

5-25-2016

California Legislature Amending Act of 1859, Stats 1859, Chap. 314, p. 340

Follow this and additional works at: https://digitalcommons.csumb.edu/hornbeck_usa_3_c



Part of the [Education Commons](#), [History Commons](#), [Law Commons](#), [Race, Ethnicity and Post-Colonial Studies Commons](#), and the [Social and Behavioral Sciences Commons](#)

Recommended Citation

"California Legislature Amending Act of 1859, Stats 1859, Chap. 314, p. 340" (2016). *Swamp and Overflow Lands Statutes*. 3.

https://digitalcommons.csumb.edu/hornbeck_usa_3_c/3

This Article is brought to you for free and open access by the California Legislation and Statutes at Digital Commons @ CSUMB. It has been accepted for inclusion in Swamp and Overflow Lands Statutes by an authorized administrator of Digital Commons @ CSUMB. For more information, please contact digitalcommons@csumb.edu.

CHAP. 314

3. AMENDING ACT OF 1859 - Stats 1859, p. 340

Date: April 18, 1859

Character: Swamp and overflowed lands, SALT MARSH

Procedure for Purchase: Person eligible to become a citizen; file with County Surveyor of county in which land is located; survey land; \$1 per acre paid to County Treasurer.

Acreage Limitation: 640, which includes all land purchased under 1855 Act. $\frac{1}{4}$ sections or no more than $\frac{1}{2}$ mile front on bay or navigable stream.

Exclusion: Same as 1858 law.

in part satisfaction of the grant of the five hundred thousand acres of land donated to this State for school purposes, by Act of Congress.

Fees. SEC. 6. The Register may charge, and receive, for issuing the certificate required by section three of this Act, the sum of three dollars.

Repealing clause. SEC. 7. All Acts, and parts of Acts, conflicting with the provisions of this Act, are hereby repealed.

Lands exempted. SEC. 8. Nothing in this Act shall be construed so as to authorize or confirm the location or purchase of any of the mineral, swamp, or overflowed lands in this State, as school lands.

(314)

CHAP. CCCXIV.—An Act amendatory of an Act entitled "An Act to provide for the Sale and Reclamation of the Swamp and Overflowed Lands of this State," approved April twenty-first, one thousand eight hundred and fifty-eight.

[Approved April 18, 1859.]

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

SECTION 1. Section second of this Act is hereby amended so as to read as follows:

File an affidavit.

Section two—Any person who is, or may be, entitled, by the laws of this State, to become a citizen thereof, wishing to purchase land under the provisions of this Act, shall file an affidavit in the office of the County Surveyor of the County in which the land sought to be purchased, or the larger portion thereof, is situated, that he has not purchased any other land under the provisions of this Act, or under the provisions of an Act passed April twenty-eighth, one thousand eight hundred and fifty-five, entitled "An Act to provide for the sale of the swamp and overflowed lands belonging to this State," which, with the lands sought to be purchased, shall exceed six hundred and forty acres; and that he or she has no knowledge of any other legal or equitable claim than his own; and that every forty-acre lot, or its equivalent subdivision, of the land sought to be purchased, is the greater part swamp or swampy, or subject to inundation at the planting, growing, or harvesting seasons, so as to endanger, injure, or destroy, the crops, taking the average season for a reasonable number of years, prior to the year one thousand eight hundred and fifty, as a rule of determination. He shall then cause the land sought to be purchased, to be surveyed, or, in case of a previous legal survey, shall cause said survey to be approved and certified by the County Surveyor of the County in which such land, or the greater portion thereof, is situated.

SEC. 2. Section four of said Act is hereby amended so as to read as follows:

\$1 per acre. Section four—The purchaser of land, under the provisions of

this Act, shall, within thirty days after the record of the approval of the Surveyor-General, as aforesaid, and upon presentation of such plot and field notes, for record, approved by the Surveyor-General, as aforesaid, pay to the County Treasurer of said County, one dollar per acre, for all land contained in such survey, which may be paid in money, and take said Treasurer's duplicate receipt for the same, and have such receipt recorded in the office of the County Auditor, immediately upon the receipt of the same, and it shall be the duty of the County Auditor to transmit a copy of said receipt, to the Register of the Land Office, as soon as it is recorded in his office.

Any person, or persons, however, wishing to purchase lands under the provisions of this Act, may, if preferred by such purchaser, or purchasers, pay twenty per cent. of the principal, and ten per cent. interest, per annum, on the balance, yearly in advance, for the term of five years; said twenty per cent. of the principal and first year's interest on the balance to be paid at the time, and in the manner, as above provided for payment in full; *Provided*, that if any person, or persons, purchasing lands upon said credit of five years, shall fail, or neglect, to pay twenty per cent. and first year's interest, within thirty days from record of approval of the Surveyor-General by the County Surveyor, or shall fail to pay the interest yearly in advance, or shall fail to pay the principal within the said term of five years from date of purchase, such neglect, or failure, shall work a forfeiture of such lands and the partial payments made, and the same shall be re-sold, as if no purchase had been made. Interest, in all cases, shall be computed from the date of the approval of the Surveyor-General, of the survey, which shall be held to be the date of purchase. And all persons purchasing lands, shall, at the time of making their first payment, pay to the County Treasurer the fee allowed by law for a certificate of purchase; said fee to be subject to the order of the Register of the State Land Office.

20 per cent.
of principal,
with interest

Sec. 3. Section eight is hereby amended so as to read as follows:

Section eight—No person shall become the original purchaser, ^{Not more than 640 acres.} under the provisions of this Act, of more than six hundred and forty acres, and the same must be taken in quarter-sections, according to the United States survey, except as hereinafter provided, for the protection of actual settlers; where such section is impracticable, or where smaller subdivisions are found necessary, in order to make up six hundred and forty acres, or the number of acres sought to be purchased, and so certified by the County Surveyor, then, and in that case, the next legal subsection, or fractional section, may be taken; *Provided*, the whole does not exceed six hundred and forty acres, or measure more than one-half mile front, on any bay or navigable stream.

Sec. 4. Section nine is hereby amended so as to read as follows:

Section nine—Any person, or persons, having, or holding, a settler's claim, under the laws of this State for the protection of settlers, or having, or holding, a claim by right of actual possessors.

any swamp lands, excepted from the provisions of the Act entitled "An Act to provide for the sale of the swamp and overflowed lands belonging to this State," passed April twenty-eighth, one thousand eight hundred and fifty-five, upon any of the swamp and overflowed lands embraced within the provisions of this Act, shall be protected in his, her, or their possession, according to the boundary-lines of said possession, or location; *Provided*, that he, she, or they, shall, within twelve months from and after the passage of this Act, comply with all the other requirements of purchasers, under the provisions of this Act; *Provided, further*, that the said claim shall not exceed six hundred and forty acres, or measure more than one-half mile front, by legal subdivision, on any bay, lake, or navigable stream.

Sec. 5. Section ten of said Act is hereby amended so as to read as follows:

In case of
contest.]

Section ten—In all cases where a contest for the certificate of purchase, or other evidence of title, to the same tract of land, shall arise before the Register, when such contest is purely as to the survey, the Register shall determine the same, according to the facts, and issue his certificate therefor, to the person whom he shall determine to be entitled thereto. Whenever, in the judgment of the Register, a question of law alone, or of law and fact, is involved in such contest, or when either party shall demand a trial of such questions in the Courts of the State, said Register shall enter such judgment, or demand, of either of the parties, in the record of the proceedings had before him, together with a direction that the parties to such contest are referred to the Courts of the State for a legal determination of said contest, or conflicting claim. Either party to such contest may bring his action in the District Court of the County in which the land in dispute is situate, to determine such conflicting claim, and the proffer of a certified copy of said entry made by the Register, and upon service and return of process, as in other civil cases, shall give to said District Court full and complete jurisdiction to hear, try, and determine, said conflicting claim. Upon filing with the State Register a certified copy of the final judgment or decision of said District Court, said State Register shall issue his certificate, or other evidence of title, in accordance with such decision. For services to be rendered by the Receiver, as prescribed by this Act, he shall be entitled to demand and receive, as a fee, the sum of ten dollars, in each case, to be deposited, equally, in advance, by the parties contesting, and on the filing, hearing, or termination, of such contest, when finally determined by him—or on certifying the proceedings had by him, as aforesaid, it shall be lawful for him to assess equally, in whole or in part, the above sum to either of the parties contestant, and for each certificate of purchase or patent he shall be entitled to demand the sum of five dollars.

Taxable.

SEC. 6. All lands purchased under the provisions of this Act shall be held to be taxable from and after date of purchase.