

CHAPTER 508

CONVEYANCING AND REGISTRATION

TITLE BY REGISTRATION

The earliest known use of any system of title registration was in Cologne in the twelfth century where the mode of conveying land was by means of a fictitious lawsuit similar to the English "fine." The court records were compiled and accorded high respect. Bohemia, Austria, Bavaria, and other German provinces, adopted similar procedure. A system of title by registration was in use in most of the eighty-five cities of the Hanseatic League. The system was practically abandoned with the reception of the Roman law by the German states in the fifteenth century. There was no requirement of recordation or registration known to the Romanists.

Land registration in central Europe was revived toward the end of the eighteenth century. In Prussia, registration was necessary in order to create a mortgage ("Hypotheken-ordnung" 1784, 11:49). Under Allgemeines Landrecht 1794, 1:10, a court could compel registration by a specific owner within one year. The present laws of the German and neighboring states stem from these early Prussian enactments and are based upon the Federal German Grundbuch-ordnung of 1897. The Anglo-Saxon laws relating to recordation or registration of conveyances of title are not based upon but are of a growth entirely independent of either the Roman or the German practice.

The Saxon tenure of lands was simple, and the mode of transfer by open sale in local assembly before neighbors whose memory served as a register was convenient for an unlettered age.

The Norman Conquest brought a system of feudal tenures under which land was transferred by corporeal investiture and by open and public delivery in the presence of other vassals of the manor to which the transferred premises pertained. Upon this system of feudal tenures was grafted, as time went on, statutes of Mortmain, of Uses, and the like, until what with "fines," "recoveries," "leases and releases," and other tortuous inventions of secret conveyancing, the conveyance of property during the time when the American Colonies were developing was manifold, changeable, tedious, and uncertain.

Except for Yorkshire and Middlesex, England muddled along with no official recordation of deed or registration of titles until the adoption of the Lord Westbury Act in 1862. Prior to that date the owner of land was obliged to retain in his own custody or that of his solicitor his title deeds and produce them whenever a sale or mortgage made inquiry as to his title imperative.

The colonies for the most part adopted a system of recording deeds of conveyance patterned after a system stemming from an act of Parliament enacted in 1704 for the East Riding of the County of York.

Under the recording system the title passes upon and by virtue of the execution and delivery to the grantee of the deed or other instrument of transfer. Under the statute making the recording of the instrument constructive notice, the instruments by which the transfer is effected are recorded in the registry office and except for things in pais the condition of the title at any time is ascertained by search and examination of the records by a lawyer skilled in title examination. Such examinations are repeated upon every sale or mortgage.

The Anglo-Saxon system of title registration stems directly from an original enactment of the province of South Australia in 1857.

Robert Richard Torrens was born in Cork, in 1814, the son of Colonel Torrens, a man of some prominence. Upon graduation at Trinity College, Dublin, he entered the British Civil Service and, in 1840, was appointed collector of customs at Adelaide,

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with a seat in the South Australia legislative council. He later became a member of the first ministry under the new self-governing Constitution of South Australia. Although a genius of common sense and the author of the greatest legal device of the age, he was politically reactionary. He voted for state aid for religion and opposed popular government, supported the retention of a nominee legislature and opposed the ballot system.

The original bill providing for the adoption of the Torrens System was introduced in the South Australia legislature June 2, 1857. Torrens was not learned in the law and his bill was modeled after the practice in vogue of the transfer of the title or the placing of liens on ships by a system of registration. Upon the adoption of the system, he became the first Registrar-General. He was retired in 1863 on a pension and returned to England. He was a member of the House of Commons from 1868 to 1874, and upon his retirement was knighted by Queen Victoria. He was a man of wealth acquired through interests in Australian gold mining properties. He died August 31, 1884.

In England the original "Lord Westbury Act" was not a complete success, and in 1875 it was succeeded by the "Lord Cairne's Act" which, as amended, is still in effect. The use of the system was spread to all Anglo-Saxon countries and some others. The system was first adopted by a Canadian province in 1885. The use of the Act in most jurisdictions is voluntary, but in some compulsory.

Following the World's Real Estate Congress held in Chicago in October 1893, the Torrens System of Registration was adopted in the United States as follows:

Illinois	L. 1895, c. 107
Ohio	L. 1896, p. 220
California	L. 1897, c. 138
Massachusetts	L. 1898, c. 562
Oregon	L. 1901, c. 438
Minnesota	L. 1901, c. 237
Colorado	L. 1903, c. 139
Hawaii	R. L. 1905, c. 154
Washington	L. 1907, c. 250
North Carolina	L. 1913, c. 90
Nebraska	L. 1915, c. 225
Virginia	L. 1916, c. 62
Georgia	L. 1917, p. 108
North Dakota	L. 1917, c. 235
South Dakota	L. 1917, c. 368

By L. 1891, c. 153, the Minnesota Legislature created a commission to examine into the Torrens System of Law Transfers. The system was established in certain counties under the provisions of L. 1901, c. 237; amended by L. 1903, c. 234, and L. 1905, c. 305. L. 1909, c. 183, extended the system to all counties.

The registry book of the Torrens System presents the status of title to real estate written upon a single folio, seen at a glance. This entry, called the original certificate of title, issued to the owner, is the pivot upon which the whole mechanism of the system turns. Brevity and simplicity are the principal features of the system and in practice the system is speedy and economical. The system settles at the moment of each transfer every question that may attack the title and secures indefeasibility of title. It furnishes great facility for verifying titles and saves time and expense.

The effectiveness and indefeasibility of a Torrens certificate of title rests upon an adjudication plus the statute of limitation coded as Section 508.28. Subsequent certificates may be issued upon either voluntary or involuntary transfers.

A person desiring to torrens a title to a tract of land must institute a suit to quiet title against persons known or unknown who might assert an adverse right to the property. The proceedings are judicial and are supervised throughout by the examiner of titles and culminate in the granting of a decree. The order of registra-

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tion is retained by the clerk of court. Based upon the court's order or decree the registrar of titles issues a certificate of title which sets forth the findings determined by the decree. The original certificate of title is a page in a register kept by the registrar of titles, and a copy of this page is delivered to the owner and is the owner's duplicate certificate of title. Duplicate certificates, nominated as such, are obtainable by persons acquiring certain liens or rights in the premises.

In case of a voluntary sale or transfer of the property the grantor executes a deed to the grantee and delivers to him the owner's duplicate certificate of title. These two instruments are delivered to the registrar who retains the instruments and transcribes a new certificate to the grantee and delivers to the grantee an owner's duplicate certificate of title being a copy of the transcription.

Involuntary transfers are based upon final adjudication determining the rights of parties to the property, and before issuing a new owner's duplicate certificate of title to the person or persons decreed to be owners, the decree of distribution or decree of partition together with a court order directing him to receive it for registration must be filed with the registrar. The decree, based upon due notice, competent evidence, and hearing, constitutes *res judicata*.

There may be endorsed upon either the original or any subsequent registry page title memorials relating to proven mortgages, liens, or other interests less than fee simple. Any interest created by the voluntary act of the owner will be registered upon presentation to the registrar of the owner's duplicate certificate together with the instrument granting the rights to be memorialized. Judgments, eminent domain proceedings, and liens of like character are noted by the registrar as memorials on the original page without the presentation of the owner's duplicate certificate.

508.01 REGISTRATION.

Plaintiff purchased a Torrens title to the land here involved in good faith and for a valuable consideration and was as a matter of law entitled to the immediate possession of the premises covered by the certificate of title, which was not subject to collateral attack for the purpose of showing that at the time of the registration decree the land was held in adverse possession. Defendant is liable in wilful trespass in conversion for trees cut on the premises. *Harrington v Linkert*, 203 M 575, 282 NW 461.

A mechanic's lien, in proper form, filed with the registrar of titles, attaches to the land as the commencement of the improvement the same as would a mechanic's lien filed in the office of the register of deeds for improvement upon land not registered under the Torrens act. *Armstrong v Lally*, 209 M 373, 296 NW 405.

Where an appeal is taken from an order denying a motion for a new trial in a land title registration proceeding upon the ground, among others, that the trial court, after denial of a prior motion for a new trial on other grounds, erred in refusing to allow the applicant to dismiss without prejudice before entry of the final decree, the appeal will lie to bring up for review the propriety of the refusal to permit the dismissal; and under section 508.21, an applicant in a land title registration proceeding is entitled to dismiss without prejudice at any time before the entry of the final decree, subject only to the imposition by the court of terms by way of pecuniary award, not limited to statutory costs, to save defendant harmless from loss caused by the institution of the proceeding, overruling *Seeger v Young*, 127 M 416, 149 NW 735. *Mitchell v Bazille*, 216 M 368, 13 NW(2d) 20.

On appeal from a proceeding relative to an application to register title to certain real estate, the appellate court held that the mere act of affiliating with a state or national spiritualistic church congregation, incorporated under section 315.01, does not thereby create and vest in such state or national organization a property right in and to the local congregation's real estate. *Trinity Church v First Spiritualist Church*, 221 M 15, 20 NW(2d) 535.

Appellant's application to intervene in the registration proceeding made more than a year after judgment therein was rendered was correctly denied. *Dean v Rees*, 211 M 103, 300 NW 396.

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A party is not entitled to jury trial in land title registration proceedings. *Carl v DeToffol*, 223 M 24, 25 NW(2d) 479.

Service on non-resident in Torrens registration suit by mailing and publication as provided in Minnesota Statutes rendered decree binding upon the non-resident. A bill in equity attacking decree in Torrens registration suit held insufficient to show fraud on the part of the petitioners in such proceedings in describing an adverse claim as a contract for lease with option to purchase. *Nitkey v McKnight*, 87 F(2d) 917.

Where title is registered a state deed to tax-forfeited lands may be recorded in the office of the register of deeds. The procedure to be followed in securing a new certificate upon a state deed when the owner's certificate is not presented for cancellation is found in L. 1939, c. 341, and Minnesota Statutes 1945, sections 284.11, 284.14, 284.16, 284.18, and 508.67. OAG Oct. 9, 1946 (374J).

Use of declaratory judgment. 5 MLR 36.

Conclusiveness of final decree. 5 MLR 569.

Conclusiveness of Torrens certificate of title. 8 MLR 200.

Torrens system of land title registration. 19 MLR 519.

Protection of an interest in real estate acquired by a purchaser in good faith at an execution sale. 24 MLR 815.

Contents of certificate of title. 26 MLR 237.

508.02 REGISTERED LAND SUBJECT TO SAME INCIDENTS AS UNREGISTERED; ADVERSE POSSESSION EXCEPTED.

Adverse possession. 8 MLR 215.

Possession not notice of unregistered interest. 12 MLR 551.

Torrens act, 1931 amendment, adding sixth exception. 16 MLR 91.

508.04 TITLES WHICH MAY BE REGISTERED.

While the title of a riparian owner on navigable or public waters extends to ordinary low-water mark, his title is not absolute except to the high-water mark. As to the intervening space the title of the riparian owner is qualified or limited by the public right. The public may set traps in the intervening space. When flood waters flood territory above the high-water mark, the riparian owner has supreme control above the high-water mark. OAG Dec. 9, 1946 (276-c-6).

What can a riparian proprietor do? 21 MLR 512.

508.05 APPLICATION, HOW SIGNED AND VERIFIED.

Application for registration of tax-forfeited lands may be signed by the special attorney appointed by the county auditor in writing, or the application can be signed by the chairman of the county board, county auditor, and the state tax commissioner. OAG Dec. 6, 1946 (374-J).

508.13 REFERENCES TO EXAMINERS; POWERS; REPORTS.

Where in an unlawful detainer action the plaintiff asserts title and right of immediate possession as the owner, and defendant asserts right of possession under a contract for deed which the plaintiff claims was duly canceled according to law, a judgment of restitution in favor of plaintiff is res judicata that the contract for deed was duly canceled. *Ferch v Hiller*, 210 M 3, 297 NW 102.

Where proceedings are instituted to register title subject to states mineral rights the state need not be joined as a party. In proceedings where the state is named as a party, the county attorney cannot represent the petitioner. OAG June 4, 1946 (121-A-7).

508.15 ORDER FOR SUMMONS; PARTIES DEFENDANT.

Appellant's application to intervene in the registration proceeding made more than a year after judgment therein was rendered was correctly denied. *Dean v Rees*, 211 M 103, 300 NW 396.

Title, points and lines in lakes and streams. 24 MLR 305.

508.16 FORM OF SUMMONS; SERVICE.

Notwithstanding the provisions of section 544.32, in proceedings for the registration of land titles, a party to the proceedings who is served with the summons is not entitled to a vacation of the final decree and for leave to answer and defend on the ground of excusable neglect to appear and answer within the time allowed by the statute. The court is without authority, discretionary or otherwise, to grant such relief. *Murphy v Borgen*, 148 M 375, 183 NW 449.

Section 645.13 has no application as to practice under this section. The language of section 508.16 prevails. OAG Nov. 8, 1944 (374-H).

Conclusiveness of Torrens certificate of title. 8 MLR 200.

508.20 TRIAL; REFERENCE.

See, *Mitchell v Bazille*, 216 M 368, 13 NW(2d) 20, under section 508.01.

Under section 508.71 the district court has jurisdiction under certain conditions where the title of a holder of a certificate of title has "terminated and ceased" to order a cancelation of the certificate and issue a new one to the rightful owner. A party is not entitled to a jury in land title proceedings. *Carl v DeToffol*, 223 M 24, 25 NW(2d) 479.

508.21 DISMISSAL.

In a proceeding to register title to two lots, wherein the referee's report contained a recommendation that a stay be granted for ten days in which applicant might file objections to the entry of any order based thereon, and a copy of the report was served on applicant's counsel, but no objections were filed, the applicant was not entitled to notice of an application for the entry of the decree made more than ten days after service of the report. *Ferch v Hiller*, 209 M 124, 295 NW 504.

508.22 DECREE OF REGISTRATION; EFFECT.

The proposed newly discovered evidence in this case is in the nature of a collateral attack on a decree for registration of land. The decree cannot be attacked collaterally for error nor for want of jurisdiction unless the want of jurisdiction appears affirmatively on the face of the record. *Jones v Wellcome*, 141 M 352, 179 NW 224; *Dean v Rees*, 208 M 38, 292 NW 765.

On the record presented the trial court did not err in permitting defendant to challenge plaintiff's claim to title by a motion to dismiss the complaint, the motion to dismiss being with prejudice and takes the place of an answer. *Dean v Rees*, 208 M 38, 292 NW 765.

Under section 508.21 an applicant in a land title registration proceeding is entitled to dismiss without prejudice at any time before entry of the final decree, subject only to the imposition by the court of terms by way of pecuniary award, not limited to statutory costs; and this overrules *Seeger v Young*, 127 M 416, 149 NW 735. The court's jurisdiction is confined to the incident of registration and to determine defendant's right title and interest, but otherwise the court has no authority to grant affirmative relief to the defendant. *Mitchell v Bazille*, 216 M 368, 13 NW(2d) 20; 219 M 224, 17 NW(2d) 353.

Conclusiveness of the final decree. 5 MLR 569.

Conclusiveness of a Torrens certificate of title. 8 MLR 200.

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508.25 RIGHTS OF PERSON HOLDING CERTIFICATE OF TITLE.

Where the title of a holder of a certificate of title has terminated and ceased, the district court has jurisdiction to order cancelation of a certificate of title and issue a new one having title but in exercising such jurisdiction should do nothing to impair the title or other interest of a purchaser for value and in good faith. *Carl v DeToffol*, 223 M 24, 25 NW(2d) 479.

Conclusiveness of a Torrens certificate of title. 8 MLR 200.

Possession not notice of unregistered interest. 12 MLR 551.

Amendment found in Laws 1927, Chapter 357. 16 MLR 91.

Purchase at execution sale. 24 MLR 805, 815.

Certificates of title, Laws 1941, Chapter 33. 26 MLR 237.

508.26 OPENING DECREE.

Conclusiveness of final decree under Torrens act. 5 MLR 569.

508.32 CONTROL OF COURT; SEAL.

The registrar of titles is not responsible for a loss through theft of books and records except by his personal neglect. His bond is conditioned upon the faithful discharge of his duties. He uses such facilities as the county board furnishes for use in his office. OAG April 17, 1947 (374).

508.35 FORM OF CERTIFICATE.

Conclusiveness of Torrens certificate of title. 8 MLR 200.

Possession not notice of unregistered interest. 12 MLR 551.

Effect of Laws 1941, Chapter 83. 26 MLR 237.

508.46 PLATS OF REGISTERED LAND.

Plats of registered property must be filed with the registrar of title. OAG Nov. 3, 1944 (373-B-15).

508.47 TRANSFER OF REGISTERED LAND.

Torrens certificates of title. 8 MLR 200, 214.

Notice of unregistered interest of possessor. 12 MLR 551.

508.48 INSTRUMENTS AFFECTING TITLE FILED WITH REGISTRAR; NOTICE.

One claiming a highway easement over land, the title of which is registered, should record the easement with the registrar of titles only. OAG Aug. 26, 1946 (374-J).

508.49 INTEREST LESS THAN FEE; NOTICED BY MEMORIAL.

Assessments upon registered property should be filed and registered with a registrar of titles who should enter a memorial relating to same. OAG Aug. 26, 1946 (374-J).

508.51 OWNER'S DUPLICATE PRESENTED; EXCEPTION.

After the expiration of the period fixed by the statute a title duly and regularly registered is, unless registration was obtained by fraud, indefeasible; but where the owner of the land is not notified as required by the statute the decree and the certificate of registration issued thereunder may be vacated and set aside on the ground of fraud unless an innocent purchaser for value has obtained rights on the faith of the record. *Baart v Martin*, 99 M 197, 108 NW 945.

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Procuring a new Torrens certificate on tax-forfeited lands; procedure. OAG Dec. 15, 1944 (374j).

Conclusiveness of title. 8 MLR 202.

508.53 TRANSFER AND PAYMENT OF TAXES.

A person unable to record his deed by reason of taxes being charged on the land may pay such taxes in order to secure recording of his deed; but such payment is not voluntary and if the tax so charged is illegal, the moneys paid may be recovered. *State v Nelson*, 41 M 25, 42 NW 548.

508.57 FORECLOSURE; NOTICE.

The court has authority to decree the existence and validity of a mechanics lien but has no power of foreclosure. *Reed v Siddall*, 94 M 216, 102 NW 453.

508.58 REGISTRATION AFTER FORECLOSURE; NEW CERTIFICATE.

Complaint by trustee of bankrupt corporation charging that corporation's property was transferred without consideration by means of a mortgage foreclosure and Torrens registration and a series of contracts securing right of redemption to one of corporation's stockholders in fraud of corporation's creditors, and rendering corporation insolvent, stated a claim upon which some relief could be granted. *Sprague v Vogt*, 150 F(2d) 795.

508.61 TRUST AND OTHER DEEDS OF LIMITATION.

As to property covered by a certificate issued to trustees of a railroad corporation under reorganization the provisions of section 508.61 are mandatory. OAG Dec. 6, 1944 (373-B-9-D).

508.67 ACQUIRING TITLE BY ACTION; NEW CERTIFICATE.

The procedure to be followed in securing a new certificate upon a state deed when the owner's certificate is not presented for cancelation is found in L. 1939, c. 341, and Minnesota Statutes 1945, sections 284.11, 284.14, 284.16, 284.18, and 508.67. OAG Oct. 6, 1946 (374J).

508.71 ALTERATIONS ON REGISTER; ORDER OF COURT.

Where the title of a holder of a certificate of title under the land title registration system has terminated and closed, the district court has jurisdiction to order cancelation of the certificate and issue a new one to the person having title. *Carl v DeToffol*, 223 M 24, 25 NW(2d) 479.

508.80 FRAUDULENT INSTRUMENT OR ENTRY; PENALTY.

Rights where fraud justifies equitable relief. *Baart v Martin*, 99 M 197, 108 NW 945; *Nitkey v McKnight*, 87 F(2d) 916.