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EVOLUTION OF LEGISLATION ON PROOF OF TITLE TO LAND

R. G. PATTON*

Apparently the earliest method of proving title to land was by actual occupancy—not necessarily a complete or exclusive occupancy but nevertheless that form which precluded other use of the land. This was the basis, and the extent, of land ownership by the American Indians, both as tribes and as families. It has been the criterion among all nomadic people. It has a preferential status in the establishment of private ownership when the nomads changed their way of life and effected permanent settlements.

Some of the earliest legislation of the United States provided for the survey and sale of its public lands, and restricted the private acquisition of land from the government in other than the surveyed rectangular sub-divisions of the survey.¹ However it was necessary to recognize the possessory titles of pioneers who had settled on public land in advance of the making of the surveys. This was done by the enactment of numerous townsite acts which provided a legal procedure for proof of rights thus acquired and the issuance of patents to the respective settlers.² Thus their possessory titles were changed to documentary or legal titles.

Possessory titles are recognized by the courts when they protect a first trespassing squatter against acts of a subsequent trespasser.³ They are given priority over the claims of the conventional title holder when the latter has lost his right to judicial assistance by reason of acts which raise an estoppel⁴ or for failure to act within a period of time which the courts or the legislature have fixed as a limitation of action.⁵ In these cases the holder of the possessory title may by court action secure a documentary title in the form of a judgment which confirms a title acquired by estoppel or by adverse possession.

In early English jurisprudence, possession, seizin and title were so nearly synonymous that for several centuries the standard, and almost exclusive, method of an inter vivos transfer of title was by a ceremony

* Joint author: AMERICAN LAW OF PROPERTY (Little, Brown & Co., 1952); PATTON ON TITLES (West Pub. Co., 1938). Referee, Land Title Calendar, District Court, Minneapolis, Minnesota.

¹ 3 AM. L. OF PROP. (1952) 399, n. 1; *Id.* 401, § 12.100.

² PATTON, TITLES (1938), § 164.

³ 3 AM. L. OF PROP. (1952), 760, n. 2.

⁴ *Id.*, 839, § 15.17.

⁵ *Id.*, 755-764.

symbolizing a transfer of possession.⁶ The use of a written instrument for the purpose of effecting and evidencing a transfer grew out of its original use as a record of the ceremony of livery of seizin.⁷

In no other portion of Europe, after its populations became settled, was there so much recognition of possessory rights in land or such a slow approach to the time when transfers of land titles would be based upon written instruments. Not that the documents used were in any of the forms of deeds which became current in England. Quite the contrary. Throughout the civil law countries, the transfer was made by the semi-judicial act of a quasi-judicial officer, the Notary. His minutes of the appearance of the parties before him, payment of the consideration, and the expressed desire of the vendor support his declaration that he has transferred the latter's title to the vendee: and they have the same standing of being a public record as has the judgment roll of a court.⁸ The notarial system of transferring land titles remains in force in most countries of continental Europe and it came by natural adoption to Latin America, Quebec and Louisiana. Although exigency of transfers by non-resident vendors has made it necessary to recognize transfers by "private act" in the last two jurisdictions, transfers by "public act" are much more numerous.⁹ In both cases the record preserved is notarial and it has the same conclusiveness as other judicial acts.

In England, delivery of the deed of conveyance became a substitute for livery of seizin. Lack in the publicity of the latter is offset by protecting a subsequent purchaser under the doctrine of bona fide purchaser.¹⁰ An attempt was made to change the operative act of transfer from delivery of the conveyance to enrollment in a public record. However, as construed by the courts the Statute of Enrollments¹¹ was of limited application and could be entirely circumvented by use of a particular form of conveyancing known as a lease and release.¹² Except for indexing under registry acts in the counties of Middlesex and York, there is no public record of private conveyances in England. A vendor furnishes evidence of the title he claims by furnishing to the vendee's solicitor the original deeds in his chain of title.

⁶ *Id.*, 210, § 12.2.

⁷ *Id.*

⁸ SAUNDER'S LECTURES ON THE CIVIL CODE (1925), pp. 452-459.

⁹ 4 AM. L. OF PROP. (1952), 701, n. 5.

¹⁰ *Id.*, 525, § 2.

¹¹ 27 HEN. VIII, c. 16 (1635).

¹² Holdsworth, *Historical Introduction to Land Law* (1927) 153, 155; 26 HARV. L. REV. 108 (1912).

The system of recording deeds which is so generally employed in the United States as to be considered world-wide is limited, in fact, almost entirely to North America. It has been stated that "the distinctive features of the American system of recording deeds are. . . indigenous."¹³ The colonists who were responsible for initiation of the system may have secured the general idea from the Dutch system with which some of them had become familiar during their stay at Leyden¹⁴ and from the abortive campaign of Henry VIII for a universal system of recording conveyances.¹⁵ The first acts followed quite closely the wording of the Statute of Enrollments except that they substituted recording for enrolling.¹⁶ "At the time of the Revolution, most of the colonial acts were of this type; conveyance good as against the grantor and his heirs upon delivery, good as against all others only after being recorded."¹⁷ In the few states where this race-to-the-record type of act exists,¹⁸ the date of recording is the sole test of priority with no exceptions based upon statutory qualification of either the first purchaser or the later purchaser.¹⁹ Regardless of the virtue of certainty and dependability afforded by these acts, twenty five state legislatures have felt that it is fairer to exclude from the race to priority a subsequent purchaser who at date of his purchase has notice of a prior conveyance.²⁰ Thus there are recording acts whose main feature is the winning of a race in recording and others whose main feature is a lack of notice of a subsequent bona fide purchaser, a statutory adaptation of the equitable doctrine of bona fide purchaser—statutes of the race type and of the notice type. However, there is a third type of act, apparently patterned after the English registry act of Middlesex County and in force in twenty-one states,²¹ under which the priority of a subsequent purchaser depends upon a lack of notice plus priority of record, designated as being of the notice-race type.²² Each type has its advantages and each has also a crop of unfair situations.²³ These latter are aug-

¹³ Beale, *Origin of the System of Recording Deeds*, 9 GREEN BAY L. REV. 335, 339 (1907).

¹⁴ *Id.* p. 339; Haskins, *Beginnings of the Recording System in Massachusetts*, 21 B. U. L. REV. 282, 293-298 (1941).

¹⁵ Holdsworth, *op. cit. supra* at p. 155.

¹⁶ 4 AM. L. OF PROP. (1952) 538.

¹⁷ *Id.* See also Philbrick, *Limits of Record Search etc.*, 93 U. OF PA. L. REV. 125, 140 (1944).

¹⁸ 4 AM. L. OF PROP. (1952) 538.

¹⁹ *Id.*

²⁰ 4 AM. L. OF PROP. (1952) 540, n. 38.

²¹ *Id.*, 541, 542.

²² Philbrick, *Limits of Record Search and Therefore of Notice*, 93 U. OF PA. L. REV. 125-136, 259-306, 391-440 (1944).

²³ 4 AM. L. OF PROP. (1952) 540-545.

mented as to types 2 and 3 by the fact that the doctrine of record notice, i.e., notice from the records, was formulated at a time when the indices were kept alphabetically by name of grantor and grantee, and that, with the multiplication of land title records, such an index is now too cumbersome to be of much practical benefit except in remote frontier counties. In most counties, a purchaser is charged with constructive notice of a prior record which is difficult or impossible for him to find. Records which clearly afforded him notice in an early colonial community may now be overlooked even by an experienced searcher.²⁴ In consequence, the making of a purchase or the placing of a loan has become such a title hazard in many of the older communities that it must be protected by insurance. Not but that the procuring of insurance is dictated by ordinary business prudence whenever there is a hazard that justifies it, but legislative prudence equally justifies the removal of hazards whenever this is practical. In most states it has been as much of a legislative blunder to continue the recording system after it became impracticable as would have been a failure to substitute transfer by written conveyance for the outmoded method of transferring title by livery of seizin.²⁵

But if the recording system with all its hazards and the necessity of saddling its users with the expense of insurance is outmoded as to present times and present populations, what is an adequate substitute?

Comment. The legislators who drafted the earliest recording acts had almost no precedents for their guidance. Recording title documents originated not merely in North America but in the world as a whole almost entirely with enactment of the early colonial statutes. Beale, *The Origin of the System of Recording Deeds in America*, 19 GREEN BAY L. REV. 335 (1907); Haskins, *Beginnings of the Recording System in Massachusetts*, 21 B. U. L. REV. 282 (1941); Howe, *Recording in Massachusetts Bay Colony*, 28 B. U. L. REV. 6 (1948); WEBB, *Record of Title* (1890); PATTON, *TITLES* (1938), §§ 6-10; 4 AM. L. OF PROP. (1952), §§ 6-10; 4 AM. L. OF PROP. (1952), §§ 17.4-17.7. With no more than they had to guide them, it must be stated that the draftsman did a good job and that the acts served their purpose effectively for their time and place. As was the case with so many real property principles and statutes drafted for conditions which have subsequently changed (*Report of American Law Institute*, 1935, pp. 62-64), there appears to have been not merely a time lag in amending recording acts and the judicial principles based thereon but an almost entire lack of such legislation. Comment, *Recording Act in Missouri*, 4 ST. L. L. REV. 131 (1919); Hackman, *Proposed Changes in Recording Acts*, 16 LAWYER AND BANKER, 92, 164 (1920); *Washington Recording Act, Recent Statutory Changes*, 9 WASH. L. REV. 175 (1934). Not but that the recording acts of the several states could in all probability be amended to afford complete protection to a record owner and to purchasers from him but neither the bar associations nor the conveyancers association appear to have taken steps for that purpose.

²⁴ Cf. *id.*, 603-605.

²⁵ With enactment of the Statute of Frauds (1677), livery of seizin became ineffective except when accompanied by a writing, and the Law of Property Act (1925), c. 51 (1) expressly provided that interests in land could not be transferred by feoffment. The substitution in the American colonies appears to have been made by custom and practice without the necessity of a statute. 3 AM. L. OF PROP. (1952) 222, n. 4.

Shall we return to the English practice of reliance on unrecorded title deeds kept in a safety deposit box? But the English have found that system unsatisfactory also in metropolitan areas. After extensive investigation by committees of Parliament, England enacted laws in 1897 providing a compulsory system of title registration for the city of London.²⁶ They are based upon the Australian statutes adopted in 1858 which were formulated by Sir Richard Torrens. Since the system is in successful operation not only in far-away Australia, New Zealand and other distant parts of the British Empire as well as in much of London, but also in the neighboring and similarly-interested provinces of Western Canada, and in various counties in the United States, it will be well to follow the example of the English committees and ascertain something of the background and the mode of operation of the new system, and to reach a conclusion as to its adaptability to the American title situation, the same as they did in respect to the vastly more complicated situation which exists in the city of London.

Just as experience has improved our methods of locating and marking the boundaries of any particular parcel of land and the terms by which it may be accurately described,²⁷ it is reasonable to assume that experience may have also produced an improved method of indicating to anyone interested therein the ownership of that parcel of land and particularly of enabling the owner to furnish ready proof of his title and of the exact items of encumbrance thereon. The purchaser of an automobile or a lender taking automobile paper as security encounters no hazard of title requiring risk insurance: the auto license amounts to a certificate of ownership. The same is true of a passbook issued by a savings bank or a certificate of stock issued by a corporation. Sir Richard Torrens, then plain Richard Torrens, could have well obtained from the latter a suggestion of the applicability of the certificate system to land ownership. Not being a banker, but instead having spent much of his life as a customs officer before being appointed Registrar General of South Australia (and thus in charge of the registration of all instruments affecting title to real estate in the province), his earlier experience with the ship registry system led him to wonder why the title to a tract of land could not be registered the same as the title to a ship. The system with which he was comparing the land records which had come

²⁶ *Report of Parliamentary Committee, 1878-9*, PARLIAMENTARY PAPERS 1878-9, vol. 2, p. 9. Also, ROYAL COMMISSION ON LAND TRANSFER ACTS: *First Report*, London 1909; *Minutes of Evidence* Oct.-Dec. 1908, London 1909; *Minutes of Evidence* Jan.-Nov. 1909, vol. 2, London 1911; *Second and Final Report*, London 1911. Lord Westby's Land Registry Act, 25 & 26 VICT. c. 53.

²⁷ PATTON, TITLES (Supp. 1952), § 110a, *Growth of Scientific Boundary Descriptions*.

under his supervision was that provided by the English Merchants Shipping Law. Under it, a page in the registry is given to each ship, and on it appears the name and description of the ship, the name of the owner, and from time to time liens or encumbrances and releases. A duplicate of the page in the form of a certificate is given to the owner, and that is the evidence of his ownership in any part of the world. If ownership is divided, each owner is given a certificate for his share. To make a transfer, the certificate holder executes an assignment of a part or all of his interest, the assignment and the certificate are sent to the registry office, whereupon the certificate is cancelled, the page closed, and a new page is opened for the new owner or owners, and new certificates are issued. At no time is there outstanding more than one certificate for the same interest and it is not necessary to go back of any outstanding certificate nor to examine any page other than that currently in force. In view of its success as applied to such valuable property as ships, not only in England but in other ship registries, why might not the system be applied to real estate? The new Registrar General set about the drafting of legislation to that effect and had the satisfaction of seeing it enacted, not only locally but in many jurisdictions of the British Empire. During the twentieth century the system has been incorporated into the legal system of several American states,²⁸ Hawaii, the Philippines²⁹ and the Dominican Republic, and the name of Mr. Torrens has come into the language both as a verb (to torrens a title) and as an adjective (a torrens title).

Proof of title from the original title deeds served very well in England for several centuries; but at a time when land transfers other than by succession at death were very few. Then instrument registration served fairly well in the United States as well as in Australia and other British possessions so long as settled communities were small enough that questions of notice and bona fides were infrequent. But with the present increases in property values, number of transactions, and volume of records, something better is needed than a mere registration of instruments under which every transaction is at the risk of the investor—buyer, mortgagee or lessee, as the case may be,—and where any interest

²⁸ Bordwell, *Registration of Title*, 12 IOWA L. REV. 114 (1927); Patton, *The Torrens System of Land Title Registration*, 19 MINN. L. REV. 519 (1935).

In 1908, a very comprehensive report on land title registration throughout the world to that date was made by Henry Pegram, Esq., of the New York Bar to the thirty-first annual meeting of the New York State Bar Association, and is included in the thirty-first annual report of the proceedings of the association.

²⁹ Patton, *Extension of the Torrens System into Hawaii, the Philippine Islands and Latin-American Jurisdictions*, 36 MINN. L. REV. 213 (1952).

is acquired subject to all defects in the entire chain of title which have not been barred by limitation. What is needed is not a mere registration of instruments but a registration of title.³⁰ That a "torrens title" is of this character has been well stated in the following quoted paragraphs:

"The basic principle of this system is the registration of the title to land instead of registering, as the old system requires, the evidence of such title. In the one case, only the ultimate fact or conclusion that a certain named party has title to a particular tract of land is registered, and certificate thereof delivered to him. In the other case, the entire evidence from which the proposed purchasers must, at their peril, draw such conclusion is registered."³¹

"The official certificate will always show the state of the title and the person in whom it is vested. The basic principle of the system is the registration of the title to the land, instead of registering, as under the old system, the evidence of such title."³²

"That registration of title is in the abstract to be preferred to registration of assurances may at once be conceded, for the former aims at presenting the intending purchaser or mortgagee with the net result of former dealings with the property, while the latter places the dealings themselves before him, and leaves him to investigate them for himself. In one case he finds, so to speak, the sum worked out for him; in the other, he has the figures given him, and has to work out the sum for himself."³³

Like the metric system in comparison with our current non-decimal system of weights and measures, there can be no doubt that a certificate system of evidencing land titles would have been vastly superior to the recording system, and would have obviated much litigation and much of the unfairness and financial loss reflected in title decisions. Had it been inaugurated at the inception of colonial and proprietary titles, or even at the time of patenting of the public lands of the states and of the United States to settlers and purchasers, the patents could have been exchanged for certificates of title as is done in the provinces of Western Canada.³⁴ But where instead the title to a tract of land has

³⁰ Beale, *Registration of Title to Land*, 6 HARV. L. REV. 369 (1893); Wigmore, *Committee Report*, 37 REPORTS OF AM. BAR ASS'N., 1148 (1912); Rood, *Brief for the Torrens System*, 12 MICH. L. REV. 379 (1914); Velie, *The Problem of Land Titles*, 44 POL. SCI. Q. 421 (1929); Patton, *The Torrens System*, 19 MINN. L. REV. 519 (1935).

³¹ Chief Justice Start in *State v. Westfall*, 85 Minn. 437, 89 N. W. 175 (1902).

³² *In re Bickel*, 301 Ill. 484, 134 N.E. 76 (1922).

³³ *Report of Parliamentary Committee, 1878-9*, PARLIAMENTARY PAPERS 1878-9, vol.

II, p. 9.

³⁴ THOM, *The Canadian Torrens System* (1912); HOGG, *A Treatise on the . . .*

first been the subject of recording, as is the case in Eastern Canada and in the United States, there necessarily exists the hazard as to ownership and encumbrance which has already been mentioned as incident to titles covered by most of the recording acts, greater or less depending upon the type of the act. Without going into detail as to these hazards, the fact that they exist, and that the public is fully aware of the fact, is amply demonstrated by the size of various title insurance companies and the large percentage of the titles in many communities for which the owners consider insurance to be necessary. In order therefore to adapt a certificate system to proof of title in the United States, the most important feature of the authorizing statutes are those sections which outline a method for a conclusive determination as to ownership and encumbrance so that these items may be reflected in the first certificate of title. After issuance of that first certificate the matter is as simple as transferring or mortgaging corporation stock or a ship, the usual deed of conveyance serving the same purpose as an assignment or a bill of sale respectively. For issuance of that first certificate the status of a title cannot here be determined by an administrative office. Both in the original proceeding and in any subsequent proceeding in relation to a registered or "torrensized" title, any question which is exclusively judicial in character must be determined by the court.³⁵ However this is an advantage rather than otherwise in that the title is thus kept at all times in the form of an adjudicated title rather than one merely presumptively good.

Accordingly in the United States the transfer of a title from the recording-act system to the certificate system must be by a judicial proceeding affirmative in character but nevertheless resembling a suit to quiet title—an action in which the court will be given jurisdiction of all parties, both known and unknown, who could by any possibility assert an adverse right or claim, and in which the court can determine the holder of the fee title, the holder of all subordinate titles or interests with their conditions and limitations, and all existing liens upon or rights in the land.

The proceeding is conducted under the close supervision of an officer of the court, designated in the acts as an Examiner of Titles, but clothed with all the powers of a referee. The initial application of the claimant must be checked by him as to form and must receive his endorsed

Ownership and Encumbrance of Registered Land (1906).

³⁵ *People v. Chase*, 165 Ill. 527, 46 N.E. 454 (1897); *People v. Simon*, 176 Ill. 165, 52 N.E. 910, 68 Am. St. Rep. 175, 44 L. R. A. 801 (1890); *State v. Guilbert*, 56 Ohio St. 575, 47 N.E. 551 (1897).

approval before it be filed. He must then examine the title records with the aid of an abstract or search furnished by the applicant; the premises must be inspected or surveyed for the purpose of determining all occupancies; the examiner-referee files a report showing all deviations from a direct chain of title in the applicant free of encumbrance and free from occupancy by other than the applicant (i.e. a report showing the record ownership of all interests in the land, all liens thereon, all possible claimants of interest or liens as shown by the records, the occupancies, or the admissions found in the application). The report further recommends (requires) certain parties as defendants, being all the parties necessary to an adjudication, on proper evidence at the subsequent hearing, that the applicant or applicants, as the case may be, hold the fee title to the premises, and as to exactly what interests, claims or liens are subsisting against the property.

This done, the burden then shifts to the attorney for the applicant. He prepares a petition for summons in which he must list under appropriate subdivisions all defendants named by the Examiner; or as to any found to be deceased, the parties who, per evidence to be produced by him at the hearing for a finding of fact in the courts' decree, have succeeded as heirs or devisees to ownership of the interest or claim of the decedent. On the basis of the petition, and any evidence required by the judge or the Examiner, there is entered an order for summons pursuant to which the clerk of court issues a summons addressed to said parties and to "parties unknown claiming any right, title or interest" in the land there described. The attorney attends to securing service of the summons on each and every defendant in the manner prescribed by statute as to the particular types of defendants (resident, non-resident, those who cannot be located), and upon the "parties unknown" by publication. All of the acts are meticulous in the matter of observing due process of law and in the main they conform, in this respect, to the "burnt record acts."³⁶

If an answer is filed, the issue is tried in the same manner as in any other land title case, in some states by a special land court and in others by the general trial court. In case of a default of appearance by the defendants, no decree is entered "pro confesso" but evidence must be produced to substantiate every claim of the applicant which is not affirmatively corroborated by the earlier report of the Examiner.

³⁶ Cf. *Robinson v. Kerrigan*, 151 Cal. 40, 90 Pac. 129, 132, 121 Am. St. Rep. 90, 12 Ann. Cas. 829 (1907).

For lists of some of the burnt-records act, see PATTON, TITLES (1938), § 23, n. 284; 5 THOMPSON, REAL PROPERTY (1924), § 4130, n. 65.

Whether the hearing is conducted by the Examiner as referee or by the judge, it appears to be the usual practice to receive in evidence the Examiner's report and incidental thereto, by reference, all the records upon which it is based.

If it is found that the applicant lacks title to the land involved or to any portion thereof, the court must dismiss the application in toto or as to the portion to which the applicant is unable to prove title from the records or otherwise. As to the portion of the land to which the applicant proves title, usually the entire tract described in his application, the court enters a decree with appropriate findings of fact upon which to base paragraphs adjudicating that the title is in the applicant, either free from encumbrance or subject to specified items including rights of dower or courtesy or a statutory substitute and ordering that the Registrar of Titles enter a certificate of title in line with the adjudication upon the forthwith filing with him of a certified copy of the decree. The form of the certificate is prescribed by statute; and the latter also provides for issuance of a copy which is no different except for endorsement across its face of the words "Owner's Duplicate." A mortgagee's or a lessee's duplicate may be had also at a slight charge. The original certificate is retained by the Registrar and is bound with others in numerical order in a book designated as a register.

After entry of the first certificate, the matter of filing mortgages, judgments, attachments, mechanics' lien claims, notices of lis pendens and the like is substantially the same as for filing similar claims against a certificate of stock. The instrument is given a document number, retained by the Registrar and noted in considerable detail on the certificate of title in his register. Instruments discharging such claims are similarly filed and memorialized.

Voluntary transfers of title are effected in substantially the same manner as transfers of corporate stock: the Owner's Duplicate and the deed are filed with the Registrar; he makes appropriate entries in his indices and reception book and endorses a cancellation across the face of both the duplicate and the certificate in the register; if the deed is for all the land covered by the certificate, he enters a new certificate to the grantee (and issues a new Owner's Duplicate) for that land; if the deed is for a part only of the land described in the certificate, he enters a new certificate and an Owner's Duplicate to the grantee for the part described in the deed, and a residue certificate and duplicate for the unconveyed portion in favor of the registered owner named in the cancelled certificate.

In case of an involuntary transfer—devise, descent, execution sale, mortgage foreclosure, etc.—there arises a purely judicial question which the Registrar as a member of the administrative division of the tri-partite state government may not determine. The matter must be presented to the court by petition in a “proceeding subsequent to registration.” If an issue can be made as to the granting of the order requested, notice must be given to all parties adversely interested. The notice may be by summons, order to show cause or other written notice depending upon the applicable statute. But if the issue is one which the court may properly determine without notice of the hearing, no notice need be given and an order to the Registrar is entered *pro forma*.

Conclusiveness of the certificates of title is safeguarded not only by expiration of the periods within which to reopen a proceeding or to appeal from an order or decree but also by a limitation statute as to any contest, six months under most of the torrens statutes. No one appears to have suffered from the shortness of the period and it obviates all necessity of examining the original proceeding six months after entry of the decree of registration. Not but that, as in the case of any judgment, a decree may be set aside for fraud.³⁷ However this ground of attack need not concern a purchaser or mortgagee in that it is not available as against a bona fide purchaser without notice.³⁸ In fact, the conclusiveness of the certificate is so strong that the certificate prevails when issued to a bona fide purchaser on the basis of a forged deed.³⁹ So long however as the registered owner takes proper care of his duplicate there is no danger from this source in that a deed, or a purported deed, from him is inoperative and cannot be filed with the Registrar unless accompanied by the Owner's Duplicate. In case of loss or destruction of that instrument, the situation is the same as when a bond or a stock certificate is lost—no transaction regarding it is possible until there is a replacement. In the case of a title certificate this is accomplished by an order of court addressed to the Registrar, and entered only after ample testimony to establish the loss or destruction.

The superiority of the certificate system of evidencing title to land has been ably summarized in decisions of the courts among which are the following:

“The purpose of the judgment is to create a judgment in rem perpetually conclusive. Other proceedings in rem may determine the status

³⁷ *Baart v. Martin*, 99 Minn. 197, 108 N.W. 945, 116 Am. St. Rep. 394 (1906).

³⁸ *Id.*, p. 213.

³⁹ *Eliason v. Wilbourn*, 335 Ill. 352, 360, 167 N.E. 101 (1929), *aff'd* 281 U.S. 457 (1930).

of a ship or other chattel that is transient; this legislation provides for a decree that shall conclude the title to an interest that is as lasting as the land itself."⁴⁰

"The purpose of the Torrens law is to establish an indefeasible title free from any and all rights or claims not registered with the Register of Titles, with certain unimportant exceptions, to the end that any one may deal with such property with the assurance that the only rights or claims of which he need take notice are those so registered."⁴¹

And these statements are particularly significant in contrast with one found in a case antedating the torrens statutes and necessarily involving a title based upon the recording act, that "it is impossible in the nature of things that there should be a mathematical certainty of good title."⁴²

⁴⁰ *Smith v. Martin*, 69 Misc. Rep. 108, 111, 124 N. Y. S. 1064 (1910).

⁴¹ *In re Juran*, 178 Minn. 55, 226 N.W. 201 (1929).

⁴² *First African M. E. Society v. Brown*, 147 Mass. 296, 17 N.E. 349 (1888).