

TRANSFER OF REAL ESTATE.

effects of our present system of land transfer are so well known to all practising lawyers, that the introduction of any simpler system which would effectually obviate these defects would meet with the cordial support of the profession.

For the last twenty years the greatest English lawyers have been endeavouring to devise some scheme which shall effect this much desired end; but the glory of delivering the country from the incubus of our present system of conveyancing must rest, not with lawyers, but with a layman whose strong practical sense has enabled him to cope successfully with a difficulty which has foiled the efforts of more than one Lord Chancellor.

In 1862, the late Lord Westbury thought he had discovered a panacea for the evil, and an act was passed under his auspices, of which golden hopes were formed. After a short trial, however, it proved to be a most complete and absolute failure. Mr. Osborne Morgan, of Burial Bill notoriety, in 1874 thus amusingly depicted its collapse: "The present duties of the Land Registry Act Office in Lincoln's Inn Fields consists not in putting titles on the register, but in taking them off. He had been in the habit of passing it daily for many years, and in that long course of time he never saw a single person enter it. The courtyard leading to it was a wilderness; it was covered with grass and weeds—weeds, he might say, grown as high as a man—and was as desolate in appearance as any property that had been in Chancery." Such was the result of Lord Westbury's labours.

Repeated failures, however, have not resulted in despair; on the contrary, renewed efforts have been recently made, and resort has at last been had in England to the South Australian system, the introduction of which into this country is advocated in the paper we have referred to. The Imperial Statute 38 & 39 Vict.,

cap. 87, which came into force on the 1st January last, is based on the South Australian system of Sir Robert Torrens.

The object of the act is to enable land to be transferred somewhat on the same principle as ships are now transferred, and to secure indefeasible titles to owners of real estate. It aims at getting rid of the necessity of investigating the rights of prior owners, and thus doing away with lengthy abstracts and searches into prior transactions in reference to the land, which is the necessary consequence of our present system. The English act is a modification of the Australian, and whether or not it is likely to prove as efficient in its operation, it can hardly fail to be productive of beneficial results.

The English act admits of the registration of three classes of titles. (a) Those that have been submitted to judicial investigation and are found to be absolute and freed from encumbrances; (b) Those that have been submitted to judicial investigation and are found subject to certain specified qualifications; and (c) those which have not been submitted to judicial investigation, and which are only claimed to be possessory. As to the first two classes, the title of the registered proprietor as it appears on the register is to be absolute and indefeasible, but as to the third class, the rights of any claimants adverse to that of the first registered proprietor are preserved, and may be enforced notwithstanding registration. As to this last class, Lord Selborne, when speaking on the subject in 1873, said: "We think that a registration founded on ostensible or possessory ownership should be permitted in the first instance; in the meantime the titles would be as good at least as they are at present; every year would tend to bring nearer the time when the register alone would be sufficient to prove the title, and every transfer would be unattended with a considerable portion of the present expense."