

Hogg, in his work on the Australian Torrens' System, says:—

By Torrens systems generally are meant those systems of registration of transactions with interests in lands whose declared object is, under governmental authority to establish and certify to the ownership of an absolute and indefeasible title to realty and to simplify its transfer. An important feature of the system is an indemnity fund to compensate any one who may be injured by the operation of the Act.

This system was introduced into the Northwest Territories in 1886 and has ever since been in force. An indemnity fund under the name of the Assurance Fund was then provided and has ever since continued, and there is no doubt that the general opinion has always been that implicit faith might be given to any act of the registrar or any of his assistants, because if he made any mistake from which damage resulted to any one, resort could be had to the Assurance Fund for indemnity. I regret to have to come to the conclusion that under the Acts in force in Alberta and Saskatchewan, which are taken from the Act in force in the Territories, that opinion is not well founded.

Sec. 108, which is the only section under which it is suggested the claim might be supported is as follows so far as is applicable to the case:—

Any person sustaining loss or damage through any omission, mistake or misfeasance of the inspector of Land Titles offices, or a registrar, or any of his officers or clerks in the execution of their respective duties under the provisions of this Act . . . may, in any case in which remedy by action for recovery of damages, hereinbefore provided is barred, bring an action against the registrar, as nominal defendant, for recovery of damages.

It then provides that the amount recovered shall be paid out of the Assurance Fund.

Now, it is apparent at once that not only a mistake causing loss or damage must exist to give a right of action, but that coupled with that it must be a case "in which remedy by action hereinbefore provided is barred."

Thom, in his work on the Canadian Torrens System, at p. 221 refers for the construction of this provision to *Morris v. Bentley* (1895), 2 Terr. L.R. 253, but an examination of that case and of the present statute as compared with the one then under consideration shews that the case is of no present assist-

ALTA.

S. C.

SETTER

v.

THE

REGISTRAR.

Harvey, C.J.