

By Mr. Brownell of Quincy, petition of Thomas F. Brownell relative to the Assurance Fund of the Land Court. The Judiciary.

---

---

**The Commonwealth of Massachusetts**

---

In the Year One Thousand Nine Hundred and Eighty-Seven.

---

AN ACT CONCERNING THE ASSURANCE FUND OF THE LAND COURT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 101 of chapter 185 of the General Laws,  
2 as appearing in the Tercentenary Edition, is hereby amended by  
3 striking said section and inserting in place thereof the following  
4 section:—

5 Any person who, without negligence on his part, sustains loss or  
6 damage after the original registration of land by the registration of  
7 any other person as owner of such land, or of any estate or interest  
8 herein, through fraud or in consequence of any error, omission,  
9 mistake or misdescription in any certificate of title or in any entry  
10 of memorandum in the registration book, may recover in contract  
11 in the superior court department of the trial court for the recovery  
12 of compensation for such loss or damage therefrom from the  
13 assurance fund. Similarly, any person who, without negligence on  
14 his part, is deprived of land or of any estate or interest therein after  
15 the original registration of land by the registration of any other  
16 person as owner of such land, or of any estate or interest therein,  
17 through fraud or in consequence of any error, omission, mistake or  
18 misdescription in any certificate of title or in any entry of memo-  
19 randum in the registration book, may recover in contract in the  
20 superior court department of the trial court compensation for such  
21 land or estate or interest therein from the assurance fund; provided  
22 however, that such a person so deprived of land or of any estate or  
23 interest therein, having a right of action or other remedy for the

24 recovery of such land, estate or interest shall first exhaust such  
25 remedy before resorting to the action of contract herein provided.  
26 This section shall not deprive the plaintiff of any action of tort  
27 which he may have against any person for such loss or damage or  
28 deprivation of land or of any estate or interest therein. But if the  
29 plaintiff elects to pursue his remedy in tort, and also brings an  
30 action of contract under this chapter, the action of contract shall be  
31 continued to await the result of the action of tort.

1 SECTION 2. Section 107 of chapter 185 of the General Laws,  
2 as appearing in the Tercentenary Edition, is hereby amended by  
3 striking said section and inserting in place thereof the following  
4 section: —

5 The assurance fund shall not be liable for any loss, damage or  
6 deprivation occasioned by a breach of trust, whether express,  
7 implied or constructive, by any registered owner who is a trustee,  
8 or by the improper exercise of any power of sale in a mortgage, nor  
9 shall any plaintiff recover in contract as compensation under this  
10 chapter more than the fair market value of the land at the time  
11 when he suffered the loss, damage or deprivation thereof, together  
12 with interest thereon from the date the action of contract was  
13 commenced and with reasonable costs of the action, including  
14 attorneys' fees and expenses of expert testimony. In the event the  
15 action of contract for compensation from the assurance fund is not  
16 commenced until after the person so deprived of land or of any  
17 estate or interest therein has exhausted his right of action or other  
18 remedy for recovery pursuant to sections one hundred and one and  
19 one hundred and eight, interest shall commence as of the time the  
20 action or other remedy for the recovery of the land, estate or  
21 interest was commenced.