

LAND TRANSFER REFORM.

It seems extremely desirable that attention should be called more commonly than has been the case in our country to the great importance of the subject of land transfer, and to the desirability of a reform in our methods of making such transfer. No person has had occasion to sell a piece of land, large or small, or to borrow money on a mortgage, in any of our States, even including the newer ones, without being impressed with the difficulty and expense attending our system; no one has attempted to purchase, without being impressed with its uncertainty. A short article printed some years ago in the *New York Herald*, and since then frequently quoted in illustration, may be repeated here to illustrate again the expense always and inevitably attendant upon our system :

“Lately the Jumel property was cut up into 1383 pieces or parcels of real estate, and sold at partition sale. There appear to have been about three hundred purchasers at that sale, and no doubt each buyer, before he paid his money, carefully employed a good lawyer to examine the title to the lot or plot that he had bought, so that three hundred lawyers, each of them carefully examined and went through the same work, viz: the old deeds and mortgages and records affecting the whole property (for, as it had never been cut up before, each had to examine the title of the whole, no matter how small his parcel), and each of them searched the same volumes of long lists of names, and picked out from the 3500 volumes of deeds and mortgages in the New York Registrar’s office the same big, dusty volumes of writing, and lifted them down and looked them through—in all 300 times, the very same labor.

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"Evidently, 299 times that labor was thrown away—done over and over again uselessly. And the clients, those buyers, together paid 300 fees to those lawyers (who each earned his money), but evidently 299 of those fees were for repetitions of the very same work.

"By and by, twenty years from now, instead of only 300 owners of those Jumel plots, the whole 1383 will be sold and built upon, and 1383 new purchasers will again pay 1383 lawyers 1383 fees for examining that same Jumel title; only the fees will be larger, for there will, by that time (at the present rate of growth, and unless a remedy is soon applied), be fully 10,000 big folio volumes in the new Hall of Records, which the Legislature has just authorized to be built in the city, and the whole 1383 fees will be for mere repetitions of labor, so far as the whole Jumel estate title is concerned, and will be practically wasted.

"Not only that, but to-day, in examining a title for a purchaser, his lawyer carefully puts in official searches. He makes a requisition on the Registrar for all deeds, conveyances, mortgages, and instruments in writing on record in his office affecting the parcel whose title he is examining, and, of course, the Registrar carefully returns on his search all the old deeds, etc., affecting the whole property—because they affect the parcel—and he charges and gets by law 5 cents for each year for each name searched against the deeds, and 5 cents per year per name for mortgages. Altogether, say \$20 is paid by each purchaser to the Registrar for those searches, but as there were 300 purchasers, and they put in 300 searches, the Registrar gets 300 times \$20 for the same work, and twenty years hence 1383 purchasers will pay the then Registrar 1383 times \$20, or more, for a search showing those very same facts.

"This sort of thing is daily repeated, year in and year out, in this city, over the whole of its surface.

"And the same thing happens in regard to loans on bonds and mortgages. Every man who thus lends money

must have the title examined, and very properly so, and the borrower has to pay for it—the same old searches against the same old names—and pay the same old fees.

“The tax which the real estate of New York city thus annually pays, amounts to more than 1 per cent. of the real value of the property sold and mortgaged, and it is safe to say that at least one-half of this heavy burden is the result of useless repetition, of the want of a good system in responsible hands, and is thrown away.”

The great expense connected with our system of land transfer is reason enough for seeking a better system, but even worse than the expense and inconvenience is the uncertainty. No person holding land that has been transferred a number of times, especially if some of the transfers date back fifty years or more, can be certain that his title is good. The records may show a clear title, but many things may affect it that do not appear of record. If, too, the transfers date back even ten years, it is difficult to find witnesses to answer necessary questions; if fifty years, usually it is impossible. We may feel confident regarding our titles, but we are still liable to lose our land, in spite of the favorable opinion of the best real estate lawyer. As the Minnesota Title Insurance and Trust Company well puts it: “Few men, even among dealers in real estate, appreciate the risks involved in titles, and still less realize that the prevailing fees of the examiner are an inadequate return for the skill and actual time required to see if each instrument is properly executed in all particulars; if duly acknowledged; if sufficiently witnessed; if the signature of a wife or a husband has been omitted; if the description is clerically exact; if a power of attorney has been recorded; if such power authorizes the special act performed; if the husband joins in the power given by a married woman; if there be errors in recording; if there be conflicting deeds; if foreclosure proceedings are defective in the publication notice or any other of the many requirements; if a plot specifies the State, or county, or

town, or section, or range—is signed by all parties, witnessed, certified to by surveyor, etc.; if there be life estates, dower, courtesy, trusts, covenants, void devises, easements, adverse possession, rights of way, sheriff's or tax sales, mechanics' liens, decrees in equity, judgments, necessary partitions or distributions, probate proceedings in general, letters testamentary, omissions of parties, posthumous or illegitimate children, minority of grantors, misnomer, defective wills, insolvency, judgments, or bankruptcy proceedings in the United States Courts, etc. Few, if any, of these particulars can be obtained from an abstract. In order to fully determine them a skilful attorney must carefully examine the record of each instrument in the change of title.”¹

If these statements are true, and no one questions them, a better system should certainly be sought. Why should not real estate be as readily transferred as government bonds or railroad stock? And if it can be as readily transferred, is it not true that the value of real estate will be greatly enhanced by adopting such a method of transfer?

The Torrens system of land transfer by registration of title is a system that really accomplishes, in a great measure at least, just this desired result. Notice that, in a word, the system differs from our own in this: We register a deed, and the deed conveys the title. In the Torrens system, the title is transferred by registration; the certificate given, a duplicate of the one preserved in the Registrar's office, is merely in law a certificate that a transfer has been made, and a minute of the nature of the transfer.

In the countries where this system has been adopted, there is no compulsion regarding the registration of land owned by private parties. If any land-owner wishes to place his property under this system, he makes formal application at the Land Transfer office, declaring the nature

¹ Mason: Pamphlet on Land Transfer.

of his title to the land in question, and depositing his deeds, abstracts of title, or other evidences of title. The evidences of title, together with officially certified survey or plan of the land, is then submitted to a barrister and conveyancer, "examiners of titles," who report to the Registrar or Recorder of Titles on the following points:¹ Whether the description of the parcel of land is definite and clear; whether the applicant is in undisputed possession; whether he appears in justice and equity entitled thereto; whether his evidence of title is sufficient to protect him in a suit against him for ejectment. If the applicant fails to satisfy the examiner on any one of these points, his application is at once rejected. If, however, the applicant, being in possession, is able to satisfy them reasonably on all these points, even though some technical flaw may appear in the title, advertisement of the application is made, and notices are given to any who may have an interest, that unless a caveat is filed within a certain time, the land will be registered in accordance with the application. If the caveat is filed, action is delayed until it is either withdrawn or set aside by action of the Court, "when the land is brought under the operation of this system by the issue of a certificate of title, vesting the estate indefeasibly in the applicant."

This certificate, a duplicate of which is retained in the office, sets forth in detail, though briefly, a description of the land, usually with a plan or reference to a map, and the exact nature of the holder's title, together with a memorandum of all mortgages, leases, or other encumbrances of whatever nature. The one paper is sufficient to show the exact title, and the government guarantee that this title is correct, renders all search for "claim" of title, as under our system, entirely superfluous.

¹ An Essay on the Transfer of Land by Registration, etc. : Sir Robert Torrens. Cassell & Co. (Cobden Club publications.) This pamphlet, besides a clear explanation of the system, gives forms of all the most common kinds of transfer, and other papers used in connection with the system.

This practice of granting an absolute, indefeasible title, guaranteed by the government, after due advertisement and service of notice, is still one that involves very little risk, though that risk is one of the chief objections urged by its opponents. Ireland has brought about one-sixth of her land, and the English colonies over 152,000 parcels under this system, with almost complete immunity from error. Still there is always danger of error and fraud in such registration and subsequent transfer, so that the governments deem it advisable to provide a fund to reimburse those injured by the act of the government in granting an indefeasible title. From one-tenth to one-fifth of one per cent. of the value of the land, levied when the land is first brought under the system and at subsequent transfers by descent or devise, is found to produce a sufficient guarantee fund.

If a person wishes to sell his land, he makes out a memorandum of transfer in a simple prescribed form; and this with his certificate is taken to the Registrar. The transfer is then entered upon the Registrar's book and upon the certificate, and the new owner has the indefeasible title, with the government guarantee. So, whenever a title is transferred, one folium of the Registrar is enough to show to whom the land belongs, and there is no expense for looking up the title, no worry or doubt regarding a cloud upon it. That is impossible.

If only a part of the land named in a certificate is to be transferred, the memorandum for transfer is given only for that part. The Registrar marks the original certificate and record "cancelled" as to that part, and a new certificate is issued to its purchaser, while the register gives it a new folium. Thus, every person holding an estate in land needs only one document to show the exact nature and extent of his ownership, and the one folium of the register shows the same facts, and always—this is worth repeating—his title is absolutely indefeasible, as shown by the record.

A mortgage or lease or other encumbrance is managed in an equally simple way. The mortgage or lease is executed in duplicate—one is given to the mortgagee or lessee, the other remains in the office. A memorandum of the encumbrance is then made upon the certificate, and upon the Registrar's book, and the work is complete. When the mortgage is paid or other encumbrance removed, a receipt is indorsed on the duplicate held by the mortgagee, and a minute of it made on the Registrar's book and on the certificate of title. Thus, in any case, the one folium of the register shows the exact condition of the title. A purchaser, too, may rely upon the record, for the government guarantees the title to be as shown on the register.

An equitable claim to land may be protected by lodging with the Registrar a caveat forbidding the registration of any dealing with the land until fourteen days, or other named period, shall have elapsed after notice of intention to register the same has been served by the Registrar at the address given. A red ink cross with the number of the caveat is then inscribed on the proper folium of the register. The notice gives every needed opportunity for protection to the holder of the equitable claim.

The most complicated forms of direct settlements and entails are managed about as readily as ordinary transfers, for in all cases all that is needed is a clear statement of the present facts on the certificate and register. Any change in the nature of the claim may be shown by a new certificate giving the new condition of affairs, and by a new folium in the register, or note on a former entry. In all transactions, present conditions, rights, and claims are shown on the one folium, and no one has any interest in going beyond that. The title, as shown, is indefeasible; the history of the title—all-important under our present system—is of no consequence whatever under the Torrens system.

The total expense under this system is, as will have been thought from the simplicity of the plan, much less than the

sums paid under the old system for abstracts and examination of titles—in old States not one-tenth as much—to say nothing of the certainty of the title and the saving of trouble. After the first entry, the cost of which would depend upon the old system, from \$5 to \$10 would suffice for the average transfer.

The system was invented by Robert Torrens,¹ of Adelaide, South Australia, an officer in the customs service, and not a lawyer, who from his experience in the registration of ships came to think of the application of the same plan to land. He drew up his plan, but the lawyers wisely shook their heads. It was so simple as to be almost if not quite ridiculous to gentlemen trained in the old school of fines and recoveries. He, however, persevered, and in 1858 South Australia passed a law adopting the system. An improvement upon this was passed in 1861, another one in 1878, and a perfected one in 1886. Since the first Act was passed in South Australia the system has been adopted in Tasmania, Victoria, New South Wales, Western Australia, New Zealand, and even in Fiji. In Vancouver Island it was introduced in 1861, and has since been introduced in British Columbia, Manitoba, and Ontario, Canada. In all cases it has been found to be in practice even more beneficial than was claimed by its advocates. Generally there has been no compulsion regarding the application of the system to individual titles, except in case of land bought from the government; but when the system has become known it is usual for purchasers to insist upon a Torrens title before buying. A usual effect of the system is to raise the value of all land brought under it.

In the United States but little has been done in the way of improving the methods of land transfer, though the evils of the present system are recognized by thoughtful men everywhere. In several of the States individuals

¹ A similar system has been in use in Hamburg, in Prussia, and in other parts of Europe for a long time; but the fact seems never to have been known to Torrens, to whom the plan was entirely new.

have taken an interest in the matter; and bills looking toward the adoption of a radically changed and improved system have been introduced into the Legislatures of Minnesota, Indiana, and possibly of other States, but with practically no result. In New York, the Land Transfer Reform Association, after long and persistent effort, succeeded in 1889 in securing the enactment of a block-indexing law for New York City, to take effect January 1, 1891, which will probably pave the way for a more complete system in the future, though Mr. Dwight W. Olmstead, the most active man in securing the very valuable law, does not approve the Torrens system, at least for use in New York City. In connection with a system of registration of possessory titles where the title seems to be somewhat in doubt, and a statute of limitations that would secure an indefeasible title in comparatively few years, as is done in some of the English colonies, there seems to be no really valid reason why the Torrens system might not be used to advantage anywhere, though it would be well probably to follow the New York plan of block-indexing as a preliminary measure.

A chief proof of the excellence of the Torrens system is the fact that it has been in use now some thirty years, and that it has universally commended itself to the States that have adopted it. No country thinks of repealing the law establishing the system; no individual wishes any other form of title. It everywhere has proved sufficient for all forms of conveyancing, has materially lessened the chances of fraud, has raised the value of land, and has facilitated dealings of all kinds in which land titles appear.

The advantages of the system may, perhaps, be best summed up in brief in the words of the Registrar-General of British Columbia, telling what the reform has accomplished in his country:

"1. The title to real property has been greatly simplified without radical changes in the general law.

"2. Stability of title, with safety to purchasers and mortgagees, has been secured.

"3. The ownership of property, either in town or country, is shown by the register at a glance, and whether incumbered or not.

"4. It increases the salable value of property.

"5. It enables both vendors and purchasers to accurately ascertain the expenses of carrying out any sale or transfer.

"6. It protects trust estates and beneficiaries.

"7. It prevents frauds, and protects purchasers and mortgagees from those misrepresentations common in all countries among a certain class of legal practitioners and land agents.

"8. It has secured the chief advantages of the old system of registration of deeds (of which notice is the most important principle), and has operated so as to almost entirely dispense with the investigation of prior title.

"9. Loans on mortgages are effected, and transfers of the fee are made, with as much ease as the transfer of bank stock is made in England, a search of from five to ten minutes being all that is necessary to disclose the state of any registered title."

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[NOTE.—As the purpose of this article is not to expound the Torrens system or to give a thorough discussion of land transfer, but simply to call attention to the importance of the question and to give a hint as to the nature of the reform, it may be well to name a few authorities that will be sufficient to give an outline of the system. Of course, a thorough study would involve the comparison of the laws themselves of countries using various systems.]

1. *An Essay on the Transfer of Land by Registration*, by Sir Robert Torrens, K.C.M.G. Cassell & Co. (Cobden Club publications.) Price, 6d.

2. *Land Transfer Reform: Two addresses*. By J. Herbert Mason, President of the Canada Land Law Amendment Association. These pamphlets may be obtained of Mr. Mason, Toronto, Canada. Five cents each.

3. Several articles in the last four volumes of the *Law Quarterly Review* on the movement in England, Prussia, and elsewhere.

4. Herbert C. Jones: *Torrens' System of Land Transfer. A practical Treatise on the Land Titles Act (Ontario) and the Real Property Act (Manitoba), embracing all the latest decisions in England, Australia, and Canada.* Carswell & Co., 30 Adelaide Street, East Toronto. Half calf, \$5.

5. *A Manual of the Law of the Registration of Titles to Real Estate in Manitoba and the Northwest Territories.* By Louis William Coutlée. Carswell & Co., Toronto, 1891. This book contains a good bibliography of the subject.

6. Dain, Alfred: *Le Système Torrens, son application en Tunisie et en Algérie.* Paris: Larose et Forcel, 1885.

7. *Land Transfer Reform, with an Explanation of the New York Block-indexing Act: a paper read before the American Bar Association, August 20, 1890.* By Dwight H. Olmstead. Dando Printing and Publishing Company, 34 South Third Street, Philadelphia, Pa.

8. *The Block-indexing Law of New York and the Act to provide for Short Forms of Deeds and Mortgages,* are published in pamphlet form by Baker, Voorhis & Co., 66 Nassau Street, New York.