejectment or of *Habere facias possessionem*, and the said Judge upon proof to his satisfaction that the land in respect of which the application is made was held under a License of Occupation, and that such License has been revoked by the Governor in Council, shall and may grant an Order upon the settler or person, or persons in possession, to deliver up the same to the Commissioner of Crown Lands, or his Agent, and such order shall have the same force and effect as a Writ of *Habere facias possessionem*, and the Sheriff shall and may receive such order and execute the same in like manner as he would receive and execute the said Writ in an action of Ejectment or Petitory Action.

XIII. In all cases where claims to locations of land have been forfeited under any Order in Council or which may hereafter be declared forfeited by order in Council, it shall and may be lawful for the Crown to resume such land finder this Act, in manner and form aforesaid; and such land, when so resumed, shall be subject to the provisions of this Act, and be disposed of accordingly; Provided always, that the Governor in Council may, upon the special merits of any case extend a right of pre-emption, to the original locates, his heirs or assignees, upon such terms and for such price as to him may seem just under the circumstances of the case, or when such forfeiture shall be discovered to have been on an erroneous report, then it shall be lawful to regrant such lot to the original locatee, his heirs or assigns.

XIV. It shall be lawful for the Governor in Council to reserve out of the proceeds of the School Lands in any County, a sum not exceeding one fourth of such proceeds, as a fund for public improvements within the County, to be expended under the direction of the Governor in Council, and also to reserve out of the proceeds of unappropriated Crown Lands in any County a sum not exceeding one fifth as a fund for public improvements within the County, to be also expended under the direction of the Governor in Council: Provided always, that the particulars of all such sums, and the expenditure thereof shall be laid before Parliament within the first ten days of each Session: Provided always, that not exceeding six per cent, on the amount collected, including surveys, shall be charged for the sale and management of Lands forming the Common School Fund, arising out of the One Million of Acres of Land set apart in the Huron Tract.

XV. It shall be lawful for the Governor in Council from time to time as he shall deem expedient to declare that the provisions of this Act or any of them shall extend and apply to the Indian lands under the management of the Chief Superintendent of Indian affairs, and the said Chief Superintendent shall, in respect to the lands so declared to be under the operation of this Act, have and exercise the same powers as the Commissioner of Crown Lands may have and exercise in respect to Crown Lands.

XVI. The Commissioner of Crown Lands shall cause lists of the Crown, School and Clergy Lots for sale in the several Townships in Canada, to be made out from time to time, and advertised and exhibited in such manner as he may deem most advisable for giving general information on the subject.

XVII. The Governor may from time to time appoint, during pleasure, all such Agents as he shall find necessary to carry out the provisions of this Act and the Orders in Council made under it, which Agents shall be paid in such manner and at such rates as the Governor in Council may direct.

XVIII. Whenever a Patent has been or may hereafter be erroneously issued or which shall contain any clerical error, misnomer or wrong description of the land thereby granted or intended to be granted, the Governor in Council may upon the Report of the Commissioner of Crown Lands, (there being no adverse claim,) direct the defective Patent to be cancelled and a correct one to be issued in its stead, which said corrected Patent shall relate back to the date of the one so cancelled, and shall have the same legal effect as if it had been issued at the date of such cancelled Patent.

XIX. In all cases in which Grants or Letters Patent have issued or may hereafter issue for the same land inconsistent with each other through error or mistake, and in all cases of sales or appropriations of the same land inconsistent with each other, the Governor in Council may order a new grant equivalent to the land of which any grantee or purchaser may thereby be deprived: Provided always, that no such claim shall be entertained unless it be preferred within five years after discovery of the error.

XX. In all cases wherein by reason of false survey, any grant, sale or appropriation of land has been or may be found to be deficient, the Governor in Council may order a free grant equal in

value to the ascertained deficiency; Provided always, that no such claim shall be entertained unless application was or shall be made within five years from the discovery of such deficiency, nor unless the deficiency is equal to one tenth of the whole quantity described to be contained in the particular lot or parcel of land granted.

XXI. It shall and may be lawful for the Court of Chancery in Upper Canada, and for the Superior Court in Lower Canada, upon action, bill or plaint to be exhibited in either of the said Courts respecting grants of land situate within their jurisdiction, 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 lands have or shall have issued through fraud or in error or mistake or improvidence, to decree the same to be void: and upon the registry of such decree in the office of the Provincial Registrar, 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: and any action or proceeding commenced under the twenty-ninth section of the Act intituled, *An Act for the disposal of Public Lands*, may be continued under this section, by which the provisions of the said twenty-ninth section are re-enacted, and which, for the purpose of any such action or proceeding, shall be construed as merely continuing in force the said twenty-ninth section.

XXII. All affidavits required under this Act may be taken before the Judge or Clerk of any County or Circuit Court, or any Justice of the Peace, or any Commissioner for taking affidavits or Agent of the Commissioner of Crown Lands.

XXIII. The Governor in Council shall require from the Commissioner of Crown Lands and from every Agent appointed under him, security for the due performance of his duty; Provided always, that all securities heretofore given under any Act hereby repealed, shall nevertheless continue valid and in full force.

XXIV. The Commissioner of Crown Lands shall transmit in the month of January in each year to the Registrar of every County or Registration District and Secretary-Treasurer of any Municipality in Lower Canada, a list of the Clergy and Crown Lands heretofore or hereafter sold or for which licenses of occupation shall be granted in such County or Registration District, and upon which a payment has been made; which said Crown, Clergy and School lands shall be liable to the assessed taxes in the Townships in which they respectively lie from the date of such license or sale; and the Commissioner of Crown Lands shall in like manner apprise each Registrar of the cancellation of any License of Occupation or Patent.

XXV. It shall and may be lawful for the Governor in Council from time to time to make such Orders as may be necessary to carry out the provisions of this Act according to their obvious intent and meaning or to meet any easements which may arise and for which no provision is made by this Act: Provided always, that such Orders shall not be inconsistent with this Act; and provided also, that such orders shall be duly published in the Official Gazette and in such Newspapers as the

Commissioner of Crown Lands may direct, and be laid before the Legislature within the first ten days' of the Session next after the date thereof.

XXVI. That in any application for a Patent by the heir, assignee or devisee of the original nominee of the Crown, it shall be lawful for the Commissioner of Crown Lands to receive proof in such manner as he may direct and require in support of any claim for a Patent when the original nominee is dead, and upon being satisfied that the claim has been equitably and justly established, to report the same to the Governor in Council, and if approved, the Patent may issue to the party named in the Order in Council founded on such report or to his assignee; any thing in the Act passed in the eighth year of Her Majesty's Reign, and chaptered eight, to the contrary notwithstanding; Provided always, that nothing in this clause contained shall limit the right of the party claiming a Patent, to make his application at any time to the Commissioners appointed under the Act last cited.

XXVII. Whenever it shall be made to appear to the satisfaction of the Commissioner of Crown Lands, that any Clergy Reserve Lot, heretofore sold or leased has been abandoned by the original purchaser or lessee, or that such purchaser or lessee, or that such purchaser or lessee has permitted any instalment or any portion of rent to remain unpaid for the period of five years or upwards, or when it shall be made manifest that it is not the intention of the original purchaser or lessee or his assignee to fulfil the conditions of such sale or lease by reason of the principal and interest or the rent amounting in the aggregate to a sum beyond the actual marketable value of the lot, it shall be lawful for the Commissioner of Crown Lands, having first obtained an Order in Council to that effect, to resell such lot as if no sale or lease had ever been made thereof, and the new purchaser shall have the same privileges and right of entry under any license or certificate from the Commissioner of Crown Lands, as would pertain to any license or certificate granted for any other Sale of Clergy Lands under this Act; Provided always, that all such new sales shall be on the condition that one fifth of the purchase money shall, be paid in hand, and the remaining four fifths in four equal annual instalments with interest.

XXVIII. The holder or person entitled to any Land Scrip not redeemed, shall be entitled to claim Land in lieu of such Scrip, as he could before the First day of August, one thousand eight hundred and fifty-one, and any such Scrip shall be received in payment of any debt now due, or hereafter to fall due to the Crown, on any Land Sale: Provided always, that the term for receiving any outstanding Scrip for that purpose, shall not extend beyond the First day of July, one thousand eight hundred and fifty-four.

XXIX. All Licenses of occupation, certificates or receipts heretofore granted by the Commissioner of Crown Lands, for money received by him on the Sale of Indian, Crown, School or Clergy Lands, or any location ticket, shall have the same force and effect, and shall enure to the benefit of the party to whom the same was granted, or to his assignee, in the same manner and to the same extent, as the Instrument in the form of a License of occupation mentioned in the sixth Section of this Act.

XXX. The Interpretation Act shall apply to this Act.