

## STATE ASSURANCE OF TITLE TO REAL ESTATE

AN EXPLANATION OF THE TORRENS SYSTEM FROM THE LAWYER'S STANDPOINT--THE PRESENT NEEDLESS WASTE OF TIME AND MONEY IN THE CEASELESS EXAMINATION OF TITLES.

(J. W. Bailey in Progressive Farmer.)

Under this head I propose to discuss in two articles the matter embraced in what is known as "The Torrens Land System." The present article will treat of the subject generally. The next article will discuss the specific subject of the act to be proposed by the North Carolina Commission for a solution by the General Assembly with a view to instituting in North Carolina the Torrens System or plan of State or county assurance of titles to real estate. I shall do this because I presume that the North Carolina plan will serve as a model for other States that should have the Torrens System, and that a discussion of its details will serve the purpose of a specific exposition of the law.

I must assume that the reader knows somewhat of the present land system in effect throughout the South. He knows that when he purchases real estate, he takes a deed of conveyance to the real estate, and has it registered in the office of the register of deeds for the county in which the land lies. And he knows that unless he employs an attorney to investigate the title to that real estate, he has no assurance whatever that he has a title to what he has paid for. What the attorney does when he "investigates the title" the reader probably does not know. So let me here set down in a general way what the attorney must do.

### THE PRESENT SYSTEM.

The attorney must first establish the "chain of title." That is, he must trace the real estate embraced in the deed back from 60 to 100 years through all who have held it. He must trace it for at least 60 years in order to establish that those who have held it and conveyed it really had a legal right to convey it. Even 60 years is not always a sufficient length of time, although it usually suffices. The safest attorneys trace the title in question back 100 years, and to the State or original grant if possible.

Next the attorney investigates the encumbrances on the title. That is, first he investigates to see what the former owners of the land have done with it. Have they mortgaged it? Have the mortgages been satisfied? Have taxes on it been paid? Have the owners suffered judgments to be taken against them while they were owners of the land? Are the judgments active, etc.?

In the course of 100 years any piece of land goes through many hands, and those hands go through many experiences. One man makes a mortgage. Another dies and leaves no will. Another gets into debt; judgments are docketed against him and his homestead is laid off. Another dies in debt, and his personal property not being sufficient to pay off his debts, his real estate is subject to sale. When one dies without a will, widow and children inherit the land—the former having her dower laid-off, the latter having land divided amongst them.

Only attorneys realize what a variety of events affect and involve a title to land. Irregular deeds, informal and enigmatical wills, partition proceedings, mortgages, unpaid taxes, judgments, liens, etc., mark the history of nearly every title. These each and all must be investigated, carefully read and passed upon, before the attorney can approve the title. As a

matter of fact, in many instances attorneys cannot "make sure" that a title is good; they give only their opinion.

It should be noted that if an attorney negligently approves a bad title, he is liable for the damages his client may sustain—provided the attorney has the money, and the client can prove the negligence. An attorney with no property can afford to look up a title for \$10, perhaps. An attorney with property cannot afford to do so for less than \$25—for the single reason that he is in a very real way a guarantor of the titles he approves. If the land is valuable, he ought to be paid in proportion.

Now, these are the facts as they stand. What does the Torrens System propose, and what is the reason for adopting its proposals?

### FEATURES OF THE TORRENS SYSTEM.

The Torrens system proposes once and for all to look up a title—to settle the questions of the past and to assure the present owner that his title is good.

As matters now stand, every time a piece of land is sold or mortgaged a lawyer has to go over the same ground that was gone over the last time the land was sold or mortgaged. And every lawyer so doing gets his fee. I was looking up a title last week. I traced the title back to 1830. I had to read some 20 deeds, and examine about 40 mortgages; investigate judgments against six individuals; look into the settlement of two estates, and see that the taxes had been paid for 20 years. A year ago this same land was mortgaged. Some attorney did then just what I did last week. The year before the land was purchased. Some lawyer then went over the same ground that I did last week and the other lawyer did last year. The year before that, this land was purchased by another man. Again a lawyer had to go over the same ground. Every time it was mortgaged some lawyer went over the same ground. I suppose investigations of the title to this lot had cost all told about \$200 and 20 days' time. The tax valuation of the lot was less than

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"I tell my friends that Peruna saved my life. I recommend it wherever I am, and when any of our folks are sick, I give them Peruna with success."

\$1,000. In other words, probably one-fifth of the tax value of the land had been spent in title investigations.

The reader must perceive what an immense expense and loss of time is here involved. This is no unusual instance.

Take another instance: A real estate company at Raleigh recently purchased 110 acres of land and converted the tract into 369 building lots. The title to this tract is one title. It might be certified under the Torrens System say for \$200 (I place the sum high because the land is valuable) and that would end the question of title. But as matters now stand there will be 360 conveyances and the title may be looked up 360 times, at a minimum cost of \$3,500 for the first round. The titles to all these lots will be looked up again in the course of 20 years—at another cost of \$3,600 and so on. Could any system be more expensive and wasteful?

I was today investigating a title to a large tract of land near Raleigh. I saw evidences (in the form of five sales of portions of it and seven mortgages) that the title to this land had been investigated 10 times or more in 10 years. I have no means of knowing what these ten investigations have cost the owners of the land. Five hundred dollars would not be too much.

What the Torrens System proposes is to close up the past; to go over the title once for all, and to put an end to the expense and waste of time required by this eternal procession of lawyers going over the same beaten path, each taking a fee for his work. One lawyer will not and should not take another's statement of title; but any lawyer will take the State's or county's judicial assurance of title.

So the sum of the proposition is that the State or county shall employ a lawyer to look up titles, and so far as possible clear them of question (by judicial process, of course) and have the land-owners pay the State once and forever for the service.

### FOOLISH OPPOSITION.

This is the first outstanding feature of the Torrens System. I have heard it said that lawyers are opposed to it on the ground that it will take work from them. Only foolish and little lawyers would oppose it on such grounds. Any man who will oppose the means of saving so much time and money to the public in order that he may have work, is too

little to be a lawyer. Such an argument is an indictment of the legal profession. The world cannot afford to lag 49 years behind in order that any man or set of men make a living. And the man who requires it had better stand aside. The laborer opposing the introduction of machinery and the lawyer opposing the introduction of State or County assurance of land titles in order that he may have business, are on a par with the idol-makers of Ephesus fighting Christianity in the interest of their trade.

Besides, title investigation is one of the lowest, most poorly paid and most hazardous of a lawyer's employments, and good lawyers will be glad to be relieved of the business. If they are worthy of their profession, they will find plenty else to do.

### LAND AS QUICK ASSETS.

The next proposition of the Torrens System is to enable the land-owner to pledge his deed by way of collateral for money borrowed, as one now pledges a certificate of stock or bond. Let us suppose that a land-owner has his title certified and registered by the county. Let us suppose that he has received from the county a certificate of title, on which the proper blanks are printed. Let us suppose that it is law that the assign-

ment of that certificate by the man and his wife shall have the effect of a mortgage and that possession of the certificate shall be necessary to conveying the land. (These are the Torrens System ideas). He goes to the bank, the certificate is signed and deposited, and he gets his loan. As matters now stand, the bank's attorney must investigate the title; a mortgage must be executed; and it must be registered. A land-owner cannot borrow money on his land without expense, time and publicity. Under the Torrens System these would be eliminated; and a man's land would be as good as bonds in aid of his credit. It should be said here that under any system the title must be investigated with regard to taxes, judgments and liens; but these three items are mere incidents to the main matter of the title.

### THE ARGUMENT AGAINST THE TORRENS SYSTEM.

The argument against the Torrens System is that it upsets our present tenures; that it does violence to the ancient law of real property. Granted. But as Artemus Ward says, "You cannot argue again a success." The Torrens System is working well in five American States—including such States Illinois and Massachusetts. It will work in any Southern State just as well. No amount of argument can meet the facts of success where the system has been instituted.

I wish to be understood as not saying that the Torrens Sys-

tem should be compulsory. It should be optional with each land-owner. I further advocate that each man pay well for his certificate of title, and pay according to the value of the land certified. Let no man expect to have the work done for nothing. The outlay will be fully repaid in the increased value of his land. I doubt if the State or county can afford to investigate, register, assure and certify any title for less than \$50 under any circumstances, and in most cases more will be required. And finally, while I heartily advocate the reform I would not advise any one to expect too much of it. The American people are in the habit of expecting and politicians are in the habit of promising too much in the name of reforms. The Torrens System will not bring in the millenium, but that it is a step in that direction I have not a doubt. We must be content to gain one step at a time. And in my judgment it is bound to come. It is in the inevitable line of human progress.

And we can bring it to pass in this State within two years if we desire it with sufficient earnestness. All you have to do is to tell all the political candidates, high and low, who shake your hand this

year that you are against them if they are not for it. Just open right up or them.

Mr. N. O. Petree left Monday for Raleigh to visit his son, Walter, who is ill there. We regret to learn that Walter does not improve as rapidly as had been hoped for.

I have shoes and slippers at a bargain. W. E. Butner.

State of Ohio, City of Toledo, Lucas County.

Frank J. Cheney makes oath that he is senior partner of the firm of F. J. Cheney & Co., doing business in the City of Toledo, County and State aforesaid, and that said firm will pay the sum of ONE HUNDRED DOLLARS for each and every case of Catarrh that cannot be cured by the use of Hall's Catarrh Cure. FRANK J. CHENEY.

Sworn to before me and subscribed in my presence, this tenth day of December, A. D. 1886. (Seal) A. W. GLEASON, Notary Public.

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