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The Torrens System of Land Title Registration

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THE TORRENS SYSTEM OF LAND TITLE REGISTRATION†

By R. G. PATTON*

SINCE written conveyances signed by the grantor became the method of transferring title to real estate, three systems of evidence of title have come successively into use. The first makes no provision for registering or recording, but instead one proves title, so far as it is made up of written conveyances, by production of the original title papers or certified copies thereof. This system is still in use in most of the counties of England, and to a limited extent in the United States. The second system provides for the registration or recording of conveyances; registration in Ireland, Scotland, and a few counties of England; recording in Holland, Denmark and the United States. Whether requiring instruments to be recorded, or merely to be registered, it is spoken of generally as a system requiring *registration* of the *instruments* of conveyance. The third system provides, instead, for registration of the *title* itself (i. e., the ownership) rather than for registration of the *evidence* of title.[1] This latter system is in force in New

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[1]"The basic principle of this system is the registration of the title to land instead of registering, as the old system requires, the evidence of such title. In the one case, only the ultimate fact or conclusion that a certain named party has title to a particular tract of land is registered, and certificate thereof delivered to him. In the other case, the entire evidence from which the proposed purchasers must, at their peril draw such conclusion, is registered." Chief Justice Start in State v. Westfall, (1902) 85 Minn. 437, 89 N. W. 175.

"The official certificate will always show the state of the title and the person in whom it is vested. The basic principle of the system is the registration of the title to the land, instead of registering, as under the old system, the evidence of such title." In re Bickel, (1922) 301 Ill. 484, 134 N. E. 76.

"That registration of titles is in the abstract to be preferred to registration of assurances may at once be conceded, for the former aims at presenting the intending purchaser or mortgagee with the net result of former dealings with the property, while the latter places the dealings themselves before him, and leaves him to investigate them for himself. In one case he finds, so to speak, the sum worked out for him; in the other he has the figures given him, and has to work out the sum for himself." Report of Parliamentary Committee, 1878-9; Parliamentary Papers 1878-9, Vol. 11, p. 9.

Zealand, Australia, Western Canada, the City of London, the Philippines, Porto Rico, Hawaii, and in nineteen of our states—varying from being used to a limited extent only in some jurisdictions to being used exclusively in others. It resembles a system which has been in vogue in Germany, Austria, the Scandinavian countries and Switzerland for a great many years. The author of the Anglo-Saxon form of the system was a British customs officer in South Australia. Upon being appointed registrar general of the province, in charge of registering all instruments affecting title to real estate, his experience in his former office with the ship registry system led him to inquire why the title to a tract of land could not be registered the same as could the title to a ship. He demonstrated that it was entirely possible in that the statutes, called Torrens Acts, which he was instrumental in having adopted by Australia and New Zealand were entirely successful and have since been enacted elsewhere as above mentioned.

To many of us the idea of registering title to a ship may be more novel than registry of title to land. It is, however, a very ancient system and is a good model for registration of title to any kind of property.[2] Probably our nearest parallel is the evidencing of ownership of stock in a corporation by the issuance of stock certificates. As against the company and the owner's creditors, one cannot transfer title to corporation stock merely by delivery, or by bill of sale—it is transferable on the books of the company only, at the place where its stock register is kept. On presentation of a stock certificate at the proper office, accompanied by a properly executed assignment, either attached to, endorsed upon, or separate from the certificate, the latter is cancelled and a new certificate is issued to the purchaser containing no data as to its former owner-

[2]Under the English Merchants' Shipping Law a page in the registry was given to each ship registered, and on it appeared the name and description of the ship, the name of the owner and any liens or encumbrances. A duplicate of this page in the form of a certificate was given to the owner which was his evidence of ownership no matter where he might be. If there were several owners—and it was quite customary to have ships divided into shares of halves, quarters, eighths, etc.—each owner received a certificate for his share. Any lien or claim against a ship was required to be noted on the registry page, so that it was possible for any interested person at a glance to see exactly the condition of the title. To make a transfer, it was necessary to assign the certificate and take it to the registry office whereupon the old certificate was cancelled, the old registry page closed, and a new page was opened. A duplicate certificate, that is, a copy of the new registry page, was given to the new owner. At no time was more than one certificate of the same interest outstanding, and it was not necessary to go back of the face of the outstanding certificate. There was no need to examine prior certificates, nor to scrutinize the legality of prior transactions.

ship. If the certificate of stock presented calls for two shares of stock and the transfer to the purchaser calls for but one, the transfer officer will issue a new certificate to the purchaser for the one share he is entitled to and a residue certificate to the former owner for the one share he did not sell. The old certificate in all these instances is retained by the transfer officer and cancelled. The same process is followed in transferring a registered bond. Regardless, therefore, of whether we are familiar with registration of title to ships or to land, we are all of us more or less familiar with the general method of transfer of registered titles.

Contrasted with the simplicity of a title registration system, we have long been familiar with the complexity of an instrument registration system pertaining to bills of sale, chattel mortgages, and conditional sales of chattels, and of an instrument recording system for documents "whereby any interest in real estate is created, aliened, mortgaged or assigned." Under the recording system, a title is transferred at the risk of the buyer and subject to all defects in its entire recorded history. It is very essential therefore that a prospective purchaser make a careful investigation of that history. The system came into existence at a time when, though real estate was the most valuable class of property, it was entirely outside the realm of commerce and was the subject of infrequent transactions. There was the pre-eminent necessity of safeguarding the title and no necessity of facilitating speedy transfers. Since that time, however, many classes of personal property have come to be equally valuable with real estate, and the latter has come to be a commercial commodity. The title to rare or valuable personal property should now have equal protection with that to realty, and the latter should be transferable as readily as the title to any equivalently high grade personal property. This may best be accomplished, not by extending the operation of the recording acts to personal property, but by adapting the personal property registration systems to embrace titles to real estate. The system of proof of title to land has already progressed from the notoriety afforded by livery of seisin to the keeping of title deeds, and from the latter to the registration or recording of all instruments affecting title. It has now entered upon an era of the registration of the title itself.

Proof of title from the original title deeds may do very well in England, where transfers are still comparatively few and the

business is concentrated in the offices of a limited number of family solicitors; but it would have fallen down completely in the active dealing in land and continued subdivision of land which has existed in the United States, particularly during the settlement of its public land areas. In turn, the system afforded by the recording acts has served very well during a period when the total transfers were so few that no chain of title was complicated, when there were fewer people of the same name, and when there were fewer people with the requisite knowledge to perpetrate title frauds. It has always been subject to the objection that it made real estate a slow asset. This is because of the time required to get abstracts continued to date, to have them examined, and then to make compliance with requirements made by the examining attorney.[3] It is further objectionable because the process makes unnecessary expense to both vendor and purchaser,[4] because no examination is conclusive, because examinations have to be made over and over again for each new purchaser[5] with always the possibility of new

[3]In 1928, at the close of a real estate "boom" in which transfers had increased to such an extent that transactions could not be closed till after a delay of from five to six months, the Florida Association of Real Estate Boards instituted a campaign for a Torrens system as a speedier method of making transfers. The complaint was that the realtors had made no income for their work for the last six months preceding collapse of the boom, due to inability to close their transactions. See, Florida Realty Journal, January, 1930.

[4]It is probable, however, that the total expense to the public as a whole is about the same under either system. As to registered land, the expense of making voluntary transfers is greatly reduced, usually amounting to a total of but three dollars, and requiring no abstract and a minimum of legal services. But in the case of an involuntary transfer, descent or devise, foreclosure, execution sale, probate deed and the like, an order of court and often an adjudication of validity is required before the transfer can be made effective by issuance of a new certificate. For details see infra. The need for a lawyer's services in effecting such transfers would appear to leave the gross expense of all transfers about the same. There is, however, a greatly reduced cost to the public by a lessened expense in the keeping of title records.

[5]Part of an article in the New York Herald some years ago read as follows: "Lately the Jumel property was cut up into 1383 pieces or parcels of real estate and sold at partition sale. There appears to have been about 300 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 to 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 3500 volumes of deeds and mortgages in the New York Register's office, the same big dusty volumes of writing, and lifted them down and looked them through, in all three hundred times of the very same labor. Evidently two hundred ninety-nine times of that labor was thrown away, done over and over again—uselessly,—and the clients, those

objections to the title, because of the unnecessary increase in the number of public records and space required for them, and because of insecurity due to defects of record or in pais which the examiner has overlooked, or which could not be found by any reasonable amount of investigation. The very fact that, with increasing value of the property and with increasing length and intricacy of the record title, corporations have been organized in some states to insure owners and mortgagees against loss by reason of some of these risks shows that the system, at least as it now exists, is inadequate for present needs. It can be improved in many respects,[6] but the only way to obviate all its defects is to substitute for it as rapidly as possible the registration of title, commonly known as the Torrens system.[7]

When introduced in Australia in 1858, the system found immediate favor. The merits there disclosed led to its adoption in New Zealand, Tasmania and the provinces of Western Canada. After forty years of parliamentary investigation of all known systems, including our recording acts, England adopted it in 1897 for the purpose of untangling the complications involving titles in the City of London. Laws patterned after the English colonial statutes were enacted by Illinois and Ohio in 1895 and 1896, respectively. They were promptly declared unconstitutional.[8] This

buyers, together paid three hundred fees to those lawyers (who each earned his money) but evidently two hundred ninety-nine of those fees were for repetitions of the very same work. By and by, twenty years from now, instead of only three hundred owners of those Jumel plots, the whole 1383 lots will be sold and built upon, and 1383 new purchasers will again pay 1383 lawyers 1383 fees for examining that same Jumel title. By that time (at the present rate of growth, and unless a remedy is applied) there will be fully 10,000 big folio volumes in the new hall of records, and the 1383 fees will be for mere repetitions of labor so far as the whole Jumel estate is concerned, and will be practically wasted."

[6]The American Title Association (composed of title companies, abstractors, and title examiners) has at various times considered the matter. At present, the Section of Real Property Law of the American Bar Association has a Committee on Improvement of Title Records. It is to be hoped that through the work of these or other agencies legislatures may be induced to remove some of the most apparent defects in the recording act systems.

[7]Velie, The Problem of Land Titles, (1929) 44 Pol. Sci. Q. 421; Rood, Brief for the Torrens System, (1914) 12 Mich. L. Rev. 379; Beale, Registration of Title to Land, (1893) 6 Harv. L. Rev. 369; Wigmore, Committee Report, (1912) 37 Reports of Am. Bar Ass'n 1148.

Statutes providing a state with a Torrens System of Title Registration should not be enacted, however, until a substantial number of lawyers, realtors, owners or mortgage investors desire it. No good end is served by a state providing legal machinery which is not likely to be put to use.

[8]People v. Chase, (1897) 165 Ill. 527, 46 N. E. 454. State v. Guilbert, (1897) 56 Ohio St. 575, 47 N. E. 551.

was because they were not drafted to suit the requirements of states bound by written constitution. It was plain that the only way that the Torrens system could be used in the United States was to provide for decision by the judiciary department of every question which belongs exclusively to that department and to bar no rights in real estate except by measures which conform to the decisions of our courts as to what constitutes due process of law. The cases having established the boundary line beyond which the acts might not go, the next Legislative Assembly of Illinois enacted a new law[9] which was drafted in form to remove the constitutional objections existing in the former act. Following the provisions perhaps of the Illinois "burnt record acts," it provided that a court of competent jurisdiction should determine the ownership, as a basis for original registration. The law was attacked[10] on the ground that it also provided for the performance of judicial duties by the registrar in the matter of his determining after registration the validity of liens offered for filing against the title. The court held the act valid for the reason that, though the powers conferred were semi-judicial, they were not of a class that their decision was vested solely in the judiciary. The Massachusetts act passed the year following[11] was next attacked on the ground of diversion of judicial power and lack of provision for due process of law, but was held constitutional.[12] Then followed the decision of the supreme court of Minnesota[13] upholding the constitutionality of our own act[14] as against attacks urging the same points.

In addition to the states mentioned, Illinois, Massachusetts and Minnesota, the system has been adopted in California, Colorado, Georgia, Mississippi, Nebraska, New York, North Carolina, North Dakota, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Utah, Virginia and Washington; also in Porto Rico, Hawaii and the Philippines. All of the acts in this country leave the matter of original registration optional with the owner; in the Philippines it is compulsory as to public lands patented subsequent to the

[9]Illinois, Laws 1897, 141.

[10]People v. Simon, (1890) 176 Ill. 165, 52 N. E. 910, 68 Am. St. Rep. 175, 44 L. R. A. 801.

[11]Massachusetts, Acts, 1898, ch. 562.

[12]Tyler v. Judges, (1900) 175 Mass. 71, 55 N. E. 812, 51 L. R. A. 433.

[13]State v. Westfall, (1902) 85 Minn. 437, 89 N. W. 175.

[14]Minnesota, Laws 1901, ch. 237. (Amended Act is chap. 65 of Revision of 1905 and of General Statutes of 1913, 1923 and 1927.) Torrens statutes differ somewhat in different states, and a careful comparison discloses that Minnesota has one of the best. Land Title Registration by Certificate, Bulletin No. 1, Federal Farm Loan Bureau.

taking effect of the act; in Hawaii it is compulsory as to lands owned by corporations. In Chicago and Minneapolis, the cities have adopted resolutions which to a limited extent amount to compulsory features in that all lands about to be purchased by the cities or by any of their subdivisions must first be placed under the Torrens system.[15] In Minneapolis, the resolution provides that otherwise the city must acquire its title by proceedings of eminent domain, that being the only method by which an equivalently good title, as against all the world, can be acquired.

The matter of transferring a title from the recording act system to the Torrens system is by a judicial proceeding in the nature of a suit to quiet title against all persons, both known and unknown, who could by any possibility assert an adverse right. The proceeding differs from the ordinary equity action to quiet title and from the statutory action to determine adverse claims in that it is supervised at all stages by an officer of the court, known as the examiner of titles, and in that, in addition to the usual findings and adjudications of the judgment or decree in such actions, it provides for the issuance by a county official known as the registrar of titles of a certificate of title which sets forth all the essential facts determined by the decree. The plan is that the decree and the issuance of the certificate of title thereunder, aided to a certain extent by a statute of limitation, shall constitute the starting point of the title under the new system. The certificate sets forth the name of the owner or owners in fee simple and also all other rights, interests and liens to which the property is then subject. The order or decree of registration is retained by the clerk of court as the final order in the Torrens proceeding. The certificate of title is a page in a register kept by the registrar of titles. A copy of this page called "owner's duplicate certificate of title" is delivered to the owner. Mortgagees and lessees may procure what are known as mortgagee's and lessee's duplicates.

The operative act to transfer a registered title is performed by the registrar of titles in cancelling an outstanding certificate and in issuing a new certificate to the transferee. In the case of voluntary transfers, his authority to perform this act comes from the filing with him of a deed in the same form as is used for the conveyance of an unregistered title. However, just as in the case of an assignment of a certificate of stock the assignment must be

[15]Chicago, March 3, 1919, Journal of Proceedings, pp. 1774-5; Minneapolis, Resolution of July 12, 1929.

accompanied by the certificate, and in the case of a check upon the savings account it must be accompanied by the pass book, so here the deed must be accompanied by the owner's duplicate certificate of title. This is an infallible method of identification. So long as the owner takes proper care of his duplicate, it is an absolute safeguard against loss of title by reason of a forged deed.[16]

In the case of involuntary transfers, however, there is a radical difference from the procedure which applies to unregistered land in that the registrar cannot recognize any such transfer unless accompanied by an order of court directing him to receive it for the purpose of registration. These orders are all based upon a final adjudication determining the rights of all parties involved. This may have been in the probate court in the form of a final decree of distribution; or, it may have been in the district court as, for instance, a decree of partition. Again it may be an order directing a conveyance, such as an order of license to sell or a judgment on foreclosure of a mortgage or a mechanic's lien. In all such cases, if the proceedings are jurisdictionally regular, and the time to appeal has expired, the court's order to the registrar, to make the transfer by cancellation of the outstanding certificate and issuance of a new certificate, is made without notice, all rights having been already adjudicated. But if an order is desired to effect a transfer by reason of some matter in pais, such as a foreclosure by advertisement, a lost or destroyed deed, the happening of a condition, or the like, the order can be issued only after proper notice and hearing.

In other words, the conclusiveness of the original certificate of title is based upon an adjudication and upon statutes of limitation; and each subsequent certificate is based upon either (1) a voluntary transfer as to which, in addition to the usual safeguards, an owner's duplicate certificate furnishes additional proof of identity, or (2) upon an involuntary transfer based upon or confirmed by a

[16]Eliason v. Wilborn, (1929) 335 Ill. 352, 360, 167 N. E. 101, aff'd (1930) 281 U. S. 457, 50 Sup. Ct. 334, 382, 74 L. Ed. 962, 1179, 68 A. L. R. 350, 357 n.

Conversely, one who delivers his duplicate certificate to a party who may forge a deed to accompany it gives to that party the power to cause a transfer of the title which in the hands of a bona fide purchaser will be unassailable. Contrary to what is the case with records under the recording acts, a bona fide purchaser may absolutely depend upon the certificate. Id. An owner should, therefore, take the same care of his identifying duplicate as he would of the keys to his safety deposit box.

final order entered after due notice and hearing and in form to constitute res adjudicata. The title shown by a certificate is at all times an adjudicated title.[17]

In the matter of rights and interests less than the fee simple title, these are set forth in the first certificate in accordance with the decree entered in the registration proceeding, as are also all mortgages and other liens adjudged to be existing at that time. Thereafter, all such interests or liens created by voluntary act of the owner are registered by presentation to the registrar of the owner's duplicate certificate and the filing with him of the instrument creating them. The registrar endorses upon all such instruments a document number and the time of registration and then retains them in his files. At the same time, he enters a "memorial," being a brief abstract of the instrument, upon the original certificate in his office and upon the owner's duplicate certificate, the latter being at once returned to the owner. In the case of involuntary interests or liens, such as an eminent domain proceeding, a judgment, a mechanic's lien claim, or the like, the registrar must receive these for registration as memorials upon the original certificate of title without presentation of the owner's duplicate certificate. They will be copied onto the owner's duplicate without charge whenever it is presented, but entry thereon is not compulsory or essential.

A purchaser may, therefore, rely upon the owner's duplicate certificate as to the condition of the fee title and as to all voluntary encumbrances; but to know the condition as to involuntary encumbrances he must make inquiry at the office of the registrar of titles, or must have the owner's duplicate presented and the memorials brought up to date.

There are found a few matters of encumbrance which it is not practicable to show upon the certificate of title. The statutes of all states having Torrens systems make certain exceptions, therefore, from the certificate, and, as to these, a purchaser or lender must make investigation other than from the certificate. The usual matters excepted are rights of appeal, short time leases, public highways, current taxes, and liens or rights arising under the laws of the United States which the state statutes cannot require to be placed of record. In Minnesota, there is the further exception of the rights of any party in possession under an un-

[17]State v. Westfall, (1902) 85 Minn. 437, 447, 89 N. W. 175.

registered deed or contract for deed. But in no state is there any exception of, nor need any inquiry be made as to, rights by prescription or adverse possession. The statutes provide that no such rights can be acquired as to registered land.

Discharges and assignments of interests less than the fee title are made by the registration of operative instruments upon the certificate of title. The fee owner, holding the owner's duplicate certificate of title, has, of course, no interest in these and need not, therefore, present his owner's duplicate. If, however, a lessee or mortgagee has procured a lessee's duplicate or a mortgagee's duplicate, any registration of a transaction in regard to the lease or mortgage must be accompanied by presentation of his duplicate.

In addition to information which may be had by personal inspection of the original certificate, or by a written or telephoned inquiry to the registrar, or by having one of the duplicate certificates continued to date to show all the memorials appearing on the original certificate, the registrar must furnish (for a fee of one dollar in most states) a certificate showing the true condition of any title registered under the system. The fee is small, but since the other methods are available with no expense whatever, "certificates of condition of title" are seldom procured.

The conclusiveness of a Torrens certificate is of vital interest to the holder, to mortgagees who loan him money, and to anyone who is about to purchase the title from him. Though such a certificate is the best evidence of title which has ever been devised and the least subject to attack, it would probably work more injury than benefit to have the necessary statutory and constitutional provisions which would make it one hundred per cent. conclusive. For all practical purposes, it is conclusive.[18] Though it might be an advantage to some particular person in a very few instances to have it more so, this would not be to the advantage of the public in general. For instance, in the matter of the first certificate after initial registration of the title and also in the case of a certificate issued on an order of court pursuant to an involuntary transfer, there is always a right of appeal.[19] While these certificates could be made more conclusive by abolishing the right of appeal, no one would maintain that this should be done. During the appeal period, that right is a hazard which one dealing with land must assume.

[18]Loring M. Staples, Conclusiveness of a Torrens Certificate of Title, (1924) 8 MINNESOTA LAW REVIEW 200.

[19]Mason's 1927 Minn. Stat., sec. 8275.

unless he procures a release thereof, regardless of whether the title is under the Torrens system or the recording act system. In either case during the existence of that period, a particularly cautious investor might wish to examine as to the sufficiency of the proceedings to bar all rights and as to the probabilities of a reversal on appeal. Most of such orders, however, are entered by default on a record which would not afford any ground for reversal, and neither in the case of a registered title nor of an unregistered title is such an examination often made. As to a registered title in particular, the combined care bestowed upon such proceedings by the applicant's attorney, the examiner of titles, and the court precludes the likelihood of judicial error.

Another item of inconclusiveness, which it would certainly be inadvisable to abrogate, is the right of a defrauded party to have set aside and cancelled a certificate outstanding in the name of a party who perpetrated a fraud by reason of which it was issued, or of one who had knowledge or notice of the fraud.[20] While estoppel by a decree is the most binding form of estoppel which exists, there has always been a right to have a judgment set aside where fraud has been practiced in procuring its entry. Though to a minor extent this undermines the conclusiveness of all judgments, it is a principle which unfortunately but necessarily must be preserved—and in Torrens proceedings the same as in other cases. However, there can be no danger from this point of inconclusiveness to a bona fide purchaser or mortgagee, and the danger most properly exists as to one holding a certificate obtained by fraud, or with notice of fraud.

The further point in which such a certificate might prove inconclusive is the one instance in which a party whose claim of right has not been barred by a decree, due to his not having been made a party to the proceeding, cannot be barred by limitation statute. The only such party is one who was at the time an occupant of the property pursuant to his right. He has no need of any machinery of the law to enforce his rights, and, consequently, the withdrawal by statute of limitation of the right to use the legal machinery of the state can have no effect upon him.[21] Inasmuch, however, as the parties to Torrens proceedings embrace not only those whose rights appear of record and the usual unknown parties,

[20]Baart v. Martin, (1906) 99 Minn. 197, 108 N. W. 945, 116 Am. St Rep. 394.

[21]State v. Westfall, (1902) 85 Minn. 437, 89 N. W. 175.

but also all parties found to be in possession of the premises, inconclusiveness on account of the situation mentioned can only exist where no investigation of occupancy has been made. The possibility of the subsistence of such a right after registration is very remote.

The Torrens statutes of all states provide for an assurance fund. This is no more essential to a Torrens system than to a recording act system. It is, however, more in line with social justice, and its existence in the Torrens system probably occurs by reason of the fact that the statutes establishing these systems in the various jurisdictions were enacted at a later period than the recording acts. Under any system, there is the possibility of some official, even the court, making an error which will bar a right which should not have been barred. When this occurs under the recording act system, there is usually no chance of recovery. However, under the Torrens statutes, a fund has been created to reimburse anyone so unfortunate as to lose a lien upon, or an interest in, the land involved by reason of entry of a decree or the issuance of a certificate which erroneously fails to preserve his rights.[22] There are seldom any demands upon this fund, and it need not be large. In the State of Minnesota, it is made up by collecting on all original registrations, and on all transfers by descent or devise, one-tenth of one per cent. on the *assessed* value of the *land*, exclusive of improvements.[23] The fund is also increased by the accumulation of interest. In most countries, no call has ever been made upon this fund.[24]

Though registration lessens the expense of transfers after the

[22]Although instances can be conceived in which a fee owner would be reimbursed from this fund, it is primarily not a fund for his benefit. The statute contemplates no risk to his title. The size of a county assurance fund should not therefore be compared to an insurance fund or a title company capitalization maintained to protect an owner or mortgagee of a title still under a recording act system.

[23]Mason's 1927 Minn. Stat., sec. 8320.

[24]But see Horgan v. Sargent, (1930) 182 Minn. 100, 233 N. W. 866. In this case the registrar memorialized a $3800 mortgage as being for $3300. A bona fide purchaser of the owner's equity, computed on the basis of the record, paid the full amount of the mortgage and recovered from the assurance fund the amount of his loss—apparently as subrogee of the mortgagee. Had a similar mistake been made in recording a mortgage in the office of a register of deeds, no recovery would have been possible. Parret v. Shaubhut, (1861) 5 Minn. 33 (Gil. 258), 8 Am. Dec. 424; and Foster v. Malmberg, (1912) 119 Minn. 168, 127 N. W. 816; Beekman v. Frost, (1820) 18 Johns Ch. (N.Y.) 544, 9 Am. Dec. 246; Prouty v. Marshall, (1909) 225 Pa. St. 570, 74 Atl. 550, 25 L. R. A. (N.S.) 1211; Terrell v. Andrew County, (1869) 44 Mo. 309.

land is once registered, the cost of the court proceeding made necessary by our state and federal constitutions has caused the growth of the system to be much slower in the states which have adopted it than was the case in the British colonies. For this reason, though practically all titles in the western provinces of Canada are now registered, there is no county in any of the states named in which the titles subject to the recording acts do not as yet greatly exceed the number which have been registered. In fact, there are many counties in each of these states which have yet to entertain their first registration proceeding. However, additional counties are from time to time adding the necessary record books to make title registration possible, and use of the system is gradually increasing. The extent to which titles are brought into the registration system varies in different states, and in the counties of any given state, according to the amount of information disseminated regarding its advantages and according to the amount of opposition encountered. The system has the approval of the large mortgage loan companies, insurance companies, federal loan agencies and trust companies. Local bankers and realtors usually prefer to deal with titles which are registered. In some states, the abstracters and title companies that first opposed the system on the supposition that it menaced the continuation of their business have found that any such result is remote and that abstract continuations required for initial registration proceedings more than offset their loss of business because of lack of need for abstracts in subsequent transactions. The system has the approval of lawyers generally, and the American Bar Association has endorsed the system and has included a model Torrens Act in the uniform laws which it from time to time recommends.[25] Instead of earning a living by examining abstracts and title records, most lawyers prefer the work of registering titles and of conducting the proceedings for new certificates required in the case of involuntary transfers. This is fully as profitable and more in line with professional training and experience. The general public, so far as it is informed upon the subject, prefers to buy a registered title, but is often not so keen about registering its own titles because of the initial expense. This amounts in Hennepin County to a bar association rate of seventy-five dollars and upwards for the attorney and about twenty dollars in filing and publication fees.

[25] (1916) 41 Reports of Am. Bar Ass'n 428.

In Ramsey and St. Louis Counties, the cost is about the same, but in other counties it runs from ten dollars to twenty dollars more, because of the fact that the examiner is paid by the applicant instead of by the county.

Those who at present have their titles registered are comprised mainly within four classes:

First. Prudent and conservative men, who, as a business precaution, are desirous of having the title to their real estate in the best possible condition, so that in case of selling it or borrowing upon it there will be no delay because of title questions, and so that, in case of their decease, no troublesome questions may arise to vex their heirs or devisees.

Second. Those whose titles are clouded or affected by some irregularity or defect, which, while their right to possession is undisputed, seriously impairs the market value of the land. In such cases, the Torrens law is resorted to instead of the older action to determine adverse claims. The expense is approximately the same, but the registration proceeding entails less work for the attorney and affords greater value to the client.

Third. Those who have derived their title through a sale for taxes, or under a mortgage foreclosure by advertisement. In such cases, enough of the proceeding is in pais to leave such uncertainty as to validity of the title that a prospective purchaser is justifiably loath to accept a conveyance until there has been an adjudication such as results from a Torrens proceeding.

Fourth. Those who own an entire addition or a number of adjoining lots. All the lots may be registered in one proceeding, and the owner may then sell his lots, one or more at a time, and not be to the expense of furnishing an abstract with each lot. The same considerations apply in the registration of a tract of land about to be subdivided.[26]

Fifth. Those owning land acquired by accretion or reliction. In such cases, the state, as the owner of all land forming the bed of public waters, is a necessary party defendant, and it is in a Torrens action only that this is allowed. In other words, there is no method other than a Torrens action by which an owner can

[26]Notable subdivisions in Hennepin County to which title has been registered at the time of or before platting are Shenandoah Terrace, Sunset Gables, Homewood, Camden Homes, Lake Nokomis Shores, Liberty Heights, Victory View, Minneapolis Industrial District, Robbinsdale Home Gardens, Thielen's Brookside, Shirley Hills, Fairwood Park, Avalon, Pembroke, Wychwood.

make of record a title which he has acquired to land below a meander line.

Sixth. Those owning property of great value or property acquired for a specific purpose who cannot, therefore, afford to take any chance on their ability to retain it by relying on the warranties in their deeds or upon the apparent regularity of the deed records. Examples are registrations of business blocks, mining properties, plants and buildings of the telephone company, etc.[27]

The reasons why all titles should be transferred from the recording system to the Torrens system have been well stated to be as follows:

1. Elimination of loss of title due to someone occupying a part or all of the premises adversely. (After a title has been registered, there is no such thing as anyone acquiring title by adverse possession.)

2. Elimination of the necessity of ever having to defend one's title because of forgery of one's name to a deed or mortgage. A forger can accomplish nothing with a forged instrument unless he also has possession of the owner's duplicate certificate of title.[28]

3. Ability to close real estate transactions with the same absence of delay as in sales of personal property and freedom from loss of sales incident to delays necessary in case of unregistered titles.

4. Decrease in expense of making a transfer by deed (no expense to the seller and only a three dollar registration fee on the part of the purchaser).

5. Immunity from having one's title clouded by the docketing of judgments against someone else of the same name as owner.

6. Speed with which a cloud upon a registered title may be removed.

7. Only method of furnishing a record title to land acquired by accretion or reliction.

8. Title made "marketable," and that condition thereafter always kept up to date.

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[27]Examples in Minneapolis: McKnight Building, Frontenac Building, Lumber Exchange Building, Evanston Block, Citizen's Aid Building, Northwestern Terminal Company Building, Northwestern Bell Telephone Company Building (also all its plants and exchange buildings), St. Mark's Church, Strutwear Building, Oak Grove Apartments, Interlachen Club, Northland Milk & Ice Cream Company, National Tea Company, Calhoun Beach Apartments, Asbury Hospital.

[28]See ante, Voluntary Conveyance and Mortgage.

9. To secure immunity from risk of loss, or impairment of title from the dangers incident to a title based upon the recording system, such as: forged deeds (deed void); deeds recorded which have never been "delivered" (deed void); deed executed pursuant to a forged or undelivered power of attorney or executed after revocation of the power by death or insanity of the maker (deed void); a deed voidable because of infancy of the grantor; deed void (in some cases) because of mental incompetency of grantor; record void because of forgery of certificate of acknowledgment; will produced for probate after conveyance by heirs at law; deed from one other than the owner but having the same name as the owner (a species of forgery);[29] deed by grantor supposed to be single but in fact married, or from a married grantor joined by a person who is not the grantor's spouse;[30] void divorce decree; claimants not barred by a legal proceeding upon which a title is based; will partially revoked by birth of a posthumous child; overruling of decisions upon the principle of which the validity of a title depends; a trusteeship of which the illegality has not been discovered; deed signed "by mark" when grantor was not conscious; lack of title in a "record owner" by reason of matters which need not be made a matter of record or which do not depend upon the record (e.g., adverse possession); conflicting government patents, of which one only appears in the county records; etc.

The number of cases on the foregoing points are sufficiently numerous to show that risks from these sources are far from minor. The courts recognize this fact and have said with reference to a title based upon the recording act that "it is impossible in the nature of things that there should be a mathematical certainty of a good title."[31] However, since the establishment of the Torrens System, we find that there can be a certainty as to title. Many statements of courts and text-writers are to be found, such as the following: "The purpose of this statute is to create a judgment in rem perpetually conclusive. Other proceedings in rem may determine the status of a ship or other chattel that is transient; this legislation provides for a decree that shall conclude the title to an interest that is to be as lasting as the land itself."[32] "Besides

[29]See Loughran v. Gorman, (1912) 256 Ill. 46, 99 N. E. 886.
[30]Rux v. Adam, (1919) 143 Minn. 35, 172 N. W. 912.
[31]First, etc., Society v. Brown, (1888) 147 Mass. 296, 17 N. E. 349.
[32]Smith v. Martin, (1910) 69 Misc. Rep. 108, 111, 124 N. Y. S. 1064.
[33]Robbins, The Torrens System, (1902) 54 Cent. L. J. 282, 290.

clearing and registering the title and facilitating its transfer, the Torrens system practically guarantees, in behalf of the state, that the holder of a registered title has an absolute and indefeasible interest which can never be questioned on any ground whatever."[33]

"The purpose of the Torrens Law is to establish an indefeasible title free from any and all rights or claims not registered with the registrar of titles, with certain unimportant exceptions, to the end that any one may deal with such property with the assurance that the only rights or claims of which he need take notice are those so registered."[34]

[34]In re Juran, (1929) 178 Minn. 55, 226 N. W. 201.