

Rhodesian Land Grants and Quitrents 1890 - 1898

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The objective and intention of the Company in making liberal grants of land to companies and individuals in the early years of the Territory was to secure the beneficial occupation of the land, and that unless the contrary was distinctly stated, every grant made was subject to such a condition. With few exceptions, grantees needed to be white settlers or businesses owned by them.

OCCUPATION OF MASHONALAND

The Rudd Concession signed on 30th October 1888 was an agreement between Lobengula and agents for Cecil Rhodes which granted exclusive mining rights to the agents over all metals and minerals in Lobengula's territories (Mashonaland). There was a weakness however, in that it made no reference to land rights other than rights in connection with mining.

The Royal Charter was granted to the BSACo on 29th October 1889.

The Occupation of Mashonaland was marked by a Flag ceremony at Fort Salisbury on 12th September 1890.

An Order in Council on 9th May 1891 declared the area (Mashonaland) to be a protectorate.

The Head Office of the British South Africa Company was in London; the Southern Africa HQ moved from Kimberley to Cape Town at the end of May 1891.

The boundary dispute (between Mozambique and Mashonaland) was finally settled by the Anglo-Portuguese Convention signed in Lisbon on 11th June 1891 though it took several years to finally define the whole border.

Lobengula regretted the Rudd Concession, feeling deceived and pressured and began exploring other alliances to weaken Rhodes's monopoly. Edouard Lippert, a Johannesburg businessman, had been attempting to gain a concession from Lobengula since early 1888 and on 4th April 1891 his agent Renny-Tailyour reported that he and Lobengula had completed an agreement. On 12th September 1891 Rudd and Lippert agreed the BSACo would buy the concession provided that it was in writing. Believing that Lippert was acting against Rhodes rather than on his behalf, and in dubious circumstances, Lobengula made his mark on a concession dated 17th November 1891, granting *"the sole and exclusive right and privilege for 100 years to lay out, grant and sell farms, townships, building plots, and grazing areas"*. Lippert sold these rights to Rudd on 24 December 1891 and Rudd transferred them to the BSACo on 11th February 1892. This was recognised by the Colonial Office in March 1892. The BSACo now had undisputed land and mineral rights in Mashonaland and long-delayed grants of farms to former Pioneers could proceed.

Land Grants in Mashonaland

In all cases it was made a condition that land could only be selected with the approval of the Administrator, and that it should not be selected on what was called "gold belt," the geological formation in which gold is expected to be found

a) Pioneer Grants

By a contract made in Cape Town in January 1890 between the British South Africa Company and Major Frank Johnson, in addition to a money payment and a special grant of land to himself, every member of his force and staff who undertook to occupy Mashonaland (thereafter called the pioneers), was promised an eventual grant of 3,000 acres (or 1,500 morgen) of surface land, on the condition of reservation of all minerals by the British South Africa Company, of personal occupation and Mili tenure*, and the land to revert to the British South Africa Company if the grantee absented himself from it at any time without the Company's permission, and *"under such laws as may from time to time be promulgated by the Company."*

* Mili tenure, or military tenure, refers to land granted under conditions of military service or occupation requiring continued loyalty or service to the Crown.

In the case of the pioneers only, the condition of occupation was afterwards withdrawn. This facilitated speculative landholding and resale, which became common among early settlers.

b) Police Grants

Subsequently, it was conceded to the members of the police force who accompanied the expedition and were engaged for two years, that if after their honourable discharge at any time they should be in a position to take up and beneficially occupy a farm and do so within one year (subsequently extended to three years), they also should be allowed to do so on the above terms. Unlike other entitlements, Police Grants were not transferrable and were only available to the ex-policeman. Because of this restriction, a Government Notice needed to be issued on the 18th January, 1898 (No 19 of 1898), giving a list of

members of the police force of 1890-91, who appeared never to have made use of the privilege to obtain farms by personal occupation and it was notified that these privileges had lapsed on the 31st December 1894 and were no longer valid. This was published to prevent people being imposed upon by the attempted sale of these police rights, which were personal and not transferable, and to obviate trouble to purchasers or to the Company by enquiries in each separate case regarding a generally known fact.

c) Other Grants

In special instances this same concession was afterwards made to Europeans who entered the country and applied in writing, expressing their ability and intention to at once occupy farms with stock, implements, etc.

Conditions applying to the grants of farms to be made in Mashonaland in 1892 were published in Cape Colony and Rhodesia in that year, and in the report of the British South Africa Company dated 24th November 1892, page 25. After 1892 these conditions were in special instances accorded but they always included *bona fide* personal and beneficial occupation. In other than cases of grants exempted from what is called "*the occupation condition*", that condition was inserted in title deeds in this form, "*There shall be bona fide and beneficial occupation of the land*".

During the period up to March 1894, 386 Rights of one sort or another had been issued in Mashonaland with a further 104 rights issued during the year ended 31st March 1895.

Purchase of Land in Mashonaland in 1894

Land could be purchased from the British South Africa Company in Mashonaland at one shilling and sixpence per morgen, subject to the following conditions :

1. The payment of an Annual Quitrent in advance of £3 per 1,500 morgen, and four shillings for every additional 100 morgen or portion thereof. The Company did not bind themselves to exceed in any one grant 3,000 morgen.
2. The reservation of all precious stones, minerals and mineral oils, with the right of ingress and egress.
3. The reservation of the right to make roads, railways, and telegraphs over the land, and to take material for these purposes without compensation except for improvements actually interfered with, which will be paid for upon valuation, recourse being had to arbitration if necessary.
4. The right to resume any land required for mining or public purposes on payment for the same at the rate of £3 per morgen, and compensation for wood, water and improvements, to be determined, if necessary, by arbitration.
5. Payment of the Survey and issue of title expenses.
6. The grantee to occupy the land within a period of five months after due notification of the grant, and to continue in occupation thereof by himself or by some European substitute duly approved of by the Administrator provided, however, that if after the expiration of a period of three years from the date of such grant, the grantee shall prove to the satisfaction of the Administrator that he has occupied the land in a bona fide and beneficial manner, and has, in addition, erected thereon buildings to the value of at least £200, then occupation of the said land shall cease to be a condition of its tenure.

OCCUPATION OF MANICALAND

Dunbar Moodie (who lived in Natal) and his cousin Thomas (Groot Tom) Moodie, a farmer in the Orange Free State, had visited the Victoria Falls and had met with Lobengula during the latter part of the 1880s. In 1891 Dunbar was managing the Sabi Ophir Gold Mining Company near Penhalonga. He resigned and accompanied Dr Jameson on a six-weeks ride from Penhalonga through Manicaland to Manhlagazi in Southern Mozambique to visit the despotic paramount Chief Gungunhana, which resulted in the Gazaland Concession.

During this trip he was most impressed by the agricultural potential of the region and when the party eventually disbanded at Delagoa Bay, Dunbar embarked on a boat for Durban, from where he travelled to see Groot Tom in Bethlehem in the Orange Free State. There he unfolded his tale of the rich farming prospects of Gazaland which he described as the loveliest country he had ever seen, this gem of the north, this Promised Land. Farming had not prospered for Thomas and, as he had a large family, the possibility of trekking to a fresh environment where there would be enough land to settle all his sons made him keenly interested. They also persuaded his neighbours to consider the move.

Land Grants in Gazaland

In March 1892 Dunbar met with Cecil Rhodes in Cape Town to discuss this idea with him. Rhodes

immediately appreciated what a tremendous advantage it would be to have a European settlement in Gungunhana's country as it would help with the Portuguese problem and be of benefit to the Company's trans-Limpopo venture as a whole. Based on the perceived authority acquired under the Gazaland Concession, Cecil Rhodes agreed to support the idea of occupying Manicaland by recruiting farmers from the Orange Free State with the offer of a 3 000 morgen farm in Gazaland to every man and boy who could trek to the Eastern Districts. This resulted in the Moodie Trek of 1892 which settled in what became Chipinga, followed by other treks that settled a little further north in the Melsetter district during the following years.

In his report dated 31st March 1895 in the BSACo Report to Shareholders 1894 - 1895, Dunbar Moodie stated that the first party of settlers crossed the Sabi River on the 9th of December 1892, and camped at Water Fall, Moodie's Camp, on 3rd January, 1893. "We numbered then 20 Europeans, had 7 waggons, and about 150 head of cattle and horses. Since our coming to the present day, a period of two years and three months, there have been from 550 to 600 white people in the Settlement. Over 300 of these have settled here, and the rest, after staying for periods varying from one week to six months, have left, mostly with the intention of returning. In fact, they have taken up land, and in guarantee of their return, they have, in most cases, paid all land dues for three years, viz. 1893-4-5. Up to date, 208 farms have been provisionally surveyed, of which 85 are in actual occupation at the present moment."

OCCUPATION OF MATABELELAND

The British South Africa Company had occupied Mashonaland in 1890, entering the territory through Tuli and Victoria to the east of Bulawayo and skirting around Lobengula's territory. The boundary between Mashonaland and Matabeleland was not well defined and there was a conflict between what Dr Jameson of the BSACo and what King Lobengula understood to be the border between their territories.

On 9th July 1893 a large raiding party of the AmaNdebele approached Victoria resulting in a serious confrontation with the settlers there. Dr Jameson was called from Salisbury to resolve the matter. However, although Dr Jameson had anticipated resolving the dispute, following a meeting with the settlers on 17th July 1893 and a confrontational meeting with the AmaNdebele party the following day he determined that it was now essential to attack Lobengula and to occupy Matabeleland.

Jameson worked with dogged determination to get his forces ready and under way before the rains of November set in and he was quite prepared to do anything to bring this about. No longer the diplomat, but now the aggressor, he lost no time in gathering his forces and equipping them.

There were to be volunteer troops from Salisbury and Victoria, which combined to form the Northern Column, and a force comprising of volunteers from Johannesburg led by Commandant Raaff centred on Tuli (Raaff's Rangers), troops of the Bechuanaland Border Police and a large force provided by Khama, Chief of the Bamangwato, all together forming the Southern Column under Col. Gould-Adams.

Land Grants in Matabeleland

Volunteers' conditions set out by a committee in Victoria on 14 August 1893 and agreed by Dr Jameson to apply to the whole force were as follows: -

- (a) Protection of all Mashonaland claims until six months after the war ended
- (b) A farm of 3,000 morgen (6,000 acres) free of occupation with a quitrent of ten shillings a year
- (c) 20 gold claims, fifteen on reef and five alluvial
- (d) Share of all the cattle taken, 50% of which would go to the BSACo, the remaining share divided equally amongst all members.

The total number of rights to farms granted to the members of the Matabeleland Expedition was 965.

All these claims were free from the condition of *bona fide personal and beneficial occupation*, and some of them obtained certain mineral rights by the aforesaid conditions "which have been a matter of long controversy."

Exactly what these land grants granted became a contentious issue between land owners and the BSACo government which was only settled following protracted negotiations.

After a long series of negotiations between the Land Owners' Association and the Government, a form of title was offered and generally accepted by farm owners, of which the principal provisions were:

- (1) the reservation to the British South Africa Company of the following minerals :- Gold, silver, aluminium, copper and their ores, coal, precious stones, mineral oils, and minerals containing mineral oils.
- (2) the reservation to farm owners of stone, lime, gravel, sand, and all building materials.
- (3) the removal of the upper limit of £3 per morgen as compensation to be paid by the Government on resuming possession of land.

(4) the payment to farm owners of half rents and licences accruing to the Government in the event of gold being discovered and worked to a profit on any particular farm.

(5) expropriation for public purposes or townships to be decided by agreement or arbitration.

(6) the establishment of outspans for public uses on public roads.

These conditions applied only to farms originally pegged out by members of the columns which occupied Matabeleland in 1893, and whose title was secured by the so-called "Victoria Agreement."

Even these detailed conditions did not cover all eventualities. For example, was a miner entitled to open a trading store to provide provisions to mine workers, or was this something which should be reserved for the farm owner of the land?

Purchase of Land in Matabeleland in 1894

Land could be purchased in Matabeleland from the British South Africa Company at three shillings per morgen, subject to the following conditions :-

1. The payment of an Annual Quit-rent in advance of £3 per 1,500 morgen, and four shillings for every additional 100 morgen or portion thereof. The Company do not bind themselves to exceed in any one grant 3,000 morgen.
2. The reservation of all metals, minerals, coal, oil, precious stones, and salines existing thereon, with the right of ingress and egress for the purpose of prospecting for or working the same.
3. The reservation of the right to make roads, railways, and telegraphs over the land, and to take material for these purposes without compensation, except for improvements actually interfered with, which will be paid for upon valuation, recourse being had to arbitration if necessary.
4. The right to resume the whole or any portion thereof required for mining or public purposes on payment for the same at the rate of £3 per morgen, and compensation for improvements to be determined, if necessary, by arbitration.
5. The reservation of all water required for mining or public purposes, provided, however, that in the taking of such water it is stipulated that due regard shall be had to the reasonable requirements of the proprietor of the land for domestic and agricultural purposes.
6. The grantee to occupy the land within a period of five months after due notification of the grant, and to continue in occupation thereof by himself or by some European substitute duly approved of by the Administrator, provided, however, that if after the expiration of a period of three years from the date of such grant, the grantee shall prove to the satisfaction of the Administrator that he has occupied the land in a bona fide and beneficial manner, and has, in addition, erected thereon buildings to the value of at least £200, then occupation of the said land shall cease to be a condition of its tenure.
7. Cost of survey and expenses of issue of title to be borne by the purchaser.

THE ENDING OF LAND GRANTS

On 27th November 1896 it was resolved by the Council of Rhodesia that no longer should any land be alienated or leased otherwise than by public auction, except with special consent of the Administrator in Council.

The occupation of the land granted was the fundamental purpose of making land grants. However, a large proportion of grantees were failing to comply with this provision. As a result two Government Notices, namely No. 154 of 1897 and No. 5 of 1898, gave notice that those who had not done so by the 1st August 1898 would not be given further extension of time to do so. The British South Africa Company reserved to itself the right to impose in such cases such modifications in the terms of the grant as might seem expedient. A number of certificates were issued giving a short period of grace but in a great many of these cases no attempt was ever made to carry out any occupation at all, and the same was the case with a large number of titles which had been issued under the sole condition of occupying such land.

From 1899 a new scheme was introduced. Land could be leased at a nominal rental for a period of three years by any person desirous of settling in the country, with the option of purchase at a low rate at the end of that period, provided that they could show in a bona fide manner, that either they, or an approved European substitute, continuously occupied and improved the land in accordance with the definition of beneficial occupation. Should the lessee fail to commence occupation within a time to be fixed, or to fulfil the conditions, the lease would *ipso facto* be void.

LAND TITLE

Quitrent

All farm land, acquired by grant or otherwise, (urban property excepted) was subject to quitrent. From the beginning in 1892 the quitrent on a farm depended on the size of the farm and whether it was an ordinary title or one of the special grants. The ordinary title required a quitrent of £3 per 1,500 morgen and on a maximum grant of 3,000 morgen the quitrent would be £6. The quitrent for a Pioneer grant of 1,500 morgen was £1, for a Police grant it was 4/- per 100 morgen (£3 per 1,500 morgen) but for a Matabele Volunteer Farm of 3,000 morgen it was only 10/-.

The Surveyor-General

All responsibilities in connected with the survey of farms, townships, commonages, native reserves and building plots were vested in the Surveyor-General, from whose office all original deeds of grant for freehold land (entitlement documents) were issued, and to whom private surveys had to be submitted for confirmation. The Land Survey Regulations which were published in the Government Gazette of March 8th, 1895, provided for the adjustment of disputed boundaries between farms, and prescribed the tariff of charges and rules for the issue of title. Any person qualified to practise in the Cape Colony as a Land Surveyor was admitted to practise in Rhodesia, on payment of the necessary fees and making the usual declaration.

An illegal practice arose on the part of persons who had received from the Company promises to land, or the right to occupy land, of engaging any surveyor they chose to survey such land for them, and by this means carving the Company's territory in any way they pleased, a practice which was particularly undesirable in such a wide and sparsely populated country as Rhodesia, where there was seldom, if ever, a chance for a properly authorised person to attend the survey to look after the interests of any other surrounding or conflicting claims, or of the public through the Government, or of the Chartered Company. This was practically making each claimant to land who chose to employ and pay a surveyor, the judge in his own cause against all others through such surveyor. This situation eventually led to the introduction of The Land Survey Regulations 1897, as amended by Government Notice No.9 of 1898, which described in detail who could qualify to undertake land surveys and how these surveys were to be conducted. All farms granted had be properly beaconed by the owners, with beacons built or made of stone and not less than 2 feet 6 inches in height at each angle. A new Office, Examiner of Diagrams, was introduced and certain lands in Matabeleland were re-surveyed.

As regards the general work and system of survey, when a person acquired a right to land, a certificate to that effect was issued (an entitlement document), and upon selection of land in satisfaction of the right a title, provisional pending survey, was issued in lieu of the certificate. The occupier could, whenever convenient, make arrangements with an admitted surveyor to survey the land, and facilities were afforded to neighbouring landowners to object before issue of final title, should the land under survey encroach upon other property. Final title, with attached diagram of the land surveyed, was issued upon cancellation of the provisional title. Certificates of right, provisional titles and final titles were all transferable in the Deeds Registry Office.

In summary - In the first instance, a Rights Certificate or similar was issued. These were recorded by the Company in registers maintained by the Surveyor General's Office and provided the holder with two options: –

- They could be traded. The resultant Transfer Deed (which referenced the original entry in the register) recording such transactions resulted in an alternative type of document evidencing title, or
- They could be retained and used to secure title to a property, once selected and surveyed. When the holder of the Right had selected a property the entitlement document was replaced with the Deed of Transfer which was registered in the central Deeds Office.

A register of these entitlement documents was maintained by the Surveyor General's Office in Salisbury and also in Bulawayo following the grants of the Matabeleland Rights.

The Deeds Office

It was only after the Occupation of Matabeleland in November 1893 and the Matabeleland Order in Council 1894 (which applied to the whole country) that a legal system was adopted - the law of the Cape in force on 10th June 1891 being applied "*as nearly as the circumstances of the Country permit*". This Order in Council of 18th July 1894 was part of the British government's effort to formalize the transition from military conquest

to civil administration. It provided the legal framework for governance, land allocation, and policing under BSACo authority. This Order laid the groundwork for the establishment of colonial institutions, including the Matabeleland Mounted Police and the Native Commissioners system, which would later be expanded across Rhodesia.

The Deeds Registry Office (in Salisbury) was established by the High Commissioner : Proclamation No. 2 of 1894, proclaimed on 7th May 1894. The establishment of a Deeds Registry Office at Bulawayo was planned for the following year. Mr E. Ross Townsend was the Bulawayo Acting Registrar of Deeds by August 1895.

In the Proclamation gazetted 3rd May 1895, the territories under the control of the Company were formally named "Rhodesia," and divided into provinces and districts.

In Salisbury, deeds relating to the whole of Rhodesia could be registered, but at Bulawayo only those having reference to property in Matabeleland. A complete record of all deeds passed in Bulawayo was kept in the Salisbury office.

Deeds of Transfer.

In the first instance, the procedure for the sale of landed property was that two solemn declarations made before a Justice of the Peace by the purchaser and seller respectively or their agents had to be lodged with the Civil Commissioner within six months from the date of sale, with a statement of the amount of purchase money, on which 4 per cent transfer duty (excluding mines) was payable. It was noted that a considerable proportion of these duties were paid in London and were not recorded in the local accounts. Deeds of Transfer were then prepared in this office and handed to the Registrar of Deeds.

Transfer of immovable property, to which definite title had been issued, was effected by Deeds passed before the Registrar: -

- These Deeds needed to be drawn by a duly qualified conveyancer.

- They had to be presented in triplicate at the Deeds Office, accompanied by the following documents: -

 - The Power of Attorney (where the transfer was effected under a Power of Attorney).

 - The Title* to the property, or the last Deed of Transfer.

 - A Receipt from the Civil Commissioner that the 4% Transfer Duty had been paid.

 - The Quitrent Receipt, where any was payable, for instance on farms, but not on stands.

* Note. Strictly speaking, it is incorrect to speak of the document issued to the grantee, and granting him land, as the Title. The Title is the entry in the Deeds Office books. In this the Roman Dutch differs from the English law, but in practice the document mentioned above is for convenience termed the Title or Title Deed.

One of the triplicates must bear stamps according to the regulated transfer fees.

Transfers of Certificates of Occupation.

It had hitherto been the practice to pass these notarially and to register the notarial transfers in the Deeds Office, but by Government Notice 39 of 1895, it was now laid down that the purchasers of the personal rights of grantees, or of their successors or assigns, of unascertained or of un-surveyed lands, or of lands in respect of which no title had been issued in the territory of the British South Africa Company, could secure all rights legally belonging to them as such purchasers by means either of: -

- A transfer placed before a Registrar or

- A notarial instrument.

Report of the Acting Registrar of Deeds, Mr. H. J. A. Hervey, for the year ended 31st March 1895

Documentary evidence indicates that Lionel McGillie (Sp?) was the Acting Registrar in December 1894.

Mr. H. J. Hervey was the Acting Civil Commissioner for the Salisbury District. By August 1895 H. Marshall Hole was the Acting Civil Commissioner for the Salisbury District and Acting Registrar of Deeds.

Certificates of Occupation, Rights to Land, etc. It is very difficult to give any exact statistics on these rights.

For instance, any right may be exchanged on survey for a definite title, and it is under contemplation to arrange that all rights shall, so far as practicable, be exchanged either for definite or for provisional title.

Provisional title may again be exchanged for definite title. Further, no Matabele volunteer rights are recorded in the Deeds Office (though transfers of them must pass through this office); nor again are the Gazaland farms, nor many of the special land grants, recorded here. As soon as provisional or definite titles have been more extensively issued, as stated above, it is contemplated to effect this exchange of rights, so far as practicable, for definite or provisional title, both of which must be registered in the Deeds Office. It will then be possible to give a much more accurate and satisfactory return.

Report of the Registrar of Deeds, Mr Godfrey J King, for the year ended 31st March 1898

At the commencement of the period under review a Registrar of Deeds and Companies was permanently appointed in Salisbury, while at Bulawayo the duties of Registrar have been performed by the Civil Commissioner for the time being. The Deeds Office records all deeds of grant of land, deeds of conveyance or transfer, mortgages, general bonds, antenuptial contracts (marriage settlements), articles of association of companies with limited liability, patents, and trade-marks. Business with the Deeds Office must be conducted in person or through an agent, and not by correspondence ; where an agent is employed it is advisable to appoint a local solicitor. Trademarks and letters patent can only be dealt with at the Salisbury office; other deeds can be registered at Bulawayo, if their contents refer to property in Matabeleland. Powers of Attorney executed anywhere within the British Dominions must be attested by the signature and seal of office of a Magistrate, Notary Public or Mayor. Powers of Attorney executed out of Her Majesty's Dominions should be attested by the signature and seal of a British Consular Officer.

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