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## THE ONTARIO LAND TITLES ACT.

As mentioned in a previous article, the Ontario Land Titles Act, R.S.O. 1927, Cap. 158, is almost a transcript of the English Transfer Act 1875 so that authorities on the English Act apply to the Ontario Act. The first Ontario Land Titles Act was enacted in 1885 and applied to Toronto and York. The rules and forms were printed as schedules to the Act and are to be found in the statute book of 1885. The rules were also largely taken from the English rules though those relating to the procedure for obtaining First Registration were taken from the Ontario Quieting Titles Act. The Act now applies also to Ottawa and Carleton, St. Thomas and Elgin, the County of Ontario and provisional judicial districts. It came into force in Ottawa in 1901 and in Carleton in 1908.

The Local Master of Titles is under the general legal administration of the Province but, in the administration of his daily details of office work, he is an independent person. There is an appeal from the local master to a Supreme Court Judge and from him in turn to an appellate division (Sects. 142-3). Within his territory, the local master of titles has the authority and the duties that the master of titles has in the County of York (Sect. 152). First registration, however, is subject to the approval of the master of titles at Toronto.

The Act deals with registration of title as distinguished from registration of deeds.

A Register of Title to land is a list of the owners of land, with particulars of the properties they own, and it may also state other particulars, such as the mortgages and other incumbrances which affect them. Legal validity is given to this list by Act of Parliament, and it is kept constantly up to date by the entry of all changes of ownership as soon as they occur.<sup>1</sup>

<sup>1</sup> Report of the Land Transfer Acts Commission issued in 1911 at p. 7.

Under Section 37 of the Land Titles Act the registered owner may by the simple instrument of transfer (Forms 31 or 32) prescribed by Rule 33, transfer the land and the transfer is completed by "entering on the register the transferee as owner," so that the land vests in the transferee only upon such entry.

In registered transfers the registrar receives an order (both in England and in Australia these orders are called Instruments of Transfer and are worded as if they were conveyances; but for registry purposes they are merely orders and I prefer to call them by that name,) desiring him to register somebody else in place of the registered owner. He satisfies himself that the order comes from the registered owner, cancels the old entry, and makes a new one accordingly. Thus the ownership account is kept always posted up-to-date.<sup>2</sup>

Every entry in the register is an independent act . . . it operates to vest an estate or interest of its own mere virtue: the registered owner's rights spring absolutely new from the last entry in the books, it is as if he had an original Crown grant in every case; whether it be called a transfer or a first registration matters not; in no case is it an old right transferred by a formality, it is a new right created by the servant of the State . . . It seems also to follow from the above observations that "registered transfer" is a sadly misleading term. It sounds like an echo from the stony defile of deed registration which we have left behind us. The new system does not register operations, it registers results; and a transfer is an operation and not a result and so can never be registered, no, not even by the Registrar-General himself.<sup>3</sup>

This being the underlying principle of the Act, namely, that "results" are registered not "operations" and that the Register of Title to land is a list of owners, not a list of instruments, it is difficult to understand why it is usual in Ontario Land Titles Offices to make the following entry in the register on a change of ownership, viz.:

By Transfer 3333, dated 2nd July, 1930, registered 3rd July, 1930, made in consideration of \$1,000. A.B., above-named, his wife, C.B., barring her dower, transferred the above parcel to X.Y., of the City of Ottawa, Carpenter, who is now the owner thereof, subject to the above incumbrances, exceptions and qualifications.

The "result" is in a subordinate clause in the centre of the entry, viz., "who is now the owner thereof, Subject, etc."

"It sounds like an echo," from the Registry Act, "the stony defile of deed registration." The abstract index (form 3) under Sect. 29 of the Registry Act sets out the number, the kind of instrument, the date, the date of registration, the grantor, the grantee, the land and the consideration but there is no corresponding

<sup>2</sup> C. F. Brickdale on Registration of Title to Land at p. 10.

<sup>3</sup> Brickdale's Registration of Title to Land at pp. 99-100.

section in the Land Titles Act. These details are out of place under the new system—the person searching being concerned only with the net result, i.e., the name of the present owner.

The following simple entry of the “result” is suggested for use in place of the above long entry partly of “operation” and partly of “result,” (where it is inconvenient to open a fresh parcel) namely:

X.Y. of the City of Ottawa, Carpenter, is the owner of the above parcel, registered 3rd July, 1930, under Transfer 3333.

The merit of this simple form is that the name of the new owner comes first where the person inspecting the register can see it at once, the date of the vesting is mentioned and there is a sufficient reference to the order or authority under which the Master of Titles has acted. It would make these notes too long if I should go over all the other entries, e.g., under transmissions, final orders of foreclosure, powers of sale in charges and the like. The forms used might all be cut down in a similar way to show “results” and not “operations.” So too with the entries of the charges, they should show “the result” not “the operation.”

What the register is under the Land Titles Act is clearly explained by the Chief Land Registrar in England in his pamphlet on Land Registration and State-Guaranteed Title at p. 8 as follows:

This register, where the land is registered with absolute title, forms the only title to the land recognised by law. The old-fashioned abstract of the past title is no longer required. A purchaser is in no way concerned with the past history of the title, nor how nor when the proprietor was entered on the register. He requires only to satisfy himself that his Vendor is in fact the person entered on the register.

There is one other point that should be mentioned. The practice in Ontario in opening a parcel is to leave at least 3 blank pages for future entries. This seems to me to be a great mistake. The rule should be to close the parcel and make a new parcel on every change of ownership, whenever it is practicable to do so. It should be an exceptional case when this is not done. At present the rule is not to make a new parcel until there is some writing on the 4th page: The rule is not to make a new parcel; It is only in exceptional cases that it is done: The rule should become the exception and the exception the rule. In England new parcels (or new titles) are frequent on change of ownership. In Alberta the original certificate of title is contained in a register which remains in the Land Titles Office and the duplicate certificate of title is issued and delivered to the owner. If the whole parcel is transferred to a purchaser the original certificate of title in the register is cancelled and a new

certificate of title is invariably made in the name of the purchaser, the original of such new certificate being in the register and the duplicate certificate of title handed to the purchaser. All this may make more work for the Land Titles Office but it appears to be essential. The practice in Ontario results in making the Land Titles registers into old-fashioned abstracts of title such as are found in the Registry Offices. The likeness is all the more striking now that the Registry Offices have adopted the Land Titles practice of striking out discharged mortgages with red lines.

Much of the difficulty has been caused by the fact that the Ontario Land Titles Act has always been administered by lawyers trained under the Registry Office system and practices useful, when deeds are registered, have been adopted in the new system where only the title is registered. It is said that a glass of water is a good thing and that a glass of wine is a good thing but that if you mix them you spoil both.

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Ottawa.

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