

[No. 17, 1926.]

## ACT

**To provide for the cancellation of the title issued under section *fourteen* of Act No. 19 of 1913 to the Committee of Management of the Carnarvon Outer Commonage; the sale of certain sowing lands on the said Commonage; the subdivision and allocation of the remaining extent of the said Commonage among the owners of opstallen and persons having grazing and sowing rights thereon and the issue of individual titles to such owners and persons; the disposal of certain other lands owned by the said Committee, and matters incidental thereto.**

Preamble.

**WHEREAS** under the provisions of the Carnarvon Outer Commonage Settlement Act, 1913 (Act No. 19 of 1913), individual titles have been issued to opstallen on the Outer Commonage of Carnarvon:

And whereas such titles conferred on the registered owners of such opstallen certain grazing rights in respect of the remainder of the Carnarvon Outer Commonage, which, in terms of section *fourteen* of Act No. 19 of 1913, was vested in a Committee in trust for the owners of the opstallen and of the rights referred to in section *ten* of the said Act:

And whereas it is desirable that the title deed, dated the fifth February, 1920, in respect of the remaining extent of the Carnarvon Outer Commonage in extent 81,413 morgen 531 square roods, which was issued in favour of the "Committee of Management of the Carnarvon Outer Commonage, in trust for the owners of opstal lots granted under Act No. 19 of 1913 and the erfholders in the town of Carnarvon who in terms of the said Act may be entitled to rights over the Outer Commonage," should be cancelled, and that the said remaining extent of the Carnarvon Outer Commonage should be subdivided and allocated among the registered owners of the opstallen and the persons having grazing and sowing rights in terms of section *ten* of Act No. 19 of 1913:

And whereas the Committee of Management of the Carnarvon Outer Commonage is the registered owner of certain land being an erf in the village of Carnarvon and an opstal lot on the Carnarvon Outer Commonage and it is desirable that power should be granted to the said Committee to dispose of the said land:

**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:—

**1.** (1) Notwithstanding anything contained in the Carnarvon Outer Commonage Settlement Act, 1913 (Act No. 19 of 1913) as amended by Act No. 16 of 1920, or in the conditions of any Crown Grant issued in terms of the said first-mentioned Act, the Governor-General may cancel the title-deed, dated the fifth day of February, 1920, and issued in respect of the remaining extent of the Carnarvon Outer Commonage measuring 81,413 morgen 531 square roods (hereinafter called the Commonage) to the "Committee of Management of the Carnarvon Outer Commonage in trust for the owners of opstal lots granted under Act No. 19 of 1913, and the erfholders in the town of Carnarvon who in terms of the said Act may be entitled to rights over the Outer Commonage": Provided that, notwithstanding the cancellation of the said title deed, the owners of opstallen and the persons having grazing and sowing rights in terms of section *ten* of Act No. 19 of 1913, as the case may be, may continue to exercise such rights over the Commonage, and the Committee of Management of the Carnarvon Outer Commonage (hereinafter called the Committee) shall continue to control and manage the Commonage in accordance with the provisions

Vesting in  
Crown of  
Carnarvon  
Outer  
Commonage.

of Act No. 18 of 1882 of the Cape of Good Hope and Act No. 19 of 1913 until such time as the subdivision and allocation of the Commonage have been finally completed in terms of section *three* of this Act.

(2) Upon such cancellation the Commonage shall, subject to the provisions of this Act, vest in the Crown, and the Registrar of Deeds at Cape Town shall make all such entries and endorsements of the cancellation and vesting as may be necessary.

(3) Notwithstanding anything contained in the Fencing Act, 1912, or any amendment thereof, no obligation shall rest on the Government to contribute towards the cost of erecting or maintaining any fencing along the boundaries of or upon the land described in sub-section (1) of this section. For the purposes of the Fencing Act, 1912, or any amendment thereof the Committee shall, notwithstanding the cancellation of the title deed described in sub-section (1) of this section, be regarded as the owner of the Commonage until such time as the subdivision and allocation of the Commonage have been finally completed in terms of section *three* of this Act.

2. (1) The Governor-General may cause to be deducted from the Commonage an area of approximately one hundred and twenty morgen of the unalienated sowing lands at the place called Zaaipoort.

(2) The said area shall be surveyed in lots of approximately four morgen and sold by public auction subject to such conditions as the Governor-General may deem expedient.

(3) The proceeds derived from such sale, after deducting all costs incidental thereto, shall be utilised in defraying the expenditure of the Board in terms of section *four*.

3. (1) The Commonage shall, after the deduction of the area of sowing lands referred to in section *two*, be subdivided into portions to be allocated and granted to the registered owners of opstallen and persons entitled to grazing and sowing rights in terms of section *ten* of Act No. 19 of 1913 in manner provided in this section.

(2) The Minister of Lands shall appoint a Board consisting of—

- (a) the Magistrate of the district of Carnarvon, who shall be chairman of the Board;
- (b) a member of the land board constituted under the Land Settlement Act, 1912, for the area in which the commonage is situate;
- (c) a duly qualified land surveyor;
- (d) two owners of land to be elected by the registered owners of opstallen and persons having grazing and sowing rights as aforesaid in manner prescribed by the Minister of Lands.

Three members of the Board shall form a quorum at any meeting. The decision of the majority of the members of the Board shall be the decision of the Board: Provided that the Chairman shall have a deliberative vote and in the event of an equality of votes shall in addition have a casting vote.

(3) The members of the Board shall be remunerated at such rates as may be determined by the Minister of Lands.

(4) It shall be the duty of the Board to subdivide and allocate the Commonage among the registered owners of the opstallen and persons entitled to rights over the Commonage in terms of section *ten* of Act No. 19 of 1913. In making any subdivision and allocation the Board shall safeguard and preserve all rights conferred on any owner by any existing title deed, and for the purpose of effecting a fair and equitable division and allocation, the Board shall take into consideration the extent of the grazing rights to which an owner may be entitled in terms of his existing title deed and have regard to the value as well as the extent of the portions to be respectively allocated. In the case of persons entitled to sowing rights in terms of section *ten* of Act No. 19 of 1913, the Board shall when allocating a commonage portion to such person add to such portion an area representing a value equal to that of four morgen of sowing land.

(5) Upon completion of the division survey and allocation the Board shall publish in two consecutive issues of the *Gazette* and twice in the English and Dutch languages in a newspaper circulating in the District of Carnarvon a description of the divisions and allocations made by it. Sixty days from the date of the *Gazette* in which the notice was first published the communal rights theretofore existing and exercised in respect of the Commonage shall cease and determine.

Sale of certain sowing lands at Zaaipoort.

Grant of individual title in Commonage

(6) On expiry of the period of sixty days referred to in sub-section (5) every person to whom a portion of the Commonage has been allocated shall, for the purposes of the Fencing Act, 1912, or any amendment thereof be regarded as the owner of such land.

Allocation of costs amongst grantees. 4.-(1) All expenditure incurred by the Board in the exercise of its functions under section *three*, together with all expenditure incurred by the Government in remunerating the members of the Board, shall in the first instance be paid out of the Consolidated Revenue Fund.

(2) All such expenditure shall, subject to the provisions of sections *two* and *nine*, be apportioned by the Minister of Lands in such a manner as he may deem equitable among, and be payable by, the persons to whom commonage portions have been allocated in terms of section *three* of this Act and no title deed shall be issued under section *five* to any person unless the amount so apportioned for payment by him, plus interest at the rate of five per cent. per annum, together with the registration fee and all other charges incidental to the issue of a Crown Grant shall first have been paid by him.

Issue of individual titles. 5. (1) Subject to the provisions of section *four* the Governor-General may, in accordance with the allocation of portions of the Commonage made by the Board in terms of section *three*, grant title to the person registered as the owner of any opstal or having grazing and sowing rights over the Commonage in terms of section *ten* of Act No. 19 of 1913, at the date of the first publication in the *Gazette* of the allocation of a commonage portion to such person. An owner to whom has been allocated more than one commonage portion may, if he so desires, and with the approval of the Board, have the portions which he may be entitled to have granted to him surveyed in one block.

(2) Title to any portion of the Commonage granted under this section shall be free of quitrent, and no purchase money shall be payable in respect thereof, but such title shall, in addition to such conditions and reservations as are usually inserted in grants of Crown land in the Province of the Cape of Good Hope, be subject to such further conditions as the Board may recommend and the Governor-General approve.

Consequence of failure to pay sums due in respect of commonage portion. 6. Any person who, within a period of ten years after the date of the first publication in the *Gazette* of the allocation of a commonage portion to him in terms of sub-section (5) of section *three*, fails to pay in full the proportion of the expenditure apportioned to him in terms of sub-section (2) of section *four*, plus interest at the rate of five per cent. per annum, shall cease to have a right to obtain a grant of the commonage portion so allocated to him. Such commonage portion shall thereupon become available for disposal under the laws regulating the disposal of Crown land, and no compensation shall be payable by the Government or any other person in respect of any improvements which may have been erected on or effected to the said commonage portion.

Cancellation of grazing rights over Commonage. 7. On issue of a title deed to a commonage portion the Registrar of Deeds at Cape Town shall endorse upon the title-deed or deed of transfer of the opstal in respect of which the commonage portion is granted or on the title deed or deed of transfer of the erf in the village of Carnarvon in respect of which rights are exercised in terms of section *ten* of Act No. 19 of 1913, that the grazing and other rights over the Commonage attaching to the title of the opstal or erf have ceased and determined.

Extension to commonage portion granted of hypothecation over opstal or village erf. 8. Whenever a commonage portion is allocated in respect of any opstal or in respect of any erf in the village of Carnarvon entitled to rights over the Commonage in terms of section *ten* of Act No. 19 of 1913, and such opstal or erf has been hypothecated under any mortgage bond which is still of force and effect at the date of such allocation, such commonage portion shall *ipso facto* be deemed to be fully and effectually hypothecated under and be subject to all the terms of such bond subject, however, to the provisions of section *six*. The Registrar of Deeds at Cape Town shall endorse on the title deed of the commonage portion so allocated the fact that it is subject to such bond and on such bond the fact that it attaches to and upon the said commonage portion, and make all necessary entries in his registers.

Committee to have power to sell certain lands. 9. Notwithstanding anything contained in Act No. 18 of 1882 of the Cape of Good Hope or in any other law the Committee is hereby empowered to sell by public auction Opstal Lot No. 11, situate in Ward No. 1, Division of Carnarvon, in extent fifty-four morgen, and certain piece of land being lot No. 11, measuring fifty-six square roods and thirty-six square feet, situate in the village of Carnarvon, which said pieces of land are respectively held by the said Committee under title deed dated the ninth March, 1925, and Deed of Transfer No. 4667, dated the twelfth June, 1907, and garden lots Nos. 75, 76 and 86, situate at Schietfontein, Division of Carnarvon, measuring respectively two hundred and seven square roods ninety-seven square feet, twenty square roods seventy-three square feet and twenty-nine square roods forty-one square feet, to the ownership of which the Committee is entitled in terms of section five of Act No. 19 of 1913. The proceeds derived from such sale shall, after deducting any expenses incidental to the sale and any indebtedness incurred by the Committee in connection with its ownership and the control and management of the Commonage, be paid to the Minister of Lands to be utilised in defraying the expenditure and other costs mentioned in section four. The Chairman of the Committee is hereby authorized to sign any document which may be necessary to pass transfer of the said lands to the purchaser thereof.

Repeal of laws. 10. As upon a date to be notified by the Governor-General by proclamation in the *Gazette*, Act No. 18 of 1882 of the Cape of Good Hope and sections fifteen and eighteen of Act No. 19 of 1913 shall be repealed and the tax of ten shillings which prior to the commencement of Act No. 19 of 1913 was payable by the holder of an erf in the village of Carnarvon to which grazing rights on the Commonage are attached shall thereupon cease to be payable.

Short title. 11. This Act may be cited as the Carnarvon Outer Commonage Subdivision Act, 1926.