THE REGISTRATION OF LAND TITLES AND THE LAND COURT OF MASSACHUSETTS

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REGISTRATION OF LAND TITLES AND THE LAND COURT

OF

MASSACHUSETTS,

WITH THE

DECISION OF THE SUPREME JUDICIAL COURT DECLARING ITS CONSTITUTIONALITY, SOME INTRODUCTORY NOTES BY THE RECORDER AND AN INDEX.

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THE LAND REGISTRATION LAW OF MASSACHUSETTS.

INTRODUCTORY STATEMENT.

The system of land transfer authorized by the land registration act, more commonly known as the "Torrens system," was first dealt with officially in Massachusetts in 1891, by a brief reference in the inaugural address of His Excellency the late Gov. Wm. E. Russell, and afterwards by his special message to the Senate and House of Representatives, dated Feb. 17, 1891. This message is here reprinted in full, with the exception of two paragraphs not applicable to the present law: —

In my inaugural address I referred to the fact that the subject of a thorough reform in our system of land registration and transfer would be brought before you, and commended the matter to your serious consideration. Since that time public-spirited citizens and various business organizations have been manifesting an interest in this question, and through the press and otherwise it is coming prominently before the people for discussion. In view of the great benefits which I believe can be realized by the adoption of new methods, I deem it proper to bring the matter specially and prominently to your attention.

I believe that the Australian system of land registration and transfer, more commonly referred to, from the name of its originator, as the Torrens system, is the longest step that has yet been taken anywhere towards that freedom, security and cheapness of land transfer which is conceded to be so desirable in the interest of the people. Our citizens demand the enactment of the best legislation that can be devised, whether originated here or elsewhere, and while another country, whose conditions are similar to our own, has gained the credit of first adopting the admirable and simple plan of land transfer which I now call to your attention, we can yet be the first among the States of the Union to place this legislation upon our statute book and to lead the way in its adoption by the American people, as we have already done in the case

of the Australian ballot. The universal favor with which this latter system has been received by our people should at least remove any prejudice against following the legislation of the same country in another respect.

The need of some new system of land transfer is shown by the growing public dissatisfaction caused by the delays and expense attending our present system of registration of deeds. That system has existed in this Commonwealth for a little more than two hundred and forty years. In former days when our population was smaller it apparently satisfied the popular demand; but with increase of population it has become less serviceable. Our people are now largely concentrated in cities and populous towns. The last national census shows that forty-seven cities and towns, having each more than eight thousand inhabitants, contain seventy per cent. of our whole population. The density of the population with the greater subdivision of land and increase of real estate transactions which it involves is reflected in the mass of the records in our registries of deeds. The four containing the largest number of volumes are those of the Middlesex south district, of Suffolk County, of the Worcester district and of the Essex south district. These contain respectively at the present time, 2,022, 1,979, 1,355 and 1,300 volumes. The increase in the number of volumes in three of these registries during the period of thirty years from the end of the year 1860 to the end of the year 1890 was as follows: in the Suffolk registry, from 790 to 1,974 volumes, an increase of 150 per cent.; in the Middlesex south district registry, from 872 to 2,014 volumes, an increase of 131 per cent., and in the Essex south district registry, from 617 to 1,297 volumes, an increase of 110 per cent.* These figures indicate such a rapid growth in the mass of the records that at no distant day even the question of providing room for the records will be a matter of serious concern.

* Middlesex south registry now contains 3,160 volumes, and Suffolk, 3,038.

In the historical pamphlet written by John T. Hassam, A.M., on the registers of deeds for the county of Suffolk, being a part of the proceedings of the Massachusetts Historical Society for March, 1900, the author says: "The great increase in the bulk of the records in the Suffolk registry of deeds can be best comprehended by bearing in mind that 19 books contained all the deeds and other instruments left for record from the first settlement of the country down to the year 1700. On Jan. 1, 1800, the number had risen to 193; on Jan. 1, 1850, there were 606 books on the shelves; and on Jan. 1, 1875, 1,250 of them; on Jan. 1, 1900, they had increased to 2,656 in number. So that there have been added in the last twenty-five years more books than had been filled during the entire period that preceded it. These are huge folio manuscript volumes, containing, most of them, 640 pages each. When the present register entered upon the duties of his office there were 1,029 volumes in the registry, so that he has attested as many volumes of the records as all his predecessors put together and half as many more besides."

But we are already met by the more serious difficulty that the present mass of records is so great that much time and labor must be spent in searches in order to ascertain the transactions which affect the title to any piece of land. This causes delay and expense in completing transfers even if the most complete methods of indexing should be employed, so as to reduce to a minimum the time required in searching the records — and our present methods are by no means perfect. The delay and expense attending the present system form a serious tax upon purchasers and mortgagors of land, which bears with especial weight upon owners of small estates.

The first point which should be noted in connection with the Torrens system is that its use is optional and not compulsory; existing methods of transfer can be continued precisely as at present. It remains entirely within the option of every land owner whether he will avail himself of the privileges offered by the new system or not, and therefore no one loses any right which he now possesses. The new method must secure support from the public not through compulsory legislation but through the greater advantages which it offers.

. . . . . .

The contrasts between our present system of registration of deeds and the Torrens system of registration of titles are very marked. Under our system title to land depends not only upon instruments recorded in the registry of deeds, but also upon facts and proceedings which lie outside of those records. There is a constant increase in the mass of records of deeds and of proceedings affecting titles to land, which makes the work of examination a constantly growing burden. If any man's title to a piece of land is questioned or attacked by any particular person the Commonwealth has provided courts with appropriate jurisdiction in which the owner can have his rights ascertained and established as against that person. But it has failed to provide any method by which one can have his title ascertained and established as against all the world. Under our practice a new examination of the title is usually made upon each sale or mortgage of a piece of land, in spite of the fact that sufficient examinations may have been made in former transactions. These repeated re-examinations, generally needless, not only cause useless expense but delays which often involve a serious loss.

Under the Torrens system an official examination of title is substituted for an unofficial one, and the result when once sufficiently ascertained is given conclusive effect in favor of the owner, and

his title is made perfect against all the world. In effect under the Torrens system the State provides a proper court in which any one can have his rights in relation to a piece of land declared and established, not only as against particular persons who may have an adverse interest upon special notice to them, but also as against everybody. The principle of basing decrees upon general notice to all persons interested already prevails in our probate law. Laws providing for the removal of clouds upon title to land after general notice to all unknown defendants exist in many States of the Union, and the validity of decrees made under such laws has been established by decisions of the supreme court of the United States.

The contrasts in practical effect between the two systems are therefore very great. Under the system of registration of deeds, we have needless expense from repeated re-examinations, loss from delays, and possible insecurity arising from the fact that title depends not only upon the records but also upon facts outside of the records and not disclosed by them. Under the Torrens system, the title is examined once for all, and there is no needless re-examination; as all subsequent acts and proceedings must be brought one by one to the registrar to be noted, the state of the title can be ascertained at any time by simple inspection of the certificate on record. Therefore, with the added advantage of great simplification of the forms of legal instruments, transfers can be made quickly, easily and at small expense; and, further, there is absolute security in the possession of the premises bought, resulting from the indefeasibility given to the certificate of title issued by the State. The result is that under the Torrens system real estate can be transferred or pledged for loans with almost as much ease as stock in corporations.

A further feature of the system is worthy of notice. When land is first registered and a certificate of title is issued, or when it passes by will or descent on the death of an owner, the applicant, devisee or heir is required to pay a small percentage of the value of the land, generally about one-fifth of one per cent., into the public treasury. The sums so paid form an "assurance fund" which is held for the payment of indemnity to any person who may have had some claim upon, or interest in, land admitted to registration, and who failed to receive notice of the application, or for other sufficient cause did not assert his claim. Under our system, on the other hand, a purchaser may have paid full value for his land, yet if any outstanding claim or interest is overlooked, he is obliged to make further payment, and may be remitted for his remedy to a suit upon covenants which have no practical value.