



WESTERN AUSTRALIA.

ANNO OCTAVO

VICTORIÆ REGINÆ.

No. IX.

An Act for the adjustment of Divisional Boundaries of Allotments in Towns, and to prevent Litigation from undesignated encroachments on adjoining Allotments.

WHEREAS surveys of the several towns in the colony of Western Australia are about to be made for the purpose of a ^{Preamble.}

proper alignment of the streets of such towns respectively; and whereas it is expedient to make provision at the same time for a final adjustment of the divisional boundaries of the allotments in such towns, as well in order to correct many inaccuracies which have occurred therein, as also to prevent future litigation amongst the owners of adjoining allotments;—Be it therefore enacted, by His Excellency the Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, that it shall be lawful for the Governor to direct the Surveyor-General, that at the same time that the external lines of the blocks of allotments in each Town are laid out for the purpose of defining the proper limits of the Streets thereof, he shall cause each block to be sub-divided into its proper number of component allotments, having a special reference to the actual position of any substantial building or durable fence which may at present exist thereon, so as to interfere to as small an extent as possible with any such substantial erections, but at the same time taking care to apportion to each allotment at least the full extent of boundaries contained in any grant thereof made or to be made by the Crown.

Governor to direct the Surveyor-General to subdivide the blocks into the proper number of component allotments, having reference to existing fences of a durable nature and giving to each at least the full extent of boundaries granted by the Crown.

Surveyor General to cause the four corners of each allotment to be marked in some visible manner.

III. AND be it enacted, that the said Surveyor-General, in order to determine the due lines and positions of Divisional Boundaries, shall cause to be marked out upon each allotment, in some convenient and visible manner, the several terminal or angular points of such allotment, and that for such purpose it shall be lawful for him, or any person or persons by his directions to enter upon any allotment, and to erect or construct any mark that may be deemed necessary, and to place, cut or brand any such mark on any fence existing thereon.

Boundaries are to be delineated on a map and a description to be entered in a Record Book and signed.

III. AND be it enacted, that whensoever and so soon as the several boundaries shall have been ascertained and finally marked as aforesaid, the Surveyor-General shall cause the same to be accurately delineated and expressed in figures on the Maps or Plans which he is directed to lay before the Governor in Executive Council in and by an Act passed in the present year of Her Majesty's reign, intituled "An Act to provide for the Alignment of Streets in the several Towns of the Colony of Western Australia," and shall enter a description of each allotment so marked in a Record Book to be kept by him for that purpose; and every such description shall be signed by him and countersigned by the Governor in Executive Council; and notice of every such entry shall be published in three successive Gazettes.

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IV. AND be it enacted, that all Boundaries of Allotments so entered and signed as aforesaid, shall be deemed and taken to be the true boundaries of such allotments respectively, all former descriptions thereof in any Title Deed or otherwise notwithstanding, and whether such allotment be in the possession of the original owner or owners, or of his, her, or their heir or assignee; and such Record Book, or a certified copy to be made and issued on demand without fee of any entry in such Book, signed by the Surveyor-General, shall and may be taken in evidence of the boundaries of such allotments in any suit or cause affecting the same.

Boundaries so entered and signed to be deemed the true boundaries, and the record book or a certified copy to be evidence.

V. AND be it enacted, that in any case in which the Boundaries of an allotment as adjusted under the powers of this Act shall differ from those contained in any Grant thereof from the Crown issued previously to such adjustment, it shall be lawful for the Colonial Secretary to endorse, or cause to be endorsed, upon the back of such Deed, if produced to him for the purpose, the boundaries as so adjusted and of which he shall make and sign a memorandum in the margin or some other convenient part of the enrolled Deed of Grant, which endorsement and memorandum shall be signed by him and countersigned by the Governor in Executive Council.

Any alteration of boundaries may be marked on the back of the title deed and a memorandum of the altered boundaries is to be inserted in the margin of the enrolled deed of grant.

VI. AND be it enacted, that if after such adjustment of boundaries as aforesaid, it shall be found that any house or other substantial structure within the limits of any Town-site has been wholly or partially and undesignedly erected upon land not being the property of the owner of such house or structure, it shall not be lawful for the owner of such land to remove or disturb, or commence any proceedings at law or equity, save as hereinafter provided, on account of such house or other substantial structure, provided that the owner of such house or other substantial structure shall pay compensation for such land in manner hereinafter provided.

Any house or substantial structure found to encroach upon another person's land is not to be disturbed, nor any legal proceedings taken on account of it, provided the owner of such house, &c., pay within twelve months a sum awarded.

VII. AND be it enacted, that at the Annual Meeting of the Trustees of each Town for the election of Officers, or at any Special Meeting thereof, for the following purpose, called upon the requisition of any three or more of such Trustees, of which notice shall be published in two successive Gazettes, there shall be chosen by ballot three of the said Trustees to act as Valuers of the property hereinafter mentioned in the said Town until the next such Annual Meeting— Provided that no such Valuers shall be chosen at any such Meeting, annual or special, unless at least seven Trustees be present thereat.

Valuers to be chosen at annual or special meeting.

The Valutors are to award the amount to be paid by the owner of the house, &c., to the owner of the land as a compensation for the actual piece of land occupied by the house. &c.

VIII. AND be it enacted, that if any person shall have undesignedly erected within the limits of any Town-site previously to an adjustment of boundaries therein under the provisions of this Act, any house or other substantial structure either entirely or partly upon the land not his own property, it shall be lawful for such Valutors as aforesaid, when called upon to do so by the owner of such house or structure, or the owner of the land upon which the same stands (taking all the circumstances of the case into their consideration), to estimate and award in writing the amount which shall be paid by the owner of such house or structure to the owner of such land as a compensation for the actual piece of land so occupied by such house or structure as aforesaid, and for such further intervening piece of land as may be necessary to give access to such house or structure.

Opinion of the majority to be the award.

Valutors may employ a Surveyor.

IX. AND be it enacted that in case of any difference of opinion between such Valutors as to the amount of compensation as aforesaid, the opinion of the Majority shall be taken to be the award; and that it shall be lawful for such Valutors, or the majority of them, to employ a Surveyor in order to obtain a correct mensuration and description of the area and boundaries of any piece of land for which they shall be called upon to award compensation, and to allow and pay to such Surveyor for such mensuration and description any sum not exceeding Ten shillings and sixpence; and to demand and receive, over and above any sum paid or engaged to be paid to any such Surveyor, for each and every award fairly written out (on parchment, if furnished to them for that purpose), the sum of One Guinea to be equally divided between the Valutors making and signing such award.

Award not to be given until the amount awarded has been paid, and fees thereon.

X. AND be it enacted, that it shall not be lawful for the said Valutors to issue or deliver out any award by them made as aforesaid until the amount of compensation thereby awarded shall have been paid to them or any one of them, to be by them paid over in manner hereinafter provided; and that it shall not be incumbent upon them to make or enter upon any such valuation as aforesaid before the sum of One Guinea, as and for their own fee, and the sum of Ten shillings and sixpence, as and for a contingent Surveyor's fee (to be repaid if not incurred), be first deposited in the hands of any one of them.

Form of the award.

XI. AND be it enacted, that any award to be made by any such Valutors as aforesaid shall be in the form, or to the effect of the form, following, the words in parenthesis being merely explanatory,—that is to say,

We, the undersigned, being the Valuators (or majority of the Valuators as the case may be) for the Town-site of _____, under the Act of Council 8th Victoriæ No. IX, by virtue and in exercise of the powers vested in us by the said Act, do hereby award to (A.B.) of (residence, and rank or calling) the sum of _____ as compensation for a piece of land, being parcel of building allotment (letter and number in the Surveyor General's maps) in the aforesaid Town-site, and being now occupied or covered by (here describe generally and briefly the encroaching structure) of which (encroaching structure) (C. D.) of (residence, and rank or calling) was heretofore reputed owner; and which said piece or parcel of land so occupied or covered as aforesaid is of the following superficial area, that is to say _____ and abuts on the _____ side thereof on land of the said (C.D), and, on all other sides thereof, upon the aforesaid allotment (letter and number as above); (If the party in whom land is to be vested by the award choose to have a plan thereof, at his or her own additional expense, drawn upon the award, then add "according to the plan delineated on the margin (or at the foot) of these Presents"); and we do hereby acknowledge to have received from the said (C.D.) the said sum of (amount of compensation). As witness on hands the _____ day of _____

XII, PROVIDED always and be it enacted, that the Powers of valuation and of awarding compensation given by this Act shall not extend to any cases of encroachment by the Proprietor of one portion of an allotment (or piece or parcel of land granted by the Crown in one entire or separate lot) on any other portion of the same allotment. Act not to apply to subdivisions of allotments made by private parties.

XIII. AND be it enacted, that it shall be lawful for any such valuator as aforesaid, when called upon to award compensation for any encroachment, to decide and determine whether the structure, alleged to be such encroachment, is a substantial structure within the provisions of this Act or otherwise—Provided that no fence, other than a stone or brick wall, shall be deemed such a substantial structure. Valuators to decide what is a substantial structure.

XIV. AND be it enacted, that it shall be lawful for any such valuator as aforesaid to consider and treat any encroachment, submitted to them under this Act for valuation and compensation, as undesigned, unless the owner or owners of the land thereby encroached upon shall give notice in writing to such valuator before award made of his, her, or their intention to proceed at law for the recovery of such land; and that it shall be lawful for the person or persons giving such notice at any time within three calendar months after Encroachments may be treated as undersigned unless in certain cases.

delivery of such notice to proceed by suit or action for the recovery of such land; but the Plaintiff or Plaintiffs in such action shall recover nothing therein unless he, she, or they shall prove to the satisfaction of the Court and Jury, or of the Court when there shall be no Jury, that such land was knowingly and wilfully encroached upon; and if the person or persons giving such notice shall fail to proceed according thereto within three calendar months after delivery thereof, or if such Plaintiff or Plaintiffs be nonsuited, or discontinue such suit or action, or if verdict or judgment be for the defendant or defendants, and a certificate thereof under the hand of the Registrar-Clerk of the Civil Court (for which a fee of Two shillings shall be demandable) be produced to the valutors of and for the Town-site within which such land shall be situated, it shall be lawful for such valutors to proceed to award compensation for the same.

One month to be allowed for the removal of any temporary structure.

XV. AND be it enacted, that when by any such adjustment of Boundaries as aforesaid, any fence or other erection, not being a substantial structure, within the terms of this Act or the determination of any such valutors as aforesaid, shall be found to be an encroachment, the person or persons who previously to such adjustment was or were the reputed owner or owners thereof shall be allowed one calendar month from the discovery of such encroachment for removal of the same, and shall during that period have right of entry on the land thereby encroached upon, for the removal of such fence or erection; and during such period, the owner of the land so encroached upon, shall not have any right of abatement, or of otherwise intermeddling with such fence or erection.

Definition of the term "Owner."

XVI. AND be it enacted, that whenever throughout this Act reference is made to the owner of a structure, which by any adjustment of Boundaries under this Act shall have been found to be an encroachment, the term "Owner" shall be deemed and taken to mean and include the person or persons who, previously to such adjustment, claimed to be, and was or were reputed, the Owner or Owners of the land occupied by such encroachment, and his, her, or their heirs and assigns.

Award may be made on the requisition of a part owner or of an agent.

XVII. AND be it enacted, that it shall be lawful for such valutors as aforesaid to make such valuation and award such compensation as aforesaid on the requisition of any part owner of any encroaching structure, or land thereby encroached upon, or of the Agent in this Colony of any absent owner or part owner thereof respectively; and that any part owner expending monies in payment of compensation,

fees, or expenses under any such award as aforesaid in respect of such structure, may recover the same by contribution from the other part owner or part owners thereof in an action for so much money laid out and expended to and for the use of such other part owner or part owners.

XVIII. AND be it enacted, that if any of such Valuator as aforesaid for any Town-site shall die, or wish to resign his Office, or become disabled to act therein from mental or bodily infirmity, or shall cease to be qualified as a Trustee of such Town, or shall become pecuniarily interested in the subject matter of any award or required award, it shall be lawful for his Co-Valuators or Co-Valuator, or for any three others of the Trustees of such Town, to convene a Special Meeting of such Trustees by requisition published in two successive Gazettes, and the Trustees assembled at such Meeting, being at least seven in number, shall elect another valuator or valutors in the place and stead of the Valuator or Valuators so dying, disabled, disqualified, or interested as aforesaid.

Appointment of a new Valuator in case of a vacancy.

XIX. AND be it enacted, that the award of such Valuators as aforesaid may be concisely entered on the back of the Title Deed of either or both of the parties, if produced to them for that purpose, and that a memorial thereof shall be registered in the usual manner in the Registry Office of this Colony at the expense of the owner of such house or structure as aforesaid, and when so registered shall have the effect of a valid conveyance in fee-simple by all necessary parties of such piece of land to the owner of such house or structure; and notwithstanding any incapacity or disability on the part of the owner or owners of such piece of land at the date of such award, but subject nevertheless of all Settlements, Incumbrances, Estates, or Interests whatsoever to which the person or persons bonâ fide dealing with such land as his, her, or their property previously to such award shall have professed to subject the same; and subject also to all judgments, incumbrances, and claims by operation of law, affecting at the date of such award the general property of the person or persons taking such land under such award.

Award may be entered on the back of the title deed, and a memorial of it is to be registred.

XX. AND be it enacted, that any compensation not exceeding Twenty pounds which shall be awarded as hereinbefore mentioned for any land shall be paid by the Valuators receiving the same to the person or persons who at the date of such award shall be beneficially entitled to the rents and profits of such land for his, her, or their own use and benefit, or in case of Infancy, Idiocy or Lunacy, or other

Compensation not exceeding £20 to be paid by Valuators to persons beneficially entitled, or the Guardian, Committee, Trustee, or Agent.

incapacity, shall be paid to his, her, or their Guardian or Guardians, Committee or Committees, Trustee or Trustees, to and for the use and benefit of such persons respectively; or in case the person or persons so for the time being beneficially entitled shall be absent from this Colony, then such compensation shall or may be paid to any his, her, or their Agent within this Colony holding any general authority in writing to receive monies on account of such Absentee or Absentees.

Compensation in certain cases to be paid to the Registrar-Clerk of the Civil Court.

XXI. AND be it enacted, that when any compensation exceeding Twenty pounds shall be awarded as aforesaid in respect of land under Mortgage or strict settlement, or any other settlement, or belonging to a Femme Covert, Infant, Idiot, Lunatic, or to any person under any other disability or incapacity, or in case compensation to any amount below or above the said sum of Twenty pounds shall be awarded as aforesaid in respect of land, the Title of which shall be in dispute between several claimants, or of which the owner cannot be discovered, or shall refuse to receive such compensation, or shall be absent from this Colony without any known Agent competent to give a receipt for such compensation, then and in any of the said cases it shall be lawful to pay the amount of such compensation into the hands of the Registrar-Clerk of the Civil Court, to abide the order, control, and disposition of the said Court; which said Court, on the application of any person making claim to such compensation, or any part thereof, on motion or petition, is hereby empowered in a summary way of proceeding or otherwise, to order payment thereof to the person, or distribution thereof among the persons, entitled to such land, in such manner, time, and proportion, and upon such terms or otherwise as to the said Court shall seem just and reasonable; and the said Registrar-Clerk shall give a receipt for any amount of compensation so paid to him, specifying therein by whom the same was paid, and in respect of what land according to such particulars as shall be furnished to him by the person paying the same, and shall be entitled to demand for such receipt the sum of One shilling.

Mispayment of compensation not to affect title of the party paying the same to the land.

XXII. AND be it enacted, that when any compensation awarded as aforesaid shall have been paid by mistake of fact or law to a person or persons not lawfully entitled to receive the same, such mispayment shall not affect the Title of the party paying the same to the land in respect of which the same shall have been paid, nor shall such land be subject to any lien for the sum so mispaid; but the persons lawfully entitled to receive such compensation, or his, her, or their lawful representatives, shall or may recover the same within

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eighteen months from the date of such payment by action for money had and received against the person receiving such mispayment, or his or her lawful representative.

XXIII. AND be it enacted, that this Act may be altered, amended, Act may be amended. or repealed by any Act to be passed during this present Session.

JOHN HUTT,
GOVERNOR.

*Passed the Council the 22nd
day of August, 1844.*

EDWARD C. SOUPER,
Clerk of the Council.