



THE  
AUSTRALIAN TORRENS SYSTEM:

BEING

A TREATISE ON THE SYSTEM OF LAND TRANSFER AND  
REGISTRATION OF TITLE NOW IN OPERATION IN  
THE SIX STATES OF THE COMMONWEALTH OF  
AUSTRALIA, THE COLONY OF NEW ZEALAND,  
AND FIJI AND BRITISH NEW GUINEA.

INCLUDING

THE TEXT OF THE TORRENS STATUTES AND ORDINANCES IN  
THE NINE TERRITORIES, AND REFERENCES TO OTHER  
STATUTES RELATING TO LAND,

AND

AN HISTORICAL ACCOUNT OF THE GROWTH OF THE SYSTEM.

BY

JAMES EDWARD HOGG,

OF LINCOLN'S INN, BARRISTER-AT-LAW, AND OF THE NEW SOUTH WALES BAR;

*Author of "Hints on Conveyancing in New South Wales" and "Conveyancing  
Precedents for Use in New South Wales."*

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## P R E F A C E.

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THE system of land transfer and registration known as the Torrens system has now been in operation in Australasia more than forty-six years, having begun its working life on the 1st July, 1858, in South Australia. The legislatures and judiciaries of seven independent self-governing communities—leaving Fiji and British New Guinea out of the question—have contributed directly to make the Australian Torrens system what it now is, whilst indirectly contributions have been levied on English Acts of Parliament and parliamentary papers. But each of these sevenfold contributions, both direct and indirect, has been made with a most insufficient regard to the matter and form of the other contributions, and the result is that, whilst the variations exhibited by the seven different bodies of statute law on really important points are extremely few in number, there are also extremely few instances of any one enactment being framed in all seven sets of Statutes in precisely the same language, whilst in a very large number of points of detail the variations are considerable, and in many instances enactments to be found in one set of Statutes are not to be found at all in others. Owing to this want of uniformity in the Statutes, decisions of the Courts in one territory are not always applicable to a similar state of facts in another territory, and a minute comparison of two correspondent or analogous enactments is often necessary in order to discover whether the enactments do resemble one another sufficiently to make it justifiable to apply, in the construction of one, a case decided upon the construction of the other.

The absolute necessity of consulting the particular Statute upon any section of which a judicial decision has been given frequently makes it difficult for the practitioner who has not the Statutes at hand to properly estimate the meaning and value of a particular decision. The bulk of the whole collection of Statutes, and the necessity for an elaborate examination and comparison of every

section in them, are probably the chief reasons why no attempt has yet been made at a complete systematization of the whole of the Torrens Statutes of Australia and New Zealand and cases decided on them. As will be seen on reference to the list of books given on p. li., only two books, one in 1888, and the other in 1899, have dealt with the subject of the Torrens system as a whole. The remaining five books in the list are annotated editions of the Statutes of one territory dealing with the system from the point of view only of that territory. The present book is an attempt to supply the want, which it is thought exists, of a convenient collection of the Australasian Statutes and cases relating to the Torrens system, treated as a whole, and thus exhibiting both the main features common to the system throughout Australia and New Zealand, and also the differences caused by variations in local legislation and decision. In order to render the principles and details of the system perfectly intelligible some knowledge of its origin and the processes by which it gained its present shape seemed essential; I have therefore given some account of the beginning of the movement connected with registration of title, and the early Australian legislation, including the Statutes of which the present consolidating Statutes in some of the territories are the outcome. The book thus consists of an historical account of the growth of the system, a print of the Statutes—with references to other legislation connected with the subject, and lastly a treatise on the subject in which an attempt is made to elucidate the principles, describe the working, and state some of the difficulties, of the system.

The main object of the book is to describe the Australian Torrens system as it exists in Australia—including New Zealand—and it is hoped that the Australian practitioner in any jurisdiction will, by its help, be better able to discover decisions in jurisdictions other than that in which he is for the time practising, and will be better able to judge of the value of any decision outside his own jurisdiction, and its applicability to the enactment in the particular set of Statutes with which he happens to be most familiar. Besides actual cases decided on enactments analogous to the enactment with which the practitioner is immediately concerned, these analogous enactments themselves—even in the absence of decisions upon them—will frequently throw some light on the enactment concerned, and a ready access to the Statutes of other jurisdictions will be found helpful. For similar reasons a reference to enactments outside the seven Torrens Statutes themselves seems desirable, and as an illustration of one tendency, at any rate, of the Australian system I have printed the Fiji Ordinances as an Appendix to the Statutes.

It will be noticed that the Fiji Ordinance occupies a position somewhere between the Australian Statutes and the English Land Transfer Acts, inasmuch as the only registered freehold "estate" allowed is the fee-simple. At present, illustrations from the English Land Transfer Acts are of little or no practical value in Australia, but in view of the recent increase of vitality in the English Acts—brought about by the operation of the compulsory registration provisions of the 1897 Act and the 1903 Rules—it is quite certain that the English Courts will be called upon to build up the case law on registration of title in England and Wales as the Australian Courts and the Privy Council have done for Australia. References to provisions in the English Acts which present analogies to the Australian Statutes may, therefore, be considered as not out of place from this point of view.

The book is also intended to exhibit the working of the Australian system for the benefit of practitioners and jurists outside Australia. Owing to its success in Australia, the Torrens system has aroused great interest—and some opposition—in nearly every part of the British Empire, and even in America. I venture to think that the system cannot be properly understood or appreciated, by persons who are not acquainted with its practical working, unless the likenesses and differences in local Statutes and decisions are exhibited in some such way as I have now attempted. Everything seems to point to the probability of reform in conveyancing and land law throughout the Empire taking the direction of registration of title, and the Australian system is admittedly the most successful example of the working of this principle under purely English law. Now that the English Land Transfer Acts of 1875 and 1897 are in active operation throughout the county of London, and the difficulties of a new system are beginning to be felt, it seems possible that some of these difficulties may be met, and the working of the English system facilitated, by considering the manner in which analogous difficulties have been overcome under the Australian system.

The waste of legislative energy which has taken place in the past—by seven legislatures turning out Statute after Statute independently of each other, though admittedly with the same objects in view—cannot but be forcibly brought home to any one who looks through the eight sets of Statutes which are here printed. Now that federation is an accomplished fact in Australia, similar waste could well be saved in the future by the six States agreeing to federal legislation on the subject, under s. 51, sub-s. 37, of the Commonwealth of Australia Constitution Act. The differences in principle are so few, and the advantages of a single Torrens Statute—or set of Statutes—throughout

Australia are so many, that if the task were seriously undertaken it should not be difficult to get all six States into line, so as to agree to uniform legislation in this matter. Not the least of the many advantages which would result would be uniformity in judicial decision.

The complete success of the Torrens system is at present retarded by the fact that it is only "a" system, and not "the" system. Until all land in any particular jurisdiction has been brought under the Torrens system, so that no conveyancing transactions can take place in that jurisdiction except subject to the rules of the system, difficulties will continue to crop up. These difficulties are principally due to the undefined nature of the relation between the Torrens Statutes and other legislation, and to the fact that analogies are constantly drawn by the Courts from the "general law" relating to land, which includes the technical rules derived from the feudal system. The tendency of the Torrens system is to throw off these technical rules, and this process would be greatly facilitated if there were no occasion—as there frequently is at present—to apply the feudal rules to land which is under the Torrens system. I have endeavoured to point out, in the course of the book, what I conceive to be the best way of meeting these difficulties, and possibly the very difficulty of doing this satisfactorily may have its effect in inducing an alteration in the direction suggested, i.e. that the old system of conveyance by assurance should no longer be permitted to exist alongside the Torrens system of registration of title. The way might thus be made clearer for the total abrogation, in theory as well as practice, of the feudal tenure of land in England and territories under the English common law.

It is necessary to give an explanation of some of the details in the arrangement of the book. It has been impossible to present an intelligible view of the system as a whole without a considerable number of references to general legislation. For the most part these references have taken the form of notes appended to particular sections of the Statutes, printed in small type in the body of the page. These notes in the body of the page also contain references to repeals and amendments effected by subsequent Torrens Statutes. A few footnotes to the Statutes are also printed, in order to point out, occasionally, the origin of some peculiarity in draftsmanship or phraseology, or mistakes and misprints which might possibly be misleading. The plan has been adopted of referring in Part III.—the treatise proper—to sections of the Statutes in groups, usually of seven, so as to bring together corresponding or analogous enactments in each of the seven jurisdictions. It has not seemed worth while to

refer with the same particularity to the Fiji Ordinances, and references to these have only been given occasionally.

One reason for printing the Fiji and British New Guinea Ordinances in extenso, as well as the Statutes of the seven self-governing territories, is the great difficulty of obtaining copies of any Statute or Ordinance outside its own territorial home; no arrangements appear to be in existence by which Statutes or Ordinances—say of New Zealand or Fiji—can be purchased in—for example—Sydney or Melbourne, and none of the Australasian Statutes, &c., can be purchased in London. For this reason only, if for no other, the print of the Statutes may be found useful. In order to diminish to some extent the inconveniently large bulk of the printed Statutes in Part II., I have, in many instances where a section or schedule, or part of a section or schedule, is identical, or nearly identical, with a section, &c., already printed, simply referred to the latter and have indicated any differences which may exist between the two. This course has only been adopted where the differences are merely verbal, and will be found useful as some guide to enactments which are substantially identical in more than one jurisdiction.

In addition to the Table of Cases and of Statutes cited, &c., I have prefixed a list of Australasian Reports, with some explanatory remarks, and also a list of books published in Australasia upon the Torrens system.

J. E. H.

8, NEW SQUARE, LINCOLN'S INN,  
*February, 1905.*



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