

At a General Assembly begun and holden at Philadelphia, the fifteenth day of October, A. D. 1711, and continued by adjournments until the seventh day of June, 1712, the following acts were passed:

CHAPTER CLXXXIII.

AN ACT CONFIRMING PATENTS AND GRANTS.

[Section I.] Be it enacted by Charles Gookin, Esquire, by the Queen's royal approbation Lieutenant-Governor under William Penn, Esquire, absolute Proprietary and Governor-in-Chief of the Province of Pennsylvania, by and with the advice and consent of the freemen of the said Province in General Assembly met, and by the authority of the same, That all lands and hereditaments which any person or persons do hold and enjoy, or ought to have, hold and enjoy within this province, as well by or under any gift, grant or estate made or granted by the said Proprietary and Governor, William Penn, or his commissioners of property and agents, pursuant to the said person's right of purchase, demise or grant from him the said proprietary, as also by or under any old grant, patent or warrant obtained or had from governors or lawful commissioners, under the Crown of England, before the date of the late King Charles the Second, his letters patent to the said proprietary, or by any other legal or equitable grant, right, title, entry, possession or estate whatsoever, shall, by virtue of this act, be held and enjoyed by such person or persons according to the purport and intent [of the] respective right, grant, patent, purchase or demise, and for and in the estate or estates thereby granted or intended to be thereby granted or settled.

Provided always, That nothing herein contained shall be construed or adjudged to confirm any lands taken up by virtue of the said old grants and not duly seated or improved by the grantees or their assigns before the year one thousand six hundred and eighty-two, nor to create or confirm any right or

interest to any person or persons whatsoever for or to any more or greater quantity of lands, marsh, meadow or cripple than shall appear, by gift, grant, demise or purchase from the said proprietary or his commissioners or agents, or from his predecessors, the former governors or commissioners aforesaid, to be the said person or persons' just due (over and above the six acres by the said proprietary allowed to be added to every hundred acres of land for roads and barrens, and the four acres over or under, to be accounted for difference of surveys), nor shall create a right to the possessor or claimer of any lands that were not taken up or surveyed by virtue of a warrant or order from persons empowered to grant the same, and by a surveyor appointed for that purpose; anything herein or in any patent, grant or survey to the contrary in anywise notwithstanding.

[Section II.] And be it further enacted by the authority aforesaid, That all the sales, gifts, grants, surrenders, assurances, conveyances and estates in anywise conveyed, had or made to or for the said proprietary, by or from any person or persons whatsoever, of any lands, tenements or other hereditaments, for or upon any consideration whatsoever, shall stand, remain and^l be good and available in law, according to the true meaning and purport of the same; saving the right, title and demand of all and every person and persons whatsoever, and of their heirs and assigns, other than such person or persons, and their heirs, being parties or privies to such grants, surrenders, conveyances or assurances, or from whom the said proprietary hath had, obtained or purchased any of the said lands, tenements and hereditaments by exchange, surrender, gift, grant, deed or otherwise.

[Section III.] And be it further enacted by the authority aforesaid, That the said William Penn, his heirs and assigns, proprietaries of this Province of Pennsylvania, either by him or themselves, or by his present commissioners or deputies, or by commissioners, deputies or agents, to be by them appointed, shall and will from time to time, and at all times hereafter, upon all reasonable demands, make, do and execute, or cause so to be, all and every such patents, grants or assurances as may

be necessary according to the laws and constitutions of this province, to grant, assure and confirm all and singular the lands, tenements and hereditaments in the said province by him, the said proprietary, or his commissioners or agents heretofore sold, granted or disposed, or which by him, his heirs or assigns, or by his or their commissioners or agents shall hereafter be sold, granted or disposed to any person or persons, bodies politic or corporate, to hold the said lands, hereditaments and premises, with their appurtenances, to the grantees or persons interested therein, for such estate or estates, term or terms of life, lives or years, and for such uses and under such rents or acknowledgments as the same lands and premises were, are or shall be sold, granted or disposed of as aforesaid: saving to all persons, their rights, titles, estates and interests in lands (granted, derived or claimed by, from or under the said old patents or grants made before the date of the said letters patent) seated and improved as aforesaid.

[Section IV.] And be it further enacted by the authority aforesaid, That all and every the grants, patents, deeds or conveyances of or for any lands, tenements and hereditaments in this province, heretofore made or given by the said proprietary, his commissioners or agents under any of his seals or hereafter to be made, given or passed by the said proprietary, his heirs or assigns, or by his or their deputies, commissioners or agents, sealed with or under the seal or seals now used or hereafter to be used for that purpose, and entered upon record in the patent or rolls office (which is hereby declared to be an office of record), shall be good and available in law, and shall be adjudged, deemed and taken, and are hereby declared to be grants or conveyances and matters of record and to have no need of delivery before witnesses, livery and seizin, or acknowledgements as deeds of other persons may or ought to have; and none shall be admitted to plead *non est factum* or *nul tiel* record against them, or shall plead in disability of the person or persons, in whose names or stead they have been or shall be made or granted; but inasmuch as they are in the nature of conveyances, therefore, if any shall have occasion to deny the operation thereof, the party may plead *non concessit*, and prove in evidence that he or they, in whose name or stead the same patents or

other deeds were made or granted as aforesaid, had nothing in the lands or tenements so granted, or that the same lands and hereditaments did not pass by such grant, deed, patent or conveyance.

[Section V.] And be it further enacted by the authority aforesaid, That no grant, patent or conveyance of any lands, tenements or hereditaments so as aforesaid made, or which shall at any time hereafter be made or granted by the said proprietary, his heirs or assigns, or by his or their said commissioners or agent as aforesaid, to or for the use of any person or persons, bodies politic or corporate, shall be judged or taken to be defective, avoided or prejudiced for or by reason of any misnaming, misrecital or nonrecital of any of the said lands, tenements, hereditaments and premises or any part thereof, or any lack of finding of offices or inquisitions of and in the premises or any part thereof, whereby the said proprietary's title therein ought to have been found, or for misrecital or nonrecital or not mentioning or not true mentioning of the said proprietary's estate or estates of, in or to the premises, or for misnaming or not true naming of the counties or places where the said lands and premises lie or be, or for lack of the true naming of the lands and premises, or of the natures, kinds or qualities thereof, or for any want of form, or for not being formally entered upon record, or for want of being heretofore sealed with the great seal, or for not being sealed and delivered before witnesses, or for want of livery and seizin or attornment, or for not mentioning the consideration; but that all the said gifts, grants, patents and conveyances with all the warrants and returns of surveys, pursuant thereunto, and other writings relating to the said lands, hereditaments and premises, shall be and are hereby declared and enacted to be good and available in law against the said proprietary, his heirs and assigns and against all others claiming or to claim under him or them and against all and every other person and persons, that shall at any time inherit or enjoy this province; and that the same shall be and remain in full force, and be maintained and have effect according to the true intent and purport thereof, and shall be expounded, deemed and adjudged most beneficially for the patentees, donees and grantees

of the same, and their heirs and assigns, executors and administrators, according to the words, tenor and true meaning of every of the said gifts, grants, patents, conveyances, surveys and other writings.

[Section VI.] And be it further enacted by the authority aforesaid, That all and singular the said lands, hereditaments and premises and every part thereof, which have been granted or confirmed by the said patents or conveyances passed under the proprietary's seal and recorded as aforesaid, as also all and singular the lands and hereditaments hereafter to be granted, conveyed or confirmed by patents or other conveyances, which shall pass under the seal of the said proprietary, his heirs or assigns, and be entered of record in manner aforesaid and every part thereof shall be and continue unto the said patentees, donees and grantees, and such as shall legally represent them, free and clear, and freely and clearly acquitted and discharged, or otherwise well and sufficiently saved harmless and indemnified by the said proprietary, his heirs and assigns, of and from all Indian claims, and all other gifts, grants, sales, titles, charges and incumbrances whatsoever, heretofore had, made, done or suffered, or hereafter to be had, made, done or suffered by him, the said proprietary or his heirs: saving to all and every other person and persons, bodies politic and corporate, their heirs and successors, executors, administrators and assigns, all such rights, titles, estates, rents, reversions, commons, profits, interests, tenures, claims and demands whatsoever, of what nature, kind or quality soever of, in and to or out of the said lands, tenements and hereditaments or any part thereof, as they or any of them had or ought to have had before the making of this act, in as large and ample manner, form and condition, to all intents and purposes, as if this act had never been made, anything herein contained to the contrary notwithstanding.

Provided always, That nothing in this act contained shall extend to make patents of any office to be of any other effect than if this act had never been made; nor shall this act make good any patent that shall be annihilated or made void by due course of law, nor shall anything herein contained, oblige

the proprietary or his heirs to make good to any purchaser of a right or rights to unlocated lands, who inadvertently or by misinformation did or may obtain a patent or confirmation of lands which are discovered to be the prior right of another person, further or any more than the same quantity of land in the next advantageous place that such purchaser shall choose and discover to be vacant and free from all other claims. But where any such prior right shall appear and take effect against any such person or persons who have purchased the same tract or parcel of land of the proprietary or his commissioners or agents, by a certain name, or by an agreed location in that particular place, or the warrants expressing the same accordingly, then and in such case the proprietary, his heirs and executors, shall refund and make good to such second purchaser the full sum or value, which he, the said proprietary or his agents, did receive for the same, together with lawful interest from the time such payment was made. And in both the above mentioned cases, if the latter purchaser, his heirs or assigns, shall have made any improvements on the said land such improvement shall be valued by two or more persons to be indifferently chosen by each of the said claimers or purchasers, which both parties are by this act obliged to do, and such value as they or the majority of them shall agree to, under their hands, shall be paid by the claimer of the first right to such improver for his improvements accordingly.

And whereas several persons before the date of the said late King's royal charter obtained grants or patents for more lands than they had any right unto by their original warrants or orders for the surveying or laying out the same, in which case it has been the method of the said proprietary and his commissioners, by their warrants to order resurveys of those lands, and allot to the possessors thereof or to the heirs or assigns of the old patentees or grantees so many acres of land and meadow or marsh, as really belonged unto them by virtue of the said respective original warrants or orders, or by the right of occupancy or improvement, and confirm the same by new patents, and dispose the residue as other vacant lands which had never been surveyed. Nevertheless, no effectual care has been

hitherto taken for vacating and annulling the record of those old exorbitant grants, patents, surveys or locations; and for securing the new patentees against the demands of the old patentees and possessors, or such as claim by, from or under them:

[Section VII.] Therefore be it enacted by the authority aforesaid, That nothing herein contained shall extend to revive, make good or confirm any of the said old grants or patents, nor give to the grantees or patentees of the same, nor their heirs, executors or assigns, any right, title, interest, or estates of, in, to or for any more or greater quantity of lands, marsh, meadow or cripple, than were expressly granted or really intended to be granted in and by the said original first warrants or orders for survey to which the old patents respectively relate. But that all and every the said old grants or patents, as to the residue or overplus of the said lands and hereditaments contained therein, shall be and are hereby declared to be null and void and of none effect; and that all and every the grants, patents, conveyances and assurances made or to be made and granted for the said residue or overplus lands, to any person or persons whatsoever, and all the estate and estates, rights, interests and possessions of any person or persons of, in or to the said overplus lands, shall, notwithstanding any of the said old grants or patents, be and continue and are hereby declared to be good and available in law against the said old patentees and against all others claiming or to claim the said overplus land or any part thereof by, from or under them or any of them, as if the same lands had never been surveyed or located before the date of the said King's letters patent: saving always to all and every person and persons (other than those who will set up or insist on any of the said old grants or patents to maintain or make good their demands or claims to any more of the said overplus land than what they or those under whom they claim have occupied, built upon or improved) all and every such right, title, interest, use, possession, estate, rents, reversions, commons, profits and advantages whatsoever, as he, they or any of them, should or might have had before the

making of this act, anything herein contained to the contrary notwithstanding.

And whereas, by a late law of this province, passed in the year one thousand seven hundred, and confirmed in the year one thousand seven hundred and one¹ it was (amongst other things) enacted that any person's lands in this province should be resurveyed; and if upon such resurvey (after allowance of four acres in the hundred, over or under, for difference of surveys, and six per cent for roads) an overplus should be found, the possessor thereof should have the refusal of it from the proprietary at reasonable rates; and in case of disagreement about such rates, the proprietary was to choose two men, and the possessor two more, who should either fix a price on the said overplus land or appoint where it should be taken off for the proprietary in one entire piece at an outside (saving to the purchaser or renter his improvements and best conveniencies), any three of whom agreeing should be conclusive; and the charges of resurveying should be borne by the purchaser or renter of the main tract, if he bought the overplus or if not, then by the proprietary; and that deficiencies should be made good by the proprietary, according as he received for overplus land as aforesaid.

In pursuance of which act, resurveys have been made of divers lands, wherein overmeasure was found. But the act expiring before the same could be cut off, or the rates thereof settled as the said law directed, the proprietary is not satisfied for the overmeasure, and the owners of the land want confirmation of what is their just due:

[Section VIII.] Be it, therefore, enacted, That where any overplus land has been found upon the said resurveys (after allowances are made for roads and difference of surveys as aforesaid) the proprietary, his heirs and assigns, and his or their commissioners or agents, shall give the possessor or owner of such land the refusal thereof at reasonable rates; and in case of disagreement with the said possessor about such rates, then the proprietary, his heirs or assigns, or his or their commissioners or agents, shall forthwith choose two men, and the said

¹ See Chapters 88 and 105.

possessor or owner shall at the same time choose two more, which persons so chosen, or any three of them, shall within thirty days after such choice either fix a price on the said overplus land to be paid by the said possessor or owner, or within the same time appoint where it shall be taken off for the proprietary, his heirs or assigns, in one entire and convenient piece at an end or outside; saving to the said possessor or owner his improvements and best conveniencies.

But in case the said persons so chosen, as aforesaid, shall refuse or neglect to fix a price on the said overplus, or to cut off the same within the time hereinbefore limited, then the party aggrieved may apply to the justices at the court of common pleas for the county where the land lies, who are hereby empowered and required to grant their order in that behalf to five indifferent and disinterested persons of the neighborhood, requiring them, or any three of them, to perform what the said four persons had refused or neglected to do.

[Section IX.] And be it further enacted, That where any overplus shall be taken off as aforesaid, the proprietary or his commissioners shall confirm the residue to the possessor or owner thereof, his heirs or assigns, saving the rights of all others; but if the proprietary, or his commissioners or agents shall refuse or neglect to appoint two persons on his behalf as aforesaid, or if after the said overplus be taken off, shall refuse to confirm the residue to the possessor or owner thereof, his heirs or assigns, within six months after such overplus is taken off, as aforesaid, and application made for the same by such owner or possessor, then and in every such case all such possessors or owners respectively shall stand and be seized or possessed of the whole tract, as if no such resurvey had been made. But if any of the said possessors or owners of lands so resurveyed as aforesaid, shall refuse or neglect to choose two men in his behalf, then the persons so as aforesaid to be chosen by the proprietary or his commissioners shall within the time aforesaid appoint where the overplus shall be taken off, saving the owner's improvements and best conveniencies, as aforesaid.

And if the owner of any such lands as have been resurveyed as aforesaid, does not reside in this province, and no person in

the actual possession of those lands, then and in every such case the proprietary or his commissioners may appoint two men of the next neighborhood to such lands, who are hereby empowered to appoint where the overplus of such lands shall be taken off as aforesaid, leaving to every such owner the full quantity belonging to him by purchase and location there, together with the allowances for roads and difference of surveys, and saving the improvements and conveniencies, as aforesaid.

And in all cases where any such overplus shall be cut, as aforesaid, in pursuance of this act, the proprietary or his commissioners or agents shall have full liberty to dispose of and grant such overplus to any person or persons that he or they shall think fit; anything in this act contained, or in any other law, to the contrary thereof in anywise notwithstanding.

And if upon the said resurveys any tract hath been found deficient in the number of acres for which it was at first granted after allowances made, as aforesaid, all such deficiencies shall be made good by the proprietary, his heirs or assigns, after the same rate he or they shall receive for such overplus land in that neighborhood.

Provided always, That nothing herein contained shall be deemed or construed to take off any overplus land out of any tract, the possessor or owner whereof has right by his purchase to take up more land over and above the quantity such tract was laid out for.

Provided also, That where any lands have been resurveyed, and such allowances for roads, barrens and difference of surveys, have been made and allowed as aforesaid, the possessor or owner thereof shall not pay any quit-rents for such allowance.

[Section X.] And be it further enacted, That for all lands hereafter to be taken up or surveyed in this province, the surveyor that lays out the same, shall allow for roads and barrens after the rate of six acres for every hundred acres to the owner of such lands, for which said allowances of six per cent no rents shall be paid to the proprietary, his heirs or assigns.

Passed June 7, 1712. Repealed by the Queen in Council, February 20, 1713-14. See Appendix III, Section II. and the Acts of Assembly passed May 28, 1715, Chapter 208, and July 7, 1759, Chapter 447.