

CHAPTER 2

PROCESSES OF LAND TRANSFER

1 Special processes needed for dealing in land

1.1 The two special characteristics of land which we described in the last chapter – immovability and indestructibility – not merely affect the nature of its ownership but also make the sale of land quite a different proceeding from the sale of goods.

1.2 Generally speaking, it can be assumed that the person who has the right to move movable property and who offers it for sale in normal circumstances is the owner and has the right to sell it. Moreover, the mere fact of moving it defines what is being sold. But since land as an item of property cannot be moved, a new owner cannot at once advertise the change of ownership and identify what he has bought by moving it to a place of his own choosing, as he usually does with other sorts of property. Nor is it safe to assume that the person in occupation of land is its owner, for frequently he is not; he may be a lessee, or merely a squatter, or even a trespasser. In any case, as already explained, the ownership of land is itself peculiar because very often it is not the simple straightforward matter of a single individual person having complete ownership. In fact, so many and so varied are the interests in land – so many different sorts of stick in the bundle¹ – that there can be, without any intention to defraud, quite genuine misunderstanding or ignorance of what the true position is. An obvious example is family land in West Africa; it is by no means always certain who can deal with it and to what extent. In customary tenures various groups ranging from the family through the clan to the tribe have a tangle of overlapping and interlocking rights and these must be unravelled before there can be any safe dealing.² Similarly the question of who could deal with settled land in England used to be obscure before the position was cleared up by statute.³ Clearly some proof of ownership other than mere occupation is an essential preliminary to the sale of land or any other dealing with it.

1.3 Also the permanence of land, the fact that it lasts forever, makes it specially liable to become the subject of derivative or subordinate interests, such as leases or mortgages or easements. These are, so to speak, carved out of or fastened on the ownership and the important point about them is that they may give to persons other than the owner rights over the land after it has been transferred, even though the person to whom it has been transferred had no knowledge of them at the time of the transfer. It is imperative that such rights be fully ascertained by a prospective purchaser before a transfer is completed.

1.4 It is evident, therefore, that the sale of land requires more care than the sale of goods, for it demands special safeguards to ensure, first, that the land being

¹ See 1.4.4

² See 9

³ See 1.6.2 asterisk note

sold is unambiguously defined; secondly, that the seller owns the land he is offering for sale and has the right to sell it; and thirdly, that the purchaser has knowledge of all the derivative and subordinate interests which may detract from the value of the land or restrict its use, and which 'run with the land', binding a successor in title when it is transferred.

1.5 "So long as third parties can in this way have legally enforceable rights against land which outwardly appears to belong absolutely to the possessor, it is difficult, *in the absence of compulsory registration of title*, to devise a system under which conveyances of land can be conducted with the facility of sales of goods,"¹ says Professor Cheshire, thereby indicating that compulsory registration of title is the solution, at least so far as proof of title is concerned. But to make this clear we must consider three distinct processes of conveyancing, which are usually referred to as:

(1) Private conveyancing, by which is meant conveyancing without recourse to any public records at all.

(2) Registration of deeds, which means conveyancing conducted with the assistance of a public record of deeds affecting land. This is sometimes called 'registration of assurances', an assurance being the legal evidence of the transfer of property; but only lawyers are likely to be familiar with this use of the word.

(3) Registration of title, which perhaps could be more aptly labelled 'title by registration'², for basically it is quite a different concept from title by deed, whether the deed is registered or not.

2 Private conveyancing

2.1 In the days when communities were small and close knit, and people knew their neighbours and all about their affairs, an oral declaration and the handing over of a turf or twig were sufficient evidence of the transfer of land. Some such symbolic act performed in the presence of witnesses upon the land itself was adequate to safeguard not only the purchaser but also any third party who might have an interest in the land. Therefore many early systems of law, including customary law in developing countries, have regarded publicity alone as a sufficiently effective guarantee when land is sold.

2.2 But, as society becomes more complex, writing takes the place of public ceremony, and mere oral enquiry in the neighbourhood of the land is no longer adequate to prove ownership; nor will third parties know when there is a dealing. The person who appears to be the owner may in fact be the owner, but, if he has bought the land, he will have obtained ownership not by a public ceremony but by virtue of a written document which has been privately negotiated and seen only by the parties to it (and their legal advisers, for the preparation of such a document soon requires specialized legal knowledge). If he has kept this document safe he will be able to produce it, but it will merely show that he acquired the land from somebody who, in his turn, by production of the relevant document showed that he had acquired it from somebody who similarly proved his acquisition, and so on

¹ Cheshire 6 (our italics)

² We are indebted to Professor WhaIan of Queensland University for this suggestion.

as far back as is required either by law or by custom. And, of course, if the owner (or his predecessor in title) came into ownership not by a transfer but by succession, then that fact must also be satisfactorily proved. Furthermore there is always the possibility that some other interest, such as a lease or a charge to secure a loan, may have been created by a document which, though it affects the title, will not be revealed merely by examination of the documents of purchase, which appear to be complete without it. Even definition of the land itself is much more open to dispute when written description of the boundary is substituted for publicly walking round it.

2.3 Thus the proof of ownership (or proof of title as it is usually called) which is needed for safe dealing becomes a difficult technical process involving skilled investigation by practitioners learned in this special branch of the law. In Chapter 4 we describe the elaborate system of conveyancing which has developed in England and has set the pattern for many countries that use English land law or have been influenced by English procedure.

2.4 This system of private conveyancing has many shortcomings. It is often slow and costly, and above all it is not conclusive. Every time there is a dealing and a different lawyer is involved, he must repeat the investigation to satisfy himself that the title is sound. The efficacy of the investigation, and so the very title itself, will depend on the skill and integrity of the lawyers conducting it, who demand and indeed deserve a substantial fee; for not only is their learning expensive to acquire but they also bear the responsibility for ensuring that the transaction is legally sound. In particular there is the danger that, because all dealing has been secret, something which affects the title will not be discovered. Some substitute for the protection previously afforded by publicity is obviously needed.

2.5 The Real Property Commissioners, appointed in 1829 to enquire into English land law, expressed the problem clearly and suggested a solution:

“In all civilised countries the title to land depends in a great measure on written documents, and the purchaser looks, and is empowered by the law to look, for proof of the seller's right beyond the fact of his possession. It is obvious that a documentary title cannot be complete, unless the party to whom it is produced can be assured, that no document which may defeat or alter the effect of those, which are shown to him, is kept out of sight. It follows, that means should be afforded by the law for the manifestation of all the documents necessary to complete the title, or for the protection of purchasers against the effect of any documents, which, for want of the use of such means, have not been brought to their knowledge; in other words, that there should be a General Register.”¹

3 Registration of deeds

3.1 The maintenance of a public register in which documents affecting interests in land are copied or abstracted is generally known as ‘registration of

¹ Real Property Commissioners Second Report (1830) 3

deeds'. This is a device used throughout the world with widely varying effectiveness depending on how the register is kept, and we consider variants of it in Chapter 6. Its basic principle in its simplest form is that registered deeds take priority over unregistered deeds, or deeds registered subsequently. In this form it does not affect the legal force of any deed; it merely determines its priority by reference to the date of its registration and not to the date of its execution; in the absence of any competing instrument, registration confers no advantage so far as the actual vesting of the property is concerned. Registration may, however, be made a condition of the validity of the deed by providing in the law that unregistered deeds may not be received or admitted in court as evidence of title. Documents which are not registered can then be safely ignored, for they can have no effect; and so a search of the deeds register should enable a conveyancer to make sure that he has not overlooked any material factor. Thus it would appear that a substantial measure of protection is afforded, at least against the dangers inherent in concealed dealing.

3.2 Unfortunately, however, there is a fundamental defect in a system of conveyancing by deeds which does not stem from lack of publicity but rather from the very nature of a deed. A deed does not in itself prove title; it is merely a record of an isolated transaction. If properly drawn, it shows that a particular transaction took place, but it does not prove that the parties were legally entitled to carry out the transaction and consequently it does not prove the transaction valid.* It may not be consistent with a previously registered transaction or even with actual fact. It is obvious that the mere copying of a deed by the Registry without any critical examination does nothing to remedy any deficiency in the deed. It follows therefore that investigation of its validity and effect will still be necessary before any further transaction can be safely conducted on the strength of it. The services of a conveyancer, of somebody skilled in this sort of investigation, will be required. This investigation will be facilitated by a register of deeds to a greater or lesser extent depending on the manner in which it is kept, and particularly on the way in which it is indexed. But, however well it is indexed, a deeds register will not show matters which affect a title but are not the subject of a deed. An example is succession on death, which gives title by operation of law and riot by act of the parties.

4 Registration of title

4.1 There is, however, another system which remedies the defects of registration of deeds; it enables title to be ascertained as a fact "instead of leaving it to be wrought out as an inference"¹. This system is commonly called 'registration of title'. A register of title is an authoritative record, kept in a public

* In England and Wales, however, "Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, *shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions*" (Law of Property (Amendment) Act 1926 s45(6), formerly Vendor and Purchaser Act 1874 s2, and so applied to some Commonwealth countries; our italics).

¹ Registration of Title Commission Report (1857) Appendix Part A 83

office, of the rights to clearly defined units of land as vested for the time being in some particular person or body, and of the limitations, if any, to which these rights are subject. With certain unavoidable exceptions known in the English system as 'overriding interests' (explained in the next section), all the material particulars affecting the title to the land are fully revealed merely by a perusal of the register which is maintained and warranted by the State. The register is at all times the final authority and the State accepts responsibility for the validity of transactions, which are effected by making an entry in the register, and only by this means. A simple procedure with simple forms is provided for the purpose. Dealing in land becomes, in theory at least, as quick, cheap and certain as dealing in goods; indeed registration of title offers a system of conveyancing which is complete in itself and, insofar as it dispenses with the need for investigation of title, it dispenses with the need for the skilled conveyancer. We hasten to add that in these days of planning regulations and land control generally, not to mention financial complications such as tax on capital gains, investigation of title is by no means the only, or even the most difficult, part of land dealing. We make this clear when we describe an English conveyance in Chapter 4.

4.2 The objective of registration of title, as defined by the Judicial Committee of the Privy Council, "is to save persons dealing with registered land from the trouble and expense of going behind the Register, in order to investigate the history of their author's title and to satisfy themselves of its validity. That end is accomplished by providing that anyone who purchases bona fide and for value, from a registered proprietor, and enters his deed of transfer or mortgage on the register, shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title"¹. (The term 'author' is here used to mean the person from whom the title was acquired and belongs to Scottish rather than to English law.) Registration of title "gives finality. It does away with the repeated, imperfect and costly examination of past title. It removes the possibility of bona fide mistakes as to the past title or the existing burdens affecting the land. It removes the ever present possibility of fraud by duplication or suppression of deeds. It gives State guaranteed safety and that positive security against adverse claims which the system of conveyancing by deeds can never give."² (An English solicitor, stun, by the implication of 'imperfect and costly examination', would be inclined to describe this claim as exaggerated and would mention rectification and overriding interests, which we discuss later.)

4.3 The register in fact provides the three safeguards we mentioned at the beginning of this chapter as being specially required in all land dealing. To do this the register sets out and officially affirms the following basic information:

- (1) The unambiguous definition of the parcel of land affected (and any right over other land which is enjoyed in virtue of owning the parcel).
- (2) The name and address of the owner, individual or corporate.
- (3) The particulars of any interest affecting the parcel, which is enjoyed by someone other than the owner.

¹ Gibbs v. Messer [1891] A.C. 248 at 254

² HM Land Registry Registration of Title to Land (HMSO London 1971) 3

The register is usually divided into three sections for this purpose, and in our model register these are labelled: Property, Proprietorship, and Incumbrances¹.

4.4 Sir Charles Fortescue Brickdale, who played a leading part in establishing registration of title in England, listed six features which should be combined in a system of registration of title: (1) security, (2) simplicity, (3) accuracy, (4) expedition, (5) cheapness, and (6) suitability to its circumstances,² and to these Dowson and Sheppard added a seventh, (7) completeness of the record.³

(1) *Security* is the quintessence of the system. The owner of the land, the man who buys or leases from him, the man who lends him money on the security of the land, the neighbouring landowner who has a right to pass over the land or run a drain through it, each and all must be secure. Their rights, once registered, must be beyond challenge (subject inevitably to certain exceptions, as we presently mention).

(2) *Simplicity* is essential not merely for the effective operation of the system, but for its initial acceptance. Landowners, no less than anyone else, suspect what they do not understand. It is, for example, futile to expect 'a tenancy in fee simple' to be a welcome substitute for a right of absolute ownership enjoyed under indigenous customary law. The customary law will probably be well understood locally but a 'tenancy in fee simple' is an expression which is incomprehensible without a knowledge of English land law, and when it is used it tends to import a number of problems.⁴ The law must be capable of translation into the language which the people speak. Simple forms must be used and the procedure must be plain and straightforward.

(3) *Accuracy* and (4) *expedition* are obvious operational necessities in any system if it is to be effective. We need say no more about accuracy, for plainly an inaccurate register would be worse than useless, but expedition, or rather its converse, delay, is not always recognized as being as important as it is. Only too often the complaint that registration takes too long is justified, and brings the system into disrepute.

(5) Cheapness is relative and can be assessed only comparatively, in terms of the possible alternatives. It is undeniable, however, that there can be no cheaper way of proving title than by an effective system of registration of title, because no other system dispenses with the necessity for retrospective examination. But the cost of the introduction of registration of title is a different matter altogether and is often the crucial factor in determining whether the system shall be adopted. It must be recognized that initial compilation, in areas where unregistered rights in land are already established, is bound to require substantial expenditure, and we can only point out that it will cost no less (and in the aggregate may cost much more) if compilation is postponed or spread over an unreasonably long period.

¹ See 17.2.6

² See Fortescue Brickdale *Methods of Land Transfer*

³ D & S 72

⁴ See P G Willoughby *A Guide to the Form and Drafting of Conveyances* (Nigerian Practic Notes Series No 2) 25-6

(6) Suitability to circumstances “is equally dependent on what is currently in existence now, and what is likely to happen in the future”.^{*} But whatever the circumstances, the decisive factor is what is feasible, and this will obviously depend on the availability of money, manpower and expertise.

(7) Completeness of the record can be construed in two ways. First, the record must be complete in respect of all land because, until it is complete, unregistered parcels will continue to be intermixed with registered parcels, with different laws applying to each, and therefore important benefits which should accrue from registration of title will not be obtained. Secondly, the record of each individual parcel must itself be complete, which is really to say no more than that it must reflect the actual up to date situation. But how completely a register of title can do this raises the important question of ‘overriding interests’, which we must now discuss.

5 Overriding interests

5.1 A moment's reflection will show us that there are certain rights and liabilities affecting land which it is not practicable to register but which, though not registered, must nevertheless retain their validity. For example, it clearly would not be feasible to alter the register every time, say, a monthly tenancy is changed, and therefore it must be provided that short term tenancies are valid, though not registered. Again, public health and building regulations may impose restrictions which affect all land in a certain area, and it would be waste of time to have to repeat them on the register in respect of each parcel. These exceptions to the rule that only registration confers a valid right are known in the English system as ‘overriding interests’, and all systems of registration of title make provision for such exceptions.

5.2 The exceptions are generally in respect of matters which would not be revealed in the title deeds of unregistered land, and they fall into two classes:

(1) Rights which may be ascertained by inspection of the property or by enquiries of the occupier. We must emphasize that registration of title does not, and cannot, do away with the need to inspect land before dealing with it, for only inspection will reveal various matters which cannot be shown on the register but which nevertheless may vitally affect the use and occupation of the land. For instance, there may be a short term tenant in occupation who cannot be evicted because of a law protecting such tenants, thus denying the proprietor (and any purchaser from him) the possession to which, from the register alone, he would appear to be entitled.

(2) Liabilities arising under statute, such as, for example, land tax and rates. Also there is always the possibility of compulsory acquisition for some

^{*} Ontario Land Registration Report (1971) 114. Two points regarded as being of special significance in Ontario were that (1) the new system must facilitate the transition from the two systems currently in operation under the Registry Act and the Land Titles Act to a single uniform land registration system, and (2) implementation must not be dependent on the completion of an accurate cadastral survey which, apart from its cost, "would result in totally unacceptable delays in completing the new register".

public purpose. It would scarcely be sensible to suppose that such liabilities could be avoided by failing to register them.

5.3 Overriding interests are a blemish on the principle that the register should be complete, and they should be kept to a minimum. Though some overriding interests are inevitable in any system, others are debatable. For example, in the English system local land charges (the money due to local authorities for e.g. taking over the maintenance of a road) are recorded in local registers, which must be searched before a transaction can be safely completed, and so it might be thought that they should appear on the register of title.

6 Registration of title and registration of deeds compared*

6.1 It is usual to think of registration of deeds and registration of title as two quite separate and distinct systems which are mutually exclusive. This is misleading. "Each is not a single system, but rather is composed of different alternatives, and the combined alternatives form a continuum. The major variable in this continuum is the extent of the affirmation made by the [State] of the existence and ownership of interests. Other differences among different forms of the systems, such as the arrangements for indexing the records and control of descriptions, plans and surveys are not inherent, and are often the results of chance."¹

6.2 For example, the first requirement of a register of title is that it should be based on parcels of land, not on the persons who own them. Dowson and Sheppard expressed this in resounding terms. The first essential working feature of registration of title, they said, "is the transference of primary attention from the mobile, mortal, mistakable persons temporarily possessing or claiming rights over patches of the earth's surface, to the immovable, durable, precisely definable units of land affected and the adoption of these as the basis of record instead."²

6.3 But the use of land units as the basis of record is not necessarily confined to systems of registration of title. As we shall presently see in Chapter 6 the operation of many registers of deeds has been substantially improved by being based on parcels rather than proprietors; but so long as the registers remain in essence registers of deeds, not of title, the title will have to be deduced from scrutiny of the relevant deeds instead of resting on the register. What is recorded is merely evidence of title. The evidence may be complete and conclusive, but it needs interpretation; an opinion or judgment must be expressed on the strength of it. Investigation is still required and the deeds register, no matter how well kept, is merely an adjunct of this investigation.

6.4 A registered title, however, requires no such investigation. The register records not merely evidence but what in effect is a judgment, final, complete and always up to date (subject as ever, of course, to overriding interests). This 'continuous finality' is the factor which really differentiates registration of title from registration of deeds. It can be said that the essential distinctive ingredient of

* A diagram following Chapter 7 illustrates how land records can be classified.

¹ Ontario Land Registration Report (1971) 19

² D & S 76; see, also 71

registration of title is that title to interests in land depends on what the register shows, and not on extraneous instruments. Title is by registration, and not by deed. Instruments are still needed to provide evidence to the registrar of the intention of an owner to create, transfer or extinguish rights in his land; but, though the instrument may establish a contractual right, it cannot in itself affect or pass any interest in land, because the law which sets up registration of title expressly provides that only the appropriate entry in the register can affect or pass such interest. The registrar is responsible for making sure that the entry is reconcilable with previously registered entries and conforms both with the law and with fact.

6.5 It is true that in an advanced deeds system, the registrar may likewise be required to satisfy himself that a deed is fully in order before he accepts it for registration, but even then the deed must be retained, for the title rests on it. In a system of registration of title, however, once the appropriate entry has been made in the register the instrument which led to it is, in theory at least, no longer required; in practice, since no human undertaking is infallible, the instrument is invariably kept for as long as that entry subsists so as to be available to support it should it be questioned. As soon as the entry it supports has been superseded, the instrument can be destroyed, but here again in practice it is generally kept for a further period in suitable archives. Indeed, few registries of title have taken advantage of the fact that it is simple to make an ordered arrangement for the disposal and eventual destruction of spent instruments, so that the registry need no longer be a 'mausoleum of parchment', as Maitland called a deeds registry.

6.6 James Edward Hogg, whose comparative work on the subject has never been equalled, writing on registration of title in the British Empire as it existed in 1920, said:

"Registration of title ... is in this book only predicated of systems of registration which conform more or less closely to the following four characteristics:

1. The land is initially placed on the register as a unit of property.
2. Transactions are registered with reference to the land itself, and not merely as instruments executed by the owner.
3. Registration of transactions is essential to their validity.
4. Registration, initial or of subsequent transactions, acts in some degree as a warranty of title in the person registered as owner, and as a bar to adverse claims."¹

6.7 Thirty five years later John Baalman (who was a leading authority on the Australian system of registration of title) made the following 'broad distinction' between the existing system of registration of deeds in Singapore and the system proposed in the Land Titles Bill which he drafted in 1955 to introduce registration of title there:

"The Registration of Deeds Ordinance says, in effect, if you do not register your conveyance of land it will be bad. The Land Titles Bill says, in effect, if you do register your conveyance, it will be good. The Ordinance protects

¹ Hogg Empire 2

purchasers from the effect of concealed encumbrances, but its operation is entirely negative. A defective conveyance will continue to be defective even after it has been registered, and a purchaser of land must always be prepared to accept the risk of paying money for a bad title. The Bill will extract the impurities from titles registered under it... so that at any given time a purchaser, without having to investigate the history of the title, or to consider the possibility of defective conveyances, but merely by inspecting the land register, can be satisfied that the proprietor named therein is the owner. He will see, by glancing at the land register, all the minor encumbrances affecting the title, and can rest secure in the knowledge that unregistered interests can be ignored.”¹

6.8 Indeed some writers do not use our terminology of ‘registration of deeds’ and ‘registration of title’, but distinguish between negative and positive systems of registration. In a recent thesis they are thus described:

“One system, the negative, simply records all transactions which involve a parcel and there is, at least in theory, a continuous record of the rights held and any changes that may occur in them. This record of transactions does not, in the legal sense, provide a title to the property and can only act as a witness in the case of disputes. In contrast, the positive system establishes a title to the parcel, and its rights, which is guaranteed by the government.”²

6.9 However, the thesis goes on to remark that, notwithstanding the theoretical distinction between the two systems, they are quite similar in their practical application. For example, the registrar is a key figure in the positive system “as the entire system depends on his integrity and judgment. In theory this does not apply to the negative system, but is often found in practice... Common acceptance of the legality of the negative system also serves to decrease the practical difference between the positive and the negative systems.” In other words, the efficiency with which some negative systems are operated, and the probative force accorded them not only in working practice but by the courts, make them positive in effect. The difficulty inherent in assigning actual systems to one classification or the other is well illustrated by the fact that the thesis lists the English system as negative, though in fact it satisfies in full measure Ruoff’s fundamental principles of registration of title which we set out at the end of this chapter. It may indeed fairly claim to be a shining example of the positive system.

6.10 In fact the distinction between registration of deeds and registration of title is by no means clear cut or even completely certain. Hogg remarked that “they shade off into each other and it is a matter of some difficulty to distinguish with complete accuracy between registration of title and registration of deeds. Any dividing line between the two must be to some extent arbitrary and each division will contain systems closely resembling systems on the other side of the line.”³ The South African system, for example, is in form a deeds system but for long has claimed to have all the advantages of registration of title, and the same

¹ Colony of Singapore Government Gazette Supplement No 56 (Bill No 4, 15 July 1955) 1134

² Norman Photogrammetry and the Cadastral Survey 8

³ Hogg *Empire* 2

claim used to be made for the Scottish system though that has at last capitulated to registration of title. (We examine these two systems and some other representative deeds systems in Chapter 6.) On the other hand, the emphasis on land certificates and certificates of title in the English and Australian systems gives those documents an importance out of keeping with the main principle of registration of title, which is that the register itself is the sole legal authority, except for overriding interests.

6.11 We might even be misled by the argument that deeds registration will not dispense with the services of a conveyancer, whereas registration of title itself provides a system of conveyancing which can stand on its own. In England, for example, very few people would contemplate buying land without professional legal assistance even when the title is registered; indeed, many laymen in England will not know whether their titles are registered or not and most would not appreciate the distinction. In Fiji, where the Torrens system operates, practically all dealings in registered land are conducted by legal practitioners though the original intention was to dispense with the need for them. On the other hand, in India and Pakistan conveyancing is successfully conducted under a deeds system largely without professional assistance in much the same way as it is, for example, under the system of registration of title in the Sudan or Malaysia, where transactions are prepared in the registry by registry staff who have no professional qualifications.

6.12 Each system must be judged on its merits, and Ruoff¹ suggests that registration of title succeeds or fails according to the degree with which the local law and local administration accord with three fundamental principles:

(1) The mirror principle which involves the proposition that the register of title is a mirror which reflects accurately and completely and beyond all argument the current facts that are material to title. With certain inevitable exceptions² the title is free from all adverse burdens, rights and qualifications unless they are mentioned in the register.

(2) The curtain principle which provides that the register is the sole source of information for proposing purchasers who need not and, indeed, must not concern themselves with trusts and equities which lie behind the curtain. (Some knowledge of English land law is needed for a proper understanding of this principle, and of course we must not forget that inspection of the land is always necessary, as also is inquiry of local and other public authorities with regard to such matters as planning proposals.)

(3) The insurance principle which is that, if through human frailty (in the Registry), the mirror fails to give an absolutely correct reflection of the title and a flaw appears, anyone who thereby suffers loss must be put in the same position, so far as money can do it, as if the reflection were a true one. (Yet no provision is made for indemnity in Malaysia, the Sudan or Fiji, each of which would claim to operate an effective register of title.)

6.13 It would appear that there is little to be gained by trying to lay down any hard and fast criteria. In the final analysis the actual form of a system, and even

¹ Ruoff *Torrens System* 8, 11, 13

² See section 5 above for an explanation of 'overriding interests'

the law which governs it, will matter less than the practical wisdom with which it has been adapted to local needs and the competence with which it is administered. A seriously defective law may be made to operate successfully by skilled administrators, while a juridically perfect law may fail in incompetent hands. “Much more than legally impeccable statutes are needed to establish and maintain a land register throughout any territory and ... the efficacy of the organisation and the machinery of humdrum record from day to day is even more vital. The Statute Books of Government must regulate and the Lions of Justice must control and guard it; but the co-operation and satisfaction of the great mass of land holders and peasantry, without which Registration of Rights to Land is neither workable nor worth working, can only be won by its realised effects on their fields and in their lives, which critically depend on the details of the record that directly touch, and the qualities of the officers who personally deal with them.”¹ This is the law and the prophets. It is fundamental – or, as they say in Papua New Guinea: “arstru bilong ol bisnis”.

¹ D & S 81