

Bill No. 20 of 1950.

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.

Section 51 (3) is amended to give the court power to modify or discharge a restrictive covenant or condition running with land if it conflicts with the provisions of a zoning by-law, official plan or scheme of development under *The Town and Rural Planning Act* and, in the opinion of the court, the modification or discharge is in the public interest.

Section 68 is amended. Subsection (1) is struck out and replaced by two new subsections (1) and (1a). This section deals with easements for rights-of-way for railway companies and public utilities. The purpose of the amendment is to make it clear that the grant of the right-of-way may be registered. The subsection is also made applicable to rights-of-way for pipe lines. In other respects the subsection is unchanged.

Section 68 is further amended by the addition of a new subsection (2a) immediately after subsection (2). This new subsection enables the registration of an instrument mortgaging or charging the right-of-way of the pipe line, public utility or railway company. Thus, if the interest of the debenture holders is secured by a general mortgage or charge on all the assets of such a company this charge could be registered against the company's interest in the lands included in the right-of-way.

Section 20 (2) is amended. This is complementary to the amendment to section 68. Section 20 (2) presently enables the Registrar to register certain instruments such as caveats, mechanics' liens, etc., without the production of the duplicate certificate of title. The amendment adds to this list of instruments the instruments referred to in subsection (2a) of section 68, namely, mortgages of a company's interest in a right-of-way.

The amendments to section 68 and to section 20 (2) are applicable to such instruments whether they were executed before or after the passing of these amendments.

Section 75 (1) is amended by the addition of a new clause immediately after clause (a). Section 75 sets out various requirements with which right-of-way plans must necessarily comply. The new clause added provides that where one copy of a plan in compliance with the section has

been deposited, the Registrar, in his discretion, may accept as a duplicate a copy which has been printed or otherwise mechanically reproduced.

A new section 76a is added immediately after section 76. This section provides that in the case of right-of-way plans the Registrar, in his discretion, may permit their registration although the titles, margins, certificate forms and other formal portions are printed or otherwise mechanically reproduced. Ordinarily all plans submitted for registration are drawn by a draftsman on tracing linen using black India ink. In the case of a right-of-way covering a considerable distance numerous plans have to be registered which require identical titles, margins, certificate forms and other formal portions. These formal portions can be printed or otherwise reproduced in such a way that they are as permanent and durable as if black India ink had been used. This amendment will expedite construction of rights-of-way by facilitating the preparation and registration of such plans and is made retroactive to the nineteenth day of December, 1949, when such registrations were authorized by order in council subject to ratification by the enactment of this section.

Section 82 (2) is amended. The effect of the amendment is that when a subdivision is registered, the existing certificate of title is cancelled as to the surface only and not as to mines and minerals and the new titles to lots and blocks are issued excepting mines and minerals.

Section 87 is struck out and a new section is substituted. The section presently requires the Registrar to issue to the Crown certificates of title for roads in a subdivision when the plan of subdivision is registered. There does not appear to be any necessity for the issue of certificates of title to such roads when the plan of subdivision itself is registered. This section is amended accordingly. A new subsection (3) is also added to make it clear that the existing title of the owner is not cancelled in respect of minerals. It is the surface rights only which are subdivided and it is not intended that the Crown should acquire the mineral rights under roadways in a subdivision. This avoids the cutting up of mineral titles to the extent where it is difficult to deal with them.

Section 91 is struck out and a new section is substituted. This section applies to road allowances and public highways outside of subdivisions and it is amended similarly to section 87. The purpose of the amendment is to relieve the Registrar from the duty of issuing titles to road allowances and public highways where the plan of survey of the road has been registered. The issue of certificates of title in such cases appears to be unnecessary. The remainder of the section is reworded slightly for purposes of clarification only.

Section 152 is amended by deleting a reference to Form 36 and Form 36 itself is struck out. This Form set out the

dower affidavit required in connection with the transfer or other disposition and it has now been superseded and replaced by the forms and provisions of *The Dower Act, 1948*. The Form and the reference to it in *The Land Titles Act* are accordingly unnecessary and should be deleted.

Section 167*a* and section 189*a* are each struck out and a new section 167*a* is substituted in their stead. Subsection (1) of the new section is practically the same as the former section 167*a* with minor alterations in the wording for purposes of clarification only. Subsections (2), (3), (4), (5) and (6) of the new section are intended to replace the former section 189*a*. Subsection (2) provides that in the case of a disposition of mines and minerals executed after the twenty-ninth day of March, 1949, by which the registered owner of an interest in mines and minerals disposes of all or part of his interest, either party to the disposition may apply to the registrar for a certificate as to ownership of the interest in mines and minerals. Subsection (3) provides that the Registrar shall make a search and if he finds that at the date of the disposition the person purporting to dispose of the interest in mines and minerals was the correct registered owner he is required to issue a certificate to that effect in a form provided in the Schedule. Subsection (4) provides that no person shall have an action against the Registrar arising out of a disposition of mines and minerals executed on or after the twenty-ninth of March, 1949, unless the Registrar has issued the mineral certificate provided for in subsection (3). Subsection (5) provides that no disposition of mines and minerals executed on or after the twenty-ninth day of March, 1949, shall be registered except by way of caveat unless it is accompanied by the mineral certificate. Subsection (6) enables the registration of a disposition of the surface including mines and minerals which is not accompanied by a mineral certificate but in such a case subsection (4) is applicable and no action lies against the Registrar until he has issued a mineral certificate. Section 189*a* is repealed retroactively to the twenty-ninth day of March, 1949.

A new section 173*a* is added immediately after section 173. The section provides that where a person has made lasting improvements on land under the belief that the land was his own he is entitled to a lien upon the land to the extent of the amount by which its value has been enhanced by the improvements. The section also provides that such a person may be required or entitled to retain the land if the court is of the opinion or requires that this should be done having regard to what is just under all the circumstances. Where the person who has created the improvements is required to retain the land by the court the compensation payable for the land is to be fixed by the court. In recent years several houses have been built by mistake on the wrong lots. This new section enables the court to deal with such a situation where the parties themselves are unable to agree on a solution.

Forms 22 and 23 in the Schedule are amended to remove the requirement of a signature by the transferee. The transferee makes no covenant in the document and there is no apparent reason for his signature being required so the forms are accordingly amended. A new Form 37a is added in the Schedule being the form of mineral certificate which was provided for in the amended section 167a.

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Acting Legislative Counsel.

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

BILL

No. 20 of 1950.

An Act to amend The Land Titles Act.

(Assented to _____, 1950.)

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 as to section 20, subsection (2) by adding immediately after the words "mechanics' liens," the words "instruments referred to in subsection (2a) of section 68."

2. The said Act is further amended as to section 51 by adding immediately at the end of subsection (3) the words "or that the condition or covenant conflicts with the provisions of a zoning by-law, official plan or scheme of development under *The Town and Rural Planning Act* and the modification or discharge is in the public interest".

3. The said Act is further amended as to section 68,—

(a) by striking out subsection (1) and by substituting the following:

"(1) In the event of the registered owner of a parcel of land granting to the Crown or to any pipe line, public utility or railway company the right to carry its pipes, wires, conductors or transmission lines upon, over or under the parcel the instrument granting the right may be registered under this Act.

"(1a) Upon such registration the right to use the parcel in accordance with the terms of the grant and all the conditions and covenants expressed therein shall be binding upon and enure to the benefit of the Crown or of the company, its successors and assigns, owners of the pipe line, public utility or railway and the grantor, his heirs, executors, administrators and assigns being owners of the parcel.";

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

"(2a) An instrument purporting to assign, mortgage, incumber or charge any right granted by instrument registered under the provisions of subsection (1) which is executed by or on behalf of the

Crown or of the company, its successors and assigns, owners of the pipe line, public utility or railway may be registered under this Act.”.

4. The said Act is further amended as to section 75, subsection (1), by adding immediately after clause (a) the following new clause:

“(aa) where one copy of a plan, in compliance with clause (a), has been deposited, the Registrar, in his discretion, may accept as a duplicate a copy of the plan which has been printed or otherwise mechanically reproduced on linen by a process or with a permanent ink other than black India ink if such process or ink, in the opinion of the Registrar, is equally satisfactory to ensure permanent and durable records;”.

5. The said Act is further amended by adding immediately after section 76 the following new section:

“76a. In the case of plans of a right-of-way for a railway, pipe line, transmission line, pole line, conduit, irrigation or drainage ditch or for any similar purpose, notwithstanding the provisions of section 75, the Registrar, in his discretion, may permit registration of such plans although the titles, margins, certificate forms and other formal portions of the plan are printed or otherwise mechanically reproduced on linen by a process or with a permanent ink other than black India ink if such process or ink, in the opinion of the Registrar, is equally satisfactory to ensure permanent and durable records.”.

6. The said Act is further amended as to section 82 by striking out subsection (2) and by substituting the following:

“(2) On the registration of a subdivision plan the Registrar shall cancel the existing certificate of title except as to mines and minerals and issue to the owner certificates of title to the property in blocks and lots as shown on the plan excepting from each certificate of title so issued all mines and minerals.”.

7. The said Act is further amended by striking out section 87 and by substituting the following:

“87.—(1) Upon the filing of an original or amended or substituted plan of subdivision the lands finally shown to be reserved for public purposes as required by *The Public Works Act* and the regulations made thereunder shall vest in the Crown in the right of the Province free of all incumbrances.

“(2) The Registrar shall,—

“(a) cancel the areas shown on the plan from the original and duplicate certificates of title; and

“(b) issue a certificate of title for the lands to the Minister of Public Works representing His Majesty

in the right of the Province and forward the duplicate thereof to the Minister, except in the case of streets, avenues, roadways, highways, lanes or thoroughfares shown on any registered plan in which case no certificate of title need be issued.

“(3) Where, under a plan of subdivision, lands are vested in the Crown in the right of the Province any certificate of title to or plan of subdivision of such lands may be cancelled or amended or a new certificate or plan substituted therefor with the consent in writing of the Minister if the former plan under which the lands were vested in His Majesty is withdrawn, amended or replaced.

“(4) Upon the filing of an original or amended or substituted plan of subdivision the title to all mines and minerals under streets, avenues, roadways, highways, lanes or thoroughfares shown on the plan shall remain vested in the owner of such mines and minerals and his assigns and shall not be vested in or transferred to His Majesty.”.

8. The said Act is further amended by striking out section 91 and by substituting the following:

“**91.**—(1) Whenever the plan of survey mentioned in section 89 is forwarded to the Registrar of the proper Land Titles Office by the Public Works Department the Registrar shall call in the duplicate certificates of title for all patented lands affected thereby in the manner set forth in section 174a.

“(2) If the registered owner refuses or neglects to return the duplicate certificate of title within thirty days after the demand has been mailed to him the Registrar shall,—

“(a) proceed to file the plan; and

“(b) cancel the area required for the public work as shown on the plan from the original certificates in his office and from the duplicates that may have been or may otherwise be returned to him; and

“(c) issue a certificate of title in fee simple free from all incumbrances for the area required for the public work to His Majesty in the right of the Province and forward the duplicate thereof to the Minister of Public Works, except in the case of roads and public highways shown on a registered plan of survey in which case certificates of title need not be issued.”.

9. The said Act is further amended as to section 152,—

(a) by adding immediately after the words “*The Dower Act*”, wherever they occur therein, the figures “, 1948”;

(b) by striking out the words and figures “(Form 36 in the Schedule)”.

10. The said Act is further amended by striking out section 167a and by substituting the following:

“**167a.**—(1) In any action against the Registrar as nominal defendant for any loss or damage sustained by reason of any error, omission or misdescription relating to mines and minerals in the register the claimant shall be entitled to recover as liquidated damages the moneys actually paid out by him for such interest in mines and minerals and such further sum not exceeding five thousand dollars for any present or prospective loss of profit, if any, sustained by him in his dealings with such mines and minerals.

“(2) In the case of a disposition by sale, lease, assignment, agreement or other instrument executed on or after the twenty-ninth day of March, 1949, by which the person who purports to be the registered owner of an interest in mines and minerals disposes of all or any part of such interest any party to the disposition and his successors and assigns may apply to the Registrar for a mineral certificate as to ownership of the interest in mines and minerals.

“(3) The Registrar shall search and examine the register to ascertain the ownership of the interest in mines and minerals dealt with in the disposition and if he finds that at the date of the disposition the person purporting to dispose of the interest in mines and minerals was the correct registered owner of the said interest he shall issue a mineral certificate to that effect in Form 37a in the Schedule.

“(4) Notwithstanding subsection (1) no person shall have an action against the Registrar arising out of a disposition of an interest in mines and minerals executed on or after the twenty-ninth day of March, 1949, for any loss or damage sustained by reason of any error, omission or misdescription in the register relating to the interest in mines and minerals, unless the Registrar has issued the mineral certificate in respect of that disposition provided for in subsection (3).

“(5) No disposition of mines and minerals executed on or after the twenty-ninth day of March, 1949, shall be registered except by way of caveat unless it is accompanied by the mineral certificate in respect of that disposition provided for in subsection (3).

“(6) Notwithstanding subsection (5) a disposition of the surface of land including mines and minerals which is not accompanied by the mineral certificate may be registered, but in such case subsection (4) shall apply and no action shall lie against the Registrar in respect of the interest in mines and minerals until the Registrar has issued the mineral certificate.”.

11. The said Act is further amended by adding immediately after section 173 the following new section:

“**173a.**—(1) Where a person at any time has made lasting improvements on land under the belief that the land was his own he or his assigns shall,—

“(a) be entitled to a lien upon the same to the extent of the amount by which the value of the land is enhanced by the improvements; or

“(b) be entitled to or may be required to retain the land if the court is of opinion or requires that this should be done having regard to what is just under all the circumstances of the case.

“(2) The person entitled or required to retain the land shall pay such compensation as the court may direct.”.

12. The said Act is further amended by striking out section 189a.

13. The said Act is further amended as to Form 22 in the Schedule by striking out the words “X.Y. (Transferee.)”.

14. The said Act is further amended as to Form 23 in the Schedule by striking out the words “Accepted, X.Y. (Transferee.)”.

15. The said Act is further amended by striking out Form 36 in the Schedule.

16. The said Act is further amended by adding immediately after Form 37 in the Schedule the following new Form:

“Form 37a.
“(Section 167a)

“MINERAL CERTIFICATE

“I hereby certify that at the date of the disposition from to dated the person purporting to dispose of the interest in mines and minerals, namely, of was the correct registered owner under Certificate of Title No. of the interest in mines and minerals described in the said disposition and contained within, upon or under the following lands:.....

“Dated this day of 19.....

“Registrar.
“. . . Alberta Land Registration District.”

17. Sections 1 and 3 of this Act apply to instruments executed either before or after the coming into force of this Act.

18. This Act shall come into force on the day upon which it is assented to and upon so coming into force,—

- (a) section 5 shall be deemed to have been in force at all times on and after the nineteenth day of December, 1949;
- (b) section 12 shall be deemed to have been in force at all times on and after the twenty-ninth day of March, 1949.

No. 20

FIRST SESSION
TWELFTH LEGISLATURE

14 GEORGE VI

1950

BILL

An Act to amend The Land Titles
Act.

Received and read the

First time

Second time

Third time

HON. MR. MAYNARD.
