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No. 209.

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1st Session, 4th Parliament, 16th Victoria, 1852-3

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**B I L L.**

**An Act to amend the Law for the Sale  
and Settlement of the Public Lands.**

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Received and read first time, Saturday, 6th  
November, 1852.

Second reading, Tuesday, 15th Feb., 1853.

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(500 Copies.)

**HON. MR. ROLPH.**

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S. Derbishire & G. Desbarats, Queen's Printer.

An Act to amend the Law for the Sale and the Settlement of the Public Lands.

- W**HEREAS 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and disposal of the Public Lands, and to limit the period for making free grants*, shall be and said Acts are hereby repealed, together with so much of any other Act or Law as may be inconsistent with this Act.
- I** II. Except as hereinafter provided, no free grant of Public Land shall be made to any person whomsoever.
- I** 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 Any claim or claims to land arising out of any Act hereby repealed, or out of and under the authority of any Order in Council or other regulation of the Government heretofore or now in force, shall be adjudged and determined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.
- I** 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; Provided always, that payment may be made in labour in such cases and in such manner as the Governor in Council may from time to time direct for the advancement of the interests of new settlements.
- I** V. No sale of Public Land shall hereafter be made except upon the terms of actual and continuous settlement and upon such other conditions as the Governor in Council may direct in that behalf; Provided always, that this section shall not apply to Clergy or Crown Lands lying in blocks of less
- Preamble.
- Acts 4 & 5 V. c. 100, and 12 V. c. 31, repealed.
- Free grants limited.
- Determination of claims arising out of repealed Acts.
- Governor in Council may fix the price of Land.
- Proviso.
- Sales to be made only on condition of settlement.
- Proviso,

than                    acres each ; which may be disposed of after thirty days' public notice, on such conditions as the Governor in Council may direct.

Limitation of extent to be sold to one settler.  
Proviso : exception.

VI. The quantity of Land sold for actual settlement under this Act, shall not exceed, according to the estimated survey, to any one settler, more than two hundred acres ; Provided always, that the Commissioner of Crown Lands may report to the Governor in Council such exceptions and the grounds thereof as he may deem just and proper, and upon the concurrence of the Governor in Council in such report such exceptions shall be allowed. 5 10

Licenses of occupation to be granted in the first instance : their effect.

VII. 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 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 *prima facie* evidence of possession by the settler or his recognized Assignee for the purpose of any such action or suit ; but no such License shall be assignable without the written consent of the Commissioner of Crown Lands, or of some person authorized by him, and every settler 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. 15 20 25

Not to be assignable without permission.

Governor in Council may revoke Licenses in case of fraud, &c.

VIII. 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. 30 35 40

Mode of obtaining possession if the settler shall refuse to deliver up the land on the revocation of his License.

IX. 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 in which the land lies for an order in the form of a Writ of Ejectment, and the said Judge upon 45

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  
 5 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  
 10 execute the said Writ in an action of Ejectment.

X. In all cases where claims to locations of land have been forfeited under the Orders in Council of  
 or which may hereafter be declared  
 forfeited by order in Council it shall and may be lawful for the Crown to resume such land under this Act, in manner and form  
 15 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 locatee, his heirs or assignees, upon such terms  
 20 and for such price as to him may seem just under the circumstances of the case.

Land may be resumed when claim is declared forfeited.  
 Proviso.

XI. 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  
 25 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  
 as a fund for public improvements within the County, to be  
 30 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.

A certain sum may be reserved out of proceeds of School Lands for public improvements in the County.  
 Proviso.

XII. It shall be lawful for the Governor in Council from  
 35 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  
 40 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.

This Act may be extended to Indian Lands, by order in Council.

XIII. 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  
 45 to time and advertised and exhibited in such manner as he

Lists of Crown, School and Clergy Lands

for sale to be published. may deem most advisable for giving general information on the subject.

Governor may appoint Agents under this Act. XIV. 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. 5

Erroneous Patents may be cancelled and correct ones issued, when there is no adverse claim. XV. That whenever a Patent has been or may hereafter be erroneously issued or which shall contain any clerical error 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. 10 15

In cases of double grant of the same Land, an equivalent may be granted to the loser. XVI. In all cases in which Grants or Letters Patent have issued or may hereafter issue for the same land inconsistent with such 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. 20 25

Proviso.

Free grant as compensation for loss by erroneous survey. XVII. 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 of the whole quantity described to be contained in the particular lot or parcel of land granted. 30 35

Proviso.

Court of Chancery in U. C. and Superior Court in L. C. may avoid Patents issued in error. XVIII. 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 40 45

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 that 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.

Practice in such cases.  
Pending proceedings continued.

**XIX.** All affidavits required under this Act may be taken before the Judge or Clerk of any County Court, the Reeve or Clerk of any Township, any Justice of the Peace or any Commissioner for receiving affidavits, or Agent of the Commissioner of Crown Lands.

Before whom affidavits may be made.

**XX.** 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.

Commissioner to give security.  
Proviso.

**XXI.** The Commissioner of Crown Lands shall transmit quarterly to the Registrar of every County or Registration District, 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 and Clergy lands shall be liable to the assessed taxes in the Township 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.

Commissioner to transmit to County Registrars, lists of lands sold, &c.

**XXII.** 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 cases 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 other papers 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.

Governor in Council may make orders to carry out this Act.  
Proviso.

**XXIII.** That the Interpretation Act shall apply to this Act.

Interpretation Act to apply.