

English law, clung to real property transactions down to the present time.

The result is that, when rights in land are created or transferred, the document embodying the arrangement is surrounded by many incidents, and affected by many statutes and precedents which are not set out in it, but which, nevertheless, vitally affect the rights of the parties. No one can explain a deed intelligently unless he knows something of feudal conveyancing, and no one can construe it accurately unless he refers to the Law and Transfer of Property Act, and probably also to one of the Short Forms Statutes. A grant, mortgage or lease, therefore, is not a simple, but a very complicated transaction, and, if all that a short form deed implies were written into it, it would be a very long and mysterious document.

With those parts of the law, either judicial or legislative, which merely regulate or interpret a deed, this article does not deal, and this discussion is limited to those parts of it which are read into the deed by the employment of symbols, and chiefly to the covenants for titles.

It was these covenants for title which contributed largely to the length of deeds, and they illustrate the changes which have taken place in our conveyancing. Originally where a deed was made, certain warranties, express or implied, accompanied the actual transfer of the seisin. The germ of them lay in the protection which the lord afforded his tenant, and which was incident to the oaths of fealty and homage accompanying a feudal real estate transaction. It might mean physical defence of the tenant's possession; it did mean defence of his title in the Courts, and an unsuccessful defence resulted in judgment directing the warrantor to substitute other lands equally valuable for those of which the tenant had been deprived. It was by a perversion of these principles that conveyancing by means of common recoveries became possible. This "learning of warranties," which Sir Edward Coke describes as "one of the most curious and cunning learnings of the law and of great use and consequence" (Co. Inst. 366a), had, "by repeated Acts of the Legislature, been reduced to a very narrow compass": note 315, Co. Inst. 365a.