

HOUSE No. 27

Bill accompanying the petition of Charles S. Rackemann and another for legislation to provide means of having real estate titles confirmed and quieted in the Land Court. Joint Judiciary. January 7.

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Ten.

AN ACT

Relative to Confirmation by the Land Court of Title to Land.

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. Application to the land court for confir-
2 mation of title may be made by any person authorized
3 by law to apply to said court for registration of title.
4 Such application may also be made by the holder of record
5 of a mortgage of real estate, by a mortgagor without the
6 consent of a mortgagee, and by a married woman without
7 the consent of her husband; also by the owner in fee of
8 any undivided interest in land or rights or easements in
9 land.

1 SECTION 2. Proceedings upon applications to confirm
2 title to land and easements or rights in land shall be pro-

3 ceedings *in rem* against the land, easements, or rights in
4 land, and the decrees on such applications shall operate
5 directly on the land and vest and establish title thereto.
6 They shall belong to the class known as real actions.

1 SECTION 3. The provisions of law, and the practice and
2 procedure relating to applications for registration of title
3 shall, except so far as they are inconsistent with the pro-
4 visions of this act, apply to applications to confirm title.

1 SECTION 4. The application shall contain, in addition
2 to the matters required to be stated in an application for
3 registration, a full and accurate description of the estate,
4 title or ownership claimed by the applicant and of any
5 and all easements, restrictions or incumbrances of any
6 nature admitted by him. It shall state, if such be the
7 fact, that some person or persons or class of persons make
8 or may make claim to some right, title or interest in or to
9 the land or right or easement in land claimed by the appli-
10 cant, with the names of such persons or description of such
11 class of persons, and the nature of the claim, so far as
12 known to him; and what search has been made to ascer-
13 tain any such person or class of persons unknown to him.

1 SECTION 5. The applicant shall file with the application
2 a plan of the land, and a full and substantial abstract or
3 statement of the title to the land or easement or right
4 claimed by the applicant, as the same appears of record, or
5 as it may otherwise be known to him, covering a period of
6 at least forty years next prior to the filing of the applica-
7 tion. Such abstract or statement shall be verified by the
8 oath of the person making the same to the effect that the
9 same is true and accurate to the best of his knowledge and
10 belief, and that he has employed all usual means to make

11 it so. The court before issuing any order of notice may
12 require such further abstract or statement or other in-
13 formation as it deems necessary for a reasonably com-
14 plete understanding of the subject matter of the applica-
15 tion.

1 SECTION 6. Immediately after the filing of an appli-
2 cation to confirm title, the court shall enter an order re-
3 ferring it to one of the examiners of title, who shall
4 verify the abstract or statement of title filed with the
5 application, and otherwise search the records and inves-
6 tigate all facts stated in the application or otherwise
7 brought to his notice, as fully and to such extent as the
8 court shall order, and shall file a report thereon with his
9 opinion upon the title. The court may in its discretion,
10 if the abstract or statement of title filed by the applicant
11 is made by one of the examiners of title appointed by the
12 court, or by some other competent person, refer the same
13 to an examiner of title who shall file a report thereon with
14 his opinion upon the title without further search or in-
15 vestigation.

1 SECTION 7. The return day of notice of the filing of
2 the application shall be not less than thirty nor more
3 than sixty days after the date of issue. At least fourteen
4 days before the return day notice shall be served as fol-
5 lows:— (a) Personal service of said notice shall be made
6 by a sheriff or deputy sheriff on each person named in the
7 application, other than the applicant, who may be found
8 in the commonwealth. (b) If the notice is not served
9 personally on such person, an attested copy of the notice
10 shall be left at his last and usual place of abode, if he has
11 any within the commonwealth known to the officer. (c)
12 Any such person who may be found in any other of the

13 United States of America, or any territory thereof, shall
14 be deemed to have received sufficient notice if personal
15 service shall be made upon him by any officer qualified
16 by the laws of such state or territory to serve civil process
17 therein, and return of such service shall be made by such
18 officer in writing and under oath. (d) Any notice shall
19 be deemed to have been personally served if instead of
20 service made as hereinbefore provided, it is sent by reg-
21 istered mail, and the registered letter containing it is
22 receipted for by the addressee and such receipt is filed
23 with the recorder. (e) A duly attested copy of the notice
24 shall also be posted by a sheriff or deputy sheriff in a
25 conspicuous place on each parcel of land included in the
26 application.

27 The court may also cause other or further notice of
28 the application to be given. The court shall require
29 proof of actual notice to all adjoining owners, and to all
30 persons who appear to have any interest in or claim to the
31 land included in the application, unless the court shall
32 find it as a fact to be impossible or impracticable to give
33 such actual notice.

34 If the applicant requests to have the line of a public
35 way determined, personal service of said notice shall also
36 be made on the mayor of the city, or one of the select-
37 men of the town or towns in which the land lies, or, if
38 the way is a highway or county road, then on any one of
39 the county commissioners of the county or counties in
40 which the land lies.

41 If the land borders on a river, navigable stream or
42 shore, or on an arm of the sea where a river or harbor
43 line has been established, or on a great pond, or if it
44 otherwise appears from the application or the proceedings
45 that the commonwealth may have a claim adverse to that

46 of the applicant, notice shall be given in the same manner
47 to the attorney-general.

1 SECTION 8. Any person who claims an interest, whether
2 named in the notice or not, may appear on or before the
3 return day, and after appearing shall within thirty days
4 after the return day file an answer, which shall state all
5 objections to the application, shall set forth the interest
6 claimed by the person who files it, shall set forth in sub-
7 stance any records or instruments not shown by the appli-
8 cant, on which the objections or interest claimed by the
9 respondent are based, and shall be signed and sworn to
10 by him or by a person in his behalf. The court may in
11 any case extend the time for filing such answers, on such
12 terms as it may see fit to impose.

1 SECTION 9. A decree of confirmation of title shall
2 bind the land and quiet the title thereto, subject only to
3 the exceptions stated in section thirty-eight of chapter
4 one hundred and twenty-eight of the Revised Laws. It
5 shall be conclusive upon and against all persons, includ-
6 ing the commonwealth, whether mentioned by name in the
7 application, notice or citation, or included in the general
8 description "to all whom it may concern." Such decree
9 shall not be opened for any reason, except as provided in
10 section twelve of this act. Such decree shall not be re-
11 garded as an agreement running with the land nor binding
12 in any way that the land shall remain confirmed, or sub-
13 ject to any provisions of law relating to registered land.
14 Land and easements and rights in land, the title to
15 which has been confirmed hereunder, shall pass by de-
16 scent or devise or otherwise and shall be dealt with in the
17 same manner as and subject to the same future burdens

18 and incidents as if the title had not been confirmed under
19 the provisions of this act.

1 SECTION 10. The court before entering a decree of
2 confirmation shall cause a correct plan of the premises to
3 be filed with the case, and immediately upon the entry of
4 the decree, the recorder shall send certified copies of the
5 decree and of such plan, to the register of deeds for each
6 district in which the land lies, and the register shall index
7 and record the same in his regular record books.

8 If such plan is not furnished by the applicant, the ex-
9 pense of making the same shall be charged to the appli-
10 cant as part of the taxable costs.

1 SECTION 11. The entry of a decree of confirmation of
2 title shall be deemed to be an interruption of the adverse
3 use or enjoyment of any right, title, or interest in or
4 to the land or easement or right in land or any part
5 thereof in derogation of the title of the owner of said
6 land or easement or right in land as established by such
7 decree.

1 SECTION 12. A petition for review may be filed within
2 six months after the entry of a decree of confirmation by
3 any person having a claim which should have been heard,
4 who was not served with notice of the proceedings in some
5 manner prescribed in section seven of this act, divisions a,
6 b, c, d, if he was deprived of land or any estate or interest
7 therein by such decree or by any person deprived thereof
8 by such decree obtained by fraud. Such petition may be
9 filed although an innocent purchaser acquired an interest
10 before the filing thereof.

1 SECTION 13. No appeal taken under the provisions of
2 this act from a decree of confirmation of title, and no peti-

3 tion for review, shall be effective unless notice thereof is
4 recorded by the appellant or petitioner for review in each
5 Registry of Deeds in which any part of the land lies,
6 within the time allowed by law for the entry of such ap-
7 peal, or petition for review. The amount actually paid
8 for such recording shall be part of the taxable costs.

1 SECTION 14. The fees for examiners' services shall be
2 the examiners' charges as allowed by the court. The fees
3 for a certified copy of a decree or confirmation hereunder
4 and of the plan filed with the decree, and sending them
5 to registers of deeds shall be the same as are provided by
6 law for registers of deeds, and twenty-five cents additional.

1 SECTION 15. This act shall take effect upon its pas-
2 sage.

