SUCCESSIVE REGISTRATIONS OF THE SAME LAND UNDER THE "TORRENS SYSTEM."— In the recent case of *Legarda* v. *Saleeby*, 13 Phil. Off. Gaz. 2117, the Supreme Court of the Philippine Islands rendered a decision under the "Torrens Act" in force there, which, if accepted as law, may go far to undermine public confidence in the system. The registrar had included the same piece of land in the certificates of adjoining owners. It was held that the one first obtaining a certificate should prevail against a purchaser from the other, who bought for value and without actual notice of the existence of the prior certificate.[1]

To a thorough understanding of the difficulties of the case, and in order to reach a correct result, it is necessary to keep in mind the chief aim and purpose of the so-called "Torrens system." Registration of title to land was first introduced into Australia in 1858;[2] and has since been adopted by England and many of her colonies,[3] several states of the United States, Hawaii, the Philippines and Porto Rico.[4] The system was designed to simplify dealings with real estate, and to give titles greater security, thereby affording greater protection to the purchaser than was vouchsafed to him under the old system.[5] Therefore, although of course no two statutes are quite alike, there are certain essentials common to all. The decree of registration operates on the title to make it conclusive against all the world, subject however, by most statutes, to the right of the true owner to set aside a registration obtained by fraud,[6]

[1] Two judges out of six dissented. For a full statement of the case, see RECENT CASES, p. 790.

[2] See, for historical matter, NIBLACK, THE TORRENS SYSTEM, 6; 3 DEVLIN, REAL ESTATE, § 1438; and a book by the founder of the system, Sir Robert Torrens, ESSAY ON THE TRANSFER OF LAND BY REGISTRATION, 9, 28.

[3] For a history of the English statutes, see DUMAS, REGISTERING TITLE TO LAND, 52; TORRENS, ESSAY ON THE TRANSFER OF LAND BY REGISTRATION, 39–44. The system is also in operation in Australasia and in many of the provinces of Canada. See YEAKLE, HURD'S ESSAY ON THE TORRENS SYSTEM, 56; 3 DEVLIN, REAL ESTATE, § 1438.

[4] The early Illinois and Ohio statutes were held unconstitutional. But the difficulties in the former case were surmounted by a new statute, and in the latter case, probably, by a constitutional amendment. For discussion of these points, see 3 DEVLIN, REAL ESTATE, §§ 1441–44; Niblack, Pivotal Points in the Torrens System, 24 YALE L. J. 274, 282. But constitutional difficulties have not greatly hindered the extension of the system, as acts are now in force also in California, Colorado, Massachusetts, Minnesota, New York, North Carolina, Oregon, and Washington, and when questioned, their constitutionality has been upheld. Robinson *v.* Kerrigan, 151 Cal. 40, 90 Pac. 129; People *ex rel.* Smith *v.* Crissman, 41 Colo. 450, 92 Pac. 949; Tyler *v.* Judges of Court of Registration, 175 Mass. 71, 55 N. E. 812; State *ex rel.* Douglas *v.* Westfall, 85 Minn. 437, 89 N. W. 175. See 3 DEVLIN, REAL ESTATE, §§ 1449–1455; 65 CENT. L. J. 449. The United States Supreme Court has not yet passed on the constitutionality of the system. In Tyler *v.* Judges of Court of Registration, 179 U. S. 405, it refused to take jurisdiction by a five to four decision. 8 COL. L. REV. 438, 446; 43 AM. L. REV. 97; 3 DEVLIN, REAL ESTATE, § 1451.

[5] For statements of the purpose of the system, and the benefits it is intended to bring about, see TORRENS, ESSAY ON THE TRANSFER OF LAND BY REGISTRATION, 9–17; YEAKLE, HURD'S ESSAY ON THE TORRENS SYSTEM, 52; DUMAS, REGISTERING TITLE TO LAND, 29–33, 94–102; 3 DEVLIN, REAL ESTATE, § 1439.

[6] See, for instance, ACTS PHILIPPINE COM., No. 496, § 38. See also Wadham *v.* Buttle, 13 S. A. R. 1, 3. Colorado and Minnesota make no exception in the case of fraud. 1 MILLS ANN. STAT. COLO., § 885; MINN. GEN. STAT., § 6889. See Baart *v.* Martin, 99 Minn. 197, 207, 108 N. W. 945, 949. However, the Minnesota courts will set aside a registration obtained by fraud. Baart *v.* Martin, 99 Minn. 197, 108 N. W. 945.

and by some, to set aside a registration obtained through mistake or misdescription.[7] Every subsequent transfer must be registered, and no interest can pass till registration takes place.[8] A purchaser for value from a registered owner gets indefeasible title subject only to such incumbrances as are registered.[9] Also most statutes provide for an indemnity fund, raised by imposing a small charge for each registration, to which an owner deprived of any interest by the operation of the system may have recourse.[10]

Although the "Torrens Acts" are generally conceded to be an improvement over the old method of transferring land by deed,[11] they have given rise to many new problems of their own, not the least of which is the problem of overlapping registration. There are several situations which may possibly arise. Where the certificates are still in the hands of the original holders, the first holder should prevail. Such is the weight of authority.[12] The state has purported to pass on the validity of both titles, and, by its adjudication, to make them conclusive against all the world. Each owner had notice of the registration by his neighbor,[13] and each was at fault in not contesting such proceedings. Since both titles cannot be good against the world, the best that can be done is to allow the owner who first sought the benefits of the system to prevail. *A fortiori* an innocent purchaser for value from the holder of the first certificate would prevail over the other original holder. But where both original holders have sold to innocent purchasers for value, it is submitted that the first purchaser should prevail regardless of from which of the two he purchased. For, as both purchasers are equally meritorious, neither having notice of the other registered certificate, and as both

[7] The Australian acts generally provide for the delivery up and cancellation of a certificate issued in error. See DUFFEY & EAGLESON, TRANSFER OF LAND ACT, §§ 82, 83; ACTS OF SOUTH AUSTRALIA, 1886, No. 380, § 69.

[8] See, for instance, N. Y. CONSOL. LAWS, REAL PROPERTY LAW, c. 52, § 406.

[9] See, for instance, ACTS PHILIPPINE COM., §§ 38, 39. N. Y. CONSOL. LAWS, REAL PROPERTY LAW, c. 52, § 400. It is perhaps a trifle inaccurate to call titles under the system indefeasible, as in the principal case both titles cannot be indefeasible. Guaranteed title is perhaps a better term. See NIBLACK, THE TORRENS SYSTEM, 64; BRICKDALE, REGISTRATION OF TITLE TO LAND, 44.

[10] See, for instance, ACTS PHILIPPINE COM., No. 496, §§ 99–107. The assurance fund provision was held unconstitutional in Ohio as taking property for private use. State *ex rel.* Attorney General *v.* Guilbert, 56 Oh. St. 575, 623, 47 N. E. 551, 557. See also NIBLACK, THE TORRENS SYSTEM, 8.

[11] The success of the system in Australia is undisputed. See TORRENS, ESSAY ON TRANSFER OF LAND BY REGISTRATION, 54–58; DUMAS, REGISTERING TITLE TO LAND, 94–102; NIBLACK, THE TORRENS SYSTEM, 14. But doubt has been expressed as to its success in other countries. See NIBLACK, THE TORRENS SYSTEM, 14–22. The outlook in the United States, however, seems hopeful. See 8 COL. L. REV. 438, 445.

[12] Stevens *v.* Williams, 12 Vict. L. R. 152; Registrar of Titles and Esperance Land Co., 1 West. Aust. R. 118; Lloyd *v.* Mayfield, 7 Aust. L. T. 48; Oelkers *v.* Merry, 2 Q. S. C. R. 193. See HOGG, AUSTRALIAN TORRENS SYSTEM, 823. But if the inclusion of the land in the prior certificate can be clearly shown to have been unintentional, it may be reformed to suit the intentions of the parties. See Pleasance *v.* Allen, 15 Vict. L. R. 601. See also HOGG, AUSTRALIAN TORRENS SYSTEM, quoted in the principal case at page 2119. Unfortunately this valuable treatise was not available at the time of writing.

[13] This is the effect of the notice "To all whom it may concern." See, for instance, ACTS PHILIPPINE COM., No. 496, §§ 35 and 38. By most acts it is provided that adjoining landowners shall have actual notice. See, for instance, ACTS PHILIPPINE COM., No. 496, § 32.

have what purport to be equally good titles, there is no affirmative reason for divesting the prior registered title in favor of a later one.

Applying this reasoning to the situation in the principal case, it would seem doubly clear that a *bonâ fide* purchaser from the original holder of the second certificate should prevail over the original holder of the first. As against such innocent purchaser the original holder of the first certificate stands in much the same position as the original holder of the second certificate stood toward him. As by the Philippine statute notice is required to be given adjoining landowners,[14] the original holder of the first certificate had actual notice of the second registration proceedings, on the faith of which the purchaser bought; whereas the purchaser has had no notice of any previous registration, nor by any possibility could have notice. In other words, it is not a case of equal equities as the majority opinion seems to assume, since the equity of the purchaser for value is clearly superior.[15] And if the purchaser in the principal case is not *bonâ fide* it is difficult to see how there can be such a thing as a *bonâ fide* purchaser under the system. For, although the description in the notice of the registration proceedings, "To all whom it may concern," makes all the world parties defendant, yet to charge a purchaser buying land under a second certificate with notice of the first certificate would have the effect of nullifying all the advantages which the "Torrens system" was intended to bring about.[16]

The decision in the principal case is therefore a serious misfortune in that its result will be to give titles to realty even less security, and purchasers even less protection, than existed under the old methods of conveyancing, with all the concomitant evils of cost, complexity, and delay intensified. For in view of the fact that no ministerial officer or court is always infallible, the purchaser of land instead of being confined only to the "chain of title," as he was under the old system, will be forced to extend his search to every certificate of land originally registered prior to the initial registration of the land he intends to buy, before he may assume with safety that he is getting a good title. That the court intended to bring about any such result seems hardly possible, yet it is difficult to see how any other conclusion can be reached from its decision. Its disregard of one of the cardinal principles of the act, that of protection to the purchaser, may serve to make the remedy worse than the disease.

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[14] See ACTS PHILIPPINE COM., No. 496, § 32. It appears that the plaintiff had actual notice in the principal case.

[15] As one of the chief essentials to the proper operation of the system is the protection of innocent purchasers for value from a registered owner, such protection has been consistently given regardless of how the original registration was brought about. See Main *v.* Robertson, 7 Aust. L. T. 127; Hassett *v.* Colonial Bank of Australasia, 7 Vict. L. R. 380; Gibbs *v.* Messer, [1891] A. C. 248, 254. But *cf.* Gibbs *v.* Messer, [1891] A. C. 248.

[16] The notice "To all whom it may concern" has the effect, with certain exceptions, of concluding all the world from disputing the validity of that registration. See ACTS PHILIPPINE COM., No. 496, §§ 35, 38. But there is nothing to indicate that such notice of the first proceedings will affect a purchaser under a second certificate. See Oelkers *v.* Merry, 2 Q. S. C. R. 193, 201. *Cf.* Miller *v.* Davy, 7 N. Z. R. 515. Otherwise there could be no such thing as a *bonâ fide* purchaser. The majority opinion in the principal case confuses registration of *deeds* with registration of *titles*. The former method has of course no effect on the title, while the latter purports to clean the slate. See 8 COL. L. REV. 438, 443 *ff.* 3 DEVLIN, REAL ESTATE, § 1440.