

No. 57

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4 Elizabeth II, 1956

BILL 57

A Bill to amend The Public Lands Act

HON. MR. WILLMORE

EDMONTON, ALBERTA
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Explanatory Note

2. (a) This term is used several times in the Act but is only a Departmental term and may not be generally understood, therefore it is defined.
- (b) Clause (o) defines "lands" in broad terms and the amendment will make it clear that mines and minerals do not come within the meaning of "lands" as used in this Act.
- (c) This amendment is occasioned by changes in the Act replacing the one here named. There is no reference in that Act at the present time to leases by the Department of Lands and Forests. The reference is therefore removed from this Act.

3. Subsection (2) of section 20 presently reads:

(2) If the residence duties under section 18 are to be performed in the vicinity of the leasehold, the lessee by the end of the third calendar year of the lease, shall complete improvements of the value of five hundred dollars exclusive of the value of cultivation or any preparation of the land for cultivation."

4. Section 34 presently reads as follows:

"34. The Director may institute proceedings on behalf of the Department for the cancellation of a homestead when he is satisfied that the lessee is in default in the performance of his duties.

This matter is sufficiently provided for elsewhere in the Act, viz., sections 39 and 40.

5. Section 36 presently reads:

"36. A homestead shall be for the sole use and benefit of the lessee, and the Minister may cancel any homestead which in his opinion is not held for the sole use and benefit of the lessee."

This section is to be placed in the general part of the Act—see clause 11.

6. Section 38 presently reads:

"38. If the Minister is satisfied that a homestead has been obtained through personation, misrepresentation or fraud, he shall cancel the homestead, and he shall not refund any moneys paid and he shall not pay any compensation to the lessee on account of any improvements which may have been made by him."

The amendment will allow the Minister a discretion.

BILL

No. 57 of 1956

An Act to amend The Public Lands Act

(Assented to _____, 1956)

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

PART I

1. *The Public Lands Act*, being chapter 81 of the Statutes of Alberta, 1949, is hereby amended.

2. Section 2 is amended

(a) by adding immediately after clause (a) the following:

“(b) “agreement of transfer” means the agreement in the Schedule to *The Alberta Natural Resources Act*;”,

(b) by adding immediately at the end of clause (o) the words “, but does not include mines and minerals”,

(c) as to clause (oo) by striking out the words “a right of entry granted pursuant to *The Right of Entry Arbitration Act*,”.

3. Section 20 is amended by striking out subsection (2).

4. Section 34 is repealed.

5. Section 36 is repealed.

6. Section 38 is struck out and the following is substituted:

“**38.** If the Minister is satisfied that a homestead lease has been obtained through personation, misrepresentation or fraud, he shall cancel the homestead lease and he may, in his discretion,

7. Subsection (2) of section 51 presently reads:

"(2) The application shall be accompanied by a fee of five dollars together with the first year's cash rental for the uncultivated land."

The amendment is necessary because of changing the basis of rental under cultivation leases from crop share arrangements to a cash rental.

8. Section 55 presently reads:

"55. (1) The lessee shall pay annually in advance a cash rental for each and every acre of uncultivated land comprised in the lease, together with such share of the crop grown on the cultivated land as may be prescribed by the Lieutenant Governor in Council and set out in the lease.

"(2) No share of a crop shall be payable on land broken and brought under cultivation by the lessee during the three crop years immediately following the granting of the lease.

"(3) No share of a variety of a crop shall be payable in any year in which the average yield of that variety of crop is a failure, and for purposes of this subsection,

"(a) the Minister shall determine in each crop year the average number of bushels per acre for each variety of crop which in his opinion are required to meet the cost of producing each such crop, and any lesser yield shall be deemed to be a failure;

"(b) any crop of wheat, oats, barley, or rye with an average production of five bushels per acre or more shall not be deemed to be a failure.

"(4) Notwithstanding any provision to the contrary in any lease presently in effect, the cash rental payable under the lease shall be paid on or before the first day of January."

The amendment changes the basis of rental under cultivation leases.

- “(a) pay or refuse to pay to the lessee any moneys as compensation for improvements made by the lessee to the leased lands, or
- “(b) refund or refuse to refund any moneys paid to the Minister by the lessee.”.

7. Section 51 is amended by striking out subsection (2) and by substituting the following:

“(2) The application shall be accompanied by a fee of five dollars and a deposit of twenty dollars for each quarter section of lands applied for, or fraction thereof.

“(3) The deposit shall be credited towards payment of rent for the first year of the term if a lease is issued, but shall be refunded where the application is refused.

“(4) Where the Minister accepts the application but the applicant refuses to enter into a lease, the deposit and any other moneys paid in connection with the application shall be forfeited.”.

8. Section 55 is struck out and the following is substituted:

“55. (1) The lessee shall pay a yearly rent of a sum of money equivalent to

“(a) five per cent of the value of the lands as assessed in accordance with *The Assessment Act* by the municipal district or improvement district in which the lands are situate, and

“(b) a sum sufficient to reimburse the Minister for any amounts paid by him pursuant to section 5 of *The Crown Cultivation Leases Act, 1954*.

“(2) The rent is payable on the first day of November in each and every year during the term of the lease.

“(3) The portion of the rent referred to in clause (a) of subsection (1) need not be paid in any year in which the average yield of the variety of crop grown is a failure and, for the purposes of this subsection,

“(a) the Minister shall determine in each crop year the average number of bushels per acre for each variety of crop that in his opinion are required to meet the cost of producing each such crop, and any lesser yield shall be deemed to be a failure, but

“(b) any crop of wheat, oats, barley, or rye with an average production of five bushels per acre or more shall not be deemed to be a failure.

“(4) A holder of a lease issued before the coming into force of this section may elect to continue paying rent in accordance with the lease or may agree with the Minister to vary the lease to provide for payment of rent in accordance with this section.”.

9. Subsections (2) and (3) of section 73 presently read as follows:

"(2) The consent of the Minister to an assignment of a grazing lease shall not be given unless

"(a) all arrears of rent, interest, penalties and other moneys due have been paid, and

"(b) the said lessee personally has been in possession of the lands for a period of not less than three years, and

"(c) the assignment is made to a person eligible to acquire a lease under this Act.

"(3) Notwithstanding the provisions of subsection (1), the Minister in his discretion may consent to an assignment where the lessee has not been in possession for three years if

"(a) the lessee dies and the assignment is presented by his executors or administrators, or

"(b) if the assignment is to the husband, wife, son, daughter, father, mother, brother or sister of the lessee."

The section at present is not adequate and the additions will provide for cases arising that are not now provided for.

10. Subsection (1) of section 80 presently reads:

"80. (1) Where any company has obtained a grazing lease, whether its lease was made under the provisions of this Act, The Provincial Lands Act or the Dominion Lands Act or the regulations made under any of the said Acts, the Minister at any time by notice in writing may require the lessee to furnish proof that at the time of the notice,

"(a) it is incorporated under the laws of Canada or of the Province of Alberta, and

"(b) the majority of its shares are owned by residents of the Province for their exclusive use and benefit and not in the interests of or for the benefit of any other person."

The amendment will permit the Minister to obtain information regarding the actual control of a company having a grazing lease.

11. This is the same provision of the present section 36. In this part of the Act the provision will apply generally. (See note to clause 5.)

12. Subsection (3) of section 94 presently reads as follows:

"(3) If the land from which the timber was cut is cultivated within one year from the date the cutting took place and if the lessee furnishes a sworn statement to that effect to the Minister, the Minister may refund the dues."

The section is redrafted to make it conform to section 43, subsection (2) of The Forests Act as amended.

13. The purpose of this amendment is to authorize the Department not to include in the valuation of improvements any fencing made by the previous occupant. A new lessee may then make his own arrangements in respect of the fencing.

9. Section 73 is amended

- (a) as to subsection (2) by striking out clause (b) and by substituting the following:

“(b) the lessee has been in possession of the lands continuously for three years prior to the date of the assignment, either by virtue of the lease or of both the lease and any other disposition to him by the Minister, and”,

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

“(2a) Where the requirements of clause (b) of subsection (2) have otherwise been met and the lease has, within three years prior to the date of the assignment, been amended by the addition of lands not exceeding in area one-third of the lands demised by the lease, the Minister may waive such requirements with respect to the additional lands.”,

- (c) as to subsection (3)

- (i) by adding immediately at the end of clause (b) the word “, or”,

- (ii) by adding immediately after clause (b) the following:

“(c) the lessee is a mentally incompetent person and the assignment is made by his committee.”.

10. Section 80, subsection (1) is amended by adding immediately after clause (b) the following:

“and, if the Minister should so desire, to furnish proof that the *de facto* control of the lessee company is in the persons resident in the Province who own the major part of the shares of such company.”

11. The following section is added immediately after section 89a:

“~~89b.~~ A lease is for the sole use and benefit of the lessee and the Minister may cancel any lease that in his opinion is not held for the sole use and benefit of the lessee.”.

12. Section 94 is amended by striking out subsection (3) and by substituting the following:

“(3) The Minister may refund the dues where the lessee makes application therefor within three years of the issue of the permit and where the application is supported by an affidavit by the lessee stating that the land from which the timber was cut was cultivated within two years of the date of the cutting.”.

13. Section 94a is amended by adding immediately after subsection (1) the following:

14. Section 102 presently reads as follows:

"102. (1) No charge or claim of any nature and no interest entitling the holder to file a caveat may be created upon or affecting any land to which this Act applies, except in the case of a settler or a person purchasing public land liable,

"(a) either as principal or surety upon a bond to the Crown or a Minister of the Crown, or

"(b) as a mortgagor on a mortgage in favour of the Crown or of a Minister of the Crown, or

"(c) as a liability of the settler or purchaser for a sum due or payable in respect of an advance of seed grain, or

"(d) because of any other indebtedness to the Crown or a Minister of the Crown.

"(2) A liability of the nature referred to in clause (a), (b), (c) or (d) of subsection (1) shall be and remain a charge upon the land and no notification shall issue in the name of such person for such land until the liability is satisfied and extinguished according to law."

This section is now too broad and the amended section will restrict its application to purchasers' and lessees' rights to receive notification from the Minister.

15. Subsection (1) of section 109 presently reads as follows:

"109. (1) All sales of lands except as herein otherwise authorized shall be made with the approval of the Lieutenant Governor in Council and upon such terms and conditions as are set out in the order."

The amendment is for the purpose of clarification.

16. (a) Clause (n) of section 113 presently reads:

"113. The Lieutenant Governor in Council may

"(n) authorize the Minister to enter into an agreement or agreements with His Majesty in the right of Canada which transfers to Canada for National Park purposes all the right, title and interest of His Majesty in the right of the Province to any lands in the Province including road allowances, surveyed roads, road diversions, and mines and minerals;".

(b) The amendment relates to transfers of land between the Crown in the right of the Province and the Crown in the right of Canada. The ownership of the land would not change in such case and it has always been difficult to frame the proper transfer. The new clause will give a statutory method of procedure in such cases.

17. Subsection (4) of section 126 presently reads:

"(4) Whenever any officer receives satisfactory information supported by affidavit or statutory declaration made before a justice of the peace or before any other competent officer or person, that any sand or gravel has been removed without authority from public lands, including the beds of rivers, or if any officer from other sources of information or his own knowledge is aware that any sand or gravel has been removed without authority from any such lands, he may seize or cause to be seized whenever found the sand or gravel so reported or known to be removed, together with any automobile, trucks, tools, and equipment used in the removing and transportation of the sand or gravel, and the sand or gravel, trucks, tools and equipment seized shall be liable to confiscation to Her Majesty as provided by section 127."

The provisions of this subsection are being set out in section 127 to remove a conflict between sections 126 and 127 with regard to procedure in seizures.

18. Section 127 presently reads as follows:

"127. (1) When any property is seized under section 126 the person making the seizure shall without delay make a report in writing to

“(1a) For the purposes of the cash payment required by subsection (1), the whole or any part of the fencing on the lands may, in the discretion of the Minister, be excluded from the valuation of the improvements.”.

14. Section 102 is struck out and the following is substituted:

“**102.** The Minister may withhold the issue of a notification with respect to public lands while the person entitled to the notification is liable

- “(a) either as principal or surety upon a bond to the Crown in the right of the Province or the Minister,
- “(b) as a mortgagor on a mortgage in favour of the Crown in the right of the Province or in favour of the Minister,
- “(c) for a sum due or payable in respect of an advance of seed grain, or
- “(d) for any other indebtedness to the Crown in the right of the Province or to the Minister.”.

15. Section 109 is amended by striking out subsection (1) and by substituting the following:

“**109.** (1) The Lieutenant Governor in Council may by order authorize the Minister to sell public lands by public auction or by private sale upon the terms and conditions set out in the order.”.

16. Section 113 is amended

- (a) as to clause (n) by striking out the words “, and mines and minerals”,
- (b) by adding immediately after clause (s) the following:
 - “(t) transfer the administration and control of any public lands to the Government of Canada upon the terms and conditions and for the reasons set out in the order.”.

17. Section 126 is amended by striking out subsection (4).

18. Section 127 is struck out and the following is substituted:

the Minister and shall hold the property under seizure until such time as he has received from the Minister directions as to the further dispositions thereof.

"(2) The Minister upon the receipt of any such report and upon being satisfied thereby that the property is liable to confiscation to His Majesty, may by writing declare that the property is confiscated, and thereupon the property shall become the property of His Majesty and all rights of property existing therein immediately before the making of the order shall cease and determine.

"(3) The Minister may cause the property to be sold in such manner and subject to such terms and conditions as he may prescribe or he shall order the return of the property to the person in whose possession it was at the time of seizure."

The amendment will result in the procedure under this section applying only to seizures of sand and gravel and equipment used in the illegal removal thereof.

19. Subsection (2) of section 128 presently reads:

"(2) In case default is made in the due payment of any share of the crop payable to His Majesty the King, in the right of the Province, under any lease, license or permit entered into pursuant to this Act or The Provincial Lands Act, the Minister by an order in writing may authorize the person named in the order to seize any grain wherever found within the Province belonging to the lessee, licensee, or permittee named in the order."

The amendment will permit the Department to make a seizure of grain for default in payment of the cash rental under a cultivation lease.

20. The amendment will enable animals not identifiable as to owner by any marks or brands to be disposed of as ownerless when taken by a round-up under this section.

“127. (1) When any officer receives satisfactory information supported by affidavit or statutory declaration that any sand or gravel has been removed without authority from public lands, including the beds of rivers, or whenever any officer from other sources of information or from personal knowledge is aware that any sand or gravel has been removed without authority from such lands, he may seize or cause to be seized wherever found the sand or gravel so reported or known to be removed, together with any automobile, truck, tools and equipment used in the removal or transportation of the sand or gravel.

“(2) The person making the seizure shall immediately report in writing to the Minister and shall retain the sand or gravel or thing seized until he has received directions from the Minister as to the future disposition thereof.

“(3) Upon receipt of the report the Minister may

“(a) by writing declare the sand, gravel or other thing seized to be confiscated to the Crown, and cause the sand, gravel or other thing so confiscated to be sold in the manner and subject to such terms and conditions as he may prescribe, or

“(b) order the return of the sand, gravel or other thing seized to the person possessed of it at the time of seizure.

“(4) Where the Minister makes a declaration of confiscation pursuant to subsection (3), the property in the sand, gravel or thing seized vests in the Crown and all rights of property existing therein immediately before the making of the declaration cease and determine.”.

19. Section 128, subsection (2) is amended by adding immediately after the words “due payment” the words “of any rent payable under a cultivation lease or”.

20. Section 128*b* is amended

(a) by adding immediately after subsection (3) the following:

“(3*a*) For the purposes of this section, horses over six months of age and not bearing any visible brand, mark or vent shall be deemed to be ownerless and notwithstanding subsections (2) and (3), where such horses are seized, the Minister may cause them to be sold by public auction or by private sale at any time.”,

(b) as to subsection (5) by striking out the word and figure “subsection (3)” and by substituting the words and figures “subsections (3) or (3*a*)”.

21. Section 142 presently reads:

"142. Any lessee, permittee or purchaser of land from the Crown who sells any of the timber from the land without having previously obtained permission so to do from the Minister is guilty of an offence and liable upon summary conviction, to a penalty not exceeding one hundred dollars, and the timber so sold shall be liable to seizure and confiscation to His Majesty, as provided by section 127."

This matter is fully provided for by The Forests Act.

22. Self-explanatory.

Part II will relate the amendments of this session to the revision and consolidation.

21. Section 142 is repealed.

22. The following section is added immediately after section 149a:

"149b. Except with the consent in writing of the Minister,

"(a) no public lands shall be mortgaged, encumbered, charged with the payment of money or made subject to any lien, and

"(b) no instrument shall be registered in any land titles office that purports to mortgage, encumber or charge public lands with the payment of money or make public lands subject to any lien."

PART II

23. *The Public Lands Act*, being chapter 259 of the Revised Statutes of Alberta, 1955, is hereby amended.

24. Section 2 is amended

(a) by adding immediately after clause (a) the following:

"(a1) "agreement of transfer" means the agreement in the Schedule to *The Alberta Natural Resources Act*,"

(b) by adding immediately at the end of clause (n) the words ", but does not include mines and minerals",

(c) as to clause (o) by striking out the words "a right of entry granted pursuant to *The Right of Entry Arbitration Act*,".

25. Section 22 is amended by striking out subsection (2).

26. Sections 33 and 34 are repealed.

27. Section 36 is struck out and the following is substituted:

"36. If the Minister is satisfied that a homestead lease has been obtained through personation, misrepresentation or fraud, he shall cancel the homestead lease and he may, in his discretion,

"(a) pay or refuse to pay to the lessee any moneys as compensation for improvements made by the lessee to the leased lands, or

"(b) refund or refuse to refund any moneys paid to the Minister by the lessee."

28. Section 48 is amended by striking out subsection (2) and by substituting the following:

“(2) The application shall be accompanied by a fee of five dollars and a deposit of twenty dollars for each quarter section of lands applied for, or fraction thereof.

“(3) The deposit shall be credited towards payment of rent for the first year of the term if a lease is issued, but shall be refunded where the application is refused.

“(4) Where the Minister accepts the application but the applicant refuses to enter into a lease, the deposit and any other moneys paid in connection with the application shall be forfeited.”.

29. Section 52 is struck out and the following is substituted:

“**52.** (1) The lessee shall pay a yearly rent of a sum of money equivalent to

“(a) five per cent of the value of the lands as assessed in accordance with *The Assessment Act* by the municipal district or improvement district in which the lands are situate, and

“(b) a sum sufficient to reimburse the Minister for any amounts paid by him pursuant to section 5 of *The Crown Cultivation Leases Act*.

“(2) The rent is payable on the first day of November in each and every year during the term of the lease.

“(3) The portion of the rent referred to in clause (a) of subsection (1) need not be paid in any year in which the average yield of the variety of crop grown is a failure and, for the purposes of this subsection,

“(a) the Minister shall determine in each crop year the average number of bushels per acre for each variety of crop that in his opinion are required to meet the cost of producing each such crop, and any lesser yield shall be deemed to be a failure, but

“(b) any crop of wheat, oats, barley, or rye with an average production of five bushels per acre or more shall not be deemed to be a failure.

“(4) A holder of a lease issued before the coming into force of this section may elect to continue paying rent in accordance with the lease or may agree with the Minister to vary the lease to provide for payment of rent in accordance with this section.”.

30. Section 72 is amended

(a) as to subsection (2) by striking out clause (b) and by substituting the following:

“(b) the lessee has been in possession of the lands continuously for three years prior to the date of the assignment, either by virtue of the lease or of both the lease and any other disposition to him by the Minister, and”,

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

“(2a) Where the requirements of clause (b) of subsection (2) have otherwise been met and the lease has, within three years prior to the date of the assignment, been amended by the addition of lands not exceeding in area one-third of the lands demised by the lease, the Minister may waive such requirements with respect to the additional lands.”,

- (c) as to subsection (3)

- (i) by adding immediately at the end of clause (b) the word “, or”,

- (ii) by adding immediately after clause (b) the following:

“(c) the lessee is a mentally incompetent person and the assignment is made by his committee.”.

31. Section 79, subsection (1) is amended by adding immediately after clause (b) the following:

“and, if the Minister should so desire, to furnish proof that the *de facto* control of the lessee company is in the persons resident in the Province who own the major part of the shares of such company.”

32. The following section is added immediately after section 87:

“**87a.** A lease is for the sole use and benefit of the lessee and the Minister may cancel any lease that in his opinion is not held for the sole use and benefit of the lessee.”.

33. Section 92 is amended by striking out subsection (3) and by substituting the following:

“(3) The Minister may refund the dues where the lessee makes application therefor within three years of the issue of the permit and where the application is supported by an affidavit by the lessee stating that the land from which the timber was cut was cultivated within two years of the date of the cutting.”.

34. Section 93 is amended by adding immediately after subsection (1) the following:

“(1a) For the purposes of the cash payment required by subsection (1), the whole or any part of the fencing on the lands may, in the discretion of the Minister, be excluded from the valuation of the improvements.”.

35. Section 108 is struck out and the following is substituted:

“**108.** The Minister may withhold the issue of a notification with respect to public lands while the person entitled to the notification is liable

- “(a) either as principal or surety upon a bond to the Crown in the right of the Province or the Minister,
- “(b) as a mortgagor on a mortgage in favour of the Crown in the right of the Province or in favour of the Minister,
- “(c) for a sum due or payable in respect of an advance of seed grain, or
- “(d) for any other indebtedness to the Crown in the right of the Province or to the Minister.”.

36. Section 115 is amended by striking out subsection (1) and by substituting the following:

“**115.** (1) The Lieutenant Governor in Council may by order authorize the Minister to sell public lands by public auction or by private sale upon the terms and conditions set out in the order.”.

37. Section 119 is amended

- (a) as to clause (o) by striking out the words “and mines and minerals,”,
- (b) by adding immediately after clause (t) the following:
 “(u) transfer the administration and control of any public lands to the Government of Canada upon the terms and conditions and for the reasons set out in the order.”.

38. Section 132 is amended by striking out subsection (7).

39. Section 133 is struck out and the following is substituted:

“**133.** (1) When any officer receives satisfactory information supported by affidavit or statutory declaration that any sand or gravel has been removed without authority from public lands, including the beds of rivers, or whenever any officer from other sources of information or from personal knowledge is aware that any sand or gravel has been removed without authority from such lands, he may seize or cause to be seized wherever found the sand or gravel so reported or known to be removed, together with any automobile, truck, tools and equipment used in the removal or transportation of the sand or gravel.

“(2) The person making the seizure shall immediately report in writing to the Minister and shall retain the sand or gravel or thing seized until he has received directions from the Minister as to the future disposition thereof.

“(3) Upon receipt of the report the Minister may

- “(a) by writing declare the sand, gravel or other thing seized to be confiscated to the Crown, and cause the sand, gravel or other thing so confiscated to be sold in the manner and subject to such terms and conditions as he may prescribe, or

“(b) order the return of the sand, gravel or other thing seized to the person possessed of it at the time of seizure.

“(4) Where the Minister makes a declaration of confiscation pursuant to subsection (3), the property in the sand, gravel or thing seized vests in the Crown and all rights of property existing therein immediately before the making of the declaration cease and determine.”.

40. Section 134, subsection (2) is amended by adding immediately after the words “due payment” the words “of any rent payable under a cultivation lease or”.

41. Section 136 is amended

(a) by adding immediately after subsection (3) the following:

“(3a) For the purposes of this section, horses over six months of age and not bearing any visible brand, mark or vent shall be deemed to be ownerless and notwithstanding subsections (2) and (3), where such horses are seized, the Minister may cause them to be sold by public auction or by private sale at any time.”,

(b) as to subsection (5) by striking out the word and figure “subsection (3)” and by substituting the words and figures “subsections (3) or (3a)”.

42. Section 151 is repealed.

43. The following section is added immediately after section 162:

“**162a.** Except with the consent in writing of the Minister,

“(a) no public lands shall be mortgaged, encumbered, charged with the payment of money or made subject to any lien, and

“(b) no instrument shall be registered in any land titles office that purports to mortgage, encumber or charge public lands with the payment of money or make public lands subject to any lien.”.

44. Part I and this section come into force on the day this Act is assented to, and Part II, except this section, comes into force and Part I is repealed on the day the Revised Statutes of Alberta, 1955, come into force.

SECOND SESSION
THIRTEENTH LEGISLATURE
4 ELIZABETH II
1956

BILL

An Act to amend The Public
Lands Act

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. WILLMORE
