

Bill No. 41 of 1949.

A BILL TO AMEND THE LAND TITLES ACT.

NOTE.

This Bill amends *The Land Titles Act*, being chapter 205 of the Revised Statutes of Alberta, 1942.

A new section 52a is added immediately after the present section 52. Cases have arisen where undivided fractional interests in minerals less than an undivided one five-hundredth of the whole interest have been presented for registration. In one case approximately fifteen hundred transfers of different undivided fractional amounts were issued in respect of one piece of land. In such a case it becomes all but impossible to properly determine assurance and increment values. Also extremely difficult administrative problems are created if several hundred people have registerable interests in one parcel of land which interests can be transferred, incumbered, protected by caveat, and otherwise dealt with, all of which dealings are required to be recorded on the title to the parcel. The likelihood of error is greatly increased and it appears to be in the public interest to prevent registration of small undivided fractional interests in mineral rights. Section 8 of *The Companies Act* prohibits unincorporated organizations such as partnerships, syndicates, etc. having a membership in excess of twenty. This new section accordingly gives the Registrar a discretion to refuse registration of undivided fractional interests in minerals in any parcel which are less than one-twentieth of the whole interest in any mineral contained in that parcel. Of course, parcels may be divided and subdivided into smaller parcels. However, in any given parcel not more than twenty undivided fractional interests in minerals need be registered. Smaller interests may be adequately protected by trust deeds, syndicate agreements, or other contracts.

Section 61 is amended. This section presently provides that the land in any certificate of title by implication and without any special mention in the title itself is subject to certain reservations and implied conditions which are listed in the section, unless the contrary is expressly declared. Among the items listed are subsisting reservations or exceptions contained in the original grant of the land from the Crown. The section is amended by striking out the words "unless the contrary is expressly declared".

Section 137 is amended. A new subsection (3) is added to this section which requires the person who causes a notice to be served as a result of which a caveat will lapse after the expiration of sixty days to prove to the satisfaction

of the Registrar not only that the notice has been served but that he has an interest in the land, mortgage, or incumbrance against which the caveat was lodged. Cases have arisen where a person has served a notice under section 137 who has no interest whatsoever in the piece of land against which a caveat has been lodged. The result is that the caveator is required to take proceedings to have his caveat continued, by reason of an application by a person who has no interest whatsoever in the land against which the caveat was filed, and who consequently has no right to have the caveat removed. This results in unnecessary expense and inconvenience to the caveator. Only a person who has an interest in the land should be entitled to send out such a notice and the amendment provides that the Registrar must be satisfied of this before a caveat is lapsed under this section.

Section 174 is struck out and three new sections are substituted. Under the provisions of section 61 the land mentioned in any certificate of title is by implication subject to certain reservations and implied conditions which are listed in the section. These reservations and implied conditions exist without the necessity of any specific mention of them in the certificate of title. The new section 174 makes it clear that the Registrar may indorse on a certificate of title the reservations contained in the original grant from the Crown to which the title is declared to be subject by virtue of section 61. If these subsisting reservations are indorsed on the title itself the public in dealing with the land is more likely to have knowledge of the reservation than if it is declared in the statute only. Indorsements of this nature made by the Registrar prior to the coming into force of this Act to notify the public of subsisting Crown reservations are validated.

The two new sections 174a and 174b, apart from re-numbering and slight rewording for the purpose of clarifying the intention, are practically the same as the present section 174.

KENNETH A. MCKENZIE,
Acting Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 41 of 1949.

An Act to amend The Land Titles Act.

(Assented to _____, 1949.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Land Titles Act*, being chapter 205 of the Revised Statutes of Alberta, 1942, is hereby amended by adding immediately after section 52 the following new section:

“**52a.** The Registrar may refuse to accept for registration any instrument transferring, incumbering, charging, or otherwise disposing of an undivided fractional interest in a parcel of land containing mines and minerals, or any mineral, which is less than an undivided one-twentieth of the whole interest in mines or minerals, or in any mineral, contained in that parcel of land.”.

2. The said Act is further amended as to section 61 by striking out the words “unless the contrary is expressly declared,”, where the same occur in subsection (1).

3. The said Act is further amended as to section 137,—

(a) by striking out the word “Except”, where the same occurs at the beginning of subsection (1), and by substituting the words “Except as otherwise provided in this section and except”;

(b) by adding immediately after subsection (2) the following new subsection:

“(3) No caveat shall be deemed to have lapsed pursuant to the provisions of subsection (1) unless the person who caused the notice to be served proves to the satisfaction of the Registrar that he has an interest in the land, mortgage or incumbrance against which the caveat was lodged.”.

4. The said Act is further amended as to section 174 by striking out the same and by substituting the following:

“**174.** In the case of any certificate of title, duplicate certificate or other instrument which, pursuant to the provisions of section 61, is declared to be subject to the reservations contained in the original grant from the Crown, the Registrar may make a memorandum or indorsement on the certificate of title, duplicate certificate or other instrument expressly declaring the reservations or implied conditions to which the land is subject.

“**174a.**—(1) If under any of the provisions of this Act the Registrar requires a duplicate certificate for the purpose of making any memorandum thereon or for the purpose of wholly or partially cancelling the same, or if it appears to the satisfaction of a Registrar,—

- “(a) that any duplicate certificate or other instrument has been issued in error or contains any misdescription of land or boundaries; or
- “(b) that any entry, memorandum or indorsement has been made in error on or omitted from any duplicate certificate or other instrument; or
- “(c) that any such duplicate certificate, instrument, entry, memorandum or indorsement has been fraudulently or wrongfully obtained; or
- “(d) that any such duplicate certificate or instrument is fraudulently or wrongfully retained;

the Registrar may by written demand which may be in Form 39 in the Schedule, to be served upon such person or to be mailed to his last known post office address, require the person to whom the duplicate certificate or other instrument has been issued, or by whom it has been obtained or is retained, to deliver it up for the purpose of being cancelled, corrected or completed, as the case requires.

“(2) In case any person refuses or neglects to comply with the written demand or cannot be found, the Registrar may apply to a judge to issue a summons for that person to appear before him and show cause why the duplicate certificate or other instrument should not be delivered up to be cancelled, corrected or completed as aforesaid.

“(3) If the person when served with the summons either personally or in the mode directed in the summons neglects or refuses to attend before the judge at the time therein appointed the judge may issue a warrant authorizing and directing the person so summoned to be apprehended and brought before the judge for examination.

“(4) In the case of any duplicate certificate or other instrument within the provisions of subsection (1) the Registrar, whether or not the duplicate certificate or other instrument is in his custody or has been produced to him in answer to his written demand, so far as practicable without prejudicing rights conferred for value, may cancel, correct or complete the register, and may wholly or partially cancel any duplicate certificate or other instrument and may correct any error or make any entry or addition in the duplicate certificate or other instrument or in any entry, memorandum or other indorsement thereon or in any memorial, duplicate certificate, exemplification or copy of any instrument made in or issued from the Land Titles Office and may supply entries omitted.

“**174b.**—(1) In the correction of any error or in the making of any cancellation, correction, or completion or in the making of any entry or addition, the Registrar shall not erase or render illegible the original words and he shall

mark the date upon which the cancellation, correction, completion, entry or addition was made or supplied.

“(2) Every cancellation, correction or completion in the register and every duplicate certificate or other instrument or entry cancelled, corrected, completed or added to shall have the like validity and effect as if the error had not been made or as if the entry or addition had not been omitted.”.

5. This Act shall come into force on the day upon which it is assented to, and upon so coming into force any memorandum or indorsement made by the Registrar on any certificate of title, duplicate certificate or other instrument expressly declaring it to be subject to the reservations contained in the original grant from the Crown is hereby ratified, confirmed and validated.

FIRST SESSION
ELEVENTH LEGISLATURE
13 GEORGE VI
1949

BILL

An Act to amend The Land
Titles Act.

Received and read the

First time

Second time

Third time.....

HON. MR. MAYNARD.
