LAND REGISTRATION

IN

ILLINOIS

BY

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EXAMINER OF TITLES FOR COOK COUNTY

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To

M. S. S.,

its instigator and most kindly critic,

this volume is dedicated.

PREFACE.

This volume is an attempt to lay before my fellow members of the bar in Illinois and elsewhere a necessarily brief discussion of the principles of registration of title, a method of dealing with land titles, although now somewhat novel in the United States, yet certain, in course of time, to come into common use. It has been many times stated that the legal profession is too slow in the reform of our land laws in the direction of registration of titles. My own experience has been to the contrary. What has been accomplished in Illinois, Massachusetts, Ohio and California has been done in most part by members of our profession. To that profession may well be left the task of working out, through new registration of title acts and amendments found needed by actual experience, the welfare of the land owner, and a safer, simpler, more expeditious and inexpensive method of dealing with land.

Upon investigation of the subject, it will be found impossible to resist the conviction that the public good requires compulsory registration of title. This was the result in England, in 1897, after some thirty years of parliamentary discussion. How this benefit can be obtained by our own land owners is an economic problem soon to come before the bar of the United States.

Chicago, March, 1901.

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LAND REGISTRATION IN ILLINOIS.

CHAPTER I.

LAND REGISTRATION IN ILLINOIS.

Illinois was the first of the United States to adopt a land title registration act.

In 1891, the Illinois State Bar Association and the Chicago Real Estate Board approved resolutions favoring the passage of a joint resolution by the Thirty-seventh General Assembly, then in session, authorizing the appointment of a commission to consider whether the Australian or Torrens system of registration of titles could be adapted to the constitution and laws of this state. Such joint resolution was adopted, and Governor Fifer appointed thereunder as such commission James K. Edsall, ex-Attorney General, as chairman, and Theodore Sheldon, Willis G. Jackson, George W. Prince and Frank H. Jones. Upon the death of Mr. Edsall, the vacancy was filled by the appointment of Harvey B. Hurd. The report of the commission was made to the Governor December 10, 1892, and by him presented to the Thirty-eighth General Assembly. Accompanying the report of the commission was the draft of a bill favored by the commission, and embodying the substantial features of the Australian and other colonial land acts so modified, it was thought, as to conform to the requirements of the federal and state constitutions. The bill failed to pass at that session, but received the approval of the next legislature, under the title of "An Act Concerning Land Titles," approved June 13, 1895. In accordance with the provisions of its

referendum clause the act was adopted in Cook County, at a general election, held November 5, 1895. The law received the practically unanimous approval of the voters in that county, 82,507 being cast in its favor, and only 5,308 against it. On February 10, 1896, the first certificate of title was issued by the registrar of titles, and a number of titles were brought under the act. The constitutionality of the new law was tested in a quo warranto proceeding, and by its decision in the case of People vs. Chase,[1] the Supreme Court of Illinois, by a bare majority of its members, held the act invalid, upon the ground that its provisions for initial registration conferred judicial powers upon the registrar. To a majority of the Court it seemed that by the provisions of the law of 1895, the registrar was clothed with power to determine the ownership of land when application was made for initial registration thereof, and to issue his certificate accordingly. That act did not contemplate any judicial proceedings as a basis for the initial registration. Largely at the instance of the Chicago Real Estate Board, a new act providing that the ownership should be determined by a decree in equity, entered in a court of competent jurisdiction, upon which decree the registrar should issue the first certificate of title, was adopted by the Fortieth General Assembly, with but 4 dissenting votes. That law, entitled "An Act Concerning Land Titles," approved May 1, 1897, is commonly called the Torrens Law. Upon submission to the voters of Cook County on June 5, 1897, it again received their practically unanimous approval. The new law, and many questions involving its constitutionality, were considered by the Supreme Court of Illinois in People vs. Simon.[2] The act was there held valid and constitutional. The registrar's office, in Cook County, was opened for business March

[1] 165 Ill. 526.

[2] 176 Ill. 165.

1, 1899, and a large number of land titles have since been brought under the law.

The new law is found to work easily and well. The cost of an initial registration is $24, to which is to be added one-tenth of one per centum of the value of the property, the latter being payable to the County Treasurer toward creating an indemnity fund to make good any losses arising from the operation of the system. On all subsequent dealings with a registered title, the expense is nominal. The entire expense of a transfer or mortgage is $3. Dealings with registered titles are completed with rapidity. Sales are frequently completed, the purchase price paid over, and the new certificate of title issued to the buyer the same day upon which the verbal contract is made. This rapidity of transfer obviates in most cases the need of a preliminary written contract. Mortgage transactions require but the added time needed for the preparation of the notes and mortgage, and a number of loans have been completed and the money in the borrower's hands the same day of his application to the lender. In fact, any ordinary dealing with a registered title can be fully completed within an hour after the parties present to the registrar the outstanding certificate of title and the deed, mortgage or other instrument authorizing the transaction.

CHAPTER II.

PROCEDURE AND PRACTICE.

The recorder of deeds is made registrar of titles, and, in addition to his duties as recorder, conducts the registration of titles, and all dealings with registered land.[1] He is assisted by deputies and examiners of title, the latter attorneys at law.[2]

INITIAL REGISTRATION.

It is optional with the owner to register his land. He files in a court of competent jurisdiction[3] his application in writing for the registration of his title. This in ordinary cases may be in the following form:

State of Illinois, }
County of Cook. } ss.

To the Judges of the Circuit Court
Of Cook County,
In Chancery Sitting:

I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge and belief.

1st. Name of Applicant—John Doe.
Age of Applicant—54 years.
Residence—10 State Avenue, Chicago, Illinois.
Married to—Mary Doe.
Residence—10 State Avenue, Chicago, Illinois.

[1] Sec. 1.
[2] Sec. 3, 5.
[3] Sec. 15.

2d. Application made by John Doe, acting as owner.

Residence as above.

3d. Description of Real Estate is as follows: Lot one (1), block one (1), Original Town of Chicago, in Cook County, Illinois.

Estate or interest therein is in fee simple, and is not subject to homestead.

4th. The land is occupied by James Smith, whose address is No. 8 North Water Street, Chicago, Illinois.

The estate interest or claim of James Smith, occupant, is tenant of applicant under lease expiring April 30, 1901.

5th. Liens and incumbrances on the lands are one trust deed in favor of Peter Johnson, trustee, whose address is 2 John street, Chicago, Illinois.

Name of owner or holder thereof—William Jones.

Postoffice Address—Aurora, Illinois.

Amount of Claim——$10,000 with interest.

Recorded Book 6082, Page 578.

6th. Other person, firm or corporation having or claiming any estate, interest or claim in law or equity in possession, remainder (reversion) or expectancy in said land are, none.

7th. Other facts connected with said land are, none.

8th. Therefore the applicant prays the Court to find and declare the title or interest of the applicant in said land and decree the same, and order the Registrar of Titles to register the same, and to grant such other and further relief as shall be according to equity.

John Doe.

Subscribed and sworn to before me by the above named John Doe, as owner, this twentieth day of February, A. D. 1901.

Richard Roe,
Notary Public.

I hereby assent to the registration of the above described real estate as prayed for by John Doe, who is my husband.

Mary Doe.

State of Illinois, } ss.
County of Cook. }

I, Richard Roe, a Notary Public in and for said County in the State aforesaid:

Do hereby certify that Mary Doe, personally known to me to be the same person whose name is subscribed to the foregoing assent, appeared before me this day in person and acknowledged the said assent as her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal, this 20th day of February, A. D. 1901.

Richard Roe,
Notary Public.

We hereby assent to the registration of the above described real estate as prayed for by John Doe.

James Smith,
Peter Johnson, trustee.
William Jones.

All persons interested in the land and all persons in possession or occupancy must be made parties defendant.[1] Summons is issued to all defendants.[2] Such as reside or are to be found within the State will be served by the proper sheriff. Non-residents will be served by publication.[3] Due opportunity to contest the matter must be afforded to all interested.

The Court refers the application to an examiner of titles who proceeds with an independent investigation of the title.[4] To him is submitted the abstracts of title and any oral testimony tending to determine the rights

[1] Sec. 11.
[2] Sec. 19.
[3] Sec. 21.
[4] Sec. 18.

of all parties. He approves no title unless satisfied that all persons interested are before the Court. If in his opinion the applicant is entitled to registration he so reports to the Court. To the report of the examiner any party may file objections, which are heard and disposed of by the Court. Upon the confirmation of the report a decree is entered confirming the applicant's title and directing the registrar to issue to him the first certificate of title.[5] This is done by entry in a book called the "Register of Titles."[6] This book is composed of a large number of certificates of title (one on a page) bound together, numbered in the order of their issue and each with ample space at its foot for the entry of subsequent notations, affecting the title. Every certificate of title is in duplicate, signed by the registrar, and recites the condition of the title. One of these is kept by the registrar bound in the "Register of Titles," the other is delivered to the owner. This completes the initial registration.

The certificate of title immediately upon its issue is conclusive proof of ownership in all courts as against all parties before the court in the proceeding for initial registration,[7] and all persons dealing with the land after registration. After the expiration of two years from the first registration, no suit attacking the title of the registered owner can be brought.[8] No exception is made in favor of infants or persons under disability,[9] but such persons are given recourse upon the indemnity fund.[10] It is thus seen that all persons are bound by the first certificate of title, except those overlooked, and not made parties to the suit for registration. If the court proceeding is properly conducted, there should be no persons not bound by the first certificate of title.

[5] Sec. 25.
[6] Secs. 30, 35.
[7] Sec. 26.
[8] Sec. 27.
[9] Sec. 26.
[10] Sec. 101.

In all dealings with the land after registration, the bona fide purchaser or incumbrancer has a like security to that given to the purchaser of negotiable paper.[11] The title of such purchaser or incumbrancer cannot be upset.[12]

TRANSFERS.

Transfers of registered land are made in the following manner:[13] The owner executes the usual deed, and submits it, together with his certificate of title, to the buyer. In every transaction, the owner must produce his duplicate certificate of title. He can do absolutely nothing without it. If lost or destroyed, upon proper showing[14] the owner receives a certified copy marked "owner's certified copy, issued in place of duplicate lost." This, after entry of the transaction upon the original certificate of title, answers the same purpose as the lost certificate. No new forms of conveyance are required.[15] The buyer, after inspection of the original certificate of title in the register, and finding thereon no incumbrance or lien, safely pays over the purchase money, and receives the deed and duplicate certificate of title. He then delivers them both to the registrar, who when satisfied as to the identity of the parties and that the transfer should be made, notes the transfer upon the register.[16] This operates to transfer the title. No title passes by the delivery of the deed.[17] The deed after delivery and before the registration of the transfer, is a mere contract between the parties.[18] Its sole object is to authorize the registrar to register the transfer. The transfer is registered, when the registrar cancels the old certificate of title, and issues a new one in duplicate as before, one, called the original, being re-

[11] Sec. 39.
[12] Secs. 93, 94 and 95.
[13] Sec. 47.
[14] Sec. 58.
[15] Sec. 52.
[16] Sec. 47.
[17] Sec. 49.
[18] Sec. 54.

tained in the register and the other called the duplicate, after proper receipt therefor filed with the registrar, delivered to the buyer, now the new owner. The deed is kept by the registrar.[19]

MORTGAGES.

A mortgage of registered land is effected in somewhat the same manner.[20] The owner executes the mortgage in duplicate,[21] and delivers it, with the note or bond and his certificate of title, to the lender. The latter, after inspection of the proper folium in the register, and finding thereon no incumbrance or lien, safely pays over the money to the borrower, and receives the mortgage securities with the certificate of title. The note or bond and duplicate mortgages are presented to the registrar, who identifies the note or bond and notes the transaction upon the register as well as upon the owner's certificate of title.[22] The latter with the note or bond is thereupon returned to the borrower, who may use the same in effecting a second or third or more mortgages. One of the duplicate mortgages is retained by the registrar.[23] The other with the date of its registration endorsed thereon by the registrar, and the note or bond is delivered to the lender. When the mortgage is paid, a release of the same is filed with the registrar, who, when satisfied that the note or bond is duly paid, thereupon notes the release upon the register book as well as upon the duplicate certificate of title.[24] The latter is then returned to the owner, or he may surrender it to the registrar for cancellation, and receive a new duplicate certificate of title containing no mention of the mortgage.

[19] Sec. 51.
[20] Sec. 59.
[21] Sec. 62.
[22] Sec. 60.
[23] Sec. 62.
[24] Sec. 65.

TRUSTS.

Registered owners, by deed or other instrument filed with the registrar, may create such trusts as may be desired.[25] The terms of the trust are not set forth in the certificate of title, but after the name of the trustee is inserted, the words "in trust," "upon condition," "or with limitation," as the case may be, and no subsequent transfer or dealing can be had thereafter, except upon the order of a court of proper jurisdiction or upon the written opinion of at least two of the examiners of title that the proposed transfer or dealing is in accordance with the terms of the trust, condition or limitation.[26]

JUDGMENT AND OTHER LIENS.

No judgment, decree,[27] attachment,[28] lis pendens,[29] mechanic's lien, or other statutory legal or equitable lien,[30] except taxes and special assessments, for which a sale has not been had, is a lien upon registered land, until a certified copy of the judicial proceedings, or a copy of the instrument upon which the lien is based, is filed with the registrar, and a brief note thereof is entered by him upon the certificate of title in the register. This abolishes all general liens, and one dealing with a registered title can safely ignore any lien not entered upon the certificate of title in the register. The area of search is enormously reduced.

ADVERSE CLAIMS.

Provision is made for all who wish to give notice of a lien upon or claim against registered land.[31] All such notices are entered by the registrar upon the proper certificate of title in the register book, and are thus

[25] Sec. 68.
[26] Sec. 69.
[27] Sec. 85.
[28] Sec. 86.
[29] Sec. 84.
[30] Sec. 90.
[31] Sec. 92.

brought directly to the attention of any one proposing to deal with the registered land. Until such claims are removed, as they may be by proper proceedings provided in the act, the registrar will enter them upon all succeeding certificates of title. Notice is thus given of mechanic's lien, foreclosure, attachment, or other suits affecting the land, unregistered mortgages or other legal or equitable liens, trusts of any kind, sale for taxes and special assessments and any other nature of claim now permitted to be asserted in any manner.

DOWER AND HOMESTEAD.

Dower is preserved in registered land, and in its first registration, as well as in all subsequent dealings, the right of dower in husband or wife of the registered owner is recognized and protected. The same is true of the statutory right of homestead.[32]

TRANSMISSION.

Upon the death of a registered owner, for the purpose of distribution of his estate, his registered lands are treated as personal property, and as such pass not to the heirs or devisees, but to the executor or administrator.[33] Before transferring or otherwise dealing with the land, the executor or administrator must file with the registrar, as authority for such transfer or dealing,[34] a certified copy of an order of the court administering upon the estate of the deceased owner. In the case of ordinary distribution among devisees or heirs, the executor or administrator, upon proper authority from the court appointing him, will apply to the registrar to have the land transferred to the devisee or heir. The sale of land for the payment of debts will be conducted as heretofore. On filing in the registrar's

[32] Sec. 55.
[33] Sec. 70.
[34] Sec. 71.

office the deed and order of confirmation of the sale, directing him so to do, the registrar will transfer the land to the purchaser at such sale.[35]

The great advantages in this change in administering upon land of a deceased owner are manifest. All questions concerning heirship, dower and rights of creditors are thus conclusively settled at the time, and do not continue, as under the old system, to remain for years afterwards as possible defects in a title.

TAX SALES.

The holder of a tax certificate of sale must within three months after the date of sale file the certificate of sale or a sworn copy thereof with the registrar for entry upon the proper certificate of title, and during the same period must mail to all persons noted upon the certificate of title as interested in the land, a notice of the registration of the tax certificate of sale. In default of such filing and notice, the land is released from the sale.[36] Should the certificate of sale ripen into a tax deed, the holder thereof may on presentation of the tax deed and outstanding certificate of title, have the land transferred to him. If he cannot present the outstanding certificate of title he must present an order of the court ordering the sale for the tax and this order can be granted only after notice to all persons interested in the land.[37]

PROCEEDINGS IN CHANCERY.

The act provides a ready recourse to a court of equity in all cases of wrong, doubt or mistake, and the courts have at all times full control over the registrar.[38] But the title of a bona fide purchaser or incumbrancer will always be upheld.[39]

[35] Sec. 72.
[36] Sec. 82.
[37] Sec. 83.
[38] Sec. 93-6.
[39] Sec. 94.

INDEMNITY FUND.

In nearly all the countries where the Torrens system is in use, an indemnity fund is provided to make good any losses incurred by rightful owners in being deprived of their land through fraud or accident. This fund is raised by charging a small fee, usually one-fifth of one per cent, upon the value of the land when first registered, and each time it afterwards passes by descent or devise. Small as such fee is, it has invariably proved to be much larger than necessary. Drafts upon these assurance funds have been few and unimportant. In some of the British colonies no sucessful claim whatsoever has been made upon them.

The Illinois act provides an indemnity fund by the payment of the small charge of one-tenth of one per cent upon the value of the land when first registered, and a like sum upon each transfer by descent or devise. This indemnity fund is kept and managed by the County Treasurer under the supervision of the County Court.[40] Ready proceedings are authorized for the recovery of compensation for loss or damage arising from the operation of the act.[41]

FEES.

Initial registration fees are as follows:

Clerk of court on filing application	$ 5
Publication notice	2
Registrar for examination of title	15
Registrar on issue of certificate of title	2
Total	$24

Sheriff's fees for service of summons, if any, are to be added, together with the contribution to the indemnity fund, one-tenth of one per cent of the value of the property, or $1 on each $1,000.

[40] Sec. 101. [41] Sec. 102.

CHAPTER III.

THE ILLINOIS TORRENS LAW.

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FEES.

SECTION.
107. Docket Fees.
108. Registrar's fees.
109. Act—how construed.

ADOPTION BY COUNTIES.

110. Submission to vote in counties.
111. Emergency.

AN ACT concerning land titles. Approved and in force May 1, 1897.

RECORDERS EX-OFFICIO REGISTRARS.

'Recorders ex-officio registrars.] § 1. Be it enacted by the 'People of the State of Illinois, represented in the General 'Assembly, Recorders and ex-officio recorders of deeds in 'the several counties in this State shall be registrars of 'titles in their respective counties. Their deputies shall be 'deputy registrars. All laws relative to recorders and their 'deputies, including their compensation, clerk hire and 'expenses, shall extend to registrars and their deputies, so 'far as the same may be applicable.'

The duties of registrar are added to those of the recorder. The records of the recorder's office thus become available for the use of the registrar. All the machinery needed to transfer land by registration of title is already to be found in the office of the recorder.

The recorder of deeds is the official maker of abstracts of title.[1]

All records kept in the office of the recorder and registrar and all instruments filed for record therein are open for public inspection and examination.[2]

'Bond of registrars.] § 2. Every recorder and ex-officio 'recorder shall, before entering upon his duties as registrar, 'give a bond with sufficient security, to be approved by the 'Judge of the County Court, payable to the People of the 'State of Illinois, in the penal sum of $50,000 (except that in 'counties having a population of more than 100,000 inhabi-

[1] Hurd's Rev. St., Ch. 115, § 25. [2] Hurd's Rev. St., Ch. 115, § 21.

'tants, the penalty of the bond shall be $200,000), condi-
'tioned for the faithful discharge of his duties, and to deliver
'up all papers, books, records and other property belonging
'to the county or appertaining to his office as registrar of
'titles, whole, safe and undefaced, when lawfully required
'so to do; which bond shall be filed in the office of the Sec-
'retary of State, and a copy thereof entered upon the rec-
'ords of the County Court.'

'Deputies—duties of—death of registrar.] § 3. Deputies 'may perform any and all duties of the registrar in the 'name of the registrar, and the acts of such deputies shall 'be held to be the acts of the registrar, and in case of the 'death of the registrar or his removal from office, the chief 'deputy shall thereupon become the acting registrar until 'such vacancy shall be filled according to law, and he shall 'file a like bond and be vested with the same powers and 'subject to the same responsibilities and entitled to the 'same compensation as in the case of the registrar.'

'Not to practice as an attorney.] § 4. No registrar or 'deputy registrar shall practice as attorney or counselor-'at-law, nor be in partnership while in office with any 'attorney or counselor-at-law so practicing.'

'Examiners, etc., to take oath, give bond, etc.] § 5. The 'registrar may appoint in his county two or more compe-'tent attorneys to be examiners of titles and legal advisers 'of the registrar. Their compensation shall be fixed in the 'same manner as that of deputy registrars.'

'Every examiner of title[s] shall, before entering upon 'the duties of his office, take and subscribe the oath pre-'scribed by the constitution, and shall also give a bond in 'such an amount, with such security as shall be approved 'by the judge of the county court, payable in like manner 'and with like conditions as required of the registrar. A 'copy of the bond shall be entered upon the records of 'said court and the original shall be deposited with the 'registrar.'

'Liability of registrar for acts of deputy as examiner.] § 6. 'The registrar shall be liable for any neglect or omission

'of the duties of his office, when occasioned by a deputy 'or examiner of titles, in the same manner as for his own 'personal neglect or omission.'

BRINGING LAND UNDER ACT.

'Bringing land under act.] § 7. The owner of any estate 'or interest in land, whether legal or equitable, may apply 'as hereinafter mentioned to have his title registered. He 'may apply in person or by an attorney in fact authorized 'so to do. A corporation may apply by its authorized 'agent, an infant by his natural or legal guardian, any 'other person under disability by his legal guardian. The 'person in whose behalf the application is made shall be 'named as applicant.'

Application may be made for the registration of any land in the county. Any owner may register his title. No one is required so to do.

The application may not be made upon the implied authority of an attorney or solicitor. By § 46 the land becomes subject to the terms of the act, and application in person or by express authority in writing becomes necessary.

'Fee to be first registered.] § 8. No mortgage, lien, charge 'or lesser estate than a fee simple shall be registered unless 'the fee simple to the same land is first registered.'

The initial registration must include the fee and all lesser estates. The land cannot be in part under this law and in part under the old system. This is due to the essentially different rules which govern dealings under the two systems. The Torrens law does not in any way affect land continuing under the old system.

'Subject to lesser estates etc.] § 9. It shall not be an 'objection to bringing land under this act, that the estate 'or interest of the applicant is subject to any outstanding 'lesser estate, mortgage, lien or charge, but every such 'lesser estate, mortgage, lien or charge shall be noted upon

'the certificate of title and the duplicate thereof, and the 'title or interest certified shall be subject only to such 'estates, mortgages, liens and charges as are so noted, 'except as herein provided.'

All adverse claims must be adjusted before or during the proceeding for initial registration. Only such lesser estates, mortgages liens or charges as are valid, or admitted by the owner of the fee, will be noted upon the certificate of title. Holders of adverse claims must of course be made parties, as the applicant seeks their extinguishment by decree. Holders of admitted lesser estates, such as mortgagees or judgment creditors must also be made parties. Their interests will be noted upon the certificate of title and thereafter will be enforced, released or otherwise dealt with in accordance with the terms of the act.

'Title derived through tax sale, etc.] § 10. No title derived 'through sale for any tax or assessment shall be entitled 'to be first registered, unless it shall be made to appear 'that the applicant or those through whom he claims title 'have been in the actual and undisputed possession of the 'land under such title at least ten years, and shall have 'paid all taxes and assessments legally levied thereon for 'seven successive years of that time.'

Applicants for registration under this section are required to make parties defendant the holder of the patent title and all claiming under him. No tax title can thus be registered until adjudicated superior to the patent title.

'Application to come under act—what to contain.] § 11. 'The application shall be in writing, signed and sworn to 'by the applicant or the person acting in his behalf. It 'shall set forth substantially:

'a. The name and place of residence of the applicant, 'and if the application is by one acting in behalf of

'another, the name and place of residence and capacity of 'the person so acting.

'b. Whether the applicant (except in the case of a 'corporation) is married or not, and, if married, the name 'and residence of the husband or wife.

'c. The description of the land.

'd. The applicant's estate or interest in the same, and 'whether the same is subject to an estate of homestead.

'e. Whether the land is occupied or unoccupied, and, if 'occupied by any other person than the applicant, the name 'and postoffice address of each occupant, and what estate 'or interest he has or claims in the land.

'f. Whether the land is subject to any lien or incum- 'brance, and, if any, give the nature and amount of the 'same, and, if recorded, the book and page of record; also 'give the name and postoffice address of each holder 'thereof.

'g. Whether any other person has any estate or claims 'any interest in the land, in law or equity, in possession, 'remainder, reversion or expectancy, and if any, set forth 'the name and postoffice address of every such person and 'the nature of his estate or claim.

'h. In case it is desired to settle or establish boundary 'lines the names and postoffice addresses of all the owners 'of the adjoining lands that may be affected thereby, so far 'as he is able, upon diligent inquiry, to ascertain the same.

'i. If the applicant is a male, that he is of the full age 'of twenty-one years; if a female, that she is of the full 'age of eighteen years. If the application is on behalf of 'a minor, the age of such minor shall be stated. If the 'application is by a husband or wife, the other shall by 'indorsement thereon acknowledged as in the case of deeds 'or by a separate instrument acknowledged in the same 'way signify his or her assent to the registration as prayed.

'j. When the place of residence of any person whose 'residence is required to be given is unknown, it may be 'so stated if the applicant will also state that upon diligent 'inquiry he has been unable to ascertain the same. All 'persons named in the application shall be considered as

'defendants thereto, and all other persons shall be included 'and considered as defendants by the term "all whom it 'may concern."'

Application blanks are always found at the registrar's office.

Care should be taken that the application comply with the form provided by the act, since it may be amended only under oath. See § 14.

In clause e., tenants will be named as such.

In clause f., where there are mortgages or trust deeds, the name and postoffice address of each mortgagee or trustee will be given, as well as that of the holder of the note secured thereby.

The expense of service of summons upon defendants not opposing the registration, such as tenants, mortgagees, trustees and holders of notes secured by mortgage or trust deed, may be avoided by the assent in writing of such persons endorsed upon the application. The form of such assent may be as follows:

"I hereby assent to the registration of the "within "described real estate as prayed for by ..... applicant" (naming him or her).

No acknowledgment is needed.

It is usual, where no contest is anticipated, to lodge the application with the registrar, who will see that it is filed in the proper court.

'Any number of contiguous pieces may be included.] § 12. 'Any number of contiguous pieces of land in the same 'county, and owned by the same person, and in the same 'right, or any number of pieces of property in the same 'county having the same chain of title and belonging to 'the same person may be included in one application.'

Initial registration fees are fixed in § 108. One title only with its necessary investigation is contemplated in each application. The title may embrace any number

of pieces of land if contiguous; 450 lots in the same subdivision but embraced in one title have been registered in one application. When the application includes titles derived from more than one source, a further fee for each additional source is to be paid. § 108.

'Form of application.] § 13. The form of the application 'may be, with appropriate changes, as follows:

FORM OF APPLICATION FOR INITIAL REGISTRATION OF TITLE TO LAND.

To the Judge of the.....Court of.....County, Illinois, in chancery sitting:

State of Illinois, } ss.
County of ... }

I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge and belief.

(1st.) Name of applicant..... Age.....years. Residence .....(No. street or township). Married to.....(Name husband or wife). Residence.....(No. street or township).

(2d.) Application made by.....acting as.....(Owner, agent or attorney)..... Residence.....(No. street or township).....

(3d.) Description of real estate is as follows:..... estate or interest therein is.....and.....subject to homestead.

(4th.) The land is....occupied by.....(Names of occupants) whose address is.....(No. street or township) and....address ..... The estate, interest or claim of occupant is.....

(5th.) Liens and incumbrances on the land..... Name of holder or owner thereof..... Postoffice address..... Amount of claim $..... Recorded, Book..... Page.....

(6th.) Other person.., firm or corporation having or claiming any estate, interest or claim in law or equity, in possession, remainder, reversion or expectancy in said land are..... Address..... Character of estate, interest or claim is.....

(7th.) Other facts connected with said land are.....

(8th.) Therefore the applicant prays the Court to find and declare the title or interest of the applicant in said land and decree the same, and order the registrar of titles to register the same, and to grant such other and further relief as shall be according to equity.

.....(Applicant's signature).....
By.....(Agent, Att'y, Adm'r, or Guard.....

Subscribed and sworn to before me by the above named..... as.....(Owner, Att'y, or Agent.) this.... day of....., A. D. 18..

.....

.....

I hereby assent to the registration of the above described real estate as prayed for by.....who is my.....(Husband or wife.)

.....(Husband or wife's signature).....

State of Illinois, } ss.
County of.... }

I, ... a.....in and for said County in the State aforesaid, Do Hereby Certify that.....personally known to me to be the same person whose name is subscribed to the foregoing assent, appeared before me this day in person and acknowledged the said assent as....free and voluntary act for the uses and purposes therein set forth.

Given under my hand and....seal, this....day of....A. D. 18..

.....

'**Application may be amended.**] § 14. The application 'may be amended only by supplemental statement in 'writing, signed and sworn to as in the case of the original.'

'**To what court application may be made—jurisdiction and 'power of court.**] § 15. The application for registration 'may be made to any Court having chancery jurisdiction 'in the County where the land is situated, and such Court 'shall have power to inquire into the condition of the title 'and to any interest in the land, and any lien or incum-'brance thereon, and to make all such orders, judgments 'and decrees as may be necessary to determine, establish 'and declare the title or interest, legal or equitable, as 'against all persons, known or unknown, and all liens and 'incumbrances existing thereon, whether by law, contract, 'judgment, mortgage, trust deed or otherwise, and to 'declare the order and preference as between the same, and 'to remove clouds from the title, and for that purpose the 'said Court shall be always open, and such orders, judg-'ments and decrees may be made and entered as well in 'vacation as in term time.'

As to the jurisdiction and power of the court, see also § 25.

'**Application to be entered in "land registration docket"—'parties defendant.**] § 16. Upon the filing of the applica-

'tion in the office of the Clerk of the Court, the Clerk shall 'docket the same in a book to be kept for that purpose, 'which shall be known as the "Land Registration Docket." 'The application may be entitled in all entries and proceed- 'ings as follows: "In the matter of the application of (name 'of applicant) to register the title to (here insert short 'description of the land)," and if any person is named as 'being in possession of the premises or having any lien or 'incumbrance upon, or as having or claiming any interest 'in the land, such person shall be named as defendant. 'All other persons shall be made and deemed to be defend- 'ants by the name or designation of "all whom it may 'concern." '

'**Application for initial registration—how docketed.**] § 17. 'All applications for initial registration of title shall be 'docketed in such book and numbered consecutively, 'beginning with number one. All orders, judgments and 'degrees of the Court in the case shall be minuted in such 'docket under the number so given it with proper refer- 'ences to the book and page where the order or decree is 'recorded.'

'**Application to be referred to examiner—proceedings of.**] '§ 18. Immediately upon the filing of the application, an 'order may be entered referring the same to one of the 'examiners of titles appointed by the registrar, who shall 'proceed to examine into the title and into the truth of the 'matter set forth in the application and particularly 'whether the land is occupied, the nature of the occupa- 'tion, if occupied; and by what right, and make report in 'writing to the Court, the substance of the proof and his 'conclusions therefrom. He shall have power to admin- 'ister oaths, and examine witnesses and may at any time 'apply to the Court for directions in any matter concerning 'his investigation. He shall not be required to report the 'evidence submitted to him except upon the request of 'some party to the proceedings or by the direction of the 'Court. No report shall be made upon such application 'until after the expiration of the time specified in the notice

'hereinafter provided for the appearance of the defendants, 'and in case of such appearance, until opportunity is given 'to such defendant to contest the rights of the applicant 'in such manner as may be allowed by the Court.'

This is a proceeding in chancery.[1] Objections or exceptions not taken and filed with the examiner will not be heard by the court.[2] In this respect the report of the examiner is like that of a master in chancery. It would seem that the general rules governing a hearing before a master in chancery, apply, except as modified by this section, to an examiner of titles.

An order of reference may be entered immediately upon the filing of the application and the examiner may thereupon proceed with his investigation of the title; but before he can report, persons appearing to defend are given ample opportunity to introduce their proofs.

The examiner will consider the abstract of title submitted by the applicant, and its continuation made by the recorder. He will also take such oral testimony as may be needed to determine the rights of all persons in possession. Testimony will frequently be required to be taken of such matters affecting the title as do not appear of record, such as proof of heirship and other matters in pais.

There is required an abstract of title from the government to any date after the fire of October 9, 1871. All the county records from the latter date are in the custody of the recorder. The abstract submitted is continued by the recorder to the date of the filing of the application. The cost of this continuation is included in the registration fees fixed in § 108.

Recorded ante fire abstracts are receivable, and the

1 Rogers v. Tyley, 144 Ill. 652; People v. Simon, 176 Ill. 165; Gage v. Consumers' Electric Light Co. (Ill Sup. Ct.), 33 Legal News, 154.

2 Gage v. Consumers' Electric Light Co. (Supra).

books of the recorder wherein they are copied will be used.

In cases where the owner is without an ante fire abstract, one borrowed from an adjoining owner will frequently answer.

It is desired that the abstract of title furnished by the owner remain with the registrar, although this is not compulsory. Such abstracts are always subject to the owner's order, and open to any inspection at any time.

It will be noted that one of the chief duties of the examiner is to see that all persons having possible claim to the land are before the court. He investigates each title independently of the proofs offered by the parties, and acts for the protection of all who may subsequently deal with the certificate of title. Each certificate of title rests accordingly upon a thorough and independent investigation, by the examiner of titles and the examining department of the registrar, of all matters affecting the title, whether of record or in pais, and the decree of the court in pursuance of the examiner's report.

Should a title be found unfit for registration and the applicant so desires, no finding or report is made and the application is dismissed without prejudice.

'Summons—return and service of.] § 19. The clerk shall 'also immediately on the filing of such petition issue sum-'mons against all persons mentioned in the petition as 'defendants. The summons shall state the date of the 'filing of the application, and shall be made returnable at 'such time as shall be directed by endorsement thereon, 'not less than ten days after the filing of such petition. The 'summons may be served as in other cases in chancery.'

It is usual to make the summons returnable in twelve days after the date of its issue. The act in this

respect differs from the chancery and common law procedure, where a summons is required to be made returnable not earlier than the first day of the next term of court. The fixed terms of court have no application to this act. Compare in this connection § 15.

'Notice to be published.] § 20. The clerk shall also 'immediately upon the filing of such application cause 'notice of the filing thereof to be published once in each 'week for four consecutive weeks in some newspaper pub-'lished in the county, or if there is no newspaper published 'in the county then in a newspaper published in one of the 'counties nearest thereto. The notice may be substantially 'as follows:

REGISTRATION OF LAND TITLE.

In the matter of the application of ..... to register the title to (here insert description of land as in the application, and in case any person is named as defendant, the name of such persons defendant). To all whom it may concern:

Take Notice, That on the ..... day of ....., A. D. ...., an application was filed by said ..... in the ..... Court of ..... County, for initial registration of the title to the land above described. Now, unless you appear on or before the ..... day of ....., A. D. .... (the time shall not be less than thirty days after the filing of such application) and show cause why such application shall not be granted, the same will be taken as confessed, and a decree will be entered according to the prayer of the application, and you will be forever barred from disputing the same.

In uncontested cases the publication of the notice is usually attended to by the registrar.

The expense of publication in Cook County is $2 irrespective of the length of the notice.

'Clerk to send copy of publication by mail.] § 21. The 'clerk shall also within ten days after the first publication, 'send a copy thereof by mail addressed to such defendants 'whose places of residence are stated in the application and 'whose appearance is not entered and who are not served 'with process. The certificate of the clerk that he has sent 'such notice in pursuance of this section shall be evidence

'thereof. Other or further notice of such application may 'be given in such manner and to such persons as may be 'directed by the court or any judge thereof.'

The usual affidavit of non-residence required by the chancery practice where non-resident defendants are to be notified, is not required or needed, since the application must set forth the facts as to the residence of the defendants.

'Who may oppose application—answer to be verified.] § 22. 'Any person interested, whether named as defendant or 'not, may upon entering his appearance and answering the 'application within the time allowed by this act, or such 'further time as shall be allowed by the court, oppose any 'such application or file a cross application in like form, 'as in case of an original application, to have the title 'registered in his behalf. In either case he shall state par- 'ticularly what his interest is and full answer make to each 'and every of the material allegations of the application, 'admitting, avoiding or traversing the same or showing 'some cause in law why the same need not be so admitted, 'avoided or traversed. Such answer shall be verified by 'the affidavit of himself or his agent having knowledge of 'the facts. The answer shall have no other or greater 'weight as evidence than the application.'

Under the standing rules of the circuit and superior courts of Cook County, a defendant in a chancery case, on entering his appearance, is entitled to twenty days within which to plead answer or demur. The rule would seem to extend to registration cases, although the question has not yet been passed upon.

All persons having adverse claims are to be named in the application. They thereby become parties defendant.[1] Under the Torrens act, as under the Burnt Record act,[2] it is sufficient to name such persons, and the

[1] §§ 11, 13.

[2] Smith v. Hutchinson, 108 Ill. 662; Gage v. Caraher, 125 Ill. 447.

irregularity or invalidity of the adverse claim need not be alleged in the application. The above section requires the defendant to state particularly what his interest is, and to verify his answer. Upon each party rests the burden of proof to maintain his own title.

So in cases where the land is subject to tax deed, or other cloud, the applicant names the holder as a defendant. It then devolves upon the latter to allege in his answer particularly what his interest is, as well as to also make answer to the allegations of the petition, and to support the allegations of the answer by requisite proof. This throws upon the holder of the tax deed the burden of proof as to its validity.[1]

This section authorizes no demurrer, plea or pleading other than an answer, and if a demurrer or plea be filed, it will be stricken from the files upon motion.[2]

Applicants seeking the removal of tax titles as clouds, can be granted relief only upon equitable terms, which, in general, require that before the issue of the certificate of title, the applicant shall pay to the holder of the tax title, or into court for his use, a sum equal to the amount for which the tax sale was made, and all subsequent taxes, assessments and costs paid by such holder, together with legal interest thereon.[3] Where the tax title accrued against a former owner, and the applicant has paid taxes and had possession for seven consecutive years, reimbursement to the holder of the tax title is not required.[4]

'When default may be entered.] § 23. If any person 'shall fail to appear within the time required of him by

[1] So held by Clifford, Gibbons, Tuthill and Dunne, J.J.

[2] 14th Ward Building & Loan Ass'n v. Glos, Circuit Court of Cook County. Dunne, J., in Land Registration No. 278.

[3] Gage v. Caraher, 125 Ill. 447.

[4] Gage v. Consumers' Eectric Light Co. (Ill. Sup. Ct.), 33 Legal News, 154.

'summons duly served upon him or within the time required 'by any notice given in pursuance of this act, or appearing 'shall fail to answer the application as herein provided, his 'default may be entered and the application taken as con- 'fessed, and upon report of examiner showing that the 'facts stated in the application are true and the applicant 'is the owner of the land or interested therein, as set forth 'in the application, the court may grant an order or decree, 'in accordance with the prayer of the application.'

Interlocutory orders of default may be entered, but, in general, all defendants not appearing are defaulted by the terms of the final decree.

'**Court not to be bound by report of examiner.**] § 24. The 'court shall in no case be bound by the report of an 'examiner of title, but may require other or further proof.'

The spirit of the act contemplates the concurrence of registrar, examiner and the court before issue of a certificate of title. The court of course is the final arbiter, the registrar and examiner being at all times under its direction and control.

'**What the court may decree.**] § 25. The court may, in 'any proceeding under this act, find and decree in whom 'the title to or any interest in the land is vested, whether 'in the applicant or in any other person, and remove clouds 'upon the title, and also whether the same is subject to any 'lien or incumbrance, estate, trust or interest, and declare 'the same, and may order the registrar of titles to register 'such title or interest, and in case the same is subject to 'any lien, incumbrance, estate, trust or interest, give direc- 'tions as to the manner and order in which the same shall 'appear upon the certificate of title to be issued by the 'registrar, and generally may make any and all such orders 'and decrees as shall be according to equity in the premises 'and as shall be in conformity to the principles of this act.'

This section in connection with § 15 confers upon the court full power to adjudicate all unsettled questions

affecting the title at the time of initial registration. The registration proceeding is made one for purification. Among the defects most frequently found are tax certificates, tax deeds, mortgages paid or outlawed and unreleased of record, forfeited or abandoned contracts of sale, errors in names of parties to conveyances, erroneous descriptions, irregularities in attestation of conveyances and adverse claims of title without substantial merit.

It will be seen that the act provides much the best and speediest method for final settlement of clouded or disputed titles. The summons is returnable in not less than ten days, § 19. The examiner may proceed with his investigation immediately upon the filing of the application, § 18. The court is always open, and orders and decrees in these cases may be entered in vacation as in term time, § 15. Final decrees are entered on motion to confirm the report of the examiner.[1] The circuit court of Cook County has held uniformly and in accordance with the spirit of the act, that registration cases, both contesed and uncontested, should be promptly disposed of without the delay usually attendant upon chancery cases standing upon a calendar for final hearing or contested motions.[2]

'Upon whom decree binding—appeal—writ of error—when 'court may review case.] § 26. The order or decree so made 'and entered shall, except as herein otherwise provided, 'be forever binding and conclusive upon all persons, 'whether mentioned by name in the petition or included in ' "All whom it may concern." It shall not be an exception 'to such conclusiveness that the person is an infant, lunatic 'or is under any disability, but such person may have 'recourse upon the indemnity fund hereinafter provided

[1] Gage v. Consumers' Electric Light Co., Supreme Court of Illinois, 33 Legal News, 154.

[2] Clifford, Gibbons, Dunne, Neeley and Tuthill, J.J.

'for, for any loss he may suffer by reason of being so con-'cluded. An appeal may be allowed to the Supreme Court 'if prayed at the time of entering the order or decree and 'upon like terms as in other cases in chancery. A writ of 'error may be sued out of the Supreme Court within two 'years after the entry of the order or decree, and not 'afterwards. Any person having an interest in or lien 'upon the land who has not been actually served with proc-'ess or notified of the filing of such application or the 'pendency thereof, may, at any time within two years after 'the entry of such order or decree, and not afterwards, 'appear and file his sworn answer to such application in 'like manner as is hereinbefore prescribed for making 'answer: Provided, The affidavit shall also state that such 'person had no notice, information or belief of the filing 'of such application or the pendency of the proceeding 'until within three months of the time of the filing of such 'answer. Upon the filing of such answer, and not less than 'ten days' notice being given to the applicant, the court 'shall proceed to review the case, and if the court is satis-'fied that the order or decree ought to be opened, an order 'shall be entered to that effect and the court may proceed 'to review the proceeding and make such order in the case 'as shall be according to equity in the premises. An appeal 'may be allowed or writ of error sued out, in such case, 'within a like time and in like manner as in the case of an 'original order or decree under this act, and not otherwise.'

It is within the legislative competency of the state to make or not to make exceptions in favor of infants or other persons under disability.[1]

It is to be noted, in this connection, that losses sustained by infants, or other persons under disability, are made payable from the indemnity fund[2] and that the period for proceedings against that fund is extended in favor of all persons under disability until two years after the disability is removed.[3]

[1] Vance v. Vance, 108 U. S. 514.
[2] § 101.
[3] § 103.

'Within what time action may be commenced.] § 27. No 'person shall commence any action at law or in equity for 'the recovery of lands or assert any interest or right in or 'lien or demand upon the same, or make entry thereon 'adversely to the title or interest as found, ordered or 'decreed by the court, unless within two years after the 'entry of the order or decree. This section shall be con- 'strued as giving such right of action to such persons only 'as shall not, because of some irregularity, insufficiency, 'or for some other cause, be bound and concluded by such 'order or decree.'

'Within what time any person not barred or concluded by 'such order or decree may assert his claim.] § 28. Any 'person having any interest, right, title, lien or demand, 'whether vested, contingent or inchoate, in, to or upon 'registered land, which existed at the time the land is first 'registered, and upon or for which no cause of action shall 'have accrued at the date of the registration of the land, 'and who has not become barred or concluded by such 'order or decree, may, prior to the expiration of said two 'years after such registration, file in the registrar's office 'a notice, under oath, setting forth his interest, right, title, 'lien or demand, and how and under whom derived, and the 'character and nature thereof, and if such counter-claim 'is so filed an action may be brought to assert or recover 'or enforce the same at any time within one year after the 'right of action shall have accrued thereon, and not after- 'wards. It shall be the duty of a life tenant or trustee to 'file such counter-claim on behalf of any remainderman or 'reversioner, whether the remainder or reversion be at the 'time vested or contingent, and of a guardian to file such 'counter-claim on behalf of his ward.'

This and the preceding section, in connection with §§ 26 and 40, limit the time for actions to upset the first certificate of title. They constitute a valid statute of limitations.[1]

[1] People v. Simon, 176 Ill. 165.

These sections can have no unfavorable effect upon the negotiability of a registered title during its first two years. All persons named as defendants and served with process are bound by the decree from its entry. This and the preceding section apply only to persons not so bound. The probability of the existence of such persons is readily determined by examination of the proceeding for initial registration. If that proceeding has been properly conducted, all necessary parties will be before the court, and there will be no persons not bound by the first certificate of title.

REGISTERING THE TITLE.

'**Registering the title.**] § 29. Upon the filing of a cer-'tificate signed by the clerk giving the effect of the order 'or decree of the court or a copy of such order or decree 'in the registrar's office, the registrar shall proceed to 'register the title or interest pursuant to the terms of the 'order or decree, in the manner following:

'**Form of certificate of title.**] § 30. He shall make out 'a certificate of title which may, subject to such change 'as the case may require, be substantially as follows:

FIRST CERTIFICATE OF TITLE PURSUANT TO ORDER OF ..... COURT OF ..... COUNTY.

State of Illinois, }
..... County. }

..... of (residence, and if a minor give his age; if under other disability, state the nature of the disability), married to (name of husband or wife, or if not married, say not married), is the owner of an estate in fee simple (or as the case may be) in the following land (here describe the premises) subject to the estates, easements, incumbrances and charges hereunder noted. (In case of trust, condition or limitation, say "in trust" or "upon condition" or "with limitation" as the case may be.)

Witness my hand and official seal this (date).

.....

[SEAL.] Registrar.

'**Subsequent certificates.**] § 31. All subsequent certifi-'cates may be in like form, except that in place of the 'words "First certificate," etc., shall be the words "Transfer

'from No.....' (the number of the next previous cer-'tificate), also the words "First registered....." (date of first registration).'

The chain of a registered title thus follows from one certificate of title to another, each showing the notations regarding the former and succeeding owner. An abstract of title to registered land, if one be needed, may be made with the utmost accuracy and ease.

'The words "heirs and assigns."] § 32. The words "heirs 'and assigns" shall not in any case be necessary to create 'a fee simple estate of inheritance.'

'Certificate—what it should contain.] § 33. Every certifi-'cate shall bear date of the day and year of its issue, and 'be under the hand and official seal of the registrar, and 'be numbered in the order of its issue. It shall state 'whether the owner (except in the case of a corporation) 'is married or not married, and if married, the name of 'the husband or wife. If the owner is a minor it shall state 'his age, if under any other disability, the nature of the 'disability. The registrar shall note at the end of the 'certificate, in such manner as to show and preserve their 'priorities, the particulars of all estates, mortgages, incum-'brances and charges to which the owner's title is subject.'

'Certificate where two or more are interested in the land.] '§ 34. In all cases where two or more persons are entitled 'as tenants in common to an estate in registered land, such 'persons may receive one certificate for the entirety, or each 'may receive a separate certificate for his undivided share.'

' "Register of titles"—what to contain.] § 35. The regis-'trar shall keep a book, to be known as the "Register of 'Titles," wherein he shall enter all first and subsequent ' "original" certificates of title by binding or recording 'them therein, in the order of their numbers, with appro-'priate blanks for the entry of memorials and notations 'allowed by this act. Each certificate, with such blanks, 'shall constitute a separate folium of such book. All 'memorials and notations that may be entered upon the

'register under the terms of this act shall be entered upon 'the folium constituted by the last certificate of title of the 'land to which they relate. Whenever the term certificate 'of title is used in this act, it shall be deemed as including 'all memorials and notations thereunder noted.'

The "register of titles" is like a ledger, where everything that can affect the title to a given piece of property is posted, up to date, at one page.

'Duplicate certificate of title—to be known as owner's dupli-'cate.] § 36. The registrar shall, at the same time that he 'makes out his original certificate of title, make out an 'exact duplicate thereof, with the memorials and notations 'thereunder noted, which shall be delivered to the owner 'and shall be known as the owner's duplicate.'

Owner's duplicate certificates of title are engraved and engrossed upon heavy parchment paper, and bear upon their reverse a plat showing the size and location of the land if a lot in a subdivision. The latter is found a convenience.

'Owner's receipt for certificate of title.] § 37. For the 'purpose of preserving evidence of the handwriting of the 'owner in his office, it shall be the duty of the registrar to 'take from the owner, in every case where it is practicable 'so to do, his receipt for the certificate of title, or whatever 'paper shall be issued to him, signed by the owner in person. 'When such receipt is signed in the registrar's office it may 'be witnessed by the registrar or some deputy. If signed 'elsewhere it may be acknowledged before any officer 'authorized to take acknowledgment of deeds. When so 'signed and witnessed or acknowledged, such receipt 'shall be prima facie evidence of the genuineness of such 'signature.'

This requirement is to aid the registrar in complying with § 47.

'In case of final registration the certificate of title shall

'relate back, etc.] § 38. In every case of final [initial] 'registration the certificate of title shall relate back to and 'take effect as of the date of the order or decree directing 'the registration, and all dealings with the land, and all 'statutory or other liens upon the same subsequent to the 'filing of the application shall be subject to such order or 'decree of the court.'

The filing of the application in a court of record is made lis pendens of the proceedings, and an interest subsequently acquired in the land is made subject to the decree.

Where no appeal is prayed from the decree, the first certificate of title is usually issued the day of its entry.

'Such certificate to be prima facie evidence.] § 39. Such 'certificate, with the memorials and notations thereunder 'noted, and any copy thereof duly certified under the hand 'and seal of the registrar, and the owner's duplicate certifi- 'cate shall until the expiration of the time herein limited 'to bring some action or to contest the title of the regis- 'tered owner, be in all courts and places prima facie 'evidence that the provisions of the law have been complied 'with, and that such certificate of title has been issued in 'compliance with a valid order or decree, and that the title 'to the land is as therein stated, and after the expiration 'of such time limited shall be conclusive evidence of the 'same facts.'

'The rights of registered owners.] § 40. The registered 'owner of any estate or interest in land brought under this 'act, shall, except in cases of fraud to which he is a party, 'or of the person through whom he claims without valuable 'consideration paid in good faith, hold the same subject 'only to such estates, mortgages, liens, charges and inter- 'ests as may be noted in the last certificate of title in the 'registrar's office and free from all others except:

'1. Any subsisting lease or agreement for a lease for a 'period not exceeding five years, where there is actual

'occupation of the land under the lease. The term lease 'shall include a verbal letting.

'2. All public highways embraced in the description of 'the lands included in the certificate shall be deemed to be 'excluded from the certificate.

'3. Any subsisting right of way or other easement, 'however created, upon, over or in respect of the land.

'4. Any tax or special assessment for which a sale of 'the land has not been had at the date of the certificate 'of title.

'5. Such right of appeal, writ of error, right to appear 'and contest the application, and of such action or to make 'counterclaim as is allowed by this act.'

The effect of this section is to give to the bona fide purchaser or incumbrancer a like security to that given to the purchaser of negotiable paper. The title of such purchaser or incumbrancer cannot be upset. This is a dominant feature of the system.

For the method by and extent to which the certificate of title may be affected by subsequent judicial proceedings see § 93, 94 and 95.

'Possession after land registered.] § 41. After land has 'been registered no title thereto adverse or in derogation 'to the title of the registered owner shall be acquired by 'any length of possession.'

After registration all rights whatsoever appear only upon the certificate of title and mere possession becomes no notice thereof. Registered owners are thus guaranteed against encroachment or risk of loss by adverse possession. No squatter's possession can ever ripen into title.

'Fraud—transfer from registered owner—effect of.] § 42. 'Except in case of fraud, and except as herein otherwise 'provided, no person taking a transfer of registered land, 'or any estate or interest therein, or of any charge upon 'the same, from the registered owner shall be held to

'inquire into the circumstances under which, or the con-'sideration for which such owner or any previous registered 'owner was registered, or be affected with notice, actual 'or constructive, of any unregistered trust, lien, claim, 'demand or interest; and the knowledge that any unregis-'tered trust, lien, claim, demand or interest is in existence 'shall not of itself be imputed as fraud.'

This again affirms the dominant principle of the system by which absolute immunity is given the bona fide purchaser or incumbrancer for valuable consideration paid in good faith. See § 40.

The Australian authorities upon what constitutes such fraud as to invalidate the certificate, will be found gathered in the Torrens Australian Digest (1899) page 102.

'Specific performance—certificate of title—conclusive evi-'dence.] § 43. In any suit for specific performance brought 'by a registered owner of any land under the provisions 'of this act, against a person who may have contracted to 'purchase such land, not having notice of any fraud or 'other circumstances which, according to the provisions of 'this act, would affect the right of the vendor, the certifi-'cate of title of such registered owner shall be held in every 'court to be conclusive evidence that such registered owner 'has a good and valid title to the land, and for the estate 'or interest therein mentioned or described.'

'In cases of ejectment.] § 44. In any action or proceed-'ing brought for ejectment, partition or possession of land, 'the certificate of title of a registered owner shall, except 'as to any person not bound by the order or decree of the 'court, or by some limitation herein or in some other statute 'contained, be held to be conclusive evidence that such 'registered owner has a good and valid title to the land, 'and for the estate or interest therein mentioned or 'described, subject only to such estates, mortgages, liens, 'charges and interests as may be noted thereunder, and 'unless it shall otherwise appear by such notations that

'such registered owner is entitled to the possession of said 'land.'

'Memorial.] § 45. Whenever a memorial or notation 'has been entered as permitted by this act, the registrar 'shall carry the same forward upon all certificates of title 'until the same is canceled in some manner authorized by 'this act.'

'The effect of bringing land under this act.] § 46. The 'bringing of land under this act shall imply an agreement 'which shall run with the land that the same shall be 'subject to the terms of the act and all amendments and 'alterations thereof. And all dealings with land or any 'estate or interest therein, after the same has been brought 'under this act, and all liens, incumbrances and charges upon 'the same subsequent to the first registration thereof, shall 'be deemed to be subject to the terms of this act.'

This section is declaratory, as probably the same effect would attach to the bringing of land under the act, were it omitted.

TRANSFER.

'Transfer.] § 47. A registered owner of land desiring to 'transfer his whole estate or interest therein, or some dis- 'tinct part or parcel thereof, or some undivided interest 'therein, or to grant out of his estate an estate for life or 'for a term of not less than ten years, may execute to the 'intended transferee a deed or instrument of conveyance 'in any form authorized by law for that purpose. And 'upon filing such deed or other instrument in the registrar's 'office and surrendering to the registrar the duplicate certifi- 'cate of title, and upon its being made to appear to the 'registrar that the transferee has the title or interest pro- 'posed to be transferred and is entitled to make the con- 'veyance and that the transferee has the right to have such 'estate or interest transferred to him, he shall make out 'and register as hereinbefore provided a new certificate 'and also an owner's duplicate certifying the title to the 'estate or interest in the land desired to be conveyed to be

'in the transferee, and shall note upon the original and 'duplicate certificate the date of the transfer, the name of 'the transferee and the volume and folium in which the new 'certificate is registered, and shall stamp across the origi- 'nal and surrendered duplicate certificate the word "can- 'celed."'

The registrar, in conducting a transfer, examines fully into every matter connected therewith. He satisfies himself as to the identity of the parties by much the same rules observed by a bank in dealing with strangers. The increased inconvenience is slight and every known method of checks and verification should be used to prevent improper transfers. Forgery thus becomes almost impossible. Nothing can be done without the surrender of the outstanding duplicate certificate of title. At every transfer every question of form and substance that can possibly affect the title intended to be transferred is then and there settled once for all. Upon this rests the efficiency of the system.

'**When only a part of land transferred.**] § 48. When only 'a part of the land described in a certificate is transferred, 'or some estate or interest in the land is to remain in the 'transfer [er], a new certificate shall be issued to him for 'the part, estate or interest remaining in him.'

'**When transfer of registered land shall be deemed to be 'registered.**] § 49. Every transfer of registered land shall 'be deemed to be registered under this act, when the new 'certificate to the transferee shall have been entered, as in 'the case of first registration; and all other dealings shall 'be considered as registered when the memorial or notation 'shall have been entered in the register upon the folium 'constituted by the existing certificate of title of the land. 'But, for the protection of the transferee or person claiming 'through any transfer or dealing, the registration shall 'relate back to the time of filing in the registrar's office the

'deed, instrument or notice, pursuant to which the trans-'fer memorial or notation is made.'

'Filing deeds, etc.—marked.] § 50. The registrar shall 'mark as filed every deed, mortgage, lease and other instru-'ment which may be filed in his office in the order of its 'receipt, and shall note thereon at the date of filing the 'minute, hour, day and year it is received. When the date 'of filing any instrument is required to be entered upon the 'register it shall be the same as that endorsed upon such 'instrument.'

'Instruments to be kept in office.] § 51. All instruments, 'notices and papers required or permitted by this act to be 'filed in the office of the registrar shall be retained and 'kept in such office. They shall be numbered consecutively 'and a list of the same kept in a book for that purpose, 'describing the same as "warranty deeds," "quit-claim 'deed," "mortgage," etc.'

'Forms of deeds, etc.] § 52. Like forms of deeds, mort-'gages, leases or other instruments as are now or may here-'after be sufficient in law for the purpose intended, may be 'used in dealing with registered land and any estate or 'interest therein.'

'Address of owners—notice.] § 53. On all instruments 'presented to the registrar for registration shall be 'endorsed the name and address of the person so presenting 'the same, and all notices by the registrar or other person 'relating to the land therein described may be served on 'such person at such address. The address may be changed 'from time to time by such person filing with the registrar 'a written notice of such change.'

'Deeds, etc., only authority to registrar to make transfer.] '§ 54. A deed, mortgage, lease or other instrument pur-'porting to convey, transfer, mortgage, lease, charge or 'otherwise deal with registered land, or any estate or inter-'est therein, or charge upon the same, other than a will or 'lease not exceeding five years where the land is in actual 'possession of the lessee or his assigns, shall take effect 'only by way of contract between the parties thereto, and

'as authority to the registrar to register the transfer, mort-'gage, lease, charge or other dealing upon compliance with 'the terms of this act. On the completion of such registra-'tion, the land, estate, interest or charge shall become 'transferred, mortgaged, leased, charged or dealt with 'according to the purport and terms of the deed, mortgage, 'lease or other instrument.'

This is to be construed in connection with § 49. Deeds and mortgages of registered land, although delivered, merely operate as powers of attorney or authority to the registrar to effect the proposed dealing. Title passes, not upon their delivery, but when the act of the registrar prescribed in § 49 is completed.

'Taxes—assessments—dower—homestead.] § 55. No trans-'fer of title to the land, or any estate or interest thereon, or 'mortgage, shall be registered until it shall be made to 'appear to the registrar that the land has not been sold for 'any tax or assessment upon which a deed has been given, 'and the title is outstanding or upon which a deed may 'thereafter be given, and that the dower, right of dower 'and estate of homestead, if any, have been released or 'extinguished, or that the transfer or mortgage is intended 'to be subject thereto, in which case it shall be so stated in 'the certificate of title.'

'Transferee married or not.] § 56. Every certificate of 'title to land shall state whether the transferee (except 'when the latter is a corporation) is married or not married, 'and if married the name of the husband or wife. The trans-'feree shall furnish the registrar the necessary information 'before he shall be entitled to have the land transferred to 'him on the register.'

'Registered owner—delivering up certificate—respecting 'parcels of land that may be included in one certificate.] § 57. 'Upon the application of any registered owner of land held 'under separate certificates of title, or under one certificate, 'and delivering up of such certificate or certificates of title, 'the registrar may issue to such owner a single certificate

'of title for the whole of such land, or several certificates, 'each containing a portion of such land in accordance with 'such application, and as far as the same may be done con- 'sistently with any regulations at the time being in force, 'respecting the parcels of land that may be included in one 'certificate of title, and upon issuing any such certificate of 'title, said registrar shall endorse on the last previous cer- 'tificate of title of such land so delivered up a memorial 'setting forth the occasion of such cancellation, and refer- 'ring to the volume and folium of the new certificate or 'certificates of title so issued.'

'When duplicate certificate of title lost—evidence—certified 'copy of original may be used.] § 58. In the event of a dupli- cate certificate of title being lost, mislaid or destroyed, the owner, together with other persons, if any, having knowl- 'edge of the circumstances, may make affidavit before the 'registrar, or before any officer authorized to administer 'oaths, stating the facts of the case, the names and descrip- 'tions of the registered owners, and the particulars of all 'mortgages, encumbrances or other matters affecting such 'land and the title thereto to the best of applicant's knowl- 'edge and belief, and the registrar, if satisfied as to the 'truth of such affidavit, and the bona fides of the transac- 'tion, shall issue to the owner a certified copy of the original 'certificate with the memorials and notations appearing 'upon the register, and shall note upon the register the fact, 'cause and date of such issue, and shall also mark upon 'such certified copy: "Owner's certified copy, issued in place 'of lost, (mislaid or destroyed, as the case may be), certifi- 'cate," and such certified copy shall stand in the place of 'and have like effect as the missing duplicate certificate.'

The practice outlined can result in no loss or serious inconvenience, since one proposing to deal with the holder of the lost or mislaid duplicate certificate will make comparison of the same with the original certificate of title in the "Register of Titles" before completion of his dealing, when and where the cancellation of the first duplicate will be found noted.

MORTGAGES, LEASES AND OTHER CHARGES.

'**Mortgages, leases and other charges.**] § 59. Every mort-'gage, lease for a term not exceeding ten years, contract to 'sell, and other instrument intended to create a lien, incum-'brance or charge upon registered land or any interest 'therein shall be deemed to be a charge thereon, and may 'be registered as hereinafter provided.'

The ordinary forms of trust deeds or mortgages are used, no new recitals or alterations being necessary.

'**On filing the instrument intended to create charge—pro-'ceedings.**] § 60. On the filing of the instrument intended 'to create the charge in the registrar's office, and the pro-'duction of the duplicate certificate of title, and it appear-'ing to the registrar that the person intending to create the 'charge has the title and right to create such charge, and 'that the person in whose favor the same is sought to be 'created is entitled by the terms of this act to have the same 'registered, he shall enter upon the proper folium of the 'register, and also upon the owner's certificate, a memorial 'of the purport thereof, and the date of filing the instrument 'with a reference thereto by its file number, which memo-'rial shall be signed by the registrar. The registrar shall 'also note upon the instrument on file the volume and fol-'ium of the register where the memorial is entered.'

The registrar will also identify, by marking the same with a stamp prepared for the purpose, all notes secured by the mortgage or trust deed. See § 65 and note thereto.

'**Trust deed to be deemed a mortgage.**] § 61. A trust deed 'in the nature of a mortgage shall be deemed to be a mort-'gage and be subject to the same rules as a mortgage.'

'**When mortgage, etc., is in duplicate, triplicate or more 'parts.**] § 62. When any mortgage, lease, or other instru-'ment creating or dealing with a charge upon registered 'land or any estate or interest therein is in duplicate, trip-

'licate or more parts, only one of the parts need be filed and 'kept in the registrar's office, but the registrar shall note 'upon the register whether the same is in duplicate, tripli- 'cate, or as the case may be, and shall also mark upon the 'others "mortgagee's duplicate," "lessor's duplicate," "les- 'see's duplicate," or as the case may be, and note upon the 'same the date of filing and the volume and folium of the 'register where the memorial is entered, and deliver them 'to the parties entitled thereto'

The better practice is to have the mortgage or trust deed executed in duplicate, thereby saving the expense of the certified copy described in § 63.

'Certified copies.] § 63. When an instrument is not exe- 'cuted in a sufficient number of parts for the convenience of 'the parties, the registrar may make and deliver to each of 'the parties entitled thereto certified copies of the instru- 'ment filed in his office with the endorsements thereon, 'marking the same "mortgagee's certified copy," "lessor's 'certified copy," or as the case may be, and shall note upon 'the register the fact of issuing such copies. Such certified 'copies shall have the same force and effect, and be treated 'as duplicates.'

'Assignment—how effected—copy.] § 64. The holder of 'any charge upon registered land desiring to transfer the 'same or any part thereof, may execute an assignment of 'the whole or any part thereof, and upon such assignment 'being filed in the office of the registrar, and the production 'of the duplicate or certified copy of the instrument creating 'the charge held by the assignor, the registrar shall enter 'in the register opposite the charge a memorial of such 'transfer, with a reference to the assignment by its file 'number; he shall also note upon the instrument on file in 'his office intended to be transferred and upon the duplicate 'or certified copy thereof produced, the volume and folium 'where the memorial is entered, with the date of the entry. 'The transferee shall be entitled to have a certified copy of 'the instrument of transfer, with the endorsement thereon,

'and in case of the transfer of the entire charge, the dupli-'cate or certified copy of the instrument creating the 'charge.'

'Release, discharge or surrender of a charge.] § 65. A 'release, discharge or surrender of a charge or any part 'thereof, or of any part of the land charged, may be effected 'in the same way as above provided in the case of a trans-'fer. In case only a part of the charge or of the land is 'intended to be released, discharged or surrendered, the 'entry shall be made accordingly, but when the whole is 'released, discharged or surrendered at the same or several 'times, the registrar shall stamp across the instrument on 'file, and the memorial thereof, and the duplicate or cer-'tified copy produced, the word "canceled."'

Great care is used by the registrar to avoid improper satisfaction of mortgage liens. He requires presentation of the cancelled notes and a properly executed and delivered release deed. In all cases where possible, direct communication will be first had with the mortgagee or trustee, and the registrar will be satisfied that the mortgage indebtedness is in fact fully paid before noting its discharge upon the proper certificate of title.

'Charges — how enforced—pendente lite.] § 66. All 'charges upon registered land or any estate or interest in the same and any rights thereunder may be enforced as 'now allowed by law, and all laws with reference to the 'foreclosure and release or satisfaction of mortgage shall 'apply to mortgages upon registered lands, or any estate or 'interest therein except as herein otherwise provided, and 'except that until notice of the pendency of any suit to 'enforce or foreclose such charge is filed in the registrar's 'office, and a memorial thereof entered on the register, the 'pendency of such suit shall not be notice to the registrar 'or any person dealing with the land or any charge thereon.'

ATTORNEYS IN FACT.

'Attorneys in fact.] § 67. Before any person can convey,

'charge or otherwise deal with any registered land or any 'estate or interest therein, as attorney in fact for another, 'the deed or instrument empowering him so to act, shall be 'filed with the registrar, and a memorial thereof entered 'upon the register in like manner as in the case of a charge. 'If the attorney shall so desire, the registrar shall deliver 'to him a certified copy of the power of attorney, with the 'endorsements thereon. Revocation of a power may be reg-'istered in like manner.'

TRUSTS, CONDITIONS AND LIMITATIONS.

'Trusts, conditions and limitations.] § 68. Whenever a 'deed or other instrument is filed in the registrar's office for 'the purpose of effecting a transfer of or charge upon regis-'tered lands, or any estate or interest in the same, and it 'shall appear that the transfer or charge is to be upon any 'trust, condition or limitation expressed in such deed or 'instrument, the registrar shall, unless such deed or instru-'ment expressly directs to the contrary, note in the certifi-'cate, and the duplicate thereof, or memorial, the words '"in trust," or "upon condition," or "with limitations," as 'the case may be, and no transfer of or charge upon, or deal-'ing with the land, estate or interest shall thereafter be 'registered, unless pursuant to the order of some court, or 'upon the written opinion of two examiners that such trans-'fer, charge or dealing is in accordance with the true in-'tent and meaning of the trust, condition or limitation.'

The terms and conditions of the trust thus remain operative without being set forth at length in the certificate of title.

Under this method the most complicated trust or settlement is dealt with no less safety and certainty than under our present system.

The senior solicitor to the registrar of South Australia in his report to the House of Commons,[1] in this connection has said:

"As to trusts: It appears to me that the question is,

[1] Registration of Title (British Colonies), Blue Book, 10 May, 1881.

Do we by virtue of the machinery of the Real Property Act place cestui qui trusts of lands in a worse position than they are usually placed in under the ordinary system? In my opinion, cestui qui trusts of land under the South Australian Real Property Act are, if anything, in a better position * * * No litigation has occurred on the subject of trusts, nor has any complaint of hardship or difficulty been made to this office."[1]

Similar reports are returned from all the other colonies using registration of title.

The English and German acts have resulted in the same safety and certainty in dealing with trusts and settlements.[2]

'Order of court or opinion of two examiners—when registration conclusive evidence.] § 69. Upon the filing with the 'registrar of an order of court or opinion of two examiners, 'as provided in the last section, and in the latter event upon 'the registrar also being satisfied that the proposed transfer, charge or other dealing is in accordance with the true 'intent and meaning of the trust, condition or limitation, 'he shall proceed to register the same, and such registration shall be conclusive evidence in favor of the person 'taking such transfer, charge or other right, and those 'claiming under him, in good faith and for a valuable consideration, that such transfer, charge or other dealing is in 'accordance with the true intent and meaning of the trust, 'condition or limitation.'

TRANSMISSION.

'Transmission.] § 70. Lands and any estate or interest 'therein registered pursuant to this act, shall, upon the 'death of the owner, go to the personal representatives of 'the deceased in like manner as personal estate, whether 'the owner dies testate or intestate, and shall be subject to 'the same rules of administration, as if the same were per-

[1] Registration of Title (British Colonies), Blue Book, 10 May, 1881.

[2] Registration in Middlesex; C. F. Brickdale, Lond., 1892; Prussian Legislation on Registration of Title; Dr. Fischer, Berlin, 1892.

'sonalty, except as otherwise provided in this act, and 'except that the rule of division shall be the same as in the 'descent of real property, or as shall be provided by will.'

Among the serious defects in the former system is that there are so many facts affecting titles that never appear of record. Among these are the facts attending the transmission of land by descent. The fact of death of the owner, who are the next of kin, whether there is a widow or surviving husband, etc., are all facts which the law makes no provision for getting upon the record so far as real property is concerned, and which have to be looked up again and again as often as the property is dealt with. The act furnishes a complete remedy for this defect. Registered land, instead of descending directly to the next of kin, goes to the executor or administrator substantially the same as personalty. Proof of heirship is made before the probate court, and that court finds the respective shares of the heirs and orders the executor or administrator to make conveyance to them accordingly. This order being filed with the registrar, and the certificate of title of the decedent being delivered up, the transfers are made and the several heirs receive certificates of title to their respective shares. All questions concerning heirship, dower, homestead, rights of creditors, etc., are thus conclusively settled at the time and do not continue for years afterwards as possible defects of title to be looked up again and again at every transfer.

'Duty of personal representative of deceased owner—certifi- 'cate.] § 71. Before the personal representative of a 'deceased owner of registered land or any estate, or inter- 'est therein, shall deal with the same, he shall file in the 'registrar's office a certified copy of his letters of adminis- 'tration, or if there is a will, a certified copy of the same and 'of the letters testamentary, or of administration, with the 'will annexed, as the case may be, and shall produce the

'duplicate certificate of title, and thereupon the registrar 'shall enter upon the register and the duplicate certificate, 'a memorial thereof with a reference to the letters or will 'and letters by their file number, and the date of filing the 'same.'

'When administrator or executor may sell.] § 72. Except 'in the case of a will devising the lands to an executor to 'his own use or upon some trust or giving to the executor 'power to sell, no sale or transfer of registered land shall 'be made by the executor or by an administrator in the 'course of administration for the payment of debts or other-'wise, except in pursuance of an order of a competent court 'obtained as provided by law.'

'Executor's or administrator's power, mortgages, leases and other personal interests.] § 73. But, a memorial of the will 'and letters testamentary or of letters of administration 'being first entered upon the register as herein provided, 'the executor or administrator may deal with mortgages, 'leases and other personal interests in or upon registered 'land as if he were the registered owner thereof.'

'Personal interests—when land is devised to executor to his 'own use or upon trust, etc.] § 74. Where it appears by the 'will, a certified copy of which with the letters testament-'ary is filed as provided in this act, that registered land is 'devised to the executor to his own use, or upon some trust, 'the executor may have the land transferred to himself 'upon the register in like manner and subject to like terms 'and conditions and with like rights as in the case of a 'transfer pursuant to deed filed in the registrar's office.'

'When will empowers executor to sell, convey, etc.] § 75 'When the will of a deceased owner of registered land, or 'any estate or interest therein, empowers the executor to 'sell, convey, incumber, charge or otherwise deal with the 'land it shall not be necessary for such executor to be 'registered as the owner, but a certified copy of the will and 'letters testamentary being filed as provided in this act, 'such executor may sell, convey, incumber, charge or other-'wise deal with the land pursuant to the power in like man-

'ner as if he were the registered owner, subject to the like 'conditions as to the trust, limitations and conditions 'expressed in the will, as in the case of trusts, limitations 'and conditions expressed in a deed.'

'Proof of heirship—conclusive evidence.] § 76. Before 'making distribution of undevised registered land the exec- 'utor or administrator shall file in the registrar's office a 'certified copy of the proof of heirship made in the probate 'or county court, as the case may be, which shall be conclu- 'sive evidence in favor of all persons thereafter dealing 'with the land that the persons therein named as the only 'heirs at law of the deceased owner as [are] such heirs.'

'Court of probate may order registered land to be sold by 'executor.] § 77. The court of probate may, for the pur- 'pose of distribution of the estate, order registered land, or 'any estate or interest therein, to be sold by the executor 'or administrator, and upon the filing of a certified copy of 'the order of sale and order of confirmation of the sale, and 'the deeds in pursuance of the same, in the registrar's office, 'a transfer of the land, estate or interest to the purchaser 'may be made upon the register, as, in the case of other 'sales, by deed.'

'Executors or administrators may be ordered to make over 'registered land before final distribution, etc.] § 78. When- 'ever, after the expiration of the time fixed for the adjust- 'ment of claims against the estate of the deceased, and after 'proof of heirship, it shall be made to appear to the court 'of probate that the estate will justify it, the court may 'direct the executor or administrator to make over and 'transfer to the devisees or heirs, or some of them, in antici- 'pation of the final distribution, a portion or the whole of 'the registered lands to which they might be entitled on 'final distribution. And upon the filing of a certified copy 'of such order in the registrar's office, the executor or 'administrator may cause such transfer to be made upon 'the register in like manner as in case of a sale. The land 'so transferred shall be held free from all liens or claims 'against the estate. In the proceedings to procure such

'direction such notice shall be given as the court of probate 'may direct.'

'Final distribution.] § 79. For the purpose of final dis- 'tribution the court of probate may determine the right of 'all persons in registered lands, or any estate or interest 'therein of the deceased, declare and enforce the rights of 'devisees, heirs, persons entitled to dower and homestead, 'and others, assign dower and homestead, and make parti- 'tion and distribution according to the rights of the parties. 'The court may give direction to the executor or adminis- 'trator as to the transfer of registered lands, and any estate 'or interest therein to the devisees or heirs, and may direct 'the transfer to be to several devisees or heirs, or tenants 'in common, or otherwise, as shall appear to the court to 'be most convenient, consistently with the rights of the 'parties, or as the parties interested may agree.'

DEALINGS OF ASSIGNEES, RECEIVERS, MASTERS, ETC.

'Dealings of assignees, receivers, masters, etc.] § 80. Before 'an assignee for the benefit of creditors, receiver, master in 'chancery, special commissioner, or other person appointed 'by court shall deal with or transfer registered land or any 'estate or interest therein, he shall file in the registrar's 'office a certified copy of an order of the court showing that 'such assignee, receiver, master in chancery, special com- 'missioner, or other person, is authorized to deal with or 'transfer such land, estate or interest, and if it is in the 'power of such person he shall present to the registrar the 'duplicate certificate of title; and thereupon the registrar 'shall enter upon the register, and the duplicate certificate, 'if presented, a memorial thereof, with a reference to such 'order by its file number. In the case of a deed of the land to 'the assignee or receiver, the same shall be filed in the 'registrar's office as in other cases.'

'When memorial entered.] § 81. Such memorial having 'been entered, the assignee, receiver, master in chancery, 'special commissioner, or other person, may, subject to the 'direction of the court, deal with or transfer such land as 'if he were the registered owner.'

TAX SALES.

'Tax sales.] § 82. The holder of any certificate of sale 'of registered land or any estate, or interest therein for 'any tax, assessment or imposition shall, within three 'months after the date of sale, present the same or a sworn 'copy thereof to the registrar, who shall thereupon enter 'on the register of the land a memorial thereof, stating the 'day of sale and the date of presentation, and shall also 'note upon the certificate of sale the date of presentation 'and the book and page of the register, where the memorial 'is entered. The holder of such certificate shall also within 'the same time mail to each of the persons who appear by 'the register to have any interest in the land a notice of 'the registration of such certificate. Unless such certificate 'is presented and registered, and notice given as herein 'provided within the time above mentioned, the land shall 'be forever released from the effect of such sale, and no 'deed shall be issued in pursuance of such certificate. When 'it shall appear by the affidavit of the holder of the certifi- 'cate filed with the registrar that the place of residence of 'any person interested in the land can not upon diligent 'inquiry be ascertained, the requirement of this section as 'to mailing notice shall not apply to such person.'

'Tax deed—effect of—when certificate to issue—notice— 'insane person, etc.] § 83. A tax deed of registered land, 'or an estate or interest therein issued in pursuance of any 'sale for tax or assessment made after the taking effect of 'this act, shall have only the effect of an agreement for the 'transfer of the title upon the register, and may be filed 'in the registrar's office, and a transfer effected as in case 'of other deeds of conveyance.

'But no certificate of title shall be issued thereon, except 'upon the surrender and cancellation of the outstanding 'certificate of title, or upon the order of court as provided 'in section 88 of this act, and no such order shall be granted 'except upon petition to the court ordering the sale for the 'tax or assessment. No such order shall be granted except 'after personal service of notice upon all persons in posses-

'sion of the premises, and notice either by personal services 'or by publication, as provided in proceedings in chancery, 'to all persons appearing upon the register to have any 'interest in the premises. And in case any minor heir, idiot, 'or insane person is interested in the premises, no such 'order shall be granted until the expiration of the time to 'redeem the premises allowed by law to such minor heir, 'idiot or insane person shall have expired.'

LIS PENDENS—JUDGMENTS—DECREES—NOTICE.

'Lis pendens—notice.] § 84. No suit, bill or proceeding 'at law or in equity for any purpose whatever affecting 'registered land or any estate or interest therein, or any 'charge upon the same, shall be deemed to be lis pendens 'or notice to any person dealing with the same, until a 'certificate of the pendency of such suit, bill or proceeding, 'under the hand and official seal of the clerk of the court 'in which it is pending, shall be filed with the registrar 'and a memorial thereof entered by him upon the register 'of the last certificate of the title to be affected. This 'section shall not apply to attachment proceedings when 'the officer making the levy shall file his certificate of levy 'as herein provided.'

JUDGMENTS, ETC.

'Judgments, etc.] § 85. No judgment or decree or order 'of any court shall be a lien upon or affect registered land 'or any estate or interest therein, until a certificate, under 'the hand and official seal of the clerk of the court in which 'the same is of record, stating the date and purport of the 'judgment, decree or order, or a certified copy of such judg-'ment, decree or order, is filed in the office of the registrar 'and a memorial of the same is entered upon the register 'of the last certificate of the title to be affected.'

The general lien of judgments, in so far as they affect registered land, is abolished, and until noted upon the proper certificate of title they are not liens.

By this section is also avoided the confusion and annoyance arising from identity or similarity of name

of the judgment debtor and the land owner. The requirement that his judgment be noted upon the proper certificate of title is laid upon the judgment creditor. Should he cause his judgment to be noted upon the wrong certificate of title, the holder of the latter is given ample and expeditious remedy by § 93.

ATTACHMENT, EXECUTION, ETC.—LIENS.

'**Attachment, execution, etc. — liens.**] § 86. Whenever 'registered land is levied upon by virtue of any writ of 'attachment, execution or other process, it shall be the duty 'of the officer making such levy to file with the registrar 'a certificate of the fact of such levy, a memorial of which 'shall be entered upon the register, and no lien shall arise 'by reason of such levy until the filing of such certificate 'and the entry in the register of such memorial, any notice 'thereof, actual or constructive, to the contrary notwith-'standing.'

'**When registered land sold under execution, etc.—sheriff, 'etc.—to file certificate with registrar—memorial—certificate 'of redemption.**] § 87. When any registered land is sold 'by virtue of any execution, judgment or decree, it shall be 'the duty of the sheriff, master in chancery, or other officer 'making such sale, instead of filing a duplicate of his 'certificate of such sale to be recorded in the recorder's 'office, to file the same with the registrar, and upon its being 'so filed the registrar shall enter a memorial thereof upon 'a register in the same manner as he is required to enter 'other memorials. Certificates of redemption shall be filed 'and noted upon the register in like manner.'

'**Sale of registered land by sheriff, etc.—surrender of out-'standing certificate of title.**] § 88. In case of sale of regis-'tered land by a sheriff, master in chancery, receiver, 'special commissioner or other officer or person pursuant 'to a judgment, decree or order of court, no transfer of the 'title shall be made by the registrar, except upon the sur-'render and cancellation of the outstanding certificate of 'title, or upon an order of the court filed with the registrar

'directing such transfer, and in case of the transfer of the 'fee, directing the cancellation of the outstanding certifi- 'cate, and granting to the transferee a writ of assistance 'to put him in possession of the premises.'

'Liens of mechanics or others—notice, etc., to be filed in the 'registrar's office.] § 89. In all cases where, by any law in 'relation to the liens of mechanics or others, any claim or 'notice is authorized to be filed in any court or office, the 'same, when it relates to registered land or any interest 'therein, may be filed in the registrar's office, and being so 'filed, a memorial thereof shall be entered by the registrar, 'as in the case of other charges, and proceedings to enforce 'the lien may be had, as provided in this act, creating the 'same. Until it is so filed and registered, no such lien shall 'be deemed to have been created.'

'When lien to affect the title of registered land.] § 90. No 'statutory or other lien shall be deemed to affect the title 'to registered land until after a memorial thereof is entered 'upon the register, as herein provided.'

This extends to all liens the requirement of notation upon the proper certificate of title before validity as a lien upon registered land. The area of search for all liens is thus reduced to a single page in the "Register of Titles."

'Certificate of clerk that suit, etc., has been dismissed to be 'filed in the registrar's office.] § 91. The certificate of the 'clerk of the court in which any suit, bill or proceeding 'shall have been pending, or any judgment or decree is of 'record, that such suit, bill or proceeding has been dis- 'missed or otherwise disposed of, or the judgment, decree 'or order has been satisfied, released, reversed or overruled, 'or of any sheriff or other officer that the levy of an execu- 'tion, attachment or other process certified by him, has been 'released, discharged or otherwise disposed of, being filed in 'the registrar's office and noted upon the register, shall be 'sufficient to authorize the registrar to cancel or otherwise

'treat the memorial of such suit, bill, proceeding, judgment, 'decree or levy, according to the purport of such certificate.

MEMORIAL OF ADVERSE CLAIM, ETC.

'Memorial of adverse claim, etc.] § 92. Any person 'making any claim to or asserting any lien upon registered 'land not existing at the initial registry of the same and 'not shown upon the register, or adverse to the title of the 'registered owner, and no other provision herein made for 'asserting the same in the registrar's office, may make affi- 'davit thereof setting forth his interest, right, title, lien or 'demand, and how and under whom derived and the char- 'acter and nature thereof. The affidavit shall state his 'place of residence and also his place of business, if he has 'one, and designate a place at which all notices relating 'thereto may be served. Upon the filing of such affidavit in 'the office of the registrar, the latter shall enter a memorial 'thereof, as in the case of a charge.'

PROCEEDINGS IN CHANCERY.

'Proceedings in chancery.] § 93. Whenever any person 'interested in registered land or any estate or interest there- 'in or charge upon the same, shall be entitled to have any 'certificate of title, memorial or other entry upon the regis- 'ter canceled, removed or modified, and the registrar or per- 'son whose duty it shall be to cancel, remove or modify the 'same or do any act towards the same, shall, upon request, 'fail or refuse so to do, or is absent from the county, or can 'not be found, or for any reason such request can not be 'made upon him, a court of chancery may, upon petition by 'the person interested, make such orders as may be accord- 'ing to equity in the premises, and upon a certified copy of 'such order being filed in the registrar's office, the registrar 'shall make such cancellation, memorial or modification as 'shall be decreed in such order.'

'Persons feeling aggrieved by action of registrar may file a 'bill, etc.] § 94. Any person feeling himself aggrieved by 'the action of the registrar or by his refusal to act in any 'matter pertaining to the first registration of land or any

'estate or interest therein, after the first registration or any 'transfer of or charge upon the same, the filing, or neglect 'or refusal to file any instrument, or to enter or cancel any 'memorial or notation, or to do any other thing required of 'him by this act, may file his bill or petition in equity in any 'court of competent jurisdiction, making the registrar and 'other persons whose interest may be affected, parties 'defendant, and the court may proceed therein as in other 'cases in equity and make such order or decree as shall be 'according to equity in the premises and purport of this act.'

'Nothing in two sections to remove bar—limitations—bona 'fide purchasers.] § 95. Nothing contained in either of the 'two preceding sections shall be so construed as to remove 'the bar of any order or decree, or extend the time of limita- 'tion hereinbefore provided, nor to affect the right of any 'bona fide purchaser or incumbrancer without notice filed 'with the registrar and noted as in the case of other memor- 'ials.'

No limit of time is prescribed within which the appeal to the court, authorized in §§ 93 and 94, may be made, except as against a bona fide purchaser or incumbrancer. The title of such purchaser or incumbrancer cannot be upset.

'Court in addition to costs may award damages, including 'attorney's fees.] § 96. The court may, in any case contem- 'plated in sections 93 and 94, in addition to the costs, award 'such damages, including reasonable attorney's fees, as it 'shall deem just in the premises.'

INDICES.

'Indices.] § 97. The registrar shall keep tract indices, 'in which shall be entered the lands registered in the numer- 'ical order of the townships, ranges, sections, and in cases 'of subdivisions, the blocks and lots therein, and the name 'of the owners with a reference to the volume and folium 'of the register in which the lands are registered.'

'Individual indices—what to contain.] § 98. He shall also

'keep alphabetical indices, in which shall be entered in 'alphabetical order the names of all registered owners and 'all other persons interested in or holding charges upon 'registered land, with a reference to the volume and folium 'of the register in which the land is registered.'

INDEMNITY FUND.

'Indemnity fund.] § 99. Upon the first bringing of land 'under the operation of this act consequent upon the appli- 'cation of the owner, as hereinbefore provided, and upon 'the issuance of a certificate of title pursuant to section 'eighty-three (83) and also upon the entry of a new certifi- 'cate showing some one either by devise or by descent as 'registered owner, there shall be paid to the registrar one- 'tenth of one per cent of the value of such land. Such value 'shall be ascertained by the registrar.'

'How said fund should be invested and how paid out.] § 100. 'All sums of money received as aforesaid shall be paid by 'the registrar to the county treasurer of the county in which 'the land is situated, for the purpose of an indemnity fund 'under the terms of this act. It shall be the duty of the 'treasurer to invest all of said funds, principal and income, 'in his hands from time to time if not immediately required 'for payments of indemnities, in the manner herein pro- 'vided, and report annually to the County Court the condi- 'tion and income thereof. All investments of the fund or 'any part thereof shall be made with the approval of said 'court by order entered of record. The said fund shall be 'invested only in the bonds or securities of the United 'States, or of this State, or counties, or other municipalities 'of this State.'

PROCEEDINGS TO RECOVER COMPENSATION FOR LOSS OR DAMAGE.

'Proceedings to recover compensation for loss or damage.] '§ 101. Any person sustaining loss or damage through any 'omission, mistake or misfeasance of the registrar, or of any 'examiner of titles, or of any deputy or clerk of the regis- 'trar in the performance of their respective duties under the 'provisions of this act, and any personally wrongfully

'deprived of any land or any interest therein, through the 'bringing of the same under the provisions of this act, or 'by the registration of any other person as owner of such 'land, or by any mistake, omission or misdescription in any 'certificate, or in any entry or memorandum in the register 'book, or by any cancellation, and who by the provisions of 'this act is barred or in any way precluded from bringing 'an action for the recovery of such land or interest therein, 'or claim upon the same, may bring an action at law against 'the treasurer of the county in which said land is situated 'for the recovery of damages to be paid out of the indemnity 'fund.'

'Action to recover for loss or damage—who to be made 'defendants—duty of state's attorney.] § 102. If such action 'before recovery for loss or damage arising only through any 'omission, mistake or misfeasance of the registrar, or of 'any examiner of titles, or any deputy or clerk of the regis- 'trar in the performance of their respective duties under 'the provisions of this act, then the county treasurer shall 'be the sole defendant to such action. But if such action be 'brought for loss or damage arising only through the fraud 'or wrongful act of some person or persons other than the 'registrar, his examiners of titles, deputies and clerks, or 'arising jointly through the fraud or wrongful act of such 'person or persons and the omission, mistake or misfeas- 'ance of the registrar, his examiners of titles, deputies or 'clerks, then such action shall be brought against both the 'county treasurer and such person or persons aforesaid. In 'all such actions where there are defendants other than the 'county treasurer and damages shall have been recovered, 'no final judgment shall be entered against the county treas- 'urer until execution against the other defendants shall be 'returned unsatisfied in whole or in part, and the officer 'returning the execution shall certify that the amount still 'due upon the execution can not be collected except by appli- 'cation to the indemnity fund. Thereupon, the court, being 'satisfied as to the truth of such return, may upon proper 'showing, order the amount of the execution and costs, or 'so much thereof as remains unpaid, to be paid by the

'county treasurer out of the indemnity fund. It shall be 'the duty of the State's Attorney or the county attorney, if 'there be one of the county, to appear and defend all such 'suits.'

TIME OF PROCEEDING LIMITED.

'Time of proceeding limited.] § 103. No action or pro- 'ceeding for compensation for or by reason of any deprива- 'tions, loss or damage occasioned or sustained as provided 'in this act, shall be made, brought or taken, except within 'the period of ten years from the time when the right to 'bring or take such action or proceeding first accrued. 'Except that if at the time when such right of action first 'accrues, the person entitled to bring such action or take 'such proceeding is within the age of twenty-one years, or 'if a female, of the age of eighteen years, or insane, impris- 'oned or absent from the United States in the service of the 'United States or of this State, such person or anyone claim- 'ing from, by or under him or her, may bring the action or 'take the proceeding at any time within two years after 'such disability is removed, notwithstanding the time 'before limited in that behalf has expired.'

PENALTIES.

'Penalties.] § 104. Whoever fraudulently procures, or 'assists in fraudulently procuring, or is a privy to the fraud- 'ulent procurement of any certificate of title or instrument, 'or of any entry in the register or other book kept in the 'registrar's office, or of any erasure or alteration in any 'entry in any said book, or in any instrument authorized by 'this act, or knowingly defrauds or is privy to defrauding 'any person by means of a false or fraudulent instrument, 'certificate, statement or affidavit, affecting registered land, 'shall be guilty of a misdemeanor and fined not exceeding 'five thousand dollars, and imprisoned not exceeding five 'years, or either or both, in the discretion of the court.'

'Whoever forges or procures to be forged, etc., the seal of 'the registrar, etc.] § 105. (1.) Whoever forges, or procures 'to be forged, or assists in forging the seal of the registrar, 'or the name, signature, or handwriting of any officer of the

'registry office, in case where such officer is expressly or 'impliedly authorized to affix his signature; or

'(2.) Fraudulently stamps, or procures to be stamped 'or assists in stamping any document with any forged seal 'of said registrar; or

'(3.) Forges, or procures to be forged, or assists in forg- 'ing the name, signature, or handwriting of any person 'whomsoever to any instrument which is expressly or impli- 'edly authorized to be signed by such person; or

'(4.) Uses any document upon which any impression, or 'part of the impression, of any seal of said registrar has 'been forged, knowing the same to have been forged, or any 'document the signature to which has been forged, knowing 'the same to have been forged, or swears falsely concern- 'ing any matter or proceeding made or done in pursuance 'of this act, shall be imprisoned in the penitentiary not 'exceeding ten years, or fined not exceeding one thousand 'dollars, or both fined and imprisoned, in the discretion 'of the court.'

'Conviction not to affect the remedy.] § 106. No proceeding 'or conviction for any act hereby [declared] to be a misde- 'meanor or a felony shall affect any remedy which any per- 'son aggrieved or injured by such act may be entitled to at 'law or in equity against the person who has committed 'such act or against his estate.'

DOCKET FEES.

'Docket fees.] § 107. On the filing of any petition the 'petitioner shall pay to the clerk of the court the sum of '$5.00, which shall be in full of all clerk's fees and charges 'in such proceeding on behalf of the applicant. Any defend- 'ant on entering his appearance shall pay to the clerk the 'sum of $5.00, which shall be in full of all clerk's fees on 'behalf of such defendant. When any number of defend- 'ants shall enter their appearance at the same time, or 'before default, but one fee shall be charged.'

REGISTRAR'S FEES.

'Registrar's fees.] § 108. The fees to be paid to the regis- 'trar shall be as follows:

'At or before the time of referring the application for 'initial registration, the applicant shall advance and pay 'to the registrar the sum of $15, which shall be in full of all 'services of the registrar and examiners up to the granting 'of the certificate of title. In proper cases the court may 'direct the payment of such further fees by the applicant 'or any defendant as it may determine. When the applica- 'tion includes titles derived from more than one source, an 'additional sum of $5 for each source shall be advanced.

'For granting certificate of title upon each application and registering the same.....$2 00

'For registering each transfer, including the filing of all instruments connected therewith, and the issue and registration of the new certificate of title 3 00

'When the land transferred is held upon any trust condition or limitation, an additional fee of.... 5 00

'For entry of each memorial on the register, including the filing of all instruments and papers connected therewith and endorsements upon duplicate certificates..... ..... 3 00

'For filing copy of will with letters testamentary, or filing copy of letter of administration and entering memorial thereof..... 5.00

'For the cancellation of each memorial or charge.. 1.00

'For each certificate showing condition of the register..... .... 1 00

'For any certified copy of register or any instrument 'of writing on file in his office, the same fees now allowed 'by law to recorders of deeds for like services.'

The expense of bringing land under the system may therefore be stated as follows:

Clerk of court on filing application..	$ 5
Publication notice	2
Registrar for examination of title....	15
Registrar on issue of certificate of title	2
Total	$24

If there be defendants upon whom summons is to be served there is to be added a sheriff's fee of $1 for each person so served. As stated elsewhere (p. 23) this expense is avoided where the defendants consent to the registration.

Should oral testimony be taken, the ordinary stenographer's fees for attendance and transcript are also to be added.

Each applicant for first registration, in addition, contributes to the indemnity fund one-tenth of one per cent of the value of the property, or $1 on each $1000. (§ 99). This fee is payable only upon first registration and when the property passes by descent or devise. No fee of this nature is due upon any other transfer or dealing with the registered title.

'**Act—how construed.**] § 109. This act shall be construed 'liberally so far as may be necessary for the purpose of 'effecting its general intent.'

The spirit of this brief but important section is being, without exception, well observed by the courts of record in Cook County.

SUBMISSION BY COUNTIES.

'**Submission to vote by counties.**] § 110. The provisions of 'this act shall not apply to land in any county until this act 'shall have been adopted by a vote of the people of the 'county at an election to be held on the Tuesday next after 'the first Monday in November or the first Tuesday in April 'or any election for the election of Judges of the year in 'which the question is submitted.

'The question may be submitted in the following man-'ner: In any county of the first or second class, as the same 'are classified in the act concerning "fees and salaries," on 'the petition of not less than one-half of the legal voters, to 'be ascertained by the vote cast at the last preceding elec-'tion for county officers, or in any county of the third class

'upon petition of not less than twenty-five hundred (2,500) 'legal voters praying the submission of the question of the 'adoption of this act, the clerk shall give notice that such 'question will be submitted at such election and shall cause 'to be printed at the top of the ballots to be used for said 'election:

For the Torrens Land Title System.....	
Against the Torrens Land Title System.....	

'The votes cast upon that question shall be counted, can- 'vassed and returned as in the case of the election of county 'officers. If the majority of the votes cast on that subject 'shall be for the Torrens land title system, this act shall 'thereafter be in force and apply to lands in that county.'

'Emergency.] § 111. Whereas an emergency exists, 'therefore this Act shall take effect and be in force from 'and after its passage.'

The act, in so far as it has come before them in the numerous registration cases already instituted, has been construed liberally by the judges of the circuit and superior courts of Cook County. As proper cases shall arise, no doubt, many of its provisions will receive from our Supreme Court more examination in detail than was involved in People v. Simon. Its general features are free from constitutional objection, and additional decisions of construction and practice will doubtless strengthen its efficacy and enlarge its use.

CHAPTER IV.

THE OLD AND NEW SYSTEMS COMPARED.

In Illinois, as in the other states, land titles have been dealt with under the system known as registration of deeds. Titles pass and liens are created by the execution and delivery of sufficient instruments in writing, and notice of these to subsequent purchasers is effected by the record of such instrument in the office of the recorder of deeds. Purchasers are also to search not only for recorded instruments, but for judgments and all other proceedings in any of the courts of record which may affect the title. On a transfer, a seller has to show that the deed to him is the last link in an unbroken chain of properly drawn, executed and recorded conveyances, reaching back to the patent from the government, a period of usually more than forty years. This search, reduced to writing and known as an abstract of title, can be made only by those skilled in the business. It contains a synopsis of every conveyance or judicial proceeding affecting the land and constitutes a complete history of the title. On each fresh dealing with the land, this abstract of title is continued or brought down to date. When completed the question whether the title so set forth is merchantable is determinable only by another set of experts, attorneys skilled in examining titles. To each sale and mortgage is shackled the delay and expense caused by the preparation of the abstract and its examination by counsel. Our usual abstract of title, with its perpetual continuations, is, as has been well said, but another edition of The House that Jack Built.

This system is found unsatisfactory in the following particulars:

1. The expense. The cost of the abstract, either in whole, or its continuation, is necessary in each transfer of title. To this must be added the cost of its examination by the attorney for the buyer. In Cook County the average outlay for these two items will be probably not less than $25. It is estimated that in Illinois, the annual cost of abstracts of title and their examination by counsel, is upwards of $10,000,000, a sum exceeding every 20 years the entire losses by the great Chicago fire. The land owners of the United States pay annually for abstracts and examining lawyers' fees a sum greater than the yearly interest upon the national debt; 90 per cent of such expense would be saved were our titles under the Torrens system.

2. The delay. Too long a time intervenes between the making of the contract of sale and the delivery of the deed. Delays consequent upon procuring abstracts, their examination and hunting up matters that do not appear of record, frequently run into many months.

3. The insecurity. The purchaser buys at his peril. Errors may intervene not only in the making of the abstract, but in the opinion of the buyer's attorney. As against all such errors the buyer assumes the risk. If the defects be sufficiently serious, he may lose the land, and then may recover damages from his grantor under covenants of warranty. Forged deeds are as easily recorded as genuine ones. The forged instrument is taken away after being recorded, and from the abstract the forgery cannot be detected.

4. The always increasing record of instruments and matters connected with the title, the accumulation of books and indexes in the recorder's office, and the lengthening of the abstracts of title, steadily increase the costs of transfers and the risk of errors. Since October, 1871, there have accumulated in the recorder's office in Cook County more than 7,300 large books of

records of deeds and mortgages each with about 600 pages. At the present rate of annual increase, within fifty years these books will be so numerous as to require a large building for their keeping; and the time and expense necessary for their examination will very seriously interfere with transfers.

5. These defects in the present system operate as a perpetual tax upon the holders of real estate, directly reduce its ease of convertibility into money, and thus lower its market value. This burden is always increasing.

No way is perceived by which the present system can be retained, and these defects removed.

Compared with our present system, the new method of transfer by registration of title shows the following advantages:

1. Expense. The cost of an initial registration under the new law is about $25, less than the usual cost of a single transfer under the present system. The cost of all subsequent transfers is greatly reduced. The entire cost of an ordinary transfer of a piece of registered land upon a sale or mortgage is $3. These charges, being fixed, are ascertainable in advance, so both seller and buyer know beforehand the expense of carrying out any sale or transfer. An ordinary transfer or mortgage of registered land is a transaction so simple in its nature that the real estate broker, or even the parties themselves, if of ordinary business intelligence, may easily carry it into effect and without the aid of a lawyer or an abstract of title. Certificates of title thus become available for short time loans, 30 or 60 days.

2. Time. Registered land may be sold or mortgaged and the money safely paid over within an hour or two after the making of the verbal contract. The ownership of the property, and whether incumbered or not, is shown by the register book at a glance. The cer-

tificate held by the owner shows the title at its date, and inspection of the original certificate of title or in lieu thereof, a certificate of search obtainable from the registrar, will show all subsequent liens. If none appears, the money is paid over, the certificate of title accompanied by the deed or mortgage is delivered to the registrar, the proper entry made upon the register, and the transfer is complete.

3. Security. The insecurity of the present system is largely due to the fact that since upon each transfer the title must be searched back to the government, there can be no rest in such searches, and error in their making is possible. By the Torrens system *the title is rested or quieted by law at each transfer*, hence upon a proposed transfer no search back of the preceding transfer is necessary. Everything necessary to know must and will appear upon the original certificate of title. This curtailing of the search greatly reduces risk of error. All rights of the buyer to recover damages from the seller for any imperfection in the title, if warranted, are fully preserved. If any purchaser, through caution, desires to satisfy himself as to the correctness of any first registration, he will examine, or have his counsel examine, the abstracts and all other evidences of title upon which the first registration was effected. All subsequent transfers or dealings with the registered title are matters of public record, and are also open to examination of the purchaser if he so desire. While such examinations may perhaps be made with more or less frequency during the first two years after registration,[1] yet, as the act of the registrar is final, they will be more and more infrequent until they cease altogether. Under the present system, security is dependent upon the examination made by the owner.

[1] Only three have been made since the system has been in use in Cook County.

Under the new system all such security is retained; and, in addition, the buyer has the benefit of (1) the official examination, made by the registrar before the title is registered, and the decree entered thereon ordering registration, which can be attacked only within the limitation period; (2) the conclusiveness given by law to the act of the registrar in registering all subsequent transfers or dealings, and (3) the indemnity fund created especially to make good such losses.

4. Shortening of the records. Under the present system, all deeds and mortgages are copied at length in the books of the recorder and the originals returned to the owners. There is no copying of any deed or mortgage of a registered title, as the original instruments are retained by the registrar. The area of search is reduced to a single page.

5. A safe method of much more quickly transferring titles at a smaller cost increases the salable value of the property.

The new law is drawn upon the theory that the register book, composed as it is of the certificates of title issued by the registrar, shall be an authoritative list of the persons entitled to sell, mortgage or deal as owners with the registered land situated within the county. It is a public record started by a judicial decree and kept by an official under bond and other safeguards ample to ensure its accuracy; and if its authoritativeness be sanctioned by law, no reason is perceived why all cannot safely rely upon such accuracy. It has been most amply demonstrated in other countries that such a list can be both authoritative and accurate.

The defects in our present system of transferring land, have brought into existence in Illinois title guaranty or title insurance companies. Each of these is the owner of a set of abstract books. Their methods provide for an examination of the title sought to be guar-

anteed or insured, and upon those selected by the company as free from risk or doubt, policies of guaranty or insurance, are issued on payment of a premium or rate fixed by the company. This premium or rate in ordinary cases, when there are no defects in the title, is one per cent of the value of the land, which may be insured to its full value or less. The policy is a contract on the part of the company to defend all suits attacking the title brought against the insured, his heirs and devisees, to the extent of the sum insured. These policies do not protect a subsequent purchaser or mortgagee without being transferred by the issue of a new policy upon the surrender of the old one and payment of additional charges and costs fixed by the company. They do not cover any risk by reason of liens, conveyances or other instruments of writing, not of record at the date of the policy, nor by the rights of persons in possession not shown of record. The policies are secured by the capital of the company.

The method in use by these guaranty companies gives, no doubt, additional security to the title shown of record, but their policies contain many conditions and stipulations greatly limiting the value of the guaranty. These are necessary, as these companies, in effecting such guarantees, have not the aid of the statutes of limitations and rules of property contained in a registration of title act, which are so essential to the protection of the title.

These guaranty of title companies do not overcome to any great degree, any of the defects or disadvantages hereinbefore shown to exist in the present system. They do not materially reduce the expense of transferring or dealing with the title, nor the necessary time involved therein. While they give the owner a guarantee which he lacked before, yet it is only against matters of record, and is limited to the face of the policy.

They do nothing toward lessening the length or volume of public records, and guaranteed titles must be still dealt with through the medium of abstracts prepared from these constantly increasing volumes in the recorder's office. The guarantee of a private corporation cannot make a title conclusive or indefeasible. The issuance of such a policy can affect no adverse rights whatsoever. Neither does such a guaranty in any way rest or quiet a title. In short, the guaranty of title system, as used by these companies, although in one way giving an additional security of title, nevertheless in all other respects is little or no improvement upon the old system. Such companies seem better suited for large cities and are not likely to soon be able to aid the landowner in smaller towns or country districts. These and similar objections to guaranty of title companies have been found to exist in other places where such companies have been longer in existence. The very existence of those companies is a strong illustration of the necessity for a radical change in our method of dealing with titles to land.

The following summary of benefits of the system of registration of titles, made by Sir Robert Torrens, has been fully justified in its use:

"1st. It has substituted security for insecurity."

"2d. It has reduced the cost of conveyances from pounds to shillings, and the time occupied from months to days."

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

"4th. It has so simplified ordinary dealings that he who has mastered the 'three Rs' can transact his own conveyancing."

"5th. It affords protection against fraud."

"6th. 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 reoccurence of any similar faults."

"7th. It has largely diminished the number of chancery suits, by removing those conditions that afford ground for them."

We may add an

"8th. As to registered lands, it saves the rights of infants and others under disability, as no one can deal with the land except through the registrar's office, where all rights clearly appear and must be respected."

CHAPTER V.

THE TORRENS SYSTEM ADAPTABLE TO AMERICAN CONSTITUTIONS.

The Torrens method, simply stated, provides that, after careful examination of the title, once for all, in any of the different manners selected to regulate the initial registration, all rights entitled to be noticed by those dealing with the land, will appear of record upon one page of the register. Any claim, however valid, not so appearing may be safely disregarded. The certificate of title is made conclusive evidence in all courts. The registered title is thus made manifest, certain and conclusive. Legislation, with such object in view, is entirely within the prerogative and duty of the State. As held in Arndt v. Griggs[1], the power of the State to regulate tenure of land within its limits and the mode of its acquisition and transfer cannot be questioned.

Two questions, of vital import, confront the framers of an American Torrens act: First, How to secure a valid initial registration; and, second, To what extent may conclusiveness be given to the act of the registrar in his subsequent dealings with the registered title.

Considering these in their order, it is to be noted that in Great Britain and her colonies, as well as in the continental countries, now using the Torrens system[2] there exists no written constitutional provision interfering with giving conclusive effect as against the world to the first certificate of title issued after due examination by an official styled a registrar who is not clothed with judicial powers. All certificates of title, including the first, are therefore made conclu-

[1] 134 U. S. 316.

[2] See chapter VII.

sive, and one injured by the initial registration is lawfully relegated to an indemnity fund. It is obvious that, under the provisions of the federal and state constitutions forbidding deprivation of property without due process of law, one so injured is entitled to his day in court, and without such due process of law or day in court his right in the land cannot be cut off by any certificate of title being made conclusive. Two methods have been adopted in order to avoid such difficulty. One provides that the first certificate of title issued by the registrar not himself a judicial officer, should be conclusive only after the expiration of some statute of limitation. Of such a character was the first act adopted in Illinois in 1895, with its limitation period of five years. As elsewhere stated this act failed to meet the approval of the supreme court of Illinois in People v. Chase,[3] where its provisions were found in effect to confer judicial power upon the registrar. To the other class belong the present Illinois law and the somewhat similar acts of Massachusetts, Ohio and California. In each of these, the initial registration is made the subject of a judicial inquiry at the application of the owner in a court of record of competent jurisdiction. The Massachusetts act was held valid and constitutional by the supreme court of that state in Tyler v. Judges, etc.[4] The case was subsequently taken by writ of error to the supreme court of the United States, where the writ was dismissed for want of jurisdiction, it not appearing that a federal question was involved.[5] The Ohio act, in the case of State v. Guilbert,[6] was held invalid upon the ground that its proceedings for initial registration failed to provide for service of process upon adverse claimants, residing within the jurisdiction of

[3] 165 Ill. 526.
[4] 175 Mass. 71.
[5] 179 U. S. 405.
[6] 56 Ohio St. 575.

the court entertaining the proceeding. The California law has not yet been construed by the Supreme Court of that State. The present Illinois law was sustained by the Supreme Court of Illinois in the case of People v. Simon.[7] These decisions establish the necessity in any American registration of title act of a judicial proceeding upon which to base the first certificate of title. After the entry of the decree in such proceeding adverse claimants not parties thereto become bound by some stated statute of limitations. This in Illinois is two years, and no extension is granted minors or persons under any disability.[8]

We now consider the second question, as to the conclusiveness, given to the act of the registrar in his subsequent dealings with the registered title.

The Illinois, as well as the other American acts, contains the following provision:[9]

"The bringing of land under this act shall imply an agreement which shall run with the land, that the same shall be subject to the terms of the act and all amendments and alterations thereof, and all dealings with land or any estate of interest therein, after the same has been brought under this act, and all liens, encumbrances and charges upon the same subsequent to the first registration thereof, shall be deemed to be subject to the terms of this act."

This provision, while probably superfluous as not increasing the legal effect of the initial registration, prevents the acquisition of any subsequent interest in registered lands, except upon the terms and conditions of the act, among which is the conclusive effect attendant upon the act of the registrar in his subsequent dealings with the registered title.

[7] 176 Ill. 165.
[8] Sec. 26.
[9] Sec. 46.

The supreme court of Illinois, in discussing this question say:[10]

"It is further insisted, that by proceedings subse-
"quent to the initial registration an owner may be
"deprived of his property without due process of law.
"In the consideration of this point, it must be remem-
"bered that the right to alienate or inherit property
"is always dependent upon the law. So long as vested
"rights are not disturbed the law may at any time
"change the tenure upon which land is held, and may
"alter the conditions under which it may be alienated
"and modify the rules of evidence by which the title
"is to be determined. The true theory of this act, as
"we understand it, that all holders of vested rights
"shall be subjected to an adjudication in a court of
"competent jurisdiction, upon due notice, in order
"that the true state of the title may be ascertained,
"and that thereafter the tenure of the owner, the right
"of transfer and incumbrance and all rights subse-
"quently accruing, shall be determined in accordance
"with the rules now prescribed. 'A State may, by
" 'statute, prescribe the remedies to be pursued in her
" 'courts, and may regulate the disposition of the
" 'property of her citizens by descent, devise or alien-
" 'ation.[11] The right of ownership which an indi-
" 'vidual may acquire must therefore, in theory, at
" 'least, be held to be derived from the State, and the
" 'State has the right and power to stipulate the con-
" 'ditions and terms upon which the land may be held
" 'by individuals.' [12] The power of the State to regu-
"late the terms of real property within her limits,
"and the modes of its acquisition and transfer, and the
"rules of its descent and the extent to which a testa-

[10] People v. Simon, 176 Ill. 165, 176.

[11] 3 Washburn on Real Property, 4th ed., p. 187.

[12] Tiedeman on Real Property, 2d ed., sec. 19.

"mentary disposition may be made of it by its owners, "is undoubted.[13] The power of the legislature in "this respect (as to changing the rules of evidence as "to the burden of proof) whether affecting proof of "existing rights or as applicable to rights subsequently "acquired or to future litigation, so long as the rules "of evidence sought to be established are impartial "and uniform in their application, is practically unre- "stricted."[14]

"It being true that the law may prescribe rules of "property and rules of evidence by which the title is "to be shown, we see no reason why the transfer of "real estate may not be made in the way contemplated, "and why it may not be made compulsory to make it "in that way, if the legislature so determines."

This reasoning met the approval of the Supreme Court of Massachusetts in the following language:[15]

"The only rights are registered rights, and when "land is brought into the registry system, there seems "to be nothing to hinder the legislature from fixing "the conditions upon which it shall be held under that "system."[16]

COMPULSORY REGISTRATION OF TITLE.

With the advantages of registration conceded, it must be admitted that compulsory registration of land titles is the better course. In England and in the German empire, the compulsory use of the system has been adopted. The English Colonial acts, like those of Illinois and Massachusetts, permit but do not require an owner to register his title. Of such character was the English act of 1875. Under such optional acts, the want of familiarity with the advan-

[13] Arndt v. Griggs, 134 U. S. 316, on p. 321.
[14] Gage v. Caraher, 125 Ill. 447, on p. 455.
[15] Tyler v. Judges, etc., 175 Mass. 71.
[16] People v. Simon, 176 Ill. 176.

tages of registration, together with the usual active opposition of those "whose work and living are furnished by conveyancing"[17] operate to discourage the bringing of land under the act, whereby a needlessly long period intervenes before the benefits of the system are generally felt.

Public discussion in England, more or less active for thirty years, resulted, in 1897, in compulsory registration.[18] By the act of that year, it is provided that, by order in council, it may be declared that as to any county, or part of a county, registration of title to land is to be compulsory on sale, and in that case the title shall not pass until the buyer is registered as the proprietor of the land.[19]

Another method proposed is to require the executor or administrator of a deceased owner to apply for registration, and thus prevent devise or descent until after registration of the title.

In so populous a county as Cook, where sales are so numerous, it seems probable that the latter method will be found preferable. The prevention of all sales of land in Chicago until registration be first had, might crowd the registrar's office with too many applications. A smaller number of titles pass each year through the Probate Court, and during the period required for such transmission, registration might be effected without inconvenience. In this way the entire land in the county would come under the act, as rapidly, perhaps, as desirable. The expense of initial registration being upon devisees and heirs would be found least onerous.

There seems to be no constitutional difficulty in the way of compelling registration, before permitting a sale, or transmission by devise or descent. As pointed

[17] Dumas on Registering Title to Land, 51.
[18] 60 and 61, Vict. c. 65.
[19] Sec. 20.

out in the opinion of the Supreme Court of Illinois above quoted,[20] the power of the State to regulate the disposition of land within her confines, by descent, devise or alienation, is undoubted.

[20] People v. Simon, 176 Ill. 176.

CHAPTER VI.

SUPREME COURT OPINIONS.

Supreme Court of Illinois, People v. Simon.[1]

Mr. Justice Wilkin delivered the opinion of the court:

This action originated in the court below upon an information in the nature of a quo warranto against appellee, requiring him to show by what authority of law he was exercising the powers and duties of the office of registrar of titles in and for the county of Cook. In answer to the information the defendant set up the act of the legislature entitled "An act concerning land titles," approved and in force May 1, 1897, commonly known as the "Torrens Law."[2] The relator filed a general demurrer to this answer, which was overruled and the information dismissed. The ground of the demurrer was, that the act under which the respondent sought to justify is unconstitutional and void, and that is the question now presented for our decision.

The act is very voluminous and some of its provisions are not skillfully drafted. Its validity is attacked on numerous grounds, and the briefs and arguments on either side are very extended. We will endeavor to consider the objections raised to the law in the order in which they are discussed by counsel.

It is first insisted that the act confers judicial powers upon the registrar of titles, or upon him and the examiners of title, in violation of the constitution of this State. A somewhat similar act passed in 1895 was held invalid on that ground in People v. Chase.[3] By

[1] 176 Ill. 165.

[2] Laws of 1897, p. 141.

[3] 165 Ill. 527.

the provisions of the law of 1895 the registrar was clothed with power to determine the ownership of land when application was made for the initial registration thereof, and to issue his certificate accordingly. The present act provides that the ownership shall be determined by a decree in equity entered in a court of competent jurisdiction, upon which decree the registrar shall issue the first certificate of registration. In this regard his duties under the present law are clearly ministerial only, and the fatal objection to the former act is therefore removed.

But it is insisted that the law is still vulnerable, in that it vests judicial power in the registrar in the performance of his duties as to subsequent registrations. Waiving the question whether this would, if true, necessarily vitiate the whole act, is the position tenable? Like a mere recorder, the registrar is required to file all deeds, mortgages, leases and other instruments affecting the title to land, and make proper notations upon the instruments and upon the record. He is to keep a record to be known as the "Register of Titles," in which must be entered the original and all subsequent certificates of title, and such notations as to liens, incumbrances and the like as are requisite to show the true condition of the title. When any instrument is filed with him which is intended to create a charge, lien or incumbrance upon land, it is made his duty, by section 60, to enter a memorial upon the register and also upon the original certificate. Thus far his duties are clearly and simply ministerial. But it is contended this section 60 authorizes him to determine the validity of liens, incumbrances or charges, and the argument is, that this is an exercise of judicial power, which, under our constitution, can be conferred upon no officer or tribunal save those which belong to the judicial department. The language of the section

applicable to this question is as follows: "It appearing to the registrar that the person intending to create the charge has the title and right to create such charge, and that the person in whose favor the same is sought to be created is entitled by the terms of this act to have the same registered, he shall enter upon the proper folium of the register, and also upon the owner's certificate, a memorial of the purport thereof," etc. It will be noticed that the provisions in case of a transfer of the property are substantially the same. Section 47 says: "Upon its being made to appear to the registrar that the transferee (evidently intending transferrer) has the title or estate proposed to be transferred and is entitled to make the conveyance, and that the transferee has the right to have such estate or interest transferred to him, he shall make out and register as hereinbefore provided, a new certificate," etc. Article 3 of the constitution of 1870 reads as follows: "The powers of the government of this State are divided into three distinct departments, —the legislative, executive and judicial; and no person or collection of persons, being one of those departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted."[4] The question therefore is, can the legislature devolve the duties named upon an officer not a member of the judicial department?

That the duties mentioned are judicial in their nature may be admitted, but it does not necessarily follow that their exercise is prohibited by the constitutional provision to all but officers belonging to the judicial department. Numerous instances may be cited, as is done in Owners of Lands v. People[5] (referred to in People v. Chase, supra), where executive and legislative officers are authorized to exercise powers which

[4] Rev. Stat. p. 60.

[5] 113 Ill. 296.

in a sense are judicial, and the laws imposing such duties held not to be in violation of the constitutional provision quoted. These duties or powers are generally and properly termed "quasi judicial," to distinguish them from those which are judicial in the sense of belonging to the judicial department exclusively. In theory all governmental power is divided into the three named divisions, and upon a casual consideration the division would seem to present no difficulty, but in the practical application of the principles involved courts have been compelled to observe that the line of demarkation between the exclusive powers of the three departments is far from clear.[6] Judge Cooley, in his work on Constitutional Limitations on the Legislative Branch of the Government, has given a definition of "judicial power." It is this: "The power which adjudicates upon and protects the rights and interests of individual citizens, and to that end construes and applies the laws." As a general definition of the functions of the judicial department it is sufficiently accurate, and we adopted it in the case of People v. Chase, supra. We then thought, and are of the opinion still, that it was applicable to that case, the functions of the registrar, under the act of 1895, being not quasi judicial, merely, but strictly so, and such as are usually exercised by the courts alone, constituting the exercise of judicial power within the constitutional prohibition. Under the present act his duties more nearly resemble those frequently exercised by members of the executive department.

The definition given by Judge Cooley does not attempt to mark the line between those quasi judicial functions which may be vested elsewhere, and those strictly judicial, which can be reposed nowhere save in the courts, and for that reason it cannot be properly

[6] 6 Am. & Eng. Ency. of Law, 2d ed., p. 1007.

adopted in this case. As we said in another case: "It may in many cases be a matter of difficulty to determine the precise line which divides the executive and judicial functions. It has been said that where the functionary hears, considers and determines, then he performs judicial acts. This definition is not strictly accurate. * * * It embraces cases that are not judicial, and hence is too comprehensive."[7] And appreciating the difficulty of defining the limits of the several departments of government we also said in an earlier case: "Nevertheless, when we come to apply them to actual controversies growing out of the varied relations which the citizens sustain to the State and to one another, we encounter doubts and difficulties of the gravest character. Just where the dividing line is to be drawn between judicial and legislative power, with respect to certain subjects, often presents questions about which enlightened courts and eminent jurists widely differ. So while the powers of courts seem so very simple and clearly defined, yet in the application of them to actual cases their proper limits are often difficult to determine."[8] Also: "The first and second sections of the first article of the constitution (of 1818) divide the powers of government into three departments,—the legislative, executive and judicial, —and declare that neither of these departments shall exercise any of the powers properly belonging to either of the others, except as expressly permitted. This is a declaration of a fundamental principle, and, although one of vital importance, it is to be understood in a limited and qualified sense. It does not mean that the legislative, executive and judicial power should be kept so entirely distinct and separate as to have no connection or dependence, the one upon the other; but

[7] Donahue v. Will County, 100 Ill. 94, on p. 108.
[8] Dodge v. Cole, 97 Ill. 338, on p. 357.

its true meaning, both in theory and practice, is, that the whole power of two or more of these departments shall not be lodged in the same hands, whether of one or many."[9]

Judge Story, in his work on the Constitution, says: "But when we speak of a separation of the three great departments of government, and maintain that their separation is indispensable to public liberty, we are to understand this maxim in a limited sense. It is not meant to affirm that they must be kept wholly separate and distinct and have no common link of connection or dependence, one upon the other, in the slightest degree. The true meaning is, that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments, and that such exercise of the whole would subvert the principles of a free constitution.[10]" "Notwithstanding the memorable terms in which this maxim of a division of powers is incorporated into the bills of rights of many of our State constitutions, the same mixture will be found provided for, and, indeed, required, in the same solemn instruments of government. * * * Indeed, there is not a single constitution of any State in the Union which does not practically embrace some acknowledgment of the maxim and at the same time some admixture of powers constituting an exception to it."[11]

In the case of Murray's Lessee v. Hoboken Land and Improvement Co.,[12] in discussing whether the issuing of a distress warrant by the solicitor of the treasury was the exercise of executive or of judicial power, the Supreme Court of the United States (p. 280) say: "It

[9] Field v. People, 2 Scam. 79, on p. 83.
[10] 1 Story on the Const., 5th ed., sec. 525.
[11] Ibid. sec. 527, p. 395.
[12] 18 How. 272.

is not sufficient to bring such matters under the judicial power that they involve the exercise of judgment upon law and fact. * * * That the auditing of the accounts of a receiver of public moneys may be, in an enlarged sense, a judicial act, must be admitted. So are all those administrative duties the performance of which involves an inquiry into the existence of facts and the application to them of rules of law. * * * We do not doubt the power of Congress to provide by law that such a question shall form the subject matter of a suit in which the judicial power can be exerted. The act of 1820 makes such a provision for reviewing the accounting officers of the treasury, but until it is reviewed it is final and binding; and the question is, whether its subject matter is necessarily, and without regard to the consent of Congress, a judicial controversy, and we are of opinion it is not."

From these authorities it is apparent that the mere fact that the registrar is required by this act to inquire into the existence of certain facts and to apply the law thereto in order to determine what his official conduct shall be, and that his action may affect private rights, does not constitute the exercise of judicial power, strictly speaking. It is not the intention of these two sections (60 and 47) to provide a tribunal for the adjudication of disputes concerning land titles. The primary purpose is the issuing of the certificate, and the exercise of the judgment of the registrar is incidental. The prohibition in question "has never been held to apply to those cases where judgment is exercised as incident to the execution of a ministerial power."[13] The powers exercised by the registrar under this law are analogous to those exercised by the commissioner of patents. A power of decision is given to that officer in many matters, not only between the

[13] Owners of Lands v. People, supra.

government and the patentee, but also between different claimants, as to priority, patentability and like matters, and in the performance of these duties it has never been considered that he was encroaching upon the judicial domain. They are also, in a measure, like the duties performed by officers of the land office. Duties of a similar nature, involving judgment or discretion and the application of the law to the facts, are devolved both under the State and Federal laws upon many other executive officers, legally. In some instances it is even held that in the exercise of such judgment the officer is free from judicial interference. But in the case of the registrar this act provides that any person feeling himself aggrieved by the act or neglect of this officer, in any matter pertaining to the duties required of him, may file a petition in equity in the proper court, making the registrar and other persons interested parties defendant, and that the court may proceed therein as in other cases in equity, and may make such order or decree as shall be according to equity in the premises and the purport of the act. This, with the well known jurisdiction of the courts in mandamus, injunction, rescission, cancellation, bills of relief, and the like, will effectually protect the citizen against any arbitrary conduct on the part of the officer.

Recurring to the duties of the registrar, we find that in case of a tax sale or judgment, or levy under an attachment or execution, or in case of a mechanic's lien, the registrar, upon the filing of the proper certificate, enters a memorial thereof upon his record, and in case the lien ripens into a title the former certificate of title is canceled and a new one issued to the proper party. These duties do not differ in character from those already mentioned, and what has been said is equally applicable thereto also. Particular stress,

however, is laid by counsel for appellant upon the contention that the duties of the registrar as to the subsequent registration of land held in trust upon conditions or limitations, are the exercise of judicial power, in violation of the terms of the constitution. The act requires, where the land is subject to a trust, condition or limitation, that the original certificate issued shall contain the words "in trust," "upon conditions" or "with limitations," as the case may be. When such land is to be transferred, it is provided that the registrar shall not issue a new certificate, nor shall any transfer of or charge upon or dealing with the land be made, unless pursuant to the order of some court, or upon the written opinion of the two examiners that such transfer, charge or dealing is in accordance with the true intent and meaning of the trust, condition or limitation, whereupon he shall proceed to register the title, and such registration is to be conclusive in favor of the grantee, and those claiming under him in good faith and for a valuable consideration, that such transfer, charge or other dealing is in accordance with the true intent and meaning of the trust, condition or limitation.[14] If the registration be made pursuant to the order or finding of a court of competent jurisdiction the acts of the registrar are purely ministerial, but if made upon the opinion of the two examiners he is required to exercise a judgment of his own. These duties do not differ materially from those already examined, except that here the decision is made conclusive in favor of the person taking the transfer in good faith and for a valuable consideration, that the transfer or charge is in accordance with the true intent and meaning of the trust, condition or limitation. This does no more than abrogate the rule in equity which requires the purchaser of trust property to see to the

[14] Secs. 68, 69.

application of the purchase money, and the inclination of courts now is to withdraw from that rule. We recently said, quoting from Judge Story: "These are some of the most important and nice distinctions which have been adopted by courts of equity upon this intricate topic, and they lead strongly to the conclusion, to which not only eminent jurists but also eminent judges have arrived, that it would have been far better to have held in all cases that the party having the right to sell had also the right to receive the purchase money, without any further responsibility on the part of the purchaser as to its application."[15] This statute also changes the rule of law as to notice. We know of no reason why the legislature might not change either or both of these rules without violating the constitution. Certainly, as to the future all trusts could be entirely abolished by the legislature, as was done in cases of uses by the Statute of Uses. As the law now stands, cases frequently arise in which bona fide purchasers take property free from existing trusts, and are not held bound to see to the application of the consideration.

The second point insisted upon in the argument is, that the provisions of the act permit the taking of private property without "due process of law." In the initial registration the provisions are for an application to a court of chancery, and that the fee must be first registered. To this application the following persons are to be made defendants: The occupant, if the land is occupied by any other person than the applicant; the holder of any lien or incumbrance; other persons having any estate or claiming any interest in the land in law or in equity, in possession, remainder, reversion or expectancy.[16] All other persons are to be made

[15] Seaverns v. Presbyterian Hospital, 173 Ill. 414, on p. 424.
[16] Sec. 11.

parties defendant by the name and designation of "all whom it may concern."[17] Summons is to issue against all persons mentioned as defendants, and is to be served as in other cases in chancery. Notice is also to be published and mailed to such defendants substantially as in other chancery cases, and the court may direct further notice to be given.[18] Upon a failure to answer default may be entered, and upon the hearing decree entered finding in whom the title is vested, and declaring the same subject to such liens, incumbrances, trusts or interests, if any, as are shown to exist, and directing the registration to be made.[19] The exception taken to these provisions is, that they authorize judgment to be taken against a resident of the State upon mere constructive service. It is certainly fundamental that no man shall be condemned unheard or without notice. While a substituted service is permitted in some instances, particularly in case of non-residents, this is because of the necessities of the case. The act does contemplate, in some contingencies at least, actual personal service, and the general law provides for publication as to unknown owners and persons in interest, and non-residents. An applicant may proceed in this way, and in strict accordance with the act obtain a decree or finding as to his title which will be binding beyond all question, so that even if the proper construction of the provision were that it attempted to authorize judgment against a resident notified only by publication, yet the law can be given practical effect, in which event only the particular provision would fail, and not the whole law.

It is further insisted, that by proceedings subsequent to the initial registration an owner may be deprived of his property without due process of law. In the

[17] Sec. 16.
[18] Secs. 19, 20, 21.
[19] Secs. 23, 25.

consideration of this point it must be remembered that the right to alienate or inherit property is always dependent upon the law. So long as vested rights are not disturbed the law may at any time change the tenure upon which land is held, and may alter the conditions under which it may be alienated and modify the rules of evidence by which the title is to be determined. The true theory of this act, as we understand it, is, that all holders of vested rights shall be subjected to an adjudication in a court of competent jurisdiction, upon due notice, in order that the true state of the title may be ascertained and declared, and that thereafter the tenure of the owner, the right of transfer and incumbrance, and all rights subsequently accruing, shall be determined in accordance with the rules now prescribed. "A State may, by statute, prescribe the remedies to be pursued in her courts, and may regulate the disposition of the property of her citizens by descent, devise or alienation."[20] "The right of ownership which an individual may acquire must therefore, in theory, at least, be held to be derived from the State, and the State has the right and power to stipulate the conditions and terms upon which the land may be held by individuals."[21] "The power of the State to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted."[22] "The power of the legislature in this respect (as to changing the rules of evidence as to the burden of proof), whether affecting proof of existing rights or as applicable to rights subsequently acquired or to future litigation, so long as the rules of evidence

[20] 3 Washburn on Real Prop., 4th ed., p. 187.
[21] Tiedeman on Real Prop., 2d ed., sec. 19.
[22] Arndt v. Griggs, 134 U. S. 316, on p. 321.

sought to be established are impartial and uniform in their application, is practically unrestricted."[23]

It being true that the law may prescribe rules of property and rules of evidence by which the title is to be shown, we see no reason why the transfer of real estate may not be made in the way contemplated, and why it may not be made compulsory to make it in that way, if the legislature so determines.

In our view of the case the indemnity fund feature of the law need not be considered. The law can, as we think, stand and accomplish its purpose without it.

Objection is also made that by section 26 any person who has any interest in the land, whether personally served, notified by publication or not served at all, must, within two years after the entry of the decree, appear and file an answer, and that after the expiration of that term of two years the decree shall (with certain exceptions) be "forever binding and conclusive upon all persons." This provision seems to attempt to make a decree binding upon persons not parties to the suit, and if given effect literally, would deprive persons of vested rights without due process of law. A limitation may be placed upon the time within which a person who has a mere right of action shall bring it, but "limitation laws cannot compel a resort to legal proceedings by one who is already in the complete enjoyment of all he claims."[24] To the extent that the act attempts to transfer property without due process of law it cannot be upheld. On all parties to the suit properly before the court the decree may, after the lapse of two years, become conclusive and forever binding, and as to all who have merely a right of action the expiration of two years may complete the bar. Even though the language of this section may be broad

[23] Gage v. Caraher, 125 Ill. 447, on p. 455.

[24] Cooley's Const. Lim. p. 366.

enough to amount to an attempt to transfer an estate by the law or by decree, yet it is possible to carry out the purposes of the act without violating the constitution in the respect complained of. Such objectionable features, or those calling for construction, must be left to future legislation, or determination by the courts in cases where the conflict is apparent and the question directly involved.

We are also of the opinion that sections 26 and 40 can be sustained by construing them as a limitation law. "Whenever an act of the legislature can be so construed and applied as to avoid conflict with the constitution, and give to it the force of law, such construction will be adopted by the courts. Therefore, acts of the legislature in terms retrospective, and which, literally interpreted, would invalidate and destroy vested rights, are upheld by giving them prospective operation only, for, applied to and operating upon future acts and transactions only, they are rules of property, under and subject to which the citizen acquires property rights, and are obnoxious to no constitutional limitation, but as retroactive laws they reach to and destroy existing rights, through force of the legislative will, without a hearing or judgment of law. So will acts of the legislature having elements of limitation, and capable of being so applied and administered, although the words are broad enough to, and do, literally read, strike at the right itself, be construed to limit and control the remedy, for as such they are valid, but as weapons destructive of vested rights they are void, and such force only will be given the acts as the legislature could impart to them."[25]

The recent case of State of Ohio v. Guilbert[26] is relied upon by counsel for appellant in support of the

[25] Newland v. Marsh, 19 Ill. 376.

[26] 47 N. E. Rep. 551.

position taken by them on both of the above points. We have given that case careful consideration. With its conclusion, viz., that the Ohio statute was unconstitutional, we agree, but what is said in argument cannot be adopted as applicable to this case. The main ground upon which that decision rests is, that the statute, in providing for the initial registration, attempts to give jurisdiction to the court without service of summons, and this, it is held, falls short of that due process of law guaranteed by the constitution. The only notice which that act required was to be given by the applicant himself, and in the application it was unnecessary to name any person claiming an adverse interest, as party defendant. On the other feature of the case, viz., as to what constitutes the exercise of judicial power, the opinion is not clear. In the reasoning on that point Judge Cooley's definition of judicial power is adopted, which we have seen does not serve to distinguish between such quasi judicial powers as may be properly exercised by executive or ministerial officers and those powers which belong solely to the judicial department.

The third point made against the law is, that the provision which says that the law shall take effect only after a favorable vote by counties, is an attempt to delegate legislative power; and the fourth is, that the law is not a general but special law. It is unnecessary to discuss these points. It is sufficient to say that both have been decided adversely to the contention of appellant in the case of People v. Hoffman.[27] That decision has become the rule of law in this State, and we see no sufficient reason for overruling it.

We are not impressed with the soundness of the objections to those sections of the statute which relate to the descent of lands on the death of a registered owner,

[27] 116 Ill. 587.

and to the sale and mortgage of real estate belonging to minors or others under disability. They are, however, objections which do not go to the validity of the entire law. They involve a construction of those sections, and can only be satisfactorily determined if cases shall arise involving their validity. It would be alike impracticable and unprofitable to attempt now to give a construction to every provision of this law. The question here is, does the act violate the constitution so far as to render it void, and therefore furnish no justification for the exercise of the acts of the respondent challenged? In the determination of that question every reasonable doubt must be resolved in favor of the validity of the law.

We have endeavored to give the case that deliberate consideration its importance demands, and have reached the conclusion that the judgment of the Criminal Court should be affirmed.

Judgment affirmed.

SUPREME COURT OF MASSACHUSETTS.

Tyler v. Judges of the Court of Registration.[1]

Holmes, C. J. This is a petition for a writ of prohibition against the judges of the court of registration established by St. 1898, c. 562, and is brought to prevent their proceeding upon an application concerning land in which the petitioner claims an interest. The ground of the petition is that the act establishing the court is unconstitutional. Two reasons are urged against the act, both of which are thought to go to the root of the statute and to make action under it impossible. The first and most important is that the original registration deprives all persons except the registered owner of any interest in the land without due process of law.

[1] 175 Mass. 171.

There is no dispute that the object of the system, expressed in section 38, is that the decree of registration "shall bind the land and quiet the title thereto," and "shall be conclusive upon and against all persons" whether named in the proceedings or not, subject to few and immaterial exceptions. And this being admitted, it is objected that there is no sufficient process against, or notice to, persons having adverse claims in a proceeding intended to bar their possible rights.

The application for registration is to be in writing and signed and sworn to. It is to contain an accurate description of the land, to set forth clearly other outstanding estates or interest known to the petitioner, to identify the deed by which he obtained the title, to state the name and address of the occupant, if there is one, and also to give the names and addresses, so far as known, of the occupants of all lands adjoining (section 21). As soon as it is filed, a memorandum containing a copy of the description of the land concerned is to be filed in the registry of deeds (section 20). The case is immediately referred to an examiner (appointed by the judge, section 12), who makes as full an investigation as he can, and reports to the court (section 29). If in the opinion of the examiner the applicant has a good title as alleged, or if the applicant after an adverse opinion elects to proceed further, the recorder is to publish a notice by order of the court in some newspaper published in the district where any portion of the land lies. This notice is to be addressed by name to all persons known to have an adverse interest, and to the adjoining owners and occupants so far as known, and to all whom it may concern. It is to contain a description of the land, the name of the applicant and the time and the place of the hearing (section 31). A copy is to be mailed to every person named in

the notice whose address is known, and a duly attested copy is to be posted in a conspicuous place on each parcel of land included in the application, by a sheriff or deputy sheriff, fourteen days at least before the return day. Further notice may be ordered by the court (section 32).

It will be seen that the notice is required to name all persons known to have an adverse interest, and this of course includes any adverse claim, whether admitted or denied, that may have been discovered by the examiner, or in any way found to exist. Taking this into account we should construe the requirement in section 21, concerning the application, as calling upon the applicant to mention not merely outstanding interests which he admits, but equally all claims of interest set up although denied by him. We mention this here to dispose of an objection of detail urged by the petitioner, and we pass to the general objection that, however construed, the mode of notice does not satisfy the constitution, either as to persons residing within the State upon whom it is not served or as to persons residing out of the State and not named.

If it does not satisfy the constitution, a judicial proceeding to clear titles against all the world hardly is possible, for the very meaning of such a proceeding is to get rid of unknown as well as known claims,—indeed, certainly against the unknown may be said to be its chief end; and unknown claims cannot be dealt with by personal service upon the claimant. It seems to have been the impression of the Supreme Court of Ohio, in the case most relied upon by the petitioner, that such a judicial proceeding is impossible in this country.[2] But we cannot bring ourselves to doubt that the constitution of the United States and of Massachusetts, at least, permit it as fully as did the common

[2] State v. Guilbert, 56 Ohio St. 575, 629.

law. Prescription or a statute of limitations may give a title good against the world, and destroy all manner of outstanding claims without any notice or judicial proceedings at all. Time and the chance which it gives the owner to find out that he is in danger of losing rights are due process of law in that case.[3] The same result used to follow upon proceedings which, looked at apart from history, may be regarded as standing half-way between statutes of limitations and true judgments in rem, and which took much less trouble about giving notice than the statute before us. We refer to the effect of a judgment on a writ of right after the mise joined and the lapse of a year and a day.[4] It would have astonished John Adams to be told that the framers of our constitution had put an end to the possibility of these ancient institutions. A somewhat similar statutory contrivance of modern days has been held good.[5] Finally, as was pointed out by the counsel for the petitioner, a proceeding in rem in the proper sense of the word might give a clear title without other notice than a seizure of the res, and an exhibition of the warrant to those in charge.[6] The general requirement of advertisement in admiralty cases is said to be due to rules of court.[7]

The prohibition in the fourteenth amendment of the United States against a State depriving any person of his property without due process of law, and that in the twelfth article of the Massachusetts bill of rights

[3] Wheeler v. Jackson, 137 U. S. 245, 258.

[4] Booth, Real Actions, 101, in margin; Fitz. Abr. Continual Claim, pl. 7, Faux Recovere, pl. 1; Y. B., 5 ed., Ill. 51, pl. 60; and of a fine with proclamations after the same time or by a later statute after five years. 2 Bl. Comm. 354. 2 Inst. 510, 518. St. 18 Ed. I. modus levandi fines. 34 Ed. III. c. 16. 4 and 5 Hen. VII. c. 24. 32 Hen. VIII. c. 36.

[5] Turner v. New York, 168 U. S. 90.

[6] 2 Browne, Civ. & Adm. Law, 398.

[7] U. S. Adm. rule 9; Betts, Adm. Practice (1838), 33, 34, App. 14.

refer to somewhat vaguely determined criteria of justification, which may be found in ancient practice,[8] or which may be found in convenience and substantial justice, although the form is new.[9] The prohibitions must be taken largely with regard to substance rather than to form, or they are likely to do more harm than good. It is not enough to show a procedure to be unconstitutional to say that we never have heard of it before.[10]

Looked at either from the point of view of history or of the necessary requirements of justice, a proceeding in rem dealing with a tangible res may be instituted and carried to judgment without personal service upon claimants within the State or notice by name to those outside of it, and not encounter any provision of either constitution. Jurisdiction is secured by the power of the court over the res. As we have said, such a proceeding would be impossible were this not so, for it hardly would do to make a distinction between the constitutional rights of claimants who were known and those who were not known to the plaintiff, when the proceeding is to bar all.[11] In Hamilton v. Brown, 161 U. S. 256, a judgment of escheat was held conclusive upon persons notified only by advertisement to all persons interested. It is true that the statute under consideration required the petition to name all known claimants and personal service to be made on those so named. But that did the plaintiffs no good, as they were not named. So a decree allowing or disallow-

[8] Murray v. Hoboken Land Co., 18 How. 272, 277.

[9] Hurtado v. California, 110 U. S. 516, 528, 531; Holden v. Hardy, 169 U. S. 366, 388, 389.

[10] Hurtado v. California, 110 U. S. 516, 537.

[11] Pennoyer v. Neff, 95 U. S. 714, 727; The Mary, 9 Cranch, 126, 144; Mankin v. Chandler, 2 Brock. 125, 127; Brown v. Levee Commission, 50 Miss. 468, 481; 2 Freeman, Judgments, 4th ed., sections 606, 611.

ing a will binds everybody, although the only notice of the proceedings given by a general notice to all persons interested. And in this case, as in that of escheat just cited, the conclusive effect of the decree is not to put upon the ground that the State has an absolute power to determine the persons to whom a man's property shall go at his death, but upon the characteristics of a proceeding in rem.[12] Admiralty proceedings need only to be mentioned in this connection, and further citation of cases seems unnecessary.

Speaking for myself, I see no reason why what we have said as to proceedings in rem in general should not apply to such proceedings concerning land. In Arndt v. Griggs,[13] it is said to be established that "a State has power by statute to provide for the adjudication of titles to real estate within its limits as against non-residents who are brought into court only by publication." In Hamilton v. Brown,[14] it was declared to be within the power of a State "to provide for determining and quieting the title to real estate within the limits of the State and within the jurisdiction of the court after actual notice to all known claimants, and notice by publication to all other persons." I doubt whether the court will not take the further step, when necessary, and declare the power of the States to do the same thing after notice by publication alone.[15] But in the present case provision is made for notice to all known claimants by the recorder, who is to mail a copy of the published notice to every person named therein whose address is known (section 32). We shall state in

[12] Bonnemort v. Gill, 167 Mass. 338, 340. See 161 U. S. 263, 274.

[13] 134 U. S. 316, 327.

[14] 161 U. S. 256, 274.

[15] See Huling v. Kaw Valley Railway Improvement Co., 130 U. S. 559, 564; Parker v. Overman, 18 How. 137, 140, 141 et seq.

a moment our reasons for thinking this form of notice constitutional.[16]

But it is said that this is not a proceeding in rem. It is certain that no phrase has been more misused. In the past it has had little more significance than that the right alleged to have been violated was a right in rem. Austin thinks it necessary to quote Liebnitz, for the sufficiently obvious remark that every right to restitution is a right in personam. So as to actions. If the technical object of the suit is to establish a claim against some particular person, with a judgment which generally, in theory at least, binds his body, or to bar some individual claim or objection, so that only certain persons are entitled to be heard in defence, the action is in personam, although it may concern the right to or possession of a tangible thing.[17] If, on the other hand, the object is to bar indifferently all who might be minded to make an objection of any sort against the rights sought to be established, and if any one in the world has a right to be heard on the strength of alleging facts which, if true, show an inconsistent interest, the proceeding is in rem.[18] All proceedings, like all rights, are really against persons. Whether they are proceedings or rights in rem depends on the number of persons affected. Hence the res need be personified and made a party defendant, as happens with the ship in the admiralty, it need not even be a tangible thing at all, as sufficiently appears by the case of the probate wills. Personification and naming the res as defendant are merely symbols, not the essential matter. They are fictions, conveniently expressing the nature of the process and the result,—nothing more.

[16] See, further, Cook v. Allen, 2 Mass. 462, 469, 470; Dascom v. Davis, 5 Met. 335, 340; Brock v. Old Colony R. R., 146 Mass. 194, 195.

[17] Mankin v. Chandler, 2 Brock. 125, 127.

[18] 2 Freeman, Judgments, 4th ed., 606, ad fin.

It is true as an historical fact that these symbols are used in admiralty proceedings, and also, again merely as an historical fact, that proceedings in rem have been confined to cases where certain classes of claims, although of very divers sorts, for indemnification for injury, for wages, for salvage, etc., are to be ascertained. But a ship is not a person. It cannot do a wrong or make a contract. To say that a ship has committed a tort is merely a shorthand way of saying that you have decided to deal with it as if it had committed one, because some man has committed one in fact. There is no in priori reason why any other claim should not be enforced in the same way. If a claim for a wrong committed by a master may be enforced against all interests in the vessel, there is no juridical objection to a claim of title being enforced in the same way. The fact that it is not so enforced under existing practice affords no test of the powers of the legislature. The contrary view would indicate that you really believed the fiction that a vessel had an independent personality as a fact behind the law. Furthermore, naming the res as defendant, although a convenient way of indicating that the proceeding is against property alone,—that is to say, that it is not to establish an infinite personal liability,—is not of the essence. If, in fact, the proceeding is of that sort, and is to bar all the world, it is a proceeding in rem.

Then as to seizure of the res. It is convenient in the case of a vessel, in order to secure its being on hand to abide judgment, although, in the case of a suit against a man, jurisdiction is regarded as established by service, without the need of keeping him in prison to await judgment. It is enough that the personal service shows that he could have been seized and imprisoned. Seizure, to be sure, is said to be notice to the owner.[19]

[19] Scott v. Sherman, 2 W. Bl. 977, 979; Mankin v. Chandler, 2 Brock. 125, 127.

But fastening the process or a copy to the mast would seem not necessarily to depend for its effect upon the continued custody of the vessel by the marshal. However this may be, when we come to deal with immovables, there would be no sense whatever in declaring seizure to be a constitutional condition of the power of the legislature to make a proceeding against land a proceeding in rem.[20] The land cannot escape from the jurisdiction, and, except as security against escape, seizure is a mere form, of no especial sanctity and of much possible inconvenience.

I do not wish to ignore the fact that seizure, when it means real dispossession, is another security for actual notice. But when it is considered how purely formal such an act may be, and that even adverse possession is possible without ever coming to the knowledge of a reasonably alert owner, I cannot think that the presence or absence of the form makes a constitutional difference, or rather, to express my view still more cautiously, I cannot but think that the immediate recording of the claim is entitled to equal effect from a constitutional point of view. I am free to confess, however, that, with the rest of my brethren, I think that the act ought to be amended in the direction of still further precautions to secure actual notice before a decree is entered, and that, if it is not amended, the judges of the court ought to do all that is in their power to satisfy themselves that there has been no failure in this regard before they admit a title to registration.

The quotations which we have made show the intent of the statute to bind the land, and to make the proceedings adverse to all the world, even if it were not stated in section 35, or if the amendment of 1899 did not expressly provide that they should be proceedings

[20] Hamilton v. Brown, 161 U. S. 256, 274.

in rem.[21] Notice is to be posted on the land, just as admiralty process is fixed to the mast. Any person claiming an interest may appear and be heard (section 34).

But perhaps the classification of the proceeding is not so important as the course of the discussion thus far might seem to imply. I have pursued that course as one which is satisfactory to my own mind; but, for the purpose of decision, a majority of the court prefer to assume that, in case in which under the constitutional requirements of due process of law it heretofore has been necessary to give to parties interested actual notice of the pending proceeding, by personal service or its equivalent, in order to render a valid judgment against them, it is not in the power of the legislature, by changing the form of the proceedings from an action in personam to a suit in rem, to avoid the necessity of giving such a notice, and to assume that, under this statute, personal rights in property are so involved, and may be so affected, that effectual notice and an opportunity to be heard should be given to all claimants who are known, or who, by reasonable effort, can be ascertained.

It hardly would be denied that the statute takes great precautions to discover outstanding claims, as we already have shown in detail, or that notice by publication is sufficient with regard to claimants outside the State. With regard to claimants living within the State and remaining undiscovered, notice by publication must suffice, of necessity. As to claimants living within the State and known, the question seems to come down to whether we can say that there is a constitutional difference between sending notice of a suit by a messenger and sending it by the postoffice, beside publishing in a newspaper, recording in the registry

[21] St. 1899, c. 131, § 1.

and posting on the land. It must be remembered that there is no constitutional requirement that the summons, even in a personal action, shall be served by an officer, or that the copy served shall be officially attested. Apart from local practice, it may be served by an indifferent person. It may be served on residents by leaving a copy at the last and usual place of abode. When we are considering a proceeding of this kind, it seems to us within the power of the legislature to say that the mail as it is managed in Massachusetts is a sufficient messenger to convey the notice, when other means of notifying the party, like publishing and posting, also are required. We agree that such an act as this is not to be upheld without anxiety. But the difference in degree between the case at bar and one in which the constitutionality of the act would be unquestionable seems to us too small to warrant a distinction. If the statute is within the power of the legislature, it is not for us to criticise the wisdom or expediency of what the legislature has done.

We do not think it necessary to refer to the elaborate collection of statutes presented by the Attorney-General for purpose of showing that the principle of the present act is old. Although no question is made on that point, we may mention that an appeal is given to the Superior Court, with the right to claim a jury. In our opinion, the main objection to the act fails.[22]

The other objection to the constitutionality of the statute is with regard to the powers and duties of the recorder and assistant recorder. It is said that they are given judicial powers after the original registration, although not judicial officers under the constitution. The act of registration is the operative act to

[22] See Shepherd v. Ware, 46 Minn. 174; People v. Simon, 176 Ill. 165; Short v. Caldwell, 155 Mass. 57, 59; Loring v. Hildreth, 170 Mass. 328.

convey title (section 50), and by the act of 1898 the assistant recorder does it, unless in doubt (sections 53, 55, 57, 58, 61, 62, 63). It is said that, as his decision affects title, it must be judicial. But here again it is necessary to use a certain largeness in interpreting broad constitutional provisions. The ordinary business of registration is very nearly ministerial. There is no question to be raised, or which can be raised. If there is a question, either raised by any party in interest or occurring to the assistant recorder, it is to be referred to the judge for decision (section 53). But, whatever may be thought of the original act, by amendment even the ordinary business is to be done only "in accordance with the rules and instructions of the court."[23] Under this amendment registration is the act of the court. The fact that it may be done by the assistant recorder under general orders when there is no question is not different from the power of the clerk to enter judgment in cases ripe for judgment under a general order or rule of the Superior Court. It should be observed that by section 55 the production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, is conclusive authority from the registered owner for the entry of a new certificate or the making of a memorandum of registration, and that a registration procured by presenting a forged certificate, etc., is void.

Finally, it is said that there is no provision for notice before registration of transfers or dealings subsequent to the original registration. It must be remembered that at all later stages no one can have a claim which does not appear on the face of the registry. The only rights are registered rights, and when land is brought into the registry system there seems to be nothing to hinder the legislature from fixing the conditions upon

[23] St. 1899, c. 131, § 8.

which it shall be held under that system.[24] By section 45 the obtaining of a decree of registration, which is a voluntary act, is an agreement running with the land that the land shall be and remain registered land and subject to the provisions of the act. Furthermore, in deciding whether substantial justice is done, it is to be borne in mind that ordinary cases will present no question at all. It is contemplated, as we have said, that, if there is a question to be discerned, it shall be referred to the court, and, of course, that the court will order notice to any party interested. The act shows throughout the intent that no one shall be concluded without having a chance to be heard; and although some of its methods are new to this Commonwealth, we cannot say that the precautions as to notice are insufficient in substance or form.

Petition denied.

[24] People v. Simon, 176 Ill. 165, 176.

CHAPTER VII.

REGISTRATION IN OTHER COUNTRIES AND STATES.

The general principle of registration of title, whereby a title, examined once for all, is thereafter evidenced only by the certificate of title, which is conclusive and shows at all times all claims, adverse and otherwise, which need be noticed by one proposing to deal with the land, has been in continuous successful operation in some parts of Europe for several hundred years. The differences in different localities are only in details of mechanism. In Austria-Hungary registration dates from the twelfth century. In Baden the system dates from 1809; in Saxony, from 1843; and from successive dates, as adopted from time to time, it has come into use in all or nearly all of the German states, the latest, Alsace-Lorraine, beginning its use in 1891. Registration of title was made universal in Austria in 1811, in Hungary in 1849, and in Prussia in 1872.

The variety of conditions under which the system is administered in continental Europe is well stated in the following:[1]

"The particular examples collected in the detailed report (accompanying the main report) include, for instance, such great estates as the ancestral domains of the Bohemian nobility (among whom are to be found some of the largest land owners of Europe), subject to the strictest entails, carrying political privileges of the highest importance, and especially registered in immense separate volumes in the provincial capital;

[1] Report of C. Fortescue Brickdale, Esq., registrar of the land registry (England), made to the British government on the system of registration of titles now in operation in Germany and Austria-Hungary, 31 American Law Review, 827.

they also include (by way of contrast) the tiny subdivisions of the peasant proprietors of the Rhine provinces, where the principles and practices of the Code Napoleon are still deeply rooted in the customs and feelings of the people. They include, on the one hand, specimens taken from the rapidly developing building properties in the suburbs of Berlin, with their villa residences and restrictive covenants, and, on the other, remote Silesian manors, with their tenant farmers, antique rights of common and commuted rents, and services dating from feudal times. They show the system as applied to vast, featureless plains, like the corn-growing regions of Hungary, to the busy mining and industrial districts of Saxony and the Black Country of Germany close to the Russian frontier, as well as to the picturesque Alpine hamlets and pastures, with their innumerable independent right of way, water and other complicated easements, to be found in Syria and the Saltzkammergut; they pass from the intricacies of cellars and flats, courts and passages, of the Jews' quarter of the City of Prague, to the simple conditions of a quiet agricultural district in Brandenburg; from mortgages on first-class properties involving hundreds of thousands of pounds, and subject to the most complicated subsequent dealings by way of transfer, alteration, subdivision and collateral security, down to rows of petty charges on diminutive shares in an inconsiderable estate from great cities, where values are measured almost by the square inch, to trackless wastes and bare mountains of scarcely any value at all. Over the whole of this vast and diversified tract, embracing an area more than seven times the size of England and Wales, systems of registration of title differing in no essential particular from the systems established under the Torrens Acts in Australia, and partially established under the Land Registry Acts in

England and Ireland, having been in almost universal operation for a considerable period, amounting in the principal Austrian provinces to upwards of eighty years, and in certain places dating from a much more remote period."

The success of the system in Australia is most notable. The first act, passed in 1858 in South Australia, was drafted by Sir Robert Richard Torrens. All other acts in English-speaking countries follow that act in general outlines, and the method is commonly known as the Torrens system. In 1861 it was adopted in Queensland, Tasmania and Victoria, and in 1862 in New South Wales. New Zealand followed in 1870, and Western Australia in 1874, since which date it has come into general use throughout all of the British Australian colonies. Its unquestioned success in the Australian colonies has led to its use in the greater part of Canada and the other British possessions in North America, British Columbia having adopted it in 1870, and Manitoba and Ontario in 1885. The system is in use also in a part of Switzerland and in Tunis.

The history of the system in England is instructive. Three different laws have sought to give to English land owners the benefits of registration of title: The Westbury Act in 1862, the Cairns Act in 1875, and the present Land Transfer Act of 1897. The first two furnished but partial relief, registration being optional and opposition constant from the legal profession. The act of 1897 establishes compulsory registration of title. It is not by its terms operative at once upon all land, but the law is made operative upon all land in such county or part of a county named from time to time by order in council, and, after such order, no owner is permitted to sell his land without previous registration of title. A large part of the land in London is now under the act, and by May 1, 1901, no title in the city or

county of London can be transferred unless registered. A similar policy is likely to be soon pursued by the council with reference to lands in the other counties. Compulsory registration is thus proceeding as rapidly as the necessary examination of titles can be made by the registrar and his officials. A large number of properties have already been placed upon the register without any yet reported loss to adverse claimants, and the certificates of title meet with general satisfaction.

The order now in force as to lands in the County of London is as follows:

ORDER IN COUNCIL.

At the court at Windsor, the 28th day of November, 1899. Present the Queen's Most Excellent Majesty, in Council.

Whereas, it is expedient as regards certain portions of the County of London that the operation of the order in council, dated the eighteenth of July, one thousand eight hundred and ninety-eight, and made pursuant to the Land Transfer Act, 1897, should be postponed;

Now, therefore, Her Majesty is pleased, by and with the advice of her Privy Council, to order and declare that as regards the hereunder mentioned portions of the said county the said order is to be read and to take effect as if the schedule therein had been expressed as follows:

PORTIONS OF THE COUNTY.	Days on and after which registration of title to land is to be compulsory on sale.
The parishes of Christ Church (Southwark),	
St. George the Martyr, Camberwell Horselydown.	
Lambeth, Bermondsey, Newington, Rotherhithe.	

Saint Olave and Saint Thomas, Saint Saviour and the detached part of the Parish of Streatham, situate between the parishes of Lambeth and Camberwell.	1 January, 1900.
The parishes of Battersea, Clapham, Putney, Tooting Graveney, Wandsworth and the remainder of the Parish of Streatham.	1 May, 1900.
The remainder of the county, except the City of London.	1 November, 1900.
The City of London.	1 May, 1901.

The present buildings in London occupied as the offices of the registrar, having become inadequate to the wants of the land registration department, by the terms of a recent act of parliament,[2] the sum of $1,325,000 has been appropriated for the acquisition of a large tract of land in Lincoln's-inn-fields and the erection of a new building suitable for the enlarged needs of the department. The new quarters are in course of progress, and when completed will provide sufficient office space for the registration of all land titles in England.

Four of the States in the United States have adopted a Torrens law, each with registration optional to the owner. These are, in order of time, Illinois, in 1895 and 1897, Ohio in 1896, California in 1897 and Massachusetts in 1898.

What has been done in Illinois is stated in a preceding chapter. The Ohio act was held invalid by the Supreme Court of that State in the case of State v. Guilbert.[3] The California law has not yet received judicial construction.

Agitation upon the subject of land transfer in Massachusetts was formally begun in 1891, by a discussion

[2] Land Registry (New Buildings) Act, 1900.

[3] 56 Ohio St. 575.

of the Torrens system in the inaugural address of the late Governor Russell, and his message to the legislature, dated February 17, 1891, in which he strongly recommended the adoption of registration of titles as follows:

"In my inaugural address I referred to the fact that the subject of a thorough reform in our system of land registration and transfer would be brought before you, and commended the matter to your serious consideration. Since that time public-spirited citizens of various business organizations have been manifesting an interest in this question, and through the press and otherwise it is coming prominently before the people for discussion. In view of the great benefits which I believe can be realized by the adoption of the new methods, I deem it proper to bring the matter specially and prominently to your attention.

"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. Our citizens demand the enactment of the best legislation that can be devised, whether originated here or elsewhere, and, while another country, whose conditions are similar to our own, has gained the credit of first adopting the admirable and simple plan of land transfer which I now call to your attention, we can yet be the first among the States of the Union to place this legislation upon our statute book and to lead the way in its adoption by the American people, as we have already done in the case of the Australian ballot. The universal favor with which this latter system has been received by our people should at least remove any

prejudice against following the legislation of the same country in another respect.

"The need of some new system of land transfer is shown by the growing public dissatisfaction caused by the delays and the expense attending our present system of registration of deeds. That system has existed in this Commonwealth for a little more than two hundred and forty years. In former days, when our population was smaller, it apparently satisfied the popular demand; but, with increase of population, it has become less serviceable. Our people are now largely concentrated in cities and populous towns. The last national census shows that forty-seven cities and towns, having each more than eight thousand inhabitants, contain seventy per cent. of our whole population. The density of the population, with the greater subdivision of land and increase of real estate transactions which it involves, is reflected in the mass of the records in our registries of deeds. The four containing the largest number of volumes are those of the Middlesex south District, of Suffolk county, of the Worcester district and of the Essex south district. These contain respectively at the present time 2,022, 1,979, 1,355 and 1,300 volumes. The increase in the number of volumes in three of these registries during the period of thirty years, from the end of the year 1860 to the end of the year 1890, was as follows: In the Suffolk registry, from 790 to 1,974 volumes, an increase of 150 per cent.; in the Middlesex south district registry, from 872 to 2,014 volumes, an increase of 131 per cent., and in the Essex south district registry, from 617 to 1,297 volumes, an increase of 110 per cent. Middlesex south registry now contains 2,810 volumes; Suffolk, 2,677; Worcester district, 1,653, and Essex south district, 1,606.

"In the historical pamphlet written by John T. Has-

sam, A. M., on the registers of deeds for the County of Suffolk, being a part of the proceedings of the Massachusetts Historical Society for March, 1900, the author says: 'The great increase in the bulk of the records in the Suffolk registry of deeds can be best comprehended by bearing in mind that nineteen books contained all the deeds and other instruments left for record from the first settlement of the country down to the year 1700. On January 1, 1800, the number had risen to 193; on January 1, 1850, there were 606 books on the shelves, and on January 1, 1875, 1,250 of them; on January 1, 1900, they had increased to 2,656 in number. So that there have been added in the last twenty-five years more books than had been filled during the entire period that had preceded it. These are huge folio manuscript volumes, containing, most of them, 640 pages each. When the present register entered upon the duties of his office there were 1,029 volumes in the registry, so that he has attested as many volumes of the records as all his predecessors put together and half as many more besides.'

"These figures indicate such a rapid growth in the mass of the records that at no distant day even the question of providing room for the records will be a matter of serious concern. But we are already met by the more serious difficulty that the present mass of records is so great that much time and labor must be spent in searches in order to ascertain the transactions which affect the title to any piece of land. This causes delay and expense in completing transfers, even if the most complete methods of indexing should be employed, so as to reduce to a minimum the time required in searching the records—and our present methods are by no means perfect. The delay and expense attending the present system form a serious tax upon purchasers and mortgagors of land, which

bears with special weight upon owners of small estates.

"The first point which should be noted in connection with the Torrens system is that its use is optional and not compulsory; existing methods of transfer can be continued precisely as at present. It remains entirely within the option of every land owner whether he will avail himself of the privileges offered by the new system or not, and, therefore, no one loses any right which he now possesses. The new method must secure support from the public not through compulsory legislation, but through the greater advantages which it offers.

. . . . . .

"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 rights ascertained and established as 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 re-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 unofficial 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 title 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.

"The contrasts in practical effect between the two systems are, therefore, very great. Under the system of registration of deeds, we have 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 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, the state of the title can be ascertained at any time by simple inspection of the certificate on record. Therefore, with the added advantage of great 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. The result is that

under the Torrens system real estate can be transferred or pledged for loans with almost as much ease as stock in corporations.

"A further feature of the system is worthy of notice. When land is first registered and a certificate of title is issued, or when it passes by will or descent on the death of an owner, the applicant, devisee or heir is required to pay a small percentage of the value of the land, generally about one-fifth of one per cent., into the public treasury. The sums so paid form an 'assurance fund' which is held for the payment of indemnity to any person who may have had some claim upon, or interest in, land admitted to registration, and who failed to receive notice of the application, or for other sufficient cause did not assert his claim. Under our system, on the other hand, a purchaser may have paid full value for his land, yet if any outstanding claim or interest is overlooked, he is obliged to make further payment and may be remitted for his remedy to a suit upon covenants which have no practical value.

"Again, technical claims are sometimes passed over by one attorney as of no consequence, but by subsequent requirement of some other attorney, who thinks them of importance, the owner may be subjected to delay and expense in obtaining a release.

"Such being, in brief, the features of the Torrens system as contrasted with that which we now employ, argument seems almost superfluous in support of the advisability of adopting it. While a system which gives absolute security of title and makes transfers easy, quick and inexpensive, tends to make all land more valuable, its benefits will be especially felt by two great classes of our people,—the small land owners and the borrowers upon mortgage. Widely distributed proprietorship of land and the ownership by the people, to the greatest possible extent, of the homes in which

they live, are so obviously desirable that I need not dwell upon them. It is evident that the masses of the people are more injuriously affected by the insecurity and expense connected with our present system than the rich; the smaller the piece of real estate, the greater is the proportionate expense of transferring it. Under the Torrens system, the expenses of transfer are based upon a fixed percentage of the value of the estate, so that a small estate is not subjected to a greater proportionate charge than a large one. Then, too, ease and cheapness of transfer are of more consequence to a man whose whole property is invested in a small piece of real estate than to the large land owner, as it is more important to the former to be able easily to dispose of his property to meet any sudden exigency.

"The convenience and relief afforded by this new system to all who borrow upon mortgage will be very great. The facility of raising money easily and cheaply upon landed security is of great consequence to the prosperity and development of a community. By abolishing the tax formerly imposed upon mortgages, our State has already relieved borrowers of one unjust and oppressive burden, to the great advantage of the public, and the additional step now proposed will confer further benefit in the same direction. The power of readily pledging real estate will also prove of great importance to the business community. At present the delays involved in an examination of title often prevent a business man from obtaining a needed advance to meet a sudden stringency in the money market. At times when loans are contracted and credit is shaken it would be of great benefit to business if all the real estate of the community, possessing, as it does, greater stability of value than anything else, could be as immediately available as a

means of raising money as stocks of goods or other personal property."

After the consideration of several bills relating to the subject, in 1898 the present law was enacted.[5] This act went into effect October 1, 1898, and the court of land registration, which exercises supervision over the recorder (or registrar) and his assistants, who are the recorders of deeds in the several counties of the State, was opened for business on October 14, 1898. The validity of the act was before the Supreme Court of Massachusetts in Tyler v. Judges of the Court of Registration,[6] and there held valid and constitutional. Upon an attempted review of the case in the Supreme Court of the United States[7] it was found that no federal question was involved, and the writ of error was, therefore, dismissed for want of jurisdiction.

[5] Mass. Acts of 1898, ch. 562.
[6] 175 Mass. 71.
[7] Tyler v. Judges of Court of Registration, 179 U. S. 405.

CHAPTER VIII.

CIRCULAR LETTERS REGARDING OPERATION OF TORRENS LAW IN COOK COUNTY.

April 15, 1900.

Dear Sir:—

At the regular meeting of the Chicago Real Estate Board, February 7, 1900, the following resolution was passed:

"Resolved, That we approve of the Torrens Law as now in operation in this County, and direct the Torrens Committee to take, from time to time, without expense to this Board, all steps necessary to conserve the interests and secure the public use of that law; and be it further

"Resolved, That Francis B. Peabody and John S. Miller be added to the Committee."

The Torrens land title law has been in operation in Cook County, Ill., since February, 1899. During this period property valued at over $1,100,000.00 has been registered, on which are mortgage liens amounting to upwards of $180,000.00.

A title registered under the Torrens system can be dealt with more safely, quickly and inexpensively than under the old system. The expense of the first registration, in most cases about $24.00, is not equal to the cost of an abstract since the Chicago fire, if there have been many transfers; and the cost of each subsequent transfer under the Torrens system, $3.00, is much less than the expense of a continuance of abstract and examination of title.

When the title is once registered, a sale or mortgage loan can generally be closed within a few hours.

If desired, surety bonds upon registered titles under the Torrens Law, can be obtained at a reasonable cost, at any time after the issuance of the certificate, from the American Surety Company, a corporation with assets of over five million dollars.

Sales and mortgages, thus quickly closed, secure owners from the danger of unnecessary delay in waiting for an abstract, or its examination, or complications arising from illness, death or absence of any party interested.

Owners of registered titles are enabled to sell or mortgage their property without annoying delays or difficulties. It is apparent that they appreciate the benefits of this law.

In promoting this reform, the Chicago Real Estate Board has spent many thousands of dollars, and devoted its unremitting efforts for over NINE YEARS.

The Torrens system was first introduced to the Illinois Legislature in 1891. Through the influence of the Board, in 1897, the present law was passed. This law has since been declared CONSTITUTIONAL and VALID by the SUPREME COURT of ILLINOIS.

We respectfully call the attention of all property owners to this law and its advantages, and urge the registration of titles, believing that the saving of time and of money, together with the security afforded by registered title, will be a boon to all property owners.

The facility of transfer and safeguards obtained through this law will add to the value of the land.

The law is of special value to smaller property holders, to whom the present system is a source of never-ending and heavy expense.

Registration blanks and general information regarding the Torrens Law can be obtained at the office of the Registrar of Titles of Cook County, Room 320, County

Building. Inquiries by mail will receive prompt reply.

Respectfully yours,

Louis A. Seeberger,
William A. Bond,
Dunlap Smith,
Willis G. Jackson,
Francis B. Peabody,
John S. Miller,
Eugene H. Fishburn,
Josiah L. Lombard,
Joseph Donnersberger,
Henry S. Dietrich,
C. L. Hammond,

The Torrens Committee of the Chicago Real Estate Board.

PEABODY, HOUGHTELING & CO.,
164 DEARBORN STREET.

CABLE ADDRESS,
"HOUGHT, CHICAGO."

Chicago, December 28, 1899.

Louis A. Seeberger, Esq.,
Chairman Torrens Committee,
Chicago Real Estate Board, City.

Dear Sir:

Mr. Sheldon, Official Examiner of Titles under the Torrens Law, has asked me to say something to you in regard to my experience under the law and my opinion of its practical working, which I am glad to do.

Fortunately, the Supreme Court, after hearing arguments of very able counsel upon all the material features of the law, sustained its constitutionality, so that the public mind is now at rest as to validity of the law.

The practical working of the law has proven so simple, expeditious and inexpensive that it is growing in popular favor, and when the public shall have become quite familiar with the system I believe it will come into very extensive use.

My firm accepts the Registrar's certificates of title without further guaranty, whenever offered in our mortgage loans, and are glad to get them.

Yours truly,

(Signed) FRANCIS B. PEABODY.

CHAPTER IX.

REGISTRATION OF TITLE LITERATURE.

Periodical Articles, Addresses, etc.

Registration of Title.

Land Reforms. Duke of Argyle. Contemporary Review. April, '85.

Question of Land. G. S. Lefevre. Nineteenth Century. October, '85.

Transfer of Land. H. W. Elphinstone. Law Quarterly Review. January, '86.

An American View of the English Land Problem. J. Swann. National Review. January, '86.

The Laws Relating to Land. J. F. Stephen. National Review. February, '86.

Free Land. Lord Hobhouse. Contemporary Review. February-March, '86.

Registration of Title to Land. Westminster Review. July, '86.

Registration or Simplification of Title. H. Greenwood, 6 Law Quart. Rev., 144.

Compulsory Registration of Titles. H. W. Challis, 6 Law Quart. Rev., 157.

Forged Certificates of Title. 11 Canadian Law Times, 127.

Forged Transfers. J. R. Adams, 8 Law Quart. Rev., 151.

Registration of Title in Ireland. 93 Law Times, 51.

Registration of Title in Ireland. 92 Law Times, 106.

Record of Title to Land. H. W. Chaplin, 6 Harv. L. Rev., 302.

Registration of Title in Ireland. C. F. Brickdale, 7 Law Quart. Rev., 184.

The supposed conclusiveness of a land transfer certificate under the Torrens system. 27 Am. L. Rev., 89.

Reply to Criticisms of the Torrens System. 7 Har. L. Rev., 24.

Registration of Guaranteed Title. 31 Solicitors' Journal and Rep., 104.

Dealing With Registered Land. 35 Solicitors' Journal and Rep., 291.

Thoughts on Registration of Title. 28 Solicitors' Journal and Rep., 627.

Registration of Title to Land. Jos. H. Beale, 6 Harv. L. Rev., 369.

Registration Bill. 55 Just. of Peace, 83.

Registration of Title. 37 Solicitors' Journal and Rep., 795, 797, 801, 802.

Land Transfer. Australian System. B. G. Schley, 32 Cent. L. J., 160.

Land Transfer Bill of 1888. 85 Law Times, 32.

Land Transfer Bill of 1889. H. M. Humphrey, 5 Law Quart. Rev., 275.

Same. 86 Law Times, 423, 430, 445, 480.

Same. 24 Law Journal, 178.

Land Transfer Bill. 32 Sol. J. & Rep., 3, 285, 301, 318, 365, 444; 33 id., 411, 435.

The Proposed Land Transfer. A. Rumsey, 12 Law. Mag. & Rev. (4th S.), 361.

Land Transfer Bill, 1887. A. Robertson, 13 Law Mag. & Rev. (4th S.), 85, 155.

Land Transfer Bill, Exit of. 33 Sol. J. & Rep., 585.

Solicitors and Land Transfer. 34 Sol. J. & Rep., 91.

Australian Land Transfer. H. Chaplin, J. Hassam, 4 Harv. L. R., 271, 280.

Same. J. Lowman, 25 W. L. Bul., 209.

Land Transfer. H. B. Hurd, 25 Am. L. Rev., 367.

Land Transfer Reform. 28 Can. Law Journal, 35.

Third Reading of Land Transfer Bill. 33 Sol. J. & Rep., 555; 24 Law Jour., 389.

Land Transfer Reform. J. W. Jenks, 2 Annals Am. Acad., 48.

Land Transfer and Registration. W. D. Turner, 25 Am. Law Rev., 755, 806.

Land Transfer. F. V. Balch, 6 Harv. L. R., 410.

Land Transfer Bill. Action of the Profession. 33 Sol. J. & Rep., 279; 37 id., 773.

Land Transfer Bill. 33 Sol. J. & Rep., 264; 34 id., 311.

Land Transfer Bill. Sir Henry James, on 33 Sol. J. & Rep., 538.

Land Transfer Bill. 82 Law Times, 409, 428, 439; 83 id., 3, 102, 133, 265, 305, 329, 359, 355, 408, 446, 467; 37 id., 351, 368, 384, 754; 38 id., 35, 550, 585; 40 id., 124, 560; 44 id., 251, 289, 308, 380, 344, 324, 168, 466, 691.

Same. 31 Sol. Journal & Rep., 359, 374, 381, 390, 407, 424, 425, 439, 476, 490, 505, 521, 541, 545, 563, 572, 589, 622, 673, 715, 743, 761, 771; 42 id., 42, 61, 179, 210; 43 id., 750, 759, 815; 44 id., 81, 87.

Same. F. H. Colt, 23 Law Journal, 141.

Same. 3 Law Quart. Rev., 263.

Same. 22 Law Journal, 201, 210, 225, 251, 266, 299.

Registration of Land Titles in Prussia. 31 Sol. Journal & Rep., 606.

Transfer of Land Titles. (Symposium.) A. Orendorff, H. Bigelow, E. Callahan, H. B. Hurd. Proceedings Illinois State Bar Association for 1892, page 170, et seq.

Registration of Title in Prussia. C. F. Brickdale. 34 Law Quart. Rev., 63.

Land Titles in Australia. Edward Atkinson. Vol. 21, Century, 586.

Registration of Title. Theodore Sheldon, Chicago, 1883.

The Torrens System. F. T. Terry, in Report of Second Congress, National Real Estate Association, 1892. Page 157.

Titles and Transfers. J. C. Simpson, in Report of Second Congress, National Real Estate Association, 1892. Page 163.

Transfer of Land in Australia. G. H. Wallace, U. S. Consular Reports, Vol. 42, p. 327.

Land Transfer Reform. Charles F. Libby, 28 Am. L. Rev., 96.

Registration of Title in Germany and Austria-Hungary. C. F. Brickdale, 31 Am. L. Rev., 827.

Land Registration, 32 Am. L. Rev., 760, 930.

Land Title Registration. W. D. Turner, 33 Am. L. Rev., 42, 136.

Land Transfer. R. R. Torrens, 53 Spectator, 1024.

Reform of Land Laws. 29 Nation, 270.

Consular Report of G. W. Griffin. State Department, Washington, D. C.

Registration of Title. H. B. Hurd, before Illinois State Bar Association, Jan. 29, 1892.

Torrens System. A. M. Pence, Chicago Legal News, 13 Jan., 1894.

Torrens System. M. M. Yeakle, Chicago, 1895.

Land Law Reform. G. A. Morgan, Fortnightly Rev., Dec., 1879.

Registration of Title. Proceedings of World's Real Estate Congress, Chicago, Oct., 1893.

PARLIAMENTARY AND LEGISLATIVE REPORTS.

Report of the Real Property Commissioners, '32.

Report of the Registration and Conveyancing Commissioners, '50.

Report of the Commissioners on Sale and Transfer of Land, '57.

Report of Special Committee on Sand, Tile and Transfers, '78-79.

Supplementary Returns to the House of Commons, upon the System of Conveyancing by Registration of Title, in Operation in South Australia, Queensland, New South Wales, Victoria, Tasmania, Western Australia, New Zealand, British Columbia and Fiji, '79.

Report of the Royal Commission of Inquiry into the Working of the Real Property Acts, '61-77. Queensland, '79.

Same, '83.

Handy Book of the Land Transfer Acts, Containing Copies of Acts Issued from the Office of the Registrar-General of Land. Wellington, New Zealand, '78.

Registration of Titles in the British Colonies. House of Commons Returns by Colonial Authorities, '81.

The Torrens System of Conveyancing, Report to the Legislature of the Straits Settlement. W. E. Maxwell, Singapore, '83.

Report of Joint Special Committee, Massachusetts, 1892.

Report of Land Transfer Commission, Illinois, 1893.

Report of Australian Governors, House of Commons Blue Book, 1872.

Report of Real Property Commission, Adelaide, 1861.

TREATISES.

Registration of Title to Land. Brickdale, Lond., '86.

Registration of Title and Transfer of Land. F. H. Colt, London, '73-85.

Registration of Title. H. B. Leech, Lond., '91.

Registration of Titles to Real Estate. L. W. Coutlee, Toronto, '90.

The Reform in the English Land System. Land Transfer Reform. J. H. Mason, Toronto, '83.

Torrens System of Land Transfer in Ontario and Manitoba. H. C. Jones, Toronto, '86.

An Essay on the Transfer of Land by Registration. R. Torrens, Lond., '91.

Practice of the Office of Titles of Victoria. Sedgefield, Melbourne, '89.

Statement on the Land Laws by the Council of the Incorporated Law Society, 1893.

Land Transfer; Report of Bar Committee. Lond., '86.

Manitoba and Northwest Territories. L. W. Coutlee, Toronto, '90.

New Zealand Land Transfer Act, 1885, with amendments. Wellington, N. Z., '85-89.

La Propriete Consolidee. E. Worms, Paris, '88.

Official Draft of the Law Relating to Registration of Titles for the German Empire. (Nebst Motiven.) Official edition. (Ger.) Berlin, '89.

Prussian Legislation concerning Registration of Title. 2nd official edition. (Ger.) Dr. Fischer. Berlin, '92.

System of Land Tenure in Various Countries. London, '92.

Registration of Title. W. B. Dill. London, 1893.

Land and Mortgage Registration. H. Morris. London, 1895.

Land Registry. C. F. Brickdale. Lond., 1892.

Registration in Middlesex. C. F. Brickdale. Lond., 1892.

Notes on Land Transfer. C. F. Brickdale. Lond., 1894.

Land Transfer and Registration of Title in Ireland. Madden. London, 1892.

Les Livres Fonciers. Emmanuel Besson. Paris, 1892.

Registering Title to Land. Jacques Dumas. Callaghan & Co., Chicago, 1900.

Land Registration Act of Mass. C. C. Smith. Boston, 1900.

APPENDIX.

AMERICAN SURETY COMPANY OF NEW YORK.

Capital $2,500,000.00
Assets $5,283,636.00

Principal Offices, 100 Broadway, New York.

Chicago Office, 704-711 Marquette Building. Telephone, Central 395.

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$ 1	$2,000	$10.00	$12.00	$14.00	$16.00	$18.00	$20.00	$2.00
2,001	2,500	12.50	15.00	17.50	20.00	22.50	25.00	2.50
2,501	3,000	15.00	18.00	21.00	24.00	27.00	30.00	3.00
3,001	3,500	17.50	21.00	24.50	28.00	31.50	35.00	3.50
3,501	4,000	20.00	24.00	28.00	32.00	36.00	40.00	4.00
4,001	4,500	22.50	27.00	31.50	36.00	40.50	44.50	4.50
4,501	5,000	25.00	30.00	35.00	40.00	45.00	50.00	5.00
5,001	5,500	26.50	31.50	36.75	42.00	46.25	52.50	5.25
5,501	6,000	27.50	33.00	38.50	44.00	49.50	55.00	5.50
6,001	6,500	28.75	34.50	40.25	46.00	51.75	57.50	5.75
6,501	7,000	30.00	36.00	42.00	48.00	54.00	60.00	6.00
7,001	7,500	31.25	37.50	43.75	50.00	56.25	62.50	6.25
7,501	8,000	32.50	39.00	45.50	52.00	58.50	65.00	6.50
8,001	8,500	33.75	40.50	47.25	54.00	60.75	67.50	6.75
8,501	9,000	35.00	42.00	49.00	56.00	63.00	70.00	7.00
9,001	9,500	36.25	43.50	50.75	58.00	65.25	72.50	7.25
9,501	10,000	37.50	45.00	52.50	60.00	67.50	75.00	7.50
For each additional	500	1.25	1.50	1.75	2.00	2.25	2.50	.25

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