

No. 19, 1913.]

ACT

TO

Provide for the issue of Individual Titles to
Opstallen, Sowing Lots and Garden Lots at
Carnarvon.

WHEREAS on the sixteenth day of November, 1860, two grants of land were made by the Governor of the late Colony of the Cape of Good Hope, the one grant being made to the then present and future proprietors of certain twenty-seven erven in the village of Harmsfontein, now called Carnarvon, of certain garden ground near the said village; and the other grant being made to the proprietors of certain one hundred and twelve erven in the said village of Harmsfontein certain commonage, known as the outer or reserved commonage of Schietfontein, for grazing purposes;

And whereas under and by virtue of regulations issued from time to time by the said Governor in accordance with the Carnarvon Reserved Commonage Act of the said Colony (Act No. 18 of 1882), the committee of management appointed under section *two* thereof, has allotted plots of ground on the said outer or reserved commonage, to erf-holders in the village of Carnarvon, for use (a) as opstallen, which are held by virtue of the ownership of an erf or a portion of an erf, (b) as sowing lots which are likewise held by virtue of the ownership of an erf or a portion of an erf, and (c) as gardens, many of which have been sold to and are at present held by persons other than the holders of the erven to which the said gardens originally belonged;

And whereas many of the said opstallen and gardens have been extensively improved, and it is therefore both equitable and expedient that the present holders should obtain fixity of tenure to enable them to secure in the land registers of the Cape of Good Hope proper registration in their names of the ownership of the said opstallen, gardens and sowing lots;

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Repeal of Act No. 28 of 1905. is hereby repealed.

Interpretation of terms.

1. Act No. 28 of 1905 of the Cape of Good Hope shall be and is hereby repealed.

2. In this Act,—

“committee” shall mean the committee of management appointed under section *two* of Act No. 18 of 1882 of the Cape of Good Hope;

“opstal” shall mean a plot of ground on the outer Carnarvon commonage to be used for general farming purposes;

“village” shall mean the village of Carnarvon.

Cancellation of titles.

3. It shall be lawful for the Governor-General to cancel and annul the following grants, namely,—

(a) the quitrent title dated the sixteenth day of November, 1860, in favour of the present and future holders of certain twenty-seven erven in the village of Harmsfontein, now Carnarvon, to certain garden ground at the said village, in extent six morgen two hundred and forty-nine square roods and one hundred and thirteen square feet; and

(b) the quitrent title dated the sixteenth day of November, 1860, in favour of the present and future holders of certain one hundred and twelve erven in the village of Harmsfontein, now Carnarvon, to certain land, in extent eighty-six thousand four hundred and forty-five morgen and two hundred and thirty-five square roods, known as the outer or reserved commonage, in the Division of Victoria West, now Carnarvon,

and to dispose of the lands granted thereunder in the manner herein set forth.

Survey and grant of gardens near village.

4. It shall be lawful for the Governor-General to cause the garden ground mentioned in paragraph (a) of the last preceding section to be surveyed as lots and after three months notice in the *Gazette* and in a newspaper circulating in the district to grant a title to any such lot in favour of any person who, to the satisfaction of an officer appointed by the Governor-General, establishes a claim thereto. Every such title shall be free of quitrent and no purchase money shall be payable in respect of the land granted under this section: Provided that every such title shall contain such conditions and reservations as are usually inserted in grants of Crown land in the Province of the Cape of Good Hope.

Survey and grant of garden lots on outer commonage.

5. It shall be lawful for the Governor-General to cause the garden ground on the outer commonage (inclusive of the site of any buildings erected outside such ground by the occupiers) to be surveyed as lots and, after notice in the manner prescribed in the last preceding section, to grant a title to any such lot in favour of any person who to the satisfaction of an officer appointed by the Governor-General establishes a claim thereto. Every such title shall be free of quitrent and no purchase money shall be payable in respect of the land granted under this section: Provided that every such title shall contain such conditions and reservations as are usually inserted in grants of Crown land in the Province of the Cape of Good Hope.

Survey and grant of opstallen on outer commonage.

6. (1) It shall be lawful for the Governor-General to cause to be surveyed the existing opstallen on the outer commonage and such further ones as have been or may be selected by the registered owners or part owners of those erven in the village to which grazing rights were attached in terms of the grant referred to in section *three* (b) and, after notice in the manner prescribed in section *four* hereof, to grant title thereto: Provided that where an erf or a portion of an erf has been sold but the grazing rights attaching thereto have been reserved the person entitled to such reserved grazing rights and not the present owner of such erf or portion of an erf shall be the person entitled to select an opstal in respect of such erf or portion of an erf.

(2) Every such title shall be subject to the condition that the opstallen shall not be subdivided.

(3) Upon the granting of a title of an opstal to such person as may be entitled thereto, the opstal right and grazing rights on the outer commonage attached to the relative village erf shall cease and determine.

(4) Every such title shall be free of quitrent and no purchase money shall be payable in respect of the land granted under this section: Provided that every such title shall contain such conditions and reservations as are usually inserted in grants of Crown land in the Province of the Cape of Good Hope.

(5) The size and position of the opstallen shall be determined in the following manner:—

- (a) The right to an opstal attaching to any erf shall not exceed fifty morgen in extent.
- (b) If the right to an opstal in regard to any one erf be held by two or more persons such persons shall have the right to select two opstallen and no more and each such opstal shall be twenty-five morgen in extent.
- (c) If a person hold the opstal rights attaching to two erven and no more he may either select one opstal not exceeding one hundred morgen in extent or two opstallen, neither of which shall be less than twenty-five morgen in extent, and the aggregate extent of which shall not exceed one hundred morgen.
- (d) If a person hold the opstal rights attaching to three erven and no more, he may select a total area not exceeding one hundred and fifty morgen in

one, two, or three blocks ; provided that the minimum extent of each opstal shall be twenty-five morgen.

- (c) If a person hold the opstal rights attaching to more than three erven, he shall nevertheless be entitled to one hundred and fifty morgen only of ground for opstal purposes which may be selected in the manner set forth in paragraph (d).
- (f) In the case of an opstal already selected in the mountains, the holder shall have the option either of taking his opstal at the site selected or of surrendering his present opstal and selecting another in a more suitable locality.
- (g) If, during the laying out of opstallen by the persons entitled thereto in accordance with this Act, a dispute arise between them as to the common boundary between their respective properties, the same shall, in default of agreement between the disputants, be referred to such officer as the Governor-General may appoint, whose decision shall be final.
- (h) No common watering place nor any portion of the areas known as the Groot Vee Veld shall be included within the limits of any opstal existing at the commencement of this Act or hereafter to be selected.
- (i) Due provision shall be made for rights of way and in case of dispute the committee's decision shall be final.

Opstal owners entitled to sowing lands

7. (1) To every opstal there shall be attached the right to sow lands free of charge at a place called Zaaipoort on the outer commonage and the extent of the sowing lands to which an owner of an opstal shall be thus entitled shall be two twenty-fifths of the extent of his opstal. Such sowing rights shall be exercised subject to regulations made under Act No. 18 of 1882 of the Cape of Good Hope.

(2) It shall be lawful for the Governor-General to cause the sowing lands aforesaid to be surveyed in lots of from two to four morgen and after notice in the manner prescribed in section *four* hereof to grant title to any such lot in favour of any person who to the satisfaction of an officer appointed by the Governor-General establishes a claim thereto.

(3) Instead of applying for a title to a sowing lot any owner of an opstal may apply for a piece of land equal in extent to the sowing lot to which he is entitled to be added to his opstal from the adjoining commonage and upon his making such application it shall be lawful for the Governor-General to authorize such owner's opstal to be increased by the extent of the sowing lot to which he is entitled. When any owner's opstal has been so increased he shall have no further right to sowing lands at Zaaipoort.

(4) The provisions of section *six* (4) shall apply to any title under this section.

Owner's obligation to fence opstal.

8. The owner of an opstal shall at his own cost be bound within two years from the date of the grant of the title thereto to fence the boundaries thereof to the satisfaction of the committee and if he fails to do so or fails to maintain such fence in a proper manner he shall not be entitled to impound any stock trespassing on such opstal

Selection of opstallen by holders of erven who have not hitherto exercised their right to do so. Retention of grazing rights by erfholders not owning opstallen

9. If a person entitled to an opstal has not, prior to the commencement of this Act, selected an opstal, he shall do so within a period of two years after such commencement and, if he make default in so doing, he shall forfeit his rights to the opstal.

10. Notwithstanding that a person has forfeited his rights to an opstal under the last preceding section, he shall retain his sowing and grazing rights, and may water stock which are his own property at the open waters, provided he has obtained from the committee a certificate as to the number of stock which he is entitled to graze and the extent of land he is entitled to sow. Such person shall have the right to sell but not to lease or sublet his sowing and grazing rights, which shall be inseparable.

Grazing rights over outer commonage to be attached to opstallen.

11. The grazing rights over the outer commonage which are at the commencement of this Act attached to the erven in the village shall in future be inseparably and indivisibly attached to the several opstallen, save as is otherwise provided in the last preceding section.

Protection of holders of bonds registered against erven in village.

12. Notwithstanding anything to the contrary in this Act contained no title to an opstal shall be issued where the erf or portion of an erf in the village in respect of which such an opstal has been or is about to be acquired is mortgaged unless the written consent of the registered holder of the bond is produced to the officer authorized to issue such title.

Repayment of survey expenses.

13. The costs of survey of any land granted under this Act shall be borne by the Government in the first instance, but each grantee shall repay to the Government a share of such costs proportionate to the extent of land granted to him.

No title shall be issued to any grantee until he has paid such share and an office fee of twelve shillings and threepence for each title deed. The repayment of such share in the costs of survey as may be due by any grantee of land under this Act may be made in one sum or in such instalments as the Governor-General may prescribe extending over a period not exceeding two years from the date on which payment is first demanded :

Provided that if the whole or portion of the amount to be repaid remain unpaid at the expiration of the said two years it may be recovered by action in the court of the resident magistrate of the district in which the person in default resides.

Vesting of ownership of remainder of outer commonage in the committee

14. The ownership of the outer commonage shall, after all the claims to opstallen gardens and sowing lots have been satisfied, be vested in the committee in trust for the owners of the opstallen, and of the rights (if any) referred to in section *ten* and it shall be lawful for the Governor-General to issue to such committee a title deed or title deeds of the whole or any portion of the outer commonage which may become vested in the committee under the provision of this section :

Provided that the committee shall pay the annual quitrent of thirty-two pounds eight shillings and fivepence hitherto paid by the municipality of Carnarvon and the land shall be subject to all the conditions attached to the quitrent title to the outer commonage dated the sixteenth day of November, 1860, notwithstanding that such title has been cancelled under the provisions of section *three* of this Act, and shall further be subject to the provisions of Act No. 18 of 1882 of the Cape of Good Hope.

Tax of ten shillings on erven in future to be paid by holders of opstallen to the committee

15. The annual tax of ten shillings sterling heretofore payable under his Deed of Grant by the holder of an erf in the village to which grazing rights on the outer commonage are attached shall, after the commencement of this Act, be paid to the committee by the person who has become under this Act the registered owner of the opstal corresponding to that erf and any moneys so derived shall be devoted to the payment of the quitrent heretofore payable on the outer commonage, to the making of dams and to the opening of springs and works of a similar nature on the said commonage: Provided that where no opstal has been selected in respect of any erf, the annual tax aforesaid shall be payable by the person entitled to select such opstal, or by the person entitled to the rights referred to in section *ten* hereof.

Cancellation of non-alienation clause in titles to erven Nos. 101 and 142.

16. From and after the commencement of this Act the restriction against alienation contained in the titles to erven Nos. 101 and 142 in the village shall be cancelled and it shall be lawful for the registered owner of either such erf to dispose of the same or portions thereof in such manner as he may deem fit, together with his rights to opstallen and the grazing rights attached thereto, subject to the provisions of this Act.

Rights of
owners of
erven Nos.
2, 4, 160 and
168.

17. Notwithstanding anything to the contrary contained in the title deeds of erven Nos. 2, 4, 160 and 168 in the village which were granted by the Government to the municipality of Carnarvon, in terms of section *thirteen* of Act No 14 of 1878 of the Cape of Good Hope, the owners of the said erven shall be entitled to all the rights on the outer commonage attaching to those erven when originally granted in 1860, and the said municipality is hereby indemnified against any claims whatsoever that may be made against it by reason that no such reference was made in the said title deeds to such rights.

Voting
powers of
postal owners.

18. (1) Where an opstal has been selected in respect of an erf the owner of such opstal shall acquire all the rights conferred on the proprietor of an erf by Act No. 18 of 1882 of the Cape of Good Hope, and such proprietor shall have no further rights under the said Act.

(2) When voting in terms of section *five* of the said Act an opstal owner shall have one vote for every opstal owned by him and which is twenty-five morgen in extent, and if he owns an opstal which is more than twenty-five morgen in extent he shall have an additional vote for every additional twenty-five morgen, provided that no such owner shall have more votes than six. If any opstal is jointly owned by two or more persons one of them may be chosen by the others to appear and vote in respect of such opstal.

Short title.

19. This Act shall be read and construed as one with Act No. 18 of 1882 of the Cape of Good Hope, and may be cited for all purposes as the Carnarvon Outer Commonage Settlement Act, 1913.