

Provided always, That no person or persons shall be punished by virtue of this act for any neglect or miscarriage in the execution thereof but within three months after such offense is committed.

Passed November 27, 1700; allowed to become a law by lapse of time, in accordance with the proprietary charter, having been considered by the Queen in Council, February 7, 1705-6, and not acted upon. See Appendix I, Section II, and the Act of Assembly, passed January 12, 1705-6, Chapter 159.

CHAPTER LXXXVIII.

[AN ACT FOR THE EFFECTUAL ESTABLISHMENT AND CONFIRMATION OF THE FREEHOLDERS OF THIS PROVINCE AND TERRITORIES, THEIR HEIRS AND ASSIGNS, IN THEIR LANDS AND TENEMENTS.]

[Whereas at the first laying out and settling of lands in this province of Pennsylvania and territories thereunto belonging, many great neglects and errors have been committed through the want of experience and care both in officers and the people, as well to the wrong of the proprietary as the insecurity of the said people and the great inconveniency of both, for remedy whereof and for the safety of the said province and territories in general, and that the inhabitants may be completely and absolutely settled and fully secured in their rights and titles to land, and all occasions of difference and contest thereupon may forever hereafter be prevented and removed:

[Section I.] Be it enacted by the Proprietary and Governor, by and with the advice and consent of the freemen of this Province and Territories in General Assembly met, and by the authority of the same, That all grants and parcels of land taken up within this province and territories, and duly seated by virtue of letters patent or warrants obtained from governors or lawful commissioners under the Crown of England, before the King's grant to the proprietary and governor] for this province (except the same was had by fraud or deceit) shall be quietly enjoyed by the actual possessors, their heirs and assigns; and that all

lands and tracts of land duly taken up by virtue of warrants obtained pursuant to purchases made and had from the proprietary and governor, or in pursuance of any commission or power granted by the proprietary to any other person (except as before excepted and except where the same does interfere with other persons' just rights and claims) shall be quietly and peaceably enjoyed by and confirmed to the possessor (according to the said warrants) his heirs and assigns forever; and although no patent hath been granted, yet if peaceable entry and possession hath been obtained by warrants or otherwise as aforesaid, and thereupon quiet possession hath been held during the space of seven years or more, such possession or such entry as aforesaid shall give an unquestionable title to all such lands according to the quantity they were taken up for, and shall be deemed and held good and be confirmed by the proprietary to the seaters or possessors thereof, their heirs and assigns forever.

[Section II.] And be it further enacted by the authority aforesaid, That all grants for land from the proprietary shall be henceforth under the great seal of this province and territories; which grants shall give the respective grantees an absolute title to all the lands therein to be granted or confirmed, be they more or less than laid out for, and shall never more thereafter be subject or liable to any further survey; and that all grants and patents heretofore granted, whether under the broad or lesser seal, either by the proprietary himself or his commissioners as aforesaid, shall be firm and good to all intents and purposes for the quantity of land in such grants expressed, forever after the time herein [limited without any further dispute.

And whereas several mistakes and errors have happened through the negligence, ignorance or fraud of surveyors or chain-carriers, and many surveys have thereby been made erroneous, for the rectifying whereof:

[Section III.] Be it enacted by the authority aforesaid, That it shall and may be lawful for the proprietary and governor and his heirs, by his and their lawful surveyors at any time within space of two years after the publication hereof, to resurvey or

cause to be resurveyed any person's land within this province or territories; and of upon such resurvey, allowing four acres in the hundred over or under for the difference of surveys, there be more land found in the number of acres than the said tract so surveyed was laid out for, allowing also six per cent for roads and highways, all such overplus lands shall be to the proprietary, and the possessor thereof shall have the refusal of it from the proprietary at reasonable rates; and if the proprietary and the said possessor do not agree, then and in such case the proprietary shall choose two men, and] the purchaser or renter shall choose two more, who shall either fix a price on the said overplus land to be paid by the possessor, or otherwise appoint where it shall be taken off for the proprietary in one entire piece at an outside, saving to the purchaser or renter his improvements and best conveniences, any three of whom agreeing shall be conclusive, and the charges of resurveying such lands shall be borne by him to whom the overplus land shall fall: (That is to say) by the purchaser or renter of the main tract if he buy the overplus; or if not, by the proprietary.

[Section IV.] And be it further enacted by the authority aforesaid, That if any purchaser or tenant, having procured his land to be again surveyed by any of the lawful surveyors, shall find the same to be deficient of the quantity it was before laid out for and should contain (allowance for difference of surveys, roads and highways being first made as above expressed), all such deficiencies shall be made good by the proprietary and governor according as he receives for the overplus land as aforesaid.

And that the people in the said surveys may have the greater satisfaction:

[Section V.] Be it further enacted by the authority aforesaid, That no surveyor shall enter upon any person's land to make a resurvey of the same without first giving notice to the owner or possessor thereof, or leaving notice at his house if he dwell near the same, and if he do not know him and the said owner dwell not in the precinct or township, that then such surveyor shall give notice thereof to the two next neighbors, under the penalty of twenty pounds to be forfeited to such owner; and in

case any surveyor shall hereafter willfully or negligently survey any lands to the prejudice of the possessor or owner, he shall make good double damages to the party grieved.

[Section VI.] And be it further enacted by the authority aforesaid, That the first hundred purchasers of land in the province [shall be preferred and have liberty to take up their lands before any after purchasers, so that they make application for the same within four months after publication hereof.

[Section VII.] And be it further enacted, That where any lands have been purchased or taken up in copartnership, and either of the parties die before division be made thereof, the survivor shall claim his equal and just share and proportion, and the heirs and assigns of the deceased partner shall hold and enjoy the part belonging to such deceased as firmly as when all the parties were living, unless it shall appear that there has been some contract or agreement made to the contrary.

And whereas it may sometimes happen that where some have purchased a parcel of land (for instance a thousand acres), and the same has been surveyed and laid out; but upon a resurvey of such tract it is found to contain twelve hundred acres, of which the purchaser having been wholly ignorant hath sold either part of it or the whole to several persons, or has given it to several children under the notion of only a thousand acres, upon resurvey of which by the proprietary's order the overplus may happen to fall within several smaller plantations or to consist entirely of one of them.

[Section VIII.] Be it therefore enacted by the authority aforesaid], That in such case the proprietary's overplus shall not be taken off any one particular of the said several plantations, but off the rough land remaining undisposed of in the whole tract, if any such be; and if there be not any such, then to be taken off every particular plantation proportionably, and the charges of running the division lines shall be always borne by the respective owners of the several plantations; and where the overplus is taken in one entire piece off the whole, it shall and may be lawful for the first purchaser to cause the several tracts by him sold to any mesne purchaser or purchasers to be

resurveyed by any lawful surveyor, and the overplus found in such tracts or mesne purchases, above what they were sold or rented for, shall go to the person of whom they were bought, in like manner as the overplus lands in general go to the proprietary and governor.

And whereas our proprietary and governor did formerly in a clause of our charter of privileges give and grant to all and every one of the inhabitants of this province and territories full and quiet enjoyment of their respective lands to which they had any lawful or equitable claim, saving only such rents and services for the same as were or customarily ought to be reserved to the proprietary, his heirs and assigns, which clause upon delivering up our said charter was reserved, and our said proprietary and governor was pleased to reserve to us:

[Section IX.] We therefore desire it may be enacted, and be it enacted by the authority aforesaid, That the said clause shall be in as full force, power and virtue as if the surrender of the charter as aforesaid had never been made.

Provided always, That nothing in this act shall be construed to confirm any lands to the prejudice of the right of infants married women, lunatics or persons beyond the seas, anything herein to the contrary in anywise notwithstanding.

And for the satisfaction and [encouragement of aliens coming into this province or counties annexed:

[Section X.] Be it further enacted by the authority aforesaid, That if any alien who is or shall be a purchaser, or who doth or shall inhabit in this province or territories thereof, shall decease at any time before he can well be naturalized, his right and interest therein shall notwithstanding descend to his wife and children or other his relations, be he testate or intestate, according to the laws of this province and territories thereof in such cases provided, in as free and ample manner to all intents and purposes as if the said alien had been naturalized.

And whereas divers persons beyond seas are and have been owners of lands within this province and territories, and such persons have usually appointed attorneys to sell and dispose of the same, to the end therefore that the several persons that

have so purchased, their heirs and assigns, may forever hereafter be secured in their titles and covenants:

Section XI.] Be it enacted by the authority aforesaid, That all sales of lands, tenements and hereditaments made by lawful attorneys especially granted to sell such lands, are and shall be deemed and adjudged good and effectual in law to all intents, constructions and purposes whatsoever, as if the said owners of such] lands had by their own deeds, bargains and sales actually and really sold, conveyed and executed the same; and all and singular the lands, tenements and hereditaments sold and conveyed as aforesaid shall be and remain to such purchasers respectively, their heirs and assigns, forever, as they might or ought to have done to the owner or owners of such lands and premises so employing his or their attorney or attorneys as aforesaid.

[Section XII.] And be it further enacted by the authority aforesaid, That all lands, tenements and hereditaments that hereafter shall be sold by virtue of any letter of attorney shall be good and valid respectively to the purchasers, their heirs and assigns forever, as aforesaid.

Provided, the said letters of attorney be attested before some magistrate or public notary (where the same shall be made and executed) and certified under their respective hands and public seals, and be proved within this province or territories *viva voce* by two witnesses at least.

Passed November 27, 1700; repealed by the Queen in Council, February 7, 1705-6. See Appendix I, Section II, and the Acts of Assembly passed October 28, 1700, Chapter 105; January 12, 1705-6, Chapter 132; and June 7, 1712, Chapter 183.