

8 EDW. VII. No. 14, 1908. *Land Acts Amendment Act.*

LANDS.

An Act to Further Amend the Land Acts.

8 EDW. VII.
No. 14.

[ASSENTED TO 21ST APRIL, 1908.]

THE
LAND ACTS
AMENDMENT
ACT OF 1908.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "*The Land Acts Amendment Act of 1908*," and shall be read as one with "*The Land Act, 1897*,"* as amended by subsequent Acts, and the said Act as so amended is herein referred to as the Principal Act. Short title and construction of Act.

2. In the proviso to subsection five of section fifty-eight of "*The Crown Lands Act of 1884*"† as enacted by section three of "*The Crown Lands Acts 1884 to 1886 Amendment Act of 1889*,"‡ the words "Governor in Council" are repealed, and the word "Minister" is inserted in lieu thereof. Amendment of s. 58 (5) of Act of 1884.

3. At the beginning of section ninety-two of the Principal Act, the words "Except in the case of Prickly Pear Selections" are inserted. Amendment of s. 92.

The following provision is inserted in the said section after the second paragraph thereof, namely:—

In the case of Prickly Pear Selections, the applicant shall, at the time of making his application, lodge therewith in cash the whole amount of the survey fee, which shall be returned to the applicant if his application is not approved.

4. The following provision is added to the first paragraph of section one hundred of the Principal Act:— Amendment of s. 100.

If only one effective application is made, and such application is accompanied by a tender, the applicant shall, if otherwise qualified, be deemed to be the successful applicant; and the annual rent payable by him during the first period of the term of the lease shall be the amount specified by him in his tender, instead of the rent specified in the Proclamation declaring the land open for selection.

* 61 Vic. No. 25, *supra*, page 6228.

† 48 Vic. No. 28, *supra*, page 1137.

‡ 53 Vic. No. 14, *supra*, page 3765.

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Amendment
f s. 122.

5. The following provision is added to section one hundred and twenty-two of the Principal Act as amended by section six of "*The Land Acts Amendment Act of 1905*,"* namely,—

"Provided further that nothing in this section shall be construed so as to permit the condition of occupation in respect of a Grazing Homestead being performed in any manner, except as prescribed by subsection one of section one hundred and fifty-four of this Act."

This section shall be read and construed as if the foregoing provisoes had been inserted therein at the date of its enactment.

Amendment
of s. 134.

6. The following provision is added to section one hundred and thirty-four of the Principal Act:—

When the selector of an Agricultural Farm which has been brought under this Act pursuant to the last preceding section applies to take advantage of the last preceding paragraph of this section, all sums of money which have been paid in respect of the rent of the selection in accordance with the provisions of the repealed Acts shall be credited to the applicant in the following manner, that is to say,—

- (a) If the application for a grant is made during the term of the lease of the selection, all such sums shall be applied in payment of as many years' rent as they are sufficient to pay; and the amount to be paid under the said last preceding paragraph shall be such sum as, in accordance with the Fifth Schedule to this Act, is payable during the year of the term up to which by the crediting of such sums the rent has been paid. If all such sums as aforesaid are more than sufficient to pay the rent to the end of the term, the surplus shall be applied in reduction of the amount of the prescribed purchasing price still remaining unpaid;
- (b) If the application for a grant is made after the expiration of the term of the lease, the amount of such sums as aforesaid shall be applied in reduction of the amount of the prescribed purchasing price then remaining unpaid.

* 5 Edw. VII. No. 28, *supra*, page 8891.

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7. After section 136B of the Principal Act as enacted by section forty-one of "*The Land Act, 1902*,"* the following section is inserted:—

[136c.] When any land is proclaimed open for selection as an Agricultural Farm, it may also be proclaimed open as a Perpetual Lease Selection under the following conditions:—

Perpetual
Lease
Selections
similar to
Agricultural
Farms.

- (i.) The lease shall be a lease in perpetuity;
- (ii.) During the first ten years the annual rent reserved by the lease shall be a sum equal to one pound ten shillings per centum of the proclaimed purchasing price of the land as an Agricultural Farm;
- (iii.) The annual rent for each period of ten years thereafter shall be determined by the Court upon the application of the lessee or the Minister, made at least six months prior to the expiration of the then current period.

If in such case the rent is not determined by the Court before the commencement of a new period, the lessee shall, until it is determined, continue to pay at the prescribed time and place the same amount of annual rent as theretofore, and when the amount of rent is determined the lessee shall, on the next thirty-first day of March, as the case may be, either pay any arrears of rent found due by him or be credited with any sum overpaid in accordance with the rate so determined so as to adjust the account between the lessee and the Crown.

If no such application as aforesaid is made within the prescribed time, the rent then payable shall continue to be the rent for the next period of ten years.

In determining the rent, the Court shall have regard to—

- (a) The amount which experienced persons would be willing to pay for land of similar quality in the same neighbourhood;
- (b) Any other matter other than improvements made in or upon the said leased area which, in the opinion of the Court, may affect the rental value of the land;

* 2 Edw. VII. No. 18, *supra*, page 8313.

- (iv.) The lease shall not include a condition entitling the selector to a deed of grant in fee-simple ;
- (v.) The lessee shall have the right at any time to surrender his lease, and upon so doing shall be relieved from all further liability in connection therewith, and may remove the whole of the improvements from his leased area, provided such removal must be made within six months from the date of such surrender.

The Governor in Council may proclaim such land open for perpetual lease selection in priority, or otherwise, to agricultural farm selection.

Except as herein otherwise provided, all the provisions of this Act relating to Agricultural Farms shall, so far as applicable, apply to Perpetual Lease Selections.

Amendment
of s. 4.

8. (1.) In section four of the Principal Act, after the definition of "Agricultural Selection," the following definition is inserted:—

Free
Homestead.

"Free Homestead"—Land held as a Free Homestead under Part IV. of this Act.

Amendment
of s. 80.

(2.) After subsection two of section eighty of the Principal Act, the following subsection is inserted:—

[2A.] In the case of land which may be selected as a Free Homestead, exceed one hundred and sixty acres ;

Amendment
of s. 85A.

(3.) In section 85A of the Principal Act as enacted by section twenty-seven of "*The Land Act, 1902*,"* after the words "Grazing Homestead," the words "or Free Homestead" are inserted.

Amendment
of s. 91.

(4.) In the last paragraph of section ninety-one of the Principal Act, after the word "accompanied," the words "except in the case of an application for a Free Homestead" are inserted.

The following words are added to the said section:—
"Every application for a Free Homestead shall be accompanied by a fee of one pound, which shall be returned to the applicant if the application is not approved."

Amendment
of s. 146.

(5.) The following words are added to the second paragraph of section one hundred and forty-six of the Principal Act as amended by section fifty-eight of "*The Land Act, 1902*,"* namely: "and to Free Homesteads."

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(6.) After section one hundred and forty-eight of the Principal Act, the following sections comprised in the Subdivision mentioned are inserted:—

Subdivision IIIA.—Free Homesteads.

[148A.] (1.) The Governor in Council may, from time to time, by Proclamation in the *Gazette*, declare any country lands therein specified to be open for selection as Free Homesteads. Lands may be proclaimed as Free Homesteads.

(2.) Upon the receipt by the Minister of a certificate that a Free Homestead has been improved by the expenditure, in substantial and permanent improvements upon the land, of at least ten shillings per acre for every acre comprised therein, the selector shall be entitled to a lease thereof from His Majesty subject to the following conditions:—

- (i.) The term of the lease shall be five years, computed from the first day of January or the first day of July nearest to the date of the license;
 - (ii.) The rent shall be a peppercorn, if demanded;
 - (iii.) The lessee shall occupy the land continuously and *bonâ fide* during the term of the lease; Occupation to be by personal residence.
- Such occupation shall be by the continuous and *bonâ fide* personal residence of the lessee on the land:

Provided that if the original lessee dies before the expiration of the term of the lease, the condition of occupation may be performed by the continuous and *bonâ fide* residence on the land for the remainder of the term of some person beneficially interested in the selection under the will, or as one of the next-of-kin, or as the widow or widower of the original lessee, or of some other person who is the actual and *bonâ fide* manager or agent of some person so interested for the purpose of the use and occupation of the land, and whose appointment is made and registered in manner hereinbefore prescribed in the case of an Agricultural Farm, whether such other person is or is not himself qualified to select a Free Homestead:

Provided further that if the original lessee becomes insane before the expiration of the term of the lease, the Court may allow the condition of occupation to be performed by the continuous and *bonâ fide* residence upon the land of the

wife or husband or some other member of the family of such lessee, or of some other person who is the actual and *bond fide* manager or agent of his wife or other member of his family, and whose appointment is made and registered in manner hereinbefore prescribed, whether such other person is or is not himself qualified to select a Free Homestead;

Forfeiture
for non-
performance
of condition
of occupation.

(iv.) If at any time during the term of the lease it is proved to the satisfaction of the Commissioner that there has been a failure to perform the condition of occupation, the Minister may (subject to the provisions in respect of forfeiture hereinbefore contained), by notification in the *Gazette*, declare the lease absolutely forfeited and vacated; and thereupon the land shall revert to His Majesty;

Prohibition of
mortgage or
transfer.

(v.) The lessee shall not mortgage, assign, or transfer the lease or his right, title, or interest thereunder to any other person. Upon any such mortgage, assignment, or transfer, whether by operation of law or otherwise (except in case of the insanity of the lessee), the land shall be forfeited.

Fee-simple
may be
acquired.

[148B.] The selector of a Free Homestead, or (in case of the death of the selector) the executor or administrator of the selector, or, where probate or letters of administration have not been taken out, the person entitled to entry of transmission of the land in the records of the Department of Public Lands as hereinafter provided, or (in case of the insanity of the selector) the committee of the selector, may, at any time within twelve months after the expiration of the term of the lease, make application to the Commissioner in open court for a certificate that the conditions of the license and lease respectively have been duly performed.

If the Commissioner refuses to give the certificate the applicant may, within the prescribed time, appeal to the Court from the decision of the Commissioner, and if the appeal is allowed the Commissioner shall give the certificate.

Any applicant who obtains such certificate as aforesaid shall, upon payment at the Treasury in Brisbane, or other place appointed by the Governor in Council, within two months from the date of the certificate or such other

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time as may be prescribed, of the deed fee and assurance fee, be entitled to a deed of grant of the land in fee-simple.

[148c.] If the selector or other such person as aforesaid has not, within twelve months after the expiration of the term of the lease, obtained the certificate and paid the fees aforesaid, the land shall be forfeited, and shall revert to His Majesty.

If conditions not fulfilled, land to revert to Crown.

[148d.] No person shall, save as is herein otherwise expressly provided, apply for or acquire in his own right more than one Free Homestead.

When two or more Free Homesteads may be acquired.

But a qualified person may apply for or acquire two or more contiguous Free Homesteads the aggregate area whereof does not exceed one hundred and sixty acres.

[148e.] No person who holds or has held from the Crown in his own right any estate or interest, whether of freehold or leasehold or otherwise howsoever, in any land within the State shall be competent to apply for or acquire in his own right a Free Homestead.

Restriction on acquirement of Free Homesteads.

[148f.] Save as modified by the provisions of this Subdivision, all the provisions of this Act relating to Agricultural Selections, so far as the same are applicable, shall apply to Free Homesteads.

Application of provisions of Act as to Agricultural Selections.

9. In subsection two of section one hundred and fifty-four of the Principal Act, the word "mortgage," where it twice occurs in the said subsection, is repealed.

Amendment of s. 154 (2).

10. (1.) The following amendments are made in section 162E of the Principal Act as enacted by section fifty of "*The Land Act, 1902*,"* and amended by section seventeen of "*The Land Acts Amendment Act of 1905*,"† namely:—

Amendment of s. 162E.

In subsection one, the word "thirteen," where it twice occurs, is repealed, and the word "fifteen" is respectively inserted in lieu thereof.

In the second paragraph of the said subsection, the word "three" is repealed, and the word "five" is inserted in lieu thereof; also, the words "one-third" are repealed, and the words "one-fifth" are inserted in lieu thereof.

In subsection two, the word "eight," where it twice occurs, is repealed, and the word "fifteen" is respectively inserted in lieu thereof.

In the second paragraph of the said subsection, the word "three" is repealed, and the word "ten" is inserted

* 2 Edw. VII. No. 18, *supra*, page 8313. † 5 Edw. VII. No. 28, *supra*, page 8891.

in lieu thereof; also, the words "one-third" are repealed, and the words "one-tenth" are inserted in lieu thereof.

In the last paragraph of subsection three, the words "three years" are repealed, and the words "five years or ten years, as the case may be," are inserted in lieu thereof.

(2.) The first, second, and third paragraphs of section seventeen of "*The Land Acts Amendment Act of 1905*"* are repealed.

In the fourth paragraph of the said section seventeen, the words "said section" are repealed, and the words "section 162E of the Principal Act" are inserted in lieu thereof.

Amendment
of s. 162F.

11. In the first paragraph of section 162F of the Principal Act as enacted by section fifty of "*The Land Act, 1902*,"† the words "may, at any time within" are repealed, and the words "may, notwithstanding the provisions hereinbefore contained, at any time after the expiration of three years from the beginning of the second period of the term, but not later than" are inserted in lieu thereof.

In the third paragraph of the said section, after the words "Governor in Council," the words "if the lease has not expired of an amount equal to the remainder of the rent that would accrue due to the end of the term and of the deed fee and assurance fee, and if the lease has expired" are inserted.

Amendment
of s. 162G.

12. In the first paragraph of section 162G of the Principal Act, the words "acquired prior to the first day of January, one thousand nine hundred and three," are repealed; also, after the words "Prickly Pear Infested Selection," where those words thrice occur in the section, the words "or as a Prickly Pear Frontage Selection" are respectively inserted.

13. After section one hundred and seventy-five of the Principal Act, the following section is inserted:—

Perpetual
Lease of
Town or
Suburban
Allotments.

[175A.] When any land is proclaimed for sale by auction under this Subdivision entitling the purchaser to a deed of grant in fee-simple, it may also be proclaimed for sale by auction as a Perpetual Town Allotment Lease or Perpetual Suburban Allotment Lease under the following conditions:—

- (i.) Bidding shall be by capital sum, as in the case of sale by auction;
- (ii.) The lease shall be a lease in perpetuity;

* 5 Edw. VII. No. 28, *supra*, page 8891. † 2 Edw. VII. No. 18, *supra*, page 8313.

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- (iii.) The annual rent reserved by the lease shall be during the first ten years a sum equal to three pounds per centum of the upset price proclaimed for the land for sale by auction, or of such capital sum as may be offered at auction, whichever is the greater;
- (iv.) For each period of ten years thereafter the rent shall be fixed by the Court, upon the application of the lessee or the Minister, made at least six months prior to the expiration of the then current period, at a sum equal to three pounds per centum of the fair capital value of land of similar quality in the same neighbourhood.

If in such case the rent is not determined by the Court before the commencement of a new period, the lessee shall, until it is determined, continue to pay at the prescribed time and place the same amount of annual rent as theretofore, and when the amount of rent is determined the lessee shall, on the next thirty-first day of March, as the case may be, either pay any arrears of rent found due by him or be credited with any sum overpaid in accordance with the rate so determined so as to adjust the account between the lessee and the Crown.

If no such application as aforesaid is made within the prescribed time, the rent then payable shall continue to be the rent for the next period of ten years.

- (v.) The lease shall not include a condition granting a deed of grant in fee-simple.

Except as herein otherwise provided, all the provisions of this Act relating to the sale of town and suburban lands shall, so far as applicable, apply to Perpetual Town Allotment Leases and Perpetual Suburban Allotment Leases.

14. After section one hundred and seventy-nine of the Principal Act, the following new section is inserted:—

[179A.] Except as hereinafter provided, a Grazing Homestead shall not be permitted to be mortgaged at any time during the first five years of the lease:

Mortgage of
Grazing
Homestead.

Provided that, upon the application of the lessee made in the prescribed form at any time during such period, the Minister may, in his discretion, for any special reason, and upon being satisfied that the application is

made *bonâ fide* for the purpose of stocking, fencing, or otherwise improving the selection, allow the lessee to mortgage the lease, and his right, title, and interest thereunder, to any person or company, upon such terms and subject to such conditions as the Minister may prescribe and determine.

Every such application shall contain full and accurate particulars, to be verified by the declaration of the applicant, of the name and address of the person or company by whom the advance is to be made, the amount to be advanced, the rate of interest, and the other terms and conditions of the proposed mortgage.

No such mortgage shall have any effect as a security against the selection unless and until the consent of the Minister thereto is evidenced by endorsement thereon under his hand.

Amendment
of s. 181.

15. In the first paragraph of section one hundred and eighty-one of the Principal Act, after the words "shall be bound," the words "except, in the case of a Grazing Homestead, within the first five years of the term thereof" are inserted.

In the last paragraph of the said section, the words "three years" are repealed, and the words "one year, in the case of a Grazing Homestead within the first five years of the term thereof, or for a period of three years, in the case of any other holding," are inserted in lieu thereof.

Amendment
of s. 188.

16. In the first paragraph of section one hundred and eighty-eight of the Principal Act as amended by section twenty-one of "*The Land Acts Amendment Act of 1905*,"* the words "fifty acres" are repealed, and the words "two hundred and fifty acres" are inserted in lieu thereof.

In the said paragraph, after the words "business purposes," the words "or for any racecourse or recreation purposes" are inserted.

The second paragraph of the said section as enacted by section twenty-one of "*The Land Acts Amendment Act of 1905*"* is repealed.

17. After section 188A of the Principal Act as enacted by section twenty-two of "*The Land Act, 1902*,"† the following section is inserted:—

Leases to
Local
Authorities
with power to
sublet.

[188B.] Leases of land may be issued to any Local Authority under the provisions of the two last preceding sections, and in such case the Local Authority may, with

* 5 Edw. VII. No. 28, *supra*, page 8891. † 2 Edw. VII. No. 18, *supra*, page 8813.

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the consent of the Minister, sublet the whole or any part of the land so leased for such term not exceeding the term of the lease and subject to the lease upon such conditions as it shall think fit.

18. In subsection two of section two hundred and thirty-one of the Principal Act, after the word "lease," the words "without the permission of the Commissioner" are inserted; also, after the word "selection," where that word last occurs in the subsection, the words "without the permission of the Commissioner, or" are repealed, and the words "and no lessee of a Prickly Pear Selection shall, during such period, without such permission, in any way utilise, except for the purposes aforesaid, or sell, or otherwise dispose of for profit any trees upon the selection, and no such selector or lessee shall" are inserted in lieu thereof.

In subsection three of the said section, after the word "destroyed," the word "or" is repealed; and, after the word "ringbarked," the words "utilised, sold, or disposed of" are inserted.

The said section so amended shall apply to all Prickly Pear Selections heretofore taken up or selected, whether under the Principal Act or under "*The Prickly Pear Selections Act of 1901*,"* as well as to all such selections hereafter to be taken up or selected.

19. After section two hundred and forty-seven of the Principal Act, the following section is inserted:—

[247A.] Notwithstanding the provisions of "*The Crown Remedies Act of 1874*"† or of any other Act, all moneys due to the Crown in respect of the sale of timber from Crown lands, or in respect of any royalty on any timber or other material cut or removed in pursuance of section two hundred and twenty-seven of this Act and the Regulations, or in respect of any royalties, fees, and charges on the cutting, removal, or other disposal of timber or other forest products in a State Forest under "*The State Forests and National Parks Act of 1906*,"‡ may be recovered in any court of competent jurisdiction at the suit of a Land Commissioner, or at the suit of any other person authorised in that behalf by the Minister.

In any such suit it shall be presumed that the plaintiff has the authority of the Minister in the matter,

* 1 Edw. VII. No. 11, *supra*, page 8147. † 38 Vic. No. 13, *supra*, page 394.

‡ 6 Edw. VII. No. 20, *supra*, page 9058.

but such presumption shall not be taken to prevent the defendant proving the absence of or the limited extent of such authority.

Amendments
of Special
Agricultural
Selections Act
of 1901.

20. (1.) In the title and in section one of "*The Special Agricultural Selections Act of 1901*"* as amended by "*The Special Agricultural Selections Act of 1904*,"† the word "Agricultural" is repealed.

(2.) In the first paragraph of subsection one of section two of the said Act as so amended, after the words "Prickly Pear Selections," the words "or as Perpetual Lease Selections, or as Grazing Selections, or as Agricultural Farms to be held in conjunction with Grazing Farms" are inserted.

In the fourth paragraph of the said subsection, after the word "hundred," the words "and sixty" are inserted.

After the fourth paragraph of the said subsection, the following provisions are inserted, namely:—

No Grazing Farm to be held in conjunction with an Agricultural Farm selected under the provisions of this Act shall exceed two thousand acres, and the total aggregate area of the Agricultural Farm and the Grazing Farm held in conjunction therewith shall not exceed three thousand two hundred and eighty acres.

No other Grazing Selection to be selected under the provisions of this Act shall exceed three thousand acres.

The following words are added to subsection two of the said section: "or two or more Grazing Selections under the provisions of this Act the aggregate area of which is greater than three thousand acres."

In subsection four of the said section, the words "the selection," where they first occur in the said subsection, are repealed, and the words "an Agricultural Selection under this Act" are inserted in lieu thereof.

To the last paragraph of the said subsection the words "or to Perpetual Lease Selections or Grazing Selections" are added.

In subsection five of the said section as enacted by section forty-three of "*The Land Acts Amendment Act of 1905*,"* after the word "Farm," the words "(including an Agricultural Farm held in conjunction with a Grazing Farm)" are inserted.

* 1 Edw. VII. No. 12, *supra*, page 8150. † 4 Edw. VII. No. 12, *supra*, page 8726.

‡ 5 Edw. VII. No. 28, *supra*, page 8891.

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After the said subsection five, the following subsections are inserted:—

(6.) During the first five years of the term of the lease of a Prickly Pear Selection selected under this Act, the lessee shall occupy the land; such condition of occupation shall be performed by the continuous and *bonâ fide* personal residence of the lessee on the selection; and during such period subsection 5A of section one hundred and thirty-two of the Principal Act, except the last paragraph thereof, shall be applicable to every such Prickly Pear Selection.

(7.) Notwithstanding anything in the Principal Act, or any Act amending the same, when the proclamation opening the land for selection so declares, lots which are not contiguous may be applied for and held as one selection under this Act.

21. The following provision is added to section 15A of "*The Land Act, 1902*":—* Amendment of s. 15A of Land Act, 1902.

If at any time during the term of the lease it is proved to the satisfaction of the Commissioner that the lessee has failed to observe any of the provisions, covenants, or stipulations contained in his lease, the Governor in Council may (subject to the provisions in respect of forfeiture contained in the Principal Act), by notification in the *Gazette*, declare the lease absolutely forfeited and vacated, and thereupon the land shall revert to His Majesty.

22. In any case where, in pursuance of section thirty-two of "*The Land Acts Amendment Act of 1905*,"† the Court has, upon the application of the lessee of a Grazing Selection, reconsidered his request for the extension of the term of his lease made under section forty-four of "*The Land Act, 1902*,"* and after such reconsideration has not recommended any extension of such lease, the Minister may, upon the application of the lessee, and after making such inquiry into the matter as he thinks fit, recommend such extension of the term as he thinks proper, but not exceeding the limits fixed by section forty-four of "*The Land Act, 1902*";* and thereupon the Governor in Council may grant such extension. Further consideration of requests for extension of leases of Grazing Selections under s. 44 of Act of 1902.

And in such case, if the rent of any such Grazing Selection has been redetermined in pursuance of section forty-eight of the said Act, such redetermination shall be treated as a nullity, and the rent for the current period of the term shall be fixed by the Minister.

* 2 Edw. VII. No. 18, *supra*, page 8313. † 5 Edw. VII. No. 28, *supra*, page 8891.