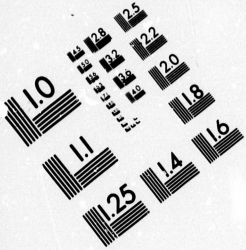


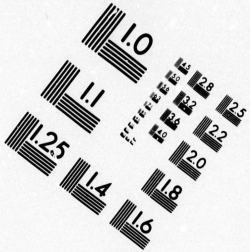


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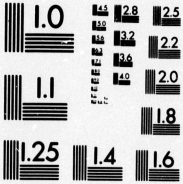


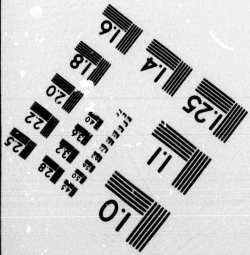


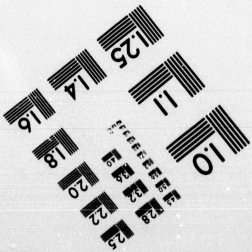


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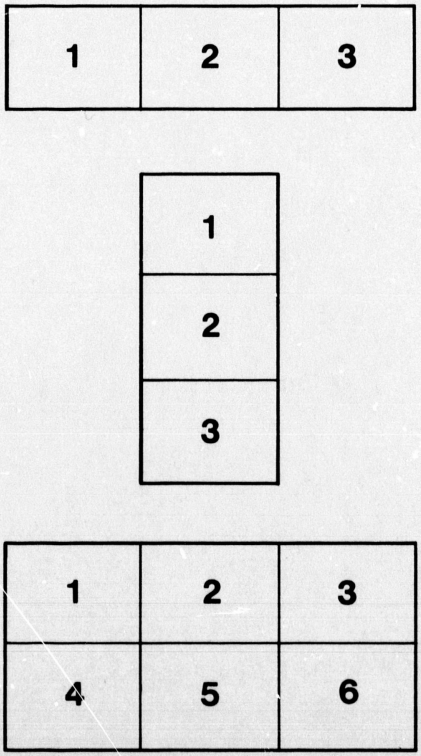

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# LAND TRANSFER REFORM.

## PROCEEDINGS

OF A PUBLIC MEETING HELD IN THE CITY HALL, TORONTO, ON 12TH FEBRUARY, 1890, UNDER THE AUSPICES OF THE

# CANADA LAND LAW AMENDMENT ASSOCIATION

AT WHICH ADDRESSES WERE DELIVERED BY

MR. J. HERBERT MASON,
*President of the Association,*

PROFESSOR GOLDWIN SMITH, MR. GEO. S. HOLMESTED, INSPECTOR OF TITLES, MR. S. G. WOOD, BARRISTER, AND MR. STAPLETON CALDECOTT, MERCHANT.

*Printed by order of the Association.*

TORONTO:
C. BLACKETT ROBINSON, PRINTER, 5 JORDAN STREET.
1890.

"My object in writing this Essay has been to demonstrate that there is no exaggeration in the estimate of the Royal Commission of 1858, backed by that of John Stuart Mill and others of experience and authority on such subjects, that the application to land in this country of a safe, cheap, simple and expeditious method of transfer, such as that adopted for property in shipping, would have the effect of adding five years' purchase to all the land in the country."—*Extract from Essay of Sir R. Torrens, published by the Cobden Club.*

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# CANADA LAND LAW AMENDMENT ASSOCIATION.

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*Mayor*

## Canada Land Law Amendment Association.

# THE FREE TRANSFER OF LAND.

A public meeting under the auspices of this Association was held in the Council Chamber of the City Hall, Toronto, on Wednesday, the 12th February, 1890. There was a fairly good attendance of well-known public men. His Worship Mayor Clarke presided, and among those present were Messrs. J. Herbert Mason (President of the Association), Goldwin Smith, Beverley Jones, City Treasurer Coady, Ald. John Hallam, Ald. Gillespie, John Hague, Judge Boyd, S. Nordheimer, Stapleton Caldecott, T. Long, R. S. Hudson, E. J. Clark, G. W. Monk, M.P.P., Mr. French, M.F P., Mr. Ostrom, M.P.P., Geo. S. Holmested, S. G. Wood, E. Hooper, Ald. Geo. H. Gillespie, W. A. Douglass, Ald. R. Score, G. Mercer Adam, J. B. Eastwood, R. H. Tomlinson, J. Lucas, G. H. Smith, Dr. F. J. Stowe, Fred. W. Hudson, W. B. Hamilton, Chester Hamilton, A. Sinclair, W. S. Lee, P. T. Mason, J. Langt, Dr. W. C. Reeves, R. W. Elliot, Wm. Maclean, T. G. Mason, A. J. Mason, John Bailie (secretary I.P.B.S.), H. W. Darling, James Halton, R. Moffatt, A. M. Campbell, and many others.

In introducing Mr. Mason His Worship said that the present land transfer system was acknowledged to be generally tedious and always expensive, and it was claimed under the system of the Canada Land Law Amendment Association—the Torrens system—transfers could be easily

brought about, and at much less expense than at present. In the city of Toronto, where so many transfers were made from year to year, it was of great moment that the system of transfer should be made as inexpensive as possible, and no one was better qualified than Mr. Mason to speak on the subject. The system, he concluded, worked well in the Australian colonies, New Zealand and British Columbia.

MR. MASON then delivered the following Address.

## THE FREE TRANSFER OF LAND

*Your Worship and Gentlemen:*

The reform of the present system of transferring title to landed property is one of the most important branches of the Land Problem, which, under various aspects, holds a foremost place among the great questions of the day, in all English-speaking communities.

In olden times, when land was held almost exclusively by the privileged few, those who exercised the law-making power did not desire that the common people should be holders of land otherwise than as tenants or retainers, at the will of powerful and titled proprietors, who again held it as a fief from the crown. Estates were kept in the same families under laws expressly designed to retain the property in a single line, and leading, as was intended, to the establishment of a wealthy landed aristocracy. The enfranchisement of the masses in modern times, the recognition of the principle that all legislation should be directed to secure the greatest good to the greatest number, and more directly perhaps than any other cause, the dispersion of the race over new lands unfettered by the traditions of the past, and the organization of English-speaking communities in every quarter of the globe, have brought into prominent relief the evils attendant upon the old system of land tenure and transfer. Not inappropriately, therefore, the new system of land transfer, known from its author as the Torrens System, took its rise and first development in the Australian colonies, from whence also, we derived our plan of voting by ballot.

There is perhaps no more potent factor in maintaining the permanence and stability of government, than a wide distribution among the people of the ownership of the soil. A writer in the *British Quarterly Review*, referring to the large number of landowners in France, truly says:—"There can be no land agitation in that country, because there, the land is a veritable national possession." There, as elsewhere, the dangerous classes are the landless and improvident.

It is therefore in the public interest, and the well-being of the State requires the removal of all unnecessary obstructions to the cheap, simple and safe acquisition, sale, and transfer of land, more especially of the homestead of the farmer, handicraftsman and labourer. Such obstructions provoke discontent and retard the prosperity of the people. Fortunately all political parties can consistently unite in promoting this great social and economical reform. Among its advocates are leading Conservatives and leading Reformers, Free Traders and Protectionists, those who uphold Henry George's theory of making land the only subject of taxation, as well as those who support a revenue tariff and a diversified basis of taxation.

It will materially assist our consideration of the question of "Land Transfer," to have a clear understanding of the difference between "transfer by deed," and "transfer by registration"; and of the meaning of the terms "registration of deeds," and "registration of title."

I therefore quote the following lucid explanation by Mr. Dwight H. Olmstead, President of the Land Transfer Reform Association, of New York. He says:—"Registration with reference to real estate has been divided into registration of deeds or assurances, and registration of titles. The essential features of these two methods I will now explain:

"In the system of the registration of deeds or assurances, the title passes upon and by virtue of the execution and delivery to the grantee of the deed or other instrument of transfer. Under the statute making the recording of an instrument constructive notice, the deed or other papers, by which the transfer is effected, are recorded or filed in the registry office, and the condition of the title at any

time is ascertained by a search for, and the careful examination of these records by lawyers skilled in the business, upon whose opinion the client must rely. Under the method pursued in this State (and, I may add, also in Ontario), these examinations are repeated on every sale (or mortgage) of a parcel of land, at a repeated cost both for searches and professional services.

"In the system of the registration of titles, however, there can be no actual transfer of a title until such transfer is entered on the public land registry in the registry office. In this case the deed or mortgage becomes a mere power of attorney to authorize the transfer to be made, upon the principle of an ordinary stock transfer, or of the registration of a United States bond.

"This mode of transfer is indicated by the phrase, 'No transfer except upon the books,' the actual transfer and public notice of it being alike simultaneous.

"Under the method of the registration of deeds, the validity of the title depends upon an extra judicial opinion determined from the records; but under the plan of the registration of titles, the register speaks for itself, each transfer being indefeasible."

## LAND TRANSFER REFORM IN ENGLAND AND ELSEWHERE.

Before considering the relations of the Province of Ontario to this question, it may be interesting to refer briefly to the position in regard to it of other parts of the Empire, and of the States of the American Union.

In England, where the cost and delays of conveyancing are so great as to almost preclude small holdings of land, the subject has been long regarded by social reformers and statesmen as one of the first importance. After his return from Australia, Sir Robert Torrens strongly urged the adoption of a system of registration of titles upon public attention. One of the first to declare his adhesion to Sir Robert's views was Lord Coleridge, now Lord Chief Justice of England, who, in 1872, at a meeting at which Sir Robert had explained his scheme, spoke as follows:—

"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 perceive 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."

In 1875 Lord Cairns' Bill was passed which provided for the permissive use of a scheme of registration of title; but, as the friends of that system pointed out, its provisions were in many respects objectionable, and comparatively little use has been made of it.

The subject has not, however, been allowed to drop. It has been, and is, freely discussed in leading periodicals. Commissions have been appointed and reported, and some changes in the law have been made. The necessity for a more perfect measure, and for making transfer by registration compulsory, is now admitted by the majority of both political parties. The Duke of Marlborough, in an article on 'The Transfer of Land' in the *Fortnightly Review*, commences by saying:—"In every country the theory of the land laws has depended on the fact that land was never intended to be dealt with by free commerce and barter, and its sale and exchange have at all times been surrounded with legal difficulties of every description. Lord Cairns' Act of 1882, deals a death-blow at this doctrine, and recognizes once for all the importance of rendering land negotiable in the hands of limited owners. It requires but one step more to free the land from the grip of the law and to render it as negotiable as other forms of wealth."

After referring to the complicated methods of English conveyancing, the writer says:—

"The simple cure is to sweep away at one blow the entire machinery of deeds, and substitute, in matters of sale, a simple mode of registration of parcels bought and sold. Deeds were the invention of lawyers; registration is a complete substitute. The State must afford means for whole-

sale registration of land on a very different basis to the feeble attempts which have heretofore been made in this direction."

Last session a bill, approved by Lord Salisbury's Government, was introduced into the House of Lords by the Lord Chancellor, which provided that all future transfers of land be by registration of title, under the guarantee of the State; in fact, making the Torrens System compulsory; and placing the contribution to the guarantee fund at one farthing in the pound, or about one-tenth of one per cent. This measure obtained its third reading and was about to pass finally, when a circular, prepared, it is said, in the interest of professional conveyancers, was issued and sent to the absentee and other peers, pointing out the inconvenience which might result to them from the publicity which a public register would afford, and other objections of a personal character. Upon this, there suddenly sprang up at the last moment a number of doubting objectors—gentlemen of the old school, who professed to apprehend all sorts of danger from the proposed innovation—and, notwithstanding the assurances of Lord Salisbury, the Lord Chancellor, Lord Selburne and other distinguished peers, that their fears were groundless, an amendment was carried by a majority of nine, which led the Government to withdraw the bill. Like all similar improvements the measure will doubtless overcome this feeble opposition and become law in the near future.*

The early settlers in the United States adopted the system of registration of deeds which, in 1704, was provided by Act of Parliament for the East Riding of the County of York, England. This system is still in force throughout the Union, and in the Maritime Provinces of the Dominion. Under it all instruments in each municipality are registered in their order, but no index is kept of the particular lot, block or parcel of land affected, as in Ontario. The chain of title is traced by means of an alphabetical index of the names of grantors.

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* In the Queen's Speech at the opening of the present Session of the Imperial Parliament it is announced that this bill is to be re-introduced.

In populous districts there are many persons of the same name, and where sub-divisions, changes of ownership, creation of liens, etc., are of frequent occurrence, the great labour and the legal acumen required in tracing titles under this system, in course of time, may be readily imagined. The sums said to be paid to prominent conveyancers in the City of New York, and doubtless well earned, for investigating, clearing up and pronouncing an opinion upon a single purchase of property, are almost incredible, passing sometimes into the thousands of dollars. The difficulties in the way of ridding the real estate of the country of this incubus, protected as it is by powerful vested interests, are such as have almost driven reformers to despair. In the State of New York, after years of agitation, the Land Transfer Reform Association, and its able and enthusiastic president, have succeeded in getting an Act passed, which comes into force in January 1891, providing for a scheme of block indexing of instruments, somewhat similar to that now in force in Ontario, which, it is hoped, will pave the way for the Torrens system. In Illinois, Minnesota, Dakota and other States, the evils of the present system are admitted, and the subject is being discussed, but no practical measure of relief has yet been adopted. Failing any legislative remedy, and as a substitute for a more satisfactory system, Land Title Guarantee companies have been devised, which, for a percentage on the value, indemnify purchasers and mortgagees against loss by defective title. Before the Torrens System was introduced, it was in contemplation to form such a company in Toronto. The necessity for these companies, and the fact that their transactions have become a large and regular branch of business, similar to life and fire insurance, in several of the larger cities of the Union, is a sad reflection on the practical intelligence of legislators in that country.

In the Maritime Provinces no organized effort has yet been made to effect a change in the system of land transfer, although the evils of the present system are freely admitted. In New Brunswick, which contains a large area of unpatented land, and in which, therefore, the introduction of the new system would be comparatively easy, the House of Assembly has had the subject under consideration, and

some of the members are strongly in favour of it. It is also not without advocates in Nova Scotia and Prince Edward. What is wanted in each of these provinces is earnest, organized effort, and the dissemination of information among the farmers and other landowners, as has to some extent been done in Ontario and Manitoba.

In the Province of Quebec, where the French Civil Code prevails, the system of land transfer is attended with many and serious difficulties. The Board of Trade of the City of Montreal sent a deputation to this city to enquire into the working of the Torrens System, and memorialized the Government in favour of its adoption; but no effective means appear to have been taken to arouse public opinion on the subject.

### THE OLD SYSTEM OF LAND TRANSFER IN ONTARIO.

Coming now to our own Province of Ontario, and including therewith the Province of Manitoba and the Northwest Territories, all of which adopted the Ontario System, we find that at a very early period in its history a system of registration of deeds was established which provided for the recording of memorials of all instruments affecting land, in books to be provided for each municipality. The first Registry Act was passed at Newark (now Niagara) in 1795, in the Fourth Session of the First Parliament of Upper Canada. Registry of instruments was at first optional, but was made compulsory in 1851. No provision appears to have been made in that Act for keeping an index of the lot, block or parcel of land affected, but the practice of keeping such an index was generally followed, and in 1865 was made obligatory. This plan of lot indexing was a material improvement on the plan of a general registry, with an index of the names of grantors only—such as prevails in the United States and in the Maritime Provinces. After the lapse of years, however, from the subdivision of original lots, the multiplication of registries, death and intestacy of owners, incompetent conveyancing, and other causes, expense, delays, uncertainty and insecurity, in regard to land titles, gave frequent cause of complaint, sometimes of litigation. Various measures

were from time to time passed by the Legislature, with a view to remedy some of the more prominent evils. Among these were the Act of 1865, before referred to, which provided among other things for the registry of deeds in full, instead of by memorial; and the several Acts simplifying the barring of entails, providing short forms of conveyances, reducing the time when undisturbed possession constitutes a good title, and the "Quieting Titles Act."

Beneficial as these measures were in mitigating some of the causes of complaint, they did not reach the root of the evil. The inherent defects of a system which, before an opinion can be formed as to the validity of any title to land, necessitates an investigation by a professional expert into the validity of every conveyance, or passage by devolution, or by legal process, back to the issue of the patent, which must be repeated every time a transaction takes place, involving, may be, the examination of hundreds of entries; that surrounds the transfer of land with so many traps and pitfalls and uncertainties, that sometimes nothing short of a judicial decision can conclusively determine the questions that arise; that preserves, in regard to the transfer of the smallest and most inexpensive piece of land, an elaborate verbiage, required for no other description of property, cannot be cured by stripping off some of its more obnoxious features. It must be entirely swept away. The enormous cost of the system, the amount uselessly spent every year in this Province in connection with the transfer of land, ought of itself to arouse public opinion to the magnitude of the evil. From the returns made by the Registrars of Ontario to the Provincial Secretary, it appears that no less than 167,877 instruments affecting land were registered in the year 1889, and that the amount paid in at the sixty-two registry offices for that year was $282,974.

Of course no statistics can be furnished of the sums paid every year to solicitors and conveyancers for preparing these one hundred and sixty odd thousand instruments, and for the searchings, investigations, clearing up doubtful points, and legal opinions connected therewith, but it is estimated that an average fee of five dollars will be well within the mark. This would make upwards of $800,000 more. Add to this the fees paid to sheriffs and treasurers

for certificates, and the total expenses in connection with land transactions, to say nothing of the unnecessary delays, trouble and expense owners are put to in furnishing the necessary proofs of title, which, judging from what has come under my own observation, would be no inconsiderable item, cannot be less than one million of dollars annually, and is probably considerably more. To this must be added the costs attending disputes and litigation affecting land titles. It is not too much to say that more than one-half of this annual tax upon the real property holders of the Province is an unnecessary expenditure and is to them entirely lost. Apart, therefore, from social and political considerations, on economical grounds alone a radical change is demanded.

## THE TORRENS SYSTEM.

The Torrens System of Transfer by Registration of Title evidenced by a Government Certificate held by the land owner, if properly and economically administered, seems to meet all reasonable requirements. It is simple, speedy, inexpensive, and secures indefeasibility of title. No search into past transactions is necessary. Everything relating to the title, up to the time of its issue, is shown on the certificate.

When buying stock in a bank or company the purchaser is not called upon to enquire into previous ownership or the validity of previous transfers. The bank or the company are responsible for all that. The seller being the registered owner, signs a form of transfer which is an instruction to the officers of the association to remove the name of the seller from their books, as far as the stock sold is concerned, and to substitute therefor the name of the buyer. A certificate is handed to the transferee which assures him the ownership of the stock. Under the Torrens system the Government holds the same relation to the landowner that the company or bank does to the shareholder, and being responsible for the title, the Master of Titles, as representing the Government, must be satisfied at the time, that the transfer is regular, that it is correctly drawn, contains a correct description of the boundaries of

the property and is regularly executed by the proper parties. These questions are thus settled at once and for all time. Under the old system they are never settled, but have to be enquired into every time a transfer takes place.

Although in successful operation for thirty years past in Australia, the Torrens System was first brought to the knowledge of the Canadian public in 1876, when two articles appeared in the *Canadian Monthly Magazine*, from the pen of Mr. George S. Holmested, whose attention had been drawn to the subject by Mr. Beverley Jones. To these two members of the legal profession, Canada is indebted, not only for initiating the movement for reform, but also for continued and efficient service in securing the adoption of the Torrens System. At first the announcement that such an improvement was possible seemed almost beyond belief. Gentlemen, learned in the law, ridiculed the idea, and others, whose experience had convinced them of the hardships attendant upon the old system, feared that the tidings were too good to be true. Subsequent investigation, the annual reports of the Masters of Titles in the Colonies where it was in operation, and the official returns to the Home Government, made by the Governors of these Colonies, soon left no room for unprejudiced doubt.

## THE FORMATION AND WORK OF THE ASSOCIATION.

In 1883 the Canada Land Law Amendment Association was formed for the avowed purpose of securing the abolition of some of the impediments to the safe holding and cheap and speedy transfer of land, and more especially to promote the introduction of the Torrens System. A prospectus was issued by the Association and largely circulated. Were there time it would be amusing to read some of the able editorials and letters on the subject which appeared in the public press at the time. Some scoffed, others impugned the motives of the promoters. A large proportion of the members of the legal profession were either indifferent or hostile. Still, by many prominent and influential members of both the press and the legal profession the question was treated with candour, and even at this early date in some cases received a generous and hearty welcome and support,

Notably among these distinguished members of the profession, were Mr. Dalton McCarthy, Q.C., the Hon. Edward Blake, the Hon. Attorney-General Mowat, and Mr. Meredith, Q.C.

Deputations waited on the members of the three Governments of the Dominion and the Provinces of Ontario and Manitoba, to which the efforts of the Association were chiefly directed, and were courteously received. But the subject was new, and very little hope was given of any immediate practical result. Several members of the Dominion Government, more especially Sir David Macpherson, then Minister of the Interior, and Sir John A. Macdonald, evinced a warm interest in the subject.

The Hon. O. Mowat, then, as now, Premier of Ontario, while personally sympathizing with the movement, on more than one occasion advised the officers of the Association that in his judgment there was no sufficient expression of the popular will to warrant so radical a change as was proposed in the mode of land transfer. While admitting that there were grounds for this view, the officers of the Association were convinced that the absence of any strong expression of popular opinion was not because the present system did not afford abundant cause for complaint, but because it was not generally known that any better system was available. The people had borne the burden so long that they supposed it to be inevitable. The Association, therefore, took steps to bring the subject to the notice of various representative bodies and the general public. Deputations from the Association waited on several of the city and county councils, Board of Agriculture, Grangers' Association, and Board of Trade. The Prospectus of the Association, an address delivered by myself before the Canadian Institute, and other literature on the subject were extensively circulated. The Honorary Secretary of the Association visited Manitoba and organized a branch association in that Province. I myself, also, having other engagements in Manitoba, paid several visits to that Province, and also visited the North-West Territories and the Provinces of Nova Scotia, New Brunswick and Prince Edward Island, and brought the subject before prominent representatives of each of these Provinces. Efforts, in

many cases successful, were made to enlist the powerful aid of the press. As the result, the Ontario House of Assembly was flooded with petitions on the subject of land transfer reform, and at length cheering indications of ultimate success began to present themselves. The late Premier of Manitoba, Mr. Norquay, was from the first strongly in favour of the new method, and the Legislature of that Province enacted the first measure for adopting the Torrens System as a provincial scheme, which came into force on the 1st July, 1885. In the Province of Ontario the new scheme was inaugurated by the Hon. Mr. Mowat at the same date, but with a caution which was perhaps justifiable at the time, it was made applicable only to the City of Toronto and the County of York. Subsequently, in response to the urgent representations of the Association, the outlying districts of Muskoka, Parry Sound, Nipissing, Algoma, Rat Portage and Rainy River were brought by Mr. Mowat under the new system; optionally as far as land already patented is concerned, but compulsory in respect to all lands alienated by the Crown after the Act came in force. The lands in these large districts comprise an extensive area, more than one-half of the whole Province, much of it still unpatented, which will therefore never be burdened with the old system of land transfer. Permission has also been given to counties, cities and towns in Ontario to adopt the Torrens System on certain conditions, which are, however, so onerous that not one of them has yet availed itself of the privilege. To obtain the benefits of the Torrens System each municipal council must pass a by-law declaring it expedient to extend the provisions of the Act to such municipality, and must undertake to provide proper fireproof and other accommodation for an office of land titles, provide books, furniture, stationery, lighting, etc., become responsible for the salaries of all officers, including the registrar or master of titles, and a proportion of the salary of an inspector. These appointments are all to be made and the salaries determined by the Government, the municipality having no voice, their sole duty being to provide the money. From sixty to seventy new offices to be built, and as many new officers to be saddled on the country. Can any scheme more extravagantly costly

be conceived, or one less likely to be adopted? Instead of being surprised that no municipal council has adopted the scheme, the wonder would be if any one had done so.

Next, and most important of all, the Dominion Government, after patient and painstaking investigation, decided on adopting the Torrens System of Land Transfer for the North-West Territories, comprising all that vast region extending from the western boundary of Manitoba to British Columbia, and from the boundary of the United States to the Artic Ocean. A bill with this object in view had been prepared some time before by Messrs. Beverley and Herbert C. Jones, and had been presented to Parliament in two previous sessions by Mr. Dalton McCarthy, Q.C., M.P. This bill, with some modifications, was adopted by Sir Alexander Campbell, then Minister of Justice, who introduced it in the session of 1884-1885. To give time for its full consideration, the bill was not enacted in that session; but in the following session, in the hands of Sir John Thompson, it was unanimously carried.

Accompanying the Torrens System and necessary to its satisfactory working, other changes advocated by the Land Law Amendment Association have been adopted, such as abolishing the distinction between real and personal property in the devolution of estates in Ontario, Manitoba and the North West Territories, and in these territories all trouble over the question of dower has been disposed of by simply abolishing the estate of dower.

Considering the vast interests involved, the antiquity of the system of transfer by deed, the immense amount of legal lore expended upon it, the complications which might possibly have arisen, and the absence of general information in regard to the new system, less than seven years ago, the results that have been accomplished are perhaps as many and as important as could have been reasonably anticipated, and certainly are much greater than many predicted at the time, whose opinions were entitled to consideration.

### THE WORKING OF THE NEW SYSTEM.

The enquiry may now be made, Has the new system fulfilled the expectations entertained of it? To this ques-

tion the facts I am about to relate, obtained in reply to recent enquiries made by the association, furnish an unquestionably affirmative answer. It must not be overlooked that all the machinery for carrying the new system into effect had to be provided, and that none of those gentlemen, who were entrusted with the administration of the Act, had previously been advocates of or had any experience in working the system. It would not, therefore, have been surprising, if at the first, and for some time, friction and misunderstandings occurred. It should also be borne in mind that bringing property under the Act is entirely optional, that there is always a prejudice against new and unknown schemes, where monetary interests are concerned; and that the high rate of contribution required to the Guarantee Fund, the liberal scale of fees charged, and the necessity for professional assistance in elucidating the previous title, expenses which meet the land owner at the outset, are direct discouragements to bringing property under the Act.

Notwithstanding these obstructions, it appears from the report for 1889 of the earnest and efficient Master of Titles in Toronto, Mr. J. G. Scott, Q. C., that property to the value of $887,761.00 was brought under the Act in that year, that the number of instruments registered was 4,679, that the expense of the office was $7,215.85 and the receipts $10,119.78. It also appears from that and previous reports that in the first three-and-a-half years, during which the office had been open, 175 properties had been brought under the Act, aggregating, at the value placed on them when they were first registered, $3,691,249.00 and that 8,784 instruments had been registered. The registrations for 1889 were more than double the number of the previous year, and several hundred more than in the preceding three and a half years. The surplus fees amounted to $2,903 and the Guarantee Fund to about $10,000.

Much of the land placed under the Act was at the time in large vacant blocks, afterwards subdivided and buildings erected thereon. The present value of the property now under the Torrens System in the County of York and City of Toronto is estimated at not less than $10,000,000.00.

In his report for 1888 the Master of Titles says: "From the above it will be seen that the office was last year self-sustaining. This result, obtained in such a short period, is a practical indication of the success of the system in this county. Though considerable disappointment is felt when applications are delayed on account of defects in evidence of title, yet I am satisfied the great majority of the legal profession and of dealers in real estate, now that they have become acquainted with the routine of the system, are heartily in accord with it." It will be noticed that the disappointment referred to is due to the old system and not to the new. Abundant corroborative testimony, from those who have bought and sold property under the Act, could be furnished if necessary.

In Manitoba the opposition to the new system, at first as strong as it was here, has entirely disappeared. In his official report for 1888, the Registrar General of the Province, says: "The provisions of the Real Property Act of 1885, as amended, have steadily continued to grow in favor and the amount of business done in the Land Titles Office is evidence of a most gratifying success." The total number of transactions registered in 1888 was 4,698. So satisfied are the government and people of Manitoba of its superiority, that the Torrens System has been adopted as the provincial system of land transfer; and with a view to its being efficiently administered, the old registration offices have been abolished, and instead thereof, the Province has been divided into four registration districts. The Act is compulsory as far as all land hereafter patented is concerned, and every encouragement and facility is afforded to land owners to bring under the Act, the real estate of the Province to which patents had been previously issued under the old system.

In a letter just received from the Hon. Joseph Martin, Attorney-General of Manitoba, after explaining the recent legislation which has been passed with a view to give additional facilities to land owners for bringing their property under the Torrens System, he says: "I may say that the merits of the new system are becoming very well known, indeed, throughout the province, especially with

dealers in real estate, and it is now quite difficult to dispose of land unless a Torrens Certificate is promised. The system meets with very strong approbation from the legal profession. It is the practice of nearly all lawyers in case any difficulty turns up in connection with a title, to strongly advise the bringing of the property under the Real Property Act."

Mr. P. M. Barker, Inspector of Land Titles Offices in the North West Territories, says: "In reply to your enquiry as to the workings of the Territories Real Properties Act in the territories, I beg to state that after three years' experience I am of opinion that the Act is proving successful. The large property holders, such as the Hudson's Bay Company, and the North West Land Company, have availed themselves of the provisions of the Act and brought their properties under its provisions. Even with the great extent of country, and the expense of maintaining Land Titles Offices, the Act is self-sustaining."

Mr. E. G. Ward, Registrar-General of New South Wales, in a letter dated Sydney, 20th December, 1889, says: "The public here are so fully alive to the advantages of the Torrens System that, in many cases, purchases of property are made on condition that the title is brought under the provisions of the new system, as it is called, though it has been in operation for now twenty-seven years. I think I may safely say that properties with a title under the Real Property Act realize from twenty to twenty-five per cent. more than if under the old system of conveyancing."

Mr. W. Bacon Carter, Registrar-General of South Australia, writing from Adelaide, under date January 14th, 1890, says: "The Torrens System is working most satisfactorily. It has now been established for so long a period that all doubts as to the benefits of this system have pretty nearly vanished."

Similar corroborative testimony has been received from Mr. H. C. A. Harrison, Melbourne, Registrar of Titles for Victoria; and Mr. J. O. Browne, Brisbane, Registrar of Titles for Queensland.

With this evidence, as to the successful working of the new system, confirming as it does the unanimous endorsement of the system by the people wherever it is in operation, and in the absence of all indications of a contrary opinion, the practical question now brought home to the people of Ontario is: Why are no steps being taken to secure the early extension of the Torrens System of Land Transfer to the whole of this Province? This question is commended to the consideration of Boards of Trade and Bankers, of Farmers' Institutes and other agricultural bodies, of the various organizations of Labour, of every man who owns or desires to own his home, or who is, or ever expects to be, the buyer or seller of landed property.

These classes constitute the heart and soul, as well as the bone and sinew of the country, and they are all directly concerned in the removal of a system which hampers business, impedes progress, and imposes unnecessary burdens.

The chief obstacle to the cause of Land Transfer Reform, here and elsewhere, lies in the technical and intricate character of the subject and in the want of general information respecting it. It is not a party or a class question, but affects the whole people, and when the general public become aware of its importance, and the possibilities within their reach, there will not be much doubt or delay as to how and when it will be settled. It is impossible that the old system can go on forever. A change must be made sooner or later, and can be made now better than at any future time. Deeds, wills, mortgages, and other charges are daily forging additional links to the chains of title, subdivisions of original lots are taking place, each adding its quota of cost and difficulty in proving title. In no other country has the Torrens system been introduced in such a gingerly fashion, and, as it were by piecemeal, as it has been in the Province of Ontario. Whatever reason there may have been for this temporizing policy six years ago, the most cautious legislators must now be convinced that the new system is no mere doubtful theory. If not so convinced, what kind of evidence and how much

of it is expected? It has unquestionably facilitated the recent rapid growth of Toronto, and if good for Toronto and the County of York, why is it not equally beneficial for other cities and counties, and why should not every possible help and facility be freely given for relieving the land of the old expensive and uncertain system? There is little or no difficulty in introducing the new system. Whatever expense has to be incurred, or obstructions overcome, are the result of the adoption by the Province of the old defective system, the difficulty of getting rid of which, and its cumbersome machinery, increases from day to day, and will never be less than it now is. Mr. Mowat's Government deserves well of the country for having introduced the Torrens System. But, unfortunately, at present only a very small portion of the land owners of Ontario can take advantage of it. Surely they are not going to leave to their successors the honour of putting the capstone on the edifice which they have so well begun, by bringing in a practicable scheme for extending the system to the whole province.

Let us briefly consider the objections usually met with to the general substitution of the new system for the old. These are: First, that it will reduce the income and emoluments of the sixty-two (now sixty-three) registrars. Second, that it takes from the legal profession a portion of the business which legitimately belongs to it. Third, that it tends to centralize the business of conveyancing in a few localities. Fourth, that it involves considerable immediate expense to the present holders of real property. Fifth, that it requires the expenditure of a large amount of public money, either by the province or by the municipalities.

Taking these in their order. As to the first objection, that it will reduce the income of registrars, it may be said that scarcely any great political or social reform, or any important mechanical improvement, or scientific invention, has been carried into effect without being attended with some immediate disadvantage to individual interests. While this may be regretted, it affords no sufficient reason for the retention of abuses or inferior methods. But, it is claimed that it does not necessarily follow that the interests of the present registrars must suffer by the adoption of the

Torrens System. They are public servants and would be entitled to a fair and reasonable compensation if their incomes should be materially interfered with. Many of them would find positions in the administration of the new system, or in other departments of the government; and those disqualified by age might be pensioned. It would be better, if necessary, to pension the whole of these gentlemen than indefinitely defer a change of such value to the community at large.

As to the second objection, that it takes from the legal profession a portion of their business. It is true that one of the advantages claimed for the Torrens System is, that under it, no investigation or legal opinion as to the validity of titles is necessary, and that the forms of transfer are so simple that for ordinary transactions no professional skill is required in using them. It is believed, however, and many members of the profession share in the opinion, that the increase in the number of transactions affecting land, will eventually largely make up for any loss in this respect. Were the Torrens System in force, many transactions would still have to be carried out under professional advice. And as far as the present generation of lawyers is concerned, there can be no doubt that the professional services necessary to bring existing titles to land into such a shape as will warrant the issue of an absolute certificate under the new system, will fully equal any loss that may arise from diminution in conveyancing charges for many years to come. It must not be overlooked also, that under the new system conveyancers are relieved from the serious responsibility involved in searching and certifying to land titles. I feel assured that if the new system justifies itself on the whole as a good one, and the public are determined to give it a trial, the great majority of the legal profession will loyally assist in carrying on that trial, without regard to considerations of personal interest or professional prejudice.

As to the third objection, that it tends to centralize the business of conveyancing, much misapprehension prevails. Under the Torrens System there are no special advantages in being near the Registry Office. No search of the past records of either the Registrar, Sheriff or Treasurer is

necessary. The seller of land has his title in his pocket and the conveyance to the purchaser is executed on the spot. Even in this city, in the case of sales or mortgages under the Torrens System, the certificates of title and the transfer are sometimes mailed to the office of the registrar, who, if no caution has been lodged, cancels or endorses the old certificate and mails the endorsed certificate or a new one to the purchaser or mortgagee, and the transaction is complete. In Scotland and in the Australian Colonies, in each of which one registry office suffices, it is not found that that fact has the effect of concentrating conveyancing in the cities in which the office happens to be situate. In Manitoba, while under the old system land mortgage companies and mortgagees generally employed only one solicitor at their head office, under the Torrens System they divide their business among a number of solicitors in different localities. The responsibility resting on the solicitor is materially lessened, and it is not necessary for him to be near his client for consultation in regard to doubtful questions or imperfections in the title. So that instead of centralizing conveyancing, the opposite is the result in that Province.

As to the fourth objection, that it involves considerable expense to the present holders of property, it may be admitted that if the present scale of fees and contribution to the Guarantee Fund be maintained, there is much force in the objection. But even then, although the charges in the initial transaction of bringing land under the Act, including the contribution to the Guarantee Fund, are much more costly than a conveyance under the old system would be, it must not be forgotten that all future transactions will be much less expensive and freed from vexatious delays; and, also, that all questions in regard to title are settled, and settled forever. Absolute certainty of title is worth paying something for. There is good ground for believing that the present scale of charges in Ontario, both for fees and guarantee, is unnecessarily high, and may safely be reduced. The fact, that, even under existing restrictions, at the end of three years, the Land Transfer Office in Toronto had become self-sustaining, and at the end of four years showed a large surplus, is sufficient

proof that with jurisdiction over a larger area, and under more favourable conditions, a much lower scale of charges would suffice. All surplus registry fees might fairly be appropriated to the Guarantee Fund. No claim has yet been made on this fund, nor is it probable that claims will be made. The forms of transfer are so simple, that with a competent officer in charge, there is little, if any, more liability to mistake than there is in transferring ships.

In the four Australian Colonies previously named, where the Torrens System has been in operation for nearly thirty years, the aggregate amount of the Guarantee Funds is $1,469,217 and during the whole of that time the total claims on the fund have been $53,567.00, or less than four per cent. As an indication of the extent and value of land under the system in Australia, the returns show that there were 43,691,654 acres of land under the Torrens System, of the declared value of $693,053,916. The transactions recorded in a single year numbered more than 108,000. The claims on the Guarantee Fund have been less than the hundreth part of one per cent. of the value of the property it insures. With capable men, such as can readily be had, holding the position of Master of Titles, there is no reason for anticipating a different result here. Canadians are as capable of doing their business correctly as Australians.

In bringing property under the Act the chief items of expense are, first, the investigation and clearing up of doubtful points in the old title, and, second, the quarter of one per cent. contribution to the guarantee fund. The first of these items may be very much reduced or may be altogether avoided, if the land owner so directs. Any person who desires to put his property under the Act, and who is unable or unwilling to incur the expense of furnishing proof of a clear title, may take out a qualified certificate, or may take out what is called a possessory certificate, which requires no official investigation at all. This will give him all the benefits of the new system, Government guarantee included, as far as all future transfers are concerned. As for the past, he is in no worse position than before, and, if undisturbed, his title will eventually become altogether indisputable. As soon as put under the Act, a

perfect title begins to mature. If the suggestion of the Toronto Master of Titles in his report for 1887 be adopted, that the payment of the contribution to the guarantee fund be deferred till the first transfer of the property takes place, and if also the recommendation of the Land Law Amendment Association, that the contribution to the guarantee fund be reduced to one-tenth of one per cent., be adopted, every possible ground for this fourth objection will be removed. Unquestionably a much smaller contribution should suffice when no responsibility for the previous title is incurred.*

As to the fifth objection—that it requires the expenditure of a large amount of public money—it is unquestionably true if the provisions of the present law are indispensable, and every county, city and town is obliged to erect fireproof registry offices, and guarantee the salaries of as many new masters of titles, before it can take advantage of the Torrens System. But are all these sixty or seventy new offices and officers necessary? Would not a half-dozen offices be amply sufficient for all practical purposes for the whole Province, and could not some of the existing offices and officers be utilized? Many who have given the subject full and careful consideration are prepared to answer these questions in the affirmative, and to give good reasons for their opinions. The Torrens System may be carried on with few or many offices, but the smaller the number the less will be the expense, and the more efficient the service. The new system should be provincial, not municipal. Whatever legitimate expense is required in making the change should be borne by the Province, which, as a whole, has received the benefit of the sale of the public lands, and the timber thereon, and which as a whole is responsible for the system of land transfer under which the title to these lands was conveyed. In a few years a moderate scale of fees would repay all the expenditure incurred in establishing the small number of offices required. And, even if it should take a longer time, who are to be benefited by this expenditure? Are they not the present and pro-

* Since the delivery of this address the contributions to the Guarantee Fund on the issue of possessory certificates has been reduced to one eighth of one per cent.

spective owners of the soil, men who, with their families, are here to stay, and who form the bulk, as they are the best part of the population? What will be the utmost sum required to properly equip the new system compared to the price paid for abolishing seigniorial tenure, another relic of feudal times, in Lower Canada, to which Upper Canada contributed the greater part and received no direct benefit whatever? To facilitate the acquisition of an interest in the soil of the country by the masses of the people; to remove one of the obstacles which prevent the sons of toil generally from owning their own homes, and compel them to remain tenants at will subject to high rentals; to relieve the farmers and other land owners of the country from a heavy annual tax; to do away with the last vestige of the feudal system, are objects deserving of liberal and statesmanlike treatment, before which the mere question of a few thousand dollars of expense to a Province so rich as Ontario, dwindles into insignificance and is unworthy of serious consideration.

## FUTURE LEGISLATION AND OTHER REQUIREMENTS.

What, then, yet remains to be done to secure the Torrens System for the whole Province? The Canada Land Law Amendment Association recommend the following changes:—

"1. That the Province be divided into registration districts, and that the Torrens System be extended throughout Ontario at as early a date as possible.

"2. That after a near fixed date all transfers of land be carried out under the new system.

"3. That the contribution to the guarantee fund be reduced to one-fifth of one per cent. for a certificate of an absolute title and to one-tenth of one per cent. for that of a possessory title, and that in the latter case payment of the contribution to the guarantee fund may, at the option of the applicant, be deferred till the first subsequent transfer or subdivision of the property.

"4. That the fees in the land titles office generally be reduced, and that, with a view to encourage small holdings,

the fees charged be one-half of the ordinary scale of fees on all transactions under $1,000.

"5. That the statutory forms be revised, so as to make them of more general application, with a view to a saving of expense.

"6. That all simplifications in the administration of the Torrens System which experience has shown to be feasible be adopted, with a view to facilitate bringing property under the Act, and to make the transfer of property as simple, expeditious and inexpensive as possible.

"7. That the law of dower be assimilated to that of England, with a provision that inchoate dower may be preserved by registration.

"8. That the Government be petitioned to appoint a commission to consider the whole subject of land transfer, and the best mode of extending the operations of the Torrens System to the whole Province.

## CONCLUSION.

Mr. Mayor and Gentlemen:—I have endeavoured very imperfectly (but as fully as the limited intervals of leisure of a busy life would permit) to give some account of the history and present position of the land transfer question in this country. During the last forty years I have been intimately connected with a branch of business which has afforded me abundant opportunities of observing the injustice inflicted upon owners of land by the present system, and I therefore am anxious to see it supplanted by a better one.

I have not, on this occasion, cited instances of inconvenience, hardship and loss arising from it, as might easily have been done, nor have I attempted to describe the simple operation of the new system. These topics have been treated in previous publications of the Land Law Amendment Association, some of which may be obtained by anyone who would like to further pursue the subject.

In conclusion, permit me to ask the earnest co-operation of all present in promoting the objects of the Association, by their active personal influence, and also by their

contributions. Considering the work done by the Association, its expenditure of money has been very small, and all that has been expended has been contributed by a few individuals and institutions no more interested than other members of the community. If, by any means, more general information on the subject can be disseminated among the masses of the people, it will not be long before the objects of the Association will be accomplished, as far, at least, as our own Province of Ontario is concerned. All good citizens are invited to unite with us in bringing about this most desirable consummation.

PROF. GOLDWIN SMITH moved, "That in the opinion of this meeting a simpler and less expensive mode of applying the Torrens System of land transfer to the whole Province of Ontario should be adopted at as early a date as possible, and that every facility should be afforded to landowners and others to bring their property under this system." He said that if what Mr. Mason had recommended this evening were adopted, and by the aid of this meeting the necessity for its adoption could be impressed upon the Legislature, there was no doubt that heavy burdens would be removed from all the land of the Province, and that land was already in a condition upon which it could ill afford to have any burdens left upon it that were capable of removal. The Torrens System, once adopted, the difficulties and expense of conveyancing, and the research attending it, would vanish, and men would be enabled to acquire property as simply, as cheaply and as easily as they could buy a yard of cloth or a loaf of bread. It was not necessary in proposing the improvements of the present to arraign the system of the past, the feudal system—that iron system which helped to mould and organize society, as society existed in the Middle Ages. So firm was the hold of that system that its marks had been left to the present day, although the system itself, so far as its usefulness was concerned, had long since passed away. The night of the Middle Ages had gone, but its shadow lingered on the land laws still. He need not tell them that under the feudal system land was not alienable. It was granted subject to military service in a society which was organized

on the military principle, and it could be alienated only by sub-infeudation.

In the case of copy-hold the lands could only be transferred by the consent of the lords of the manor. Society had advanced, and it had been found necessary to break through this system. The way in which society broke through the feudal system in England was by the introduction of a legal fiction which was well known to all who were familiar with the legal proceedings in the beginning of the present century. This system lingered on until the reign of William IV., and it was curious to look back upon its details. There was nothing in China or Japan or any Eastern nation more absurd than the system of acquiring land by fines and recoveries. The flaws that take place in the entries on processes and deeds, the mode by which property had been transferred from generation to generation by lease and release, were referred to, as well as other difficulties, which all continued to make the English aristocracy and landholders chary of adopting improvements to the system of transfer, for the improvements would of necessity involve the registration of their deeds. The Torrens System was, however, very nearly carried in England last year. It was only defeated at the last moment by a party of peers, whose faces were seldom seen in the House of Lords, going up to London, no doubt, on the advice of their lawyers, and voting against it. They must not be surprised that England was slow to adopt this system, but there was no earthly reason why it should not be adopted here. "There can be no doubt," said the Professor, "that this is the real answer to those vague schemes of land nationalization, or, as it practically means, land confiscation, that now disturb society. I cannot help agreeing with Mr. Gladstone and Mr. John Morley that nationalization of land without compensation would be robbery, and with compensation would be folly. Nothing that ever happens is happier in itself or more beneficent in its consequences to society than the acquisition by a mechanic of the freehold of his home. Let the transfer of land be perfectly easy, so that every thrifty man could acquire it at the least possible expense. If people would only use half the energy and make half the effort that they

put forth in support of unmeaning shibboleths they would soon carry out a magnificent reform."

MR. GEORGE S. HOLMESTED, Inspector of Titles of the High Court of Justice for Ontario, spoke as follows:—I have been invited to second this resolution, I presume because I am one of the pioneers in advocating the introduction of the Torrens System of registration into Canada. It is now fourteen years since I was first led to investigate that system, and from the time I came to understand it, until the present time, I have never wavered in my conviction of the great superiority of that system over that which prevails in Ontario.

You have heard in the President's address that this Torrens System has been adopted by all the Australian Colonies, by the Parliament of Canada for the Northwest Territories, by the Legislature of Manitoba, and also partially by the Province of Ontario. The fact that it has been so adopted is strong *prima facia* evidence of its merits, but I should like, if possible, to convince everyone here present of the propriety of voting in favour of the Torrens System on its merits.

### THE OLD SYSTEM OF REGISTRATION AND THE NEW.

In order that you may be able to give an intelligent opinion on the subject, it is necessary for you clearly to understand in what respect the Torrens System of registration differs from the system of registration of deeds which at present prevails in Ontario. People who look at the matter superficially may jump at the conclusion that there is no great difference between the two systems, but as a matter of fact they differ radically. It is quite true that under our present system of registration we talk of having "a registered title," meaning thereby that all the documents constituting the chain of title are registered. But if the Torrens System accomplished nothing more than that, no one would think it worth the trouble of making the change. Let us consider for a moment what the present system of registration is intended to do. It is simply this: to provide a public office in which all instruments

affecting the title to land may be recorded. It does not pretend to provide any means whatever for determining the legal effect of instruments which are so recorded; and as a matter of fact instruments may be recorded against a parcel of land, which, though purporting to affect the title, have in reality no more legal effect on the title than a blank sheet of paper.

### A VISIT TO A REGISTRY OFFICE.

Let us, in imagination, go for a moment to one of our registry offices. We want to ascertain the title to a lot of land. We are shown what is called an "Abstract Index," in which is set forth a list of all the instruments affecting the land we are inquiring about. From this it may appear that there is a perfect chain of title; but no one is safe in relying on this Index alone; he must examine each instrument indexed, and carefully consider whether it is made by proper parties, in proper form, and is duly executed. This he must do at his own risk. He must determine for himself the legal effect of each instrument at the risk that if he, or his legal adviser make a mistake, he may lose the land. And the great trouble is that after exercising all the care and caution possible, and procuring the best legal assistance, some unexpected flaw may be discovered. Let me give you a few practical instances of the way in which our present registry system works.

### A REGISTERED WILL THAT WAS NO WILL.

There was a case of Nex *vs.* Seddon before Mr. Justice Robertson lately. The action was brought to enforce a contract for the sale of a parcel of land. In this action it appeared that the vendor had a good registered title—no links in the chain were wanting, no flaws were apparent. It appeared that the vendor claimed as devisee under his uncle's will and had effected loans on the property, and I believe had made one or two mortgages to loan companies. Now very few persons, I venture to think, would guess what was the objection to this title. The will under which the vendor claimed was in due form, duly

executed, duly registered, and yet *it was of no more value than a piece of waste paper.* The difficulty was that after the testator had made his will, he married, which had the effect of revoking the will (See R.S.O., chap. 109, sec. 20), so that it was absolutely null and void; and yet, as you have seen, it was nevertheless registered.

### HOW A FARMER LOST HIS FARM AFTER TWENTY YEARS' POSSESSION.

There was another case not long ago before the courts of Munsie *vs.* Lindsay (1 Ont. Repts., 164; 11 Ont. Repts., 520), in which the facts were as follows:—In 1854 a man named Munsie died leaving a will whereby he devised his farm to his widow for her life, and then after her death to his son Robert. The will was duly registered. Robert shortly afterwards purchased his mother's life-interest, and then thinking himself owner of the lot absolutely, he sold it to his brother James, who subsequently sold it to the defendant Lindsay, who bought on the faith of his vendor having a good registered title. Lindsay lived on the lot and worked and improved it for a good many years, thinking, no doubt, to leave it as a provision for his family on his death. In 1874, however, the widow of the testator died, and within ten years afterwards the heirs at law instituted a suit against Lindsay and recovered the land from him, on the ground that the devise to Robert was void, he happening to have been a witness to the will. All the hard-earned fruits of Lindsay's labour were thus taken from him without any compensation, except a lien for the value of the permanent improvements he had made, against which was set off an occupation rent for the premises since the widow's death. I think that you will confess that a registration system which leads to such results is, to say the least, not a very perfect or efficient system.

### A MORTGAGE DISCHARGED THAT WASN'T DISCHARGED.

I will give you another instance of its effects. Some little time ago a case was before the courts, Beaty *vs.* Shaw (14 Ont. Appeal Reports, 600), in which the following state of facts appeared:—There were two persons,

executors and trustees of an estate. One of the trustees owed a sum of money to the estate, and executed a mortgage on a parcel of land to his co-trustee to secure its payment. The co-trustee died, and the other who owed the money survived him, and he then (without paying the debt to the trust estate) as surviving trustee and executor, dishonestly executed a discharge of his mortgage, which was duly registered. He then sold the land to the defendants in the action, who bought it in good faith, relying on the mortgage having been discharged. The purchasers worked it and made valuable improvements on it, and were somewhat astonished after the lapse of two years to learn that

THE DISCHARGE OF MORTGAGE WAS UTTERLY WORTHLESS.

The result of the suit was to take the land away from them, with all their improvements, without any compensation whatever; and yet you will be careful to observe that the discharge, or what purported to be a discharge, was duly registered.

A CHAIN OF TITLE OF 600 LINKS.

I remember another case where a man had laid out a farm lot as a village and cut it up into a number of small lots which he sold off. These lots passed through different hands, and some were sold for taxes. Unfortunately the village never got beyond the paper stage, and after some years all these lots got back into one hand, and were together used as a farm lot; but the land was practically unsaleable, for in order to investigate the title to this farm lot you had to examine and consider no less than 600 registrations, and the result was the owner had to spend over $1,000 to quiet his title.

HOW A Q.C. CAME TO GRIEF.

I will mention yet one other instance. It was told me only to-day. A learned Q.C. of Toronto, a shrewd business man, bought a parcel of land, he carefully searched the title and found it all right, the registry office disclosed no incumbrances. He paid his purchase money and was somewhat surprised afterwards, on being called on to pay

$1,500 on a mortgage. This mortgage, it appeared, had been made on the land the Q.C. had purchased, and other lands, and duly registered, but, by mistake, the registrar had omitted to index it against the lot the Q.C. had purchased. The only redress the Q.C. had, was a right of action against his vendor and the registrar, but as both of them were worthless, he had to lose his money and look as pleasant as possible under the circumstances (See Lawrie *vs.* Rathbun, 38 U.C.Q.B. 255, a similar case).

### 144 OBJECTIONS TO ONE TITLE.

But I will not weary you with further illustrations of the hazards which people have to run under our present registry system. Let me, however, point out to you one other defect. Owing to the necessity of each link in the chain having to be perfect, it is easy to see that the more transactions there are recorded, the greater is the number of defects likely to be found in the title; and the result is that the investigation of titles extends sometimes over months and even years. Some time ago there was a case before the courts in which no less than 144 objections and requisitions had been made on the title in question, and the investigation had been going on for four months; and all this means, I need hardly say, great expense.

### RESULTS OF OLD SYSTEM OF REGISTRATION.

As the results of the present system of registry we have, therefore, great uncertainty of title, and great expense, and delay, in investigating titles.

### WHAT THE TORRENS SYSTEM IS.

Now let us see what the Torrens System 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 Torrens System aims at doing, and actually

does, is to record *the title, i.e.*, 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; 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.

But there are cases where a difficulty may arise in making out a perfectly good title, but even these cases may be registered under the Torrens 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 the date of its first registration would not be guaranteed, and any person dealing with a title so registered would have to satisfy themselves as to the goodness of the title of the person first registered, but all subsequent transactions would be under the Torrens 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 titles would be capable of being fully registered without much expense.

### A VISIT TO A TORRENS REGISTRY OFFICE.

If you want, therefore, to ascertain the state of a title registered under the Torrens System, you go to the office, and instead of having to search through a long list of deeds, as under our present registry system, you are shown a book, on one page of which is set out distinctly who is the present owner, and what charges, if any, affect his title; and you have all the information in a narrow compass which it is necessary for you to know, in order safely to deal with the person claiming to be the owner, without the necessity of going into any antiquarian researches as to who owned the property thirty or forty years ago, and how it has devolved from hand to hand ever since. Moreover, in dealing with property registered

UNDER THE TORRENS SYSTEM, YOU RUN NO RISKS,

as to the title; the risk and responsibility of determining the legal effect of instruments affecting the title, is taken off your shoulders by the public officer, because no devolution of the title can be recorded until he is first satisfied of the legal validity and sufficiency of the instrument by which it is effected, and even should he by chance make a mistake, persons who would otherwise suffer are guaranteed compensation for any loss occasioned by the mistake.

THE RESULTS OF THE TORRENS SYSTEM

Therefore, are certainty of title, expedition in showing title, and the avoidance of the great expense attending the investigation of titles under the old system, and a guarantee against loss arising through mistakes.

THE TORRENS SYSTEM FOR THE WHOLE PROVINCE.

Now, I hope, I have convinced you of the superiority of the Torrens System of registration. Let me ask you, is it going to be any easier to adopt that system by waiting? Are our titles in the meantime likely to grow shorter, simpler, or more free from defects than they now are? Is it not perfectly obvious that every transaction adds a fresh link to the chain, and every deed or instrument recorded under our present system renders the possible existence of mistakes, flaws and imperfections more likely? No one, surely, who considers the matter, can doubt that the sooner the Torrens System is extended to the whole Province the better.

But, gentlemen, this resolution asks you not only to affirm that it is desirable that the Torrens System should be speedily extended to the whole Province, but that it should be so extended, as inexpensively as possible. In most of the Australian Colonies, one office for each colony is found sufficient. In Ontario three or four would be ample.

The necessity for one or more registry offices in every county, under our present system, arises from the necessity of making searches, and going minutely into the past his-

tory of titles; all of which, as we have seen, is done away with under the Torrens System of registration.

In Australia the great bulk of the business in the land titles office is transacted through the post office, and there is no reason why it should not be so in this Province, where our postal communication is so good. There is, therefore, it seems to me, no real obstacle to the system being introduced at a comparatively small expense.

Gentlemen, I hope that I have enabled you to come to an intelligent conclusion as to the propriety of this resolution, and if so, I shall not have spoken altogether in vain.

☞ It may be useful to point out how such difficulties as have been referred to above could not arise under the Torrens System, or if they did arise, what would be the result.

In such a case as Nex *vs.* Seddon, for instance, the devisee would not be registered as owner unless the officer was satisfied that the will legally vested the property in him. But suppose the officer made a mistake, and registered a person as owner under an instrument which afterwards proved to be invalid. So long as the person improperly registered remained on the register as owner, the mistake could be corrected, but if he conveyed to an innocent person, then it is obvious one of two innocent persons must lose the land, and, in that case, whichever did would be entitled to be compensated for his loss out of the Guarantee Fund. This remark applies not only to the cases of invalid wills, but also to the mortgage omitted to be recorded against the proper lot, a mistake (by the way) infinitely less likely to occur under the Torrens System than our present registry system.

In the case of the sub-division of a lot into small parcels, the title to each parcel would be kept perfectly clear and distinct, and in the event of one man becoming the owner of all again, the whole property could be brought readily into one registration, without any necessity of quieting the title, or any such enormous expense as was necessary in the case referred to.

It must not be supposed that the cases referred to by Mr. Holmested are by any means rare or exceptional cases; as one of the gentlemen present at the meeting remarked, "anyone who has had any thing to do with real estate could tell of dozens of similar cases."

MR. S. G. WOOD said that one of the strongest and simplest arguments in favour of the Torrens System is that it has been so thoroughly successful in all the countries where it has been adopted, and no one knows of a single community in which it has been introduced, where there has been the slightest feeling in opposition to it, or where there has been any desire to return to the old sys-

tem. On the contrary, it has been found to be a boon to every community where it has been introduced. If a boon to the Australian Provinces, surely it will prove an equal boon to our Canadian Provinces.

I submit also that it is an undoubted fact that no individual who has placed his property under this system has ever regretted it, or will ever think of withdrawing from it and returning to the old system, the defects of which have been so ably exposed by Mr. Holmested. Therefore it appears to me that the question admits of no argument.

With regard to the opposition supposed to exist on the part of the legal profession, to which I have the honour to belong, it seems to me that there is no probable ground for anticipating any antipathy on their part. Lawyers, I submit, Mr. Mayor, have been in all time, and must necessarily be, the promoters of legal reforms.

I trust that the object we have in view in holding this meeting to-night, and in the moving, seconding and carrying of this resolution unanimously, will begin a new era in the history of the transfer of land in this Province of Ontario.

MR. STAPLETON CALDECOTT—From the able address of the president of the Association, followed by Prof. Goldwin Smith and Mr. Holmested, four impressions entered my mind.

First.—The present system of transferring land is a relic of feudal times, and in Canada we do not want any of the evils of those days.

Second.—All authorities have agreed that the Torrens System is the best; therefore no Legislature should delay its adoption on the ground of expense.

Third.—Our very best lawyers all over the country favour the change, and Mr. Wood says no reputable lawyers will stand in the way.

Fourth.—The Torrens System, wherever it has been tried, has proved to be a great success; whether in Australia, Manitoba, or in our own City of Toronto.

With these four propositions established, and the five objections so ably answered by Mr. Mason, removed, what more do we want?

The resolution was then put, and unanimously carried.

After passing a vote of thanks to the Mayor, the meeting adjourned.

# FORMS.

The following forms will give an idea of the practical working of the Torrens system:

Suppose that Mr. Goldwin Smith is entered as owner of Lot 5, east side of John Street, Toronto, on Plan No. 15.

The forms show a transfer from Goldwin Smith to J. Herbert Mason, a Mortgage by Mr. Mason to Sir Robert Torrens, and a Certificate granted to Mr. Mason; the Mortgage being endorsed and a final cancellation of that Certificate made when property is transferred.

## FORM OF TRANSFER.

*Land Titles Act.*

I, GOLDWIN SMITH, of Toronto, Esquire, the registered owner of the land, entered in the Register under the Land Titles Act, under Number 264, in consideration of the sum of Ten Thousand Dollars paid to me, transfer such land to John Herbert Mason, of Toronto, the said land being Lot 5 on the east side of John Street, Toronto, per Plan No. 15.

I, ———— Smith, wife of said Goldwin Smith, hereby bars my dower.

Dated the 25th day of April, 1890.

*Witness*: GOLDWIN SMITH.

BEVERLEY JONES. ———— SMITH (Wife).

Then follows affidavit verifying execution.

## FORM OF MORTGAGE.

*Land Titles Act.*

I, JOHN HERBERT MASON, of Toronto, Esquire, the registered owner of the freehold land registered in the Office of Land Titles, at Toronto, as Parcel 500 in the Register for Centre Toronto, in consideration of the sum of Five Thousand Dollars paid to me, charge the land hereinafter particularly described, namely Lot 5 on east side of John Street, Toronto, according to Plan No. 15, being the whole of the said parcel with the payment to Robert Torrens, of Adelaide, Australia, Knt., of the principal sum of Five Thousand Dollars, with interest at the rate of seven per cent. per annum, payable in manner following: In five years from date with interest yearly on the 25th of

April, and with a power of sale to be exercised after default, and one month's subsequent notice of the intention to sell. *All necessary covenants are implied.*

I, ———————— Mason, wife of said John Herbert Mason, hereby bars my dower.

Dated the 26th day of October, 1890.

*Witness:* J. HERBERT MASON.

GEORGE S. HOLMSTED. ———————— MASON (wife).

If party unmarried an affidavit annexed of that fact also of execution of Mortgage.

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Parcel 500 in the Register for Centre Toronto. Volume Folio 536.

## CERTIFICATE OF OWNERSHIP.

*The Land Titles Act.*

THIS IS TO CERTIFY that John Herbert Mason, of Toronto, Esquire, is the owner in fee simple with an absolute title of that certain parcel of land registered under the Land Titles Act as Parcel 500 in the Register for Centre Toronto, situate in the City of Toronto, in the County of York and Province of Ontario, namely Lot 5 on the east side of John Street as per Plan No. 15, subject to the exceptions and qualifications mentioned in Section 24 of the Land Titles Act.

*Such as municipal taxes, etc.

IN WITNESS whereof I have hereunto Subscribed my name and affixed my Seal this 26th day of April A.D. 1890.

(Signed) J. G. SCOTT,
*Master of Titles.*

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## ENDORSEMENT OF DELATINGS.

*On Certificate.*

By charge, No. 530, dated 26th October 1890, John Herbert Mason, his wife barring her dower, charged the above parcel in favour of Robert Torrens, of Adelaide, Australia, Knt., with the payment of $5,000.

By transfer, No. 1,215, dated 30th December, 1890, registered the 31st day of December, 1890, J. H. Mason, his wife barring her dower, transferred the above parcel to Thomas Marshall, who is now the owner, subject to the above charge and to municipal taxes.

Now entered as Parcel 560 Centre Toronto. (560 would therefore be the new number in Marshall's certificate.