

THE TORRENS SYSTEM OF LAND TRANSFER
AND A COMPARISON WITH THE PRESENT REGISTRY OF DEEDS SYSTEM

by

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INTRODUCTION

Land is a fundamental element in the wealth of man. Since the day that Adam and Eve were evicted from the Garden of Eden, there has been a constant warfare among men and nations for control of our Earth. The title to land was originally obtained and held by might. This situation is only very gradually being replaced by the regulations of law.

Land is precious to man because of its characteristics of immobility, indestructibility, and relative permanence of value. Land also holds a value for man which is more subjective. Land provides a place of abode and haven; a foundation for the fundamental element of society---the home. Then, too, land has certain other sentimental attachments which are likewise more or less subjective---the prestige accompanying the ownership of land, and certain experiences and recollections connected with particular parcels of land. Land is the most tangible and the least perishable of all sources of wealth.

There are essentially three ways in which title to land may be acquired. The first is by grant from the previous owner, either by patent from a sovereign, by deed of sale, as a gift, by a quit-claim deed from the existing owner, or

by devise by the last will and testament of the deceased owner. Second, land may be obtained by the operation of the law. It may pass by descent to the heir of the owner who died intestate, or through adverse possession for such a period of time as may be prescribed by the local statute of limitations. Third, title to land may be acquired through the actions of waters in building up accretions, or in retreating and leaving uncovered land formerly submerged.

The title to the land is the important and essential element regardless of the manner in which the land is acquired. The land itself only represents so much soil and rock, but the title represents the right to occupation without molestation, and the right to transfer and pledge the property, that is, the privilege of possession, enjoyment, and alienation.

And yet, although land represents the largest single element of wealth in the United States, the difficulties and delays attendant to the transfer of land make it practically unavailable as a source of quick or emergency credit. In no other item in the possession of man, does the past history have to be investigated, so much as with land.

Thomas Jefferson once wrote, "The small landowners are the most precious part of a State." Yet all "back to the land" movements and other social reform schemes depend on a

pronounced increase in the number of small holdings, which in turn are based on a simple and cheap method of buying, selling, and pledging land.

REVIEW OF LITERATURE

The literature on the subject of the Torrens system is not extensive, and is comprised, for the most part, of short articles in periodicals and a number of pamphlets and bulletins issued by various agencies.

Cameron (10) in writing on the simplicity, serviceability, and success of the plan, states, "No legal or economic principle is of greater moment than the Torrens." Cameron's book was written in answer to popular demand for the collection and summarization of a series of articles appearing in The Wall Street Journal. Cameron is thoroughly in favor of the system and terms it "the creation of a business man for business purposes."

Massie (31), in his book, explains the operation and effects of the Torrens Law in Virginia and answers certain legal questions. He also includes an annotated copy of the "Uniform Land Registration Act" in Virginia, accompanied by sample forms appropriate for use under the Virginia "Torrens" Act.

Yeakle (63) has covered the subject rather completely,

including discussions of the purpose, procedure, effects and advantages of the Torrens system. Yeakle submits also a sample Torrens law in the form of a "Bill for an Act."

These three writers have all been favorable to the Torrens plan. Incidentally, their works preceded the 1917-1918 period, at which time interest in this method of land transfer declined. During the period preceding 1917-1918, there also were a number of bulletins and small publications issued.

A few educational institutions have considered the different aspects of the Torrens plan. Publications from Johns Hopkins University (18); the University of Tennessee (52); the University of Maryland (6); and the University of South Carolina (33) all have dealt favorably with the system.

The Federal Farm Loan Bureau (15) has issued a favorable treatise covering fairly thoroughly every important phase of the registration of titles principle. Especial attention is given to the essentials and adaptations of an act to fit Constitutional requirements, along lines apparently approved by United States Supreme Court decisions.

Browne (7) of the Nebraska Legislative Reference Bureau and Skog (45), Registrar of Titles in Hennepin County, Minnesota, each have written publications on the Torrens laws of their respective states. Of all the literature

reviewed for this study, Browne gives the most comprehensive and easily understandable discussion. Although Browne wrote graciously of the Nebraska Act at about the time of its passage in 1916, the Torrens plan of land transfer never has been used in that state.

A great many articles have appeared in periodicals on the registration of titles. The major portion of these have been printed in such magazines as the Outlook (2, 50, and 53), Nation (26 and 42), Forum (30), Contemporary Review (13, 29, and 46), Spectator (48 and 55); and in law journals such as The Reports of the American Bar Association (39), the Harvard Law Review (47), Corpus Juris (36), the University of Pennsylvania Law Review (12), and the American Law Review (8, 20, 22, 28, 32, 54, 59, and 60). These articles, excepting Corpus Juris (36) and Cushman (12), were written before the period of relative inactivity set in and express a benign and friendly attitude toward the Torrens plan.

During the period of inactivity (1918 to 1934) there were few publications on the subject. The few which were issued, however, seem to indicate a change of opinion from one favorable to one adversely critical. Reque (40) is highly critical of the system, and upholds his arguments by authoritative assertions of County Registrars and other officials.

Lately, the aggregate of writings on the Torrens system has increased sufficiently to show the revival of interest in this method of land transfer. Allin (1) holds a rather unfavorable attitude, while Finck (16) terms the system "The Torrens Fallacy". Finck concludes that the "recording (of deeds) system is the new American system giving protection to all."

A very favorable discussion of the Torrens plan by Beatty (5) appeared in the Reader's Digest in 1936. Beatty states, as the most important reason for the relative failure of the Torrens system in the United States, that, "The Torrens system was massacred by title guarantee companies when it threatened to encroach on their hunting grounds. Title guarantee companies exist only in the United States. Nowhere else is the title system so faulty that property owners must buy insurance. The more confusion the better for these companies."

The latest publication of which the author has knowledge is that of Cushman (12). Cushman undertakes a consideration of the plan from a historical standpoint and follows that by an examination of its advantages and disadvantages. He concludes that regulation of title insurance would be preferable to the adoption of the Torrens system by saying, "Only by improving in every possible way

the service rendered to the public, and by refraining religiously from engaging in the practice of law can title companies escape from onerous regulations by the state and from the necessity of meeting again and again the recurrent claims of proponents of a state title insurance system."

SCOPE OF STUDY

The subject matter of this thesis deals with the use of the Torrens system and its comparison with the registry of deeds system of land transfer.

The points which the writer has hoped to explain are:

(1) Why the Torrens system has not had more than nominal success in the United States, as indicated by the relatively small territory covered by the system and the comparatively small use of the system in those states in which it has been adopted;

(2) Why, until the last two or three years, interest in the plan had faded so rapidly and so completely; and

(3) How the Torrens system might be put into operation most advantageously and effectively in the United States.

The first phase of the study was to trace land transfer methods through the ages. This includes a brief account of the life of Sir Robert Richard Torrens, the originator of the Torrens system of land transfer.

The second phase of the study deals with the Torrens system, including discussions of the purpose, the principles, and the advantages and disadvantages of this system; also the procedure under this plan, the places where it is used and the extent of its use, the opinions of various professional men, and its comparison with the more extensive registration of deeds system.

PROCEDURE FOLLOWED IN STUDY

As indicated by the extensive bibliography, secondary sources were the fountainhead of information for this monograph. The author obtained material for use from the Kansas State College Library; the Law Library of Wyandotte County, Kansas; and the Kansas City, Kansas and Kansas City, Missouri Public Libraries. Various publications were also received from various governmental and non-governmental agencies.

Supplementary to this fundamental source of material, additional data were procured through questionnaires, interviews, and correspondence.

Questionnaires were sent to each state of the United States having a Torrens Act on its statute books. The questionnaire included inquiry as to: the method of application of the Torrens Act, that is, whether compulsory or optional; the presence of requirements of abstract, court action and compensation funds; costs, length of statutes of

limitations, and extent of use within the state; the ability of applicants to group themselves in publishing notice and retaining an attorney; the ability of a registered owner to change back to the deeds system; and the date of adoption and the successfulness of the system. The results of this questionnaire are shown in Table I.

The state officials have no records or data on the extent of use of the Torrens system in the different counties of the various states, so that in many instances this information was not available.

Interviews were held with men connected with land transactions---abstractors, real estate agents, bankers, and lawyers. The interviews were disappointing, in that these men, who should be expected to be familiar with systems of land transfer used in the United States, with few exceptions, did not understand even the more fundamental workings of the Torrens plan.

Correspondence was carried on with The Farm Credit Administration, a representative in Congress, the Legislative Council of the State of Kansas, the National Association of Real Estate Boards, the Nebraska Legislative Reference Bureau, the Bureau of Agricultural Economics of the United States Department of Agriculture, the Colorado Title Association, the American Title Association, the

Hartman Abstract Company, and others which have furnished a great deal of valuable information.

Since there are so few accessible and available primary sources of data, it has been necessary and imperative that secondary sources be depended upon in gathering the majority of the material contained herein.

EVOLUTION OF LAND REGISTRATION

Land registration is a process connected with the transfer of landed property. Registration is accomplished by either registration of deeds or registration of titles. Registration itself is made in the self-interest and for the protection of the owner and serves the purpose of assisting the purchaser or mortgagee of land to satisfy himself as to the vendor's or mortgagor's title. The reason for the purchaser's or mortgagee's desiring to know the validity or merchantability of the title to the land is obvious. Only ready sale-ability and reasonable assurance of ownership invites buyers of land or any other commodity. With goods, possession is usually ample proof of ownership, but with land, the person in possession may or may not be the owner. Also, goods are less often given as security for a pledge, whereas, from the beginning of history, land has been a prime source of credit. Surely, then, the man who buys

land is justified in making certain that there is not some hidden loophole through which he may be deprived of a large part or even the whole of its value. Again, the purchaser of land risks more than the purchaser of goods due to the immovable and indestructible characteristics of land. For these reasons, among others, any attempt to deal with land on the simple, unsuspecting principles which hold in regard to goods would be subject to grave risks.

The earliest system of transferring land consisted of the meeting of the parties on the land in the presence of witnesses, accompanied by the passing of a clod of earth or a branch of a tree from the vendor to the vendee. This act was symbolical of the transfer of the whole tract of land. Of course, as long as the witnesses existed and their memories stood them in good stead, this method was sufficient to render fraud and mistake difficult.

The first stage in the history of land registration and one of the earliest improvements over the above system consisted in the establishment of a sort of public record by a local authority, containing a series of notes on the effect of various transactions that took place. The entries were simple, consisting mainly of the date, the names of the parties, the name or a short description of the land, and the nature of the transaction. The Manorial Court Rolls,

in the middle ages, were of this character and were the great authorities on titles in England and on the continent. There is a land registry in Vienna in which the series of registries dates back to 1368, in Prague to 1377, in Munich to 1440. (53)

As dealings became more numerous and complicated, the second stage of land registration began, in which written deeds were required to express the intentions of the parties, and also as evidence of title. The general practice was to deposit these written charges and deeds with an authority, commonly called the "Registrar". This system is termed "The Registration of Deeds System" and is used in many parts of the world, including the United States, at the present time. The practical effect is that anyone interested can, by searching the register, satisfy himself, insofar as the registered documents are concerned, of the validity of the title to land. A further refinement of this system, as employed in parts of New York City, consists in filing these documents by geographical position as well as alphabetically by names.

Several governments are now trying out a different plan of land registration, which may be called the third stage. The transactions affecting a given parcel of land are collected under a separate head on a single sheet of

paper called the certificate. As each subsequent transaction occurs, the subsisting rights of all parties in relation to the land are authoritatively summarized on the certificate. (27) This system was inspired in and developed by Sir Robert Richard Torrens, an Englishman residing at the time in Australia.

Torrens, who did more to improve land transfer methods than any other man, was of English parentage, and born at Cork, Ireland in 1814. He was the son of Colonel Robert Torrens (1780-1864), soldier and economist, and was educated at Trinity College in Dublin. In 1840 he moved to South Australia, where he was made a collector of customs and a member of the first legislative council. In 1852 he was appointed to the post of Colonial treasurer and registrar-general. When the responsible Colonial government was established in 1857, he represented the district of Adelaide in the House of Assembly and also became the first Premier of South Australia. His job as collector of customs had familiarized him with the shipping laws, and from the principles involved in registering ownership of vessels, he drew his idea of registering title to land. In 1857, after a great deal of arduous work, he introduced his Real Property Act, the principle of which consists of conveyance by registration and certificate rather than by deed. The

Torrens system became law in South Australia on January 27, 1858. The system has been widely adopted in the British colonies and in many other parts of the world.

After the enactment of the law, Torrens resigned the office of Premier to become registrar-general again, in which capacity he devoted five years to the successful inauguration of his new system. In 1863, he returned to the British Isles and, representing Cambridge, was elected to the House of Commons in 1868. He served as a member of Parliament for six years. In 1872, he was knighted for his public services. He died August 31, 1884. (27)

REGISTRY OF DEEDS SYSTEM

History and Objections

"Transfer by deed is traceable to the ancient method of the barbarians. First, there was the actual transfer by seizure and delivery; then the symbolic transfer--the title deed, to which, for the purpose of notice, has since been added registration." (22)

The record system was first inaugurated in the United States in Virginia in January, 1640. The system requires evidences of title to be recorded as notice to third parties. The owner under this system, to demonstrate a marketable

title, must show not only his receipt for payment and his deed of record, but also that his deed is the last link in an unbroken chain of properly drawn, executed and recorded conveyances. The record provides constructive notice to all the world, as opposed to actual notice, which is given directly to a specific person, of the validity of title; and since many transactions that affect title are not recorded, or are recorded erroneously, the system provides a basis for many controversies. There is no recordation of heirs of decedents, or title by adverse possession. Also titles may arise by decree of court which is not recorded, and by unrecorded marriages or wills.

So we now have two serious defects of the record system, which, without further analysis, leave it open to criticism. The system deals only with evidences of title and does not require all evidence of title to be recorded. These faults prevent a purchaser or mortgagee from ascertaining, without a doubt, in whom the title lies. There is no guarantee as to the validity and merchantability of the title. The record system does not declare and guarantee validity of title. It makes possible the knowledge of such validity as is traced in the record, by the formation of an abstract of title to the land and examination of the abstract by a competent member of the legal profession.

This last fact leads to a further analysis of the system and the consequent discovery of other defects. The preparation of the abstract requires a long and arduous search of all the records on file where the land lies. The search involves the employment of an expert who must accept grave responsibilities. This man, an abstractor, is bonded and sworn to include every recorded deed dealing with the land in question. He requires time for his labor, and, of course, must be paid in proportion to the service rendered and the assurance given. For example, from the time of the Chicago fire (1871) which destroyed the records of Cook County, up to March 15, 1894, there were filed in the Recorder's office of Cook County 2,009,634 conveyances of record. As these are not filed in any definite order, the work of looking over each instrument and preparing the abstract is tremendous. After the abstract is prepared, the purchaser will desire his attorney to examine and approve it before acting. The abstractor merely assures one that the abstract is complete, insofar as the records are concerned. The lawyer must pass on the legality and validity of the title as set forth in the abstract. The expense and the delay, which may involve a wait of a year or two, of these operations is considerable and often affects, very seriously, the merchantability of a title. And then, after all this

expense and delay are sustained, the purchaser is not guaranteed an indefeasible title.

Furthermore, the duplication of labor is enormous. Each time the land is sold or pledged, a new abstract must be drawn up and examined. Also, with each recordation of deeds the records which must be searched grow larger, and the abstractor's and lawyer's fees increase, until today, in some of the older eastern cities, the length of an abstract will run into the hundreds of pages and cost hundreds of dollars.

The worst feature of the system is, that after every proper operation has been completed, there is no positive assurance that the title is a good one. James E. Hill, chairman of the committee authorized by the Texas Bar Association of 1896, to investigate and report on the Torrens system of registration of titles to land, in his report published in the Houston Daily Post, says, "Under our laws, and the decisions of our courts, no lawyer can, from an abstract, or copies of records and conveyances affecting the title to a tract of land, decide certainly that the title is perfect in anyone, after many transfers from the patent. Issues of homestead, limitations, acknowledgements of married women, fraud, failure of consideration, trusts, heirship, separate and community property, forgery,

and other possible issues may exist, seldom apparent on the muniments of title.... Under our land system, litigation to perfect title only binds parties before the court; and after a suit quieting the title between parties, a few years may bring about another suit to clear the title, or remove a cloud. The Torrens system remedies this." (22) All that the dealer in land has after the examination of the abstract is the opinion of his lawyer, and the multifarious lawsuits which are hanging fire in the courts today show conclusively that two competent lawyers may reach exactly contrary conclusions as to the validity of a certain title. Of course, for a premium, a title may be insured with a title insurance company, the very existence of which is surely no compliment to our present system. The company agrees to handle all controversies which may arise in regard to the title, with certain exceptions, which usually include all loopholes found in the abstract on examination, up to the limit of costs mentioned in the insurance contract.

The second greatest drawback to our present plan is that there is no finality to the process. The proceeding which has been explained above must necessarily be repeated with every transaction. To give an illustration of this point, an article from the New York Herald of 1885, or thereabouts, has frequently been quoted: (21)

"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 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 300 lawyers, each of them carefully examined and went through the same work, that is, 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.

"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 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 today, 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, and so forth, affecting the whole property--because they affect the parcel--and he charges and gets by law five cents for each year for each name searched against the deeds, and five cents per year per name for mortgages. Altogether, say \$20.00 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 \$20.00 for the same work, and twenty years hence 1383 purchasers will pay the then Registrar 1383 times \$20.00, 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 one percent 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."

Sir William Blackstone, English jurist, described the law of real estate as "a tissue of metaphysical subtleties serving no other purpose than to show the vast power of the human intellect, however vainly and preposterously applied."

(63)

A seriously defective system justifies changing. If there is applied, as the test of a good system, the desirable elements of a simple and easy method, a safe, marketable, and indefeasible title, and a comparatively low total expense of transfer or pledge, to the recordation of deeds

system, it is obvious that the system will not meet the test on any one of the requirements.

Title Insurance

The great Chicago fire of 1871 brought to light the comparative monopoly which a few companies have developed over land transfer operations. The records kept by Cook County were destroyed, but the title insurance companies' records remained intact due to protection against just such disasters. Following the conflagration, the only place to which inquirers could go to assure themselves as to the validity of a title was the title insurance company. Now, this might have been a happy arrangement if the insurance companies had not taken advantage of the situation by charging monopoly prices. The company books were alphabetized and followed the block system of filing so that searches of the records were comparatively easy. The search and examination would both have to have been made only the one time, even if the title were to be insured. To combat these unwarranted charges, the people of Chicago encouraged and effected the adoption of the Torrens system.

The essential difference between the Torrens system and title insurance is that the Torrens system directs its action to the root of the trouble and corrects any existing mistakes

and flaws in the title, while title insurance does not correct the trouble, but simply guarantees protection to the insured in case an adverse claim should arise based on the grounds of a mistake or flaw in the title.

The title insurance company will insure the full or partial value of the title to a parcel of land, the abstract to which shows a seemingly clear title. The premium for this assurance service is normally about 1% of the value of the property. However, if the title is not clear, the company usually hedges the policy with limitations and conditions. Also, the policy does not protect the insured against liens, dealings relative to property which escaped discovery in the preparation of the abstract, or from rights of persons in possession but not shown in the record.

According to Fribourg (17) there are two types of policies in use today:

(a) "Those which protect the title only against direct attack. In this case the company defends the action in court and reimburses the insurer against losses as provided for in the policy, and

(b) "Those which insure the title against direct attack and also insure the marketability of the title."

Cushman (12) asserts that, "The Torrens system will not meet the problem of marketability of title as effectively as

does title insurance under well organized companies," and maintains that a stricter regulation of insuring companies would be more satisfactory. It is true that the insurance companies furnish the maximum of safety and security which is possible with our present recording of deeds system. However, since the distribution and protection of land is generally held to be a natural function of the State, why can not the guarantee of title also be included as a natural function in the protection of land? The fact that a new policy must be issued and paid for with each transfer of the property allows the accumulation of enormous profits by the companies. If the State would guarantee titles, these profits would not only provide a source of considerable revenue for the State, but would effect large savings to society.

"The major disadvantage of the title insurance company lies in the fact that they lack the authority of law to fix and determine titles according to their records and therefore fall back on the fallacious principle of financial guaranty. They make a charge for searching a title and then attempt to insure the face value of the properties searched." (49)

THE TORRENS SYSTEM

Definition and Purpose

"The Torrens system is a method of land registration under which the title to the land is guaranteed by the government to the registered owner." (58) Walter Fairchild, President of the Torrens Title League of New York, has stated, "The Torrens system is merely a ledger-page method of bookkeeping for titles to be kept by authority of law." (49) The purpose of the Torrens system is "to create a judgment in rem, perpetually conclusive," (12); "to create and perpetuate a marketable title to land and at the same time conclusively determine all adverse claims against such land." (McDonald vs. Dabney, 161 Ga., 711) The object of this system is to effect the transfer of land speedily and with a maximum of assurance at a minimum of costs. It differs, mainly, from the more commonly used registration of deeds system in that it serves as a new starting point in determining the title to land by requiring a complete investigation by the registrar at the time of application of the title to the land. From then on the investigation extends back only to the preceding transfer. "The design of the system is to vest the title-holder with a certificate behind which outsiders need not look, as towards them it is

forever binding and conclusive." (Lachman vs. Brookfield, 135 N.Y.S., 261) While with the present system, the search has no definite starting point and it may be necessary to search through the records of the last 50 to 150 years to find a valid starting point. Also a certificate of title may not be registered under the Torrens system until the record is declared perfect. Under the other system the deeds are registered without examination as to their validity, and the register is not a guarantee of title, but simply a means of notifying others of property exchange and a method of determining ownership of property. The Torrens system does away with the need for frequent examinations of title and gives the owner a title guaranteed by the government, whose natural function is the protection of land.

"The title registration law is not for the purpose of registering bad titles or by the judgment of the court giving to the plaintiff a title which he does not have. Its object is to establish by a judgment of the court a fact once for all that the plaintiff has title so that thereafter the records need not be examined." (Crabbe vs. Hardy, 135 N.Y.S. 119)

Principles and Essential Features of the System

To accomplish the aim of the Torrens system, that of

making land transactions as simple, as rapid, and as cheap as transactions in personal property; and to make titles to land as discernible and as readily transferable as title to personal property, there must be a definite set of principles to guide interested parties. Jones (22) has defined these as:

(a) "A public examination of title, in the United States by a court of competent jurisdiction,

(b) A registration of the title as found upon such examination,

(c) Issuance of a certificate of title,

(d) Re-registration of title upon every subsequent transfer,

(e) Notice on the certificate of any matter affecting the registered title. Claims which are not registered are not valid, and

(f) Indemnity against loss out of an assurance fund to be assembled for this purpose by charging one-tenth of 1% of the value of the land at the time of registration."

The essential features of this system of registration of titles include:

(a) "That the inconclusive and frequently repeated examination of title by private individuals is done away with by one final and authoritative examination by the State.

(2) "As a result of this examination, the formation of

a list or register of land-owners of State guaranteed accuracy together with a list of mortgages and other burdens affecting their land.

(3) "The constant keeping up to date of this register by noting every devolution of the land on sale, death, or otherwise, and by the cancellation of every entry on the register the effect of which is exhausted." (2)

OPERATION OF THE TORRENS SYSTEM

Places Where the Torrens System is in Use

The Torrens system in foreign countries. The Torrens system is used more widely in English-speaking countries than in any others. Of these, Great Britian and the British possessions have used the plan most successfully. The foreign countries and their provinces or possessions which use the new plan include:

<u>Name of country</u>	<u>Date adopted</u>
South Australia	1858
British Honduras	1858
Vancouver	1860
Queensland	1861
British Colombia	1861
New South Wales	1862
Victoria	1862

Tasmania	1862
Ireland	1865
New Zealand	1870
Prussia	1872
Western Australia	1874
Austria-Hungary	1874
Great Britian	1875
Fiji Islands	1876
British Guiana	1880
Ontario and Manitoba	1884
Leeward Islands	1886
Jamaica	1888
Germany	1900
Nova Scotia	1904
Alberta	1906
Saskatchewan	1906

Previous to the adoption of the first "Torrens Law", various countries had systems of recording titles. Bohemia had a registration system in the twelfth century. Even the Roman Empire possessed a crude system of registering titles. In 1811, the Civil Code of Austria made title registration universal and compulsory throughout the country. Hungary, then a separate nation, adopted this type of plan in 1849. Also Prussia, in 1722, started a system of district registry of mortgages. Prussia later adopted the Torrens system in

1872. (10)

So, although the Torrens system was original with Sir Robert Torrens, there were in existence previous to 1858 a number of systems of registering titles similar to the plan evolved by Torrens. The original Torrens system, as adopted by South Australia, provided that a title could be registered as absolute if the landowner held possession in fee simple, or as possessory, in case of any doubt, in which instance the certificate is registered as becoming absolute on the furnishing of such evidence of title as may be prescribed. This possessory title may be contested.

The Land Transfer Act of 1875, a modification of the original Australian system, established the Torrens law throughout England and Wales for optional use. In 1898, Parliament made its use compulsory in Middlesex County, in which the city of London is located. By 1927, there were more than 352,000 titles registered in London, representing an average assessed valuation of 350 £ sterling for each parcel of land. The costs of registering title vary with the valuation of the property. For £ 500 valuation, the costs are £ 11, 10s, 0d. For £ 2000 valuation--£ 29, 6s, 8d. The registry has an annual surplus, part of which has been used to pay for a £ 160,000 building and site, and another part to create a £ 133,000 assurance fund.

The German Torrens system is compulsory throughout the nation. The records are maintained at public expense, making the rates extremely cheap. For example, for \$100 valuation, the costs are only \$1.33, and for \$5,000 valuation--\$15.00. The title is indefeasible, subject to rectification of errors in all cases except as against bona-fide purchasers for value. Registration of titles is made with reference to and in connection with the system of land tax registers and maps, which are called cadasters. (39) In Prussia in 1894, there were 1,159,995 transactions registered under the Torrens system. There were 938,708 registrations in Austria by 1893.

Under the New Zealand Torrens Act the registration of the title and the transfer of the property can be effected at the same time with the cost remaining the same as for registration alone. The statute of limitations provides for the issuance of absolute title after a period of 30 days after registration. A caveat filed with the Registrar will hold up registration for three months, after which it will be released. The costs under the New Zealand law are only \$18.00 for the initial registration and \$2.00 for each subsequent transfer. The favorable attitude of the people of both New Zealand and Australia, as evidenced by their requirement that a title be registered before

purchase, makes the system practically compulsory.

France has no title registration system, although such a system could be easily installed and combined with their system of cadasters (land assessment maps), which would give the description of the land and a valid title. France uses the deeds system universally. The costs of transferring land under the French system are borne by the purchaser and amount to 25% to 30% of the value of the land.

Ireland, in 1926, had more than 300,000 titles registered with an average increase of 10,000 initial registrations a year. About 30,000 transactions are registered annually. The costs of initial registration are low, varying from 10s. in Northern Ireland to 18-19s. in the Free State.

The Torrens system in the United States. The history of the Torrens law in the United States dates back to June 13, 1895, when the state of Illinois adopted "An Act Concerning Land Titles". The act was declared unconstitutional by the courts as conferring judicial powers upon the registrar and examiners. (People vs. Chase, 165 Ill. 527)

The following year, 1896, a statute adopted by Ohio did not require the personal notification of persons known to claim in fee simple adversely to the applicant. The only requirement as to this adverse claimant was notice by publication. The act was declared unconstitutional. (State vs.

Guilbert, 56 Ohio St., 575)

On June 5, 1897, the first Torrens Law, which has been held constitutional, was passed by Illinois. Registration under this act began March 1, 1899.

The adoption of the Torrens system by the states proceeded, to include:

California	----	1897
Massachusetts	-	1898
Oregon	-----	1901
Minnesota	-----	1901
Colorado	-----	1903
Washington	----	1907
New York	-----	1909
North Carolina	-	1913
Ohio	-----	1913 (second act--held constitutional)
Mississippi	---	1914 (omitted from code in 1930)
Nebraska	-----	1915
Virginia	-----	1916
South Carolina	-	1916 (omitted from code in 1932)
Georgia	-----	1917
Tennessee	-----	1917 (repealed in 1932)
Utah	-----	1917 (repealed in 1933)
North Dakota	--	1922
South Dakota	--	1929

In all, fifteen states, as well as Hawaii, Puerto Rico, and the Philippines, now possess "Torrens Laws". (Refer to Table I) In addition to this number, Iowa, Maine, Michigan, Pennsylvania, Missouri, New Mexico, Rhode Island, Texas, West Virginia, Wisconsin, and the District of Columbia all have considered or are considering the adoption of laws pertaining to the registration of titles to land.

In California the cost of initial registration is so high that the law is made practically inoperative. A measure was proposed in that state in 1911 which would have reduced this high cost. The measure provided:

(a) To dispense with the necessity of an abstract after 20 years possession in the absence of any adverse claimant.

(b) To dispense with surveys when the tract can be designated on an official map.

(c) To permit registration of two or more parcels of land under one application under certain conditions.

(d) To permit applicants to group themselves in hiring an attorney or in publishing notice.

This measure, although not adopted, would have reduced the cost of registering title to land under the California law by more than one-half.

One of the main advantages secured by the Virginia Act of June 19, 1916 is that land can not be forfeited for

Table I. Important Characteristics of Torrens Laws in Different States.*

Name of state	Date of adoption	Method of application of the law	Requirements for initial registration	
			Abstract	Court action
Illinois	1895	Optional to counties and to individuals	Yes	Yes
California	1897	Optional to counties and to individuals	Yes	Yes
Massachusetts	1898	Universal to state, optional to individuals	Yes	Through Land Court
Minnesota	1901	Universal to state, optional to individuals	Yes	Yes
Oregon	1901	Universal to counties, optional to individuals	Yes	Yes
Colorado	1903	Automatically in force, optional to individuals	Yes	Yes
Washington	1907	Optional to counties and to individuals	Yes	Yes
New York	1909	Universal to state, optional to individuals	Yes	Yes
Ohio	1913	Universal to state, optional to individuals	Not necessarily	Yes
North Carolina	1913	Universal to counties, optional to individuals	Not necessarily	Yes
Nebraska	1915	In counties on petition of 10% of the landowners, optional to individuals	Yes	Yes
Virginia	1916	Immediately applicable to 42 counties. Optional to other counties and individuals	Yes	Yes
Georgia	1917	---	---	---
North Dakota	1922	---	---	---
South Dakota	1929	Optional to counties and to individuals	No	No
Philippine Islands	---	Universal throughout the islands	No	Yes
Hawaiian Islands	---	Universal throughout the islands	Yes	Through Land Court

* Prepared from questionnaires distributed by the author.

Table I. (cont'd.)

Name of state	Group applicants for giving notice and hiring lawyer	Expenses subsidized by state?	Approximate cost of initial registration proceeding	Approximate cost of subsequent transfer
Illinois	Yes	None	\$30.00	\$3.00
California	Yes	None	\$50.00	\$1.00
Massachusetts	No	None	\$300.00	\$3.00
Minnesota	Yes	Pays title examiner	\$25.00	\$3.00
Oregon	No	None	\$150.00	\$3.00
Colorado	No	None	---	\$3.00
Washington	No	None	\$200.00	\$0.85
New York	Yes	None	\$60.00	\$5.00
Ohio	---	None	---	\$2.50
North Carolina	No	None	---	\$3.00
Nebraska	No	None	\$50.00	\$3.00
Virginia	No	None	\$20.00	\$2.50
Georgia	---	---	---	---
North Dakota	---	---	---	---
South Dakota	Yes	None	\$15.00 plus attorney's fees	\$2.50
Philippine Islands	No	None	\$10-\$250.00 According to	\$1-\$50.00 valuation
Hawaiian Islands	No	None	\$75.00 and up	\$1.50

Table I. (cont'd.)

Name of state	Compensation fund requirements	Can registered owner change back to deeds system?	Length of statute of limitations	Considered successful
Illinois	1/10 of 1%, plus 5% of fees collected	No	Two years	Yes
California	1/10 of 1%	No	One year	Yes
Massachusetts	1/5 of 1%	No	One year	Yes
Minnesota	1/10 of 1%	No	60 days	Yes
Oregon	1/10 of 1%	Yes	Two years	No
Colorado	1/10 of 1%	No	Two years	---
Washington	1/10 of 1%	Yes	90 days	No
New York	1/10 of 1%	No	Six months	---
Ohio	1/10 of 1%	Yes	One year	---
North Carolina	1/10 of 1%	No	Six months	No
Nebraska	1/10 of 1%	Yes	Two years	No
Virginia	1/10 of 1%	No	90 days	---
Georgia	---	No	One year	No
North Dakota	---	---	Six months	No
South Dakota	No fund	No	Six months	No
Philippine Islands	1/10 of 1%	No	---	Yes
Hawaiian Islands	1/10 of 1%	No	One year	Yes

delinquent taxes without the owner's knowledge, as was possible under the older system.

The Tennessee Torrens law was pushed through to overcome the requirement by the Federal Farm Loan Act of 1916 of an abstract back to the Civil War. Farmers and business men cooperated to effect the passage of the land transfer act in this state.

The Massachusetts Act provides that if the law should ever be declared void in any or all of its parts, a title which was valid before registration will be equally valid afterwards. The law in Massachusetts is distinctive in that it created a special "Land Court" to hear and determine all questions arising upon application for the registering of the title to land. This court also appoints guardians ad litem for minors, unknown persons, and persons not in being. The Torrens system in Massachusetts has been extended to include about ten per cent of the property in the state. In the city of Boston, by January 1, 1914, after the system had been in operation 15 years, there were more than 18,000 titles registered.

The state of Massachusetts and Cook County, Illinois are the two jurisdictions in the United States under which the Torrens system has found the most favorable and extensive use. More than 20% of the property of Cook County, Illinois is registered under the Torrens system and the number of

registrations is increasing rapidly.

The manager of the Washington Title Insurance Company, of Seattle, Washington, writes, "In King County, Washington, the largest county in the state, of which Seattle is the county seat, there have been 205 original registration cases, the last one filed March 11, 1929, and about 3700 parcels of land have been registered. There have been 209 withdrawals, leaving about 3500 parcels under the system, which is only a negligible fraction of all the real estate in the county. Most of the registration cases were conducted instead of suits to quiet title, particularly on tax titles and on properties of small values, selling as low as \$50.00 per lot. In some counties there have been no registrations at all. The Torrens system is not considered successful as operating in this state."

Since the adoption of the Torrens system in Minnesota in 1901, there have been 24,575 lots registered in Hennepin County under this plan. In the same county, up to January 1, 1937, there had been mortgages made and registered to the amount of \$110,903,978.73. Up to 1936, there had been 59,744 certificates issued, with 3707 subsequent proceedings registered.

The Secretary of State of North Dakota, in correspondence, says, "The Torrens system was adopted in this state

about fifteen years ago, but has never been used to the best of our knowledge."

The Secretary of State of Mississippi writes, "A law of this kind was enacted by the Mississippi Legislature of 1914, and the necessary books were installed in some counties, but the law was never enforced or used. Hence, it was agreed by the Code Commission of 1930 to not bring this law forward, and the legislature's adoption of the Code, repealed the law by omission."

In regard to the state of Nebraska, the State Real Estate Commissioner advises that, "We have the Torrens system on our statutes but it is not used anywhere in this state."

The reply from the Legislative Reference Librarian of North Carolina states, "The Torrens Act is seldom used in North Carolina and has never met with favor since its enactment in 1913." It is used to some extent by possibly a half dozen counties out of the hundred counties in the state.

In Oregon, there have been no registrations since 1924. The second largest county in the state, Marion County, has issued registrations for 103 parcels of land, about half of which number have been withdrawn from the Torrens system and replaced under the recording of deeds system.

According to advices received from the Division of

state Lands of the California Department of Finance, certificates of title have been issued to August 1, 1936, by the registrars of land titles under the Torrens Law in 17 of the 58 counties, as follows:

Los Angeles	86,111	Alameda	167
Orange	7,544	Kern	139
San Bernardino	5,185	Santa Cruz	95
San Diego	4,980	Tulare	66
Santa Barbara	684	Fresno	47
Sonoma	503	San Francisco	6
Imperial	479	San Luis Obispo	4
Humboldt	296	Ventura	<u>3</u>
Riverside	272	Total	106,580

The United States possessions, Hawaii, Puerto Rico, and the Philippines have the Torrens system on their books. The plan is not used at all in Puerto Rico, but in the other two places it is extensively used. The Registrar of the Land Court of Hawaii writes, "A land court title is looked upon as the last word in land titles." The law in Hawaii is compulsory in regard to corporations.

The correspondence received in this study seems to indicate that the Torrens system is used primarily with regard to urban property, rather than rural property. The fact that urban property is more often subjected to land

transfer, and that, in general, urban property has a smaller assessed valuation on which the contribution to the assurance fund is calculated, would account for this situation, in part.

Evidences of Success of Torrens System

Cameron (10) cites, as the greatest factor in showing that the Torrens system has been successful, that, "There have been many conflicts, repeals, and amendments, but no country or state has abolished the system when once adopted, but has continued to perfect its operation." This statement was made in 1915, and, since 1930, is no longer true. The fact, though, that only four states have erased the Torrens Act from their statutes out of the large number of countries and states which have adopted and retained the plan does give the system a point in its favor.

Another illustration of the success of the system is shown in the writings of the Recorder of the Court of Land Registration in Massachusetts. He writes, "People who have their land registered seem to be entirely satisfied with the advantages accruing to them under the land registration act, and return to file other petitions. From a business standpoint, that is really the practical and ultimate test of any system which seeks to supplant or improve a present established one." (30)

In 1896 a report was presented to both Houses of Parliament on the actual existence of the claimed advantages of the Torrens system in actual practice as well as in theory. The report, after stating that the system has been used in some parts of Germany and Austria for several centuries, as affecting large estates, tiny peasant plots, suburban land, towns and agricultural land, points out that "the Continental registers appeared, according to every test by which their practical efficiency could be tried, to be giving complete satisfaction, and to enable landowners, large and small, habitually to transact sales and mortgages with an ease, rapidity, cheapness, and security which, to persons accustomed only to the conditions of land transactions in this country will appear almost incredible." (46)

Another advantage claimed for the Torrens system is that it will raise the value of land and thereby the price which can be obtained on the sale of land. This increase in the sale price has been estimated (46) to amount to as much as 10% in Australia. "A usual effect of the Torrens system is to raise the value of all land brought under it, to lessen the chances of fraud and to facilitate dealings of all kinds in which land titles appear." (21)

An evidence of success which should be considered is the opinions which have been voiced on the subject. The

opinions of the Canadian and American delegates to the World's Real Estate Congress, in which they unanimously adopted resolutions pledging their influence and labors in the work of the adoption of the Torrens system, will be referred to later. In Australia, the "professional men (lawyers) are not only employed, but dealings in land being more frequent owing to the ease of transfer, they have more work in bulk of cases than before. All professional hostility to the Act has disappeared." (46)

According to Cameron, Batcheller, of California, an opponent of the Torrens system, grants that "a plan of original or primary registration by means of a suit to quiet title against all the world, including unknown heirs and persons under disability, is perfectly valid, even though non-residents and others who cannot be found are served by publication." (10)

Cameron also relates that Niblack, leader of hostility to the Torrens system concedes that "a system by which persons by an inspection of the register may ascertain absolutely who holds title to a particular piece of land, and what burdens, if any, are on it, though more complicated than a mere statement of its elementary principles might indicate, is worthy of adoption if it can be created under our laws." (10)

And finally, the opinion of Sir Robert Richard Torrens himself. He states that his system "has been tested by an experience of over 20 years, during which 539,000 transactions of various kinds have been completed at a reduction in cost from pounds to shillings, and in time from months to days." (63) (With reference to the British Colonies)

PROCEDURE UNDER THE TORRENS SYSTEM

Procedure to Register Title

In the first place, the applicant files a petition or application in writing, which contains all the information necessary to give the court a basis for action on the case. This will include the name, age, and address of the applicant, his marital status, a description of the land and the applicant's interest in the land, the name and address of the occupant, if the land is occupied, and a statement as to the incumbrances and claims existing against the estate. The application is signed and sworn to and then filed with the Registrar, from whence it is referred to the title examiners. The examiners of title report to the Registrar and the court on:

- (a) Whether the description of the parcel of land is definite and clear,
- (b) Whether the applicant is in undisputed possession,

(c) Whether the applicant appears in justice and equity entitled to register the title to his land, and

(d) Whether the applicant's evidence of title is sufficient to protect him in a suit for ejectment.

If there are adverse claims pending, notice is given to them by special messenger, registered letter, newspaper publication, or any other form of judicially recognized notification procedure. The application may be answered by anyone having an interest in the estate.

When the court is ready to hear the case, the defendants are summoned, the case is presented and the court decides either that the title is not susceptible of registration, that the title may be registered pending the removal of claims, or decrees title and orders the title to be registered and a copy of the certificate of registration to be issued to the owner.

On this certificate of registration issued to the owner and on the copy kept by the Registrar's Office is a list of memorials including all encumbrances. By this plan, if one of the elements necessary to a good title becomes unsettled, it is immediately apparent, and it automatically becomes impossible to deal with the land until the troubled element is again established. The only incumbrance which will be held as valid in the courts, under the Torrens system, must

be entered in the memorials on the certificate itself.

Massie (31) states that, "The legal procedure of registration must judicially determine and authenticate the title, and effectually register it as to the whole world." The essential for complete and constitutional accomplishment of this requirement is the proper designation and service of notice to the defendant parties, or adverse claimants.

"The proceeding is a chancery proceeding (Wyman vs. Hageman, 318 Ill., 64) in rem (Stewart vs. Kellough, 104 Ohio St., 347), adversary in character (Title Guaranty & Co. vs. Grisct, 189 Cal., 382), and partakes of the nature of a suit to quiet title. (In re Wasson, 54 Cal. App., 269)" (40)

Suit to Quiet Title

The Land Transfer Commissioners of 1870 (in England) described this part of the Torrens system in this manner, "It is as if a filter were placed athwart a muddy stream; the water above remains muddy, but below it is clear; and when you get so far down the stream as never to have occasion to ascend above the filter, it is the same thing as though the stream were clear from its source." (60) The quiet title suit, corresponding to the filter, gives any interested person a starting point back of which it is unnecessary to investigate the title to land.

There are four classes of persons who are affected as defendants in these suits against all persons:

- (a) "Known residents of the state,
- (b) Known residents of the state, but who cannot be found,
- (c) Known non-residents of the state, and
- (d) Unknown persons, whether in being or not, whether minors or under other disability, and whether residents or non-residents of the state." (31)

These persons are entitled to due process of law by notification and opportunity for hearing in order that they may be brought before the court and be bound by its decree.

There have been instances when the court has held that there was insufficient notice given and has declared the certificate of registration invalid. (Roller vs. Holly, 176 U.S., 398) In Huling vs. Kaw Valley R. and Improvement Co., 9 Sup. Ct., 603, the court held that publication and notice is sufficient to fill the requirements of the "due process of law" clause. In Gillman vs. Tucker, 28 N.E., 1040(N.Y.) immediate acceptance and registration was held unconstitutional as violating "due process of law" and making an involuntary transfer of property by the State. In the case of Arndt vs. Griggs, 134 U.S., 316, the court held that publication is sufficient notice to non-resident defendants. (31)

The "due process of law" clause in our Constitution provides the source of one of the main differences between the Torrens system as used in the United States and in other countries. "The fundamental requirement of 'due process of law' is an opportunity for a hearing and defense, but no fixed procedure is demanded." (Ballard vs. Hunter, 204 U.S., 241) The Supreme Court of Minnesota has stated that, "Necessarily the initial registration of the title, that is, the conclusive establishment of a starting point, binding upon all the world, must rest upon judicial proceedings." Judicial process implies notice to all adverse claimants and an adjudication of title after due proceedings. (22)

To overcome this legal objection to the Torrens system, the plan of a statute of limitations has been incorporated in the Torrens laws of the states. This plan provides that the proceeding to decree title may be reopened within the time allowed by law, but not thereafter. The use of a statute of limitations procures certain advantages to the landowner who is registering his title which are not characteristic of the judicial proceeding. These include:

(a) There is no need of an assurance fund, and, consequently, no required payment to the fund,

(b) The exhaustive examination of title may be dispensed with, as the intent to register the estate is publicised and ample time given for caveats to be

registered with the Registrar, and

(c) The cost of the initial registration proceeding is greatly reduced.

In the decision of *Tyler vs. Judges*, 175 Mass., 71, it was stated that "the statute of limitations may give a title validity without notice or judicial proceeding." In *Turner vs. N.Y.*, 168 U.S., 90, it was held that "statutes of limitations are within the constitutional power of the states to enact," and that "a limitation of two years is not unreasonable." (15)

By the use of a statute of limitations the owner receives, at the decree of the court, what is termed a possessory title, which may be attacked within the limitation of time. After the limitation is passed, the owner receives an absolute title which can not be attacked by adverse claimants whose claims were valid before the adjudication of title by the courts.

OBJECTIONS TO TORRENS SYSTEM

Objections Advanced by Opponents

Before considering the objections to the Torrens system it might be well to fix in mind just who the opponents to this system are. In general, it might be said that that group of persons to whom the installation of the system

would mean a pecuniary loss constitute the major portion of the resisting class. This class would include lawyers, who would lose the practice of examining abstracts; abstractors, who, in time, would not be needed at all; and the title insurance companies, who would experience a large decrease in their volume of business. As Cameron (10) has put it, the opposing group would include "the entrenched power of vested interests, who, in effect, proclaim and demand for themselves a place superior to the position of law."

The objections put forward by this group include the fact that the certificate is issued to one who may not be the rightful owner. For compensation of loss the rightful owner must bring suit against the assurance fund and prove his case, which requires time and financial capacity. Then too, the sentimental value of the estate to the owner may make it impossible to repay his loss except by the restoration of the land to him.

Another point of attack is the charge of onerous duties and endless details attached to the system. Finck (16) states that, "Registration (of titles) will not remove the impediments, the technicalities, and the outmoded laws and procedural requirements which so seriously impede real estate transactions. On the contrary, it will add to them."

The expenses attendant to the original registration of

the title to an estate are, on the average, from \$2.00 to \$10.00 higher than a transaction under the older system. However, one must recognize that, whereas every transaction under the deeds system requires the same lengthy procedure and consequent payments for services, the most common price of subsequent transfer dealings under the Torrens plan is only \$3.00. According to Cameron (10), Reeves, authority on real estate law and on the Torrens plan, in speaking of this point, has said, "The initial expense of dealing with a title to a piece of real property is, of course, considerably more than that of having it examined and passed by a lawyer, or examined and guaranteed by a title insurance company. But this primary outlay can and will be minimized as the system comes to be more and more employed; and the ultimate saving to landowners, in avoiding repeated material expenditures every time the same property is transferred or encumbered and in conducting those transactions very quickly, is destined to be enormous. For the manipulation of a title once properly registered and set out on the certificate is thereafter quick, easy, and at very little cost. Landowners in Massachusetts, where substantially the same system (as in New York) is working smoothly, are utilizing their certificates of registration today for carrying through the entire process of transfer or borrowing in only a few hours at most

and a cost that is usually negligible."

Another dissenting declaration along this same line is that the plan as it is effective in the United States today is a burden to society as a whole. This is true, in some cases, as can be proved by comparing the costs of operating the office of the Registrar and the income derived through the office. In a very few of the states the system is self-supporting, but in the majority it is not, and the balance must be taken from society by taxation. Finck (16) contends that state examination of titles and decree of indefeasibility will take additional taxes to support the Registrar's office and pay the salaries of the necessary public employees. He quotes from a special American Bar Association Convention number of October 1, 1921, on title registration in Los Angeles County, California. The article, after giving figures to show that Torrens instruments constitute only 2.01% of all instruments filed, continues:

"The foregoing facts are of little interest to the public excepting those who have been so unfortunate as to have permitted themselves and their property to be tied to an antiquated and cumbersome system of registration from which there is no withdrawal.

"The public does become vitally interested, however, when the expenditure of public funds to maintain this system for the minority is considered."

The article then presents a table to show the appropriations and estimated revenues for three years of both systems, as follows:

Table II. Comparison of the Deeds System and the Torrens System as to Appropriations for Operating Expenses and Estimated Revenues in Los Angeles County, California, for the years shown.*

Appropriations	1919-1920	1920-1921	1921-1922
Office of the Recorder of Deeds.	\$171,938.00	\$301,923.00	\$302,898.00
Office of the Registrar of Titles.	\$11,334.00	\$22,095.00	\$22,096.00
Estimated revenue	1919-1920	1920-1921	1921-1922
Office of the Recorder of Deeds.	\$160,000.00	\$325,000.00	\$325,000.00
Office of the Registrar of Titles.	\$3,000.00	\$6,000.00	\$5,000.00

* Finck, John L. The Torrens Fallacy. 1935.

But the sum of \$22,096.00 appropriated by the Board of Supervisors for the current year, is only a part of the total expense which will be incurred by the Torrens department.

"The Board of Supervisors has also appropriated for the current year monies to pay the salaries of the following persons, necessary in the operation of the Torrens system for the few. (Following this is a list of employees with their salaries, which total \$18,820.00.)

"These amounts, with the appropriations for the Registrar's office, make the total appropriations for the conduct of the Torrens system in Los Angeles County \$40,916.00. The Board of Supervisors has estimated that the revenue from the Torrens department will be \$5,000.00 leaving \$35,916.00 to be paid by the taxpayers of the county. Though the Torrens department handles only 2.01% of the documents handled by the Recorder, there is appropriated for the Torrens system 13% of the amount appropriated for the Recorder's office."

The constitutional difficulty regarding the need for and lack of a conclusive starting point for the title is occasionally brought to the fore. The courts, however, have affirmed the legality of the use of a short statute of limitations to establish the title. A court decree establishes absolute title in the applicant immediately, while the certificate issued under the statute of limitations would give only possessory title, which is subject to attack. After the length of time provided for by the statute had passed, the applicant would receive a certificate providing an indefeasible title. The method and use of a statute of limitations has been upheld by the United States Supreme Court and by the State courts.

Another critical attitude taken is that toward the

Registrar. It has been held that this officer, in such an important position which is generally filled by election, is liable to be incompetent.

Another point along this same line is that the Registrar, an executive or ministerial officer, is delegated judicial powers in determining ownership of land. This would of course be a violation of the Constitution. The Illinois Torrens Law of 1895 was declared unconstitutional on these grounds in the decision of *People vs. Chase*, 165 Ill., 527. In 1897, Illinois again passed a Torrens law providing for the Registrar to issue a certificate of title only after a court decision. This law was upheld and declared constitutional. (*People vs. Simon*, 176 Ill., 165) In reference to this question, Chief Justice Holmes, after making reference (*Tyler vs. Judges of Court of Registration*, 175 Mass., 71) to the fact that there is no question in ordinary cases, said, "If there is a question to be discerned, it shall be referred to the court."

The opponents of the Torrens system often question the conclusiveness of the title established thereby. The record may not contain lesser matters, such as records of covenants and restrictions, which might cause trouble. (The Torrens law provides that all documents affecting the title must be filed and appear in the memorials on the certificate to be effective against the holder of the certificate, except:

(a) Liens, claims, or rights arising under the laws or Constitution of the United States, which the statutes of the state can not require to appear of record under registry laws,

(b) Taxes and levies assessed thereon but not delinquent, or

(c) Any lease for a term not exceeding one year under which the land is actually occupied. (These exceptions are from the Virginia "Torrens" law, section 73.)

Possession of the certificate to a parcel of land would entitle anyone to secure registration in his own name by simply forging a deed of sale from the rightful owner. A certificate of title is not conclusive in a number of particulars and a search is essential to protect a purchaser or mortgagee against "claims of the United States, bankruptcy of the parties, current taxes, short term leases, rights of appeal, mechanic's liens, and other possible adverse claims." (12) Under the deeds system, as well as in localities where the Torrens system is the law, it is essential to make a separate search for liens in anticipation of or resulting from suits or mechanic's liens, county, state, city, or other taxes, bankruptcies, and federal estate tax liens. A Torrens examiner, before passing anew a title which has been registered some years

previous, brings its history to date by a complete search for possible bankruptcy since 1898 and liens for federal estate taxes after the owner's death until 1916, as well as by the invariable examination for local taxes. (12) Under the recording system, adequate title insurance gives protection against such defects and the expense incident to defending a suit in case the title is attacked. A Torrens title holder, however, must go to the trouble and expense of maintaining a suit against the assurance fund, if an assurance fund has been provided for and his claim is within the provisions of the fund. The laws of the states of California, Massachusetts, Minnesota, North Carolina, North Dakota, Ohio, and South Dakota confer such a right of action against the assurance fund only to persons who sustain loss without negligence on their part. Furthermore, these persons are required to exhaust all other remedies before resorting to an action against the fund.

A point which often arises in the question of conclusiveness of title is that a holder may have his certificate voided by an appellate court on the ground of fraud or decreed as not binding on persons not properly served with notice of the initial proceeding. (Follette vs. Pacific Light and Power Co., 189 Cal., 193)

Cameron states that Loomis, in opposing the adoption of

the Torrens system by Louisiana, says, "The Torrens system is of foreign birth. In Australia, whence it springs, in England, and in all British dependencies, the legislative power is supreme. An act of Parliament may declare a fact, delegate to a commission full power to act under the statute; and if any vested rights are divested, there is no remedy. In our country, no vested rights can be divested until a man has had his day in court; and none but the judicial power can determine whether due process of law has been used to deprive a person of a right. The question of due process is characteristic of our form of government, and is a rock which will make it endure for ages. There can, therefore, be no such thing as the Torrens system in the United States, because there can be no indefeasible title until due process has been accorded the least vested interest in the property."
(10)

According to Cameron, Batcheller, of California, grants on the test cases of several Supreme Courts of the states, "Although these were merely test cases, not involving a real controversy over the title to a piece of land, yet there can be no doubt that under the principles laid down in these decisions, a plan of original or primary registration by means of a suit to write title against all the world, including unknown heirs and persons under disability,

is perfectly valid, even though non-residents and others who cannot be found are served by publication." (10)

To summarize the objections advanced by the opponents of the Torrens system (not all of these have been included in the discussion):

(1) A title registration system will require more time, labor and expense than the deed recording system.

(2) The possibility of fraud is greater.

(3) The conclusiveness of title is not so assured as under the deeds system with title insurance.

(4) The Torrens system does not eliminate duplication of work. It is held that the preparation of an abstract, examination, and title insurance are still necessary to assure indefeasibility of title.

(5) It will increase the tax burden due to the extra records to be kept, the necessary employees to be hired, and the required offices.

(6) The system is inconvenient because title can be transferred only by the attendance of all parties interested at the Registrar's office.

(7) The system is un-American and does not fit in with our institutions and ideas of justice and fair play.

(8) The adoption of the system would upset the status quo of real estate, and plunge us into a morass of confusion and litigation without compensating gain.

Type of Cases Arising from Use of Torrens System

The objection which is most generally used is that the Torrens system deprives persons of property without due process of law. Cases which have hinged on this question include: *Robinson vs. Kerrigan*, 151 Cal., 40; *Saunders vs. Staten*, 152 Ga., 142; *People vs. Simon*, 176 Ill., 165; and *White vs. Ainsworth*, 62 Colo., 513.

Other questions which have been taken to the courts for settlement involve:

(a) The denial of the right to jury trial--*Crowell vs. Aiken*, 152 Ga., 126.

(b) The denial of equal protection of laws--*Drake vs. Fraser*, 105 Nebr., 162.

(c) The denial of affirmative relief to the defendant, that is, the best he can do is a decree of dismissal--*People vs. Crissman*, 41 Colo., 450.

(d) The commitment to the judicial department of functions which are purely administrative and executive--*Robinson vs. Kerrigan*, 151 Cal., 40.

(e) The delegation of judicial powers to ministerial officers (examiners, registrars, and recorders)--*State vs. Westfall*, 85 Minn., 437.

(f) The Torrens laws constitute special legislation

because of the special provisions necessary for a statute of limitations and/or for classifying counties as to population --People vs. Simon, 176 Ill., 165.

(g) The creation of a new office not filled by appointment or election as provided by the Constitution--People vs. Crissman, 41 Colo., 450.

(h) The bestowal of new duties on an office already existing--People vs. Crissman, 41 Colo., 450.

(i) The local option clause is an attempt to delegate legislative power--People vs. Simon, 176 Ill., 165.

In the instance of a case before a Philippine court, in which the dispute was between two adjoining property owners whose property overlapped, the court held that the title-holder who registered his certificate last should prevail over the title-holder who registered first, because the Philippine law requires notice to adjacent landowners, and therefore the first registering owner knew of the overlapping and should have presented his claim in the suit to quiet title to the second piece of property. This is one instance, at least, in which a Torrens title was not indefeasible and was successfully attacked.

OPINIONS OF THE BUSINESSMEN AFFECTED

Abstractors

The abstracting profession, in general, is not in favor of the Torrens system. This is because, although most abstractors have an additional source of income such as an insurance agency, the proceeds from the preparation of abstracts are depended upon to furnish the major portion of their living. The adoption of a compulsory system of registering titles would therefore eliminate the need of this profession after an indefinite interval of time. However, as an abstract is required for the registration of title proceeding, and as the universal acceptance of the system would require a number of years, the generation of abstractors now in business would profit accordingly, and the discouragement of further entrance into the profession would tend to solve this objectionable situation.

A member of the American Title Association*, considers the difficulty of obtaining a competent man to serve in the important position of Registrar as the greatest drawback of

* Sam C. Charlson, abstractor of Manhattan, Kansas, expressed this opinion in an interview with the author.

the registration of titles system. He stated further that a working knowledge of legal methods and bookkeeping would be indispensable and that, under the election system, restriction as to the holders of public offices can only include age, citizenry, and past record limitations. To give weight to this idea, he cited several examples of incompetency in public office with which he was familiar.

It is true that an error made in the office of the Registrar of Titles likely would have more serious consequences than an error occurring in the office of the Recorder of Deeds. The practice, however, of filling the office of Registrar by appointment by the Governor, or some other responsible official, from a list of qualified persons, could overcome this undesirable difficulty.

Bankers

The Torrens system is generally held, by bankers, to be an improvement over the older system of registration of deeds. A title, guaranteed indefeasible by the State, would decrease the risk taken by the bank in loaning money and would make it less difficult to secure loans. This is especially true of smaller loans, for which the costs of the preparation and examination of abstract under the deeds system are practically prohibitive. Not only would credit

be more easily and readily available, but the rate of interest would be reduced in proportion to the decrease in uncertainty involved.

Lawyers

The problem of this group of persons differs from that of the other main groups which would be unfavorably affected by the adoption of a system of registration of title, namely, the abstracting profession and the title insurance companies. The dissimilarity lies in the fact that lawyers do not depend on the examination of title as a source of income to any great extent. After the period required to introduce universally the new system, the loss might be apparent but would provide no cause for real concern.

Then too, there will always be a class of people who would retain an attorney to approve their certificates of title and so it is possible that, with the probable increase in transfers caused by the new plan, the loss of business to lawyers would be insignificant.

To the logical-minded lawyer a system of registration of titles seems practical and feasible. In 1913, the Committee on the Torrens System and Registration of Title to Land of the American Bar Association presented a report, which was adopted by the Association, stating that the

"trend of events unmistakably shows that there is an increasing need and demand for the exercise of its functions in a practical, definite, and fruitful manner." (10)

Real Estate Agents

The World's Real Estate Congress, in 1893, carried with only two dissenting votes the resolution, "That it is the sense of the delegates of the World's Real Estate Congress that they should do what lies in their power to call the attention of their various state legislatures to the benefit of the Torrens system, and recommend its adoption, so modified as to suit it to their state constitutions and laws." (10)

Real estate agents, in general, are in favor of the new plan because:

(a) It will make transfers of property easier and increase their volume of business, and

(b) It will correct the existing situation in which the title insurance companies are taking over a considerable part of the land brokerage business. This produces a double and conflicting duty which is good for neither the real estate broker nor the investor.

Title Insurance Companies

Title insurance companies are naturally adversely critical of the Torrens system of registering title to land, because the acceptance of such a plan would completely remove the necessity of this service agency.

Under a plan of registration of title to land and the guarantee of the indefeasibility of that title by the state, there would be no requisite for title insurance. Therefore, the Torrens system would put the companies completely out of the picture, and the adoption of such a scheme would, of course, be opposed.

ADVANTAGES OF THE TORRENS SYSTEM

One of the two major advantages of the Torrens system lies in the fact that the landowner is granted absolute title, either through the statute of limitations or by a court decree. He does not have merely a possessory title, but a title which is proof against all claims except lack of notification in the registration proceedings.

Previous to the advent of the Torrens system land was the only form of property which could not be safely and indefeasibly transferred. All lapses or breaks in the chain of deeds showing possessory title, and all other defects and

omissions of record casting a cloud on the title to land under the registry of deeds system are eliminated by the registration of the title under the Torrens system.

According to Cameron (10), Hawes, in writing on the favorable utility of an indefeasible title, states:

"If there is a risk, as is frankly conceded, in the old system of title insurance, the public will undoubtedly prefer to adopt a system where there is no risk and where the State vests an absolutely indefeasible title which cannot be attacked subsequently, namely, by an action in rem in the Supreme Court, instituted by the plaintiff, claiming to be owner, against all mortgagees and other lienors and encumbrancers of record, the People of the State of New York (to cut off any question of escheat) and 'all other persons, if any, having any right or interest in or lien upon the property affected by this action or any part thereof,' as defendants. Then, by posting on the premises and publishing in a newspaper, designated by the court, copy of summons and notice of object of action, which constitutes notice to all the world, as the United States Supreme Court has held, and on further application to the court, and upon the survey, abstract of title, report of the official examiner, and other papers, final judgment and decree is entered, vesting title in fee-simple absolute, whereby all clouds are removed

and all defects cured, and certificate is thereupon issued to the owner by the registrar. Thus, all risk to the owner is eliminated and perfect title is created, not insured."

The other main advantage is that the transfer of property is made less complicated, less costly, and more rapid than under the registry of deeds system. Governor Russell of Massachusetts, in his inaugural address in 1891, gave a good resume of the superiority of the Torrens system on this point when stated (10):

"The contrasts between our present system of registration of deeds and the Torrens system of registration of titles are very marked. Under our system title to land depends not only upon instruments recorded in the registry of deeds, but also upon facts and proceedings which lie outside of those records. There is a constant increase in the mass of records of deeds and of proceedings affecting titles to land, which makes the work of examination a constantly growing burden. If any man's title to a piece of land is questioned or attacked by any particular person, the Commonwealth has provided courts with appropriate jurisdiction in which the owner can have his right ascertained and established against that person. But it has failed to provide any method by which one can have his title ascertained and established as against all the world. Under our

practice a new examination of the title is usually made upon each sale or mortgage of a piece of land, in spite of the fact that sufficient examinations may have been made in former transactions. These repeated examinations, generally needless, not only cause useless expense, but delays which often involve a serious loss.

"Under the Torrens system an official examination of title is substituted for an un-official one, and the result when once sufficiently ascertained is given conclusive effect in favor of the owner, and his title is made perfect against all the world. In effect, under the Torrens system, the State provides a proper court in which any one can have his rights in relation to a piece of land declared and established, not only as against particular persons who may have an adverse interest upon special notice to them, but also as against everybody. The principle of basing decrees upon general notice to all persons interested already prevails in our probate law. Laws providing for the removal of clouds upon titles to land, after general notice to all unknown defendants, exist in many States of the Union and the validity of decrees made under such laws has been established by decisions of the Supreme Court of the United States.

"This eliminates needless expense from repeated re-examinations, loss from delays, and possible insecurity

arising from the fact that title depends not only upon the records, but also upon the facts outside of the records and not disclosed by them. Under the Torrens system the title is examined once for all, and there is no needless re-examination; as all subsequent acts and proceedings must be brought one by one to the registrar to be noted, and state of the title can be ascertained at any time by simple inspection of the certificate of record. Therefore, with the added advantage of greater simplification of the forms of legal instruments, transfers can be made quickly, easily, and at small expense; and, further, there is absolute security in the possession of the premises bought, resulting from the indefeasibility given to the certificate of title issued by the State.

"I believe that the Australian system of land registration and transfer, more commonly referred to, from the name of its originator, as the Torrens system, is the longest step that has yet been taken anywhere towards that freedom, security, and cheapness of land transfer which is conceded to be so desirable in the interest of the people."

The Torrens system also provides against the time when a search of the voluminous number of dealings with land under the system of recording of deeds would cost so much as to be prohibitive in the case of a small mortgage.

These two superiorities and others which will be cited later on have been interpreted differently by the opponents of the Torrens system to form the basis for their most influential objections. As Yeakle (63) says, "All objections to Torrens Law proceed from either: (1) Ignorance of its merits, or (2) Self-interest," it would be safe to conclude that a great deal of propoganda and harmful statements against the Torrens system have been issued to retard its progress.

The Torrens system eliminates one of the main objections to the older system--that of having to carry the examination of title back to the first transaction, or however far is customary in the community. The certificate of title contains in the memorials all that is required to ascertain validity of the title in the holder and the claims against the estate. With the recording of deeds system there is no finality to the process of examination. The recording of titles system, on the other hand, sets a definite starting point, back of which it is unnecessary to investigate. Not only does it provide a place or time to start the search of title, but it also brings the starting point up to date with each transfer of the property. The purchaser of the property receives a new certificate in his name, in the memorials of which appear all the unclosed dealings to which the land is

subject. Since no claim is valid unless it appears in the memorials on the certificate, the only necessary search is of the certificate itself.

Another improvement secured by the use of the Torrens system is that the man who desires to pledge his property does not have to allow two or three months for the mortgage to "go through", but he need only give the mortgagee time to appraise his property and ten to fifteen minutes to examine his certificate. The total time required to conclude a mortgage should not exceed a day or two.

Not only does the Torrens system minimize the time necessary to obtain a mortgage on a parcel of property, but by providing an indefeasible title guaranteed by the State, the interest rate required of the mortgagor tends to be reduced by the difference between the rate on a mortgage loan and that on a security loan. The reduction of interest rates and of the time necessary to conclude mortgages will obviously increase the quality and value of land, making the maximum mortgage amount greater. Land has always been a prime source of credit, but dealings to this effect have been costly, complicated, and tedious. The Torrens system overcomes this drawback to make land a more fluid asset and a quick emergency source of credit.

To effect a transfer of a registered title the title-

holder simply executes to the intended transferee a deed to be filed in the Registrar's office. The parties must agree as to the nature and intended effect of the transfer in a statement to the Registrar. After the requirements of the contract are fulfilled, the owner's duplicate certificate is surrendered to be cancelled, and the transaction is completed by issuing a certificate of title to the new owner. The transfer procedure can be terminated in a few hours, including an examination of the title for validity and the actual transaction. The cost is nominal, being merely a payment for recording services and generally amounting to about \$3.00.

By releasing land from the burden of the exorbitant cost of conveyancing under the evidences of title system, the value of the land would theoretically be increased by the amount of the saving, and the number of transactions dealing with land would be greatly accelerated. The tax of land transfer under the present system rests on the poorer class of the population which is least able to bear it, and to which may be attributed the larger portion of dealings in real estate. The Torrens system would relieve the citizenry of the United States of the conveyancing burden, would increase the value of their property, and, since the State would be the guarantor of titles, the Torrens system would

transfer the fees now collected by the title insurance companies to the public treasury.

Cameron (10) has made an estimate of the savings possible with the Torrens system in New York City alone. The title companies' charges for examination and insurance amount to \$315.00. The examination fee and fee for issuance of the Torrens certificate amount to \$40.00. Add to this sum the premium going to the assurance fund which is \$50.00 (all figures are based on a \$50,000.00 valuation) to place the total costs of a Torrens title at \$105.00. This makes a difference in favor of the registration of titles system of an average of \$210.00 per lot. This amount, figured on the basis of an estimated 100,000 lots (1915), would secure a saving of \$21,000,000.00 to the property owners of the city of New York. However, the great saving in the Torrens system is in transactions subsequent to the registration proceeding. On a \$50,000.00 valuation the title company reissue rate would amount to \$150.00 plus a recording fee of \$1.65 to equal \$151.65. The transfer by the Torrens method costs \$3.00. This effects a saving of \$148.65, or approximately \$150.00 per transaction. With the average number of land transactions in New York City per year estimated at 20,000, the Torrens system would save \$3,000,000.00 per year for real estate owners of the city.

The saving made possible throughout the nation by the use of the Torrens system would be tremendous.

It is held by the proponents of the Torrens system that it will reduce, or even eliminate, the danger of fraud and forgery. This assertion is based on the fact that an exact duplicate of the title-holder's certificate is held by the Registrar and that if an error is made, or a fraudulent act committed, the rightful owner still has recourse to the assurance fund. When a purchaser in good faith pays for land which does not rightfully belong to the vendor, one of two innocent parties must suffer--either the purchaser or the owner. The old system of registration of deeds compels the purchaser to surrender the land, the purchase price, and perhaps any improvements on the property. Under the system of registration of titles, anyone deprived of property by fraud, either purchaser or owner, may resort to the assurance fund for remuneration. The Torrens system insures the registered owner against any loss of his land due to any cause except fraud in which the owner has had a part. This would include protection against the incursions of unscrupulous legal practitioners and land agents.

It is certainly true that the risks due to errors in ownership, either made at the time of registration or later, are small. These errors in Queensland have amounted to only

one error out of 1,397,910 registrations. In Australia, the demands on the assurance fund have amounted to only two and one-half ($2\frac{1}{2}$) cents per transaction, and in Tasmania there has not been a single call for adjustment.

The Registrar of New York County, New York, declares that, "The Torrens system is a safeguard against forgery due to the issuance of a duplicate certificate of title and by the provision that all instruments relating to the title remain on file with the Registrar. This point is not required under the deeds system, where deeds and mortgages, after recordation, are returned to the owner and may be later lost or forged." (49) The Torrens system removes all opportunity for duplication and suppression of deeds.

Another point of vantage secured by the Torrens system is that of freedom from extreme technicality. The memorials and the certificate are written in language understood by the common man. There is no excess use of legal jargon which can be interpreted only by an attorney, and which often provides the question upon which a serious controversy hinges. The Torrens system is a direct system. It possesses brevity and simplicity. It replaces confusion by keeping land records in a business-like manner--the account of transactions is on a single page and the record is complete and almost instantaneous in its usable characteristics.

Then, too, the Torrens system is practical in application. Lord Chief Justice Coleridge, great English legal authority, once made the declaration, according to Cameron (10), that, "I have never been able to perceive the obstacle to applying to land the system which answers so well when applied to shipping; but as my learned brethren, one and all, have declared that to be impossible, I had become impressed with the belief that there must be something wrong in my intellect, as I failed to perceive the impossibility. The remarkably clear and logical paper which has been read by Sir Robert Torrens, relieves me from that painful impression, and the statistics of the successful working of his system in Australia amounts to demonstration, so that the man who denies the practicability of applying it might as well deny that two and two make four." Many do not believe in the feasibility of the Torrens system, simply because they have not studied it from every angle. This statement expresses the feeling of the Committee on the Torrens System and Registration of Title to Land in their report to the twenty-fourth Annual Conference of the Commissioners on Uniform State Laws in 1914. This committee says, "Few members of the American Bar have taken the time to study the provisions and operations of land registration acts. These acts in some respects present novel propositions, and it is

in keeping with the traditions of the profession to question their constitutionality. It is said that such legislation is all very well in England, Australia, and Canada, where there are no written constitutions to limit the power of Parliament, but that the case is wholly different in the United States. And so a respectable portion of the Bar begin by assuming that no land registration act could be passed in the United States which would not be liable to be upset on constitutional grounds. And though our courts have in direct contests sustained the present acts of the States mentioned above in every instance in which they have been attacked, there are still some lawyers who are inclined to doubt the constitutionality of such legislation. This doubt in most instances rests merely on vague general ideas with no accurate knowledge of what has been decided by the courts. It is believed that if the Bar were generally informed on this subject all doubts and opposition to land registration would disappear." (10)

A minor, yet possibly important, advantage possessed by the Torrens system is greater protection against the hazard of fires, by providing that both the titleholder and the Registrar possess a copy of the registered title certificate. It would be in line to add that the mortgagee may also have a copy of the certificate for the nominal fee of, commonly,

fifty cents. This further distributes the risks of fire and protects the mortgagee, in that a notation is entered in the memorials of the other two copies of the existence of the extra copy of the certificate.

A second minor advantage of the Torrens system is that the vendor and the vendee of a registered estate both know exactly how much their portion of the costs of the transfer will amount to, as fixed by law. Under the prevailing system today, the abstractor cannot quote his exact fee; neither can the lawyer set an exact price for his services, as they will vary with the labor necessary to complete the task.

The Federal Farm Loan Bureau (15) lists as the greatest superiority in the use of the Torrens system the fact that "it aims to correct a prevailing condition under which the public records affecting titles to land are, without regulation, coming into private control for all practical purposes."

The situation in many places is tending to become similar to that existing in Chicago before the great fire (1871) where the private records were better safeguarded, systemized, and more complete than the public records. Private individuals, before insuring a title, if such is their business will require affidavits, quit claim deeds, and the like, to remove certain clouds on the title to be

insured, and in this manner will acquire a more perfect record than that of the public agency. This increased efficiency, besides tending towards monopoly, assigns to the individual the four functions of preparing abstracts, examining abstracts, insuring titles, and acting as a land broker. This last function might possibly conflict with the other three functions, and create, in time, a very undesirable condition. It is, certainly, not impossible to imagine a circumstance in which the private individual would profit by approving and insuring an unmarketable title in order to obtain the commission from the sale of the property.

Viele and Baecher, according to Cameron (10), add that, "By thus forcing the earliest possible settlement of equivocal situations, the system, in addition to its facilitating the handling of marketable titles, tends to prevent their ever becoming permanently unmarketable. The inspection of the original certificate proves the title. Without reference to the original, the duplicate kept by the owner proves his title, and shows the encumbrances upon it to the date to which it agrees with the original certificate. At the time of closing a purchase, looking over the certificate, the tax receipts since judgment of registration and before tax-sale, the docket of the United States Court, and viewing the premises, discloses all particulars of the

title. Through the continuous availability of this proof, and by being transferable without the expense hitherto customary, and without delay after an agreement on terms, registered land acquires a new value as a mortgage security and as an asset."

Reeves points out, so Cameron (10) relates, that, "One of the splendid features of the Torrens system--a feature which realty interests should emphasize--is in its supplying a method whereby the owner of property may have his title tested and adjudged, even though no attack is being made thereon. Without this law, a landowner whose title is questioned, however improperly or unsubstantially, must often wait for a direct attack upon it, or a rejection of it when it has been contracted to be sold before he can get into court to settle the questions involved. But a registration action enables him to proceed affirmatively and compel all who gainsay his ownership to come in and successfully assert their claims, or have them forever barred and extinguished."

Massie (31) asserts that, "It will pay you to have your title registered:

- (a) If you wish to use your land as a business asset,
- (b) If you wish to be certain of a home no one can take away from you or your wife and children,

(c) If you wish to make make a permanent improvement to your land,

(d) If you wish to sell your land at the highest price,

(e) If you wish to keep your title secure from land-grabbers."

It might be well to add at this point that registration of the title to your property is the only possible permanent improvement which can be made to your land. Physical structures such as the house, barns, fences, and so forth, may waste away and finally require replacement or removal. Nutrients added to the soil may be leached out or used by plants. But a registered title is permanent as long as the existing political economy and civilization is not upset by revolution or some other major disaster.

The originator of this system, Sir Robert Richard Torrens, has well summarized the benefits of his system of land title registration in the following points:

(1) "It has substituted security for insecurity.

(2) "It has reduced the cost of conveyances from dollars to dimes, and the time occupied from months to days.

(3) "It has exchanged brevity and clearness for obscurity and verbiage.

(4) "It has so simplified ordinary dealings that he who has mastered the 'three R's' can transact his own conveyancing.

(5) "It affords protection against fraud.

(6) "It has restored to their just value many estates, held under good holding titles, but depreciated in consequence of some blur or technical defect, and has barred the recurrence of any similar faults.

(7) "It has largely diminished the number of Chancery suits (equity proceedings), by removing those conditions that afford grounds for them." (10)

Two other advantages of the Torrens system include the amount of machinery needed for its operation, and the provision of an assurance fund.

The machinery needed for efficient operation of the Torrens system is simple. The existing Clerk of the Court or the Recorder of Deeds may also assume the position of Registrar of Titles. Besides the Registrar of Titles, the plan requires that there be one or more title examiners, who may be paid by salary or fees, to act as deputy Registrars. These men should, of course, be well versed in the legal profession, and are responsible to the Registrar for all official acts. The law may or may not provide for the establishment of a separate court, such as the Land Court of Massachusetts, to handle, strictly, cases involving the Torrens system.

The Torrens law may provide for voluntary registration

of titles, under which plan only those who so desire have their titles registered, or, the plan may be compulsory, requiring all titles to be registered, or those who wish may have their titles registered and in addition all changes of title resulting from judicial decrees are required to be recorded and registered, providing a "mixed" plan.

The average costs of initial registration of property with a \$5,000 valuation, as given by the U. S. Treasury Bulletin (15), would include:

Filing application -----	\$1 to \$4.00
Publication and service of notice-----	\$2 to \$15.00
Preparation of abstract -----	\$5 to \$50.00
Examination of abstract -----	\$5 to \$30.00
Attorney's fee -----	\$25 to \$50.00
Final registration fee -----	\$2 to \$4.00
Assurance fund (1/10 of 1%) -----	<u>\$5.00-\$5.00</u>
Total -----	\$45 to \$160.00

According to the bulletin, if the applicants could be grouped together for the purposes of publishing notice and hiring an attorney; if the putting into effect of a title registration law may be regarded as a matter of public welfare, making registration and the initiation and conduct of proceedings, except in contested cases, a part of the duties of the officials; and, if the suit to quiet and

register title is not contested, to dismiss the requirement for the preparation and examination of abstracts, a drastic reduction could be effected in the costs of registration.

The costs would then include:

Filing fee -----	\$0.10 to \$0.60
Publication costs -----	\$0.20 to \$1.50
Final registration fee -----	\$2.00 to \$4.00
Assurance fund (1/10 of 1%) -----	<u>\$2.50 -- \$2.50</u>
Total -----	\$7.30 to \$11.10

Browne (7) quotes the costs of registration under the Torrens Law in Nebraska on property valued at \$5,000 at \$39.00 and the cost of transferring property under the present system including insurance at \$36.50, which amount does not include the fees of the Register of Deeds. As has been cited before, the largest advantage in relation to costs comes in subsequent transfers after registration under the Torrens system.

The assurance fund, when provided for, is created and maintained by collecting a certain percentage of the valuation of the property at the time it is registered, or by setting aside a certain amount of the fees paid in, or by setting up a fund to be guaranteed by the State. The assurance fund payment is made once and only once--at the time of initial registration of the title.

Niblack has well stated the theory of the assurance fund, as pointed out by Cameron (10):

"The act of registration is the operative act, and the transfer and vesting of the title is effected, not by the execution of an instrument of transfer, not by the act of the owner of the land, not by the transfer of a valid title by the transferor, but by the State acting through its officer, the Registrar; and because it transfers and vests the title by the issue of a certificate which is declared by statute to be conclusive evidence of an indefeasible title to the land, the State creates a fund for the compensation of such persons as may be injured by the divesting and cutting off of rights and interests under this statutory declaration."

The demands made on the assurance funds have been negligible. In Saskatchewan, up to 1912, the fund contained \$527,021.00 with claim payments amounting to \$5406.00. In Alberta, similarly, the funds amounted to \$375,915.00 and the payments to \$575.00. In Australia, there is property registered under the Torrens Act valued at \$700,000,000.00. The claims made against the Australian assurance fund have amounted to less than 1/100 of one percent of the amount of the fund. The fund in Minnesota plus the accumulated interest, as of January 1, 1937, amounted to \$15,027.89. In

California, the books of the State Treasurer show that on December 31, 1936, the "Torrens Title Assurance Fund" had a cash balance of \$829.99 and an investment of \$39,000.00 in bonds. No money has been paid out on account of defective titles or proceedings. Statistics show that in all jurisdictions where the Torrens system is in use, the assurance fund has been amply sufficient to protect all interests, and that the difficulty has been to know what to do with the fund. Of course, the monies paid into the assurance fund should be put into a trust fund with the proper provisions made for investment and for suit against the fund; or in some manner, safeguarded against the ravages of unscrupulous and ignorant public officials.

According to Cameron (10), Hopper, Register of New York County, New York, in 1915, said, "The certificate of registration is by law conclusive and indefeasible against the whole world. In theory, therefore, no assurance fund is needed so far as holders of certificates are concerned. On the other hand, the certificate effectually cuts off the rights of any person not named in the certificate, even though those rights are concededly just. Natural justice demands that compensation should be given in such cases. Furthermore, mistakes of clerks or officials in transferring certificates may result in overlapping rights and cause a

loss to a holder. To take the burden of loss caused by the operation of the system from the individual and distribute it over the whole class of those who benefit by the system, is the purpose of the assurance fund. The establishment of such a fund is simply the application of the modern principle of insurance."

SUMMARY

Reasons for Slow Growth of the System

The Torrens system has not developed as rapidly or extensively as might reasonably be expected of a system which offers the benefits and improved conditions claimed by its proponents.

Especially is this situation true in the United States. Between the years 1895 and 1929, a period of 34 years, only nineteen states adopted the system of registering titles. As shown by the volume of the publications written on the system, there was a decided drop in the interest shown in the method of title registration between the years 1917-1918 and 1936. The major portion of articles, both pro and con, on the plan, preceded 1917-1918. Of late, there have been a few articles published, showing some revival of interest. Then, too, since 1930, Mississippi (1930), Tennessee (1932), South Carolina (1932), and Utah (1933) have dropped their

title registration laws.

It would appear that, as these repeals were all made during the depression, that the requirements for the support of the system were out of proportion to the benefits derived therefrom, or else that the initial registration costs were prohibitive in times of low purchasing power. Both of these points have been factors contributing to the loss of interest for the plan.

At least one writer has given as the principal reason for the slow growth of the system since its initiation in the United States the suppression by "the entrenched power of vested interests, who, in effect, proclaim and demand for themselves a place superior to the position of law." (10)

These "powers" would include principally the title insurance companies, and the abstractor's and lawyer's associations. There are enormous quantities of money and influence in the hands of these organizations, which make them very effective in throttling enthusiasm of any sort for a land transfer scheme which might damage their incomes. According to Cameron, Wigmore has analysed the opposition in this fashion:

"Is it not permissible for us to take note frankly of the partisan nature of the opposition to the system? The aggressive intolerance of some of the opponents leads to a

natural suspicion that the cause which can excite such language may possibly be a very good cause which is simply treading on the toes of self-interest." (10)

Other reasons for the slow growth of the Torrens system might be simply listed as:

(1) The time required for a registered title to become conclusive. This, of course, would vary with the length of the statute of limitations.

(2) The expense of the initial proceedings to register title. In certain states, however, this is not a detrimental factor, as the initial cost is lower than that for a transfer by the deeds system.

(3) The inertia of the human race and the fact that the average individual does not make more than a few real estate transactions during his lifetime. A person naturally dislikes to move until the immediate objective or necessity arises. The owner of land may consider his title, as indicated by the recorded instruments, to be valid. Then when he wishes to use that title, he may find that his supposition has been incorrect and that his title is unmarketable.

(4) A great deal may depend on the attitude and goodwill of the legal profession concerning the system, and the opinion which they give a client as to the advisability of

registering his title.

(5) The practice of allowing one man to hold the office of Recorder of Deeds and also the office of Registrar of Titles, which allows the bias of the official to have a very direct bearing on the system used. Also the lack of uniformity throughout a state may lessen the confidence of the people.

(6) The fact that the publication of intention to register title is, in effect, an invitation to all interested persons and adverse claimants to enter suit against the title.

(7) The general ignorance of the average man as to the advantages and benefits which are possible by the use of the Torrens system. The author had the experience of interviewing real estate agents, attorneys, and others, who certainly should understand thoroughly the workings of systems of land transfer used in the United States, and finding that these men knew practically nothing of the Torrens system.

Future Prospects in the United States

The major use of the Torrens system in the future will probably be for registering large estates, subdivisions, and other large tracts of land to be cut up into lots and streets for further sale. The ever increasing use and subdivision of

land will crowd the present agencies of land transfer and title proof, and the Torrens system of registering title to land would be excellent for correcting this situation. Also, the registration of the large tract would allow the vendor to transfer his title at a cost of only two or three dollars with the title guaranteed by the State.

The Torrens system is constructive in nature, and, in time, should forge to the place of supremacy in land transfer.

The prospects for the Torrens system in the future can best be answered by the reactions to the following questions put by Viele (62):

(1) "Can government service function as well as private service?"

(2) "Can private service on the basis of the old form of record indefinitely conceal the need for, and advantages possessed by, adequate governmental operation of the new form?"

(3) "Is even remarkably convenient private service, based on reliability and financial responsibility, worthwhile when it is not the main object sought?"

How the Torrens System Could Be Put Into Effect

The question might possibly, and very probably will, be asked, "If the Torrens system does possess the advantages claimed for it, how could it be most effectively and profitably incorporated into our laws?"

Inasmuch as it is held that the guaranteeing of the title to land should justly be a function of the State, it would be best that the matter be handled entirely through the federal government. The reasons for this plan are obvious. The law would be uniform and universal throughout each state, and a law which has been passed by Congress, approved by the President, and declared constitutional by the Supreme Court, will have no conflict with the state laws. The plan could be handled by the federal government in a more uniform, economical, and efficient manner.

The Act should provide for compulsory registration of title by forbidding the investment of public or trust funds in unregistered property, by requiring registration as an incident of mortgage foreclosure, and by requiring registration of title to effect a transfer of the land. There should be no method provided by which a registered owner might shift back to the older deeds system.

The county system of recording districts should be

retained, with the position of Registrar of Titles subject to appointment and removal by the Governor of the state. The Registrar should be required to fill certain stringent requirements as to training and experience in law and book-keeping.

The registered owner should have the option of registering his duplicate certificate with the United States government if he so desires, in a manner similar to that in which bonds are registered. This plan would eliminate all chances of success with fraud or forgery.

An assurance fund for the protection of registered owners and encumbrancers should be provided for; to be maintained by a payment of 1/20 of 1% of the assessed land value instead of 1/10 of 1%, since statistics indicate that the smaller payment would be sufficient. This fund should be collected and administered by each state, with the sufficiency of the fund guaranteed by the federal government.

In addition to the above suggested essential provisions, the United States Treasury Department Bulletin (15) cites the following provisions, which would be necessary to effect a valid statute:

(1) "Primarily, the statute should provide for such procedure in the initial proceeding for registration as the United States Supreme Court has approved. In American Land

Co. vs. Zeiss, 219 U.S., 47, a precedent is found.

(2)"A statute of limitations, such as is discussed in *Saranac Land & Timber Co. vs. Roberts*, 177 U.S., 318, and in *American Land Co. vs. Zeiss*, *supra*, should be provided in order that the original decree of registration shall be made absolutely conclusive. From the former case it appears that there is no doubt as to the propriety or force of such a statute, and from the latter case it appears that one year is a reasonable period of time for such when the fullness of the notice provided by the statute is taken into consideration.

(3) "Every transaction, voluntary or involuntary or arising by operation of law, affecting a registered title or the right to possession of registered land, which, if recorded, filed, or entered in any office in the county within which the land is situated, would affect the title or right of possession to unregistered land, should, if filed in the office of the registrar of said county, but not otherwise, be notice to all persons from the time of such filing.

(4) "Registrars should be required to enter the decree of original registration and a notation or memorial of all subsequent transactions upon a single page of the register of titles, to become and to be known as the original

certificate of title, and to issue duplicate certificates of title as provided by existing land title registration statutes.

(5) "It should be provided that, upon the running of the statutes of limitations provided, the original certificate of title shall be absolutely conclusive of the state of title, saving and excepting only, first, liens, claims, or rights arising or existing under the laws or Constitution of the United States which the statutes of the State can not require to be filed in the office of the registrar; second, taxes and levies, assessed, but not delinquent.

(6) "It should be made the duty of the official 'examiners of title', for the appointment of whom all registration statutes provide, to initiate and conduct for applicants for registration of title in all uncontested cases.

(7) "Under the direction and by the consent of the official examiner of titles, applicants for registration, owning in severalty within the same county, should be permitted to join in the same petition for initial registration.

(8) "Registrars should be required to keep 'property indices', for which many statutes already provide, upon which are shown the section (or subdivision), the range (or block),

the township (or lot), and any further description necessary to identify each piece of land, also the name of the owner.

Name indices of owners, also, should be kept in alphabetical order, containing a description of property, with columns for notation of liens, claims, charges, etc., and the name of the holder.

(9) "All owners should be required to file with the registrar within a stated time (six months) after approval of act or amendment a brief summary of claim of ownership, giving description of property and source of title; likewise all claimants to subordinate interests, adverse claimants and encumbrancers should be required to file within the same time a brief statement of their claims, giving description of property and nature of the claim, all to be noted in indices such as are above mentioned.

(10) "The statute should authorize the commencement of a proceeding for registration of the title upon expiration of a stated time (six months) after filing of the summary of ownership, and provide for the giving of actual notice of the proceeding to all persons who will have filed with the registrar notice of an interest in, claim or charge against the property sought to be registered.

(11) "The summary of ownership should be made admissible in evidence upon the hearing for registration, having the

effect of creating a rebuttable presumption of existence of title as stated therein; however, no judgment or decree of registration should be entered by default, but it should be required that in all cases the immediate source of title and actual possession be proved to the satisfaction of the court."

The results of these suggestions and essential provisions would be:

(1) "Without surrender of any substantial benefit of the ideal registration plan to an objectionable degree, the foregoing provisions meet all legal objections raised and heretofore made to land-title registration statutes by opponents of the system, and free such statutes of all doubt as to constitutionality and validity.

(2) "By examination of title over a period of time never longer than two years and under a plan whereby the whole record to be examined appears upon a single page, certificates of title for all practical purposes become available immediately upon entry at a nominal expense; and all advantages claimed for 'title registration' are preserved.

(3) "The whole expense of registration of title, without the sacrifice of any apparent precautionary measure, but with additional safeguards against fraud, can be reduced from an average cost of from \$45 to \$160 on a \$5000 property

to from \$4.85 to \$8.60, varying according to fixed charges under local laws and cost of publication of notice. On properties of larger values the only extra expense of registration will be the additional one-twentieth of 1 per cent contributed to the assurance fund.

(4) "After original registration the time required in determination of the average title should seldom exceed a few hours and the cost should be correspondingly small, without the possibility of monopoly." (15)

Another provision which would increase the cost of the system somewhat, but which could very reasonably and profitably be applied at this time, is that of the re-survey of all land registered under the Act by the triangulation survey method, making use of plane coordinates.

The older surveys, especially those in the eastern and older part of the United States, were made by using temporary markers (trees, streams, posts, and the like) in the description of the land. The surveys have become inaccurate and incomplete due to the removal, destruction, and shifting of these temporary markers, and furnish the basis for many of our present lawsuits.

The United States Coast and Geodetic Survey Service (25) has developed, established, and enacted a scientific method of permanently marking land for survey. They make use of

permanent (concrete) markers placed at various triangulation points throughout a given district, from which the direction and distances may be measured and a valid description of the land made by reference to these markers.

This system of survey is used on all United States government land, in New Jersey, by the Land Court of Massachusetts, to some extent in Iowa, and to a small degree in other parts of the United States. France, Germany, and England also make use of the triangulation survey.

The adoption of the triangulation survey universally throughout the United States would counteract one of the major objections to both systems of land transfer, but more especially, the registration of deeds system. Many of the lawsuits which have been decided have depended for their existence on the fact that the original survey was inaccurate, or that the landmarks have been destroyed or lost.

CONCLUSIONS

The Torrens system of land transfer is an improvement over the registry of deeds system. The principle of registration of titles fills the essentials of a valid system of land transfer which were previously stated--simplicity, security, and economy--to a much greater degree than the evidences of title principle.

The part played by the Torrens system in the transactions dealing with land in the United States is small and unimportant. Most authorities will admit that, as it exists today, it is a dead letter.

However, although the Torrens system has not made headway in this country, the writer has faith in the principle of registration of titles. This method, it is believed, is far more effective and advantageous to society as a whole than any other plan of land transfer.

The fact must be faced, however, that the plan has neither been practical nor decidedly successful in operation in the United States. Of course, the earlier start and consequent grip on society by the registration of deeds system has placed the Torrens system at a disadvantage. Other reasons for its insignificant use have been mentioned previously.

It seems probable that the Torrens method of land transfer will not be of much consequence in the land transactions of this country for many years to come. The only hope, as seen by the author, is that in time the registration of evidences of title system will become so expensive, so burdensome, so ponderous, so delaying, and so vexing to the American people that they will demand a reform in land transfer methods.

In a situation of this type, a title registration scheme would be the logical result of the reform movement, because, not only in principle, but in practice in foreign countries, the Torrens system has proved more efficient, more economical, more secure, and less complicated than an evidences of title plan.

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