

Alignment of Streets in Towns

WESTERN AUSTRALIA

ANNO OCTAVO

VICTORIÆ REGINÆ

No. 8

An Act to provide for the Alignment of Streets in the several Towns in the Colony of Western Australia.

[Assented to 22nd August, 1844.]

WHEREAS by the first section of an Act of Council passed in the fourth and fifth year of the reign of Her present Majesty Queen Victoria, intituled 'An Act to provide for the improvement of Towns in the Colony of Western Australia,' the right of property in all streets, paths, canals, towing-paths, ferries, bridges and other thoroughfares within the limits of any town site is vested in the respective trustees of each such town; and whereas in several instances a difficulty has been experienced in recognizing the exact lines of the streets, because many of the surveyors' marks by which such lines were originally defined have been either removed, destroyed or obliterated in the course of time; and whereas it is highly expedient to ascertain the precise limits of the streets so vested in each Town Trust respectively and to define the same by conspicuous and permanent marks, so as to enable the said Trustees to preserve the regularity of the streets and to prevent any encroachment thereon: 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 immediately after the passing of this Act it shall be lawful for the Governor to direct the Surveyor-General at his earliest convenience to cause a survey to be made of every town laid out by the Government of this Colony as nearly as possible in accordance with the survey originally made of such town, except in any case where a deviation therefrom may have been previously directed and sanctioned by any Governor of this Colony, or may during the progress of such survey be found necessary for the rectification of any street so as not to interfere with any substantial brick or stone building already erected, and which deviation may be sanctioned by the Governor in Executive Council, in which case the survey is to be made in accordance with such sanctioned alteration, which the Governor is hereby authorised to make: Provided nevertheless that no such alteration shall be so made as to lessen the quantity of land contained in any allotment granted in fee-simple by the Crown without compensation being given for the portion so taken away.

Preamble

The Governor is to direct the Surveyor-General to cause a survey to be made of every town in accordance with the survey originally made, except where any alteration may be sanctioned by the Governor, in which case it is to be made in accordance with such sanctioned alteration, which the Governor is hereby empowered to make

Provided the quantity of land in the allotments be not lessened

2. And be it enacted that the Surveyor-General shall cause to be placed at each corner of each block of allotments at the intersection of the streets, or at any other part or parts of the streets or thoroughfares where it may be considered necessary, one of the posts or boundary marks hereinafter more particularly mentioned and described in such manner that the two exterior faces of each post shall coincide with the lines of the adjacent streets.

Surveyor-General to place at the corner of each block of allotments boundary posts, having their exterior faces coinciding with the adjacent streets

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Surveyor-General may enter upon allotments and erect posts and form necessary marks, and remove any obstructions which may be in the way. Any person hindering or molesting him, to forfeit a sum not exceeding £10

Posts to be made of sawn timber or some other durable material where procurable, and to have the initial letters of the Town Trust formed upon them

Provided that if a house, wall or other substantial erection stand at the corner, it shall be sufficient to mark the letters upon such erection

Posts to be the property of the Town Trust, and to define the line of streets

Surveyor-General to report the streets so marked, and to lay duplicate plans of them before the Governor-in-Council, which plans are to be signed by the Governor, one to be kept in the Survey Office, and one given to the Chairman of the Trust

These plans are to be given in evidence in any suit or cause regarding the streets

Chairman of the Trust is to regulate the line of streets, and to remove any projection or obstruction

Any person molesting him in the execution of this duty, to forfeit £10

3. And be it enacted that it shall be lawful for the Surveyor-General or any person or persons employed by him from time to time, to enter upon any allotment for the purposes of this Act, and to erect such post or posts or construct such other mark or marks, as may be deemed necessary, and for that purpose to dig holes or to remove such parts of fences, walls or other erections as may be in the way, and any person who shall wilfully obstruct or hinder him or them in the execution of such duty shall forfeit and pay a sum not exceeding ten pounds.

4. And be it enacted that such posts or boundary marks shall be made either of sawn timber not less than six inches square or any more durable material where such can be procured, and shall have the initial letters of the Town Trust marked or formed in some permanent manner upon each of the exterior faces of the said posts or boundary marks, in characters not less than two inches long, and at the height of three feet above the ground.

5. Provided always and be it enacted that if it shall so happen that any house, wall or other substantial erection shall be found to be correctly placed at the corner of any block of allotments so that it is impracticable to erect in that position one of such posts as aforesaid, then in that case it shall be sufficient to mark or otherwise affix the said letters in such permanent manner as may be deemed advisable in their proper places in the manner aforesaid upon such house, wall or other substantial erection.

6. And be it enacted that the said boundary posts and marks so placed as aforesaid, shall be deemed and taken to be the property of the Town Trust, and shall indicate and define the position, direction and breadth of the several streets and lines of communication vested in the Trustees of each town respectively.

7. And be it enacted that whensoever and so soon as the several streets and lines of communication within any town-site shall have been ascertained and marked as aforesaid, the Surveyor-General shall report the same and lay before the Governor in Executive Council a map or plan of such town in duplicate, having the streets and lines of communication delineated accordingly thereon, both of which plans shall be signed by the Governor in Executive Council, and one shall be retained in the Survey Office or some other convenient place and the other shall be delivered to the Chairman or Acting-Chairman of the Town Trust, either of which plans so signed by the Governor or any copy thereof duly certified by the Surveyor-General, shall and may be given in evidence of such streets or lines of communication in any cause or suit regarding the same.

8. And be it enacted that immediately after such plan shall have been delivered to the Chairman or Acting-Chairman of the Town Trust aforesaid, it shall be lawful for such Chairman or Acting-Chairman, and he is hereby authorised and required, to proceed forthwith to adjust and regulate the lines of streets between the posts or marks as aforesaid according to such plan, and for that purpose to remove any material or erection whatsoever which may project into the lines of streets so defined as aforesaid, and to place the same upon the immediately adjacent land, and any person who shall wilfully obstruct or hinder him or any one employed by him in the execution of such duty, shall forfeit and pay a sum not exceeding ten pounds.

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9. And be it enacted that it shall not be lawful to mortice into or nail or fasten in any other way to the said boundary posts or marks so placed as aforesaid, any rail, post, paling or other material whatsoever, and any person convicted before any two Justices of the Peace of this Colony of having done so, or of having wilfully injured, defaced or disturbed any such boundary post or mark as aforesaid, shall forfeit a sum not exceeding twenty pounds.

10. And be it enacted that any person who shall be convicted before the Court of Quarter Sessions of this Colony of wilfully removing or destroying any such boundary posts so placed as aforesaid shall be liable at the discretion of the Court to be imprisoned and kept to hard labour for any term not exceeding three years.

11. And be it enacted that the Chairman or Acting-Chairman of the Town Trust shall in the month of December in each year examine and inspect the said posts and marks, and make a written report of their state and condition to the Governor, and if it shall appear from the said report, or if at any time it shall be discovered in any other manner that any of the said posts or marks require to be renewed, repaired or adjusted, it shall be lawful for the Governor to direct the same to be renewed, repaired or adjusted, in the same way as they were originally made, but at the cost and expense of the said Town Trust.

12. And be it enacted that when and so often as any fresh blocks of allotments are required to be laid out, by which any new lines of communication shall be formed, the Surveyor-General shall lay before the Governor in Executive Council duplicate maps or plans of the same, both of which plans shall be signed by the Governor in Council, and one shall be retained in the Survey Office, or some other convenient place, and the other shall be delivered to the Chairman or Acting-Chairman of the Town Trust, either of which plans, so signed by the Governor, or any copy thereof duly certified by the Surveyor-General, shall and may be given in evidence of such streets in any cause or suit regarding the same, and such additional lines of communication and blocks of allotments may be added to or delineated upon the original maps or plans, and the additional part authenticated in the same manner as the original maps or plans by the signature of the Governor in Council, and such part so authenticated may also be given in evidence as aforesaid.

13. And be it enacted that no action, suit, or proceedings shall be commenced or prosecuted against any person or persons for anything done in pursuance of this Act until thirty days' notice thereof shall be given to such person or persons, nor after sufficient satisfaction or tender of amends hath been made to the party or parties aggrieved, nor after the expiration of six calendar months next after the fact committed; and the defendant or defendants in every such action, suit, or prosecution, shall and may, at his or their election, plead specially, or the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this Act; and if it shall appear that the matter on which the cause of action arose was done in pursuance and by authority of this Act, or that such action or suit shall have been brought before thirty days' notice thereof was given as aforesaid, or after a sufficient satisfaction made or tendered as aforesaid,

Nothing to be fastened to the boundary posts
Any person convicted of injuring, defacing or disturbing such post, to forfeit not more than £20; and in default of payment to be imprisoned

Any person convicted of wilfully removing or destroying such posts, to be liable to be imprisoned and kept to hard labour

Chairman of the Town Trust to make annual inspection of posts and marks, and report their state, and if any require to be renewed, repaired or adjusted, it is to be done at the expense of the Trust

When any new streets are formed, duplicate plans of the same are to be laid before the Governor and signed by him, one of such plans shall be kept in the Survey Office and one delivered to the Chairman
These plans may be given in evidence, and the additional streets may be delineated on the original map, and authenticated by the Governor's signature

Limitation of actions

Tender of amends

Notice

General issue

Costs

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or after the time limited for bringing the same as aforesaid, then the Court or Jury shall find for the defendant or defendants; and upon such verdict or finding, or if the plaintiff or plaintiffs shall be nonsuited, or shall discontinue his, her, or their action, suit, or prosecution, after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, defendant or defendants shall recover double costs, and have such remedy for the same as any defendant or defendants hath or have in other cases of costs given by law, and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the Judge before whom the trial shall be shall certify his approbation of the action and of the verdict obtained thereon.

Limitation of prosecutions

14. And be it enacted that all prosecutions for the recovery of any of the forfeitures and penalties imposed by this Act must be commenced within one calendar month after the offence committed for which such penalty or forfeiture shall be incurred.

Recovery and appropriation of penalties

15. And be it enacted that all informations and proceedings in respect of any offences under this Act shall be heard and determined and the forfeitures and penalties in respect of the same shall be awarded and imposed in a summary way by or before two or more Justices of the Peace, according to the provisions of an Act of Council passed in the seventh year of the reign of Her present Majesty, intituled 'An Act to regulate Summary Proceedings before Justices of the Peace;' and that any fines, forfeitures, or penalties recovered under this Act shall be appropriated to the use of the Trust of that town within which the offence was committed.

Appeal

16. And be it enacted that if any person shall think himself aggrieved by any judgment or conviction made under this Act, such person may appeal therefrom to the next Court of Quarter Sessions.

Act may be amended

17. And be it enacted that this Act may be amended or repealed by any Act to be passed during this present session.

JOHN HUTT.
GOVERNOR.