(No. 121.)

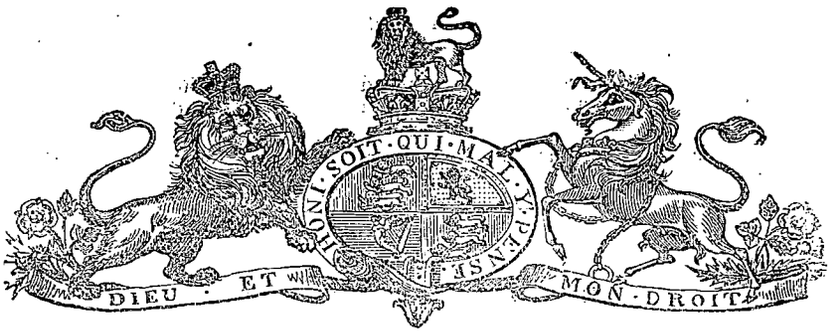
1885.

PARLIAMENT OF TASMANIA.

THE TORRENS' ACT:

REPORT FROM THE SELECT COMMITTEE, WITH MINUTES OF PROCEEDINGS AND EVIDENCE.

Brought up by Mr. Lucas, and ordered by the House of Assembly to be printed, September 24, 1885.



SELECT COMMITTEE appointed, on the 30th July, 1885, to enquire into and report upon the working of "The Torrens' Act."

MEMBERS OF THE COMMITTEE.

The Attorney-General.	Mr. Shoobridge.
Mr. Braddon.	Mr. Hartnoll.
Mr. Reibey.	Mr. Lucas. *(Mover.)*
Mr. Archer.	

DAYS OF MEETING.

Wednesday, 6th August. Friday, 4th September. Friday, 11th September. Tuesday, 17th September.

MINUTES OF PROCEEDINGS.

No. 1.

THURSDAY, AUGUST 6, 1885.

The Committee met at 11 A.M.

Present—Mr. Reibey, Mr. Shoobridge, Mr. Archer, Mr. Hartnoll, Mr. Lucas.

1. Mr. Lucas was voted to the Chair.

2. The Chairman laid upon the Table a copy of the evidence collected by the Select Committee appointed by the House of Assembly in 1883 to inquire into the working of the Lands' Titles Office.—See Appendix A.

3. Resolved, that the evidence be reprinted, and a copy thereof forwarded to each member of the Legal Profession on the Roll of the Supreme Court of Tasmania, with the following circular.—See Appendix B.

No. 2.

FRIDAY, SEPTEMBER 4, 1885.

The Committee met at 11 A.M.

Present—Mr. Shoobridge, Mr. Braddon, Mr. Lucas (Chairman).

The Minutes of the last meeting were read and confirmed.

Answers from the following Legal Practitioners were received in reply to the circular sent out on the 15th ult. (*Vide* Appendix C) :—Mr. G. P. Adams, Hobart ; Mr. S. K. Chapman, Solicitor Lands' Titles Commissioners ; Mr. G. C. Gilmore, Launceston ; Mr. A. Green, Launceston ; Mr. C. Hall, Latrobe ; The Hon. J. A. Jackson, Hobart ; Mr. J. Laughton, Hobart ; Mr. J. M'Intyre, Hobart ; Mr. W. Martin, Launceston ; Mr. A. Norman, Launceston ; Mr. J. T. Robertson, Hobart ; Mr. A. J. Robertson, Hobart ; Mr. W. Ritchie, Launceston ; Mr. J. Steer, Latrobe ; Mr. J. Whyte, Recorder of Titles.

The Committee proceeded to peruse the replies received.

The Committee adjourned till Wednesday, the 9th instant, at 2·30 P.M.

No. 3.

FRIDAY, SEPTEMBER 11, 1885.

The Committee met at 11 A.M.

Present—Mr. Hartnoll, Mr. Shoobridge, Mr. Braddon, Mr. Lucas (Chairman).

The Minutes of the last meeting were read and confirmed.

The Committee deliberated.

Resolved, That the Chairman be requested to draw up and submit a Draft Report embodying the views of the Committee that both systems should be amalgamated, retaining the useful, and discarding the objectionable features of either Act.

The Committee adjourned until Thursday, the 17th instant, at 11 A.M.

No. 4.

THURSDAY, SEPTEMBER 17, 1885.

The Committee met at 11 A.M.

Present—Mr. Hartnoll, Mr. Shoobridge, Mr. Braddon, and Mr. Lucas (Chairman).

The Minutes of the last meeting were read and confirmed.

The Chairman submitted the Draft Report.

The Draft Report was read and adopted.

The Committee adjourned *sine die*.

REPORT.

YOUR Committee, on perusing the opinions of certain members of the legal profession obtained by the Select Committee appointed by your Honorable House in the Session of 1883 to report on the working of the Torrens Office, have arrived at the conclusion that the two systems of Conveyancing at present in operation in Tasmania are a source of great inconvenience, expense, and delay; and the suggestion of combining the respective and manifest advantages of the two modes of transfer into one uniform system is thought well worthy of consideration. Your Committee, recognizing the great importance of the question, the urgent need of reform, and the necessity of exercising great caution in dealing with so complex and important a subject as that of Conveyancing, prepared a circular and forwarded a copy thereof, with a copy of the above-mentioned opinions, to all the members of the legal profession in Tasmania, with a view of obtaining their opinions as to whether a reform of the present system on the lines indicated by the circular were desirable and practicable. To these circulars several members of the profession furnished replies, which, with the opinions referred to, satisfied your Committee of the practicability of reforming the present systems of Conveyancing in the direction indicated in this Report.

Your Committee fully recognize the great advantages of the Torrens Act in abolishing the long and expensive Abstracts of Title and Recitals incidental to the method of Conveyancing known as the "Old System," the advantages of an indefeasible title secured by that Act, and the simplicity and efficiency of the mode of registration thereunder; but your Committee feel convinced that with all these recommendations, the Torrens System, to adopt the language of Mr. Justice Gwynne, of South Australia, in Palmer *v.* Andrews, S. 8 S.A.L.R., 282, is "of necessity confined within narrow and technical limits," and is therefore an unsatisfactory and inefficient system of Conveyancing. The general tenor of the answers of the respective members of the legal profession before referred to, and the fact that the Colonies of Victoria and South Australia have passed several amending Acts to make the original Real Property Acts passed by their respective Legislatures workable, and that a Royal Commission recently appointed in Victoria, whose report was furnished to the Government of that Colony on the tenth day of June last, have recommended extensive amendments of the present Victorian Law of Land Transfer, demonstrate the difficulty of effecting an efficient and satisfactory method of Conveyancing on the principles of the Real Property Act.

Your Committee have carefully considered the feasibility of so amending the Real Property Act as to embody the recommendation of certain members of the legal profession, who, whilst pointing out the defects inherent in the Torrens System, and apparently not contemplating such a reform as that suggested in this Report, have recommended numerous and extensive amendments

to the Act; but the extent and number of such amendments, it appears to your Committee, would be so voluminous that, with so large an area of land in the Colony still under the old system, it is most undesirable to create so extensive a code of Conveyancing Law for one portion, even though a large portion, of the lands of the Colony, whilst the old system, as amended recently by "The Conveyancing and Law of Property Act, 1884," is still in operation, more especially if one uniform system of Conveyancing can be devised which will combine economy with safety and efficiency.

Your Committee have arrived at the conclusion, based upon the evidence before them, that the old system as recently amended, with the Torrens' Grant or Certificate of Title as the basis of title, is admirably adapted for dealing with the multifarious interests in real property which the exigencies of modern times have created; and the opinions of those who, by study and long practice, are best fitted to advise on the subject, justify your Committee in recommending that the best system of Conveyancing that can be devised would be one that embodies the advantages of the Torrens' Act hereinbefore mentioned with those of "The Conveyancing and Law of Property Act, 1884."

Your Committee believe that, even if the suggested amendments of the Real Property Act were made, landed proprietors having land under the old system, and relying on the judgment of their legal advisers, would not very readily bring their land under the operation of an amended Torrens system; whereas if the recommendations contained in this Report were adopted by the Legislature, thus embodying the views of a large and influential section of the legal profession, the result would be in all probability that all the lands in the Colony not at present under the Torrens Act would at no distant date be brought under the operation of the new system,—thus abolishing the evils incidental and inevitable to the Torrens' system, whilst obtaining one uniform, cheap, expeditious, and effective method of Conveyancing.

The advantages and elasticity of the old system over the Torrens' system, which is strictly formulary, and therefore "narrow and technical," are clearly established by the evidence before your Committee, who feel assured that if the recommendations in this Report were adopted, the legal profession would co-operate with the Legislature and ultimately make the experiment an unqualified success.

Your Committee have the honor to recommend that a Bill be prepared and submitted to the Legislature having for its object the reform of the present system of Conveyancing, and that the following suggestions be embodied therein :—

1. That the present machinery and officers of the Lands' Titles Department be retained.
2. That a grant to all Lands purchased from the Government be issued in the present form and have the same effect as grants issued under the Real Property Act, and that a Certificate of Title may be obtained in the same manner and on the same conditions as under the provisions of the said Act, which shall give to the holder thereof an indefeasible title.
3. That the provisions of the Real Property Act with reference to the issuing of Grants, the application for and issuing of Certificates of Title, be embodied in the Bill.
4. That all dealings with land subsequent to the issue of the Grant or Certificate of Title shall be effected under the "old system" as amended and simplified by "The Conveyancing and Law of Property Act, 1884."
5. That every owner of land holding a title to such land, whether derived from a Grant or Certificate of Title, shall be at liberty, at any time when he has a "clear title," to apply for and obtain a new Certificate which shall have the same effect as the original Grant or Certificate.
6. That the Commissioners have power to pass a title which, though technically defective, is not so in any important particular, upon the applicant paying such an extra assurance fee as the Commissioners may think sufficient.
7. That the method of registration under the Real Property Act,—namely, the registration of dealings affecting the specific land mentioned in the grant or certificate,—with such modifications as will enable the registration of trusts to be effected, be embodied in such Bill.

R. J. LUCAS, *Chairman.*

House of Assembly, Tasmania,
24th September, 1885.

Appendix A.

QUESTIONS answered by Solicitors as to the working of the Lands' Titles Office.

W. RITCHIE, *Esq.*

1. What experience have you had in carrying out the system of Conveyancing introduced by the Real Property Act (25 Vict. No. 16)?

My experience has been that of a Solicitor with a considerable conveyancing practice, extending over the whole period from the time when the Act came into operation up to this date; and I have reason to believe that of the business transacted (through the intervention of Solicitors) by persons bringing land under the operation of the Act, or dealing with land under it, a large proportion of that done in Northern Tasmania has been effected by my firm.

2. What defects (if any) has experience shown you to exist in the practical carrying out of that system?

I find a difficulty in answering this question, inasmuch as I consider the system itself so radically bad that it can never be carried out so as to answer the expectations of its authors and advocates. The Real Property Act system is founded on "The Merchant Shipping Act," and is an attempt, in which some ingenuity has been displayed, to adapt the last-named Act to the purpose of dealing with real estate and interests therein. Property in shipping differs so entirely in its nature from property in land that it could scarcely be expected that a system of dealing with the one would answer for the other. The necessity for a registration system in connection with property in shipping arises mainly from the fact of its being generally held in a quasi-partnership. A similar cause necessitates a system of registration by joint-stock companies (each keeping its own share register) of dealings in shares. But another reason for the adoption of a registration system in connection with dealings in shipping interests exists in the extremely mobile character of the property to be dealt with, which in the course of a few days or weeks may be transported from one port or territory to another. A further reason for the adoption of such a system with regard to shipping is to be found in the importance of the interests involved, and the consequent desirableness of possessing authenticated documentary evidence of title to property of so much value, and which is so easily and constantly removed beyond the reach of the owners.

Ownership in land is different in its nature from that in shipping. The subject of the one is perishable; that of the other lasts for all time. In shipping, one may possess an absolute property, but no subject possesses an absolute ownership of land. The superior right of the Sovereign or State to the ultimate or absolute ownership of the land within the limits of the State is everywhere recognised; the subject, or so-called owners, being only entitled (as individuals) to the usufruct, and regarded as tenants for longer or shorter terms, and with greater or more limited powers. Having regard to the immobility of land, there is less necessity for a registration system of dealing with it on that score than there is with regard to moveable property like shipping, inasmuch as evidence of dealing with it and of possession or ownership is more easily preserved. The transfer of property in land by mere delivery of possession has been common in all ages, and has prevailed among nations which have realised a high degree of civilisation without any serious inconvenience being experienced. The chief reason for making a registration system desirable for dealings with land arises from the very varions and extensive interests which may be, and constantly are, created in it, owing to the wide liberty which the law allows to the owners of property of dealing with it in such manner as may suit their convenience or gratify their caprice. The creation of such interests necessarily draws in its train the complication of titles, and where such complications exist simplicity of dealing becomes impossible. The question to be solved is—whether is it better to restrict the large powers of alienation which the law now allows to owners, for the sake of attaining greater simplicity in dealing with land, or to put up with the inconvenience of a certain amount of complication in titles in consideration of the convenience of possessing the power of moulding one's ownership to suit the exigencies of family or other circumstances? I am of opinion that the Bills now before Parliament, "The Conveyancing and Law of Property Act, 1884," and "The Settled Land Act, 1884," go a long way towards solving this difficult question, and indicate the direction in which sound attempts to reform the law of real property should proceed.

Regarding as I do, the Torrens' system as empirical, and founded on imperfect knowledge of the causes of the evils which it has attemped to remedy or remove, I consider it useless to attempt to point out the defects in its practical working, such defects being inherent in the system.

Among the more prominent defects of the Torrens' system are its rigidity and want of adaptability to the varying requirements of the owners of interests in land. Its inconveniences are least perceptible when dealing with simple (or what are popularly termed absolute) interests in land. It is quite unsuited for dealing with or registering the titles to those vast interests in land which are known as equitable or trust estates, and hence the framers of the system have attempted to exclude all notice of trusts from the Register. Under this system there are practical difficulties in the way of the creation of new estates out of existing interests by the exercise of powers vested in other persons than the registered proprietors, while this may be easily and conveniently accomplished under the general law. This system makes the title to land depend upon the acccuracy of the plan or diagram on the Certificate of Title. This is a most serious objection to its adoption, as it is evident that plans are chiefly useful for the purpose of illustration. In determining the title to land, so far as boundaries and abutments are concerned, the most important thing to be considered is its actual possession or enjoyment for a considerable period—whether it be a limited period, fixed by Statute, or any other. The determination of boundaries by natural objects, land-marks, fences, walls, &c. is much more reliable and satisfactory than definition by a plan. It may be safely laid down as an absolute fact that no plans are quite accurate, while most plans are very far from being so. In my own experience I have frequently found serious inaccuracies in the diagrams on Certificates of Title. Even if it were possible to draw the diagrams with perfect accuracy, the shrinkage of the parchment would throw them out of truth.

3. Have you at any time, and when, had to complain of delay or other difficulty in dealing with Land under the Act?

I have repeatedly had to complain of such delay and difficulty. I have frequently published such complaints, and some of my letters may be seen in the correspondence which has at various times been printed and laid before Parliament. Last year I had an abstract prepared of some of the business done by my firm with the Lands' Titles Office between the 1st June, 1881, and 1st June, 1882, with the object of placing it in the hands of a Member of Parliament who then purposed moving for a Committee of Inquiry into the working of the Real Property Act. In order to show the great and unnecessary delay which took place in getting business carried through in the office I annex this abstract, so that it may be verified by, and further information obtained from, Mr. F. J. Boothman, if this should be deemed necessary. I beg to state that names are supplied only for the purpose of identifying the documents and transactions mentioned, and that they are not to be published in any report of the Select Committee or otherwise.

I have to add that similar delays continued until very recently. There has been less cause for complaint lately, but there is still room for great improvement in the expedition of the work of the office.

ABSTRACT of Business done with the Lands' Titles Office from 1st June, 1881, to 1st June, 1882, by Messrs. Ritchie and Parker.

	When filed.	*When received by R. & P.*		*When filed.*	*When received by R. & P.*
Application ..	9 June, 1881	22 August, 1881	Mortgage ..	5 January, 1882	2 Feb., 1882
Transfer	18 ditto	23 ditto	Transfer	6 ditto	22 April, 1882
Application ..	21 ditto	6 Sept., 1881	ditto	6 ditto	22 ditto
ditto	27 ditto	30 March, 1882	Application .	11 ditto	31 March, 1882
ditto	12 July, 1881	5 Oct., 1881	Transfer	12 ditto	No date
ditto	20 ditto	23 Aug., 1881	ditto	17 ditto	ditto
Transfer	21 ditto	29 ditto	Application .	18 ditto	Not received
ditto	22 ditto	29 ditto	ditto	20 ditto	ditto
ditto	22 ditto	29 ditto	Discharge ..	21 ditto	31 March, 1882
Discharge / Mortgage	25 ditto	13 Sept., 1881	Mortgage ..	21 ditto	22 ditto
			Transfer	21 ditto	20 May, 1882
Application ..	25 ditto	I do not think this has come to hand yet	Application .	28 ditto	23 March, 1882
			Transfer	31 ditto	Not received
ditto	4 August, 1881	13 Sept., 1881	ditto	2 Feb., 1882	31 March, 1882
Transfer	9 ditto	29 Aug., 1881	ditto	13 ditto	July, 1882
Discharge / Transfer	12 ditto	6 Sept., 1881	Application .	28 ditto	No date
			Transfer	8 March, 1882	13 June, 1882
ditto	15 ditto	5 Oct., 1881	Mortgage ..	23 ditto	18 April, 1882
ditto	16 ditto	17 ditto	Transfer	24 ditto	No date
Application ..	23 ditto	8 Nov., 1881	ditto .. .	28 ditto	July, 1882
Transfer	25 ditto	13 Sept., 1881	ditto	31 ditto	1 ditto
ditto	27 ditto	8 Nov., 1881	ditto	31 ditto	13 May, 1882
ditto	6 Sept., 1881	7 ditto	ditto	31 ditto	23 ditto
ditto	6 ditto	14 April, 1882	ditto	31 ditto	No date
ditto	21 ditto	2 January, 1882	ditto	31 ditto	6 June, 1882
Mortgage ..	29 ditto	28 October, 1882	Mortgage ..	31 ditto	No date
ditto	1 Oct., 1881	17 ditto	Discharge ..	5 April, 1882	13 June, 1882
Transfer	1 ditto	14 April, 1882	Application .	18 ditto	No date
Mortgage ..	10 ditto	2 Feb., 1882	Mortgage ..	18 ditto	5 May, 1882
Transfer	3 ditto	No date	Transfer	28 ditto	21 July, 1882
ditto	17 ditto	14 April, 1882	Application .	28 ditto	Not received
Application ..	22 ditto	8 Nov., 1881	Transfer	2 May, 1882	13 June, 1882
Discharge / Transfer	22 ditto	11 January, 1882	ditto	3 ditto	13 ditto
			Mortgage ..	3 ditto	No date
Mortgage ..	7 Nov., 1881	21 Nov., 1881	Transfer	3 ditto	ditto
ditto	11 ditto	21 ditto	ditto	3 ditto	ditto
Transfer	11 ditto	No date	ditto	4 ditto	13 June, 1882
Discharge ..	12 ditto	ditto	ditto	11 ditto	17 ditto
Mortgage ..	30 ditto	2 Feb., 1882	Application .	11 ditto	13 July, 1882
Application ..	2 Dec., 1881	2 March, 1882	Transfer	16 ditto	17 June, 1882
Transfer	3 ditto	3 Jan., 1882	Mortgage ..	16 ditto	No date
ditto	8 ditto	2 Feb., 1882	Application .	17 ditto	13 July, 1882
Mortgage ..	13 ditto	30 Dec., 1881	Discharge ..	29 ditto	21 June, 1882
Transfer	19 ditto	10 Feb., 1882	Transfer	1 June, 1882	1 July, 1882
Application ..	21 Dec., 1881	Not received	ditto	1 ditto	Not received
Plan filed ..	11 March, 1882				

4. Do you attribute any difficulties which *have arisen* to defects inherent in the system, or to causes remediable by amended Legislation or improved Office administration? You will oblige by stating fully and explicitly your views on this question.

I have answered this question to some extent in my reply to the 2nd question. No doubt the difficulties which arise in the working of any faulty system may be increased or diminished by the way in

which it is administered. The system under consideration is bad, and its administration has increased the difficulties and inconveniences with which it is charged. A large proportion of the transactions under the Real Property Act are of a comparatively simple character, such as Mortgages, Discharges of Mortgages, Leases, Surrenders, Transfers of Mortgages and Leases, Applications by representatives to be registered as Proprietors, &c., which only require to be registered to complete the transactions; but the long delay which occurs in such simple matters is apparently inexcusable, as the work of registration would be quite inadequate to account for it. Legislation might undoubtedly mitigate many of the inconveniences at present experienced in working the Act, but the system being essentially faulty, other inconveniences would crop up. Mere surface reforms in legislation never answer in the end. The better way would be to reform the Act altogether.

5. Have you any, and if so, what remedies to suggest for any defects you may have found to exist in the Act or its administration?

I think it would be a mistake to attempt to amend an Act which is founded on wrong principles, as it would only tend to perpetuate an evil. I am of opinion that legislation should be on the lines of the Bills before referred to as now before Parliament, and should be directed towards an uniformity of system in conveyancing. The inconveniences of various kinds caused by the existence of two distinct systems have been long felt, and are daily becoming greater.

6. Have you any further remarks on the subject you would like to make for the assistance of the Select Committee?

In my opinion the Torrens' system of conveyancing has failed in this Colony to realise the expectations of those who promoted its introduction. It was held out that it "would add four or five years' purchase (some will say ten) to the marketable value of land." Experience, on the contrary, shows that after a trial of the system for upwards of twenty years, land held under it is of no greater marketable value than land held under the general law.

The system was advocated as being cheap, simple, expeditious, and accurate. I think that it may be more justly characterised as costly, complicated, dilatory, and unreliable. The system has been afforded every chance of success. All the land purchased from the Crown since the Real Property Act came into operation, more than 21 years since, has been compulsorily brought under it. A large quantity of the land under contract of purchase from the Crown at the passing of the Act has been brought under it on the issue of the grants. The system being one which throws a large proportion of the cost of conducting private transactions upon the general public, and being much vaunted by its advocates for its other supposed advantages, many persons have been thereby induced to bring their land under its operation. Notwithstanding these factitious aids, the system has not proved self-supporting, but continues a burden on the State. The fees of the Lands Titles Office for the year ending 30th June, 1883, amounted to £1906 19*s.* 10*d.*, while the amount estimated for the expenditure of the Department for the year 1883 was £2365, and that proposed for the year 1884 is £2525. It must be borne in mind that the fees payable to the Lands' Titles Office only represent a portion of the direct cost to which persons transacting business under the Real Property Act are subjected, as it is still necessary for them in the majority of cases to employ Solicitors. But the direct cost very frequently bears no comparison with the indirect loss in the interest of money and other charges and expenses to which persons dealing with land under the Real Property Act are exposed, through the long, unnecessary, and vexatious delays which so frequently occur in getting transactions completed in the Lands' Titles Office. The supposed simplicity of the system is merely colourable. Where the subject-matter of the dealing is simple in its nature, as, *e.g.*, an ordinary transfer of mortgage or lease, the form of instrument might very well be simple as it is under the general law, and will be rendered still more so when "The Conveyancing and Law of Property Act, 1884," comes into operation. But where any considerable departure from the forms provided by the Real Property Act for the most ordinary transactions is necessary, then the weakness of the system betrays itself in its stiffness and want of adaptability to circumstances. To take an example: if, say, four or more persons are tenants in common of an allotment under the general law they may hold it under one simple conveyance, and deal with it in conveying to one person or to half a dozen persons as tenants in common by one sinple conveyance. But if such four persons hold the allotment under the Real Property Act, each must have a Certificate of Title for his undivided fourth share, and each of these Certificates of Title must be in duplicate, one original of each having to be bound up in the Register Book. This involves the preparation of eight Certificates of Title to start with. If now the four tenants in common wish to sell a part of their allotment to half a dozen other persons to be held by them as tenants in common, each of them must execute a transfer in duplicate in favour of the half dozen, and each of the half dozen or his solicitor must sign the Certificate endorsed on each transfer in duplicate that it is correct for the purpose of registration. While under the general law four signatures would be sufficient for a conveyance by the four tenants in common to the six, under the Real Property Act fifty-six signatures might be required,—viz., eight signatures of the transferrors to the four transfers in duplicate, and eight signatures of each of the six transferrees or his solicitor certifying to the correctness of the transfers in duplicate. But this would be only a small part of the business. The four Certificates of Title held by the four tenants in common would have to be surrendered and cancelled. Six new Certificates of Title in duplicate,—*i.e.*, twelve new documents,—would have to be prepared, of which six would be issued to the transferrees, one to each. In addition to these, four more Certificates,—Balance Certificates as they are termed,—would have to be prepared for the four undivided moieties of the four transferrors in the unsold portion of the allotment, and each of these Certificates would have to be in duplicate. Thus, for one transaction which, under the general law, would only necessitate one simple conveyance with four signatures, there would be required, under the Real Property Act, the preparation of eight transfers, to which fifty-six signatures might have to be attached; and there would also have to be prepared twenty Certificates of Title, and numerous entries would have to be made in the Register Book to show the transfer of what after all would only be part of a single allotment. Tried by such a simple test as this, dealing with land under the Real Property Act would be found to be vastly more expensive, cumbrous, slow, and liable to error than the mode of transfer in use under the general law.

LIST of Business done by Messrs. Ritchie & Parker with the Lands' Titles Office for the Year commencing 30th June, 1882, and ending 30th June, 1883.

Nature of Instrument.	*Date of Filing.*	*When received from Lands' Titles Office.*	*Nature of Instrument.*	*Date of Filing.*	*When received from Lands' Titles Office.*
Mortgage	3 July, 1882	25 July, 1882	Transfer	16 Nov., 1882	18 Jan., 1883
ditto.....	ditto	12 ditto	ditto.....	ditto	4 ditto
ditto.....	ditto	27 ditto	Application	18 ditto	3 Aug., 1883
ditto.....	ditto	18 ditto	ditto.....	ditto	
Transfer of Mortgage.....	5 ditto	25 ditto	Mortgage	20 ditto	2 Jan., 1883
Application	6 ditto	ditto	Transfer.....	21 ditto	11 ditto
Transfer	7 ditto	21 ditto	Application .. .	23 ditto	5 Mar., 1883
ditto.....	ditto	28 Aug., 1882	Transfer.....	ditto	21 ditto
Application	17 ditto	1 ditto	Discharge Mortgage	ditto	8 Dec., 1883
ditto.....	ditto	10 ditto	Mortgage	30 ditto	6 Feb., 1883
Application to be registered Proprietor	ditto	Oct., 1882	Transfer.....	ditto	4 Jan., 1883
Transfer	18 ditto	21 Sept., 1882	ditto.....	1 Dec., 1882	ditto
ditto.....	ditto	12 ditto	ditto.....	9 ditto	28 Aug., 1883
ditto.....	ditto	20 ditto	ditto.....	12 ditto	14 Mar., 1883
ditto.....	21 ditto	21 ditto	Mortgage	15 ditto	6 Feb., 1883
ditto.....	26 ditto	ditto	Partial Discharge Mortgage	19 ditto	1 Mar., 1883
ditto.....	ditto	12 Aug., 1882	Transfer.....	20 ditto	
Application, registered Proprietor	ditto	22 Jan., 1882	ditto.....	ditto	5 ditto
ditto for Grant	27 ditto	1 Nov., 1882	ditto.....	ditto	
Transfer	28 ditto	6 Sept., 1882	ditto.....	ditto	
ditto.....	ditto	22 Aug., 1882	ditto.....	21 ditto	14 ditto
Application.....	ditto	18 Oct., 1882	ditto.....	ditto	ditto
ditto, registered Proprietor, Mortgage	ditto	12 Sept., 1882	ditto.....	8 Jan., 1883	22 Feb., 1883
ditto.....	8 Aug., 1882	ditto	Discharge Mortgage	ditto	12 ditto
Transfer	10 ditto		Mortgage	13 ditto	6 ditto
Mortgage	23 ditto	26 ditto	Transfer.....	16 ditto	14 Mar., 1883
ditto.....	ditto	ditto	ditto.....	18 ditto	6 ditto
Application.....	24 ditto	3 Oct., 1882	ditto.....	23 ditto	5 ditto
Transfer	14 Sept., 1882	24 ditto	Transfer.....	25 ditto	ditto
ditto.....	ditto	24 ditto	Discharge Mortgage	ditto	22 ditto
Mortgage	18 ditto	3 Oct., 1882	Mortgage	ditto	ditto
ditto.....	ditto	12 ditto	Application	26 ditto	2 May, 1883
Transfer	19 ditto	24 ditto	Discharge Mortgage	27 ditto	4 ditto
ditto.....	21 ditto	31 ditto	Transfer.....	ditto	
ditto.....	ditto	26 ditto	ditto.....	8 Feb., 1883	14 Mar., 1883
ditto.....	26 ditto	10 Nov., 1882	Application for a Grant	12 ditto	
Mortgage	27 ditto	18 Oct., 1882	Application to bring land under Act	20 ditto	4 May, 1883
ditto.....	ditto	25 ditto	Discharge Mortgage.....	22 ditto	22 Mar., 1883
Application, registered Proprietor, Mortgage	3 Oct., 1882	31 Oct., 1882	ditto.....	ditto	6 June, 1883
Transfer	ditto	6 Dec., 1882	Transfer.....	ditto	ditto
Discharge Mortgage.....	18 ditto	31 Oct., 1882	ditto.....	3 Mar., 1883	4 May, 1883
Transfer	19 ditto	21 Nov., 1882	Mortgage	ditto	17 July, 1883
Application, registered Proprietor	20 ditto	19 Jan., 1883	Transfer.....	5 ditto	
Mortgage	24 ditto	21 Nov., 1882	ditto.....	ditto	
Transfer	30 ditto	15 Dec., 1882	Mortgage	ditto	17 April, 1883
Application.....	3 Nov., 1882	12 Feb., 1883	Transfer.....	12 ditto	2 May, 1883
Transfer	ditto	10 Jan., 1883	Lease	13 ditto	ditto
Mortgage	4 ditto	15 Dec., 1882	Transfer.....	ditto	4 ditto
Discharge Mortgage.....	10 ditto	ditto	Mortgage	14 ditto	17 April, 1883
Mortgage	ditto	ditto	ditto.....	17 ditto	14 ditto
ditto.....	ditto	ditto	Transfer.....	21 ditto	6 June, 1883
Transfer.....	14 ditto	5 Jan., 1883	Mortgage	ditto	14 April, 1883
Discharge Mortgage.....	ditto	10 ditto	Application	28 ditto	16 June, 1883
			Transfer.....	29 ditto	7 ditto
			ditto.....	ditto	6 ditto
			Mortgage	ditto	14 April, 1883

Nature of Instrument.	*Date of Filing.*	*When received from Lands' Titles Office.*	*Nature of Instrument.*	*Date of Filing.*	*When received from Lands' Titles Office.*
Transfer	30 Mar., 1883	28 June, 1883	Transfer	30 May, 1883	28 June, 1883
Lease	9 April, 1883	17 July, 1883	Application	1 June, 1883	3 Sept., 1883
Transfer	10 ditto	7 June, 1883	ditto	2 ditto	
ditto	ditto	12 July, 1883	Mortgage	7 ditto	3 Aug., 1883
ditto	11 ditto	20 June, 1883	Transfer	ditto	31 July, 1883
Discharge Mortgage	16 ditto	16 ditto	Mortgage	8 ditto	3 ditto
Transfer	ditto	ditto	Transfer	ditto	15 Aug., 1883
Discharge Mortgage	21 ditto	6 ditto	Discharge Mortgage	14 ditto	18 ditto
Lease	24 ditto	13 Sept., 1883	Transfer	ditto	ditto
Discharge Mortgage	26 ditto	6 June, 1883	Lease	ditto	13 ditto
Transfer	ditto	ditto	ditto	ditto	ditto
ditto	27 ditto	31 July, 1883	Mortgage	ditto	17 July, 1883
ditto	3 May, 1883	17 ditto	ditto	18 ditto	3 Aug., 1883
ditto	ditto	24 Aug., 1883	Transfer	ditto	26 July, 1883
ditto	ditto	18 June, 1883	ditto	ditto	15 Aug., 1883
ditto	7 ditto	11 Sept. 1883	ditto	19 ditto	21 ditto
Mortgage	ditto	31 July, 1883	ditto	30 ditto	
ditto	9 ditto	ditto	ditto	ditto	11 Sept., 1883
Transfer	10 ditto	28 June, 1883	ditto	ditto	25 Aug., 1883
Mortgage	ditto	ditto	ditto	6 July, 1883	
Discharge Mortgage	14 ditto		Discharge Mortgage	17 ditto	18 ditto
Transfer	16 ditto		Transfer	ditto	
ditto	ditto		ditto	18 ditto	13 ditto
Application	17 ditto		ditto	20 ditto	28 ditto
Discharge Mortgage	30 ditto	ditto	ditto	ditto	
			Mortgage	22 ditto	ditto
			Transfer	24 ditto	
			ditto	ditto	

WILLIAM RITCHIE.
1*st Sept.*, 1883.

C. H. ELLISTON, *Esq.*

1. What experience have you had in carrying out the system of Conveyancing introduced by the Real Property Act (25 Vict. No. 16)?

Ever since the Act was introduced I have been concerned in bringing land under its operation and in dealing with land under the Act.

I have also acted during the same time as agent for practitioners in Launceston, and had very considerable experience in its working.

2. What defects (if any) has experience shown you to exist in the practical carrying out of that system?

In bringing land under the Act:

This is effected in two ways.

(*a*) By application for a *Grant* where the land has not hitherto been granted.

(*b*) By application for a *Certificate* where the land has hitherto been granted.

In applying for a Grant a grave defect exists in the power given to the Commissioners to refuse the application after the applicant has furnished evidence (at considerable expense) proving himself to be entitled at Law to a Grant.

The application and all the evidence in support is first dealt with and reported upon by the Solicitor to the Lands' Titles Office, and in some cases, where all his requisitions have been complied with and the applicant's title proved, the Commissioners (setting aside his report) have refused the application.

The remedy for this is very inefficient. The applicant calls upon the Commissioners to state the grounds of refusal, and he can then go to the Supreme Court for its decision, but *only* at his own expense; even where he succeeds he still has to pay the costs on *both* sides, and thus it becomes a practical denial of justice.

(2) The above remarks also apply to applications for a Certificate of Title.

(3) A serious defect exists in the Act in regard to there being no means of carrying out an ordinary conveyance and mortgage where property under the Act is sold and part of the purchase money is allowed to remain on mortgage.

As the Act is now worked, the vendor must either transfer the land to the purchaser out and out, and then afterwards as soon as the new certificate is obtained trust to the purchaser executing a mortgage to secure the unpaid portion of the purchase money, and the purchaser gets nothing but *a declaration* by the vendor, which will not be taken notice of by the Recorder under the Act, that he is the purchaser, and has to wait till the mortgage is paid off before he can get a transfer; and his only protection would be to enter

a caveat against the vendor dealing with the land, which, in case for a sale for non-payment of principal or interest, would have to be removed, and if not consented to, expense, vexation, and delay would ensue. Again, as a caveat would lapse at the end of three months, it would have to be continually renewed, and be a source of great annoyance. Both courses are very objectionable.

As a rule it takes from three to six weeks, and not unfrequently much longer, to obtain a certificate under a transfer. The vendor, by the transfer, parts with all his estate in the land, and if, before the certificate issued, the purchaser or mortgagee were to die, very great difficulty and delay, accompanied with expense, would be experienced in getting the transaction carried out and completed. The wills would have to be proved or letters of administration taken out, and the executor or trustee registered as proprietor, all which would at the least occupy three months or more, and then the same objectionable and *untruthful* form would have to be gone through,—for the purchaser is not a purchaser for cash only, but part remains on mortgage.

This ought not to be, as a conveyance and mortgage ought to be completed by the signature of the parties to one document, and then the certificate could issue to the purchaser with the mortgage incumbrance marked upon it.

I strongly recommend the amendment of the Act in this respect. It would be a boon to the public generally, as nearly all estates when sold are, for general convenience and to ensure the best price, sold on condition that part of the purchase money may remain on mortgage; and to carry out such a transaction as the Act now stands is literally an impossibility. We are compelled *to dodge the Act.*

No help is given to the profession to carry out such a transaction by the department,—the profession must take all risk on their own shoulders.

(4) There is no way of creating an estate tail under the Act; and where land under the Act is devised by will in such a way as to create an estate tail, there are no means by which the tenant in tail can bar the entail. The Act wants amending and assimilating to the old law in this respect.

(5) The delay and expense in registering a devisee or trustee under a will as proprietor.

Under the old law a devisee or trustee takes as purchaser by devolution of law; registration of the will only is sufficient to complete his title.

Not so under the Real Property Act. He has to go through the expensive and tedious process of an application to be registered as proprietor, which has to be advertised in the same way as if he were applying for a certificate, and has to wait at least six weeks or more before he can complete his title.

It is, I think, wholly unnecessary that this ordeal should be gone through. If the testator holds a grant or certificate of title under the Act, his will alone should be sufficient to enable the trustee or devisee to be registered as proprietor, without the farce of advertising.

(6) The Act takes no notice of trusts.

This is, to my mind, a serious defect, and some day a great fraud will be perpetrated in consequence. As long as the world lasts trusts must exist, and some method should be adopted of dealing with them under the Act. This is a very difficult question to deal with, but I think some better mode than ignoring them altogether might be devised which would throw some protection around the *cestuis que trustent.*

(7) When part of an estate is under the Act, and part not, and the whole is let or mortgaged, great difficulty and expense is occasioned in effectively carrying out the transaction owing to the part which is not under the Act being, as it were, ignored or treated as if it did not exist by the forms required for that which is under the Act.

The Act wants something in this respect so that the two might be combined and made to work a little more harmoniously or hand-in-hand together.

These are defects which occur to me at present, and which experience in working the Act shows to be great drawbacks to its utility.

3. Have you at any time, and when, had to complain of delay or other difficulty in dealing with land under the Act?

The delays are numerous, and it is principally by our clerks continually going over and urging on matters that they can be got through. I cannot give dates.

Difficulties arising in dealing with land under the Act are generally treated with a high hand by the Department. See answer to Question No. 2.

A great difficulty in dealing with land under the Act is a rule made by the Department of not giving receipts for deeds relating to other land as well, and which are only exhibited or lent in support of a title.

Such deeds are not cancelled, and have to be returned.

As a rule they are left at the office for convenience of examination; when done with they are not put up and returned, but are put away with the cancelled deeds. They are not returned unless called for—the Department could not think of such a thing. Deeds thus get lost or forgotten, sometimes for years. The Department say they have not got them; no receipt being given, there is no direct proof, and it is only by worrying that they can be got to look for them. We have had deeds lost like this for eighteen months and more.

The ordinary business practice of giving a receipt should be adopted, and when deeds are done with they should be returned, without the necessity of being sent for.

A box or pigeon-hole could be kept for deeds on loan, which, on production of the receipt, could be handed over without difficulty. It would save both time and trouble to adopt such a course.

4. Do you attribute any difficulties which *have* arisen to defects inherent in the system, or to causes remediable by amended legislation or improved office administration? You will oblige by stating fully and explicitly your views on this question.

As will be seen by the previous answers, some of the defects are inherent in the system, some are departmental.

Those which are remediable by amended legislation are—

(1) The Commissioners ought to have such a knowledge of the fundamental rules of law as not to refuse an application capriciously or from some "fancied idea" which does not exist in law; *ergo, the Commissioners should be professional men.*

(2) A proper form of conveyance and mortgage should be legislated for, that is, by filling a form showing that property has been purchased subject to part of the purchase money remaining on mortgage, a certificate should issue to the purchaser with the encumbrance marked upon it, and the vendor or mortgagee should retain his part, which should give him *all the powers of a mortgage.*

(3) Power should be given enabling parties holding land under the Act by deed to create an estate tail, and also, where such has been created by will or settlement, to enable the tenant in tail to bar the entail, in the same way as under the old law can be done by a disentailing assurance.

(4) A more simple method of registering a devisee or trustee as proprietor should be adopted.

(5) Some method of dealing with trusts enacted. If only the words "as trustee" were inserted, it would at once give notice that the party did not hold the land in his own right, which would afford some protection.

(6) When some lands are under the Act, and some not, and the two forming one estate are let or mortgaged together, some mode of reference should be adopted whereby the two titles can be dealt with as one property without separating the amount of rent or mortgage money, which is very inconvenient, and in some instances cannot be done.

Improved office administration would certainly arise in making the Department co-operate with the Solicitors in facilitating difficult matters and transactions which cannot be carried out without risk in the strict way as prescribed by the Act; in giving receipts for deeds on loan and returning them when done with; in the *quicker despatch of business.*

5. Have you any, and if so, what remedies to suggest for any defects you may have found to exist in the Act or its administration?

I have mentioned these in the foregoing answers.

The precise mode of carrying out "suggestions" must be left to the Parliamentary Draftsman.

The suggested alterations might be submitted to the profession generally for approval.

6. Have you any further remarks on the subject you would like to make for the assistance of the Select Committee?

I think it would be of incalculable benefit to everybody holding land, whether by grant under the Real Property Act or by a certificate of title, if such grant and certificate could be exchanged into the old system and make a root of title under the old law.

It would be the means of getting rid of long and cumbrous title deeds.

It would simplify the title, and so lessen expense on sales.

It would get rid, in very many cases, of long abstracts, long and tedious searches, and making copies of or depositing title deeds.

It would be a means of getting rid of the vexed question of trusts.

The Real Property Act is confined almost exclusively in its effect to very simple transactions, such as conveyances, leases, and mortgages. It was taken in the main idea from the Merchant Shipping Act, and sought to ignore trusts and all complicated transactions. This is all very well as to *chattel property,* but will never work as to lands. Trusts must exist of some kind or other, and therefore *an Act which professes not to recognise them is radically defective.*

Therefore if a grant or certificate of title under the Real Property Act could, by registration, be made a root of title under the old law, it would remove many vexed questions, and very much increase the usefulness of the Real Property Acts. Almost every one then who held land under a long and intricate title would bring it under the operation of the Act, if only to simplify the title, and, as circumstances required, the land could either remain under the Act or be dealt with under the old law.

To my mind such a law would be one of the greatest utility, and do more to simplify the law of Real Property than anything else. It would vastly increase the popularity of the Real Property Statutes.

C. H. ELLISTON.
5th Sept. 1883.

ALFRED GREEN, *Esq.*

1. What experience have you had in carrying out the system of Conveyancing introduced by the Real Property Act (25 Vict. No. 16)?

I have had considerable experience in carrying out the system of conveyancing introduced by the Real Property Act, having been engaged in business ever since the Act was passed, and having a great many transactions under the Act in the course of the year.

2. What defects (if any) has experience shown you to exist in the practical carrying out of that system?

The system has been found to be practically very defective, and it must, I think, continue to be so; for being a formulary system, its operation is necessarily confined within narrow and technical limits.

The system appears to be an attempt to adopt for the transfer of land the forms used for the transfer of ships; but inasmuch as the estates and interests which are created in land are such as are not, and cannot, be created in ships, and inasmuch as when a portion of a ship has to be transferred no specified portion is transferred, but only a fractional part of the whole, the cases are not analogous, and what answers in one case is found defective in the other.

A proprietor of land ought to be enabled to deal with it in any manner, and to create such estates and interests as the law will allow: under this system he cannot. And it is not always desirable to place property in the names of trustees who, as trusts, are not recognised, have an absolute power of disposing thereof, and thus frustrating the intended trusts.

Some alteration should be made to meet the case where land is to be mortgaged at the time when it is transferred. At present it is required that a mortgagor must be registered as proprietor at the date of the

mortgage, and that the grant or certificate of title must be referred to. The usual practice is for a transfer to be signed transferring the land to the purchaser, who at the same time signs a mortgage in blank to be dated and filled up after the registration of the transfer and the issue of his certificate of title. Therefore such a mortgage must remain for a time incomplete, and this might cause great inconvenience in the event of the death of either party.

I think this might be remedied by striking out the words " registered as " in the form, and by inserting a clear description of the land in the mortgage instead of referring to the certificate of title. The mortgage could then be dated on the day on which it is signed, the purchaser would be the proprietor, though not the registered proprietor, as soon as the transfer to himself was signed; and as such proprietor, though not registered proprietor, should be entitled to mortgage. Of course the mortgage would have to be duly registered in order to bind the land, but there is no need for the proprietor to be actually registered as such at the date of the mortgage, and there should be no necessity for signing the documents in blank.

Dealings in leasehold property show clearly the difficulty of attempting to simplify dealings by the Torrens' system. A lease is granted, say for 99 years, (and as the Colony grows older more and more long leases may be expected), the lease is issued in duplicate, one copy being retained in the office and the other the landlord sometimes claims, giving to the tenant a certified copy; afterwards the tenant wishes to mortgage his leasehold interest, and for that purpose signs a mortgage, which is lodged in the office for registration. The memorial thereof must be notified not only on the duplicate lease in the office, but on the other copy, which may be in the landlord's hands, and on the certificate of title, which may be in the landlord's hands or may be in the hands of a mortgagee and not readily obtainable. If the mortgagee of such leasehold estate assigns that mortgage, such assignment is endorsed on the mortgage but is not notified on the certificate of title. Then, if the lessee again mortgages, or if he sublets or otherwise deals with a portion of his leasehold property, or if his mortgagee sells under his mortgage, such transaction must be recorded on the certificate of title; but if he assigns his lease by endorsement it will not be. So that, what with some transactions being recorded on the certificate of title and some being not, and mixed up as they may be with transactions relating to the freehold estate, the probability would be that before the 99 years were expired it might be a matter of difficulty to learn the exact position of either freehold or leasehold estate. And why should the leaseholder be dependent on the will or the ability of his landlord to produce his certificate of title? Moreover all the documents relating to the lease will have to be kept to prove the title to the leasehold estate. So that, as far as leasehold property is concerned, Torrens' system does not simplify the transaction.

I think the system is defective in the matter of trusts. No doubt a formulary system is not suited to the numerous and varying trusts upon which land is constantly held. But trusts *will* exist, and though they may not be recognised in transfers the language of testators cannot be controlled.

Questions must from time to time arise under wills as to the legal estate which cannot be provided for by any set of forms.

The clause as to the insertion of the words " no survivorship " in transfers is delusive. It certainly prevents the survivor from dealing with the land, but the provision requiring the sanction of the Supreme Court or a Judge to any dealing with the land in the event of a death will, I think, show that the Torrens' system has not the simplicity it is supposed to have.

The portion of the the 78th section as to registering the husband of a female proprietor as co-proprietor does not appear to be understood. Apparently it was intended by section 32 that a married woman holding land not settled to her separate use should, whilst holding it free from encumbrances, liens, estates, or interests, hold it under disability, and therefore (as when land was not under the Act) be unable to dispose of it without her husband's assent. Then if she wished to deal with it, her husband should, under section 78, be registered as co-proprietor and the two together could then deal with the land. The law under Torrens' system was to remain as before, except as to the *mode* of transferring, &c.

But the office ignore the disability clause in section 32, and allow a married woman to dispose of property not settled to her separate use as if it was so settled, and so make the latter part of section 78 useless and unmeaning. This matter should be clearly settled. If a married woman may dispose of land not settled to her separate use without the consent of her husband, the law should be the same whether the land is or is not under the Real Property Act.

The provisions for the registration as proprietors of devisees under wills is found to be a great inconvenience, but I suppose that under the system it must be so.

It seems rather inconsistent that the application of a devisee under a will should require to be advertised, whilst the application of the administrators of an intestate estate does not.

A tenant in tail can no doubt be registered as a proprietor, but there is no provision in the Act to enable him to bar his estate tail. It is one of the incidents of an estate tail that it may be barred, and land under the Real Property Act should not in that respect differ from land which is not under it.

Upon surrender of existing grants or certificates of title a proprietor may obtain a single certificate for all the land included therein. There ought to be provision that he may, if he wished, obtain several certificates in place of one.

Tenants in common are bound to have separate and distinct certificates of title, and thereby incur additional expense, which would not be incurred if the land were not under the Act.

The Recorder of Titles may, with the consent of the Government, make alterations in the forms, but is not authorised to make new forms. Forms have, from time to time, been issued by the office differing from the form given in the Act. If any such were other than alterations, or were not made with the consent of the Government, they ought to be made valid.

Provision should be made by which writs of execution, &c. should bind land. At present the sheriff may sell a proprietor's interest in land, but he cannot bind the land until after the sale, and there is nothing to prevent a debtor whose land has been seized from selling his land even after it has been sold by the sheriff.

The provision for the attestation of instruments might well be amended by allowing instruments to be signed in the presence of certain persons to be specified, and the list might include justices of the peace and solicitors here and in the other Colonies, &c. At present if a document is signed in Victoria or some other

Colony, and if the Act is carried out strictly, it might be necessary to *prove* the signature before either the Chief Justice or a Judge of the Supreme Court, or the Governor-General, Resident, or Chief Secretary. No one else is mentioned before whom the signature could be proved.

Amongst the defects of the system must be mentioned the attempt to delineate and describe property with mathematical accuracy. It is well known that different surveys of the same property do not correspond, particularly if they happen to be over rough country. Even in township allotments it is not unusual to find that the measurements given in the certificate of title do not agree with the actual dimensions of the land.

Where the land is not under Torrens' system mathematical accuracy is not required, as the land can be described by its boundaries sufficiently well to identify it and show clearly the land intended to be conveyed; but, under Torrens' system, if any error has originally been made in the measurement, a subsequent purchaser may find himself without title to a part of his land. I know of a case in which after some lots fronting on a street had been sold, the purchaser of the balance of the frontage on such street was asked if he would accept a certificate of title for a frontage of more than twenty links less than he actually purchased. The interpretation clause says that the describing any person as proprietor, &c. shall be deemed to include the heirs, executors, administrators, and assigns of such person. This clause is unintelligible.

3. Have you at any time, and when, had to complain of delay or other difficulty in dealing with land under the Act?

I have from time to time had to complain of delay, and have had other difficulty in dealing with land under the Act.

4. Do you attribute any difficulties which *have* arisen to defects inherent in the system or to causes remediable by amended legislation or improved office administration? You will oblige by stating fully and explicitly your views on this question.

I am of opinion that many of the difficulties which have arisen are attributable to defects inherent in the system, for, although some of the defects may be remedied by amended legislation, and improved office administration may provide for the transaction of business rather more expeditiously and according to the order in which documents are lodged, the system cannot be expected to provide for different cases which will from time to time arise. I think that an attempt by the Government to provide for all the conveyancing business of the Colony cannot be expected to be satisfactory without great expense (and irrespective of those defects in the system which cannot be overcome.)

It must be expected that documents will at times be sent in by the different offices in the Colony in large numbers. All the matters are required to be attended to immediately (and so they ought to be be), but when it is considered that they must be all investigated and memorials prepared and certificates of title written out, it is not to be wondered at that delay will occur. The fault must in a measure be attributed to the system.

5. Have you any, and if so, what remedies to suggest for any defects you may have found to exist in the Act or its administration?

The most effectual remedy which I have to suggest is to sweep away the Torrens' system entirely, and have Commissioners who may investigate any title that may be brought before them, and cause a certificate of title to be issued, which would be similar to the issue of a grant, showing that the proprietor of the land held it in fee simple free from all incumbrances. The land could then be dealt with in the usual manner. If at any future time the title became complicated, the proprietor could again apply for and obtain a new certificate.

By this means the difficulties and encumbrances attendent upon the dealings with land under Torrens' system would be got rid of; and by enabling a proprietor to obtain a clean sheet and start afresh whenever he thought fit, the complications of title which sometimes arise could all be cleared away. At the present time the cost of a transfer under Torrens' Act and obtaining a balance certificate of title is more than the cost of a simple conveyance of land not under Torrens' Act.

A simple conveyance under the old system can be prepared, completed, and registered in much less time than is usually taken to have Torrens' transfers completed and new certificates of title issued; and the old system allows freedom in the dealing with land which is not attainable under a formulary system, like the Torrens' system.

ALF. GREEN,
10*th Sept.*, 1883.

HENRY DOBSON, *Esq.*

1. What experience have you had in carrying out the system of Conveyancing introduced by the Real Property Act (25 Vict. No. 16)?

I have been in business as a Solicitor since 1865, and have had considerance experience in carrying out the system of the Real Property Act. For the last ten years I have transacted a very large amount of business with the Real Property Office in all its branches. I have frequently pointed out defects in the Act as they turned up, and suggested that many of the practical difficulties which arose in working the Act should be got rid of by an amended Act, but the Recorder never would admit that any amendment of the Act was necessary.

2. What defects (if any) has experience shown you to exist in the practical carrying out of that system?

The defect existing in the practical carrying out of the system is that no *system* of any kind has ever been adopted for carrying out the daily routine work of the office; and no attempt at organisation or method seems to have been made in trying to conduct the work of the Real Property Department.

Until quite recently the Real Property Act Department did the conveyancing of every one who took deeds to the Office, or asked the clerks there to prepare transfers, mortgages, and other documents for them; and although I believe this practice has, by the order of the Attorney-General, been discontinued, it lasted for 16 years, and must have always prevented anything like the introduction of the system which I have suggested in my letters to the Hon. the Attorney-General. For instance, the Solicitors might one day present a dozen documents *to be filed*, and that same day half a dozen private persons might have instructed the clerks to *prepare* documents for them, and then the proper and legitimate work of filing documents and preparing Certificates and Grants was brought to a standstill while the conveyancing work of a few private individuals was being attended to. The work of the Department has greatly increased, and has outgrown the office accommodation and the staff; and if to this increased work the Clerks and Recorder added the labour of acting as solicitors and conveyancers for those who employed them, although the Act does not empower them so to act, the Members of the Legislature, bearing all this in mind, can easily understand the state of confusion in which the Department is now plunged. It is quite true that no conveyancing work for the public is now supposed to be done at the office, and yet the confusion and delays are as bad as ever; this is because the *arrears* of work are very large, the incoming work is increasing daily, and the Department has not had time to *organise* and *start* a *systematic* mode of conducting its business: this ought to have been set on foot from the commencement.

3. Have you at any time, and when, had to complain of delay or other difficulty in dealing with Land under the Act?

The delays which have taken place in carrying out many transactions with which my office has been connected have been very great, almost beyond belief for a Department whose work is for the most part to *file and record documents prepared by others*. In my letters to the Hon. the Attorney-General of 26th May and 11th July last, I have fully set forth particulars of some of the cases in which delay has occurred, and from these particulars it will be seen that the delay is not confined to any one particular class of documents, but pervades generally every class of transaction passing through the office, whether the transaction is simple or complicated.

The following cases of delay have occurred quite recently:—

——— *to* ——. This transfer filed 15th June, 1883, and the Certificate of Title to be issued in pursuance of it was not ready on the 2nd September, although frequently asked for and applied for every day since the 22nd August and 3rd September.

——— *to* ——. Transfer filed on 18th July last, but Certificate of Title was not ready to issue till 29th August, and no cause given for the delay.

——— *to* ——. Transfer filed 13th July last, and Certificate of Title asked for several times, but not issued yet; the reason for delay given was that other transactions came to the office before this, and must be first attended to.

—— *to* —— *and* ——. Transfer filed 6th July, and Certificate of Title drawn, but not yet engrossed. Has been asked for several times. (5th September, 1883.)

——— *and* —— *to* ———. This mortgage (in duplicate) was filed on 28th August, 1882, and the fees then paid, and the two Certificates of Title were then in the Real Property Office. When a clerk, in August, 1883, went to receive the mortgage registered and get the Certificates of Title, neither Mortgages nor Certificates could be found; but a week after they found the Mortgages, but not the Certificates. The clerks hinted that we might have the Certificates, but as they issue no documents without a receipt and cannot produce a receipt for the Certificates, we feel sure they have them. It would be useless to take the Mortgage to be registered without taking the Certificates unless the Real Property Office held the Certificates.

Numerous documents belonging to us have been sent to Launceston in *error*.

4. Do you attribute any difficulties which have arisen to defects inherent in the system, or to causes remediable by amended Legislation or improved Office administration? You will oblige by stating fully and explicitly your views on this question.

The defects in the Act and in the administration of the Act are great, but most of them can be remedied, as pointed out here and in my letters to the Hon. the Attorney-General; and, on the whole, I think the inherent defects in the system are not serious enough to prevent the Real Property Act, if properly amended and administered, being of very great advantage to the public. I am aware that many solicitors, who have thought more of the subject than I have, think that the inherent defects in the Real Property Act system are so great that the measure can never be a perfect system of dealing with land. It must be borne in mind that the Real Property Act is a reaction to the old system of conveyancing, which was complicated, cumbersome, tedious, and costly in the extreme. But the Real Property Act system tried to go too far. It was introduced by a layman, who, in reply to the undeserved evident prejudices of part of the legal world, insisted that land could be dealt with as promptly and easily as chattels; that the laws of England regarding land might all be repealed and ignored if inconsistent with the Real Property Act, and that legal knowledge and skill was no longer necessary in dealing with land. All this was partly true and partly false; but instead of acting upon what was true, and laymen and lawyers joining together and framing, as they might have done, a Conveyancing Act, such as that now before Parliament, incorporating with it the best of Mr. Torrens' suggestions, the contending parties did not attempt to agree upon a thorough remodelling of the system of conveyancing, or lend each other their brains, and Mr. Torrens was left alone when the legal world saw that the public would have an amendment of the system, and so an extreme measure was passed; but you have only to look at the amendments made in most of the other Colonies to see what a faulty and defective system it is as we have it in an Act. Although, then, I think that the inherent defects of the Real Property Act system are not so great as to prevent its being of great public use, I believe that, in the long run, the Conveyancing Act now before the Parliament will prove by far the best and most advantageous way of dealing with land. People will always desire to tie up their property, in some instances on special and complicated trusts, and the machinery of the Real Property Act is unsuited for this—is not elastic enough.

5. Have you any, and if so, what remedies to suggest for any defects you may have found to exist in the Act or its administration?

I respectfully call the attention of the Committee to my letters to the Hon. the Attorney-General, dated the 26th of May, 20th June, and 11th July last, and to Mr. Jackson's opinion, which latter, I think, is entitled to great weight. I suggest that some system of conducting the routine work of the office be started *immediately*, and let the public know within what time the Grants and Certificates of Titles will be prepared, and when they may call for documents which they have left to be filed or registered. Let every effort be made to keep down the daily work of the office in accordance with the system when it is once set on foot, and arrange with the officers of the Department to get rid of the arrears by working overtime, and pay them for it, or get in additional help to get through the arrears of work. The Recorder should be furnished with such assistance as will enable him to get rid of arrears by a given day, and it should be an instruction to him that by that date no transaction should be delayed or stuck up in the office, unless for some cause not within the control of the Department or its officers. The Recorder will, I think, require more office room, and more safes and pigeon-holes for the reception of documents. Documents should be put away and arranged so that any clerk who knows the run of the office can find them in a moment. The Solicitor to the Act should devote certain hours on each day to attend to the work devolving on him connected with the filing of documents and the routine work of the office. Certificates of Titles should be kept in print, instead of the clerks wasting time in writing out a draft of each Certificate. If, as I understand, the Solicitor has to peruse and settle each draft Certificate of Title, this seems to me a waste of time; the Lands Office do not require the Crown Solicitor to draft or settle forms of Grant, and in all simple cases the Certificate of Title is only a form, but the important part of it is the plan, and the correctness of its registration.

In my letters to the Attorney-General I have only touched upon a few points in which the Act should be amended,—but numerous other amendments are necessary. I suggest that Mr. Jackson be employed to draft a short amended Act for this Session, and next year that he draft another Real Property Act entirely, introducing all the amendments adopted by the other Colonies, or such of them as have worked well in practice. The great difficulty to be faced is, that you have now two systems of conveyancing growing up side by side, and in many cases of conveyance and of mortgage we find that the lands to be dealt with are under both systems; the result is that the purchaser or mortgagor, as the case may be, has to pay for two sets of deeds, and has also to bear two sets of fees and stamps. Now in all cases of this sort—and they are numerous, and increasing daily—the Real Property Act is a positive injury and annoyance to the landowner; it may be that almost all his deeds are under the old system, but that he has recently added a block of Crown Land to one of his estates, the Grant of which he was compelled to take under the Real Property Act. In dealing with small properties and poor men, your Committee can have very little idea of the cost, delay, and disappointment the two systems are causing. The question now is, what is the best remedy? The Conveyancing Act should be passed, and also an amendment of the Real Property Act, and power should be given to landowners to deal with their lands under which system they please, and let the systems and Acts so fit into each other as to permit of this; then in process of time I predict that the Conveyancing Act will grow to be the favourite system, and we shall then probably get back to one system only; if, in the meantime, the two systems can practically be worked as one so much the better. If the Legislature will not pass the necessary amendments to enable us to try and work the two systems together, then I foresee endless annoyance and unnecessary cost to a large portion of the people who deal in land.

For Partner and Self,
HENRY DOBSON,
10*th September*, 1883.

MESSRS. BUTLER & McINTYRE.

1. What experience have you had in carrying out the system of Conveyancing introduced by the Real Property Act (25 Vict. No. 16)?

I, the undersigned, Charles Butler, have worked under the Real Property Act from the date it came into operation up to the present time.

I, the undersigned, John McIntyre, have worked under the Act for about nine or ten years.

2. What defects (if any) has experience shown you to exist in the practical carrying out of that system?

The defects are so many that, unless a transaction is of the most simple nature, we have, as a general rule, experienced much difficulty in carrying it out under the provisions of the Act. The difficulties are indeed so formidable, and, in many instances, the risk to ourselves or our clients so great, that we have always dreaded to see any matter of a complicated nature in connection with the Act brought into the office. When the matter is of a simple character it can, in most cases, be effected more expeditiously under the old system. We shall endeavour to enumerate a few of what appear to us to be the chief defects in the Act, but it would take more time than we have at command to attempt an exhaustive definition of the defects which have presented themselves for consideration since the Act came into force:—

(1.) A simple Conveyance, or Mortgage, or Lease under the old law is often, when required, completed within one or two days: under the Real Property Act similar transactions have usually taken from a fortnight to three weeks, and very often double that time.

(2.) In many cases where a party purchases land, it is subject to one or more Mortgages which have to be paid off, and he has often to borrow money for the purpose of discharging those Mortgages and paying the purchase money. It is impossible to deal safely with transactions of this nature under the Real Property Act. All parties, except the purchaser, must incur a considerable amount of risk. The transfer to the purchaser, the discharge of each Mortgage, and the Mortgage to the new Mortgagee, have to be effected

by means of separate documents, each of which must be registered before it is of any value. The vendor, however, will not transfer to the purchaser until he has received his purchase money; the Mortgagees will not discharge their securities until they have been paid off; the new Mortgagee, who is to advance the money necessary to pay the purchase money and discharge these Mortgages, will not do so until a Mortgage to him has been executed by the purchaser; while the purchaser is not in a position to execute such Mortgage until the property has been transferred to him and he has paid off the purchase money and prior incumbrances. Under the old system a matter of this nature can be safely and expeditiously completed by means of one deed only.

(3.) Out of every twenty sales of property in this Colony at least nineteen are made partly upon credit, the unpaid purchase money remaining secured upon mortgage of the property. There is no safe method of carrying out these sales under the Real Property Act. Often long and expensive deeds have to be prepared explanatory of the transaction, and in whatever way it may be done there is certain risk either to the vendor or the purchaser. To give one example: A. sells to B. a property for £10,000, of which B. pays £1000 in cash, and £9000 have to remain secured upon the property for a term of years, at interest. The mode in which this sale is effected under the Real Property Act is as follows:— A. signs an absolute transfer to B. of the property, acknowledging that he has received the full amount of the purchase money; B. signs a Mortgage to A. for £9000, describing himself in such Mortgage as the "registered proprietor" of the land, although he has at this time no estate or interest therein. (See Section 39 of the Real Property Act.) The Mortgage is undated, and contains no description whatever of the property to be mortgaged, inasmuch as the description can only be inserted by reference to B's. Certificate of Title whenever the same shall be issued. We submit that such a document is void. B. presents his transfer for registration, but under the practice of the Department several days often elapse before the instrument is actually registered by the Recorder. Difficulties, moreover, may arise, or objections be taken by the Recorder, which will prevent registration for a lengthened period, or it may be that the Recorder will refuse altogether to register the transfer. Assuming, however, that the transfer is at length safely registered, a Certificate of Title is issued to B. After the Certificate of Title is issued, the date and the description of the land are filled in in the Mortgage, which is then produced for registration. If either vendor or purchaser should die, or if the purchaser should become bankrupt between the date of registration of the Transfer and the registration of the Mortgage, it seems evident that the Mortgage would be worthless, and the vendor, who has entirely parted with his property, would lose the balance of purchase money, unless indeed he could obtain relief by means of an expensive equity suit. At the present time we believe there are many of these Mortgages in existence, some of them for very large amounts. The risk in carrying out transactions of this nature under the Real Property Act is so great, that unless the purchase money is very small, the vendor's solicitor, in many cases, is compelled to advise his client not to transfer the land until the Mortgage money is paid, and a lengthy deed has accordingly to be prepared with the object of securing both vendor and purchaser. In such a case the purchaser must run the risk of the vendor selling or incumbering the property, unless the Recorder could be persuaded by the purchaser to enter a Caveat for the prevention of fraud or improper dealing with the land. (See Section 3 of the Real Property Act.) And in the event of the purchaser having to sell in default of payment of the purchase money, such a Caveat might give rise to much difficulty and expense. Under the old system a sale of land on credit can be effected with perfect safety by one deed.

(4.) No purchaser or Mortgagee is safe, although he may have paid his purchase money or his advance, until the Transfer or Mortgage is registered. Up to that period it is of no effect (Section 39, Real Property Act), so that a purchaser or Mortgagee should not pay over his money until registration of the instrument. In practice, however, it would be almost impossible to adopt this method, and therefore each purchaser and Mortgagee has to run the risk of every day's delay in the registration of the document.

(5.) The forms prescribed by the Act for use are much too narrow, and do not meet the requirements of many transactions. The consequence is that if any special matter is inserted in an instrument which, in the opinion of the Recorder is inconsistent with the form in the Schedule to the Act, he can refuse, and has refused, to register the instrument. The purchase money or Mortgage money will have been paid at the time the instrument was signed, and the purchaser or Mortgagee may be unable to obtain a re-execution of the Transfer or Mortgage, and, consequently, will have paid his money for nothing. In most transactions under this Act there should, in fact, be a stakeholder to hold the money for vendor and purchaser, or Mortgagor and Mortgagee, until the Transfer or Mortgage be registered; and in no other way can the business be transacted without risk.

(6.) The Act contains no provision for a Mortgage of a Mortgage.

(7.) It would appear that no valid Lease for less than three years can be created under the Act.

(8.) The Act contains no power to create an equitable Mortgage by deposit of the Certificate of Title. We understand that the Supreme Court of South Australia has given two conflicting decisions upon this point, and that, in consequence, a clause has been inserted in one of the amending Acts introduced in that Colony enabling such a security to be created. In Victoria it has been held that a registered Proprietor can give an equitable Mortgage over his land. It is impossible to say what the Supreme Court of Tasmania would decide in such a case, and we think it is desirable to set the matter at rest by express legislation.

(9.) It would seem that the Sheriff has no power to convey or transfer to a purchaser land under the Real Property Act sold to him by virtue of a Writ of *Fi. Fa.* The Supreme Court of South Australia has decided that the Sheriff cannot convey or transfer under the Act of that Colony of 1861, of which Act our own is substantially a copy. *Palmer v. Andrews*, 8 *S.A. L.R.*, 282. The Real Property Statutes of Victoria give the Sheriff full power to effect such Conveyance or Transfer.

(10.) The Act gives no form of transfer of land under a Decree or Order of the Supreme Court. The Victorian Act has provided a form for this purpose.

(11.) It is very doubtful whether Estates Tail can be created under the Real Property Act. By the Victorian Act (No. CCCI.) an estate tail can be created either by Will or by Transfer. (See Section 60, and form of Certificate of Title in the Schedule to that Act.)

(12.) The Act provides no means of barring Estates Tail.

(13.) A testator devises land held under the Real Property Act to the trustees of his Will, in trust to raise certain portions for his daughters, by sale or mortgage, and subject thereto he devises the land to his son for life, with remainder to his son's children. The trustees will be placed on the register as Proprietors, but we do not see how the estates in the property given to the son and to his children can appear on the register, or how they can be in any way dealt with. Under the old system there would not be the least difficulty in dealing with these estates.

3. Have you at any time, and when, had to complain of delay or other difficulty in dealing with Land under the Act?

We have frequently complained of great delay in dealing with land under the Act, but we never made a formal complaint to the head of the Department. Speaking generally, the administration of the Department for years past has, in our opinion, been very defective. We are bound to add that of late there appears to have been considerable improvement in the administration of the office.

4. Do you attribute any difficulties which *have* arisen to defects inherent in the system, or to causes remediable by amended Legislation or improved Office administration? You will oblige by stating fully and explicitly your views on this question.

We attribute many of the difficulties which have arisen to defects inherent in the system. As was remarked by Mr. Justice Gwynne, in the case of *Palmer v. Andrews*, which we have before cited,—"The new system is a formulary one, and, like all other formulary systems, its operation is necessarily confined within narrow and technical limits." At the same time we think that many of the difficulties are remediable by amended legislation, and others by an improved office administration.

5. Have you any, and if so, what remedies to suggest for any defects you may have found to exist in the Act or its administration?

A great deal of blame has been unjustly cast upon Solicitors for their opposition to the Act, when, in truth, their objections have arisen from the inefficiency of the measure, in its present form and administration, to effect its professed object. Over and over again we should have been glad to advise clients to obtain a Title under the Act, and so relieve ourselves from heavy responsibility, and get rid of long and cumbrous muniments of title and all the consequent expenses, had we not found from time to time that dealings under the Act involved great danger, delay, and difficulty. The delay in completing matters is, in itself, of no small moment. A transaction that we can carry out under the old system, if required, in twenty-four hours, often takes weeks under the Real Property Act. In the other Colonies amending Acts have been passed from time to time with a view of making the system as workable as possible. In Tasmania, unfortunately, as it appears to us, for the more efficient working of the system, the Recorder of Titles has discouraged further legislation, although experience has shown the inaptitude of the Act in its present form. The only wonder is that such a state of things has been tolerated by the legal profession and the public generally for so long.

We do not, as we have already said, attempt to give an exhaustive definition of the defects in the Act, but we suggest that if the system *is to remain in force*, it is absolutely necessary that the Act should be amended in various particulars. We suggest :—

(1.) That a more liberal interpretation be given to the Act. We have always been of opinion that the Recorder—no doubt from a strict sense of duty—has construed its provisions in too rigid and literal a manner, and that difficulties have arisen in consequence. It is absolutely essential to the satisfactory working of such a measure that it shall receive as broad and liberal construction as is consistent with its scope and object. A narrow interpretation of an Act which, while in theory fitted to deal in a simple manner with the manifold and complex dispositions of real estate that take place from day to day, is, in practice, a system of statutory forms, cannot fail to be detrimental to its efficient working. The spirit as well as the letter of the enactment must be kept in view while administering its provisions, or the result can never be satisfactory. From all we can gather, the Victorian Act is construed with great liberality.

(2.) That provision be made in the Act, and a form be added to the Schedule, by means of which a sale on credit can be safely carried out. An instrument framed upon the principle of the deed in daily use under the old system, and known as a "Conveyance and Mortgage," comprising in itself a transfer from the vendor to the purchaser, and a Mortgage from the purchaser to the vendor for the unpaid portion of the purchase money, would, we think, be the best for this purpose, and could be prepared without much difficulty. The registration of the Transfer and of the Mortgage would thus take place at the same time, and so avoid the dangerous hiatus which, as we have pointed out in our answer to Question No. 2, must necessarily occur in carrying out sales upon credit under the present practice of the Department. The inability to complete sales on credit without great risk is, in our opinion, one of the gravest defects in the Act, and ought to have been remedied many years since.

(3.) As there is always risk until a Transfer or Mortgage is registered, we think it extremely desirable that registration should take place as soon as possible after the instrument has been produced at the office for registration. We suggest that on production of an instrument for registration, and pending registration, the Recorder shall pass the same, if correct, and write the word "passed" thereon, so that the parties to the transaction may know that the instrument will certainly be registered in due course, and may accordingly complete the matter without waiting for its actual registration.

(4.) As the Recorder has power to refuse to register any instrument which is not in his opinion in accordance with the provisions of the Act, we suggest that it be made a part of his duty to settle, when required, the draft of any instrument which it is proposed to register. In our answer to Question No. 2 we have pointed out that great trouble and risk may be occasioned should the Recorder refuse to register a document after it has been duly executed and the purchase or mortgage money paid over. The Recorder has always readily assisted us when we have personally laid a draft before him for perusal, but we know that he has at various times declined to peruse draft instruments, and has stated that it is no part of his duty to do so.

(5.) That such amendments be made in the Act, and such forms added to the Schedule as will authorise a Mortgage of a Mortgage; a Lease for less than three years; the creation of an Equitable Mortgage; a Transfer by the Sheriff; a Transfer under a Decree or Order of the Supreme Court; the creation and barring of Estates Tail; and the registration of Life and other estates, where the same have been given subject to a devise in fee to Trustees for the purposes of the Will.

(6.) Where an estate of freehold in possession, not being a lease for a life or lives in the whole or in part of the land mentioned in any Grant or Certificate of Title, is transferred, the Transferror must deliver up the Grant or Certificate of Title for cancellation, either wholly or partially, as the case may be, and a fresh Certificate of Title to the land included in the Transfer is then made out to the Transferree, the Proprietor of the unsold portion, if any, being entitled to receive, when demanded, a Certificate of Title for such portion (Sections 44 and 45). The 20th Section of an Act passed in New Zealand in 1871, to amend the Land Transfer Act of that Colony, enacts that if any Memorandum of Transfer purports to transfer to any person the *whole* of any land described in any Grant or Certificate of Title, for the same estate or interest for which it was held by the Transferror, it shall not be necessary to cancel the Grant or Certificate of Title and to issue a fresh Certificate of Title, but the Registrar shall simply enter on the Register Book and on the duplicate Grant or Certificate a memorial of such transfer. We submit for the consideration of the Select Committee the desirability of amending the Real Property Act to the same effect.

(7.) We suggest the insertion of a clause empowering the Commissioners to pass a Title which, although defective, is not so in any substantial particular, charging an additional assurance fee, according to the nature of the defect. The 32nd Section of the Victorian Act empowers the Commissioner to direct the Registrar to bring any land under the operation of the Act "upon the applicant contributing to the Assurance Fund in augmentation thereof such an additional sum of money as the Commissioner shall certify under his hand to be in his judgment a sufficient indemnity by reason of the non-production of any document affecting the title, or of the imperfect nature of the evidence of title, or against any uncertain or doubtful claim or demand arising upon the title,"—such a provision will, in our opinion, be a valuable one. This Section has received a liberal construction in Victoria. In one case the Registrar was directed to bring land under the Act, on a bond being entered into conditioned to be void if the Assurance Fund were kept indemnified against certain claims. (See *Sedgefield's Practice of the Office of Titles of Victoria*, *p.* 17.)

(8.) The 110th Section of the Act enables a Proprietor who is dissatisfied with the decision of the Recorder in respect of the several matters mentioned therein, to bring the question before the Supreme Court, but provides that all the expenses attendant upon any such proceedings shall be paid by the applicant, unless the Court shall certify that there were no probable grounds for such decision. We believe that in all matters that have hitherto been brought before the Court under this Section, the expenses have fallen upon the applicant, even when he has been successful. The consequence is that, in many instances Proprietors will put up with loss and inconvenience rather than bring their complaint before the Court. We suggest that whenever a party succeeds in his application all expenses should be paid out of the Assurance Fund.

(9.) The "Conveyancing and Law of Property Act" now before Parliament contains many valuable and beneficial provisions in dealing with lands and trusts relating thereto; but by the 68th Section it is enacted that the provisions of the Act are not to extend to any property under the Real Property Act. The Sections in the "Conveyancing and Law of Property Act" which we think might, with great advantage, be extended to the Real Property Act, are Nos. 3, 10, 11, 12, 14, 17, 18, 24, 25, 30, 31, 32, 33, 35, 36, 38, 39, 40, 42, 43, 44, 46, 47, 55, 60, 65, 66, and 70. We therefore suggest that these Sections be made to extend to land held under the Act. The effect of the passing of the Conveyancing Act in its present form will be that in all or most of the subjects treated of in the Sections we have mentioned, there will be one law as to land under the Real Property Act, and a different law as to land under the old system. We give one example only out of many which might be adduced. A lessee of premises, part of which is held under the old system and part under the new, commits a breach of covenant or condition which entitles the Lessor to re-enter and forfeit the lease. As to the portion under the old law, equity may, by virtue of the Conveyancing Act, relieve the tenant against forfeiture upon such terms as may be deemed just, while as to the residue of the land the Court may be unable to grant any relief. We need hardly point out that endless confusion and difficulty will arise in connection with Leases, Mortgages, Settlements, Sales, and Dispositions by Will, and that it is impossible to foresee the extent of the mischief.

(10.) We suggest that in practice more elasticity be given to the forms for the time being in force under the Act. The 136th Section of the Victorian "Transfer of Land Statutes," which enacts that any forms may be modified or altered in any respect, not being matter of substance, to suit the circumstances of any case, has obtained a wide interpretation. Mr. Sedgefield, in the book to which we have already referred, writing on the above Section, says:—"This Section has received a liberal construction. In one case, where the value of the land was small, the Commissioner allowed a Conveyance under the old system (prepared in error) to be registered as a Transfer, after it had been shown that a proper Transfer could only be obtained with great difficulty and at considerable expense." There is a similar provision in our own Act (Section 3), and we submit that it should receive as liberal a construction as the Victorian Clause.

(11.) We venture to suggest for consideration the desirability of effecting a still wider amendment of the Act than any which we have already proposed. Why should not land under the Act be conveyed, charged, settled, dealt with, or effected, either by statutory disposition in any of the forms prescribed by the Act, or, at the option of the parties, by any deed or instrument now in use under the old system? The Act of the Imperial Parliament, 25 & 26 *Victoriæ*, *C.* 53, passed for the purpose of establishing a registry of title to landed estates, and enabling parties to obtain registration of titles as indefeasible, allowed property brought thereunder to be dealt with either by the statutory forms provided for that purpose, or by any of the ordinary modes of disposition. And the greatest possible elasticity was given to the statutory forms, for by Section 67 it was enacted that the forms contained in the Schedule might be modified or altered in expression to suit the circumstances of every case, and that the conveyances made in such altered forms should be equally valid and effectual. Comparatively few persons appear to have availed themselves of the provisions of this statute, but this would seem to have been in consequence of various objections, the chief

of which,—viz., the fact that few Proprietors of land in England possess what a Court of Equity would hold to be "a valid marketable title," and which was the only title that would be accepted under the Act, does not exist in Tasmania. So far as we can learn no objection was ever made to the Act on the ground that parties were left at liberty to use statutory or other recognised modes of disposition as they might see fit. If such a provision can be made consistently with the system of the Real Property Act, and we submit that it can, many of the gravest objections to that measure would be at once swept away. In dealings of a simple nature with land the statutory forms would answer every purpose. If, however, the matter was a complicated one, where arrangements had to be carried out involving several concurrent transactions with regard to the same property, and for which purpose statutory forms would from their very nature be inadequate, recourse could be had to the long established, safe, and flexible mode of disposition under the old system, which are competent to effect the most complex dealings with landed estate. We are fully aware that the non-recognition of Trusts, except by a side-wind, is one of the principles of the system; but we do not see that this principle would be necessarily affected by such an alteration as we are now suggesting. It would, we think, be found practicable to permit the use of other than statutory methods of disposition, while continuing to prohibit the registration of Trusts. But it is well worthy of consideration whether a scheme for registering Trusts—whenever it may be deemed desirable to do so—cannot be devised in connection with the system, instead of as at present forbidding the recognition in any shape or form of Trusts upon the Register, and treating Trustees as absolute owners. We would draw attention to the fact that the entry of Trusts on the Register was made a part of the system established by the English Statute before mentioned (25 & 26 *Victoriæ, C.* 53). Section 14 provides that, in a book to be called "The Record of Title to Lands on the Registry," there shall be entered in concise terms an exact record of the existing estates powers and interests in the lands so registered as aforesaid and the names and descriptions of the persons and classes of persons that are or may become entitled thereto respectively." And Section 19 enacts that "the names of the persons entitled to the proceeds of any Trust for sale of lands so registered, or to any principal money to be raised by virtue of any charge under the Trusts of any estate or term, shall not be entered in the Register unless the Registrar shall think fit to do so, but the estate of the Trustees shall be defined, and the purpose of the Trust shortly explained."

(12.) Lastly, we submit for the consideration of the Committee that a registered Proprietor of land should be empowered to remove such land, if he so desires, from the operation of the Real Property Act, and to deal with it thereafter under the old system. A state of circumstances might arise when it would be of the greatest importance that a Proprietor should possess such a power. The 34th Section of the English Act (25 & 26 *Victoriæ, C.* 53,) gives the power with regard to lands brought under the provisions of that enactment. The Section is as follows:—"The registered Proprietor of land may, with the consent of all persons appearing, by the Register, to be interested in such land, remove the same from the Register; and thereupon the Register shall, as respects such land, be deemed to be closed." See the case *In re Winter, L. R. XV. Eq.*, 157, where an Order was made by the Court for the removal from the Register of property that had been entered on the Register of Estates with an indefeasible title.

6. Have you any further remarks on the subject you would like to make for the assistance of the Select Committee?

We think that with the amendments and additions to the Real Property Act we have suggested in our answer to Question No. 5, such a system of conveyancing would be established in the Colony, as would leave little or nothing to be desired.

Failing this, we suggest the repeal of the Real Property Act and the passing of an Act similar to that prepared with great care by the late Mr. Joseph Allport, extending the provisions of "The Claims to Grants of Lands Act, No. 3," so as to enable every person claiming to be entitled to land which has been granted by the Crown to apply to the Supreme Court for a Certificate of his Title to such land.

The effect of such a measure would be that whenever an owner of Real Estate was desirous of getting rid of a lot of title deeds and starting with a clean sheet, he could apply for and obtain a Certificate of Title to his land. All future dealings with the land would be effected under the old system of Conveyancing, the cost and trouble of investigating lengthy titles would be done away, and under the provisions of the "Conveyancing and Law of Property Act" all deeds in connection with the property would be greatly shortened. We have already pointed out the infinite superiority of the old system over one of statutory forms with regard to land.

CHARLES BUTLER.
JOHN McINTYRE.

GEORGE COLLINS, *Esq.*

1. What experience have you had in carrying out the system of Conveyancing introduced by the Real Property Act (25 Vict. No. 16)?

I have been engaged in business ever since the Act was passed, and my firm have had over 1500 transactions with the Lands' Titles Office.

2. What defects (if any) has experience shown you to exist in the practical carrying out of that system?

The system is practically defective; it does not enable a registered Proprietor to create such estates and interests as the Law would allow him to do under the old system of Conveyancing.

The Devisees under a Will ought, on production of the Probate, to be entitled to be registered as Proprietors of property under the Act in the same manner as can be done in the case of an Administrator, Executor, or a Trustee in Bankruptcy, and at no more expense.

Sections 80 and 81 cause unnecessary delay and expense, and should be amended in manner indicated.

All titles should be made absolute and unimpeachable at law. Sections 33, 40, 124, and 135 as at present framed do not give a proper security to a Mortgagee, as the title to the property mortgaged may be impeached notwithstanding the provisions of Section 126.

In cases where land is to be mortgaged, at the time when it is transferred the date of the Mortgage has to be left blank and filled up after the new title has been issued. This is very objectionable, and the Act and form of Mortgage should be altered so that by inserting the words "*or entitled to be registered*" after the word "registered" in the form of Mortgage, the Transfer and Mortgage could bear the same date and be filed contemporaneously. Such an alteration as the one suggested would avoid any difficulties which might arise through the death or bankruptcy of the Mortgagor.

There does not seem to be any objection to a tenant in tail being registered under the Act, but there is no provision in the Act enabling him to bar the entail in the same manner as he could do under the old system. This ought to be remedied by legislation.

If a registered Proprietor should surrender a Certificate of Title he may obtain what is termed a Balance Certificate, but a provision should be made enabling him to obtain several Certificates in place of one, if he desired it.

Tenants in common ought not to be compelled to incur an unnecessary expense in taking out separate and distinct titles when they might hold the land under one title, the same as under the old system.

The 89th Section requires amending so that a Certificate of Title could be issued to the reversioner or remainderman subject to the prior life estate, so as to enable him to deal with the land the same as he could do if it were under the old system.

A Declaration should be sufficient in any case. (*Vide* Sections 93 and 100.)

The property of Friendly Societies and other associations should be vested in the Trustees for the time being, in the same way as property under the old system is now held by Friendly Societies.

A provision ought to be made for charging a Debtor's land in case of a registered judgment, the same as can be done under the old system, and prevent his dealing with the land after judgment; and a seizure of land under a *Fi. Fa.* should take effect from date of seizure.

Instruments should be accepted by the Department when attested by any Justice of the Peace or Solicitor either in Tasmania or in the other Colonies. The present law is most objectionable, and entails much trouble, delay, and unnecessary expense.

Married Women's Rights under the Act should be clearly defined, and provision should be made under which they can make Wills and hold property in their own right without any claim either on the part of their husbands or creditors.

Provision should be made for enabling a person to withdraw his land from the provisions of the Act, and obtain a Grant from the Crown on surrender of his title deed, in the same manner as he could do if the land were ungranted.

3. Have you at any time, and when, had to complain of delay or other difficulty in dealing with Land under the Act?

My firm have from time to time had to complain of delay, and have had other difficulties in dealing with land under the Act; in fact, there appears to be a want of system in the Department, and documents are detained in the office for a considerable period beyond the time necessary to complete the same, and the delays in many cases have caused vexation and annoyance to our clients. There does not seem to be proper care taken of documents sent to the office. *My firm have lost two documents* through the default of some person in the Department. One document is a Probate of the Will of Thomas Tucker Parker, filed with the application of Benjamin Henry Rooke, on the 14th March, 1881, and which was not returned with the other documents on the 31st May, 1881. The other document which has been lost is a Certificate of Title, Vol. XXX., Fol. 198, in the name of Elizabeth Ann Clarke, lent by us to Mr. Boothman on 9th June, 1881.

It is very desirable that a book should be kept in the Lands' Titles Office showing the dates when documents are received, the names of the parties, the nature of the documents, the dates when transactions completed, and any other necessary information.

4. Do you attribute any difficulties which *have* arisen to defects inherent in the system, or to causes remediable by amended Legislation or improved Office administration? You will oblige by stating fully and explicitly your views on this question.

It seems to me that many of the difficulties which have arisen are partly attributable to defects inherent in the system, and partly to the want of proper office administration.

Some of these defects may be remedied by legislation, and improved office administration may expedite the transaction of business; but the system is so defective that it is almost impossible to expect that provision can be made for the different cases which will from time to time arise.

Every expedition should be used by the Department in dealing with the various transactions, and the Recorder of Titles should see that every document received in the office is at once attended to, so as to prevent annoyance and unnecessary delay.

5. Have you any, and if so, what remedies to suggest for any defects you may have found to exist in the Act or its administration?

The Act seems to be specially suited for land speculators only, and not adapted to the usual and necessary mode of dealing with land for the purposes of settlement according to the wishes and requirements of the owner.

The Act is excellent so long as you have plain, straightforward transactions to carry out, but directly you attempt to deviate from simple transfers or mortgages difficulties crop up, causing vexatious delays and expense. Under the old system a deed can always be framed to meet the circumstances,—you can always strike out a road for yourself; but if you wish to do anything of the kind under the Real Property Act you find yourself off the rails, and a smash up is the consequence.

It would be much better to have an Act by which any person could obtain a Certificate of Title showing that he was the owner, and under which he could deal with his land in the same manner as under the old system. If at any time afterwards it was found that the deeds became numerous, a new title could be issued to the owner if he desired the same. This system could be carried out by the Lands' Titles Commissioner, with the assistance of a Solicitor and a small but useful staff. The Title Deed could be made very concise (something similar to a Certificate of Title under the Real Property Act), and be signed by the Solicitor or other authorised person. All titles now held under the Real Property Act could be made valid, and treated as if issued under the system which I suggest.

6. Have you any further remarks on the subject you would like to make for the assistance of the Select Committee?

No.

GEO. COLLINS.

A. O. NORMAN, *Esq.*

1. What experience have you had in carrying out the system of Conveyancing introduced by the Real Property Act (25 Vict. No. 16)?

During the past ten years I have had experience in connection with carrying out the system of conveyancing introduced by the above Act both in the Southern and Northern portions of the Island.

Previous to that time I was employed as a clerk in the Lands' Titles Office at Hobart.

2. What defects (if any) has experience shown you to exist in the practical carrying out of that system?

I am not aware of any defects which would interfere with the practical carrying out of the system.

3. Have you at any time, and when, had to complain of delay or other difficulty in dealing with Land under the Act?

During the last three years I have complaineds to the Recorder of Titles of the unnecessary delay in procuring the registration of instruments in connection with dealings with land under this Act.

I find, upon referring to my books, that during the past two years I have had upwards of one hundred transactions under this Act, and the registration of any instrument was seldom completed within the space of one month. In the case of one transfer the Certificate of Title was not issued until more than one year had elapsed after being filed, and no reason was ever given for the delay. In the registration of Leases and Mortgages as long as three months has elapsed before the registration was completed.

4. Do you attribute any difficulties which *have* arisen to defects inherent in the system, or to causes remediable by amended Legislation or improved Office administration? You will oblige by stating fully and explicitly your views on this question.

I do not attribute any difficulties which have arisen to defects inherent in the system, nor to causes remediable by amended legislation, but to the want of improved office administration.

During the time I was connected with the Department I had every opportunity of making myself acquainted with the office administration. The staff employed at that time (1873) consisted of the Recorder of Titles,—who was also Registrar of the Supreme Court and Registrar of Births, &c., and therefore devoted only a small portion of his time to the Lands' Titles Office,—the Solicitor to the Department, and three clerks. I do not remember of any complaints of delay being made, and the work of the office gave the public every satisfaction. Although the duties of the office have since then greatly increased, I cannot see any reason why, with the present large staff, a delay of more than a few days should take place in registration.

I am of opinion that these delays are primarily caused by the overcrowded state of the office and the many changes in the staff which have taken place in the last three or four years.

In 1873 the office was then too small to admit of a proper classification of office documents, and since then, with the increased business and accumulation of papers, it must necessarily follow that the office is at the present time crowded out. This would account in a great measure for the number of deeds deposited with applications which are continually being mislaid or lost. The time of the clerks would therefore be taken up in having to search for the lost documents.

I am also of opinion that the crowded-out state of the office interferes and prevents the clerks from performing the duties demanded of them, and that the public having access to the only room occupied by them must also interfere with them.

5. Have you any, and if so, what remedies to suggest for any defects you may have found to exist in the Act or its administration?

So far as the Act is concerned I have no amendments to suggest, unless it is intended to repeal the whole Act and re-enact upon a different principle. The present Act is unworkable where the title is hampered with trusts. Want of time, owing to press of business, prevents me from setting out in detail any suggestion I have to make.

With regard to the defects in the administration of the Act, I do not think the present defects can be remedied until more suitable offices be obtained, and a separate office devoted to the clerk whose duty it is to attend to the public.

6. Have you any further remarks on the subject you would like to make for the assistance of the Select Committee?

None.

A. O. NORMAN.

A. J. ROBERTSON, *Esq.*

1. What experience have you had in carrying out the system of Conveyancing introduced by the Real Property Act (25 Vict. No. 16)?

I have had some considerable experience in carrying out this system in almost all its branches, and more than enough to enable me to form an opinion as to its many deficiencies, which are considerably enhanced by the inefficient manner in which the work at the office is performed.

2. What defects (if any) has experience shown you to exist in the practical carrying out of that system?

There are certainly defects existing in the system of conveyancing under the Real Property Act, especially with regard to the Conveyance and Mortgage of property. Where a portion of the purchase money is to remain secured on the property the Mortgagee takes a *blank* mortgage of land which the Mortgagor at the time he signs is not possessed of, and which, in my opinion, is of very little or no value; also when a Testator dies possessed of land held under the Act, the Trustees have to go through the farce and reality of expense in making an application to be registered Proprietors. This ought to be brought about by a mere registration or production of the Probate at the office.

3. Have you at any time, and when, had to complain of delay or other difficulty in dealing with land under the Act?

At various times and, in fact, every time I have had dealings with the Lands' Titles Office, I have had to complain of vexatious delays in carrying out the work. Within the last month or so I have been compelled to keep an estate open through not being able obtain a Certificate in the names of the Trustees. In applications for Grants I have been kept waiting some months after the time for entering Caveats had expired before I succeeded in obtaining the Grant.

4. Do you attribute any difficulties which *have* arisen to defects inherent in the system, or to causes remediable by amended legislation or improved office administration? You will oblige by stating fully and explicitly your views on this question.

A great many of the difficulties which I have experienced certainly need not have arisen had there been proper office management and supervision, but at the same time the Act requires amending, in my opinion, with regard to the Conveyance and Mortgage, as pointed out in my answer to Question 2; and a very great benefit would be conferred on holders of property under the Act if they had the power to deal with such property either under that Act or under the "old system" of Conveyancing; and, if at any time there was an accumulation of deeds by dealing under the latter system, then to be able to apply again to bring it under the Act, and have a fresh Certificate issued to them.

5. Have you any, and if so, what remedies to suggest for any defects you may have found to exist in the Act or its administration?

See previous answers. With regard to the Conveyance and Mortgage of property, where it is one transaction I would suggest that this be done by one instrument, called a "Transfer and Mortgage," which would obviate some of the many risks that are daily run by Mortgagees under the existing mode.

6. Have you any further remarks on the subject you would like to make for the assistance of the Select Committee?

None.

A. J. ROBERTSON.

J. MITCHELL, *Esq.*

1. What experience have you had in carrying out the system of Conveyancing introduced by the Real Property Act (25 Vict. No. 16)?

I have had transactions daily in carrying out the system, and this for upwards of thirteen years.

2. What defects (if any) has experience shown you to exist in the practical carrying out of that system?

The great defect is that the Act is not applicable to many of the transactions which take place in dealing with land.

3. Have you at any time, and when, had to complain of delay or other difficulty in dealing with Land under the Act?

Delays are numerous, but these and the other difficulties are, in almost all cases caused by the non-applicability of the Act to the transactions sought to be carried out.

4. Do you attribute any difficulties which *have* arisen to defects inherent in the system, or to causes remediable by amended legislation or improved Office administration? You will oblige by stating fully and explicitly your views on this question.

I attribute the difficulties *all* to causes remediable by legislation and an improved office administration.

I suggest as follows:—

Grants.—I would suggest that the Lands' Titles Office and the Lands' Office alone should have to deal with them, thus abolishing the record of them in the Supreme Court Office, and make the Lands' Titles Office the Court of Record, and the signature of the Recorder of Titles as valid as that of the Registrar of

the Supreme Court to verify the enrolment. This would save a great deal of trouble and expense in both the Chief Secretary's Office and the Supreme Court Office; it would save the valuable time of a clerk in the latter office, and which time might be much more usefully employed than in copying into books there the same words, &c. that the Government have in the Lands' Titles Office.

Transfers.—I regard the preparation of these in duplicate as simply waste—waste to the parties transferring and purchasing, and to the office, which is lumbered up with a duplicate which, when the new title is made out, is valueless.

Mortgages need not be in duplicate. Let one be signed and kept in the office, and let the Certificate of Title or Grant show (as it should) very short particulars of the charge on the land. The Mortgagor could be furnished with a document to be called, say, "a Mortgagor's Certificate" or a "Mortgagor's Grant," and this would show his ownership and how it is affected. A great deal of trouble was at first given by an opinion given by His Honor Mr. Justice Dobson, when a practising barrister, to the effect that the Mortgagor had (although his land was mortgaged) the right to retain the Certificate or Grant, and thus the Mortgagee had, when about to realise his security, to get the deed almost as best he could, for although the Act gives the Recorder power to enforce the production of the document, he was very loth to exercise the power. The practice has been adopted of making the Mortgagor covenant with the Mortgagee that the Mortgagee might during the continuance of the security hold the deed; this has, however, put the Mortgagor in a position of having to ask the Mortgagee for the loan of his own deed, and this has caused expense and trouble. The suggestion that I make,—namely, to give the Mortgagee the right to hold the deed, and the Mortgagor a Mortgagee's Certificate or Grant,—would, I believe, work well.

The Act contains power to mortgage, but no provision as to a mortgage of a mortgage. The way this has been carried out has been to take an absolute transfer of a mortgage, and give a letter showing the transaction; this has worked very well, but simply because there are very few persons dealing with property who have the desire to be fraudulent. The Act might be amended to meet the case. The release of a Mortgage might be effected by a Memo. written by the Mortgagee across the entry of the Mortgage or the Certificate or Grant, or might be by simply writing the words "discharged" across it, and the word "entered," and signed by the Recorder of Titles, which would complete the matter.

While on the subject of Mortgages, I think a provision should be made whereby the fees for Releases might be lessened. Thus, if A. mortgages land to B., and A. sells half in 10 allotments, then there must be 10 Releases fees; this is certainly a blot, and could easily be remedied by an amendment of the scale of fees.

A large amount of difficulty will be found in carrying out the Act when Mortgages have been taken in three names without a joint account clause; many have been so taken, and in practice it has been found that at times the Executors of a deceased Mortgagee will not have anything to do with the Mortgage taken in the name of their testator and another, and so at the present time Mortgages are stuck up. I would suggest that the Commissioners should be empowered in a proper case, supported by proper evidence, to dispense with the Executors of a deceased Mortgagee, and register the whole Mortgage in the name of the surviving Mortgagee, taking, if necessary, an assurance fee.

While on the subject of Mortgages, it is worth while noting whether, when a new Trustee is appointed, the Lands' Titles Office should not, on production of the deed of appointment, vest all property in the new and old Trustees without going through all the forms at present required by the office.

Leases.—A great difficulty is here, and much expense is caused by a Lease for three years having to be registered. I would strongly urge that this should be fourteen years, the same as in land under the old Act.

But there is a still greater difficulty, namely,—how is a piece of land which is let to be sublet? or how is a portion of leased land to be leased? There is absolutely no provision, and *at once* legislation should come to the rescue; a section or sections could be easily framed to meet the case.

Applications to be registered Proprietor of lands under Wills ought not to have to be "sat upon" by the Commissioners and then advertised. The Act requires a devisee of a Mortgage for ten thousand pounds to be considered only by the Recorder, and if he thinks it correct it is registered; but if a devisee of a ten pound allotment wished to be registered Proprietor he must file his application, pay fees, the matter must be considered by the Commissioners, and finally advertised. This is simply absurd, and the sooner both matters are allowed to be considered and passed by the Recorder alone the better.

Certificates.—These should, when the Proprietors are Trustees, show that they are Trustees of a Deed (giving its date) or a Will (giving its date and so forth) state this. The deed would then speak for itself. It will, of course, be said that this is contrary to the spirit of the Act that no trusts should be shown; but I submit it would facilitate matters and prevent any error that might possibly arise.

Instruments.—The attestation of documents should be allowed to be made in other Colonies before Solicitors or a Justice of the Peace of that Colony, and in Tasmania by any recognised persons in inland towns, or in out-of-the-way places signed before the nearest postmaster or postmistress. The signature of these latter persons could easily be recognised by the Post Office at Hobart in case of doubt.

Transfer and Mortgage.—This ought to be able to be carried out by one document, but as no doubt other Solicitors have enlarged on this it is unnecessary to do so here.

Applications to bring land under the Act might be very much simplified, and the expense lessened, by allowing one application to be filed in respect of land already granted and land only located. According to the present practice of the office, if A. has two pieces of land, one being granted and the other located, and he wishes to bring both under the operation of the Act, he must file two applications, pay two sets of fees, &c., and have two deeds,—namely, a Certificate of Title for the land granted and a Grant for the land located. This appears to me to be utterly unnecessary; legislation could easily remedy this.

Married Women.—The Attorney-General should carefully consider the effect which the Married Women's Property Act has on the Real Property Act generally, and specially as to the 78th Section, and, if necessary, make the two run smoothly. It appears to me that a very grave question would arise if the husband, under Section 78 of the Real Property Act, wished to be registered a co-proprietor.

Powers of Attorney at present are filed in the office of the Registrar of Deeds. Some provision might be made whereby the Real Property Act should be made to take cognisance thereof, and Proprietors

of land should not have to register the Power in the Lands' Titles Office and pay a fee there, more especially when perhaps the only property the Power relates to is under the Real Property Act. A section in the proposed amended Act might put this matter in such a way as to carry out the above suggestion.

Shaky Titles.—As at present the Act only allows a perfect title to be accepted; but I would strongly urge that (as done in Victoria) the Commissioners should have a full discretion to take *all* titles and to guarantee the office that the Commissioners should have power to say what assurance fee should be paid. I feel sure that if a provision of this kind were passed a great many more titles would be placed under the Act than are at present. I certainly see no objection to the proposal; it would be a Commissioners' "Local Option."

Recorder should have full power to summon before him all persons for the purposes of the Act, and to produce all deeds without exception, and to allow same to be dealt with in furthering the provisions of the Act and carrying out any matter connected with the property affected by the deeds. A power to appeal to a Judge in Chambers in a summary way, as in the Vendor and Purchaser Act, could also be given as a guarantee that nothing illegal or oppressive be done by the Recorder. I make this suggestion because it is within my own knowledge that Solicitors who are inimical to the Act will refuse to produce deeds to the Recorder, and thus a person who wants land brought under the Act is prevented from doing so. No possible harm could accrue to any one with an appeal from the Recorder to a Judge.

Caveats.—The time for lapsing should be shortened to, say, a month, but with a power either to the Recorder or a Judge to enlarge same in a proper case. The Caveator in his Caveat should be compelled to state fully the grounds upon which he enters a Caveat, and provision should be made for trial of the Caveat and of the costs attending the same.

Judgments.—Under the Acts for registration of Judgments a charge can be registered against lands under the old Act; but it is a very grave question whether a Judgment (except by active execution) can be made attachable under Section 82 of the Real Property Act. In South Australia it has been held that it cannot, and a case is now before the Chief Justice on the very point. This matter should at once be placed beyond doubt, and it should be made plain that Judgments can be so registered as to bind land under the Real Property Act.

Further Powers.—I would strongly suggest that any person who has an interest in land under the Real Property Act, whether for life or in remainder, in possession or reversion, and whether in fee or for a term, and any person who has a charge upon land, whether an annuity or rent charge, or a legacy charged on land or an easement over land, should have some document signed by the Recorder to evidence the same. To this end I also strongly urge that the Recorder should be given an absolute power to prepare and settle all forms to carry out the Act, and specially the suggestion herein contained. If necessary an assurance fee could be charged.

I feel sure that if something like the above could be done, so that all persons could handle and show evidence of their property, the Act would be much more largely availed of.

I see no reason why, with a Recorder and Commissioners with broader ideas than the present ones, or the present ones with such ideas, the Act could not be made to carry out the intention of its framers and be quite as workable as the old system of Conveyancing without its tons of parchment.

The staff in the office should be increased.

5. Have you any, and if so, what remedies to suggest for any defects you may have found to exist in the Act or its administration?

See previous suggestions.

6. Have you any further remarks on the subject you would like to make for the assistance of the Select Committee?

If time were given, many more matters might be brought under the consideration of the Committee.

J. MITCHELL.

Attorney-General's Office, 23rd November, 1883.

SIR,

I HAVE the honor to forward to you herewith two printed copies of questions put to ten Solicitors, by direction of a Select Committee of the House of Assembly, with reference to the working of the Lands' Titles Office, and their replies thereto.

Will you be good enough to peruse one copy of these questions and answers, and instruct the Solicitor to the Department to give his careful consideration to the others, with a view to my being furnished, for the information of Parliament, with a full report upon the matters alleged, distinguishing between matters of complaint against the administration of the Real Property Act and defects alleged to be inherent in the system or requiring remedy by legislation?

I am very desirous to remove all well-founded causes of complaint against either the system or its administration, and shall be prepared to recommend to the favourable consideration of Ministers and the Legislature any suggestions you may submit which will give effect to that desire.

I have, &c.

W. R. GIBLIN.

G. P. ADAMS, *Esq., Recorder of Titles.*

Attorney-General's Office, Hobart, 10th January, 1884.

SIR,

REFERRING to my letter to you of the 23rd November last, I have now the honor to forward to you correspondence between Mr. Henry Dobson and myself, which has already been perused by you, in order that the papers may be under consideration together with the answers from Solicitors forwarded to the Select Committee of the House of Assembly upon which I have already solicited the observations of yourself and of the Solicitor to the Lands' Titles Commissioners.

I have, &c.

The Recorder of Titles.

W. R. GIBLIN.

Hobart, 26th May, 1883.

SIR,

I HAVE the honor to bring under your notice the necessity which exists for the immediate introduction of some simple and well recognized system of conducting the business of the Real Property Office Department. I have conferred with the Recorder of Titles upon this subject, but I understood him to say that, even if the system which I am about to propose was a desirable one, the staff placed at his disposal by the Government was not large enough to enable him to adopt it.

The Real Property Act is intended to simplify, cheapen, and facilitate all dealings with land, so that a man who wishes to transfer, mortgage, or let his property, can do so by a short and inexpensive document which can be prepared, filed, and completed in a few hours.

You are aware that a conveyance or a mortgage under the old system can be, and frequently is, drawn, engrossed, and executed within a day or within 24 hours, and long and special deeds are not unfrequently prepared and completed within the same time. But no such promptitude as this is possible under the Real Property Act as administered in Tasmania. The simplest transactions take days, and sometimes weeks, to complete in the Real Property Office, and if the matter is not of the most ordinary description, some months are frequently occupied in getting it through the office; and most important and large monetary transactions are consequently kept open, to the serious loss of clients, because the filing of a discharge of a mortgage, which should be done in ten minutes, occupies as many days.

As a proof to you that the very great delay of which I speak does take place, I beg to refer you to the cases set forth in the schedule at foot; and if you add to these transactions those which I could instance if I searched our books or applied to other Solicitors for their experience, you will see at once how important it is that the Government should give this matter their serious attention.

The duties of the Real Property Office Department are to receive and pass Applications to bring land under the Act, to prepare and issue Grants and Certificates of Title, and to file all documents which are presented at the office. Now, no matter what the delay may be in passing a difficult title, the time comes when the period for entering Caveats has elapsed, and if this be the first of a month, why should not the applicant know to a certainty that at any time after a given hour on the second day of the month he can obtain his grant? If, again, a purchaser has bought land which is under the Act and files his transfer with the grant of the land before noon of one day, what is there to

prevent his being able to obtain his new Certificate of Title at any moment after noon of the day following? and if the purchase is only of part of the land comprised in the grant, then the vendor should at the same time be able to obtain his new Certificate of Title for the balance of the land; but I have known instances in which a vendor has been kept waiting weeks, and sometimes months, for his balance certificate.

As to the filing of all mortgages, discharge of mortgages, leases, and other similar documents, which occupy but a few minutes, I think it is not unreasonable to suggest that all documents requiring filing only, if left before noon of one day, should be filed and ready to issue to the owner at a quarter to 4 P.M. on the same day.

In the cases of preparing Grants where the Lands Office has to assist, I think that a system should also be introduced there, for sometimes I have known long delays take place in the Lands Office and the Real Property Office has been unjustly blamed on account thereof. When a Surveyor sends in his plan it should be forwarded by the Lands Office to the Lands Titles Office within a given time, and the notice-boards at the latter office might contain the dates at which the surveys are received; and when a Grant has to be prepared at the Lands Office, it would be a very great convenience to the public to know that within a certain number of days after the last instalment of purchase money is paid, the Grant will be ready to issue from the Lands' Title Office.

I think the Recorder of Titles must have hit the nail on the head when he said that he had not the staff of clerks at disposal to carry out any system other than the one he now adopts, and it is for this reason that I venture to trouble the Government with these suggestions. If a Grant or Certificate of Title cannot be prepared in a day, and a Mortgage, Lease, or a Discharge of a Mortgage cannot be filed in a few hours, what becomes of the prompt and expeditious system of conveyancing supposed to be afforded by the Real Property Act? It may be answered that the average number of transactions passing through the office daily is twenty, in ten cases of which Grants or Certificates of Title have to be prepared, and that if in any one day at least twenty Grants or Certificates had to be prepared, the system proposed must break down. But any reasonable expenditure of money on the part of the Government would be preferable to allowing their system to fail; and what could be easier than to put a small fund at the disposal of the Recorder to enable him to pay for work being done, in cases of necessity, out of office hours. The Recorder could easily furnish a satisfactory account of this fund by giving the most work out of office hours to the clerks who did most during office hours.

The work in the office of the Solicitor to the Real Property Act progresses for the most part with reasonable diligence, and difficult titles are frequently brought on before the Commissioners as promptly as one could expect. The greatest delay is in the simple and routine work of the General Office; but I feel sure that if you will kindly look into this matter, and call to your assistance the very valuable advice of the Recorder, you will be able to establish without much difficulty such a system as will give very great satisfaction to the public.

I shall be happy to give the Government any further information or assistance in my power.

I have, &c.

The Honorable the Attorney-General. HENRY DOBSON.

SCHEDULE.

Applications.

1. Application by Mrs. Simper to be registered proprietor as tenant for life. Filed 10th August, 1881. (One month allowed for advertising.) Certificate should have been ready at least about 20th September. Certificate not received till 21st February, 1882.
2. Application by Mrs. Simper's children as remaindermen to be registered proprietors of estate in fee expectant on death of Mrs. Simper. This Application filed 11th January, 1882. (To be advertised for one month.) The Certificate is not ready yet for issuing, in spite of repeated and urgent applications for same.
3. Dean Wood and Hunter's Application. Filed 27th September, 1882. (To be advertised for one month.) Certificate dated 19th January, 1883. Mr. Sheehy filed this, and his clerk, at my request, attended several times at the office to hurry on the application.

Transfers.

4. Kingston to Kingston. Filed April 9th, 1879. Certificate dated 29th October, 1879. (This was one of three Transfers from a father to his sons, and I remember that six months after the Transfers were filed the sons came to our office for their Certificates, but on enquiry at the Lands' Titles Office the reply was that they would be *ready in two hours*; they were ready in two hours, but this delay shows most clearly the want of some system.)

5. Brown and others to Smith. Transfer filed July 25th, 1880. Certificate dated 24th October, 1880.
6. Carter to Freeman. Transfer filed December 4th, 1880. Although the Certificate of Title herein is dated 16th December, 1880, and a Mortgage from Freeman to Carter was filed in December, 1882, yet on applying for the Certificate on 4th May instant the same was not ready, and it was only after repeated applications that same was received on 10th May instant; the Mortgage referred to not having been dealt with in any way.
7. Synod trustees to Boylan. Transfer filed 16th June, 1881. After repeated attendances and requests to hasten the matter, Certificate received 2nd August, 1881.
8. Barclay to Burbury. Transfer filed 29th September, 1881. Not ready till August, 1882.
9. Snowden to Johnston. Filed April 5th, 1881. The new Certificate herein not ready yet, in spite of frequent applications for same.
10. Proctor to Dobson. Filed 18th October, 1881. Received by us 29th May, 1882. (My clerk had instructions to get this promptly.)

Mortgages.

11. Wooley to Building Society. Filed 31st August, 1881. Not entered in Registry Book till 24th October, 1881.
12. St. Leger to Baily and another. Filed 30th November, 1882. Not entered till 21st December, 1882.
13. Graff to Brown and another. Filed 30th November, 1882. Not entered till 21st December, 1882.

Releases.

14. Rollings to Buckland. Filed 6th March, 1882. Not entered till 16th March, 1882.
15. Fysh to Roe. Filed 21st August, 1882. Not ready till 12th September, 1882.
16. Rodman to Winch. Filed September 19th, 1882. Not received till 10th October, 1882.

HENRY DOBSON.

MEMO.

Attorney-General's Office, Hobart, May 31st, 1883.

THE accompanying letter from Messrs. Dobson and Mitchell to the Attorney-General is forwarded for the perusal of the Recorder of Titles, with the request that he will be good enough to report fully thereon, and generally upon the alleged want of expedition on the part of the Lands' Titles Office.

The Attorney-General would be glad to receive any suggestions, whether for the amendment of the law or for increasing the administrative staff of the Office, which may tend to facilitate the despatch of business and obviate all well-grounded complaints as to the delays of the Lands' Titles Department.

W. R. GIBLIN.

The Recorder of Titles.

Lands' Titles Office, June 13th, 1883.

SIR,

I HAVE the honor to acknowledge the receipt of your Memo. of 31st ultimo, requesting me to report fully upon Messrs. Dobson and Mitchell's letter to you of 26th ultimo.

Mr. H. Dobson has on several occasions favoured me with his opinion on the manner in which the work of the Real Property Act should be carried out, but I have hitherto failed to profit by his information to the extent required by him, probably because I consider his views to be based upon a misconception of the duties of the office. He has always strenuously insisted that the Lands' Titles Office, like the Registry of Deeds, is a Registry Office, and that documents should be registered with equal expedition in both offices. The cases, however, are by no means analogous. Under the old system of conveyancing, both deed and memorial are prepared by the solicitor engaged, and when the memorial is sworn, a few minutes suffice to register the deed and give a receipt for the memorial. In the simplest transactions in the Lands' Titles Office, when documents in duplicate are presented for registration, which Mr. H. Dobson calls *filing*—although the phrase is almost unknown in the Real Property Act—if after perusal the instrument is considered formal in all respects, a memorial is drafted embodying the necessary particulars, and engrossed on the Certificate of Title and also upon the Register; this memorial in duplicate is signed by the Recorder, and the facts are noted upon the instrument, also in duplicate, which is signed by the Recorder. Where several Grants or Certificates of Title are affected the business is proportionately increased,—sometimes tenfold, or even more. How this work is to be accomplished in a few minutes is not easily explained.

In applications to bring land under the Real Property Act it frequently happens that surveys are required, and delay is thus occasioned. The preparation of Grants is conducted at the Survey Office, which is not under my control, and until forwarded to the Lands' Titles Office from thence

the issue of Grants cannot be expedited by the Recorder; there is then no delay in their issue. Much odium attaches to the Lands' Titles Office in consequence of notices being sent to parties from the Survey Office informing them that Grants will be issued to them from the Office of the Recorder of Titles upon application. Grants frequently do not find their way to the Lands' Titles Office for weeks after the issue of these notices, and in the meantime repeated applications are made to me by the parties, who cannot believe that their Grants are not being wilfully detained in the Lands' Titles Office, as they have received notice to apply there for them: this is of almost daily occurrence, and this office is blamed in consequence. Certificates of Title issued upon Transfers often require great care in their preparation; new surveys do not always agree with the old surveys upon which Grants and Certificates are founded, and description in Transfers are not uncommonly incorrectly or unskilfully drawn to prevent encroachment and overlapping boundaries; the draftsman's skill is much in requisition, and frequent visits to the Survey Office and inspection of charts there deposited become necessary.

In the two cases mentioned by Mr. Dobson as being incomplete, I cannot ascertain that this office is in fault, but the matters are being enquired into; and with regard to the delay in the issue of certificates already received by him, I consider, without entering into particulars, that they have probably been postponed for other pressing matters more urgently required by Mr. Dobson and others.

A more unfavourable time for charges of delay, so far as the office is concerned, could hardly have been chosen. Sickness, the loss of experienced clerks, and other cause perfectly within the knowledge of Mr. H. Dobson and the profession generally, have combined for some time past to weaken the Department; but every effort is now being made by care and assiduity to repair these misfortunes. That there has been no want of diligence the large amount of business transacted in the office will prove. Doubtless, greater expedition might be attained by an increased staff of clerks; but with the present limited office room, I hesitate to recommend Mr. H. Dobson's suggestion, as not only records, but clerks also, have long since overflowed from the Lands' Titles Office into the Registry of Deeds, which in consequence is even now in danger of overcrowding.

I have the honor to be,
Sir,
Your obedient Servant,

The Hon. the Attorney-General. G. PATTEN ADAMS, *Recorder of Titles.*

THE within letter is forwarded for the perusal and consideration of the Recorder of Titles and for his report thereon.

The Recorder is well aware of the very great dissatisfaction that has been long felt at the slow progress of transactions in land under the Real Property Act.

Mr. Dobson suggests a reference to Mr. Jackson, but it appears to the Attorney-General quite unnecessary. The experience of the Recorder, as the first Solicitor to the Commissioners, has been so lengthened and extensive that he must be more competent than any other person to see and indicate the weak points in the system. The question, for instance, of altering the law so as not to require Transfers to be in duplicate is one which the Recorder, after twenty years' experience, could speak with authority on. To the writer, who is not practically closely acquainted with the subject, the duplication of Transfers seems a needless trouble and expense. And so perhaps in other matters cost might be saved by a judicious alteration of the Act.

W. R. GIBLIN.
22. 6. 83.

Hobart, 20th June, 1883.

SIR,

I HAVE had the honor to bring under your notice on more than one occasion some of the amendments which several Solicitors, in common with myself, think should be made in the Real Property Act, and you kindly promised to give the matter your attention if I wrote to you on the subject.

The Real Property Act was passed in 1862, and, with the exception of a short Act (26 Vict. No. 1) passed in the following year, no amendments, alterations, or improvements worth mentioning have been made in the original Act, and for over 20 years we have gone on working under one of the most defective and cumbersome Acts which ever appeared on our Statute Book; no one has ever thought it worth while to get the most palpable blunders and errors rectified, or to incorporate with our Act any of the numerous and admirable amendments and improvements adopted long ago by the neighbouring Colonies.

I had intended to suggest that you should ask the Recorder of Titles and his Solicitor to report to you upon the amendments which they thought might with advantage be made in the present Acts, and also to read and carefully consider the Acts and amended Acts of all the Colonies, together with the exhaustive Reports and Commissions issued in some of the Colonies, all having for their object the improvement of the system of dealing with land, and then to advise which of the provisions therein suggested should be adopted by our Legislature.

Parliament will so soon meet that there is hardly time to prepare a new and complete Act compiled from the modern enactments of the various Colonies; but the amendments which I have now the honor to suggest are so simple and so urgently required, that I trust you will at once take action in the matter and not allow the coming Session of Parliament to terminate without passing an Act embodying these suggestions, with such additions and improvements as I am sure the Recorder and Solicitor, if asked to do so, will point out.

(1.) The Real Property Act (Section 35) enacts that "every Grant or other Instrument presented for registration shall be in duplicate, *except as is hereinafter otherwise provided*"; and the Section goes on to point out the reason for having documents in duplicate, viz.,—that one shall be filed in the office and the other delivered to the person entitled thereto. When documents have to be filed only, and are not handed back to the person entitled thereto, there can be no necessity for them to be in duplicate; but in administering our Act the Recorder loses sight of this fact, and entirely ignores the exceptions afterwards mentioned in the Act against the rule requiring instruments to be in duplicate.

It is contended by myself and others that exceptions are to be found in Sections 42, 48, and 59. Section 42 says—"When land is to be transferred the Proprietor shall execute *a Memorandum of Transfer in Form D.*" Nothing is here said about the Transfer being in duplicate, but the Recorder insists upon your filing in his office not *a Transfer* but *two Transfers;* neither copy of the Transfer is handed back to the person filing it,—he receives of course his Certificate of Title instead, and the Recorder has the trouble of filing two documents instead of one, whereas search the Act as you will and not a hint can you find that any dealer in land is required to go through the farce of filing two copies of the same document. If you consider the 1*s.* paid for each duplicate transfer form, and the extra cost of preparing it, which has been incurred in the transfer of every piece of land under the Act for the last 21 years, this point is rather a startling one.

Section 48 says that the mode of surrendering a Lease is to endorse the word "Surrendered" *upon such Lease, or on the "counterpart thereof,"* and get such endorsement signed by the Lessor and Lessee; but the Recorder will not allow this Section to be carried out, and ignores the words underlined, and insists that the Lessor must procure the filed copy of Lease from the office and endorse a duplicate surrender on it, and when this is done and two copies of the Surrender are filed, the Lease will then be surrendered, but not before.

Section 59 enacts that a Mortgage is to be relieved by having a discharge endorsed "upon *any* Memorandum of Mortgage." No mention is here made of a duplicate discharge; but the Recorder says he must have two discharges, and to enable his demand to be complied with he actually hands to any clerk of the mortgagee's solicitor who calls with the mortgagee's duplicate of the mortgage or the duplicate original mortgage, and allows this document, which is filed in his office as a matter of record, to leave his custody and be sent all over the Colony. Now, if the question as to the necessity of preparing Transfers of Land, Surrenders of Leases, and Discharges of Mortgages in duplicate was at all doubtful, the point should be set at rest, when it is considered that it is impossible to carry out the practice insisted on by the Recorder without allowing filed documents and matters of record to leave the office; this practice cannot be justified, and no authority can be found for it in the Act.

I am sure you will appreciate the very great annoyance and delay which the Recorder's reading of these Sections causes, and if you think that he is wrong, or might without violating the law read the Section in the way here suggested, it will be esteemed a great favour by the legal profession if you will at once arrange with the Recorder not to insist upon the documents before named being in duplicate. I know that in some of the other Colonies Transfers of Land and Discharges of Mortgages are not prepared in duplicate, for I frequently attest as a Notary the execution of such documents.

(2.) Why should a new Certificate of Title be issued each time the land described therein is transferred? It is easier to endorse on the Certificate the words "transferred from A. to B., dated 12th June, 1883, registered vol. —, folio —," then to put on the Certificate the usual particulars of either a Mortgage or a Lease. If a piece of lands changed hands several times in a few years this mode of transferring it would be a vast saving in time and cost, and I believe it is adopted in some of the Colonies.

(3.) The mode of vesting land in an Heir or Devisee under a Will, as provided by Sections 80 and 81, seems particularly defective and tedious. Under the old system the production of a Will duly registered is proof of the Devisee's Title, and in all cases of absolute devises, devises in trust for sale or simple devises, such as to A. for life with remainder to B., what is to be gained by making the claimant apply to be Registered Proprietor, and by compelling the application to be

advertised for a month so as to give an opportunity of entering Caveats against the application, when it is known perfectly well that no Caveats will be entered? The Commissioners could, of course, be given a discretion to advertise the application to be registered Proprietor in all cases where the proof of heirship was not clear, or where the legal meaning of the devise was doubtful. You can have no idea of the vexatious delay and cost which these Sections occasion, and if the Act is amended in this particular, I would urge that the amendment be made retrospective so as to facilitate the dealing with lands belonging to persons claiming under the Wills of Proprietors now deceased.

A client of ours recently devised two small pieces of land at New Norfolk to her daughter absolutely, and the Devisee had to apply to be registered Proprietor. It took about two months to get the new title through the office, and she paid £5 1*s*. for fees on the application, besides my firm's costs, and then sold both pieces of land for under £100; under the old system the costs and fees of registering the Will would have been £2 2*s*., and the land could have been transferred in a day instead of two months.

Under Section 79 an Executor or Administrator can perfect his Title to a Lease or Mortgage or other personal estate by making an application in writing to be registered Proprietor and without being compelled to advertise such application. The land of a Bankrupt can also be transmitted by the same simple means.—See Section 76. Why should not real estate be dealt with in the same way?

(4.) I have had several cases of a Transfer to one person for life with remainder to others in fee, and the Recorder in some cases appeared to be in doubt as to how the matter should be carried out. On one occasion he gave us back a duplicate of the Transfer to keep as evidence of the title of those claiming in remainder. The Act appears to me to be rather clearer than usual on this point; but if the Recorder thinks otherwise, had it not better be amended?

(5.) It frequently happens that the time for payment of a Mortgage debt has to be extended, and the Interest increased or reduced; but our Act does not contemplate such a simple and every day transaction. A form to carry out this transaction could be prepared in less than a dozen words, and the endorsement thereof on the Certificate of Title would be the work of only a minute or two; but the mode of effecting this object, as suggested at the Real Property Office, is to prepare an entirely new Mortgage. It is needless to point out the cost of doing this, besides having to pay the fees and stamps of subsequently releasing in duplicate two Mortgages for the same sum.

(6.) The fees payable under the Act are very heavy, and far in excess of the Office charges under the old system. If six children or other persons claim a piece of land as Tenants in Common and they require separate Certificates of Title, they each have to pay 25*s*.—a duplicate Certificate or Title might very fairly be issued for 5*s*. Again, a man pays 25*s*. for a Certificate of Title to land worth £10,000, and he pays the same fee if the land is only worth £10. I believe that half the advantage which the Act affords is neutralised by the excessive fees which are charged.

(7.) Very great convenience would be afforded if either Vendor or Purchaser could apply to bring land under the Act; as it is at present a distinction is made as to whether land is granted or ungranted, which causes much trouble and delay.

(8.) A Conveyance and Mortgage comprised in one deed is as common under the old system as a Conveyance, but under the Real Property Act you must prepare your Transfer, obtain the Certificate of Title after the delay of days and sometimes weeks, and then prepare the Mortgage. Why could not a form be introduced into the Act combining a Transfer and Mortgage in one document? We have the authority of the late Solicitor to the Act for saying that such a form could be easily prepared and made workable.

While referring to Mr. Jackson, I respectfully suggest that the Government would act wisely in taking advantage of his experience and employing him to draft such additions and amendments to our Real Property Act as are considered urgent and important.

You were spoken to last year by a deputation from the Legal Profession as to the amendment of the Real Property Act taken in connection with the Conveyancing Act which you are about to introduce into Parliament, and no doubt you have given this suggestion your attention, and have considerad the idea of allowing lands under the Real Property Act to be dealt with under the Conveyancing Act, making the Certificate in such cases the root of title.

I must apologise for troubling you at such length, but the amendment of the Real Property Act seems to me to require the most thoughtful and prompt consideration of the Government, and I shall be glad to learn that you take the same view of the matter and will act accordingly.

I have the honor to remain,
Sir,
Your obedient Servant,

The Hon. the Attorney-General. HENRY DOBSON.

Lands' Titles Office, Hobart, 7th July, 1883.

SIR,

I HAVE the honor to acknowledge the receipt of your Memo. of the 22nd ultimo, enclosing Mr. H. Dobson's letter to you of the 20th ultimo for my perusal and consideration, and for my report thereon.

The Real Property Act was passed in 1862, and was amended in 1863, again in 1867, and again in 1878; it appears strange, therefore, that advantage was not taken at the time when these different amending Acts were passed to get "palpable blunders and errors" rectified in a "most defective and cumbersome Act," if such indeed existed. On the contrary, with the exception of Mr. H. Dobson's letter, I am not aware of any representations on the part of the legal profession that any serious defects requiring legislation existed in the Real Property Act; and during the 21 years in which it has been in operation ample opportunity must have been afforded for noting and effecting necessary alterations.

1. Mr. Dobson contends, notwithstanding the 35th Section, enacting that "every Grant or other instrument presented for registration shall be in duplicate, except as hereinafter provided," that Transfers in duplicate are not required by the Real Property Act, and bases this proposition upon Section 42, which states when land is to be transferred the proprietor shall execute *a Memorandum of Transfer in Form D.*,—that as nothing is said in this Section about the Transfer being in duplicate, the Recorder is wrong in requiring *two Transfers* instead of *a Transfer*. Let us see to what we shall inevitably be led by this process of reasoning:—Section 47 enacts that when land is to be leased the proprietor shall execute a *Memorandum of Lease in Form E.*; as nothing is said in this Section about the Lease being in duplicate, according to Mr. Dobson's arguments *a Lease* only is required, not a Lease in duplicate. In like manner Section 52 enacts, when land is to be mortgaged, the Mortgagor shall execute *a Memorandum of Mortgage in Form F.*, and the Section being silent as to Mortgages being in duplicate, *a Mortgage* only is required, not a Mortgage in duplicate. It follows, therefore, according to Mr. Dobson, that neither Transfers, Leases, nor Mortgages are required by the Real Property Act to be in duplicate. If his opinion is sound, his argument to my mind is unconvincing,—indeed he boldly states: "search the Act as you will, and not a hint can you find that any dealer in land is required to go through the farce of filing two copies of the same document." Great weight is attached by Mr. Dobson to the words, *except as hereinafter otherwise provided*, as intended also to exempt Mortgages and Leases from being released and surrendered in duplicate; but I would point out that Section 93 provides for dispensing in certain cases with the production of instruments in duplicate, to which Section, in my opinion, the words underlined refer. Sir R. R. Torrens, in his Handy Book, page 38, Instructions, &c., expressly states: "the prescribed Forms of Transfer, Lease, Mortgage, &c., when filled up, executed, and attested, *and in duplicate*, may be presented at the Lands' Titles Office." But I am not disposed to predict bad results if Transfers are not executed in duplicate, although it is questionable whether it is advisable, at the mere suggestion of Mr. Dobson, to alter a law which has worked well, and until now without opposition, for 21 years, and was undoubtedly the intention of the founder of the Real Property Act, for the purpose of saving a little additional labour, and 1*s.* for a Form.

2. Mr. Dobson seems to have lost sight of the fact that his proposed system could only apply to cases where the whole of the land included in the certificate was transferred. In every other case it appears to me that the issue of a new Certificate would still be required. Uniformity of practice would be destroyed by this system, and the unwary or illiterate might possibly be deceived. As to the "vast saving in cost," £1 only is charged for each new certificate, and I think in most cases this sum would willingly be paid by the purchaser for a Certificate in his own name, rather than that he should receive a Certificate in the name of other parties, with only a slight endorsement, understood by the initiated, as evidence of his ownership. It was never intended that all the previous history of the Title should appear on the face of the Certificate,—such a disclosure might lead to disastrous consequences.

3. To abolish advertisement on the death of a registered proprietor as prescribed by Section 81, would be very inexpedient. It is one of the safeguards of the system, notwithstanding Mr. Dobson's statement that under the old system "production of Will duly registered is proof of Title." The Will produced may not be the last Will, and too much publicity cannot be given to the fact that an indefeasible Title is about to be issued to Trustees or other Devisees. To delay the application to be registered until years have elapsed after the death of a registered proprietor, as is frequently the case, and when the property is sold, or otherwise is required to be dealt with, to make the application, requiring 1 month's advertisement, must, it has often appeared to me, be "vexatious" to clients. The fees on application, exclusive of a ¼*d.* in the £ towards assurance fund, rarely exceeds £2. I do not therefore think that the "delay and cost" in the transaction are fairly chargeable to the Real Property Act.

4. I am not aware that any difficulty has been experienced in carrying out the transactions referred to. It is not unusual to hand back duplicate Transfer to the parties requiring it as evidence of the Transfer—an additional argument in favour of the execution of Transfers in duplicate.

5. An extension of Mortgage, with or without an alteration in the rate of interest, is not uncommon, both under the Real Property Act and the old system of conveyancing; in practice, I believe it to be usual under either system to effect the arrangement by a mere agreement, which is but seldom registered,—with this the parties are satisfied; but to release a Mortgage and execute a new one must be of rare occurrence, unless the terms are considerably altered, or more money is borrowed. If really necessary, I do not think there would be much difficulty in extending Mortgages by endorsement properly registered, but in altering the terms, additional advances, or anything in the nature of a new Mortgage, should be provided against, or complications of different kinds (particularly stamp duty questions) would arise. With proper precautions, Leases might, I consider, be extended in like manner.

6. Mr. H. Dobson states that "the fees are very heavy, and far in excess of the office charges under the old system, and that half the advantage which the Act affords is neutralised by the excessive fees which are charged."

In an application to bring land of the value of £500 under the Act, including the issue of new Certificate to a purchaser, the office and assurance fees amount to £4 14*s.* 5*d.*

In a Transfer of land worth £500, including new Certificate to purchaser, fees are £1 12*s.*

A Mortgage for £500 costs	12*s.*
Transfer or release of ditto	5*s.*
Lease	12*s.*
Transfer or surrender of ditto	5*s.*

Tenants in common each requiring a separate Certificate of Title pay £1, but under the old system of conveyancing Tenants in common would find it more expensive individually to perfect Title for sale to their undivided share. So far from being "excessive," the fees are on so low a scale as hardly to pay the cost of working.

Rule 50 of the Tasmanian Permanent Building Society provides the following scale of fees under the old system of conveyancing:—

SCHEDULE B.	£	*s.*	*d.*
Mortgages not exceeding £75	3	3	0
Ditto 200	4	4	0
Ditto 300	5	5	0
Ditto 500	6	6	0
Ditto above 500	7	7	0

Stamps additional.

Under the Real Property Act, two-thirds of the above.

7. I fail to perceive how allowing the purchaser, instead of the vendor, to apply to bring granted land under the Act would be a great convenience.

The application is in the form of a declaration, and applicant is bound to disclose the condition of the legal title and other necessary particulars within his knowledge, of which a purchaser of yesterday could know nothing.

Applicants for Grants are required to prove only that they are entitled in equity and good conscience; moreover the Crown will issue Grants only to applicants themselves, and not to purchasers from them. There might also be difficulty with respect to Stamp Duty. I cannot recommend any alteration of the law in this respect.

A Form combining a Transfer and Mortgage in one document does not appear to me to be so easily prepared and made workable as supposed by Mr. H. Dobson. On the contrary, there would, in my opinion, be considerable difficulty in introducing an instrument of this description. It is apparently opposed to a system which provides for the registration of separate and distinct documents as evidence of each transaction. So far as I know, no innovation of this character has ever been attempted.

Notwithstanding Mr. H. Dobson's statements, but little difficulty has, I think, been experienced in working the Real Property Act; and in my opinion his numerous objections have been satisfactorily answered.

I have, &c.

The Hon. the Attorney-General. G. PATTEN ADAMS, *Recorder of Titles.*

I HAVE perused the above, and concur in considering that the objections referred to have been satisfactorily answered.

JAMES WHYTE,
Solicitor to the Lands' Titles Commissioners, 7th July, 1883.

Hobart, 11*th July*, 1883.

SIR,

I HAVE the honor to forward herewith the opinion of Mr. John A. Jackson, lately the Solicitor to the Real Property Act Department, upon the system which, in my letter to you of the 26th day of May last, I advocated should be introduced in conducting the business of that office, and I think you will see from his remarks that Mr. Jackson thinks the proposed system both possible and expedient, if only the Government will furnish the Recorder with a sufficient staff and office accommodation. The Real Property Office should, to use Mr. Jackson's verbal opinion expressed to me, work like a machine; if it does not, I affirm, without fear of contradiction, that it is not what Mr. Torrens or those who introduced the Real Property Act intended it to be.

I do not wish to be too exacting, but I think Mr. Jackson's language is rather too strong when he says it is not *possible* as a rule to register Mortgages, Discharges of Mortgages, and Leases within a few hours. If a few Mortgages, Discharges, and Leases were filed before 11 o'clock one day, they could, I think, be registered and ready to issue by 4 o'clock the same afternoon; if this would be impossible, then I say the Torrens' system of dealing with land is not remarkable for its promptness.

I have not been favoured with a reply to my letter of the 26th May last, and I therefore trust that the Government see the urgency of having the work of the Real Property Office conducted upon a proper system, and are taking steps to see that this is at once done. In further proof of the absolute necessity of some system being introduced, may I bring under your notice the four following cases:—

1. The duplicate Lease, Earle to Piesse, filed in the Real Property Office, and which I mentioned to you as having been lost or mislaid by the clerks in that Department, cannot yet be found, and although Mr. Earle has produced Mr. Piesse's duplicate Lease surrendered in proper form, the Recorder refuses to surrender the Lease because the surrender is not in duplicate; and before he will do so, Mr. Earle is compelled to obtain Mr. Piesse's affidavit that the duplicate Lease now lost in the Real Property Office has not been deposited by him (Mr. Piesse) to secure a sum of money, and Mr. Earle has to submit to the injustice of paying the legal charges and office fees connected with this matter as if he, and not the Real Property Office, had lost the document.

2. A client of ours was put to great inconvenience because he could not get his Mortgage to the Building Society discharged. The Certificate of Title, with discharge endorsed, finally reached us on 19th June last, but it was entered as registered in the Real Property Office on 8th January last. Our clerks not only asked for this Certificate with discharge registered on several occasions, but frequently asked for all documents belonging to our office.

3. Simper's application is one of the cases of delay mentioned in my first letter. Nothing has been done in it since, and on our Managing Clerk enquiring about it last week he was told that the Application had never been filed and that the fees had not been paid. Knowing this to be incorrect he asked the clerk to look into the matter, and the following day he was informed that the application had been filed but could not be found, and that the fees had been paid. The property included in the Application was sold last April, and the purchaser paid his money and left his Transfer with us to file,—but this cannot be done till the Application is disposed of and the new Certificate issued. The purchaser lives at New Norfolk, and he has called and sent to town three times for his Certificate of Title, and is now under the belief that his title is bad, and that his interests have been neglected by my firm.

4. Mr. Daldy held a Mortgage over a small property, and left the Grant and both copies of the Mortgage at the Real Property Office. We paid him off, and received his authority to get the deeds, but on our Managing Clerk presenting his authority at the Lands Titles Office he was told the Deeds could not be found. He attended on the two following days with the same result, and on his fourth attendance the documents were found. Both copies of the Mortgage were handed to our clerk to have the discharge endorsed thereon; so that the objectionable and illegal practice of allowing filed documents to leave the office still continues.

I regret having taken up so much of your time, but I feel sure that the facts I have brought under your notice in this and my previous letter will convince the Government of the immediate necessity of taking action in this matter.

I have to thank you for sending me the Recorder's letter of the 7th instant, in which he says that little difficulty has been experienced in working the Act, and from which he appears to think that all the objections contained in my letter of the 20th June are groundless. The best answer I can give to the letter is to refer you to the last paragraph of Mr. Jackson's opinion, in which he says that what is most *urgently required* is not only an amended Act, as I suggested, *but the repeal of the present Act and the enactment of another similar in its provisions to the Acts now in force in the other Colonies*. In my opinion the Recorder's letter does not answer one of my objections; but it is useless for me to try and convince him that the Act is very defective, for he thinks it is perfect; but I beg to assure the Government that the opinion of most of the Solicitors of the Colony, and of scores of gentlemen who deal largely in land, coincides with that so forcibly expressed by Mr. Jackson, and not that which Mr. Adams holds.

I now leave the matter in your hands, and trust that an amended Act will be passed through Parliament this session. If, however, the Recorder should still advise the Government that the Act does not require alteration, I shall be glad if you will let me know in a day or two, for I will then answer Mr. Adams's letter, and take immediate steps to bring the matter before the profession and the public.

I have, &c.

The Hon. the Attorney-General. HENRY DOBSON.

Stone Buildings, July, 1883.

SIR,

I BEG to acknowledge the receipt of a copy of a letter dated the 26th May, 1883, from yourself to the Hon. the Attorney-General, on the subject of the system of conducting the business which now obtains in the Lands' Titles Office in this Colony; and in answer to your request that I should make such remarks on the subject-matter of your letter which my experience in the Lands' Titles Office might suggest, I submit the following observations.

I do not think it possible that, as a rule, ordinary transactions, such as Mortgages, Leases, Discharges of Mortgages, &c. can be filed, registered, and completed within a few hours, as you seem to think should be the case. All such matters must be referred to the Solicitor to the Department, and where there is a large amount of business passing through the office, it would not be unreasonable for one day, at least, to be allowed for the perusal and settlement by the Solicitor of such transactions. Granting this, there is no reason, in my opinion, why the simple matters I have referred to should not be filed and completed the day after presentation for registration, that is, supposing an adequate staff to be available by the head of the Department; but on this point I have always understood from the Recorder of Titles that the Department was under officered. As to the cases scheduled by you, where delays of months and longer are alleged to have occurred, I am unable to give any explanation of the cause of such protracted delay,—all the matters referred to came before me in the routine of business, and were promptly disposed of, as a reference to the books of the office will prove; the Recorder, however, is the only person who is in a position to give the proper explanation.

Place a sufficient staff at the disposal of the Recorder of Titles, and give him the necessary office accommodation, there is no reason why such transactions as Mortgages, Releases, Leases, &c., should not, having regard to the present amount of business passing through the office, be filed one day and completed the next. Simple Transfers (as the majority are) filed one day should be registered, and the new Certificate of Title (and, if necessary, Balance Certificate also) ready for issue on the third day after the presentation of the transfer for Registration. If this, or anything like it could be done, the profession and the public would be more than satisfied. The complaints which have been made, and which are reiterated in your letter, have reference to delays extending over months, and even years.

With respect to applications to bring property under the Act where the land has been granted, the new Certificate should be ready for issue within a few days after the time allowed for caveating has expired, as the whole matter rests with the Lands' Titles Office; but as to land unalienated from the Crown, the delays which so frequently take place arise, in most cases, from causes for which the Department is responsible. For instance, an application is made to bring ungranted land under the Act, and duly filed in the office. Before it is referred to the Solicitor a description of the land under application must be forwarded to the Surveyor-General for his remarks and proper description of the land. In many cases months elapse before the report from the Survey Office is forwarded to the Lands' Titles Office. I do not know why such a long time should be required, but I do know that as a rule the blame falls, and most unjustly, on the latter office. Then, after the report from the Surveyor-General is received, the case is investigated by the Solicitor, and if passed is advertised,—again delay for which the office is not responsible. The new Grant must be prepared at the Survey Office, forwarded to the Treasury, then to the Registrar of the Supreme Court for enrolment, and finally to the Recorder of Titles for registration and issue. All these items require time: but I do think that a great improvement might be effected if some attention were given by the Government to this state of things.

Your suggestion that a sum of money should be placed at the disposal of the Recorder of Titles for extra clerical assistance when necessary should, I think, be acted upon. I believe the Recorder has several times suggested such a provision, but in vain.

Of course there are many transactions of a complicated nature passing through the office, and the time necessary for their completion must depend on the circumstances of each case.

In my opinion, what is most urgently required is an amended Real Property Act, or rather the repeal of the present Act and the enactment of another similar in its provisions to the Acts now in force in the other Colonies. The latter are based on valuable Reports of various Royal Commissions

which have enquired into Mr. Torrens' system of the transfer of land, and in all important matters are infinitely superior to the original Torrens' Act—the one now the law here. A new Act similar to that of South Australia would effect as much in expediting the business of the Real Property Office, and preventing unnecessary delay and expense, as any improvement in the conduct of the business of the department. But as this point is not raised in your letter, it is not necessary for me to pursue it further.

I have, &c.

HENRY DOBSON, *Esq.*, *Macquarie-street.* JOHN A. JACKSON.

Lands' Titles Office, Hobart, 28th January, 1884.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of 24th November, 1883, with two printed copies of questions put to ten Solicitors, by direction of a Select Committee of the House of Assembly, with reference to the working of the Lands' Titles Office, and the replies thereto, requesting me to peruse one copy of questions and answers, and to instruct the Solicitor to the Department to give his careful consideration to the others, with a view to your being furnished, for the information of Parliament, with a full report upon the matters alleged, distinguishing between matters of complaint against the administration of the Real Property Act, and defects alleged to be inherent in the system or requiring remedy by legislation.

I have also the honor to acknowledge the receipt of your letter of 10th instant referring to your letter of 23rd November last, and forwarding correspondence between Mr. H. Dobson and yourself, in order that the papers might be under consideration together with the answers from Solicitors forwarded to the Select Committee of the House of Assembly, upon which you had already solicited the observations of myself and of the Solicitor to the Lands' Titles Commissioners.

The report of Mr. J. W. Whyte, the Solicitor to the Lands' Titles Commissioners, is herewith forwarded.

I propose in this report, first, to consider matters of complaint against the administration of the Real Property Act, and, secondly, the defects alleged to be inherent in the system or requiring remedy by legislation.

First.—After careful perusal of the answers of the different Solicitors, I have arrived at the conclusion that the principal defect alleged to exist in the administration of the Real Property Act is delay in the transaction of business, both in bringing land under the operation of the Real Property Act, and in dealing with land already under its provisions.

Applications are frequently forwarded to the Office in an informal or imperfect condition; and in all cases where requisitions on the title are necessary, applications are not brought before the Commissioners until replies to such requisitions have been received and considered by the Solicitor to the Department. Difficult, and occasionally defective titles are submitted, which require long correspondence or frequent attendances on the applicants or their Solicitors; and the nature of the Solicitor's business (I speak from 14 years' experience as Solicitor to the Department) is such that it is impossible in every case to state in how many days or weeks a title may be brought into a satisfactory condition, even though it may have passed through various solicitors' offices within a comparatively recent period.

Surveys are frequently needed, even when the land applied for has been already granted by the Crown; but in applications for grants a survey is almost invariably required. The services of a surveyor in a particular locality may not be immediately available, and delay is then inevitable. Grants are always prepared at the Survey Office, and until forwarded from thence to the Lands' Titles Office cannot of course be issued.

In consequence of notice being sent from the Survey Office to purchasers of Crown lands that grants will be issued to them from the Office of the Recorder of Titles on application, long before such grants have been received at the Lands' Titles Office, purchasers frequently cannot obtain their grants when applying for them in pursuance of such notice, it being the fact that grants often do not arrive at the Lands' Titles Office for some weeks after the parties have received notice to call for them. Hundreds of applicants have been informed by me that, notwithstanding such notice, the grants are not ready to issue, much to their annoyance and to the detriment of this Department.

Considerable misapprehension seems to exist as to the nature of the work of the Office: it is not "for the most part to file and record documents prepared by others." I have before, on several occasions, endeavoured, without success as it appears, to combat the notion that the Office is a Registry Office and nothing more. Certificates of Titles issued upon Transfers often require great care in their preparation; new surveys do not always agree with the old plans upon which Grants

and Certificates have been based, and descriptions in Transfers not uncommonly are incorrect or unskilfully drawn. Frequent visits to the Survey Office and inspection of the charts are necessary to prevent encroachment and over-lapping boundaries. In transactions of a simple character, such as the Registration of Mortgages, Leases, &c., when the documents in duplicate are presented for registration, if, after perusal, the instrument is considered formal in all respects, a Memorial is drafted embodying the necessary particulars, and engrossed on the Certificate of Title and also upon the Register. This Memorial, in duplicate, is signed by the Recorder, and the facts are noted upon the instrument, also in duplicate, which is signed by the Recorder.

When several Grants or Certificates are affected, the business is proportionably increased. To carry out this work in detail properly time is required, and undue haste might lead to disastrous consequences.

Upon comparing the present staff of officials with that employed 7 years ago, I find that the strength of the Office is now precisely the same as in July, 1876 (*vide* Report of Recorder, dated 25th September, 1876, as to sufficiency of staff, No. 69), with the addition of one clerk, appointed in April last at a salary of £75 per annum, "as a case of emergency." Although the staff has been so slightly increased during the past seven years, the work to be performed has assumed very different proportions.

In the year 1876, land to the value of £1,207,599 had been brought under the operation of the Real Property Act; in 1883, the total value of such land was £1,761,245. During the year ending 30th June, 1876, there were 210 Transfers registered; in the year ending 30th June, 1883, there were registered 548 Transfers (more than double the number registered in 1876). In 1876, there were 135 Mortgages; in 1883, 254 Mortgages were registered. In 1876, 101 Mortgages were paid off; in 1883, 219 Mortgages were released. In 1876, Registration Fees for the year amounted to £872 18*s.*; in the year 1883, the Fees were £1906 19*s.* 10*d.* (more than double the receipts for the year 1876). These figures speak for themselves: the work during the past seven years has been more than doubled,—the staff has been almost stationary; nor, with the recent limited office accommodation, could there have been any increase in the number of clerks without great inconvenience. As stated in my Report of 8th July, 1882, "from want of available space business is now being carried on at considerable disadvantage, and unless the defect is remedied the efficiency of the Office must be impaired."

In my Report, dated 13th June, 1883, which I had the honor to furnish you with, on Messrs. Dobson and Mitchell's letters, I said that "greater expedition might be attained by an increased staff of Clerks, but with the present limited office accommodation I hesitate to recommend Mr. Dobson's suggestion, as not only records, but clerks also, have long since overflowed from the Lands' Titles Office into the Registry of Deeds, which, in consequence, is even now in danger of overcrowding."

Again, in my report of 18th July, 1883, I stated—"the continual increase of work leaves day by day less room for conducting transactions, and but scanty accommodation for documents; another Department has long since been encroached upon for the safe custody of Records, and frequently required as they are for use and reference, additional labour is thus entailed upon the officials. I must again urge upon the Government the necessity for amendment in this respect."

I also requested, in my letter to you of the 14th August, 1883, that "a sum of money might be placed at my disposal for the payment of over-time work, considering this course necessary, as the pressure of work was such as not to admit of its being performed in office hours by the present clerical staff." Apart from its want of strength numerically, there has been an element of weakness in the staff, with which you are acquainted, now fortunately removed, which has considerably interfered with the expeditious transaction of business.

Frequent representations have therefore been made as to the want of office room, and the defect has now been remedied, additional accommodation having been afforded the Department in the beginning of the present year, an improvement the beneficial results of which are already very apparent.

When the Real Property Act came into operation, and for some years afterwards, the time of the Recorder was, I believe, exclusively devoted to the duties of the Lands' Titles Office; now that the work has increased fourfold, the Recorder is called upon to fill the offices of Registrar of Deeds and Collector of Stamp Duties, with all their attendant pecuniary responsibilities. By the 19th Section of the Stamp Duties Act, the responsibility of ascertaining that instruments are correctly stamped is thrown upon the Registrar of Deeds and Collector of Stamp Duties,—as by that Section no instrument can be received, registered, or recorded unless the same is duly stamped. The perusal of some hundreds of documents every month, which are received and registered in my different offices, and determining the correct amount of Stamp Duty payable on each—frequently after considerable discussion with Solicitors—entails an amount of labour and an expenditure of time

which can only, I think, be properly appreciated by a professional man. Stamping and giving receipts for Stamp Duty on the various documents, and attendance at all times on the public and the legal profession for these purposes, occupy much valuable time which would otherwise be available for the duties of the Lands' Titles Office. I have no hesitation in stating that the duties of these three different offices can be satisfactorily performed by one officer only, by the assistance of a thoroughly efficient staff of clerks. The want of system which has been made a ground of complaint against the conduct of the office has, I think, arisen from anxiety on the part of the Department to expedite business represented as extremely urgent, which was occasionally done by the postponement of other matters in which apparently speed was not of so much importance. This irregularity is not unlikely to occur where the work fluctuates as in the Lands' Titles Office, and the staff of clerks is not sufficient at all times to meet an unexpected press of business.

It is in my opinion necessary, as stated in my letter of 13th September, 1883, which I had the honor to forward to you, that "another clerk should be appointed for the purpose of keeping the Index and another office record which has become indispensable."

In one of the solicitor's letters it is objected that "the system has not proved self-supporting, but continues a burden on the State."

The cost of the offices of Registrar of Deeds and Collector of Stamp Duties is, however, included in the amount estimated for the expenditure of the Lands' Titles Office, and if the receipts from the Registry of Deeds and the Stamp Duties collected were taken into account, it would be found that the united income of the Departments would very far exceed the outlay, and therefore render them more than self-supporting.

Secondly.—As to defects alleged to be inherent in the system or requiring remedy by legislation.

It is asserted that the system is "radically bad." I therefore desire to record my firm conviction that in the system itself there is nothing fundamentally wrong; this, I think, is abundantly proved from its comparatively smooth working both in Tasmania and other Colonies for some years past. Like most tentative measures, however, it is, I consider, capable of improvement. With regard to the alleged unsuitability of the Real Property Act for dealing with Equitable or Trust Estates, it is provided by the 66th Section that no entry can be made in the Register Book of any Notice of Trust; but this is not intended to prevent the settlement of property, which may be effected as directed by the 86th Section, giving power to the proprietor to create or execute any power of appointment or to limit any estates, whether by remainder or otherwise. Land can also be transferred to Trustees with or without the words "No survivorship," who may execute any instrument in the nature of a settlement declaratory of the trusts upon which the property is to be held. A copy of the instrument may be deposited in the Lands' Titles Office, and, if considered necessary, Caveat may be entered to protect the interests of the parties beneficially entitled, or to prevent any dealing with the land otherwise than in the manner provided by the settlement.

The Trustees appear on the Register as absolute proprietors, but in this respect they differ but little from Trustees under the old system of conveyancing, who, in most well-drawn settlements, are invested with full power of selling, leasing, and exchanging, and a purchaser from them is in no way concerned or responsible for the proper disposition of the purchase money. I am not in favour of the registration of Trusts.

It is stated that "the system makes the title depend upon the accuracy of the plan or diagram on the Certificate of Title." The diagram is certainly an important feature in the Certificate of Title, and exceedingly useful for the purpose of illustration; but Certificates of Title, although in some cases written descriptions are dispensed with, refer to the original grant of the land, wherein a definite description in chains and links or feet and inches may be at once obtained.

Depending upon natural objects, marked trees, creeks, &c. for boundaries is occasionally the cause of great confusion, as marks become obliterated, and the courses of creeks are altered by the action of floods. Should the parchment shrink, as suggested, and create an inaccuracy in the diagram, there is still the written description for reference.

The system is characterised as "costly and complicated," and to illustrate this an example is given of four persons—Tenants in Common,—each of whom is required by the Real Property Act to take out a Certificate for his undivided share. A Certificate of Title costs £1, which in practice, I think it will be found, parties will each prefer to pay in order to be the holder of his Title Deed rather than that there should be only one Certificate of Title the common property of all the proprietors. It can, however, be left optional with the parties either to take out one or more Certificates of Title by a slight alteration in the present law, as I am aware is the case in some other Colonies, with what result, however, I am not acquainted. Even under the old system of conveyancing, Tenants in Common find it more expensive to complete a Title for the sale of their undivided shares.

In a letter to you from Mr. H. Dobson dated 20th June, 1883, upon which I had the honor to furnish you with a Report, he states that "a Form combining a Transfer and Mortgage in one document could be easily prepared and made workable;" but, as mentioned by me in the Report referred to, "there would, in my opinion, be considerable difficulty in introducing an instrument of this description. It is apparently opposed to a system which provides for the registration of separate and distinct documents as evidence of each transaction." I still hold the same views with respect to a Form combining a Transfer and Mortgage in one document. A section, however, might, I consider, be introduced, declaring that in all cases where a Transfer and Mortgage of the same land are presented for registration and endorsement at the same time, such Mortgage should be considered as taking effect immediately after the registration of the Transfer. That no documents, Caveats, &c., subsequently presented for registration, should take priority over such Mortgage or affect its validity, and that the Mortgagee's security should in no way be affected by the death or bankruptcy of the Mortgagor during the time which might elapse between the registration of such Transfer and the registration of the Mortgage. The question is not free from difficulty, but, as the law now stands, the risk in these cases might be very considerably diminished if the clerical staff of the office were always sufficiently strong to allow of the immediate preparation of the Transfer Certificate, in which case the Mortgage could at once be registered, and the whole transaction could be completed at the office counter in a day, or two at furthest.

In Sir R. R. Torrens' "Handy Book," page 46, there is given a Form of Settlement intended for the creation of Estates Tail, but in the Real Property Act there appears to be no machinery provided by which Tenant in Tail can bar the entail. Provision should therefore be made for enabling a Tenant in Tail to deal with his land in as unrestricted a manner as under the old system of conveyancing. A form of disentailing assurance or transfer could be easily prepared with this object.

By the 81st Section of the Real Property Act, the application of the Devisee or other person claiming an estate of freehold in the land of a deceased proprietor, is submitted for the consideration of the Lands' Titles Commissioners, who may either reject the application or direct the Recorder of Titles to have the same advertised for not less than a month. If in the interval there is no Caveat, a memo. of the transaction is entered in the Register Book, and new Certificate is issued to the applicant for the land transmitted. The delay and cost of this proceeding is objected to on the ground that "the Act requires a Devisee of a Mortgage for £10,000 to be considered only by the Recorder, but if a Devisee of a £10 allotment wished to be registered proprietor, he must file his application, pay fees, the matter must be considered by the Commissioners, and finally advertised." It would be a boon to the public and the profession if, in the case of real estate, the application could be considered by the Recorder alone, as in the case of personal property, and passed by him without the delay and cost occasioned by advertising.

This can be done by a fundamental alteration of the Law of Real Property, making the land on the death of a proprietor pass to the executor or administrator. If this alteration were only to affect land under the provisions of the Real Property Act, there would, however, I am afraid, be occasionally complications and difficulties arising between the old law and the new, but it seems doubtful whether there is any good reason why real estate held under the old law should not also pass to the Executor or Administrator and be held by them subject to the trusts and equities affecting the same. The reform of the laws of Real Property seems to be tending in this direction. By the South Australian Real Property Act, real estate passes to the Executor or Administrator, and consideration by the Commissioners, advertising and assurance fees are dispensed with. Probably this example may be followed here with advantage, and the law be altered accordingly.

It is objected that "the Act contains no power to create an equitable Mortgage by deposit of the Certificate of Title." It may be questioned whether it is desirable to make any addition to the law in this respect. The policy of the Real Property Act appears to be that all incumbrances, charges, and liens should appear on the Register—in fact, that the state of the proprietor's title should be disclosed to those taking the trouble to search: moreover, the execution of a Mortgage in the form prescribed is so simple and inexpensive a transaction that it need be seldom dispensed with on the ground of trouble or cost. If secrecy is absolutely necessary, a Mortgage can be signed, but not registered, and a Caveat can be entered by the Mortagee.

There does not appear to be any objection to Leases being in triplicate. At present the Lessee generally holds only an office copy, and when an assignment becomes necessary, difficulty sometimes arises in obtaining the original document.

A Lease for less than three years should, I consider, be registered if desired by the parties, but there need be no alteration of the form in the schedule on this account. In my report dated 7th July, 1883, on Mr. H. Dobson's letter, I submitted that Mortgages and Leases might be extended by endorsement, and I am still of that opinion. "Extended for years" endorsed on the Mortgage and Lease, together with any alteration in terms, and signed by the parties, would, I

consider, be sufficient. The document could be registered in the same manner as the original instrument. If the land under lease is mortgaged, the consent in writing of the Mortgagee must, however, be obtained.

It has been suggested that the Commissioners should be empowered to pass defective titles, charging an additional assurance fee for the risk. Increased responsibility would thus be thrown upon the Commissioners; but assuming there would be no objection on their part, this provision might be made in the Act.

It is proposed that when a party succeeds in an application to the Supreme Court on a matter previously decided by the Recorder, but with which decision the applicant is dissatisfied, all expenses should be paid out of the assurance fund. In my opinion this would be diverting the assurance fund from its legitimate object, and might, in some cases, be an incentive to litigation.

It is desired that when a person transfers the *whole* of any land described in any Grant or Certificate of Title for the same estate or interest for which it was held by the transferror, it shall not be necessary to issue a fresh certificate, but that a memorial of such transfer shall be entered on the Register and on the Duplicate Grant or Certificate of Title. This would effect a saving of office labour and the cost of a new Certificate (£1); but the process should, I consider, be limited to one transaction.

The 96th Section, as to the attestation of Instruments, is objected to as causing trouble, delay, and unnecessary expense. It is not necessary, however, that the execution of Instrument should in every case be proved, particularly if the attesting witness be a Tasmanian J.P., Solicitor, Notary Public, or Commissioner of the Supreme Court. Fraud must, however, be carefully guarded against.

I see no good reason for requiring Powers of Attorney to be filed in the Registry of Deeds and also in the Lands' Titles Office. As to property under the Real Property Act, filing in the latter Office should be sufficient.

The time of the Recorder would be very much taken up if employed in settling drafts of Instruments for the different Solicitors. Such a practice would probably lead to endless trouble and argument. At the same time the profession have always obtained advice and assistance when required, and can continue to do so.

After a transfer of part of the land included in a Certificate of Title or Grant, Balance Certificates can be taken out for the whole or part of the land remaining untransferred. There seems to be some misapprehension on this subject. It is provided for by Section 45 of the Real Property Act.

As yet it has not been judicially decided in this Colony that a judgment creditor is not in a position to enter a caveat against dealing with his debtor's land. Doubts have, however, arisen on the subject, and should it not be shortly legally settled beyond dispute that a caveat may be entered by a judgment creditor against any dealing with land held by the debtor under the Real Property Act, I would recommend legislation to that effect.

The 89th Section of the Real Property Act has been referred to as requiring amendment, "so that a Certificate of Title could be issued to the reversioner or remainderman subject to the prior life estate," and I consider that the South Australian Act may be followed in this respect, which provides for Certificates of Title being issued to the proprietors of legal estates of freehold, whether in possession, reversion, or remainder. I may here be permitted to observe that remaindermen, under the Real Property Act, will thus be in a better position than those under the old system of conveyancing, who are frequently unable to obtain the custody of their Title Deeds, which are generally held by the tenant for life.

It is enacted by the 3rd Section of the Real Property Act that "whenever a Form in the Schedule thereto is directed to be used, such direction shall apply equally to any Form to the like effect signed by the Recorder of Titles, or which for the same purpose may be authorised in conformity with the provisions of the Act, and any variation from such Forms, not being in matter of substance, shall not affect their validity or regularity, but they may be used with such alterations as the character of the parties or the circumstances of the case may render necessary." This Section confers wide discretionary powers, and I venture to assert that it has been liberally construed, not, as has been more than insinuated, narrowly interpreted.

In practice it has, I believe, been found that the Forms in the Schedule, with occasional alterations, have met the requirements of the different transactions. It is now suggested that various new Forms should be added to those at present in use, and by the 92nd Section provision for this is made with the consent of the Governor. If there is a question as to the validity of the Forms now generally used, which would appear to be the case, these and additional Forms can be transmitted

for the consent of His Excellency; at the same time I must remark that the fact of the Forms in the Schedule having been made sufficient for carrying out the various transactions for many years past is inconsistent with the charge of "a want of elasticity" in their use which is represented as having been hitherto a hindrance to the system.

The Sections of the Conveyancing and Law of Property Act enumerated in the letters, and recommended for their general usefulness and adaptability to both systems of conveyancing, may, I think, with the exercise of due caution, be allowed to affect property under the Real Property Act.

It has been contended that under the Real Property Act neither Transfers, Surrenders of Leases, nor Discharges of Mortgages are required to be in duplicate. I have, however, before endeavoured to prove (*vide* my Report on Mr. H. Dobson's letter dated 7th July, 1883,) that duplicates of these instruments are required by the Act. The necessity for Transfers being in duplicate, is not, however, very apparent, and in my opinion the duplicate in the case of Transfers may be dispensed with. I do not anticipate any difficulty or complication if Surrenders of Leases and Discharges of Mortgages, when duly endorsed, although not in duplicate, are made valid; but I would recommend that any alteration of the Act in this respect should, so far as possible, be in accordance with the amendments of the law in the other Colonies.

The 78th Section of the Real Property Act appears to be misunderstood; and I think a married woman's right to deal with land of which she is the registered proprietor might be more clearly defined. Until the husband is registered as co-proprietor in the manner provided by the 78th Section, the wife should be considered as sole proprietor, and as holding the land for her separate use. A section might be introduced to this effect.

It is stated that "the Sheriff has no power to convey or transfer to a purchaser land under the Real Property Act sold to him by virtue of a Writ of *Fi. Fa.*" In my opinion sufficient provision is made by the 94th Section for carrying out Sales by the Sheriff, and by a slight alteration of the Form of Transfer in the Schedule a suitable Form of Transfer can be provided. There can be no objection, however, to enactments removing any doubt on the subject, and, with this view, the Real Property Statutes of Victoria might be followed. Similarly a Form might be prepared for the Transfer of land under a Decree or Order of the Supreme Court.

The expense of dealing with land held under both systems of conveyancing is complained of,—that two sets of Deeds are required, two sets of stamps and fees have to be paid. *In cases of this description it would be to the advantage of the landholder to bring the land held under the old system of conveyancing under the provisions of the Real Property Act.* Unity of system would be attained, and the double sets of deeds and fees would for ever be done away with.

It is proposed that one application should be allowed in respect of land already granted by the Crown and land held under Location Order only. I do not, however, recommend any alteration of the law in this respect. As to land unalienated in fee from the Crown, the Lands' Titles Commissioners are guided by equity and good conscience only, but where land has been granted their decisions are differently arrived at.

I see no good reason for altering the constitution of the Board of Lands' Titles Commissioners in the direction indicated,—viz., that "the Commissioners should be professional men." The Board cannot be expected by its decisions to please every applicant, although probably in most cases giving satisfaction to the legal profession and to the public.

I notice a very general proposition that a Registered Proprietor should be empowered to remove his land from the operation of the Real Property Act and to deal with it under the old system of conveyancing, and if the title became at any future time complicated it is suggested that a new Certificate of Title could again be applied for. With this view of the utility of the Real Property Act I have no sympathy.

If such a measure as that proposed were adopted, before many years had elapsed not a few of those Titles, now liberated, perhaps with infinite pains and difficulty, from a mass of documents and technicalities, would again be overlaid by the old system of conveyancing, with its "tons of parchment," so deprecated in one of the letters.

I have, &c.

GEO. PATTEN ADAMS, *Recorder of Titles.*

The Hon. the Attorney-General.

Lands' Titles Office, Hobart, 12th January, 1884.

SIR,

I HAVE the honor to acknowledge receipt of correspondence between the Honorable the Attorney-General, Mr. Henry Dobson, and yourself, forwarded for consideration with the answers from Solicitors forwarded to the Select Committee of the House of Assembly. I had already completed the annexed Report before receiving that correspondence.

I do not think there is anything arising therefrom which necessitates addition to my Report, as I think all the questions of Law therein referred to have been reported upon by me, and the questions of Departmental management or alleged delay are, I conceive, for the reasons given in my Report, not within my province to deal with.

I return the correspondence herewith.

I have, &c.

JAMES WHYTE,

Solicitor to the Lands' Titles Commissioners.

G. P. ADAMS, *Esq., Recorder of Titles, Hobart.*

REPORT ON "TORRENS' SYSTEM" IN TASMANIA.

Lands' Titles Office, Hobart, 12th January, 1884.

SIR,

I HAVE the honor to acknowledge receipt of copy of questions put to ten Solicitors by direction of a Select Committee of the House of Assembly with reference to the working of the Lands' Titles office, and their replies thereto, forwarded to me with instructions for perusal, with a view to the Attorney-General being furnished, for the information of Parliament, with a full report upon the matters alleged, distinguishing between matters of complaint against the administration of the Real Property Act and defects alleged to be inherent in the system or requiring remedy by legislation. With reference to "matters of complaint against the Administration of the Act," I respectfully submit that there are two sufficient reasons why I should not report upon them—First, my official connection with the Department being of so recent a standing, any observations which I might make arising from matters brought under my notice would be of little value; secondly, in my position as Solicitor to the Department I have nothing to do with its office management, but have to deal only with all matters as they are referred to me. Hence I submit it would be invidious for me to report on the departmental administration, which is under your control, and with which it is not my province to deal.

With reference to the "matters of complaint as to defects alleged to be inherent in the system or requiring remedy by legislation," I think it will prove most convenient to take the Solicitors' answers *in globo*, dividing the points touched upon, and such others as I have occasion to refer to, under different headings, instead of dealing with each Solicitor's letter and the matter especially arising therefrom separately. I have therefore the honor to furnish the following Report:—

1. *Trusts and Settlements.*

One of the most important charges brought against the Torrens' system is that it is "quite unsuited" and inadaptable to creating or dealing with Trusts or Settlements, leaving the Trustee the absolute owner upon the Register, with full powers of alienation, and the *Cestuis qui trustent* without any protection to their equitable or beneficial interests.

In creating Settlements or Trusts of land under the old system of conveyancing, two principal modes are adopted—first, direct settlements, by which I mean a direct limitation of estates to the parties interested, by means of the Statute of Uses; secondly, indirect settlements, by which I mean the vesting of estate in the land in trustees by an instrument, upon certain Trusts declared either therein or by a separate instrument. A direct settlement can be made of land under the Torrens' system with any number of limitations of estates for life in tail, cross remainders, &c. preceding the final remainder, with as much facility as exists under the old system, the only difference in procedure being that under the Torrens' system the estates are limited direct, without the intervention of the Statute of Uses (see Form D8, page 46, of Sir Robert Torrens' Handy Book on the Real Property Act.) At the same time, I am of opinion that uses might be employed (see A'Beckett's Transfer of Land Statute, second edition, page 121, and Form of Transfer to Uses in the Appendix thereto, page 276). In this Colony, indirect settlements of real estate arise in most cases under wills the trusts of which are for sale and division of proceeds among beneficiaries, but in no case, whether under will or declaration of trust *inter vivos*, is a purchaser bound to see to the application of the purchase money. Consents by beneficiaries to a sale by trustees are most rare, and even where sales can only take place on the happening of any certain event, the purchaser only

requires proof of the event having happened, and the beneficiaries' rights to the purchase money are quite unprotected, excepting so far as their remedy in a Court of Equity remains. If the indirect settlement or trust is of land under the Torrens' system, the parties beneficially interested under the will or separate declaration of trust, or any person on their behalf, may enter caveat against any dealing by them being registered, and such caveat will remain in force until withdrawn or removed by Judge's order (Sections 83 and 84 of No. 1 Real Property Act), and will not "lapse at the end of the three months," as appears to have been the impression of some. It will thus be seen that beneficiaries have more power to protect themselves, without resorting to an Equity suit, when the land is under Torrens' system than when under the whole system; while, if they are merely passive, their interests are no more jeopardised under the former than under the latter system. In Victoria, where a registered proprietor is known to be a fiduciary only, the office marks his certificate of title "S.O."—special owner. If any proposed dealing is in accordance with the trust it is passed, if not, the Registrar of Titles enters a caveat on behalf of Her Majesty, under Section 129 of the Victorian Act 301, which corresponds in effect to our Act 25 Victoria, No. 16, s. 11, s.s. 5 (see T. A'Beckett's Transfer of Land Statute, second edition, pp. 183 and 184). I see, however, by the Report of the Board which recently sat on the Office of Titles there, it is proposed to do away with "S.O." In these days, when the tendency of the times is against permitting land to be "*tied up*," I much question whether Settlements and Trusts of land should *not be discouraged instead of fostered*.

2. *Description of land by diagram and not by natural land-marks.*

It would appear to be the impression that no written description is given of the land in the Certificate of Title, and that a reference is solely relied upon to a diagram in the margin. This is a misapprehension. Descriptions are written at full length in every case, excepting where the land affected comprises the whole of the land comprised in an original grant. Whether or not it would be advisable to have fixed land-marks on the ground or under it as, I think, is the case in New Zealand and some parts of America, is, I think, a Surveyor's question, and consequently not for me to deal with. I suggest, however, that diagrams be on a larger scale to allow for subdivision, plotting, and marking off.

3. *Tenancy in Common.*

The multiplicity of Certificates of Title, where there are several Tenants in Common, each having to take out a separate certificate, is justly referred to as being a blot, which is however easily capable of removal by adopting the provisions of Section 44 of Victorian Act, No. 301, which runs in these terms: "And in all cases where two or more persons are entitled as Tenants in Common to undivided shares of or in any land, such persons may receive one certificate for the entirety, or separate certificates for the undivided shares."

4. *Transfer and Mortgage.*

The present practice referred to, of leaving the number of the Certificate of Title in the Mortgage, and the date of the latter blank, until the new certificate issues, is undoubtedly dangerous to Mortgagees, but can, I think, be easily altered with advantage. In Victoria the Office of Titles considers registration takes effect from the time of production, not from the time of the actual making of the entry of the memorial of the instrument, and should registration be delayed pending compliance with a requisition made by the office, no instrument, not even a caveat lodged subsequently, will be dealt with until the instrument first lodged is disposed of (A'Beckett's Transfer of Land Act, page 99.) It follows in practice from this that in cases of "Transfer and Mortgage" the Mortgagor is described as "Registered Proprietor or Entitled to be Registered Proprietor," and the Mortgage is filed *immediately* after the transfer for registration. The sections construed as above in Victorian are *verbatim* the same as those in our Act, but to avoid any doubts on the point it may be well to provide for the question by legislation. I submit this might be done by a declaratory section providing for making the transfer "subject to Mortgage of even date herewith, and intended to be registered immediately after the registration hereof." The section might then enact that in cases where such notice is given on the face of the transfer, the estate of the transferree shall, on registration of his transfer, relate back to the execution thereof, when it will follow that he would have had power to sign a mortgage, to be filed at the next moment after filing his transfer. (Such Mortgage, for description of the land, to refer to old Certificate or Grant, or to have description set out in full where part only affected.) One of the fundamental principles of the Torrens' system is to keep each transaction, so far as the documentary evidence of it is concerned, separate, and hence I think the above would be a course preferable to embodying a transfer and mortgage in one document. Here it may not be out of place to refer to the allegation that where instruments only take effect from the date of registration, there is risk to the parties who in practice part with their money when the documents are signed, *sometimes days before registration*. I cannot dispute that in such practice there is at any rate a minimum of risk of a caveat being entered. Under the old system there is a similar risk of a judgment being registered. The remedy is, however, very simple. All transactions should be *finally* completed at the counter of this office, for up to the last moment a caveat may be entered by some one claiming estate or interest in the land and forbidding registration.

The parties might easily conclude all the details of a settlement beforehand, and then finally attend at the Lands' Titles Office, search for caveats, and finding none, and everything in order, then exchange money for signed instruments, which would date their registration from the then time of filing. It is, of course, impossible to invent any system impervious to fraud: the most that can be done is to render it as difficult as possible to commit, and as easy as possible to detect.

5. *Estates Tail.*

It is alleged that Estates Tail cannot be created or barred under this system. The first proposition is in my opinion not in accordance with law, and I have approved of a Certificate of Title being issued for an Estate Tail; but there is certainly no way of barring one when once created. This should be altered, I think, and power of barring given to the same parties who have it under the old law.

6. *Applications to be Registered Proprietors of Deceased Persons' Lands.*

The Profession complain of the cost occasioned by devisees having to submit applications to the Commissioners for new Certificates of Title on the death of their testator and to pay an assurance fee, and the delay of having such applications advertised for a month before they can be considered as finally passed, and they contrast the position with the expedition of registering a Will in the Registry of Deeds where the land is under the old system. The cases are not analogous. When the new Certificates are issued, the testator's devise is practically *underwritten* by the guardians of the Assurance Fund, while registration in the Deeds' Office has no efficacy to make a doubtful devise a good one, and is mere notice to the world of the devise. I think, however, the South Australian law might be followed with advantage in these cases, and the question of construction got rid of by making the lands under Torrens' system all pass to the executor, whatever the devise might be. On production of the probate there could be no question of the executor's title, vouched for by the seal of the Supreme Court; and on entering a memorial at foot of his testator's certificate he would be deemed registered proprietor. He would then be in a position to hold or transfer upon the trusts of the Will, and any beneficiary could protect himself, if needful, by caveat. In South Australia no assurance fee is paid in these cases. Or the difficulty might be met by allowing the Recorder to dispense with the assurance fee and advertising in cases of general devises to trustees. Probably the first-mentioned course is the better one, as it is the outcome of much experience in the birth-place of the Torrens' system—South Australia.

7. *Sub-leases and Sub-mortgages and Equitable Mortgages.*

There is certainly no way of registering such documents under our Act, nor is there in Victoria or South Australia. In fact, the Board which recently sat in the former Colony on the Titles' Office appear to think the omission from their Torrens' law was made advisedly, and do not recommend legislation on the point. The practice there is to effect such a dealing by means of an unregistered Instrument, the claimant under which protects himself by a caveat entered under a section corresponding with Section 82 of our Act.

An Equitable Mortgage may be carried out in the same way; and it is within my own experience that the Court here has upheld such a caveat as being properly entered.

8. *Leases in triplicate, and assignments of same.*

I think the suggestion that Leases should be in triplicate a very good one, as the lessee would then hold a part which would (provided there was no clause contained therein against assigning without a licence) enable him to assign without the necessity of making the landlord produce his part. I think also it would be an improvement to make assignments of Lease by separate documents compulsory, and not optional, as now, thus getting over the necessity of lending the *field office part* of Lease to enable the parties to endorse the assignment, as now.

9. *Shaky or imperfect Titles.*

It has been suggested that provision should be made for bringing "shaky" or imperfect Titles under the Act. I suggest that the Victorian law be followed (No. 301, Section 32), which provides for an additional payment to the Assurance Fund in such cases. In one case in Victoria the Commissioner of Titles directed the passing of an imperfect Title on an approved bond of indemnity of the Assurance Fund being given. I think a similar option might be specifically given to the Commissioners here.

10. *Assurance Fund liable for Costs.*

I submit this is a revenue question, not within my province to deal with.

11. *Balance Certificates.*

It is suggested that proprietors should be able to take up Balance Certificates *for portions or portion* of the balance of land remaining after a transfer, and not be limited to taking up a Balance Certificate for the whole of the land remaining. This is already the law (see Section 45 of 25 Victoria, No. 16), and has been carried into effect within my own knowledge.

12. *New Certificates on Sale.*

It has been suggested that it would be more convenient not to have new Certificates on every sale. Where part of the land only comprised in a Title is transferred, a new Certificate could not be dispensed with; but where the whole of the land comprised is transferred, a new Certificate might be dispensed with, and the purchaser's Title consist of the old Certificate with the memorial at foot passing the estate, as in South Australia; but in no case do I think this should be continued a second time, as it would strike at the fundamental principle of each transaction standing alone, and would tend to complication. It is only done once in South Australia.

13. *Attestation of Instruments.*

It is most important that the signing of Instruments should be properly authenticated, and every guard placed against forgery. At the same time I think the provisions of Section 96 of the Act might be expanded without danger. As it stands at present I am daily obliged to break the law for convenience' sake by accepting the attestation of Solicitors, they, as a fact, not being included in the list of witnesses prescribed by the said section and the amendment thereof. I would suggest that this section be remodelled, and that among the prescribed witnesses be such person as the Recorder shall appoint, either as a perpetual Commissioner under the Real Property Act for attesting Instruments generally, or in any specific case. Here I may state that I am aware that it has been thought that I have construed the section too strictly, and that it is alleged that Deeds generally do not require such formalities. To this I say, Deeds, unless executed in pursuance of a power prescribing a witness, do not necessarily require one, and one is only used for the purpose of knowing where to find the means of proving the Deed at some future time. The time for proving an Instrument under the Torrens' Act is on presentation for registration; and as the Government guarantee the Title, it is quite right that all prescribed formalities should be insisted upon.

14. *As to draft of documents intended to be registered and tendered for perusal before engrossed.*

As the system is at present constituted and worked it is no part of my duty to do this, although in practice I have frequently gone through draft documents without, however, affixing an official mark of approval. If it should be considered advisable to make this part of my duty I shall of course do my best to carry it out properly.

15. *Powers of Attorney.*

I admit that I do not see the utility of filing a Power of Attorney in the Registry of Deeds and also a copy in this office, where it is only intended to affect land under this system. This has been the practice, however, to avoid doubts. I do not see any objection to making it obligatory on this Department to take official notice of Powers of Attorney filed in the Registry of Deeds without requiring a duplicate or copy to be filed in this office, but where it is intended to affect only land under this Act I would still retain the provisions of Section 70 of Real Property Act, No. 1.

16. *Judgments, Caveats on.*

In South Australia it has been decided that a judgment creditor cannot enter a caveat against any dealing being registered (*re* Palmer, 5 S.A.L.R., p. 80); and although there has been no judicial decision here on the point, I am of opinion that we have no power to receive such caveat, and that it is a mere nullity—a judgment creditor not having any estate or interest in his debtor's land. I think that caveats of this sort should be made legal, and a judgment creditor whose debtor has land under the Real Property Act be thus put on the same footing as one who has land under the old system.

17. *Certificates of Title for all Interests, legal and equitable.*

I cannot go the length of agreeing with the above, but I think all parties entitled to legal estates of freehold, whether in possession, reversion, or remainder, should have Certificates of Title, as in South Australia, and not, as at present, only those having such estates in possession.

18. *Forms.*

Doubts having been raised as to the validity of the Forms of Transfer in use for carrying out sales by order of the Supreme Court, by the Sheriff, and under Mortgage, I recommend that such forms be "consented to" by the Governor in pursuance of Section 92 of Real Property Act No. 1. It would, I think, be more convenient to alter this section so as to dispense with the Governor's consent, and if a consent is necessary, to substitute that of the Commissioners. Much stress is laid on the "want of elasticity" in the forms used under this system, and it has been suggested that it would be an improvement for this office to register deeds and documents affecting land under the system, although not in the prescribed forms, and to adopt the principles of the English Act 25 and 26 Victoria, c. 53, (Lord Westbury's Act.) The permissive use of deeds sanctioned by Lord Westbury's Act involves a combination of two incompatible principles—"Registration of Deeds" and "Registration of Titles"—producing a hybrid measure, which Sir Henry Thring, the well known English Parliamentary Counsel, has pronounced to be "entirely unworkable, and to differ little from an incomplete registry of assurances, and to possess all the disadvantages, without any of the advantages, of the numerous schemes formerly proposed for the Registry of

Deeds." In that Act it is distinctly the execution of the instrument, and not the entry in the Register, which is made operative to pass or affect the land. It is, I think, admitted that that Act has failed at Home. I think I may fairly point out that while it is alleged that our system is not elastic enough, and that no system of forms can be made adaptable to the various dealings in land, yet in the same breath the "Conveyancing and Law of Property Act" is hailed as a great boon—which it undoubtedly is—*yet it prescribes in its Schedule short forms to carry out all ordinary conveyancing transactions, including Marriage Settlements*, in lieu of those more cumbrous ones now in use. I concur in the suggestions that certain of the sections in that Act, referred to in one of the Solicitors' letters, and which are only confirmatory of general law, and not prescriptive of the mode of dealing with land, should not be excluded from affecting land under the Torrens' system.

19. *Duplicate Instruments.*

Much objection is made to the Department insisting upon having—(1) Transfers, (2) Surrenders of Leases, and (3) Discharges of Mortgages, in duplicate, and some members of the profession are of opinion that such insistance is not warranted by the Act. Be that as it may, it will, I think, be better to set the question at rest by legislation. I can see no objection to the alteration wished for in the three cases indicated. In the latter two cases such alteration will obviate the necessity now existing of *lending parties the office part* of the duplicate lease or mortgage to enable them to endorse the surrender or discharge thereon. I think it would be convenient to have the surrender or discharge by separate document at parties' option (as in assignment of lease), and not imperatively by endorsement. The form would be prescribed, and would be found to meet the cases (if duplicates of such documents are abolished) where the surrenders or discharges are partial only, which, *if by endorsement, as now, must be in duplicate, otherwise the office would have no copy to retain.*

20. *Easements.*

It has been the practice in bringing land under the provisions of the Act, under Section 17, to bring also under the Act rights of way and other easements appurtenant, over *servient tenements not under the Act.* I am of opinion that the interpretation clause of the Act is not sufficiently comprehensive to warrant this, and I am borne out in my opinion by decisions in Victoria (see A'Beckett's Transfer of Land Statute, 2nd Ed., pp. 75 and 76). In South Australia this question has been made the subject of an amended Act, which amply provides for existing ways created on bringing land under the Torrens' Act in the first instance, and removes all doubts as to power to create such ways for the future.

21. *Reference to Supreme Court to decide Applications for Grants and Caveats against same.*

In a recent case before the Court (in *re* Hart applicant, and Pegus caveator) decided in July last, His Honor Mr. Justice Dobson pointed out an omission in the law which amounted to this, that the Supreme Court was not at present competent to decide between applicant and caveator where the application is for a grant under the Real Property Act, No. 2, as it undoubtedly can where the application is for a certificate under the Real Property Act, No. 1, and pointed out the remedy. I respectfully refer to this suggestion as very important.

22. *Surveys.*

As it is admitted that many of the old original grant surveys are inaccurate, I submit that in bringing the whole of the land comprised in an original grant under the Real Property Act, *an identification survey* should in all cases be insisted upon. Inaccuracies will otherwise creep in, and eventually the assurance fund will suffer.

23. *Encumbrances on first bringing Land under the Act.*

It is, I understand, the practice to note on the certificate of title or grant on first bringing land under the provisions of the Act all existing mortgages, leases, &c. It seems to me doubtful whether this can be done with certificates in the first instance under the authority of Section 32 of Real Property Act, No. 1, which I think refers to certificates issued on transfer or balance certificates. However, the same practice is followed in Victoria. The Certificate of Title is issued to the mortgagor, and it is considered that the equity of redemption only is brought under the Act. Should the mortgagee sell under his power of sale, another application to bring the land under the Act is there held necessary, and it may be made either by the mortgagee-vendor or the purchaser (A'Beckett's Treatise, p. 79). This seems to me a most anomalous state of things, and contrary to legal principles, to have the mortgagor and the mortgagee holding their respective estates in the *same* land under *different* systems. In cases of grants I submit there is no authority to note thereon encumbrances existing at time of application. The encumbrancers are required in all cases to consent to the application, and therefore cannot be prejudiced against their will by also having their estate or interest brought under the Act. I therefore suggest, to remove all difficulties and doubts, that an amendment be made in the law expressly empowering the Commissioners in such cases to bring the entirety of the land under the Act, and the Recorder to note such encumbrances, and enabling the encumbrancers to deal with their estates or interests by instruments in the forms prescribed by the Act.

24. *Married Women.*

The reference to the position of married women is deserving of much consideration. Prior to the passing of the Married Women's Property Act, a married woman had greater power over her real property, if under the Torrens' Act, than under the old system; and indeed it has, I think, been held by the Court here that, until a husband was registered as co-proprietor with his wife, he had no legal interest in land standing in her name in a Certificate of Title under the Real Property Act. I think the provisions of Section 78 of that Act, which enable a husband to apply to be registered as co-proprietor of his wife's land, unless held for her separate use, require some alteration so as to make the law practically the same whether the land is held under the Real Property Act or the old system. Since the passing of the Married Women's Property Act in Victoria, the Office of Titles has held that the *consent of a married woman's husband* to her bringing land under the provisions of the Torrens' system is *unnecessary*, and the Office also dispenses with certificates of acknowledgment by married women on execution of instrument. It may be worth considering whether in the face of this it is worth while continuing to retain on the face of our Real Property Acts the provisions which require those two formalities, when the Married Women's Property Act renders it almost certain they could not be insisted upon.

25. *Sales under Execution.*

I think other Courts than the Supreme Court proper should have power to take in execution to sell and to transfer land under the Real Property Act.

26. *Memorials in Registry of Deeds.*

In bringing land under the Act, I submit it would be advantageous to follow the Victorian law and make memorials of registered deeds *primâ facie* evidence of the deeds where the latter are lost or mislaid, or for some reason cannot be produced. This is in effect the practice of the Department, but in such cases I cannot report the title to be passed, and the question of waiving strict legal evidence has to be left to the Commissioners. In such cases in Victoria a fee is charged for each memorial so acted upon.

27. *Purchases from the Crown.*

In South Australia purchasers from the Crown are, by the Torrens' Act, enabled to deal with their interests in the land before the grant actually issues, on production and registration of the Treasurer's receipt for purchase money, and I know from my own experience, in private practice, that such power would materially assist owners of small lots, who, although anxious to effect improvements on their land, find it difficult to borrow money thereon until the final payment is made to the Crown for it, while lenders run much risk by making such final payment for them and waiting till the grant is issued before they can obtain a proper mortgage. In practice this difficulty is sometimes got over by having the grant issued in the lender's name, and a declaration of trust executed by him; but this is an unsatisfactory way of carrying out the matter, and does not place all parties in their proper legal position.

28. *Power to take Certificates and Grants off the Register, and treat them as Roots of Title under the old system.*

To give this power would be in effect a practical repeal of the Torrens' system, and in a very few years' time this Department would be only used as a place to clear up lengthy and shaky titles. When the system was conceived, the head and front of it was *to establish Registration and guarantee of Title*, and one of the principal adjuncts of the system was, and is, the enabling people to bring their land under the provisions of the system; but it was never intended to merely supplement the grants jurisdiction of the Supreme Court by creating a power to issue new titles where the land has been already granted as well as where it is ungranted. The power to remove titles from the Register does not exist in any of the Australian Colonies, and in Victoria, where a Board has been recently sitting on the Act and the Department, it is not proposed to create any such power. The leading journal there speaks of the system, as it there exists, in these terms: "Of the advantages we enjoy in a Colony where it is possible to make a new start in many things none is greater than the security of title and the simplicity of sale and purchase of real estate which obtain here under the Torrens' system." Conveyancing by Registration of Title has been, I understand, in force for over a century in some of the largest European States, and has worked well: it has worked well in all the other Colonies, and is popular in each of them: but like every other system devised by man, the light of experience shows how it may be improved. Here we have the immeasurable advantage of seeing how the alterations made in the other Colonies have worked; and I suggest that any alterations which the Government may think of making in this system be made on the lines of the South Australian and Victorian Acts, which have been most frequently amended, and consequently may now fairly be considered as the result of most experience.

I have, &c.

JAMES WHYTE,
Solicitor to the Lands' Titles Commissioners.

G. P. ADAMS, *Esq., Recorder of Titles, Hobart.*

Appendix B.

Committee Room, House of Assembly, 15th August, 1885.

Sir,

The Select Committee appointed by the House of Assembly to enquire into and report upon the working of the Torrens' Act, beg to request that you will be good enough to inform the Committee if, in your opinion, the Torrens' Act can be safely and judiciously amalgamated with the Conveyancing Law Amendment Act ; and if not, to give your reasons for holding that opinion.

I enclose a copy of the evidence obtained by the Select Committee appointed by the House of Assembly in 1883 to enquire into the working of the Lands' Titles Office, which will no doubt assist you in advising the Committee on this important matter.

As the Committee are anxious to bring up a Report as early as possible, I shall feel obliged if you will favour the Committee with a reply on or before the 26th instant.

I have, &c.

R. J. LUCAS, *Chairman.*

Appendix C.

Public Buildings, Hobart, 25th August, 1885.

Sir,

I have the honor to acknowledge the receipt of your letter of the 15th instant, requesting me to inform the Select Committee appointed by the House of Assembly to enquire into and report upon the working of the Torrens' Act if, in my opinion, the Torrens' Act can be safely and judiciously amalgamated with the Conveyancing Law Amendment Act ; and if not, to give my reasons for holding that opinion.

In my opinion, such an amalgamation of the law of Real Property, if possible, would be neither judicious nor safe.

Title under Torrens' Act is essentially title by registration, and this principle of registration, the base of the system, is recognised throughout the whole Act. Title under the old system of conveyancing, which the Conveyancing Law Amendment Act is intended solely to effect, is evidenced by deeds, and the mere registration of these deeds will not bring the title into the same condition as a title under Torrens' Act, nor will the title be in any degree simplified by the process.

Each time the land is dealt with under the old system of conveyancing the ever-lengthening chain of deeds and documents must be inspected ; abstracts of title, giving its history from the earliest commencement, must be prepared and carefully perused ; requisitions must be answered, and defects must be remedied.

It matters not that this process may have been previously recently gone through on behalf of a former purchaser or mortgagee—the same course must be pursued by the solicitor of each intending purchaser or mortgagee as often as a fresh transaction takes place ; delay is frequently inevitable ; and even after every care and precaution has been taken, a title is never stronger than its weakest link.

Title by registration under Torrens' system of land transfer completely abolishes this retrospective process. The duplicate of each Certificate of Title constitutes a separate page of the register, disclosing by memorial thereon all dealings with the land comprised in the Certificate ; and as often as the land becomes the property of a new proprietor the old Certificate is cancelled and another Certificate is issued, the duplicate of which constitutes a new folium of the Register, upon which is underwritten all encumbrances, charges, and interests existing and relating to the land at the time of registering the new owner as proprietor. This title is indefeasible, and can be affected by no deed or instrument except such as shall have their particulars duly entered by the Registrar on the folium of the Register. Until this registration takes place no estate or interest passes, which is not the case under the old system of conveyancing, where the transfer or other dealing is effected by the execution of the instrument.

The general principles of the Conveyancing Law Amendment Act are in my opinion unsuitable to the provisions of the Torrens' system of land transfer : for example, Section 6 of the Conveyancing Law Amendment Act deals with the subject of constructive notice—a doctrine highly valuable under the old system of conveyancing, but one which the Torrens' Act does not entertain, as being wholly foreign to its purposes ; and many similar instances of incongruity may be noticed.

It has been objected that Torrens' Act is unsuitable for dealing with equitable or trust estates, and that it restricts the powers of alienation over land which proprietors under the old system now possess. In my Report, dated 28th January, 1884, which I had the honor to furnish to the Honorable the then Attorney-General for the information of Parliament, these objections were answered in the following terms :—

"It is provided by the 66th Section of Torrens' Act that no entry can be made in the Register Book of any notice of Trust, but this is not intended to prevent the settlement of property which may be effected as directed by the 86th Section, giving power to the proprietor to create or execute any power of appointment, or to limit any estates, whether by remainder or otherwise. Land can also be transferred to Trustees, with or without the words "no survivorship," who may execute any instrument in the nature of a settlement declaratory of the Trust upon which the property is to be held. A copy of the instrument may be deposited in the Lands' Titles Office, and, if considered necessary, caveat may be entered to protect the interests of the parties beneficially entitled, or to prevent any dealing with the land otherwise than in the manner provided by the settlement. The Trustees appear on the Register as absolute proprietors, but in this respect they differ but little from Trustees under the old system of conveyancing, who in most well-drawn Settlements are invested with full power of selling, leasing, and exchanging, and a purchaser from them is in no way concerned or responsible for the proper disposition of the purchase money."

In my Report before mentioned I pointed out certain alterations and amendments in Torrens' Act which I considered might be judiciously effected, and I also indicated the manner in which these changes might be carried out.

It has occasionally been found necessary in the other Colonies, where the new system has hitherto worked successfully, to introduce amendments, and a Bill with this object in view is, I believe, at present being prepared, and will shortly be laid before the Victorian Parliament; it would, therefore, in my opinion be advisable to await the result of this measure before attempting any such radical reform as that now sought to be introduced.

Torrens' Act has been worked with much satisfaction in all the Australian Colonies ; and I am not aware that any such retrogressive movement as that now proposed has elsewhere ever been advocated. If carried out, it would, I think, be found in practice to amount to a repeal of the Act.

It is a fact not to be disguised that the new system of land transfer is antagonistic to the old system of conveyancing ; and whatever effect the projected amalgamation might have upon the general law of Real Property, it would, I consider, for the reasons above stated, prove fatal to the progress of Torrens' Act, which for many years past has been in operation throughout the Australian Colonies, and has worked successfully in Tasmania for nearly a quarter of a century.

I have, &c.

G. PATTEN ADAMS.

R. J. LUCAS, *Esq., M.H.A., Chairman of the Select Committee for enquiring into and reporting upon the working of the Torrens' Act.*

Lands' Titles Office, Hobart, 26th August, 1885.

SIR,

I HAVE to acknowledge the receipt of your circular of the 15th August instant, requesting me to inform a Committee of the House of Assembly whether, in my opinion, the Torrens' Act could be safely and judiciously amalgamated with the Conveyancing Law Amendment Act ("Conveyancing and Law of Property Act, 1884,") and, if not, my reasons for that opinion. I also received a copy of the evidence obtained by the Select Committee appointed by the House of Assembly in 1883 to enquire into the working of the Lands' Titles Office.

After as careful a consideration of the question as the short time allotted to me to send in my answer will allow, I have come to the conclusion that an amalgamation of the Torrens' Act and "Conveyancing and Law of Property Act, 1884," would be neither safe nor judicious.

The Torrens' Act, introduced into South Australia by the late Sir R. R. Torrens in 1856, and passing into law there in 1858, has been generally adopted throughout the Australian Colonies. Other British Colonies have also adopted it. Canada is, I believe, endeavouring to introduce the system there, and even in England it has been seriously talked of introducing a similar measure.

One of the great advantages of the Torrens' Act claimed for it by its originator is that it cuts down the great length of titles, and gives every man a title to his property comprised in one short document, which he can (if of average intelligence) easily understand without a lawyer's aid. This great advantage would be lost by an amalgamation of Torrens' Act with the new Conveyancing

Act, which does little more than cut down the length of deeds and abstracts, but leaves the system of dealing with land still too complicated to be attempted by a layman. Another strong argument in favour of keeping the Torrens' system intact is that it has been found to work well in the other colonies, where the transactions are much greater and more numerous than here. There have been numerous improvements on the original Act in South Australia, and Victoria is now considering further improvements. Such being the case, it will be better to wait and profit by the greater experience of our neighbours than to rush into a scheme which would be difficult to devise, would undo all the good done by the Real Property Act during over 20 years, and by again rendering liable to complication titles that have been once rescued, do great injury to the public and benefit only the lawyers.

The two systems of conveyancing are so utterly opposed to one another in principle that I am certain any attempt to combine them as proposed would only lead to fresh trouble; so I consider the best course will be to amend the Torrens' Act as pointed out by Mr. Adams, the former Recorder of Titles, and Mr. Whyte, formerly Solicitor to the Lands' Titles Commissioners, taking in such as are practicable of the suggestions of the solicitors who have replied to the questions of the Select Committee. By this means, and utilising the experience gained by Victoria and South Australia, an Act could easily be framed that would answer every requirement, and, in the words of Messrs. Charles Butler and John M'Intyre, members of the leading firm of Conveyancers of the Colony, and whose opinion, founded on great experience, is entitled to foremost consideration, "such a system of Conveyancing would be established in the Colony as would leave little or nothing to be desired."

I have, &c.

S. K. CHAPMAN, *Solicitor to the Lands' Titles Commissioners.*

R. J. LUCAS, *Esq., Chairman of Select Committee of House of Assembly, Tasmania.*

Patterson-street, Launceston, 26th August, 1885.

SIR,

IN reply to your communication of the 15th instant, I am of opinion that the Torrens' Act cannot be "safely and judiciously amalgamated" with the Conveyancing Law Amendment Act.

The latter is apparently an adaptation of the English Conveyancing Act of 1882, and many of the defects of the Torrens' Act, as pointed out by members of the legal profession in 1883, remain *in statu quo*.

I venture to think that if our Real Property Act were repealed, and an Act modelled on that of South Australia passed in its stead, the change would be beneficial alike to clients and to legal practitioners.

I have, &c.

G. CROSBY GILMORE.

R. J. LUCAS, *Esq., M.H.A., Solicitor, Hobart.*

I DO not see how the Real Property Act can possibly be amalgamated with the Conveyancing Act, but I do think that some of the principles of the Real Property Act could be applied to the general principles of conveyancing, so that the community could have the advantage thereof without the disadvantages arising under the Real Property Act.

It appears to me that the main advantage to be obtained by the Real Property Act is that each purchaser of land can commence with a clean title evidenced by one document, and can from time to time, on clearing off incumbrances, again obtain a similar clean title, and that if such advantage can be combined with the general principles of conveyancing, with a simple mode of registration and making searches, the general adaptability of the old system of conveyancing must make it superior to a mere formulary system.

In order to effect this, I think that the present Real Property Act should be repealed entirely, but that the Lands' Titles Department might be retained and the office of the Registrar of Deeds amalgamated therewith.

All lands would then be under one system, and one conveyance would be sufficient to convey any lands whether they are under the Real Property Act or not, and all documents relating to land would then be registered in one office.

In this office would be kept, as are now in the Lands' Titles Office, duplicates of all grants and certificates of title of land now under the Real Property Act, and also duplicates of all grants and certificates of title which may hereafter be issued.

Whenever a document relating to land comprised in any such grant or certificate of title has to be registered, then, on production of the document, a memorial thereof should be notified on the duplicate grant or certificate of title—in fact, a memorial somewhat similar to, or perhaps even shorter than, the memorial now made under the Real Property Act.

Documents relating to land not comprised in such grants or certificates of title would have to be registered by lodging a memorial (which might be modified), as under the present Registration of Deeds Act, until new grants or certificates of title were obtained for such lands.

If the documents related to both classes of lands, such memorial would have to be lodged, and in addition a memorial would have to be entered on the duplicate grant or certificate of title of the land affected.

The Lands' Titles Department should be empowered to issue new grants or certificates of title from time to time, whenever required by the owner of the land, on being satisfied that the title is good.

The effect would, I think, be that for ordinary transactions the work of the Lands' Titles Department would be much the same as at present. A conveyance (instead of a transfer) would be presented for registration, and the memorial thereof would be entered on the duplicate grant or certificate of title, and probably the purchaser would, in the majority of cases, at once ask for and obtain a new certificate of title.

If a person wished to deal with his land in any particular way, as by way of settlement, &c., or if a new certificate of title were not obtained, or if the property passed under a will or letters of administration, the documents relating to the land, commencing from the grant or certificate of title, would form the title to the land, as is now the case with land not under the Real Property Act, and as is now the case with leaseholds under the Real Property Act. Of course, such documents would have to be registered, and parties dealing would, as now, have to search; but as the registration would be by memorial on the duplicate grant or certificate of title, the trouble of searching would be slight, and the search would be against the land and not against the parties. If at any future time the owner of the land wanted a new certificate of title he could obtain one and begin again with a clean title.

Mortgages (which, by the aid of the Conveyancing Act, and by referring to the vol. and fol. of the grant or certificate of title, might be shortened) would be registered by the entry of a memorial on the duplicate grant or certificate of title, and the mortgagee would have the same powers that a mortgagee of land not under the Real Property Act now has.

On the death of the owner of land there need not be any application to be registered as proprietor. The will or letters of administration would be registered by a memorial on the duplicate grant or certificate of title, and nothing more would be necessary. The property could immediately be dealt with in the usual way. Of course before the Lands' Titles Department issued a new certificate of title they would have to be satisfied that any party dealing with the land under the will, &c., had power so to do; but it would not be necessary for the devisee, &c. to take out a new certificate.

The certificates of title issued under the new system could be as indefeasible as certificates of title under the Real Property Act, but need not be a guarantee against incumbrances. A certificate of title now is no proof that no caveat has been entered. Incumbrances would have to be guarded against by search. Judgments could be registered by memorial on the duplicate grant or certificate of title.

The grant or certificate of title in the possession of the owner of the land need not have any memorial of incumbrances thereon (for incumbrances including judgments would have to be guarded against by search), but such owner might be permitted for his own information to have a copy made thereon from time to time of all memorials which are entered on the duplicate.

In case of a conveyance of portion only of the land comprised in any grant or certificate of title, the purchaser could have a certificate of title for such portion, but the vendor could retain his original grant or certificate of title, and need not take out a balance certificate unless he desired, the portion sold being shown by the memorial entered on the duplicate on the registration of the conveyance.

Matters of detail would have to be arranged and provided for; but I see no reason why a system should not be adopted, as above indicated, so as to permit new certificates of title to be issued as are now issued under the Real Property Act, and at the same time to allow the freedom which is attainable under the ordinary conveyancing system.

ALFD. GREEN.
August 21, 1885.

Formby, 24th August, 1885.

SIR,

I HAVE the honor to acknowledge the receipt of yours of 15th instant, and, in reply, to state that in my opinion the Real Property Acts can be safely amalgamated with the Conveyancing and Law of Property Act 1884, and that owners and occupiers of land would benefit considerably if the amalgamation be (to quote your letter) judiciously effected. I am not one of those who wish to see the system introduced by the Real Property Act entirely swept away. It has its advantages as well as disadvantages, and therefore great care should be taken so as to give the public the good points of each system. If this be done, the advantage of having only one system of conveyancing would be so great and easily perceived, that the most ardent advocate of the Real Property Act could reasonably find nothing to cavil at in the change, and would soon wonder how the existence of two systems of dealing with land had been so long tolerated side by side.

The disadvantages of the Real Property Acts appear to me to be, with two exceptions, very fully set forth in the evidence taken by the Select Committee in 1883, for a copy of which I thank you. The exceptions are,—

1. The Act provides no form for transferring property from the registered proprietor to a sub-purchaser on a sale before a transfer has been executed to the original purchaser. The registered proprietor can insist on transferring to the purchaser from him, and when that transfer has been registered and a Certificate of Title issued (and not till then) a transfer to the sub-purchaser may be signed. There are thus two transfers and two certificates, creating unnecessary expense as well as delay. Under the old system one conveyance would complete the transaction, the vendor by direction of the purchaser conveying to the sub-purchaser.
2. Where land is sold in consideration of a rent-charge to be secured on the land, the same difficulties and risks arise as in the case of a sale where part of the purchase money is to be secured by mortgage on the land.

I have found that section 47 of the Real Property Act, which requires the registration of leases, causes great inconvenience. I think it would suffice to compel registration when the term exceeds fourteen years or contains a provision enabling the lessee to purchase an interest in the land. Reading sections 42 and 53 of the Real Property Act together, it appears that a mortgagee or encumbrancee has no estate in the land, and I can therefore see no reason in insisting upon the consent of a mortgagee or encumbrancee to make a lease valid.

As the Recorder of Titles can very seldom have a personal knowledge of the parties to instruments presented for registration, I think section 32 of the Real Property Act in its present shape, so far as it relates to a certificate showing that the owner is a minor or a person under disability, is impracticable, and should either be repealed or amended.

If amalgamation of the two systems be decided upon, the principle embodied in section 40 of the Real Property Act should be retained. I recommend this because I have found the advantage of the system to be great.

Generally I concur with the remarks of Mr. Collins. I differ from him as to the necessity of providing means for registering a judgment as a charge on *all* the debtor's land, and I would point out that the practice has been abandoned in England, and judgments only bind land that has been actually delivered in execution—*vide* 27 and 28 Vict. c. 112. But section 94 of the Real Property Act requires amendment. In its present shape it is a protection to a dishonest debtor and any one in collusion with him. To prevent frauds I think the section should be so amended as to make actual notice of the issue of the writ, followed by a levy and sale within a month, bind the lands in the hands of a subsequent purchaser or mortgagee.

If the suggestion of Mr. Collins on page 17 of evidence to Committee of 1883 become law, it should be made compulsory on a vendor when he subdivides and sells land to deposit his deeds and take a certificate for the unsold balance, as is done now under sections 44 and 45 of the Real Property Act. The inconvenience and expense attending the production of deeds under acknowledgments would disappear, greatly to the benefit of purchasers of land.

I have &c.

CHARLES J. HALL.

R. J. LUCAS, *Esq.*, *M.H.A.*, *Hobart.*

Hobart, 25th August, 1885.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 15th instant, in which you ask me to inform your Committee if in my opinion the Torrens' Act can be safely and judiciously amalgamated with the Conveyancing Law Amendment Act, and, if not, to give my reasons for my opinion.

I presume that by the expression the Conveyancing Law Amendment Act is meant "The Conveyancing and Law of Property Act, 1884." If this is so, it seems to me that the amalgamation indicated above is impossible. The latter Act does not contain in itself any complete system of conveyancing,—it merely amends in certain particulars the law and practice of the ancient system. The Real Property Act, on the other hand, professes to be a complete system; and hence to propose amalgamating the latter Act with the Conveyancing and Law of Property Amendment Act, 1884, is, as it appears to me, an absurdity.

As the object of your Committee is to enquire into and report upon the working of the Real Property Act, I beg respectfully to reiterate the opinion I expressed in a previous letter on this subject laid before the last Parliamentary Committee which was appointed to enquire into the working of the Lands' Titles Office, as to the expediency of repealing the existing Real Property Act and enacting another similar in its provisions to the Acts in force in Victoria or South Australia. My previous letter was written before the Conveyancing and Law of Property Act, 1884, came into operation, and I have to add that since it has become law the necessity of a thorough amendment of the Real Property Act is greater than ever, if it is intended to give Mr Torrens' system of the transfer of land a fair chance, as consequences have, in my opinion, arisen by the passing of the Conveyancing Act affecting lands held under the new system which were not intended by the Legislature, and which, if not provided for, will before long be the cause of much vexation to the registered proprietors of land.

The Lands' Titles Commissioners, I believe, do all in their power to administer the Real Property Act so as far as possible to secure the many great advantages attendant on the plan of transferring and dealing with land which they are appointed to carry out; but they are now placed at a great disadvantage by the persistent refusal of the Legislature of this Colony to embody in a new Real Property Act the many desirable amendments which experience has suggested, and which if made law would effect an immense saving in the time of the officers of the department, and have a marked effect in promoting prompt registration of transactions and issue of documents.

I have, &c.

JOHN A. JACKSON.

R. J. LUCAS, *Esq.*, *M.H.A.*,
Chairman Torrens' Act Committee.

Hobart, 25th August, 1885.

SIR,

IN reply to your letter of the 15th instant, I have the honor to inform you that in my opinion the Torrens' Act cannot be safely and judiciously amalgamated with the Conveyancing Law Amendment Act. My reasons for holding that opinion are that they have not sufficient affinity with each other, particularly with regard to the Law of Trusts, and that the expenses of the two systems will necessarily counteract any advantage arising to the public.

Most of the objections are shown in detail in the answers to the questions answered by solicitors in the papers sent to me in the evidence obtained by the Select Committee, 1883.

In the various Commissions issued in England upon the Registration of Title, which I consider very similar to Torrens' Act in many respects, the principal objection seems to have been with regard to the matter of Trusts. I refer to a remark of Lord St. Leonards—"Do not be misled by the assertion that the registered owner is only a substitution for the present system of trustees; he may sell or mortgage an estate, and ruin you." In my opinion, Declaration of Trusts will be too complicated to be prepared properly and expeditiously unless by skilled conveyancing lawyers, and the expense of them will be great.

The greatest defect in principle with regard to Torrens' Act is in endeavouring to treat real and personal property as identical, when they are altogether different in their natures.

I have scarcely had time to enter fully into the matter, but, as it was required of me, I thought I was bound to give my opinion, such as it is, for the benefit of the public.

I have, &c.

R. J. LUCAS, *Esq.*, *M.H.A.*

JAMES LAUGHTON.

Hobart, 3rd September, 1885.

SIR,

I HAVE the honor to acknowledge the receipt of your circular of 15th ultimo, requesting me to inform the Committee if, in my opinion, the Torrens' Act can be safely and judiciously amalgamated with the Conveyancing Law Amendment Act.

I regret that, owing to press of business and other circumstances, I am unable to enter fully into the subject matter of the circular.

I have been in some doubt as to the true meaning of the question put to me, but, assuming that my interpretation is correct, I am bound to say that I do not see how Torrens' Act, as a whole, can be safely and judiciously amalgamated with the Conveyancing Law Amendment Act.

That the Real Property Act, in its present form, is a most unsatisfactory system of dealing with land the moment you get beyond transactions of a simple nature, must be patent to all who have had any experience of its working. The defects and disadvantages of that Act have been elaborately set forth in the evidence obtained by the Select Committee appointed by the House of Assembly in 1883 to enquire into the working of the Lands' Titles Office. The Recorder interprets the Act in the most liberal spirit, and does his utmost to make it work smoothly and efficiently, but the inherent defects are too many and too great for any man to overcome.

At the same time it must be admitted that the Act embraces one great advantage; viz., the conferring an indefeasible title.

From the consideration I have been able to give to the matter, I can see no reason why a system should not be devised which, while comprising this benefit, should get rid of the insuperable defects of the Real Property Act.

Such a system should, as it appears to me, be based somewhat on the following lines:—

(1.) Retain the existing machinery of the Lands' Titles Department.

(2.) Let the Certificate of Title confer an indefeasible title.

(3.) Let all subsequent dealings with the land be effected under the old system of conveyancing, as simplified and shortened by the Conveyancing and Law of Property Act, 1884.

(4.) Let it be competent to an owner of land to apply for and obtain a new Certificate of Title at any time.

(5.) Permit the registration of Trusts, when desired, exactly as under the old system.

(6.) Empower the Commissioners to pass a title which, though defective, is not so in any important particular, provision being made for charging an extra assurance fee according to the nature of the defect.

If such a system were established, I believe that most of the property in the Colony would be brought under its provisions. Dealings in land which now, under Torrens' Act, take a week or a fortnight to complete, could be carried out, if necessary, in a few hours.

Under the Conveyancing and Law of Property Act, 1884, most deeds are nearly as short—sometimes, perhaps, shorter, than the forms prescribed by the Real Property Act, and are infinitely better adapted for dealing with complicated transactions in regard to real estate. It is simply absurd to say that since the passing of the Conveyancing and Law of Property Act the old system has become a formulary one, and that this is proof in itself that a system of forms can be made adaptable to the various dealings in land. It may as well be said that because books of precedents of conveyances, mortgages, settlements, &c. are to be found on every lawyer's shelves, the old system is therefore one of forms. The fact is that the principles of the two systems are utterly at variance. That established by the Real Property Act is a formulary one, pure and simple; the old system is not a formulary one, even since the passing of the Conveyancing and Law of Property Act: it never has been and never will be so, in the proper sense of the term. The forms in use under Torrens' Act are based on those contained in the Merchant Shipping Act, and can never, as it seems to me, satisfactorily answer the purposes for which they are intended; whereas there is no dealing, however complicated, with land that cannot be readily and perfectly effected under the old system, and generally by means of one deed.

The non-recognition of Trusts, except by a side-wind, is a grave defect in the Real Property system.

One great advantage claimed for Torrens' Act is that it does away with all troublesome questions of Notice. If this advantage had been claimed in England as against the old system, there might be something in it. In Tasmania, however, we have a general Registry of Deeds, and in my experience I do not remember any practical difficulties to have arisen with regard to Notice.

My partner, Mr. Butler, is at present out of the Colony, but he concurs in my view of the matter submitted for our consideration.

I regret that I have been compelled to give such a hasty and imperfect reply to your circular.

I have, &c.

JOHN M'INTYRE.

R. J. LUCAS, *Esq., Chairman of Select Committee to enquire into and report upon Torrens' Act.*

Launceston, 21st August, 1885.

SIR,

I HAVE the honor to acknowledge receipt of your communication of 15th instant, enclosing a copy of the evidence obtained by the Select Committee in 1883, and requesting me to inform the present Committee if in my opinion the Torrens' Act can be safely and judiciously amalgamated with the Conveyancing Law Amendment Act, and if not, my reasons for holding that opinion.

In my opinion the two Acts as they now stand cannot be safely and judiciously amalgamated; but by embodying many of the provisions of the Torrens' Act, and engrafting them, as it were, upon the Conveyancing Act, I think an improvement might be effected.

The Conveyancing Act and other recent Acts amending the Law of Real Property have rendered the "old system" of conveyancing exceedingly simple and inexpensive, and I do not think the Torrens' Act would now be missed or regretted if it were swept away altogether; but at present I am afraid the public at large are too firmly wedded to the measure to accept its total abolition unless at the same time some other simple system is substituted. As regards the relative merits or advantages of the two systems, they both have undeniable advantages and disadvantages. The question then naturally arises, cannot some system be adopted whereby the advantages of both may be secured, while that which is objectionable in either is rejected?

The chief evils of the Torrens' system consist, in my opinion, of—

(1.) The want of elasticity in the modes of dealing with land thereunder.

(2.) The non-recognition of Trusts.

(3.) The heavy fees payable in many cases.

(4.) The having to lodge documents for registration at the Lands' Titles Office, and leave them there for an indefinite period.

Nearly—if not all—the other objections to the Torrens' system could, I think, be removed by judicious legislation on the lines of the Victorian and South Australian Acts.

To obviate these evils, I would suggest the appointment of a Board of Commissioners, assisted by a solicitor and staff of clerks, as under Torrens' Act. It would be the duty of the Board to receive applications for Certificates of Title to land, as is now done under Torrens' Act. If after investigating the applicant's Title the Board were satisfied that he was entitled to the land mentioned in the application, they would issue to him a Certificate of Title similar to the present document of that name, but *in all cases* giving a full verbal description of the land, and, if necessary or convenient, referring to a diagram or plan endorsed on the Certificate. This Certificate would—as at present—be issued in duplicate, and one copy filed in the office and the other issued to the applicant, who would then proceed to deal with the land precisely as he would do if it were under the "old system." Registration could be effected by each subsequent document affecting the land being produced at the office, where a note or memorandum would be made upon the office copy of the original Certificate, stating the nature of the document, the date and names of the parties, the portion of the land affected thereby, and the day and hour of production of the document for registration. A note would also be placed on the document itself to testify to its registration, in the same way that a receipt for a memorial is given on the registration of a deed under the "old system." Registration could thus be effected in as many minutes as it now takes days, and sometimes weeks and months, to effect the registration of the simplest transaction under Torrens' Act. The registration would give notice to all the world of each transaction with the land, and give sufficient particulars for ordinary cases. Should it be found desirable to obtain further information as to the nature and contents of the deed, enquiry would have to be made for the deed itself, and inspection obtained, as is done every day under the "old system." Or, if thought desirable or better, a system of registration by filing a short memorial of each document might be adopted, and as each document subsequent to the Certificate of Title should as at present refer specially to the volume and folio of that instrument, an Index of Certificates might be kept instead of an index of the names of the

parties as at present, and the number of the memorial indexed opposite the volume and folio of the Certificate in the Index. This system of registration (whichever plan—by memorial or otherwise—might be adopted) should be less expensive than the present one, and would very much simplify searching.

Provision should also be made enabling a Registered Proprietor to, from time to time, submit his title again for examination, and on it appearing that he had a good title, a fresh Certificate to that effect should be given to him, with which he would again proceed to deal as above suggested. All grants from the Crown issued subsequently to the passing of such a measure should be issued thereunder, and in duplicate, as grants are now issued under Torrens' Act; and all certificates or grants should be guaranteed by an Assurance Fund.

I have merely outlined the kind of measure which I think would meet the case; and many matters upon which I have not touched would require very careful consideration in carrying such a measure into effect, but they are, I think, mostly proper subjects for the draughtsman to consider.

I have, &c.

W. MARTIN.

R. J. LUCAS, *Esq., Chairman of Select Committee of House of Assembly on working of Torrens' Act, Hobart.*

Launceston, 25th August, 1885.

SIR,

I HAVE the honor to acknowledge the receipt of yours of the 15th instant, requesting me to inform the Committee if, in my opinion, the Torrens' Act can be safely and judiciously amalgamated with the Conveyancing Law Amendment Act.

In reply, I have carefully perused the printed answers to questions put to certain solicitors by direction of the Select Committee of the House of Assembly with reference to the working of the Lands Titles Office, and the correspondence thereon, and arrive at the conclusion that the system of conveyancing under that department discloses vexatious delays and defects. The Real Property Act does not appear to have met the requirements for which it was intended,—viz., to provide a simple, speedy, and inexpensive mode of conveyancing, and as it has had a fair trial, I am of opinion that the Act should be repealed.

With regard to its amalgamation with the Conveyancing Law Amendment Act, it would be, in my opinion, both unsafe and injudicious to attempt to do so, inasmuch as it has clearly been shewn by experience to be both defective and unworkable.

The provisions of both Acts being so utterly in opposition to each other, both in practice and law, and the Real Property Act being so defective in its working, any attempt to amalgamate them would only create evils instead of doing away with them, and thereby render both Acts unworkable.

I am therefore of opinion that the Acts should not be amalgamated, but that the Real Property Act should be repealed, and the Conveyancing Law Amendment Act should be applied to all land now under the provisions of the former Act, and also all land to be granted by the Crown.

The existing titles under the Real Property Act would not then be required to be called in or re-issued, but the duplicates of all titles together with the index should be kept in the Registry Office.

All incumbrances, &c. now existing on the land would be shewn both on the duplicate and original titles, and any fresh dealings would, of course, be under the provisions of the Conveyancing Law Amendment Act. This would necessitate special legislation with reference to trustees, &c., otherwise the beneficial interest will devolve upon the persons not entitled thereto. This might be met by a declaration of trust. The mortgages now existing could be discharged by a special form of discharge.

It cannot be disputed that many transactions are less costly and more expeditiously done under the Conveyancing Law Amendment Act than under the Real Property Act; and, therefore, if the latter Act was repealed the cost of a very expensive department would be dispensed with.

It has been brought forward that the office is self-supporting, but even if this is the case the cost is levied by way of extortionate fees from the public, who receive no benefit therefrom. If, however, the Act was repealed the work would be performed at a less expense by solicitors who are responsible to their clients for any *lâches* in conducting it.

In conclusion, I do not see what benefits were ever derived from the passing of the Real Property Act, nor do I see the necessity of still continuing a system of conveyancing which has been shewn to be dilatory, defective, and costly.

I have, &c.

ARTHUR NORMAN.

R. J. Lucas, *Esq., M.H.A., Chairman Select Committee Real Property Act, House of Assembly, Hobart.*

31, *Davey-street, Hobart, 25th August*, 1885.

Re Torrens' Act.

Sir,

I beg to acknowledge the receipt of your letter of the 15th instant, requesting that I would be good enough to inform the Committee if in my opinion the above Act could be safely and judiciously amalgamated with the Conveyancing Law Amendment Act, with its enclosure, a copy of the Evidence given before a previous Committee upon the same Act by various members of the profession, it being so sent for the purpose of assisting me in advising the present Committee in the matter now again under consideration. In reply thereto, I have to say that, not being in active practice of my profession for years, I have consequently had no actual experience of its working in any way whatever; but, notwithstanding, after having read over the Evidence very carefully, which to my mind is pretty exhaustive upon the whole, I came to the conclusion that it cannot safely and judiciously, in any way whatever, be amalgamated with the Conveyancing Law Amendment Act to make it at all workable, and, therefore, the sooner it is swept off our Statute Book the better for all concerned. The Evidence has enabled me to form this opinion, therefore you will see that it has been of great assistance to me. By such a step we would thus get rid of an abortion of an Act, and return again to the old, safe, and secure system of conveyancing that was in existence at the time of bringing it in. My decided opinion is that the Act is faulty in the extreme, for you cannot deal in any way with Trusts under Will or by any other document. As expressed by some members of the profession, I quite concur that real property can never be treated as a chattel interest. Why the Act was brought in I could never understand. Under the "old system" the law of real property was simple, sure, and certain, whereas now it is just the reverse—complex, insecure, and uncertain; and, consequently, will in time lead to endless ruinous and disastrous results.

In conclusion, I do not know whether this letter will be considered by the Committee of any value. I, however, hope it may be to some extent, and, if not, there is no harm done, and I have acted, to say the least of it, courteously.

I have, &c.

JAMES THOS. ROBERTSON.

R. J. Lucas, *Esq., M.H.A.,*
Chairman of Committee re *Torrens' Act.*

43, *Elizabeth-street, Hobart, 20th August*, 1885.

Sir.

I received your circular letter of the 15th instant, requesting me to inform your Committee if in my opinion the Torrens' Act can be safely amalgamated with the Conveyancing Law Amendment Act.

In reply, I have to refer the Committee to my answers to questions put by the Select Committee in 1883, and am further of opinion that the Torrens' Act cannot be amalgamated with the Act referred to, for the simple reason that the former is unworkable and unsafe in the extreme. I hold the opinion, and I believe am not alone in that opinion, that the only sure and safe course would be to repeal the Torrens' Act altogether, and let us go back to the old system of conveyancing, which has in its favour the facts that it is safe, reliable, and far from expensive.

One great error has lately crept into the administration of the office, and one that is certain in the near future to bring about endless disputes, has lately come under my notice very recently, and that is, that the Department will not depart from the old plans and surveys in the office, however erroneous they may be, but perpetuate the errors shown thereon by making surveyors "doctor" their plans, however accurate from actual survey, so as to fit in with the old plans and surveys in the office, and which they know are wrong and misleading. Boundaries in old plans have been shown straight; when on the ground they are actually in two or three different bearings, and still the surveyors are called upon to alter their plans in order to make the boundaries agree with ones which are known to be totally wrong. The facts speak for themselves. This, however, does not lie with the Act itself, but in its administration.

In my opinion the Act has failed to bring about that which its promoters predicted in its introduction, and, besides, the inconveniences caused by having two distinct systems of conveyancing in use have been unusually great, and, to even laymen's eyes, must be very obvious.

Let us have one system only, and that one a perfect one, and abolish such an obvious abortion as the Torrens' Act. To try to amalgamate that Act with the Conveyancing Law Amendment Act is simply impossible. The latter, with the Settled Estates Act recently passed, works well, and is simple and speedy.

If this is of any use to the Committee, I shall feel that I have not wasted my time in writing it; but my opinion will not, I fear, carry much weight alone, but when backed up, as I am sure it will be, by other practitioners more competent to form and give an opinion, will be of some little use in aiding your Committee to arrive at some conclusion on the matter referred.

I have, &c.

ALFRED J. ROBERTSON.

R. J. LUCAS, *Esq., Chairman Committee* re *Torrens' Act.*

St. John-street, Launceston, 22nd August, 1885.

SIR,

I HAVE the honor to acknowledge the receipt of your circular letter dated the 15th instant.

The very short time allowed to answer the question conveyed by the circular, and to give reasons for my opinion, renders it quite impossible for me to give an opinion which would be of any value, or to state the grounds on which it was based. The question is one which requires careful consideration, and it is much to be regretted that more time had not been given to those to whom the circular is addressed to reply to it. A week is obviously too short a time, when regard is had to the numerous calls on the attention of professional men, to which they are bound to give precedence.

Generally, however, I may say that I do not think, so far as I am able to frame an opinion, that it would be either judicious or safe to attempt to amalgamate the Real Property Act with the Conveyancing and Law of Property Act, 1884. The latter, although it may have some defects, appears to be an excellent and sound piece of legislation, and it would not seem wise to attempt to engraft upon it a system which cannot be said to have proved a success.

Under any circumstances it would seem necessary to continue the working of the Real Property Act for some time, even if it were determined to let the Torrens' system die out in this Colony. But it might be quite practicable to allow grants and certificates issued under the Real Property Act to become the roots of titles for dealing with real property under the general law; and also to make provision that any person desiring to shorten a derivative title, and to obtain a new root to it, might apply for a new certificate, either to the Supreme Court or to a Court specially constituted for dealing with such applications. In certain cases, as, *e.g.*, where it was intended to divide a property into a number of lots for sale, it might be worth the expense to obtain a new certificate; but probably in the great majority of cases, where there was no subdivision, or where there were only a few links in the title, owners or intending purchasers would be perfectly satisfied with a title held under the derivative system, while purchasers, mortgagees, and others would have the advantage of the much greater facility, safety, and economy afforded by the general law in completing transactions under it.

I have, &c.

WILLIAM RITCHIE.

R. J. LUCAS, *Esq., M.H.A., Chairman of Select Committee on the working of the Real Property Act, House of Assembly, Hobart.*

Latrobe, 25th August, 1885.

SIR,

I THINK it a pity to spoil useful, and what may be made in a short period and with due care, perfect and conclusive legislation, by incorporating with it such a faulty system as Torrens'—a system which can never be made perfect, founded as it is on a wrong principle.

I concur generally with the evidence you forwarded me, more especially with that of Messrs. W. Ritchie and A. Green; and I think on provision being made as suggested in Section 5 of Mr. Green's evidence, that the Conveyancing Act would fully embrace all that is claimed for Torrens' Act. I should suggest, as Mr. Green does, the sweeping away of Torrens' system entirely. My

experience during the whole of the time that Torrens' system has been in operation is that it is neither cheap nor expeditious. Torrens' system is only really applicable to simple transfers, and the charges for a simple conveyance would be no more than for a simple transfer, whilst in some instances, such as devisees under a will, the charges are much less. For instance, a client of mine a short time before his death purchased three allotments, at, I understand, £5 each, for which separate grants were issued. He devised an allotment to each of his three children, and I am informed that the fees payable in each child's case for a Certificate of Title would be above £3 9*s*.,—this not including professional charges,—whereas the simple registration of the will would, under the old system, complete the devisee's title. Then as to expedition,—well, I have found it the reverse of expeditious; for although I have for some time past sent all transactions with the Real Property Department through my Hobart agents with the object of getting quicker despatch, yet in only one instance did I get a return in nine days, and generally I have had to wait a fortnight, three weeks, a month, and even longer. Did I state all my objections to Torrens' system I should only be reiterating all the objections contained in the evidence you sent me.

I have, &c.

J. STEER.

R. J. LUCAS, *Esq.*, *M.H.A.*, *Hobart.*

Lands' Titles Office, *Hobart*, 26*th August*, 1885.

SIR,

I HAVE the honor to enclose Report in reply to your circular of 15th instant. While doing so, permit me to draw your attention to my Annual Report on the working of the Department for the year ending 30th June last (Parliamentary Paper 87 of the current year), from which it appears that the delays in conducting the business of the office alleged in the evidence referred to in your Circular do not now exist.

I have &c.

JAMES WHYTE, *Recorder of Titles.*

R. J. LUCAS, *Esq.*, *Chairman of Select Committee of House of Assembly on Torrens' Act.*

REPORT to SELECT COMMITTEE *of House of Assembly*, 1885, *on proposed amalgamation of the Conveyancing and Law of Property Act*, 1884, *and the Real Property Acts (Torrens.')*

Lands' Titles Office, *Hobart*, 26*th August*, 1885.

SIR,

I HAVE the honor to acknowledge the receipt of your (circular) letter of 15th instant, requesting me to inform the Select Committee of the House of Assembly appointed to enquire into the working of the Torrens' Act, "if in my opinion the Torrens' Act can be safely and judiciously amalgamated with the Conveyancing Law Amendment Act; and if not, to give my reasons for holding such opinion."

The Conveyancing Law Amendment Act ("The Conveyancing and Law of Property Act, 1884,") is, as it is more fully entitled, "An Act for simplifying and improving the practice of Conveyancing, and for vesting in Trustees, Mortgagees, and others various powers commonly conferred by provisions in Settlements, Mortgages, Wills, and other Instruments, and for amending in various particulars the Law of Property, and for other purposes." The mode of Conveyancing dealt with by this Act, and commonly referred to as the "Old System," in contradistinction to that invented by Torrens, and now in use in all the Australian Colonies, dates back to the days of the Feudal System,—its principal distinguishing feature being that the estate or interest in the property dealt with passes *on the execution of the deed or instrument.* It follows from this that the evidence of title consists of deeds which must year by year increase in number, *while such title must necessarily be a connected chain, which can be no stronger than its weakest link.* The Act under reference reduces the length of these deeds by providing short forms in which covenants and powers are by law implied, which previously it was necessary to set out specifically at length. Certain portions of local Acts relating to Trustees and Mortgagees are repealed, but re-enacted and amplified.

It contains many salutary provisions affecting the details of the practice of conveyancing under the old system, and also some sections defining the mutual rights as between themselves of mortgagor and mortgagee, &c. These last sections are not in any way *prescriptive of the mode of dealing* with land, and I do not know any reason why land under the Real Property Act should have been excluded from their operation. But it must be remembered that the Conveyancing Act under reference does not in any way alter the general principles of the old system of conveyancing, *or attempt to constitute a system in itself.* Titles will, as years go on, still become lengthy, purchasers will still be affected, although to a modified extent, by *constructive notice*, and will still not receive that Government guarantee of security of title, which can only be expected to obtain under a system of registration of it.

On the other hand, the Torrens' Act *constitutes a system of conveyancing in itself*, the primary features of which are that the estate or interest dealt with passes, not on the execution of the instrument, but upon the registration of it, and the doctrine of actual and constructive notice is got rid of, so that a purchaser need never go behind the title of his vendor so long as the latter is the registered owner. Previous flaws in the titles of the various persons through whose hands the property has passed affect him not, so long as he is purchaser *bonâ fide* and for valuable consideration, while any ordinary business man can ascertain by a perusal of *the single sheet* of parchment constituting the title who is the registered proprietor, whether his property is encumbered and, if so, to what extent.

It may be seen from the above that I am of opinion that the fundamental principles of the old system of conveyancing are so diametrically opposed to those of the Torrens' that any attempt at amalgamation of them must result in the production of a hybrid measure which would partake of all the disadvantages of both without the corresponding advantages of either, and would operate as a practical repeal, by a side wind, of the Torrens' system. I submit this would be retrograde legislation, if the experiences of the other Colonies, and of other parts of the British Dominions, in dealing with interests in land are of any value. Simplicity and security of title are universally craved for. Torrens' Acts in the Colonies have given that security of title to all holding land under them and acting *bonâ fide*, and have approached the greatest simplicity yet obtained. The Act and its amendments in force in this Colony require considerable improvement in practical detail to bring them up abreast of the other Colonies in efficiency. In the evidence referred to in your letter, and now before your Committee (Parliamentary Paper No. 69, of 1884, pages 37 to 42), I had the honor to deal very fully with the whole question under 28 different heads, some of which, I submit, went to prove that certain defects alleged as inherent in the system were not such, while others suggested the direction which, in the opinion of the writer, amending legislation should take for the removal of existing defects in detail and improving and further simplifying the practice under the Torrens' Law. Such suggestions were principally on the lines of adopting the best provisions from the Torrens' Acts of each of the other Colonies. I have particularly to draw your attention to heads Nos. 1, 4, 9, 18, 27, and 28 of the Report under reference. Since writing that Report, other questions of detail have come under my notice, and there can be no doubt that the practice under the system can be much more simplified, and reduced to a piece of machinery adequate to meet all practical requirements.

The Royal Commission recently sitting in Victoria on the Torrens' Act took a mass of evidence, and has reported thereon, principally on the survey part of the question, suggesting certain improvements in the local Acts, *none of which, however, affect the fundamental principles of Torrens' system.*

It is stated that inconvenience and expense arise in dealing with property part of which is held under the old tenure and part under the Torrens' Act. From my experience in the ranks of the profession and in this Department, I venture to say that these cases are not of comparatively frequent occurrence, and the difficulty in any such case could be got over once and for all by bringing under the provisions of the Torrens' Act that part of the property not already held under it. It is no doubt an anomalous state of things for one-fifth of the alienated land in the Colony to be held under one mode of tenure and the other four-fifths to be held under another. Year by year the proportion of land held under the Real Property Act must increase as Crown land is purchased, and I very much doubt whether the time will not arrive when the question will have to be considered here and in the other colonies whether or not it has become imperative to take such steps as may be necessary to bring all land under the Torrens' tenure, subject of course to such stipulations as to time, compensation for expense incurred in such process, and otherwise, as may be deemed advisable.

In conclusion, I particularly wish to call your attention to head No. 28, p. 42, of the Report embodied in the evidence before quoted, and to reiterate that it is generally admitted that to give the power to take titles off the Register and deal with them again by deeds under the old practice would be the death-blow of a system which is fostered in all the other colonies. *Titles which have been cleared up and rendered indefeasible and easy to deal with would in time become tangled and complicated again*, and the work which Torrens' Act has accomplished in this Colony during the past 23 years would be entirely undone in less than as many years more. Surely this is not an end to be sought after in the interests of landholders, and as surely it cannot be desired by them.

I have, &c.

JAMES WHYTE, *Recorder of Titles.*

R. J. LUCAS, *Esq., Chairman Select Committee of House of Assembly on working of Torrens' Act.*

WILLIAM THOMAS STRUTT,
GOVERNMENT PRINTER, TASMANIA.