THE COURT OF LAND REGISTRATION.

Amidst the trend of modern times toward specialization in all lines of intellectual activity,—an over-specialization, perhaps, in which not only have the once cohesive and component parts of long-established trades and professions been broken up into many separate and independent branches, but entirely new and distinct trades and even professions have arisen,—two of the three ancient learned professions remain, in outward form at least, comparatively unchanged.

In spite of the readiness of the law to adapt itself to the changing circumstances and demands of business life, in spite even of its leadership in the quest for new forms and new vehicles for commercial activity, its own machinery has undergone surprisingly little change either in form or substance. Throughout the country at large, throughout any one State as a whole, the practice and the administration of the law remain comparatively unchanged from ancient times. Even in the great cities where in the matter of practice the profession has been broken up into many and distinct groups of workers, each confined more or less rigorously to its own special line of work, the forms and nomenclature of the courts have remained as from the days of our fathers.

When, then, a new court, having a novel name, a new and independent procedure, and almost a new kind of jurisdiction is created in Massachusetts, is provided for by constitutional amendment in Virginia, is adopted by the Federal Government for the new island possessions, and is copied by the German empire into its judicial system, it may not be amiss, in a journal devoted to the scientific study of the law, to consider for a moment some of the causes which have demanded the creation of this new judicial machinery, what the new court in itself is, and what it may be expected to accomplish.

The Court of Land Registration is purely a Massachusetts creation. It is not, as popular opinion, professional perhaps as well as lay, would have it, a more or less socialistic importation from Australia. With a bland and characteristic disregard of everything "foreign," the Anglo-Saxon has associated with all methods

of land registration the name of Sir Robert Richard Torrens, although land registration on practically the same general lines existed in Europe for nearly five centuries before Torrens developed his method in Australia. The Massachusetts system is purely a local adaptation to the usages and practices of the common law and to existing Massachusetts statutes of the general features common to all such systems, without any especial regard to the Australian method. Moreover, the system established by Torrens was a piece of purely administrative machinery designed expressly to remove the registration and transfer of land from the domain of the law entirely, rather than to favor the creation of still another court. The name of Sir Robert Torrens has nevertheless become indissolubly associated with that of the Massachusetts Act of 1898, and the "Torrens System" and the "Torrens Court" it is, in popular parlance, and such it is likely to remain.

The underlying causes for the adoption of some system of the kind, whether in connection with a European code, the English law, or the statutes of an American State, are of course the same. Throughout the modern world land is the great asset, the basis of all property rights, and the safety and simplicity of its tenure and transfer are the just and primal objects of the law. The first great property right of non-nomadic peoples is the right, following upon the might, to hold that land of which one is literally seized in possession. It is the recognition and protection by the law of the righteous physical control actually existing that constitutes "title" under our law. Hence arose the recognition by the State of the right of corporeal holding, the making of that right a matter of record, the transfer of that right also a matter of record, and the method of transfer and preservation of the record a part of the law of public administration.

As time has passed a great difference has arisen in the condition of real estate titles in the older cities from that in the country districts. In each a system which was very well adapted to the simple conditions which obtained among our forefathers was becoming rapidly outgrown; and insecurity of tenure, and delay and uncertainty in transfer, resulted. The cities have suffered from too much record title; the towns from too little.

The remarkable change and development which has taken place in the last thirty years in both the character and method of real estate dealings has been so gradual and so natural that it has to a great extent escaped the attention of the bar as well as that of the

public at large. The congestion of our great cities, the enormous increase in ground rents and in the valuation per foot in the business sections, suburban development, the closing in for strictly private enjoyment in country estates of great tracts, hitherto open country or seashore reaches, and the general investment of capital in real estate securities, has occasioned a prodigious increase in real estate transactions. With this has grown up the business of the real estate broker, and the development of conveyancing as a separate and special branch of the legal profession.

Thirty years ago there were in Boston some half a dozen professional conveyancers; to-day there is a conveyancing bar numbering several hundred. Then real estate dealings were comparatively few; the character of the foundation and standard titles was well known; a search was a matter of comparative ease and of relatively small expense; its character was comparatively simple; and judicial determination, if necessary, prompt and decisive; moreover, the personality of the borrower or purchaser played an important part in every transaction. To-day the element of personal guaranty has been practically eliminated; the delay and difficulty attending the trial of a real estate cause is almost prohibitive; the chain of even the average title has become long and complicated; the result reached by the best conveyancer is merely an individual opinion deduced from so much of the evidence of title as may be of record, taking of necessity from ten to twenty days to accomplish, and costing a substantial fee, proportionate both to the amount of work and to the amount of money involved.

As a result, while to the real estate dealer and investor cheapness, facility, and security in transfers have been becoming more and more a necessity, expense, delay, and uncertainty have been growing more and more his portion. With hundreds of transactions a day in the Metropolitan districts this has grown to be an insufferable burden upon real estate as a live asset.

Nor has this state of affairs commended itself to the profession. The legitimate duties and responsibilities of a conveyancer in the proper drafting and construction of current instruments, have become buried beneath the burden of severe and exacting mechanical labor and the necessity of avoiding, rather than of construing and settling, any question, or possibility of question, that learning or ingenuity, timidity, or ignorance can suggest in a long, involved, and often incomplete record title. Neither the validity of a title as matter of law, nor the safety of possession under it, has become

the current test of its marketability, but merely the possession of a character either negative, or sufficiently neutral. In some States a remedy for this condition of affairs has been sought in the furnishing of official searches from the records; in others in the establishment of title insurance companies. Neither method satisfies the profession, or relieves the public.

In Massachusetts the attention of the legislature was directed to land transfer reform and some adaptation of the Torrens method was recommended in a vigorous and able message by Governor Russell in 1891. The matter was promptly taken up by leaders of the bar, and after years of discussion and attempts at legislation the matter was placed in the hands of a distinguished lawyer, Mr. Alfred Hemenway, as a Special Committee, to draft a measure for land transfer reform adapted to existing conditions in Massachusetts. The result was the present Massachusetts act. It is exceedingly simple in substance, though somewhat lengthy in form. In five years of practical operation under it no question has ever arisen as to the meaning of any of its provisions. The question of the constitutionality of the act was thoroughly tried out and upheld in *Tyler vs. the Judges,* 175 Mass. 71.

All of its provisions are carried out under the immediate order of a special court created for the purpose. The use of the act is purely voluntary, but land once registered remains so. The procedure is purely in rem, and consists in the judicial investigation and determination, upon petition of any person or persons claiming the ownership or power of disposal in fee simple, of the status of the title, and the boundaries upon the ground, of any given parcel of land; of the issuance of a decree and certificate of title in accordance therewith; and thereafter of the immediate judicial construction and determination of all instruments and proceedings affecting the land, and the maintenance of an official and conclusive muniment of the current title thereto.

Upon the receipt of an application for the registration of a parcel of land the title is referred to one of the official examiners, who returns as his report in the case a complete abstract of the record title, together with such facts outside the record as he may be able to definitely state, any recommendations he may deem it advisable to make as to requiring the investigation or proof of further facts by the petitioner, a statement of parties other than those named in the petition upon whom notice of the proceedings should be served, and finally, his opinion upon the title. Notice of the proceedings is then

issued by the court to every person who appears from any source to have any right or color of claim in the property. The entire abstract is carefully read by the judge before whom the matter comes, this having been found essential to the issuance of proper notice, to an intelligent trial of the case, and to the ordering of a proper decree which definitely and permanently determines the title.

Any person deprived by land registration of any right or estate without fault on his part is entitled to indemnity from the State treasury, and the responsibility of safeguarding the interests of the commonwealth, as well as those of all persons having possible claim in or to the land, is thrown directly upon the judges, the whole matter being thus made one, not of clerical routine, but of the administration of justice.

If no adverse claim or necessity for proof of matters outside the record appears, the cause is ripe for a decree immediately after the return day, which is usually about three weeks from the filing of the examiner's report. If there is a contest, it may be assigned for an immediate hearing.

Appeal lies for thirty days upon any particular matter as to which a party is aggrieved to the Superior Court, for an immediate trial upon issues framed therefor in the Court of Land Registration. Questions of law may be taken upon exceptions or report direct to the full bench of the Supreme Court. So much of the case only is carried up as is specified in the issue, exception, or report, and the cause is remanded back, with a certificate of the decision of the appellate court, for a decree in accordance therewith.

A copy of the final decree as to the whole or any portion of the land is filed in the Registry of Deeds in the district where the land lies, and the register, who is, ex-officio, an assistant recorder of the court, thereupon issues a certificate of title. With each petition must be filed a plan with such data that the boundaries of the land can be not only definitely determined, but preserved, and, if necessary, reproduced upon the ground. Each certificate is illustrated by an official plan drawn by the court's engineer and bound up in the registry with the original certificate of title, and every owner's or mortgagee's duplicate certificate refers to it. Each decree and certificate is made binding upon all the world, and conclusive evidence of the matters therein stated.

After final decree, future dealings with the land are effectuated by the endorsement or certificate of the recording officer, much as in the case of transfer of certificates of stock, except that the

authority for the acts of the assistant recorder is evidenced by deeds and other instruments in their present ordinary form. Registered land is dealt with precisely as is unregistered land, except as to the method and evidence of transfer and the compulsory use of definite boundaries, but the land is no longer subject to the acquirement of any right or interest by adverse possession or prescription. Voluntary transactions are accompanied by a surrender of the duplicate certificate for the proper endorsement, in case of the creation or transfer of a right less than a fee, or the cancellation of the old and issuance of a new certificate where the title passes. In involuntary transactions process issues to the owner to surrender his certificate for proper action thereon.

In plain cases of simple transfer the registers may, under a standing order of court, make the appropriate endorsements or transfers of title, but all other cases must be referred to the court; and on any matter of uncertainty or controversy, recourse may be had by any party or official to the court, for an immediate adjudication.

Thus titles may be reduced by a quick and inexpensive judicial process to a concise and conclusive official statement of their status, which is never allowed thereafter to become clouded by any doubt or uncertainty lasting over more than one transfer. The expense of initial registration is on a general average about the same as that of any ordinary examination of title and transfer; sometimes a little more, sometimes a little less. In subsequent dealings there is no delay and very little expense.

The necessity of a separate court or division of a court for the successful administration of such an act seems obvious. The cases all demand of the presiding judge an intimate knowledge of the methods and machinery of modern conveyancing, and the judges must at all times be available for consultation and direction, while the prompt hearing and disposal of all controversies or questions goes to the very essence of the whole system.

Apart from its duties, however, in providing for initial registration, and the guidance thereafter of a system of keeping land records, with occasional quasi-equitable jurisdiction, there are several ways in which the court seems to be of advantage as a new judicial tribunal.

One of the great impediments to the ready marketability of a large number of titles is the vague and intangible character of the defects or doubtful matters found, or suggested, upon an examina-

tion. One cannot remove by ordinary judicial process a cloud upon a title, without alleging and proving the real existence of the cloud, —the last thing that is desired. It is the ghost of the unborn as well as of the dead among his adversaries that haunts the troubled dreams of the conveyancer; and here is the only place where they may be exorcised. Into the Court of Land Registration is brought the land itself, and the title thereto is definitely determined. Doubt and question are resolved by a positive decree; a threatening enemy who will neither stand nor fight is forced to a prompt and decisive adjudication. For the intangible and unascertainable possible hostile interests a representative is appointed, through whom a present and permanent settlement of all questions is effected.

Again there are many titles, perfectly good in reality, but depending upon facts outside the record not susceptible of proof in such available or permanent form that a court of equity would enforce specific performance of an agreement to purchase. The machinery of the Torrens court facilitates the ready proof of such titles and the issuance of a certificate thereon which is made ever thereafter conclusive.

For the trial of real estate actions there are a number of advantages in a special court. In the metropolitan district the dockets of the regular trial courts are crowded with a multitude of cases. The trial lists are months, and in some places many months, in arrears. Real estate transactions cannot await the slow progress of the ordinary lawsuit. The Land Court affords an immediate trial, and, on appeal, a place as of right on the "speedy list."

The trial of a real action, either to a jury or a single justice, at general term, is a difficult and complicated matter. In the Land Court the report and abstract of the examiner takes the place of the customary mass of copies and exhibits, and both the proof and argument of purely technical matter and detail is simple before a court composed of practical working conveyancers. For the purpose, too, of carrying, in a real action, either a question of fact to a jury, or a question of law to the full bench, the elimination in the Land Court of all collateral matters is a great advantage, thereby leaving for the jury, or for the appellate court, the immediate and exact matter only as to which final determination is sought.

A great many of the questions which affect the marketability of a title are questions of practice rather than of law, and seldom come up in the course of ordinary litigation, and as the once prevailing "custom among the best conveyancers," which but a few years ago

formed an effective, though unwritten, code of law becomes daily weaker and vaguer, the need of some technical authority grows more imperative.

Finally, the most characteristic feature of the new judicial process is the jurisdiction and decree in rem. A decree once made is final; it binds all the world; it settles the title; and it thereafter keeps it settled. It would be but repetition to enlarge on this its principal feature further than to suggest the practical difficulty so often encountered in trying to definitely settle a controversy about land by any form of personal action.

Practically none of the matters here noted as peculiar to the new court from a purely professional standpoint, are essential to, or dependent upon, the purely administrative method of preserving and transferring the evidences of title under the Torrens system. Entirely aside from that, there seems to be a present need and a probable future for some such court as a modern though legitimate part of the regular judicial system. The present Attorney-General of Massachusetts has renewed the recommendations of his predecessor that to the new court be given general jurisdiction in all real actions; and such, if it be properly and conservatively administered, would seem to be its probable and natural development.

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