

SIMPLIFICATION OF LAND TITLES AND TRANSFERS.*

Having been invited by the Committee on Organization to say a few words with respect to the operations of the Torrens System of Land Transfer in Canada, while acceding thereto with pleasure, I must express the regret I feel, that not being aware that I should be expected to speak on the subject, until since my arrival in this city on another errand a few days ago, I have not been able to provide myself with those statistics and that accurate information which I should like to be able to lay before you, nor to prepare such an address as befits so important an occasion.

Not being personally known to many, if any, of the members of this large and important assemblage, permit me, Mr. President, to say that for nearly forty years I have been intimately associated with an institution in Toronto whose function it is to supply capital to owners of real estate. Its operations extend from, and including, the Province of Ontario to the Pacific Ocean. The legal proceedings necessary to ensure the Company's title as Mortgagee to the securities offered are to me a matter of daily observation. The difficulties, vexatious delays, expense, and uncertainty attending the old method of transfer have made a deep impression on me. Many a time have I asked the question, why is all this circumlocution required in every transaction in Land, no matter how small its value, when Stocks and Bonds to any amount may be transferred in a few minutes, with safety to the buyer and with little or no expense? For a long time I was led to believe that there was no remedy, that there was something inherent in land which prevented its being dealt with as other kinds of property, that like taxes and death the evil was inevitable and must be endured. The scheme devised and elaborated by Sir Robert Torrens, and now for more than thirty years in successful operation in the Australian Colonies of Great Britain, has demonstrated that this belief is fallacious. Add to this the testimony of the highest legal authority in England, that of Lord Chief Justice Coleridge, who said:—

"I have never been able to perceive the obstacle to applying to land the system of transfer which answers so well when applied to shipping; but, as my learned brethren, one and all, have declared that to be impossible, I had become impressed with the belief that there must be something wrong in my intellect, as I failed to see the impossibility. The remarkably clear and logical paper which has been read by Sir Robert Torrens, relieves me from that painful impression, and the statistics of the successful working of his system in Australia amounts to demonstration; so that the man who denies the practicability of applying it might as well deny that two and two make four." (Extract from a speech delivered by Lord Coleridge, now Lord Chief Justice of England, presiding at the Congress of the Law Amendment Society at Cheltenham, England, in 1872).

Having become convinced that there

* An address delivered before the World's Real Estate Congress, by J. Herbert Mason, Toronto

was no good reason why land could not be dealt with as easily as other kinds of property—ships, for instance; that the complications surrounding its transfer were of human device and could be removed by human effort, a few gentlemen whose attention had been called to the subject, met in Toronto, in 1883, and formed the Canada Land Law Amendment Association. They immediately began a vigorous agitation for obtaining necessary legislation. To arouse popular sentiment we held public meetings, addressed County Councils, Boards of Trade, Farmers' Institutes, and other local bodies, and distributed thousands of explanatory pamphlets. One of these pamphlets contained an Address I had the honour to deliver before the Canadian Institute on the 1st of December, 1883, which contained the following passage:—

"The method of Land Transfer, and the Registry Laws in force in Ontario, are considered as perfect as any that exist, which aim simply at being a record of deeds and documents that have to be examined, and their legal effect pronounced upon, every time the title is investigated. They are free from some of the difficulties that arise under the system in operation in New York, and some other States of the Union; but the following remarks, taken from the New York Herald, are measurably as applicable here as they are there: 'Lately the Jumel property was cut up into 1,383 pieces or parcels of real estate, and sold at partition sale. There appear to have been about three hundred purchasers at that sale, and no doubt each buyer, before he paid his money, carefully employed a good lawyer to examine the title to the lot or plot that he had bought; so that three hundred lawyers, each of them carefully examined and went through the same work, viz., the old deeds and mortgages and records affecting the whole property (for, as it had never been cut up before, each had to examine the title of the whole, no matter how small his parcel), and each of them searched the same volumes of long lists of names, and picked out from the 3,500 volumes of deeds and mortgages in the New York Registrar's office the same big dusty volumes of writing, and lifted them down and looked them through—in all 300 times, the very same labour.

'Evidently 299 times that labour was thrown away—done over and over again uselessly.

'And the clients, those buyers, together, paid 300 fees to those lawyers (who each earned his money), but evidently 299 of those fees were for repetitions of the very same work.

'By and by, twenty years from now, instead of only 300 owners of those Jumel plots, the whole 1,383 lots will be sold and built upon, and 1,383 new purchasers will again pay 1,383 lawyers 1,383 fees for examining that same Jumel title, only the fees will be larger, for there will, by that time (at the present rate of growth, and unless a remedy is soon applied), be fully 10,000 big folio volumes in the new Hall of Records which the Legislature has just authorized to be built in the city, and the whole 1,383 fees will be for mere repetitions of labour, so far as the whole Jumel estate title is concerned, and will be practically wasted.

'Not only that, but to-day, in examining that title for a purchaser, his lawyer carefully puts in official searches. He makes a requisition on the Registrar for all deeds, conveyances, mortgages and instruments in writing on record in his office affecting the parcel whose title he is examining, and, of course, the Registrar carefully returns on his search all the old deeds, etc., affecting the whole property—because they affect the parcel—and he charges and gets by law five cents for each year for each name searched against for deeds, and five cents per year per name for mortgages. Altogether, say \$20, is paid by each purchaser to the Registrar for those searches; but as there were 300 purchasers, and they put in 300 searches, the Registrar gets 300 times \$20 for the same work; and twenty years hence 1,383 purchasers will again pay the then Registrar 1,383 times \$20, or more, for a search showing those very same facts.

'This sort of thing is daily repeated, year in and year out, in this city, over the whole of its surface.

'And the same thing happens in regard to loans on bond and mortgage. Every man who thus lends money must have the title examined, and very properly so, and the borrower has to pay for it—the same old searches against the same old names—and pay the same old fees.' "

This sketch humorously, but it is said not unfairly illustrates the method of transferring lands in the great city of New York.

We interviewed and discussed the question with the members of the Governments of Ontario and Manitoba, with respect to those Provinces, and of the Dominion with respect to the great Territories of the North-West, the home of future millions, who happily will never know from practical experience what the old system of Land Transfer is. Those Territories being as yet only partially provided with local self-government, are under the jurisdiction of the Dominion Parliament.

As the result, notwithstanding much opposition, in 1884 the Torrens System was adopted by the Legislature of Ontario, for the city of Toronto and the adjoining county of York, by the Legislature of Manitoba for that Province; and it was adopted by the Dominion Parliament after long and patient discussion, in two of its sessions, in 1885 and 1886, for the Territories lying between Manitoba and the Rocky Mountains. The use of the Torrens System has since been extended by the Ontario Legislature to certain new and outlying districts, which in extent comprise more than one half the area of that Province.

The Province of British Columbia adopted the Torrens idea of Transfer by Registration instead of by deed, in 1880, when it was a Crown Colony, and therefore unable to give the necessary guarantee of indefeasibility, which is an important feature of the Torrens System. In that Province, the Registrar's certificates are generally accepted by purchasers and mortgagees, and I am informed have never been successfully attacked, but there being no responsibility, either on his part or on that of the Government, against possible error, careful con-