

LAND OFFICE - PUBLIC LANDS - GRANTS, WARRANTS & SURVEYS

Act of Apr. 8, 1785, 2 Sm.L. No. 1153

Cl. 68

AN ACT

To provide further regulations, whereby to secure fair and equal proceedings on the Land-Office, and in the surveying of lands.

Section 1. WHEREAS the time for opening the Land-Office of this state, for the lands contained within the purchase lately made by the commonwealth of the Indian natives, of all the residue of waste lands, within the charter bounds of Pennsylvania, as the same have been adjusted between this state and the state of Virginia, is fixed to be from and after the first day of May next, when it is probable that numerous applications will be made to the said Land-Office at the same time, for lands within the bounds of the said late purchase, and the officers of the Land-Office must necessarily be obligated to give preference to some persons, before others whose applications may be made equally early, and thereby great dissatisfaction must arise unless some provision be made by law to regulate the same: For remedy whereof,

Section 2. Be it enacted, by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That from and after the time assigned for opening the said Land-Office, as aforesaid, until the end of the tenth day thereafter, being the eleventh day of the month, the Secretary of the Land-Office, upon the whole of the purchase money being deposited in the hands of the Receiver-General of the Land-Office, and not otherwise, and upon acquittance for the same being shown to the said Secretary, he shall receive and file all applications made to him for lands within the said late purchase, not exceeding one thousand acres in one application, numbering them, respectively, from number one, after the common progression, to the last which shall be received within the same ten days; and every such application shall set forth, in words at length, and not in figures only, the number of acres asked by each applicant respectively; after which the said Secretary shall proceed to enter all such applications, and to make a fair and accurate list thereof, and, upon each application so entered, shall issue a warrant for such quantity as is contained in the application respectively, provided the same does not exceed one thousand acres, to the person entitled to the same, giving preference and priority of number to him to whom such preference and priority shall fall upon a fair lottery, to be made by the said secretary as hereinafter directed; and so to the next in order, until a warrant be issued upon every of the said applications, according to their preference and order, to be adjusted as aforesaid: And the said lottery shall be formed and conducted in manner following, that is to say; the name of the first applicant, together with the number of acres applied for by such person, shall be written on an oblong piece of paper, as nearly as may be of the breadth of two inches, and of the length of three inches, and the said piece of paper or ticket shall be closely rolled up and bound, and then put within a lottery wheel; and in the like manner the name of the second applicant, and so of the third and the rest of the same tickets, in their order, till every of the applications so received, as aforesaid, being first severally rolled of equal size and shape, shall be put within the same wheel; and then other tickets, on each whereof shall be written a distinct number, beginning with

number one, and proceeding, by the common arithmetical progression, till on the last thereof there be written the last or highest number of the said applications; which last mentioned papers or tickets, being first rolled up and bound in equal size and form with each other, shall be put within another lottery wheel; and after the said two kinds of tickets shall be disposed of, as above directed, within their respective wheels, the same wheels shall be turned about so many times, as to shake and intermix the respective tickets in each wheel; which being done, the same tickets shall be deliberately and singly drawn, one out of each wheel at a time, in the manner of a lottery; and the number first drawn out of the last mentioned wheel shall be considered as the number of the application to be drawn at the same time out of the other wheel, and as such shall be marked in the aforesaid list, over against the same application, and so of the second and third drawn, and of the rest thereof, until all of the said tickets be drawn as aforesaid: And the warrants to be issued on the said applications shall severally be numbered according to the decision of the said lottery, and shall bear date on the day in which the drawing thereof shall be finished: And all applications to the said Land-Office, which shall be made after the expiration of the said ten days, for lands within the said late purchase, being made as above directed, shall have priority according to the order in which they shall severally come to the hands of the said Secretary, and shall be numbered accordingly, and not otherwise; and all warrants for land within the said late purchase, as well those, the priority of which shall depend upon the said lottery, as others, shall be made out in their proper order as aforesaid, upon payment of the legal fees, by the person who shall produce the acquittance of the said Receiver-General for the purchase money, as soon as conveniently may be, without any needless delay, and without partiality.

Section 3. And be it further enacted by the authority aforesaid, That every warrant for land within the said late purchase shall be directed by the Surveyor-General to the deputy-surveyor of some one district within the same purchase, in order that the same warrant may be duly executed, and the quantity of land therein specified, surveyed and located, according to the tenor of such warrant; but if land, to the satisfaction of the person who shall have property in any such warrant, be not found within such district, then and in such case, the deputy-surveyor, to whom such warrant was directed, shall, on the desire of the person entitled to the same, certify, by indorsement thereon in writing, witnessed by two subscribing witnesses, that the same warrant has not been executed within his district, and shall re-direct the same warrant to the deputy-surveyor of some other district within the said late purchase; and upon producing the warrant, so certified as aforesaid, the deputy-surveyor to whom the same may be directed, shall proceed upon and execute such warrant, in like manner, and with the like effect as if it had been so directed by the Surveyor-General.

Section 4. And be it further enacted by the authority aforesaid, That no deputy-surveyor shall execute any such warrant as aforesaid, unless the same warrant be directed to him, as is above set forth, nor shall any deputy-surveyor proceed to measure any land upon any warrant within the said late purchase, until the expiration of thirty days from and after the day of the date of the warrant, which, for preference and priority, shall be dependent on the aforesaid lottery; and

during the latter twenty of the said thirty days, each deputy-surveyor of lands within the said late purchase shall keep open his office, and give his personal attendance therein, for at least six hours in every of the said twenty days (Sundays excepted) for the purpose of receiving the warrants to be issued, and directed as aforesaid; and every such deputy-surveyor shall, on or before the first day of May next, certify, in writing, to the said Surveyor-General, the county, township and place, where such deputy-surveyor shall keep his office open for the purpose aforesaid, in order that all persons who may apply for lands as aforesaid may be duly informed thereof; and that every deputy-surveyor, who shall receive any such warrant, shall make fair and clear entries of all warrants put into his hands, in a book to be provided by him for that purpose, distinguishing therein the names of the grantees, quantities of land, number and date of each warrant, and the day on which such deputy-surveyor shall receive the same respectively, and whatever shall be done concerning every such warrant, which book shall be open at all seasonable hours to every applier, who shall be entitled to copies of any entry therein, to be certified as such, and signed by such deputy-surveyor.

Section 5. And be it further enacted by the authority aforesaid, That after thirty days from the date of every such warrant, the priority of which shall depend on the lottery as aforesaid, but not sooner, the deputy-surveyor, to whom the same shall be directed as aforesaid, may and shall proceed to execute such warrant in the usual manner, if thereunto requested by the owner thereof, or his agent, giving preference always to the lowest in number of those unexecuted warrants which shall have come to his hands, in case the owner thereof, or his agent, shall be ready to proceed with the said deputy-surveyor, and to direct him to the place where such person shall be desirous that the same should be executed.

Section 6. Provided always, That none of the said warrants, that shall not be fully lodged and left with one of the deputy-surveyors of the lands within the said late purchase, for survey and location within the district of such deputy-surveyor, before the said thirty days be expired, shall be entitled to the priority aforesaid, but shall be considered as posterior to any warrant that shall have been lodged within the thirty days, and be surveyed and located accordingly.

Section 7. Provided also, That if any person having right to any warrant for the surveying of lands, within the said late purchase, shall fix upon, and shall desire that his warrant be located to a particular place or piece of vacant land, the deputy-surveyor of the district, in whose hands the warrant shall be, shall accordingly make an entry thereof in his aforesaid book, and shall afterwards proceed to survey the same upon such warrant, unless some person claiming under a warrant entitled to priority by the aforesaid lottery, shall insist upon having his survey made at the same place, in which case, the warrant which had been so located as superseded, as aforesaid, shall be entitled to a second location as before, liable to a claim, under another prior warrant, as before, and so toties quoties, till the same shall be undisputed: Provided nevertheless, That the person claiming to have land surveyed to him, under any warrant for land in the said late purchase, may, at any time before actual survey be made, renounce such location, and withdraw his or her warrant, and deliver the same warrant to the deputy-surveyor of any other district within the said late purchase, in the manner hereinbefore provided and

declared; and may afterwards again, in like manner, withdraw the same, and deliver it to the deputy-surveyor of another district, and so on, till the quantity of land therein mentioned be surveyed, and the same established in the order and manner aforesaid.

Section 8. And be it further enacted by the authority aforesaid, That all warrants of survey that shall be issued by the said Land-Office of this state, after (and the priority of which shall depend on,) the drawing of the said lottery, for lands within the said late purchase, shall be executed in the order, and have preference of survey, as they shall severally be earliest delivered to the deputy-surveyor of the district, to whom they be directed, who shall make survey thereupon; and for that purpose, the said Surveyor-General shall register the same warrants, and every of them, in the order they shall come to his office, in the manner directed in respect to the warrant first aforesaid; and every survey of the lands within the said late purchase, which shall be made in pursuance of this act, and of the former acts of this commonwealth for opening and regulating the Land-Office, shall be duly returned into the office of the said Surveyor-General, as soon as conveniently may be after such survey shall be made, upon the payment or tender of the fees to which such deputy-surveyor shall be legally entitled for his services therein; and if any such survey shall have been made on or before the thirty-first day of December, in any year, and shall not be returned into the office of the said Surveyor-General on or before the last day of March, in the year next following, the same survey shall be void, as to future surveys which shall be sooner returned, and filed in the office of the Surveyor-General; and if such avoidance shall happen by the neglect or default of the deputy-surveyor, who surveyed the same, such deputy-surveyor shall be answerable to the party thereby damaged, for all the damages he or she shall sustain by such neglect or default as aforesaid, and the party shall be entitled to a new warrant, to survey other land elsewhere, to satisfy his original application.

Section 9. And be it further enacted by the authority aforesaid, That every survey hereafter to be returned into the Land-Office of this state, upon any warrant which shall be issued after the passing of this act, shall be made by actual going upon and measuring of the land, and marking the lines to be returned upon such warrant, after the warrant authorizing such survey shall come to the hands of the deputy-surveyor, to whom the same shall be directed; and every survey made theretofore shall be accounted clandestine, and shall be void, and of no effect whatsoever; and every deputy-surveyor, upon request to him made, shall give a receipt, in writing, signed by him, to the person delivering any warrant of survey, for which the fee of six-pence shall be paid by the party requesting the same, in which receipt shall be set forth the day and year when, and the order in which, the same warrant shall have come to the hands of such deputy-surveyor, and also the grantee's name and surname, and the number of acres to be surveyed thereon, and also the number of the same warrant.

Section 10. And be it further enacted by the authority aforesaid, That every deputy-surveyor shall, within the month of February in every year, make a general list, (and shall return the same into the office of the Surveyor-General,) of all the warrants, upon which he shall have made any survey during the year preceding, therein setting forth, in a summary manner, what quantity of land he hath surveyed upon each

warrant distinguishing every warrant by its number, date, and the name of the grantee, and also the situation of every tract so surveyed, respectively.

Section 11. And be it further enacted by the authority aforesaid, That the appointment of all deputy-surveyors of lands in this state shall hereafter be by the said Surveyor-General, subject to the approbation of the President or Vice-President in Council, and the Surveyor-General shall be answerable for the persons so appointed; and that before the opening of the Land Office for the late purchase as aforesaid, every deputy-surveyor then in office, and every deputy-surveyor thereafter to be appointed, shall give bond to the commonwealth, with two sureties, to be approved by the President or Vice-President in Council, who shall be bound with such deputy-surveyor in the sum of one thousand pounds, conditioned for the due, faithful and equal discharge of his duty, according to law, which bond shall be recorded in the office for recording deeds in the proper county, and be liable to such use and suit, and be of like avail to persons damaged by such deputy-surveyor, as bonds given by the Sheriffs of this state are liable; and moreover, the Secretary of the Land-Office, the Receiver-General of the same, and the Surveyor-General of this state, and every deputy-surveyor now in office, and hereafter to be appointed, shall swear, or, being conscientiously scrupulous of taking an oath, shall affirm, as followeth: "I, A. B. do swear, (or do solemnly, sincerely, and truly declare and affirm,) that I will do and perform the duties of the office of --- with fidelity and impartiality to all men;" which oath or affirmation shall be taken before one of the Justices of the Supreme Court, or one of the Justices of the Peace of the proper county; and the same being put into writing, signed by the officer taking the same, and by the said Justice, shall be filed in the office of the Clerk of Peace of the county, wherein such officer shall execute his said office.

Compiler's Note: Section 28 of Act 207 of 2004 provided that any and all references in any other law to a "district justice" or "justice of the peace" shall be deemed to be references to a magisterial district judge.

Section 12. And be it further enacted by the authority aforesaid, That the number of districts to be formed within the said new purchase, and the extent and boundaries of each of the same districts, shall be ascertained and declared by the Surveyor-General, to be approved of by the President or Vice-President in council, who at their discretion, may afterwards alter the same.

Section 13. And be it further enacted by the authority aforesaid, That all islands within the bed of the river Susquehanna, and of the east and west branches thereof, and of the rivers Ohio, Allegheny and Delaware, which be within the said new purchase, together with the appropriated lands northwestward of the rivers Ohio and Allegheny, and the right or pre-emption of one thousand acres of land in the forks of Sinnemahoning, near the Great or Buffalo swamp, which is hereby reserved and granted to General James Potter, shall be excepted and reserved from all such applications as are herein before mentioned, and for all surveys under the same; and the said islands, and every of them, may and shall be sold by public sale, or otherwise, by special order of the President or Vice-President in Council, concerning each of them, for the best prices that can be gotten for the same islands; and all occupancy, and every survey, claim, or pretences for holding

the same islands, or any of them, by any other title, shall be utterly void, saving always the pre-emption heretofore granted to William Irwin, esquire, of Montour's island in the river Ohio, and other pre-emption rights heretofore granted by law.

Section 14. And be it further enacted by the authority aforesaid, That if any officer, or other person, who is enjoined or required to do or perform anything by this act, shall neglect or refuse to perform the same, he shall, (besides being liable to the party grieved for damages,) be punishable for his neglect or refusal as aforesaid, and likewise for any other misbehavior, abuse of trust, and for any fraud therein, by fine and imprisonment, at the discretion of the court of the proper county.

Section 15. And be it further enacted by the authority aforesaid, That in making any survey by any deputy-surveyor, he shall not go out of his proper district to perform the same, and that every survey made by any deputy-surveyor without his proper district shall be void and of none effect: And the Surveyor-General and his deputies are hereby severally directed and enjoined to locate and survey, or cause to be located and surveyed, the full amount of land contained and mentioned in any warrant, in one entire tract, in such manner as form, as that such tract shall not contain in front of any river more than one half of the length or depth of such tract, and to conform the lines of every survey in such manner, as to form the figure or plot thereof, as nearly as circumstances will admit, to an oblong of three times the breadth thereof. And in case any such survey should be found to contain a greater quantity of land, than is mentioned in the warrant on which it shall be made, so that such excess be not more than one tenth of the number of acres mentioned in such warrant, besides the usual allowance for highways, the return thereof shall nevertheless be admitted under the said warrant; provided the party procuring such return to be made shall forthwith pay to the Receiver-General of the Land-Office, the price of value of such excess or overplus land, at the same rate at which he paid for the land mentioned in the warrant. Provided always, That all and singular the lands to be located, surveyed, and taken up, subject to, nor charged with, any general tax for the use of this state, or of the United States, for the term of two years from and after the passing of this act.