

Bill No. 58 of 1935.

A BILL TO AMEND THE LAND TITLES ACT.

NOTE.

Section 2 of the Bill preserves the easements referred to in section 62a of the Act from extinction on the issuance of a new title in tax recovery proceedings.

By section 3 the certificate of title issuable for land expropriated for a public work is expressly stated to be for an estate in fee simple free from incumbrances.

By section 4 provision is made for the discharge of a mortgage where claims under it are barred by *The Limitation of Actions Act, 1935*.

Section 5 provides for the fixing by the judge of the amount required to pay off a mortgage in cases of dispute, and for the payment into a bank to the credit of the mortgage of the fixed amount and the subsequent discharge of the mortgage.

Section 6 strikes out two subsections which are no longer required.

Section 8 provides for the expiry and renewal of certificates of judgment and for the lapsing of the same upon the vesting of the land to which they relate.

Section 9 makes a verbal amendment for greater clarity.

Section 10 amends the provisions relating to actions against the Registrar and claims against the assurance fund. No judgment can be given in any action for the payment of money out of the assurance fund unless the Registrar has been made a party to the action: the damages which may be recovered as against the assurance fund are limited to the value of the interest in land lost by the plaintiff or the actual loss sustained, whichever is the lesser: three months' notice in writing to the Registrar of an intended action against him is required before the action is brought; and the times within which actions against the Registrar must be brought are expressly limited.

Section 11 is designed to restate the amended subsection with greater clarity.

Section 12 makes necessary verbal amendments to certain forms.

R. ANDREW SMITH,
Legislative Counsel.

(This note does not form any part of the Bill and is offered merely as a partial explanation of some of its provisions.)

BILL

No. 58 of 1935.

An Act to amend The Land Titles Act.

(Assented to _____, 1935.)

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

1. This Act may be cited as "*The Land Titles Act Amendment Act, 1935.*"

2. *The Land Titles Act*, being chapter 133 of the Revised Statutes of Alberta, 1922, is hereby amended as to section 57*a* thereof by striking out the words and figures "section 62", where the same occur therein, and by substituting therefor the words and figures "sections 62 and 62*a*".

3. The said Act is further amended as to section 83 thereof by striking out the words "a certificate of title for the area required for the public work", where the same occur therein, and by substituting therefor the words "a certificate of title in fee simple free from all incumbrances for the area required for the public work".

4. The said Act is further amended as to section 97 thereof by adding at the end of subsection (1) thereof the following new paragraph:

"(c) upon the production of a certificate signed by a judge certifying that the right of any person to recover any money secured by the mortgage or incumbrance has been extinguished by reason of the operation of the provisions of *The Limitation of Actions Act, 1935.*"

5. The said Act is further amended as to section 100 thereof by inserting therein, immediately after subsection (1) thereof, the following new subsection:

"(1*a*) If any mortgagor becomes entitled to pay off the mortgage moneys and a dispute arises between the mortgagee or other person entitled to receive the mortgage moneys as to the amount payable in satisfaction of the mortgage, the judge may, on the application of either party and upon the giving of such notice to such persons as the judge may direct, after hearing evidence in such manner as he may direct, deal with the matter in a summary manner and by order fix the amount so payable as at the date to be mentioned in the order and direct the payment of that amount into a chartered

bank having a branch or agency in the district in which the land comprised in the mortgage is situate together with any interest, accrued thereon since the date so fixed to the date of payment, to the credit of the mortgagee or other person entitled thereto, and thereupon the interest on the mortgage shall cease to run or accrue.”

6. The said Act is further amended as to section 109 thereof by striking out subsections (4) and (8) thereof.

7. The said Act is further amended as to section 113 thereof by striking out the words “fifty cents”, where the same occur therein, and by substituting therefor the words “his proper fee”.

8. The said Act is further amended as to section 114a thereof by adding at the end thereof the following new subsections:

“(2) Certificates of judgment shall expire and be renewable as if they were writs of execution.

“(3) Upon the registration of an order vesting in the mortgagee the land to which a certificate of judgment relates, that certificate shall lapse.”

9. The said Act is further amended as to section 120 thereof by striking out the words “unless such instrument be expressed to be subject to the claim of the caveator”, where the same occur therein, and by substituting therefor the words “unless such instrument or certificate of title be expressed to be subject to the claim of the caveator”.

10. The said Act is further amended by striking out sections 147, 149, 150, 151, 152, 153, 154, 155 and 156 thereof and by inserting therein, immediately after section 148 thereof, the following:

“**149.** Any person sustaining loss or damage through an omission, mistake or misfeasance of the Registrar or an official in his office in the execution of his duties, and any person deprived of any land or incumbrance or of an estate or interest therein through the bringing of the same under this Act, or by the registration of another person as owner of such land or incumbrance or by an error, omission or misdescription in a certificate of title, and who by the provisions of this Act is barred from bringing an action for the recovery of such land or incumbrance or interest therein, may bring an action against the Registrar of the district in which the land is situate for the recovery of damages.

“**150.**—(1) Any person who has at any time heretofore or hereafter—

“(a) acquired either directly, or indirectly by transfer, any interest in land as a mortgagee thereof or incumbrancee thereon created by any mortgage or incumbrance made in good faith and for valuable consideration and registered pursuant to this Act which is null and void by reason of *The Dower Act*;
or

“(b) acquires an interest as owner in any land under a transfer thereof made in good faith and for valuable consideration and registered pursuant to this Act which is null and void pursuant to *The Dower Act*— shall be entitled in an action brought against the Registrar as nominal defendant to a judgment for such damages as he may have sustained by reason of the voidance and nullification of the mortgage, incumbrance or transfer, as the case may be.

“(2) No person shall be entitled to recover any damages under this section unless he proves that the person taking the mortgage, incumbrance or transfer which is so null and void—

“(a) gave valuable consideration therefor; and

“(b) acted in good faith; and

“(c) had no knowledge of any fact sufficient to avoid the same; and

“(d) made reasonable enquiries as to the existence of any such fact.

“(3) The damages which may be recovered shall be the amount of the loss actually sustained by the plaintiff or such amount as appears to the court to be the fair actual value of the land at the time of trial of the action, whichever amount is the lesser.

“(4) Upon the payment out of the assurance fund of any amount payable under any judgment given pursuant to this section, or upon the payment pursuant to section 156*d* of any sum in respect of a claim made under this section, the Provincial Treasurer shall be entitled to recover from the maker of the void mortgage, incumbrance or transfer and from his estate any amount so paid, and shall in any event be subrogated to all the rights and remedies of the mortgagee, incumbrancee or transferee.

“(5) Time shall not commence or continue to run against the Provincial Treasurer, nor shall any statutory provision relating to limitation of action affect in any way the right of the Provincial Treasurer to recover all moneys paid out of the assurance fund under the provisions of this section or to take in any other way full advantage of the provisions of the next preceding subsection.

“**151.** Nothing in this Act contained shall be so interpreted as to leave subject to action for recovery of damages as aforesaid, or to action of ejectment, or to deprivation of land in respect of which he is registered as owner, any purchaser or mortgagee *bona fide* for valuable consideration of land under this Act on the plea that his transferor or mortgagor has been registered as owner through fraud or error, or has derived title from or through a person registered as owner through fraud or error, except in the case of misdescription as mentioned in section 149 hereof.

“**152.** If such action be for the recovery of loss or damage arising only through an omission, mistake or misfeasance of the Registrar or such official, the Registrar shall be the sole defendant; but, if it be brought for loss or damage arising only from the fraud or wrongful act of some person

other than the Registrar and his officials, or arising jointly through the fraud or wrongful act of such other person, and the omission, mistake or misfeasance of the Registrar or other official, then such action shall be brought against both the Registrar and such other person.

“153. In all such actions where there is a defendant other than the Registrar and damages are recovered, if the court find that some defendant other than the Registrar is liable for the loss sustained, final judgment shall not be entered against the Registrar until a judge of the court in which such action was brought shall have made an order declaring that such judgment is not and cannot be satisfied in whole or in part out of the goods or lands of such other defendant so found liable, and that the amount of such judgment in whole or as to such part thereof as remains unsatisfied, together with costs, should be a judgment against the Registrar, and judgment may thereupon be entered against the Registrar.

“154. Upon payment of the amount of such judgment the Provincial Treasurer shall be entitled to an assignment thereof as against any other defendant liable as aforesaid and to be subrogated to all the rights of the person entitled to the judgment.

“155. No action shall be brought against the Registrar under sections 149, 150 and 152 unless three months' previous notice in writing of the intended action and of the cause thereof has been served upon the Registrar and the Attorney General of the Province, respectively.

“156. The Provincial Treasurer shall pay the amount of any judgment recovered against the Registrar out of the assurance fund provided by this Act.

“156a. All actions against the Registrar shall be brought against him by his name of office, and shall not abate or be in any way affected by a vacancy occurring in the said office or by change of officer.

“156b. If in any action against the Registrar as nominal defendant judgment is given in favour of the nominal defendant, or the plaintiff discontinues, the plaintiff shall be liable to pay the full costs of defending the action; and the same when taxed shall be levied in the name of the nominal defendant by the like process of execution as in ordinary civil cases.

“156c. No action for damages under this Act shall be brought against the Registrar—

- “(a)** by reason of the deprivation of land unless the same is brought within six years from the date when the deprivation took place;
- “(b)** by reason of any error, omission or misdescription in a certificate of title, unless the same is brought within six years after the making of the error, omission or misdescription;
- “(c)** by reason of the registration of any mortgage, incumbrance or transfer which is void pursuant to *The Dower Act*, unless the same is brought within six years after the execution thereof; and

“(d) for any other reason, unless the same is brought within six years from the date when the cause of action arose:

“Provided that any person under the disability of infancy, lunacy or unsoundness of mind may bring the action within six years from the date on which the disability ceased; and the plaintiff in the action within six years from the date on which such disability ceased, and the plaintiff in any such action at whatever time it is brought, and the plaintiff in any action for the recovery of land shall be nonsuited in any case in which it appears to the satisfaction of the judge before whom such action is tried that the plaintiff or the person through or under whom he claims title had notice by personal service or otherwise was aware of such delay and wilfully or collusively omitted to lodge a caveat or allowed the caveat to lapse.

“**156d.**—(1) The Attorney General upon being satisfied that any claim which might under this Act be the subject of an action for damages against the Registrar as a nominal defendant is well founded may issue a certificate to that effect, and thereupon the Lieutenant Governor in Council may direct the payment of the claim out of the assurance fund, together with a reasonable sum for costs incurred in making the same.

“(2) Whenever any amount is so paid out of the assurance fund, it shall be deemed to have been paid on account of such person as the Attorney General may direct, and the said amount may be recovered from the said person in manner directed by the next following section.

“**156e.** The assurance fund shall not under any circumstances be liable for compensation for loss, damage or deprivation—

- “(a) occasioned by the owner’s breach of any trust whether express, implied or constructive; or
- “(b) in any case in which the same land has been included in two or more grants from the Crown; or
- “(c) in any case in which loss, damage or deprivation has been occasioned by land being included in the same certificate of title with other land through misdescription of the boundaries or parcels; unless it is proved that the person liable for compensation and damages is dead or has absconded from the Province or has been adjudged insolvent, or the sheriff has certified that he is not able to realize the full amount and costs awarded in an action for such compensation; or
- “(d) by reason of the improper use of the seal of a corporation or the want of capacity in a corporation to deal with the estate or interest involved or to execute or take the benefit of the instrument registered; or
- “(e) by reason of the registration of an instrument executed by a person under legal disability, unless the fact of such disability was disclosed on such instrument”.

11. The said Act is further amended as to section 160 thereof by striking out subsection (2) thereof and by substituting therefor the following:

“(2) If it appears to the satisfaction of the Registrar that any duplicate certificate of title or other instrument has been issued in error or contains any misdescription of land or boundaries, or that any entry, memorandum or endorsement has been made in error on or omitted from any certificate of title or other instrument, or that any such certificate, instrument, entry, memorandum or endorsement has been fraudulently or wrongfully obtained he may, whether such certificate or instrument is in his custody or has been produced to him in answer to a demand, so far as practicable without prejudicing rights conferred for value, cancel or correct any error in such certificate or other instrument or in any entry, memorandum or endorsement thereon or in any memorial, certificate of title, exemplification or copy of any instrument made in or issued from the Land Titles Office, and may supply entries omitted to be made.

“(2a) In the correction of any such error the Registrar shall not erase or render illegible the original words and he shall mark the date upon which the correction was made or entry supplied”.

12. The said Act is further amended as to the schedule thereof—

- (a) by striking out the word and letters “form FF”, where the same occur in Form F thereof, and by substituting therefor the word and letter “Form G”; and
- (b) by striking out the words and figures “sections 114 and 115”, where the same occur in Form MM thereof, and by substituting therefor the words and figures “sections 160 and 161”.

13. This Act shall come into force on the first day of July, 1935.

No. 58.

FIFTH SESSION
SEVENTH LEGISLATURE
25 GEORGE V
1935

B I L L

An Act to amend The Land Titles Act.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. LYMBURN

EDMONTON:
W. D. McLEAN, KING'S PRINTER
1935