

LAND TRANSFER REFORM

Part of an Address Before the Convention of the Dominion Mortgage and Investments Association

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THE chief difficulty in considering a question of so wide a range is not so much in finding something to say as in deciding what must be left unsaid, and so touch only matters of practical and present day interest, always remembering that "brevity is the soul of wit," and never more so than in a convention such as this.

I hardly think I would have undertaken the task at all had not Mr. J. C. Scott, Master of Titles, produced from his files, a copy of the proceedings of a public meeting held in Toronto on February 12th, 1890, under the auspices of the Canada Land Law Amendment Association at which addresses were delivered by Mr. Geo. S. Holmsted, the late Mr. J. Herbert Mason and others, upon the very subject which is before us to-day, and if I quote more or less largely from that pamphlet, my only excuse, and a very valid one, is, that these gentlemen have put into better language and in a much clearer way than I, without their aid, could have done, the ideas which come first to mind when we approach the consideration of Land Transfer Reform.

It is interesting, but scarcely necessary to call to mind the absurdities and anomalies of the Law of Real property as it existed in England in early times, and how the incidents of the Feudal System became so deeply rooted that only after long years, centuries in fact, of persistent struggle, was anything like certainty evolved and common sense, even to a limited extent, began to prevail over the mass of empty forms and fictions and technicalities which had so long held sway, so that a man could at length feel himself to be actually the owner of a parcel of land and able to dispose thereof, as he might choose, at first only by deed in his lifetime, and subsequently by Last Will and Testament.

And we all have seen those voluminous and awe-inspiring "Indentures" which were in common use up to the middle of the 19th century, the production of a system of artificial conveyancing which thrived at the expense of a long suffering people and in which the chief avenue to fame was the coining from the Latin, French and various other sources, of new and hairsplitting words and phrases that became the delight of special pleaders and the dismay of many a bench of judges.

But we are living in happier days (at least we like to think we are) when the rule of reason and common sense is given wider play and scope, and the tendency of courts and legislatures is to brush aside technicality and insist that the common, everyday business of the transfer of land shall be effected in a manner not too difficult to be understood, even by non-professional people, and the title to land guarded and made secure by a system in which doubt and uncertainty are reduced to a minimum.

If one had time to do so, it would not be out of the way to note a few of the more radical changes which have been introduced within the last fifty years, many of them during the long term of Sir Oliver Mowat's attorney generalship; one might recall the wonderful advantages of the Short Forms Acts, whereby a few plain and simple clauses were made to do the work of intricate and long drawn out paragraphs; the concise definitions and interpretations of various legal words and phrases laid down in the Conveyancing Act; the Devolution of Estates Act, whereby land was invested with many of the attributes of personal property and so became more readily disposable in the hands of executors and administrators of deceased owners; and the latest and most exhaustive consolidation of the Ontario statutes, particularly those relating to dower and inheritance and the property of married women, has been a great help in the right direction.

It may be mentioned, too, that a very helpful piece of legislation is that whereby in a simple and informal way the opinion of a High Court Judge may be obtained on the

construction of a will and he is empowered to make an order binding on the parties. The material shortening of the period, on the expiration of which a good title may be acquired by virtue of the statute of limitations, has likewise been of great value in making titles more secure from attack, and there have been likewise many beneficial amendments to the Registry Act.

But this paper will be expected to deal more particularly with the workings of the Land Titles Act and the advantages claimed for it over the old established registry office system, for whatever the form and method of the conveyance of land, the main thing is to be certain that it has accomplished what was intended of it, and has actually conferred a good and valid and incontestible title upon a purchaser. As you all know, under the registry office system, you have to depend upon the certificate of the solicitor employed to examine the title, who may be a man of greater or less skill and experience, and when you come to sell, you very likely will find your purchaser's solicitor is able to discover some kink in the chain that your own adviser has overlooked or thought unimportant, or a document may have been lost or misplaced. Only lawyers know how much anxiety and misgiving some extremely zealous and persistent investigator is able to provide for his professional brethren, and if a parcel of land changes hands six times in a year, then six times in a year will the same routine be followed back to the Crown, all at so much per hour (and likely to be increased in accordance with the high cost of living) probably by six different solicitors, and after all this the last purchaser has even yet no safe and sufficient guarantee that everything is in shipshape.

Under the Land Titles Act, if a defect had not been observed at the outset by the Master of Titles, but became apparent afterwards, it could still be remedied, so long as the original applicant remained the registered owner of the land, but if the land had been transferred to an innocent purchaser a valid claim would arise against the assurance fund.

Remedies of Land Titles Act

Mr. Holmsted goes on to say—"Now let us see what the Land Titles Act is intended to do—but first, I may tell you what it does not do. It does not pretend merely to record the fact that a deed or instrument has been made; and it does not permit instruments to be recorded as instruments affecting the title, which are in fact of no more legal effect than mere waste paper, as we have seen that our present system of registry does. What the Land Titles System aims at doing, and actually does, is to record the title, that is, the legal effect of all instruments affecting the land. In order to bring property under this system it is necessary that the title of the person claiming to be first registered as owner should be investigated by a public officer, and ample opportunity given by public notice to all surrounding and adjacent owners to assert any claim to the contrary; the title having been proved to his satisfaction, it is then registered—not the string of deeds under which the owner claims, but the fact that the person who has thus established his title is the owner of the property; and if his title is subject to any qualifications, mortgages or otherwise, these are also specially stated in the register. This is known as an "absolute" title.

But there are cases where a difficulty may arise in making out a perfectly good title, and even these may be registered under the Land Titles system. In such cases when a good prima facie title is shown, the person appearing to be the owner may be registered in this modified way, viz., so that the title up to its first registration in the Land Titles office would not be guaranteed and any person dealing with a title so registered would have to satisfy himself as to the goodness of the title of the person first registered, but all subsequent transactions would be under the Land Titles System, and would be guaranteed. By this means the chain of title which it would be necessary to investigate would stop at the first registration, and in process of time such title would be capable of being fully registered without much expense. This is known as a "qualified" title.

If you want, therefore, to ascertain the state of a title registered under the Land Titles System, you go to the