

THE TIMBER CULTURE ACTS 1873 - 1891

FOREWORD

BY

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The Timber Culture Act of 1873 was enacted to encourage the growing of trees on “western prairies.” Any person who planted, protected and kept healthy trees on forty acres of a quarter-section (160 acres) land for ten years would be deeded that land. But growing trees was difficult and the new forests envisioned by Congress did not materialize. Worse, the law was widely abused by claimants. The Timber Culture Act of 1873 was revised in 1874, again in 1878, and repealed in 1891.

The 1874 amendments tightened eligibility by requiring claimants to satisfy the age and citizenship qualifications in the 1841 Pre-emption Act and the 1862 Homestead Act, and also established a schedule for “breaking” the prairie and “planting trees” that would be relaxed by the 1878 amendments.

A claimant to 160 acres under the 1874 act had eight years to “plant, protect and keep in a healthy growing condition” forty acres of timber. He or she was required to “break” ten acres of land the first year; ten acres the second; and twenty the third; in addition, he or she was required to “plant” ten acres of trees the second year; ten acres the third year, and twenty acres the fourth year. A timber claimant could claim only one 160-acre tract in each section.

The forty acre requirement was reduced in 1878 to ten acres, to be planted and maintained for eight years according to guidelines similar to those in the 1874 act. When the limit of 160 acres was claimed, five acres were to be broken or plowed the first year, and

another five the second year; in addition, in the second year, the acreage broken or plowed the first year was to be cultivated (which differs from planting); in the third year, the first five acres were to be planted with trees, and second five acres cultivated; and in the fourth year trees would be planted on the second five acres, making a total of ten acres in trees. Not less than 2,700 trees were to be planted on each of the ten acres (a total of 27,000 trees), and at least 675 “living and healthy trees” were required on each acre when the claimant applied for a “patent” or deed to that land at the end of eight years. Failure to comply with these procedures could result in cancellation after one year. The 1878 amendments permitted the total claim to cover smaller tracts as long as the aggregate did not exceed 160 acres; and they also allowed exceptions or extensions for grasshopper devastation or the failure of seeds or cuttings to germinate.

At the end of eight years from the date of entry, the claimant filed a final proof that the necessary conditions had been fulfilled (in some cases, five additional years were allowed to make proof, or a total of thirteen years from the date of entry). The claimant submitted an affidavit corroborated by two witnesses before the final certificate and patents to the land were issued.

But Timber Act claimants did not always follow the letter and spirit of the law. Professor Everett Dick describes how easily it was avoided, abused and manipulated:

At best, even if a man went through the motions of fulfilling the requirements of the law, it was primarily a means of adding a quarter section his holdings. In this way the typical pioneer was able to secure 480 acres means of the Homestead, Pre-emption, and Timber Culture acts. A common procedure by those who made an attempt to fulfill the requirement of the Timber Culture Act was to plow a furrow, stick cottonwood cuttings erect in the bottom of the furrow, and cover them with the next round of the plow, allowing the switches to stand erect; then they skipped a few furrows and repeated the process. The more conscientious made an effort to keep down the weeds between the rows. Astonishing as it

may be, if the earth was marshy or wet, the cottonwood sticks formed roots and grew. In a few places enough effort was put forth to actually plant trees, and a lively demand was created for seedlings.....By and large, however, the attempt to make trees grow in the semiarid region was a mockery of nature.....In the semiarid regions, where trees did not grow, it was particularly impossible to fulfill the requirements of the law.....As a rule, timber-culture claimants did not intend to raise trees but merely wanted to add a quarter-section to their holdings or sell it at an advance. Many of the first settlers' tree claims were sold to the next comers who purchased rather than take homesteads or pre-emptions.

The Timber Culture Act lent itself to the rancher more readily than the Homestead Act because residence and improvements were not required; it was necessary only for the cowman to have his cowboys allow their names to be used and for them to perjure themselves at the appropriate moment. There was no building of cabins, even fragile shacks, and no anxiety that someone might be watching to see that the entryman spent a night on claim now and then. Many tree claims were entered, relinquished after three years, and re-entered by another employee.....In 1888 the land officer at Sidney, Nebraska, stated that there had never been a final proof for a timber-culture claim in that district. The routine he said, was enter, hold, relinquish, change claims; enter, hold, relinquish, and so on; indefinitely holding and keeping quantities of the public domain from the newcomers until the claims became valuable.

Almost every section of a ranch had a timber-culture claim in 1885, and the other three quarter-sections often were held by fraudulent use of other land-law provisions, or by sheer force. According to the [General Land-Office] Commissioner's report for that year it was estimated that 100 per cent of the pre-emptions and 95 per cent of the timber-culture claims were fraudulent. In the eyes of the

land officers, the latter act was more harmful than either the Homestead or the Pre-emption act because it permitted the manipulations that kept large areas tied up, and it played into the hands of the big interests. Thousands of settlers were prevented from exercising their legal right to acquire homes. On the other hand, it was a godsend to the rancher, who could not legally secure the land he needed.

Cattlemen, however, were not the only ones who misused the Timber Culture Act. The purpose of the law, of course, was to encourage the growing of trees, and the statute stated that land, to be admissible for taking under the act, had to be “devoid of timber.” But by means of the ever useful, ever pliable frontier oath, valuable coal lands—and incredible as it may seem, even timberlands—were separated from the government by the use of this act. The law required the entryman at the time of proof to show 6,750 living and thriving trees as a result of his planting and cultivation. Commissioner Sparks, in his report for 1885, noted that he had found a predecessor’s ruling that a partially forested tract, on which not more than 6,750 trees were growing at the time of entry, could be entered as a timber-culture claim, allowing a man to plant a few more trees and fulfill the requirements of the Timber Culture Act—a complete reversal of the intent of the law....*

The 1873 Timber Culture Act, the amendments of 1874 and 1878, and the repeal by the Land Revision Act of 1891 follow.

* Everett Dick, *The Lure of the Land: A Social History of the Public Lands from the Articles of Confederation to the New Deal* 224-227 (Univ. of Nebraska Press, 1970)(citing sources).

Timber Culture Act of 1873

17 Stat. at Large, ch. 277, at p. 605 (1873)

CHAP. CCLXXVII---An Act to encourage the
Growth of Timber on Western Prairies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall plant, protect, and keep in a healthy, growing condition for ten years forty acres of timber, the trees thereon not being more than twelve feet apart each way on any quarter-section of any of the public lands of the United States shall be entitled to a patent for the whole of said quarter-section at the expiration of said ten years, on making proof of such fact by not less than two credible witnesses; *Provided*, That only one quarter in any section shall be thus granted.

Section 2. That the person applying for the benefit of this act shall, upon application to the register of the land-office in which he or she is about to make such entry, make affidavit before said register or receiver that said entry is made for the cultivation of timber, and upon filing said affidavit with said register and receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified: *Provided however*, That, no certificate shall be given or patent issue therefor until the expiration of at least ten years from the date of such entry; and if at the expiration of such time, or at any time within three years thereafter, the person making such entry, or if he or she be dead, his or her heirs or legal representatives, shall prove by two credible witnesses that he, she, or they have planted, and for not less than ten years have cultivated and protected such quantity and character of timber as aforesaid, they shall receive the patent for such quarter-section of land.

Section 3. That if at any time after the filing of said affidavit, and prior to the issuing of the patent for said land, it shall be proven after due notice to the part making such entry and claiming to cultivate such timber, to the satisfaction of the register of the land-office that such person has abandoned or failed to cultivate, protect and keep in good condition such timber, then, and in that event, said land shall revert to the United States.

Section 4. That each and every person who, under the provisions of an act entitled "An act to secure homesteads to actual settlers on the public domain" approved May twentieth, eighteen hundred and sixty-two, or any amendment thereto, having a homestead on said public domain, who, at the end of the third year of his or her residence thereon, shall have had under cultivation, for two years, one acre of timber, the trees thereon not being more than twelve feet apart each way, and in a good, thrifty condition, for each and every sixteen acres of said homestead, shall upon due proof of said fact by two credible witnesses receive his or her patent for said homestead.

Section 5. That no land acquired under provisions of this act shall, in any event, become liable to the satisfaction of any debt or debts contracted prior to the issuing of patent therefore.

Section 6. That the commissioner of the general land-office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and the receivers of the several land-offices shall be entitled to receive the same compensation for any lands entered under the provisions of this that they are now entitled to receive when the same quantity of land is entered with money.

Section 7. That the fifth section of the act entitled "An act in addition to an act to punish crimes against the United States, and for other purposes" approved March third, eighteen hundred and fifty-seven, shall extend to all oaths, affirmations, and affidavits required or authorized by this act.

Approved, March 3, 1873.

1874 AMENDMENTS
TO THE TIMBER CULTURE ACT OF 1873

18 Stat. at Large, ch. 55, at p. 21 (1874)

CHAP. 55.---An act to amend the act entitled
"An act to encourage the growth of timber on
Western Prairies."

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the act entitled "An act to encourage the growth of timber on western prairies" approved eighteen hundred and seventy-three, be, and the same is hereby, amended so as to read as follows: That any person who is the head of a family or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration to become such, as required by the naturalization laws of the United States, who shall plant, protect, and keep in a healthy, growing condition for eight years, forty acres of timber, the trees thereon not being more than twelve feet apart each way, on any quarter-section of any of the public lands of the United States, or twenty acres on any legal subdivision of eighty acres, or ten acres on any legal subdivision of forty acres, or one-fourth part of any fractional subdivision of land less than forty acres, shall be entitled to a patent for the whole

of said quarter-section, or of such legal subdivision of eighty or forty acres, or fractional subdivision of less than forty acres, as the case may be, at the expiration of said eight years, on making proof of such fact by not less than two credible witnesses: *Provided*, That not more than one-quarter of any section shall be thus granted, and that no person shall make more than one entry under the provisions of this act, unless fractional subdivisions of less than forty acres are entered which, in the aggregate, shall not exceed one quarter-section.

Section. 2. That the person applying for the benefit of this act shall, upon application to the register of the land-district in which he or she is to make such entry, make affidavit before the register, or the receiver, or some officer authorized to administer oaths in the district where the land is situated, who is required by law to use an official seal, that said entry is made for the cultivation of timber, and upon filing said affidavit with said register and said receiver, and payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified; and the party making an entry of a quarter-section under the provisions of this act shall be required to break ten acres of the land covered thereby the first year, ten acres the second year, and twenty acres the third year after date of entry, and to plant ten acres of timber the second year, ten acres the third year, and twenty acres the fourth year after date of entry. A party making an entry of eighty acres shall break and plant at the times hereinbefore prescribed, one half of the quantity required of a party who enters a quarter-section, and a party entering forty acres shall break and plant, at the times hereinbefore prescribed, one quarter of the quantity required of a party who enters a quarter-section, or a proportionate quantity for any smaller fractional subdivision: *Provided, however*, That no final certificate shall be given or patent issued for the land so entered until the expiration of eight years from the date of such entry; and, if at the expiration of such time, or at

any time within five years thereafter, the person making such entry, or if he or she be dead, his or her heirs or legal representatives shall prove, by two credible witnesses, that he, or she, or they have planted, and, for not less than eight years, have cultivated and protected such quantity and character of timber as aforesaid, they shall receive a patent for such quarter-section or legal subdivision of eighty or forty acres of land, or for any fractional quantity of less than forty acres, as herein provided. And in case of the death of a person who has complied with the provisions of this act for the period of three years, his heirs or legal representatives shall have the option to comply with the provisions of this act, and receive at the expiration of eight years, a patent for one hundred and sixty acres, or receive without delay a patent for forty acres, relinquishing all claim to the remainder.

Section 3. That if at any time after the filing of said affidavit, and prior to the issuing of the patent for said land, the claimant shall abandon the land, or fail to do the breaking and planting required by this act, or any part thereof, or shall fail to cultivate, protect, and keep in good condition such timber, then, and in that event, such land shall be subject to entry under the homestead laws, or by some other person under the provisions of this act: *Provided* That the party making claim to said land, either as a homestead settler or under this act, shall give, at the time claimant of filing his application, such notice to the original claimant as shall be prescribed by the rules established by the Commissioner of the General Land-Office, and the rights of the parties shall be determined as in other contested cases.

Section 4. That each and every person who, under the provisions of the act entitled "An act to secure homesteads to actual settlers on the public domain" approved May twentieth, eighteen hundred and sixty-two, or any amendment thereto, having a homestead on said public

domain, who, at any time after the end of the third year of his or her residence thereon shall, in addition to the settlement and improvements now required by law, have had under cultivation, for two years, one acre of timber, the trees thereon not being more than twelve feet apart each way, and in a good thrifty condition, for each and every sixteen acres of said homestead, shall, upon due proof of such fact by two credible witnesses receive his or her patent for said homestead.

Section 5. That no land acquired under the provisions of this act shall for prior debts, in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of certificate therefor.

Section. 6. That the Commissioner of the General Land-Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and the receivers of the several land-offices shall each be entitled to receive two dollars at the time of entry, and the same sum when the claim is finally established and the final certificate issued.

Section. 7. That the fifth section of the act entitled "An act in addition to an act to punish crimes against the United States, and for other purposes," approved March third, eighteen hundred and fifty-seven, shall extend to all oaths, affirmations, and affidavits required or authorized by this act.

Section. 8. That parties who have already made entries under the act approved March third, eighteen hundred and seventy-three, of which this is amendatory, shall be permitted to complete the same upon full compliance with the provisions of this act.

Approved, March 13, 1874.

1878 AMENDMENTS TO THE TIMBER CULTURE
ACT OF 1874

20 Stat. at Large, ch. 190, p. 113 (1878)

CHAP. 190---An act to amend an act entitled
"An act to encourage the growth of timber
on the Western Prairies."

Be it enacted by the Senate and House of Representatives of the United States of America in a Congress assembled, That the act entitled "An act to amend the act entitled 'An act to encourage the growth of timber on Western Prairies'", approved March thirteenth, eighteen hundred seventy-four, be and the same is hereby amended so as to read as follows: That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, who shall plant, protect, and keep in a healthy, growing condition for eight years ten acres of timber, on any quarter-section of any of the public lands of the United States, or five acres on any legal subdivision of eighty acres, or two and one half acres on any legal subdivision of forty acres or less, shall be entitled to a patent for the whole of said quarter-section, or of such subdivision of eighty or forty acres, or fractional subdivision of less than forty acres, as the case may be, at the expiration of said eight years, on making proof of such fact by not less than two credible witnesses, and a full compliance of the further conditions as provided in section two: *Provided further,* That not more than one quarter of any section shall be thus granted, and that no

person shall make more than one entry under the provisions of this act.

Section. 2 . That the person applying for the benefits of this act shall, upon oath on applies to the register of the land-district in which he or she is about to make such entry, make affidavit, before the register or the receiver, or the clerk of some court of record, or officer authorized to administer oaths in the district where the land is situated ; which affidavit shall be as follows, to wit : I, _____ , having made my application, number _____, for an entry under the provisions of an act entitled "An act to amend an act entitled 'An act to encourage the growth of timber on the Western prairies'" approved 187_, do solemnly swear (or affirm) that I am the head of a family (or over twenty-one years of age), and a citizen of the United States (or have declared my intention to become such); that the section of land specified in my said application is composed exclusively of prairie lands, or other lands devoid of timber; that this filing and entry is made for the cultivation of timber, and for my own exclusive use and benefit; that I have made the said application in good faith, and not for the purpose of speculation, or directly or indirectly for the use or benefit of any other person or persons whomsoever; that I intend to hold and cultivate the land, and to fully comply with the provisions of this said act; and that I have not heretofore made an entry under this act, or the acts of which this is amendatory. And upon filing said affidavit with said register and said receiver and on payment of ten dollars, if the tract applied for is more than eighty acres; and five dollars if it is eighty acres or less, he or she shall thereupon be permitted to enter the quantity of land specified; and the party making an entry of a quarter-section under the provisions of this act shall be required to break or plow five acres covered thereby planted annually, the first year, five acres the second year, and to cultivate to crop or otherwise the five acres broken or plowed the first year; the third year he or she shall cultivate to crop or

otherwise the five acres broken the second year, and to plant in timber, seeds, or cuttings the five acres broken or plowed, and to cultivate and put in crop or otherwise the remaining five acres, and the fourth year to plant in timber, seeds, or cuttings the remaining five acres. All entries of less quantity than one quarter-section shall be plowed, planted, cultivated and planted to trees, tree-seeds, or cuttings, in the same manner and in the same proportion as hereinbefore provided for a quarter-section. *Provided, however,* That in case such trees, seeds, or cuttings shall be destroyed by grasshoppers, or by extreme and unusual drouth, for any year or term of years, the time for planting such trees, seeds, or cuttings shall be extended one year for every such year that they are so destroyed. *Provided further,* That the person making such entry shall, before he or she shall be entitled to such extension of time, file with the register and the receiver of the proper land-office an affidavit, corroborated by two witnesses, setting forth the destruction of such trees, and that, in consequence of such destruction, he or she is compelled to ask an extension of time, in accordance with the provisions of this act: *And provided further,* That no final certificate shall be given, or patent issued, for the land so entered until the expiration of eight years from the date of such entry; and if, at the expiration of such time, or at any time within five years thereafter, the person making such entry, or, if he or she be dead, his or her heirs or legal representatives, shall prove by two witnesses that he or she or they have planted, and, for not less than eight years, have cultivated and protected such quantity and character of trees as aforesaid; that not less than twenty-seven hundred trees were planted on each acre and that at the time of making such proof that there shall be then growing at least six hundred and seventy-five living and thrifty trees to each acre, they shall receive a patent for such tract of land.

Section 3. That if at any time after the filing of said affidavit, and prior to the issuing of the patent for said land,

the claimant shall fail to comply with any of the requirements of this act, then and in that event such land shall be subject to entry under the homestead laws, or by some other person under the provisions of this act. *Provided*, That the party making claim to said land, either as a homestead-settler, or under this act, shall give at the time of filing his application, such notice to the original claimant as shall be prescribed by the rules established by the Commissioner of the General Land Office; and the rights of the parties shall be determined as in other contested cases.

Section 4. That no land acquired under the provisions of this act shall, become liable to the satisfaction of any debt or debts contracted prior to the issuing of the final certificate therefor.

Section 5. That the Commissioner of the General Land Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land-offices shall each be entitled to receive two dollars at the time of entry, and the like sum when the claim is finally established and the final certificate issued.

Section 6. That the fifth section of the act entitled "An act in addition to an act to punish crimes against the United States, and for other purposes", approved March third, eighteen hundred and fifty-seven, shall extend to all oaths, affirmations, and affidavits required or authorized by this act.

Section 7. That parties who have already made entries under the acts approved March third, eighteen hundred and seventy-three, and March thirteenth, eighteen hundred and seventy-four, of which this is amendatory shall be permitted to complete the same upon fall compliance with the

provisions of this act; that is, they shall, at the time of making their final proof, have had under cultivation, as required by this act, an amount of timber sufficient to make the number of acres required by this act.

Section 8. All acts and parts of acts in conflict with this act are hereby repealed .

Approved, June 14, 1878.

THE REPEAL OF THE TIMBER CULTURE ACT
BY
THE LAND REVISION ACT OF 1891

26 Stat. at Large, ch. 561, p. 1095 (1891)

CHAP. 561.--- An act to repeal timber-culture laws,
and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assemble, That an act entitled "An act to amend an act entitled 'An act to encourage the growth of timber on the Western prairies,'" approved June fourteenth eighteen hundred and seventy eight, and all laws supplementary thereto or amendatory thereof, be, and the same are hereby repealed: Provided, That this repeal shall not affect any valid rights heretofore accrued or accruing under said laws, but all bona fide claims lawfully initiated before the passage of this act maybe perfected upon due compliance with law, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this act had not been, passed: And provided further, That the following words of the last clause of section two of said

act, namely, "That not less than twenty-seven hundred trees were planted on each acre," are hereby repealed: *And provided further*, that in computing the period of cultivation the time shall run from the date of the entry, if the necessary acts of cultivation were performed within the proper time: And provided further, That the preparation of the land and the planting of trees shall be construed as acts of cultivation, and the time authorized to be so employed and actually employed shall be computed as a part of the eight years of cultivation required by statute: *Provided*, That any person who has made entry of any public lands of the United States under the timber-culture laws, and who has for a period of four years in good faith complied with the provisions of said laws and who is an actual bona fide resident of the State or Territory in which said land is located shall be entitled to make final proof thereto, and acquire title to the same, by the payment of one dollar and twenty five cents per acre for such tract, under such rules and regulations as shall be prescribed by the Secretary of the Interior, and registers and receivers shall be allowed the same fees and compensation for final proofs in timber-culture entries as is now allowed by law in homestead entries: *And provided further*, That no land acquired under the provision of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the final certificate therefor.

. Sections 2-24 omitted.

Effective March 3, 1891. ■

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Posted MLHP: March 9, 2012.