
CHAP. CCCXCVII.—*An Act to provide for the Sale of certain Lands belonging to the State.*

[Approved April 27, 1863.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The Swamp and Overflowed, Marsh, and Tide Lands, belonging to the State, shall be sold at the rate of one dollar per acre, in gold or silver coin, payable: twenty per cent of principal within thirty days of the record of approval of survey or location, by the Surveyor-General, in the County Surveyor's office; the balance, bearing interest at the rate of ten per cent per annum, payable annually in advance, computed from the date of such approval, shall be due and payable one

Swamp and Overflowed Land sale.

How payable.

year after the passage of any Act requiring such payment, or before, if desired by the purchaser.

School
Lands, etc.

Sale.

Terms.

Proviso.

SEC. 2. The one hundred and fifty thousand acres of land granted to this State for the use of an Agricultural College, by Act of Congress of July second, eighteen hundred and sixty-two, the unsold portion of the five hundred thousand acres granted to the State for School purposes, the unsold portion of the seventy-two sections granted to the State for a Seminary of Learning, the unsold portion of the ten sections granted to the State for the erection of Public Buildings, and the sixteenth and thirty-sixth sections granted for the use of the Public Schools, or lands in lieu thereof, shall be sold at the rate of one dollar and twenty-five cents per acre, payable in United States gold or silver coin, twenty per cent of the principal and the first advance interest on the balance to be paid within fifty days from the date of the record of approval of survey or location in the State Locating Agent's office, the balance, bearing interest at the rate of ten per cent per annum, payable yearly in advance, shall be due and payable, at the option of the purchaser, within one year after the passage of any Act requiring such payment; *provided*, nothing in this Act shall be construed to affect the sale of lands by the location of School Land Warrants, which lands shall be located and paid for in the manner now provided by law. The money received into the State Treasury from the sale of the one hundred and fifty thousand acres of land granted to this State for the maintenance and support of an Agricultural and Mechanical Arts College shall be converted into bonds of the Civil Funded Debt of the State, issued since the first day of January, A. D. eighteen hundred and fifty-eight, in the same manner as is provided for converting school money into State bonds by section nine of an Act entitled an Act to provide for the location and sale of the unsold portion of the five hundred thousand acres of land donated to this State for School purposes, and the seventy-two sections donated to this State for the use of a Seminary of Learning, approved April twenty-third, eighteen hundred and fifty-eight, and when the moneys are thus converted into bonds they shall be deposited in the office of the State Treasury, and there kept as a special deposit, marked "Agricultural and Mechanical Arts College Fund," to the credit of said Fund.

Oath of
purchaser,
and
application.

SEC. 3. Whenever any resident of this State desires to purchase any portion of the Swamp and Overflowed Lands granted to the State by Act of Congress of September twenty-eighth, eighteen hundred and fifty, or any portion of the Tide Lands belonging to the State by virtue of her sovereignty, he shall make affidavit before any person competent to administer oaths, that he is a citizen of the United States, or has filed his intention of becoming a citizen, is a resident of the State, and of lawful age, that he desires to purchase said lands (describing them) under the laws of the State providing for the sale of the Swamp and Overflowed and Tide Lands of the State, and that he has not entered under said laws any other land which, together with the land sought to be purchased, shall exceed six hundred and forty acres, and that he does not know of any legal or equitable claim to said land other than his own,

and also, if the applicant be a female, that she is entitled to purchase and hold real estate in her own name under the laws of this State, which application and affidavit shall be filed in the office of the Surveyor of the county in which such lands, or the greater portion thereof, are situate.

SEC. 4. Whenever any resident of this State desires to purchase any portion of a sixteenth or thirty-sixth section of any township in this State, or lands in lieu thereof, if the lands sought to be purchased have not been surveyed by authority of the United States, he shall file in the office of the County Surveyor of the county in which said lands are situate, an application for a survey and plat and field notes of the lands sought to be purchased, which, when obtained, he shall file with the Locating Agent of the district, together with an affidavit that he is a citizen of the United States, or has filed his intentions to become a citizen, that he is of lawful age, and is a resident of the State, that the lands sought to be purchased are unoccupied except by the applicant, and that there are no improvements on said lands other than his own, and that to the best of his knowledge and belief there is no valid claim existing to said land adverse to his own, and if the applicant be a female, that she is entitled to purchase and hold real estate in her own name under the laws of this State; all of which shall be verified by the affidavit of three disinterested witnesses; *provided*, that the affidavits of applicants for the purchase of any of the lands granted to this State for the maintenance and support of an Agricultural and Mechanical Arts College, shall, in addition to the requirements of the affidavits above required, show that the lands sought to be purchased have been surveyed by the United States, and that the lands are subject to entry at private sale.

Application
for survey,
etc., of
School Lands

Proviso.

SEC. 5. Whenever a settlement is or has been made by occupation or improvement upon any portion of a sixteenth or thirty-sixth section of any of the Public Lands in this State, the Locating Agent of the district in which such land is situated shall, if such occupant has not acquired a pre-emption right to such land, notify such occupant or claimant of the fact that he is upon lands belonging to the State, and that he must make application to purchase the same of the State within sixty days, or forfeit all rights to the land. If such occupant or claimant shall neglect or refuse to make such application to purchase within the sixty days above named, such land shall be subject to location and sale in the manner provided for the sale of other sixteenth and thirty-sixth sections, with the exception that the affidavits in regard to occupancy and improvement may be omitted, in all of which cases the application to purchase shall be accompanied by the affidavit of the Locating Agent of the district, that he has duly notified the occupant or claimant of the land as provided by this section, and that for a period of sixty days after such notice the occupant or claimant has refused or neglected to apply for said lands.

Locating
Agent, and
his duties.

SEC. 6. Whenever any resident of the State desires to purchase from the lands surveyed by authority of the United States

Affidavit of
purchaser.

any portion not less than the smallest legal subdivision of the one hundred and fifty thousand acres granted to this State for the use of an Agricultural College, any portion of the five hundred thousand acre grant, or of the seventy-two section grant, or the ten section grant, or of any sixteenth or thirty-sixth section, or lands in lieu thereof, he shall make the same affidavit as provided in section four of this Act, which shall be verified in the same manner; which affidavit, together with his application to purchase said lands, describing them by legal subdivisions, shall be filed in the office of the State Locating Agent of the district in which the lands sought to be purchased are situate.

Duties of
County
Surveyor.

SEC. 7. It shall be the duty of the County Surveyor, immediately upon receiving any application for a survey required by sections three and four of this Act, to note the same in a book kept in his office for the purpose, in the regular order in which it is received, giving the name and address of the applicant, description of the land, class of lands, whether Swamp, Tide, sixteenth and thirty-sixth section grant, or lands in lieu thereof, which book shall be furnished by the Surveyor-General, and shall always be open to public inspection. He shall, within thirty days after receiving such application, if the lands are subject to sale, complete the survey, plat, and field notes, duplicates of which, together with a copy of the application and affidavits, shall, if the lands be Swamp and Overflowed, or Tide Lands, be forwarded to the Surveyor-General for approval; and if the lands be part of the sixteenth and thirty-sixth section grant, he shall furnish the applicant with a full description, by legal subdivision, of the lands applied for, which, together with the application and affidavits required by section four of this Act, shall be filed with the Locating Agent of the district in which the lands are situate. The County Surveyor shall, immediately upon the receipt from the Surveyor-General of any approved copy of survey of Swamp or Tide Lands, forward the same to the applicant, and mark upon the maps and record in the books of his office all surveys thus made by him, which maps and books shall be always open to public inspection.

Duties of
Locating
Agents.

SEC. 8. It shall be the duty of the several State Locating Agents of this State, whenever application is made to them, as provided in sections five, six, and seven of this Act, for the purchase of any lands of this State, except Swamp and Overflowed and Tide Lands, if the lands applied for be subject to sale, to keep a complete record of such applications, when accepted, in the same manner as provided for County Surveyors in section seven of this Act, which record shall always be open to public inspection. Whenever the amount of three hundred and twenty or more acres have been applied for under any one grant, he shall, in behalf of the State, make application to the Register of the United States Land Office for the district, for such lands, in part satisfaction of the grant under which they are located, and obtain his acceptance of the selections, which acceptance, together with the corresponding certificates of location, according to the form prescribed by the Surveyor-General, he shall forward, with the proper affidavits, to the office of the Surveyor-General for approval, and when approved and returned to him,

he shall record the approval, and forward the approved certificate of location to the applicant.

SEC. 9. It shall be the duty of the Surveyor-General, upon the receipt of any application to purchase any lands of the State, to carefully compare the same with the maps and records of surveys and locations in his office, and if the law under which such survey or location was made has been complied with, and no counter application or conflict exists, he shall, at the expiration of thirty days, approve the same, and forward a copy, with his approval indorsed thereon, to the County Surveyor, if the lands be Swamp and Overflowed, and to the State Locating Agent, if for any other class of lands. The Surveyor-General shall keep at his office complete maps of the State, so far as surveys have been returned to him, upon which shall be shown all the lands sold by the State, and all surveys of lands applied for, which have been approved by him, showing, also, all lands for which certificates of purchase or patents have been issued.

Duties of Surveyor-General.

SEC. 10. Whenever any County Surveyor shall neglect or refuse to make any surveys of the State lands as provided by this Act, the Surveyor-General may appoint some competent person to make such surveys, who shall have free access to the books and papers of the County Surveyor's office.

County Surveyor failing to discharge duties.

SEC. 11. For the purpose of ascertaining, protecting, and managing the title and claim of the State to any lands within its limits, derived by grants from the United States, or in any other manner, and for the purpose of carrying out the laws which have been or may hereafter be enacted for the disposal of the same, an office shall be established at the seat of government, which shall be designated and known as the State Land Office of the State of California.

State Land Office.

SEC. 12. The chief officer of said Land Office shall be designated and known as the "Register of the State Land Office," and his duties shall be such as may be prescribed by law. The Surveyor-General shall be ex officio said Register until otherwise provided by law; but before entering upon the duties of his office, the Register shall take an oath for the faithful performance of his duties, and to support the Constitution of the United States and of this State; and the said Surveyor-General and Register shall have power to appoint, under his hand and seal, a Deputy, who may, when necessary, perform all duties belonging to the two offices; and for his own security the Surveyor-General and Register may require said Deputy to give him a bond in such sum and with such securities as he may deem sufficient; but the said Deputy shall be entitled to no compensation from the State for acting in such capacity.

Register.

Oath.

Deputy.

SEC. 13. It shall be the duty of the said Register to keep separate and distinct accounts and records in relation to each class of lands to which the State may be entitled. He shall keep, in a well bound set of books, complete records of all lands that may have been or may hereafter be selected and located by the proper Agents of the State as a portion of the five hundred thousand acres granted to the State, and applied to school purposes, of the seventy-two sections granted to the State for the purposes of a Seminary of Learning, of the ten sections granted to the State for the erection of public buildings, of the grant of the six-

Duty of Register.

teenth and thirty-sixth sections, or lands taken in lieu thereof, and of the one hundred and fifty thousand acres granted to the State for the purposes of an Agricultural College. These records shall show the number of the location, the date of the same, the name of the locator, the description of the land by township, range, section, and, when practicable, by the subdivisions of sections, the price per acre at which the same are sold, the amount paid, and date of first payment, the date of all subsequent payments, the number and date of the certificate of purchase, and the date of the patent, when the same shall have been issued. He shall also keep, in a well bound set of books, a complete record of all Swamp and Overflowed Lands, and Tide Lands, to which the State is entitled by virtue of any Act of Congress, or by her own sovereignty, in the same manner as already prescribed in the case of School, Seminary, Public Building, and Agricultural College Lands. He shall also keep the proper plats of the above named lands, upon which plats all approved locations and surveys shall be designated by their numbers; and when certificates of purchase or patents shall have been issued, the same shall be also noted on the plats. But so long as the Surveyor-General performs the duties of Register, but one set of maps shall be required.

Approved surveys, etc.

SEC. 14. Whenever any location or survey of any of the above mentioned lands has been approved by the Surveyor-General, in the manner hereinbefore specified, the purchaser shall present his copy of the same to the County Treasurer, who shall thereupon receive the amount, whether in full or in part, so provided by law, and the fee for the certificate of purchase, indorsing his receipt therefor upon the back of the said certificate of location or survey, which shall then be returned to the purchaser. All subsequent payments, whether of the balance of the principal or of the interest thereon, shall be paid to the County Treasurer in like manner, who shall indorse the same upon the back of the certificate of purchase. The Treasurer shall also direct the purchaser to take the said certificate of location or purchase or survey so indorsed, to the Auditor, who shall charge the amount named therein to the account of the Treasurer, and make his check upon the indorsed receipt so charged.

Payments.

County Treasurers.

SEC. 15. Upon the first and sixteenth days of every month, (except when the same shall fall on Sundays or other holiday, and then upon the days next following,) the County Treasurer shall make a report to the Register of the State Land Office, showing the number of the location, the name of the locator, and the amount paid since the date of his last report, whether as principal or interest, which amounts shall be entered in the columns belonging to the particular class of land upon which each payment has been made. The payment of the fee for the certificate of purchase shall also be entered in the proper column, and the Treasurer shall then send the report to the Auditor, who shall compare the items with the account of the Treasurer, and if the same shall be found to agree with his entries, he shall countersign the report as correct, and return it to the Treasurer. These reports shall be forwarded to the Register on or before the fifth day after they have been made up, and upon receipt thereof the Register shall enter the pay-

Reports to be made semi-monthly.

ment so reported to the credit of the purchasers by whom they have been made, in the books of his office. He shall further, as soon as possible thereafter, notify the County Treasurer of the receipt of his report, and of any error that may have been found therein; in that case returning the report for correction. He shall also, as soon as practicable, after any correct or corrected report has been received, prepare and forward to the County Treasurer or owners, the certificates of purchase for which the fees have been reported as paid.

Register.
Duties.

SEC. 16. At the end of the quarter it shall be the duty of the County Treasurer to make a report to the Controller of State, showing the amount which has been received during the quarter, either as principal or interest, upon each class of land, which report shall be referred to the Register of the State Land Office for examination and comparison with the books of his office. When the Register shall have certified to the correctness of the report, it shall be returned to the Controller, who shall thereupon make his settlement with the County Treasurer, and the said County Treasurer shall then pay over to the Treasurer of State all moneys, Controller's warrants, or other indebtedness of the State, that may have been received in payment for said lands. The Treasurer shall be entitled to three per centum of all amounts received and so reported by him, and the Auditor to one per centum of all amounts so certified by him, which he shall receive from the Treasurer, and his receipt therefor shall be a sufficient voucher for the Controller of State, in his settlement with the County Treasurer.

County
Treasurer to
report to
State
Controller.

SEC. 17. When a certificate of purchase has been issued by the Register, the same shall be deemed prima facie evidence of legal title to the land for which the certificate of purchase is issued; *provided*, such certificates of purchase shall not be so construed as to affect the working of mineral lands for mining purposes. Such certificates, and all rights acquired thereby, shall be subject to sale and transfer, by deed or assignment, executed and acknowledged before any officer authorized by law to take acknowledgments of deeds, or before said Register; but all such sales or transfers shall, when recorded by the County Recorder, be reported by him to the Register, to be entered in the books of his office, and the said Recorder shall be entitled to receive from the purchaser or transferee, for so reporting the same, a fee of fifty cents in addition to that already allowed for recording.

Certificates
of purchase.

SEC. 18. Whenever a purchaser of any State land upon a credit desires to abandon the location or entry made by him, he shall do so by acknowledgment and re-conveyance of his title to the State, and shall surrender the certificate of purchase, or if the same has been lost, send to the Register an affidavit of the fact.

Abandon-
ment of
location.

SEC. 19. In the event of any of the lands sold by the State proving to be within the boundaries of a grant, or otherwise not the property of the State, the holder or assignee of the certificate of purchase or patent shall be entitled to receive in exchange therefor a certificate from the Register of the State Land Office that such amount has been paid. This certificate shall specify the kind or class of land upon which the said

Lands sold
not belong-
ing to the
State.

amount was paid, and the locator may present, and the County Treasurer and State Treasurer shall receive, the said certificate as payment for its amount, either principal or interest, upon any lands of the same class which the same purchaser or assigns may afterward desire to locate, or may already have located. The Register may demand and receive of the person receiving said certificate the sum of three dollars.

Failure to
pay interest.

SEC. 20. Whenever hereafter the purchaser of any of the public lands which have been sold on a credit, or the owner of or assignee of the certificate of purchase shall fail or neglect to pay the interest within thirty days after the same shall have become due, in accordance with the provisions of the Act under which the purchase was made, it shall be the duty of the Register of the State Land Office to publish a list of the lands upon which default has been so made by causing the same to be printed three or more times in some weekly newspaper published in the county in which the lands are situated, or in case there is no newspaper published in the county, by posting the same upon the doors of the County Court House during the period of thirty days, together with a notice that if the sum due upon each is not paid to the County Treasurer within ten days after the last day of publication, the certificate of purchase may be annulled, as now provided for by law, and the land held subject to be re-entered by other parties, as though the same had never been taken up.

SEC. 21. A second certificate of purchase shall not in any case be issued for the same tract of land, unless the first certificate shall have been surrendered, or shall have been annulled in the manner prescribed by law.

Final
payment.

SEC. 22. When any final payment shall have been made for any tract sold by the State, which is situated upon lands which have been surveyed by the United States, and the selection of which has been duly accepted by and all papers required by law duly procured from the proper officer of the Government, or when the tract so finally paid for shall be Swamp or Tide Lands, it shall be the duty of the Register of the Land Office to prepare a patent for said land, and send the same to the Governor of the State, together with a certificate under his official seal, certifying that the laws relating to the particular case have been fully complied with, or that full payment has been made to the State, and that the party named in the patent is entitled to the same. The Governor shall then complete and issue the patent, conveying to the party named the lands described in the body of the patent, which shall then be signed by the Governor, sealed with the seal of State, and attested by the Secretary of State. The Register shall then record the patent in the proper record book of his office, and countersign and deliver or forward the patent to the owner or his Agent.

Issuance of
patent.

Seals of
Register and
Surveyor-
General.

SEC. 23. The Register and Surveyor-General shall each have a seal of office, which they shall attach to all certificates issued by them, and any copies or extracts of any documents, or papers, or records belonging to his office, duly authenticated by him under his said seal, shall have the same effect and efficiency in the Courts of the State as the originals would have.

SEC. 24. The Register shall have such a salary as may be Register.
 fixed by law, payable monthly, and shall be entitled to appoint Salary.
 such Clerks, Draughtsman, and at such salaries as may be Clerks.
 allowed by law, payable monthly; and the proper officers of the
 State shall be and the same hereby are authorized and required
 to pay the same, and such contingent and other expenses of the
 office of said Register as may be allowed by law. The Register Fees.
 shall be entitled to a fee of fifteen cents per folio for all copies
 of papers furnished by him, to be paid by the person applying;
 and for each certificate of purchase, duplicate, or patent, he
 shall receive the sum of three dollars; and for each certificate
 given under the provisions of section nineteen of this Act, he
 shall receive the sum of one dollar. All fees received by the
 Surveyor-General and Register shall be paid into the State
 Treasury, as now required by law.

SEC. 25. The Surveyor-General, Register, County Surveyors, Powers of officers.
 and Agents, authorized by law to locate State lands, shall each
 have power to administer the oaths or affirmations required or
 allowed by law in matters touching the duties of his office, and
 for no other purpose.

SEC. 26. Any person making application for a duplicate Applications for duplicate warrants.
 School Land Warrant, in lieu of one alleged to have been lost or
 destroyed, or when for any other cause it cannot be made avail-
 able, shall make satisfactory proof to the Register of the State
 Land Office that the party applying therefor is the bona fide
 owner of the warrant, that the same has been lost or destroyed;
 upon the applicant making the above proof, and filing with the
 Register of the State Land Office a good and sufficient bond, in
 form joint and several, with two or more sureties, to be approved
 by the said Register, payable to The State of California, in double
 the value of said School Land Warrant, conditioned that the
 said warrant alleged to have been lost shall not be presented
 for location, the said Register shall certify that the applicant is
 entitled to a duplicate School Land Warrant in lieu of the one
 proven to have been lost or destroyed, and upon the presentation
 of said certificate to the Governor, he shall prepare and deliver
 to said applicant a duplicate warrant, bearing the same number
 as the one lost or destroyed, having the word "duplicate" writ-
 ten across the face thereof, which said warrant, when so issued,
 shall have the same force and effect as the original would have;
 the Register of the State Land Office shall in no case give the
 certificate above required until he shall be fully satisfied that
 the original has not been located, or if located, that the lands so
 located have not and will not be charged to this State by the
 Federal Government as a portion of the five hundred thousand
 acres of land granted to this State for internal improvements.

SEC. 27. The Surveyor-General and Register are hereby Surveyor-General and Register.
 authorized to issue all the necessary instructions, and to pre-
 pare and order the printing of all the blanks needed for the
 proper fulfilment of the requirements of this Act. In all cases
 where a contest shall arise for the approval of a survey or loca-
 tion before the Surveyor-General, or for a certificate of purchase,
 or other evidence of title, before the Register, that officer shall,
 when such contest is a question as to the survey, or purely a
 question of fact, determine the same according to the facts, and

Powers and
duties.

give his approval, or issue the certificate of purchase, or other evidence of title, as he may so determine. When, in the judgment of the Surveyor-General or Register, a question of law alone, or of law and fact, is involved in such case, or when either party shall demand a trial of such question in the Courts of this State, the said Surveyor-General or Register shall enter such demand, with a statement of the case, together with a direction that the parties are referred to the District Court of the proper district for a final determination of such conflicting claim or contest, in the proper record book of his office. Either party may bring his action in the District Court of the county in which the land in question is situated, to determine such conflicting claim; and the proffer of a certified copy of the entry, made by the Surveyor-General or Register, shall give to said District Court full and complete jurisdiction to hear, try, and determine said conflicting claims. Upon the filing with the Surveyor-General or Register a copy of the final judgment of said District Court, the officer shall give his approval, or issue the certificate of purchase, or other evidence of title, in accordance with such judgment.

SEC. 28. No location of land made under the provisions of this Act, or any proceedings in accordance therewith, shall be construed to give any title to, interest in, or right of possession or occupation of any of the Public Lands in this State, unless the person for whose benefit the location is made or the proceedings taken shall have first taken and subscribed the following oath or affirmation:

Oath of
purchaser.

"I do solemnly swear (or affirm, as the case may be) that I will support, protect, and defend the Constitution and Government of the United States against all enemies, whether domestic or foreign, that I will bear true faith, allegiance, and loyalty to the said Constitution and Government, any ordinance or law of any State, Convention, or Legislature, or any rule or obligation of any society or association, or any decree or order from any source whatsoever, to the contrary notwithstanding; and that I will support the Constitution of the State of California; and, further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever, and that this oath (or affirmation, as the case may be,) is not taken for the purpose of acquiring title to, interest in, or possession of any land in order that such title, interest, or possession may be transferred to any person or persons, to enable such person or persons to evade the provisions of any law of the State of California, or any regulation of the General Land Office at Washington."

Certificate of
oath to be
indorsed, etc

SEC. 29. The certificate of the oath or affirmation prescribed in the preceding section shall be indorsed on a description of the land over which ownership or control is sought to be acquired, setting forth when the land has been surveyed by the General Government, the section and subdivision of section, township, and range, in which such land is situated, and the said description, with the certificate of the oath or affirmation indorsed as prescribed by this section, shall be filed in the office of the Recorder of the county in which the land described is situated, and the right of the person making the oath or affir-

mation shall not be deemed to attach to such land by virtue of any proceedings under this Act until the moment of the filing the description and certificate of the oath or affirmation in the office of the County Recorder, and no certificate of purchase or patent shall be issued to any person for lands located under this Act until a certified copy of said description and oath or affirmation has been filed in the office of the State Register.

SEC. 30. This Act shall not apply to the Marsh and Tide Lands upon the city front and within five miles of the City and County of San Francisco, and of the City of Oakland, and one mile of the State Prison at San Quentin. Act not to apply to certain lands.

SEC. 31. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.
