

Legislative Council.

No. , 1921.

A BILL

To make provision for the adjustment of boundaries where buildings encroach on adjoining land; and for purposes connected therewith.

[SIR JOSEPH CARRUTHERS;—11 *November*, 1921.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Encroachment of Short title. Buildings Act, 1921."

2. In this Act, unless the context otherwise requires, Definition.
"Court" means the Supreme Court in its equitable
jurisdiction.

Encroach-
ments by
buildings—
power of
court.

3. (1) When any substantial building encroaches on land which is owned by a person other than the owner of such building, the court may, upon the application of the owner of the building or the owner of the land encroached upon, order that the land encroached upon 5 be conveyed or transferred to or vested in the owner of the building or the owner of the land upon which the building is erected, or may make such other order as the court deems proper and consistent with a due regard for the interests of all parties concerned for defining a 10 suitable or convenient boundary line between the adjoining properties.

(2) For the purpose of giving effect to the provisions of this section the court may make orders and give directions in respect of the payment of com- 15 pensation, the variation of deeds, settlements, and contracts, the execution of conveyances or transfers, and the discharge of mortgages, or may make such orders and declarations and give such directions in the premises as it deems just. 20

Assessment
of amount
payable.

4. When an order is made for payment of compensation the court shall assess or cause to be assessed the amount payable, and shall determine the persons by and to whom such compensation shall be paid.

5. (1) Where an application is made by the owner 25 of a building which encroaches upon the land of an adjoining owner, and an order for payment of compensation is made, the value of the land encroached upon shall be assessed at not less than three times its unimproved value at the date of the application. 30

Notice before
foundations
of buildings
laid.

(2) Where such an application is made and the court is satisfied that, at or before the time when the foundations of the building were laid, notice in writing was given by the owner of the adjoining land to the owner of the land upon which the foundations are laid 35 that a building erected on such foundations will encroach on the adjoining land, and the erection of the building is proceeded with, and the building when erected does encroach on the adjoining land, any compensation which may be ordered to be paid for the land encroached upon 40 shall be assessed at not less than twenty times the unimproved value of such land at the date of the application. 6.

6. In determining whether, in the case of any application to the court, any order should be made, and where any order is made what compensation should be paid, the court shall take into consideration, amongst
5 other matters,—

- (a) the situation and value of the land encroached upon, and the extent and nature of the encroachment;
- 10 (b) the character of the encroaching building, and the purposes for which it may be used;
- (c) the loss or injury which may be incurred by the owner of the land encroached upon by the deprivation of his land.

7. Where there is a difficulty in determining whether
15 a building which is erected or proposed to be erected does or will encroach on adjoining land, the court may exercise the powers conferred by this Act, and may define the boundary line or a new boundary line, and may make any declaration which appears to be just for
20 determining the rights of the parties interested.

8. The court may grant an injunction, upon such terms as the court thinks fit, to restrain any person from taking or continuing any proceedings, at law or in equity, where, in the opinion of the court, any question
25 in issue in such proceedings could more conveniently be dealt with by an application made to the court under the provisions of this Act.

9. In any application under this Act the court may require that notice of the application shall be given to
30 any person interested, unless the court thinks fit to dispense with such notice.

10. In any application under this Act the court may make such orders as to payment of costs as it deems just.

11. (1) The court may make rules for regulating the practice and procedure in applications under this Act, and for prescribing forms. Until such rules are made, any such application shall be by motion.

(2) The practice and procedure of the Supreme
40 Court in its equitable jurisdiction shall, except so far as is inconsistent with this Act or any rules made thereunder, apply to applications under this Act.

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This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, December, 1921.*

New South Wales.



ANNO DUODECIMO

GEORGII V REGIS.

Act No. , 1921.

An Act to make provision for the adjustment of boundaries where buildings encroach on adjoining land; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Encroachment of Short title. Buildings Act, 1921."

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2.

Encroachment of Buildings.

2. In this Act, unless the context otherwise requires,— Definitions.

“Adjacent owner” and “owner” respectively mean the owner of the land encroached upon and the owner of the land contiguous to the boundary over which the encroachment extends.

“Boundary” means the boundary line of two contiguous parcels of land.

“Building” includes wall or other erection of a permanent character.

“Court” means the Supreme Court in its equitable jurisdiction.

3. (1) When any substantial building encroaches beyond the boundary the court may, upon the application of the owner or the adjacent owner, order that the land covered by the encroachment be conveyed or transferred to or vested in the owner, or may make such other order as the court deems proper and consistent with a due regard for the interests of all parties concerned for defining a suitable or convenient boundary line.

(2) For the purpose of giving effect to the provisions of this section the court may make orders and give directions in respect of the payment of compensation, the variation of deeds, settlements, and contracts, the execution of conveyances or transfers, and the discharge of mortgages, or may make such orders and declarations and give such directions in the premises as it deems just.

(3) When the land or any part thereof affected by such order is held under old system title such order shall be registered by the owner in the General Registry of Deeds, and whenever such land or any part thereof is held under the Real Property Act the Registrar-General shall on payment of the proper fees and on lodgment of an application in the prescribed form make all necessary amendments, alterations and entries in the register book and issue such certificate of title as the case may require.

4. When an order is made for payment of compensation the court shall assess or cause to be assessed the amount payable, and shall determine the persons by and to whom such compensation shall be paid.

5.

Encroachment of Buildings.

5. (1) Where an application is made by the owner and an order for payment of compensation is made, the value of the land covered by the encroachment shall be assessed at not less than three times its unimproved value at the date of the application.

(2) Where such an application is made and the court is satisfied that, at or before the time when the foundations of the building were laid, notice in writing was given by the adjacent owner to the owner that a building erected on such foundations will encroach beyond the boundary, and the erection of the building is proceeded with, and the building when erected does encroach, any compensation which may be ordered to be paid for the land covered by the encroachment shall be assessed at not less than six times the unimproved value of such land at the date of the application.

6. In determining whether, in the case of any application to the court, any order should be made, and where any order is made what compensation should be paid, the court shall take into consideration, amongst other matters,—

- (a) the situation and value of the land encroached upon, and the extent and nature of the encroachment;
- (b) the character of the encroaching building, and the purposes for which it may be used;
- (c) the loss or injury which may be incurred by the adjacent owner by the deprivation of his land;
- (d) the loss and injury which may be incurred by the owner should he be required to remove the encroachment.

7. Where there is a difficulty in determining whether a building which is erected or proposed to be erected does or will encroach beyond the boundary, the court may refer to a surveyor agreed upon by the parties, or in default of agreement to a surveyor appointed by the court, the duty of determining disputed boundaries, and his definition shall be final and conclusive between the parties, or the court may exercise the powers conferred by this Act, and may define the boundary or a new boundary

Encroachment of Buildings

boundary line, and may make any declaration which appears to be just for determining the rights of the parties interested.

8. The court may grant an injunction, upon such Court may grant injunction, &c.
 5 terms as the court thinks fit, to restrain any person from taking or continuing any proceedings, at law or in equity, where, in the opinion of the court, any question in issue in such proceedings could more conveniently be dealt with by an application made to the court under
 10 the provisions of this Act.

9. In any application under this Act the court may Notice of application.
 require that notice of the application shall be given to any person interested, unless the court thinks fit to dispense with such notice.

10. In any application under this Act the court Costs.
 15 may make such orders as to payment of costs as it deems just.

11. (1) The court may make rules for regulating Regulations and practice.
 the practice and procedure in applications under this
 20 Act, and for prescribing forms. Until such rules are made, any such application shall be by motion.

(2) The practice and procedure of the Supreme Court in its equitable jurisdiction shall, except so far as is inconsistent with this Act or any rules made
 25 thereunder, apply to applications under this Act.