

LAWS RELATING TO RURAL CREDITS AND LAND REGISTRATION

UNIFORM STATE LAWS RELATING TO SAME



STATEMENT

TO THE

CHAIRMAN OF THE SUBCOMMITTEE ON LAND
MORTGAGE LOANS OF THE JOINT COMMITTEE
ON RURAL CREDITS TRANSMITTING A COPY OF
THE UNIFORM LAND REGISTRATION ACT AS
ADOPTED BY THE TWENTY-FIFTH NATIONAL
CONFERENCE OF COMMISSIONERS ON UNI-
FORM STATE LAWS, HELD IN SALT LAKE CITY,
UTAH, ON AUGUST 10-16, 1915

BY

S. R. CHILD

CHAIRMAN OF THE COMMITTEE



PRESENTED BY MR. FLETCHER

FEBRUARY 25, 1916.—Referred to the Committee on Printing

REPORTED BY MR. FLETCHER.

IN THE SENATE OF THE UNITED STATES,
March 9, 1916.

Resolved, That the manuscript submitted by the Senator from Florida (Mr. Fletcher) on February 25, 1916, entitled "Uniform State Laws Relating to Rural Credits and Land Registration," being a statement submitted by S. R. Child, chairman committee on adoption of approval acts of National Conference of Commissioners on Uniform State Laws, be printed as a Senate document.

Attest:

JAMES M. BAKER, *Secretary.*

LAWS RELATING TO RURAL CREDITS AND LAND REGISTRATION.

FEBRUARY 23, 1916.

Senator H. F. HOLLIS,

*Chairman of Subcommittee on Land Mortgage Loans of the
Joint Committee on Rural Credits, Congress of the United
States.*

SIR: As chairman of the committee on adoption of approved acts of the National Conference of Commissioners on Uniform State Laws, I take this occasion to address you with reference to the following points:

1. To lay before you a brief outline of the nature and extent of the work of our national organization.

2. To call your attention to features of this work which appear to relate to and have an influence upon the subject of rural credits, concerning which your committee is seeking data as a basis for legislation.

3. To ascertain in what respect our National Conference, which represents the interests of the 48 States of the Union with respect to the subject of uniform State laws, can most effectually aid or cooperate with your committee with reference to the subject of rural credits, which is affected alike with both a Federal and State interest.

Taking up the above points in order, let me, therefore, as briefly as may be, first lay before you an outline of the nature and extent of the work undertaken by our national organization, that you may better be able to judge in what respect its work affects the subject your committee has under investigation with a view to congressional legislation.

ORGANIZATION OF COMMISSIONERS ON UNIFORM STATE LAWS.

Each of the 48 States, the District of Columbia, and the several Territorial possessions of the United States are alike officially represented in the National Conference, either pursuant to State law or by gubernatorial initiative, there being three duly appointed commissioners from each of the 53 legislative jurisdictions.

In substantially its present form the organization dates from 1892. Prior to that, for a number of years, uniform State laws was the subject of report and discussion by the American Bar Association with a view to promoting measures to overcome delay, uncertainty, and conflict of judicial administrations. In its present official form the organization recently held its twenty-fifth national conference.

Heretofore the work of the commissioners has largely been confined to making a study of proper subjects for uniform State laws, investigating data, obtaining expert and public opinion, and making the draft of the proposed model uniform laws. As showing the thoroughness of this work the National Conference in certain cases has devoted 5 to 10 years to the study of conditions surrounding a given subject of legislation and submitted as high as five different tentative acts to the public for analysis before the final approved draft was submitted to the legislatures of the several States for adoption.

It is now proposed by the National Conference to take up the subject of publicity in a more systematic manner and through its legislative committee push the adoption of the approved measures, so as to more effectively and completely achieve the purpose for which the commissioners are appointed, namely, to secure for the United States on certain cardinal and essential subjects a national system of Uniform State laws for the mutual and reciprocal protection and welfare of the people of the 53 State and Territorial jurisdictions.

The subject chosen for uniform State action include commerce and industry, transportation and finance, and many sociological and civic measures. As related to the subject of rural credits, however, two classes of the uniform acts are specially commended to your attention, namely, the several Uniform Commercial acts and the Uniform Land Registration act.

UNIFORM STATE COMMERCIAL LAWS.

The first model uniform act submitted by the National Conference was the uniform negotiable instruments act approved in 1896. This is a codification of the international "law merchant" which is common to all the commercial nations of the earth.

In 1897 it was adopted by the States of Connecticut, Colorado, Florida, and New York, and in 1898 and 1899 by Massachusetts, Rhode Island, Virginia, Maryland, North Carolina, Tennessee, North Dakota, Wisconsin, Utah, Oregon, and Washington. It is now the law of 43 States, Alaska, Hawaii, the Philippines, and was adopted by Congress for the District of Columbia.

This act has been cited in 750 American decisions. The latest indorsement of the principle of commercial uniformity is the opinion delivered by Justice Hughes for the United States Supreme Court on January 10, 1916, in which the court upholds the uniform warehouse receipts law in a Louisiana cotton case. The Supreme Court determined the issue and turned over the cotton to the holder of the warehouse receipt, on the principle that the purpose of the act to promote uniformity of judicial administration as between the States took precedence over all previous statutes and decisions of the States.

The purpose and effect of the uniform negotiable instruments act is to give fluidity and legal certainty over large commercial areas to all negotiable instruments, such as checks, drafts, promissory notes, and the various classes of commercial paper, and thereby reduce cost, delay, and risk of commercial and financial transactions, and generally add to the efficiency, economy, and volume of business.

The uniform negotiable instruments act thereby has become a prime factor and essential condition precedent to the following results in the country's finance:

(a) It gives the States adopting it more certain and economical command of the capital of the country at large for development.

(b) It reduces the prevailing interest rates on commercial paper, and short-term loans generally, as well as indirectly affecting the interest rates on mortgage loans.

(c) It brings the business of the State into the general channels of both domestic and foreign commerce.

(d) It benefits all industries, agriculture and manufactures alike, by bringing them into the general circle of the country's financial and commercial markets for the financing and sale of their productions.

(e) It has demonstrated by experience the benefits to be derived by reason of the uniformity of law as to a particular branch thereof, thus producing a tendency toward the development of similar uniformity in other branches of the law.

Georgia, Mississippi, and Texas are three cotton States which to date have not availed themselves of the uniform negotiable instruments act, and Maine among the New England States. The comparatively high interest rates on farm loans, both short-term and mortgage loans, prevailing in these States, as shown by the investigations of the Department of Agriculture, is doubtless due in part to the fact that failure to adopt the uniform negotiable instruments act deprives them of one of the essential factors in commanding on most favorable and economical terms, for their States's development, the capital and financial facilities of the country at large.

UNIFORM WAREHOUSE RECEIPTS ACT.

The second in importance among the uniform State commercial laws approved and submitted by the National Conference to the States for general adoption is the uniform warehouse receipts law. This act is now in effective operation in 31 States. It is essential to the successful financing of such staple crops and products as grain, cotton, and flour, which readily command the available financial facilities of the country at minimum rates, when the warehouse receipts representing these products become dependable and currently acceptable security under the operations of the uniform act.

The Federal Reserve Board, which has recognized this law as a prime factor in financing cotton, has been doing yeoman service in extending the adoption of the uniform warehouse receipts act by the cotton States.

The Uniform Warehouse Receipts law first demonstrated its usefulness as a vital factor in financing commerce and agriculture on a large and economical scale in moving the wheat crop of the Upper Mississippi Valley. Chicago and Minneapolis bankers testify before the Federal Reserve Board that in many respects they prefer the warehouse receipt on State inspected wheat to a Government bond as security for commercial paper, because more fluid and readily marketable.

As a result, Minneapolis and Duluth grain elevators, which handle upwards of 150,000,000 bushels of the Minnesota-Dakota spring

wheat crop, commonly float their commercial paper on warehouse receipts at 3 per cent to 4 per cent.

Mississippi Valley wheat-producing States which successfully finance their staple crop under the Uniform Warehouse Receipts law are: Ohio, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Nebraska, Kansas, and South Dakota. All the Pacific States and part of the Rocky Mountain States are under the warehouse act.

Southern States adopting the Uniform Warehouse Receipts law include Louisiana, Maryland, Virginia, Tennessee, and recently Alabama and Arkansas. Among the prominent Southern States which at his writing have not availed themselves of the benefits of the uniform warehouse act in financing their crops are Georgia, Florida, North and South Carolina, Mississippi, Oklahoma, and Texas.

There is no question that in order to utilize at favorable rates the available financial machinery of the country in handling such agricultural staples as cotton, the Uniform Warehouse Receipts law is a prime business necessity. The testimony of the Federal Reserve Board, of the State Commissioners on Uniform State Laws, and of bankers, merchants, and warehousemen generally, leaves no room for question. It is patent in the nature of the case that commercial paper in order to pass current at minimum rates must be so fixed and certain in its character that no reasonable question can arise as to its legal validity; and, to secure this legal standing, it is essential that the States through which such paper passes current should have a common legal standard understood generally by the financial institutions and investors of the country. That farmers and merchants in the cotton States have become thoroughly aroused to the facts in the case is apparent in the recent mass meetings in Alabama, of the Farmers' Union, the Cotton Producers' Association, and the Merchants' Association, which resulted in the prompt adoption of the Uniform Warehouse Receipts law by the Alabama Legislature. Similar movements are going forward in other cotton States.

OTHER UNIFORM COMMERCIAL STATE LAWS.

Other Uniform Commercial acts approved and submitted by the National Conference for general State adoption include the following:

In 1909, the Uniform Bills of Lading act, which is now adopted by 13 States, including such seaboard States as New York, Massachusetts, Pennsylvania, Maryland, Louisiana, and such Great Lakes commonwealths as, Ohio, Illinois, and Michigan, and by the progressive agricultural State of Iowa.

In 1906, the Uniform Sales act, which has been adopted by 13 States, including the leading commercial and industrial States of the Atlantic seaboard and Great Lakes.

In 1909, the Uniform Stock Transfer act, which is the law in nine States, including Massachusetts, Rhode Island, New York, Pennsylvania, Maryland, Louisiana, Ohio, Michigan, and Wisconsin.

And in 1914, the Uniform Partnership law, which three States thus far have adopted.

The purpose and effect of these Uniform Commercial laws is to carry out the general principle, in harmony with the modern development of commerce, finance, and industry, that the business of

the country as conducted through such channels as the railway, telegraph, long-distance telephone, mail, express, waterways, commercial paper, bond and stock securities, and the host of commercial agencies, and banking and investment institutions is no longer subject to State boundaries, but passes current in all directions and for all distances, and that only under uniform commercial laws, State and National, is the efficient and economical conduct of the business of the 48 States of our Union to-day feasible. The State which neglects to come within the realm of modern uniform commercial laws simply bars its people, its resources, and enterprises from those common channels of finance which insure the maximum volume of business at the minimum cost for the employment of capital.

FARM LOAN RATES AND UNIFORM COMMERCIAL LAWS.

There is perhaps no better illustration of the practical value of the uniform commercial laws in reducing interest rates by enlistment of outside capital than is presented in the statistical tables of the Department of Agriculture, on the subject of comparative State rates on short-term farm loans and also on farm mortgages, as compiled under the direction of Secretary Houston and laid before your committee by Dr. Thompson, specialist in charge of rural organization. (See pt. 3, personal rural credits, of hearings before your committee.)

Among the acknowledged causes which affect comparative farm rates for use of capital as between States similarly favored as to climate, soil, and industrial population are: (a) Accessibility to financial resources, including financial centers and general savings for investment purposes; (b) accessibility to commercial resources, including transportation and banking facilities, and accessibility to markets.

It is plain that the uniform State commercial acts are active, direct, and vital factors in giving the agriculture of a given State greater accessibility both to the financial and commercial resources and facilities of the country at large. They have the same effect in financial channels as railways and telegraphs, postal rural routes, and parcel-post routes possess in regard to transportation and commercial communication.

Prof. Thompson's comparative interest rates on farm loans in the respective States, as exhibited in part 3 of your hearings, furnish interesting illustrations of the above principle.

Maine is the only New England State which has not adopted any of the uniform commercial laws. You will note that, on loans to farmers on personal security, the average total cost to the farmers of Maine is 7.7 per cent interest and commissions, as compared with 6.5 per cent as the average for the other five New England States. Interest rates on farm loans are nearly one-fifth higher for this New England State, which has neglected to avail itself of the advantages of the uniform commercial laws.

In the South, the stress of the European war as affecting the financing of cotton was felt with special severity in Georgia, Mississippi, and Texas, which have adopted none of the uniform commercial acts, and Oklahoma, Alabama, Arkansas, and the Carolinas,

which when the war opened did not have the uniform warehouse receipts law as a basis for loans on warehouse cotton.

On the other hand, in Louisiana, Maryland, Virginia, and Tennessee, the war found the agricultural industry and domestic commerce provided with the Uniform Negotiable Instruments law and the uniform warehouse receipts law; in Louisiana and Maryland also the Uniform Stock Transfer and Uniform Bills of Lading acts were in force; under the operation of these laws these States found little difficulty in commanding adequate capital at reasonable rates.

Although comparisons are not conclusive as to effect of these uniform acts upon interest rates because of the variety of conditions involved, it is interesting to note, in Prof. Thompson's table of short-term farm loan rates, that the average farm cost of loans in the four Southern States under uniform commercial laws is from 7 per cent to 11 per cent; as compared with 10.8 per cent to 15.6 per cent in the States which were inadequately provided with uniform commercial acts.

UNIFORM LAWS VERSUS USURIOUS INTEREST RATES.

In testimony of Comptroller of the Currency, Hon. John Skelton Williams (part 2 of your committee hearings), it will be noted as a striking fact that the most sensational and usurious rates are charged farm loans in States which do not have the uniform laws to invite the competition of the general capital of the country.

Comptroller Williams reports, in his list of 1,206 banks charging 12 per cent interest or more on farm loans, 66 banks located in Georgia and 168 located in Texas, these States having no uniform commercial acts, as compared with 6 banks in Louisiana and 5 banks in Virginia, which States operate under uniform acts; and 287 banks in Oklahoma, which has no Warehouse Receipts law to attract outside capital, as compared with 21 banks in Kansas, 19 in Missouri, and 2 in Nebraska, which States have the warehouse receipts act to invite competing capital.

In the States where the legislatures have neglected to provide the uniform commercial acts which create accessibility to the savings and investment institutions of the country, Comptroller Williams reports usurious interest charges on farm loans running from 12 per cent to over 100 per cent; whereas in a score of States, including most of the Middle West where the Uniform acts prevail, an interest charge as high as 12 per cent is exceptional.

Although, of course, it is idle to expect by law to prevent every occurrence of usury, it is apparent, from the statistics compiled by the Comptroller of the Currency, that the Uniform State commercial laws where adopted have made substantial strides in that direction by opening up the gateways and channels of commercial paper, farm loans, mortgages, and negotiable instruments generally in such efficient manner that usurious and extortionate interest rates are so exceptional as to prove the rule of prevailing reasonable rates.

FARM MORTGAGE LOANS AND UNIFORM LAND REGISTRATION.

Your committee has already taken note of the fact that in order to develop a rural credits system in this country, similar to that of Europe, based on long-term farm mortgages, the foundation of the

system must be some method of uniform land registration by which titles will be certain and standard, and thereby become unquestioned security for the bonds or debentures of any Federal system of land banks. This will require Uniform State laws as well as the Federal Rural Credits act. Twelve States have already adopted the Torrens system of land registration; and although these laws are not in all respects uniform, they approximate uniformity to a degree sufficient perhaps to satisfy all practical requirements.

For an able and instructive review of the subject of "commercial land titles," allow me to submit to your committee herewith the published address of Mr. Eugene C. Massie, of Richmond, Va., delivered before the Georgia Bar Association, June 4, 1915. Mr. Massie is chairman of the executive committee of the National Conference of Commissioners on Uniform State Laws, and is an authority on the so-called Torrens system of land-title registration, of which he has made an exhaustive study both as to its economic and legal aspects. He finds that the Torrens system is in operation throughout Australia, Tasmania, New Zealand, a great portion of the Dominion of Canada, and in a modified form in England. In this country it is in force in California, Colorado, Illinois, Massachusetts, Minnesota, Mississippi, North Carolina, New York, Nebraska, Ohio, Oregon, and Washington, and also in Porto Rico, Hawaii, and the Philippines, and has just been adopted in South Carolina and Virginia. In all of these States the Torrens principle of land registration has been upheld by the supreme courts. Though it has not been an issue before the United States Supreme Court, the leading Massachusetts decision was rendered by Chief Justice Holmes, now Justice of the United States Supreme Court. (*Tyler v. Judges*, 175 Mass., 71; 179 U. S. 405.)

In his exhaustive argument before the Georgia Bar Association, Mr. Massie urges: "Nothing short of registered title can give to land any of the true attributes of a commercial asset. To answer the great public needs we must make land in a sense negotiable."

Applying the principle to the State of Georgia he finds: "It also appears from said report that Georgia realty has a value more than eleven times greater than all the merchandise in the State, more than eleven times greater than all the live stock in the State, and more than eleven times greater than all the bank shares in the State. I beg you, therefore, to consider how enormously the bankable capital of your State would be increased if your real assets were made available for free use in business."

NEGOTIABLE FARM-LAND CAPITAL.

From the testimony of Hon. David F. Houston, Secretary of Agriculture, before your committee, it appears that there are only \$3,500,000,000 of farm mortgage loans in this country on \$40,000,000,000 worth of farm property. At the same time, the clamor of the rural districts for capital to develop the agricultural industry is country-wide.

It also appears in Secretary Houston's testimony, that interest plus commission on farm mortgage loans in the United States range from 5.3 to 10.5 per cent—the average rate in no less than 20 different

States being 8 to 10 per cent; whereas, the prevailing farm loan rates under modern rural credit systems in Germany, France, Norway, Denmark, Great Britain, and Australia, are $3\frac{1}{2}$ to 4 per cent.

Comptroller of the Currency, Hon. John Skelton Williams, has testified before your committee that even on 30, 60, or 90 day loans for crop-moving purposes the farmer is entitled to as low a rate as commercial paper. On long-term farm mortgages handled under the provisions of such an act as that provided for in the Hollis bill (S. 2986) there is no reason why farm mortgage rates in the United States should not approximate the European basis; especially in view of the fact that commercial paper in the United States floats at as low rates as in Europe.

Under the proposed rural credits plan—with a Federal farm loan board and 12 regional farm land banks to give negotiability to the agricultural lands of the United States—the aggregate, actual capital of America available in negotiable form for bankable purposes would readily be more than doubled and thereby become one of the greatest and most dependable assets in our national finance.

The part which the States will play, through the operation of the Uniform State laws is to present a line of State legislative and judicial harmony and solidarity in accord with the principles of the Federal rural credits act. The necessity of unified action on the part of the States in order to give farm loans a national market is excellently shown in an article on rural credits published in the Bankers' Home Magazine of May, 1914, from which we quote:

NATIONAL MARKET ESSENTIAL.

It is idle to presume that any local banking institution can issue any form of security based on land, which will command a national market, and it is equally certain that no success can attend any attempt to reach the general investing public for the benefit of the landed interests, unless a national market is secured.

NECESSITY FOR STATE UNIFORMITY.

Indeed, your committee has taken careful note of the necessity of unified action by the States in order that they may severally avail themselves of the benefits of a Federal rural credits system.

In the report of your Joint Committee on Rural Credits to Congress, January 3, 1916, with the draft of a bill to "provide a system of land-mortgage credits to the United States under Federal supervision," your committee (H. Doc. No. 494, p. 16) has this to say of necessary State legislation:

STATE LEGISLATION.

It is well understood that the laws in the several States vary as to land titles, registry, exemptions, homestead rights, foreclosure, and equities of redemption. It is therefore made the duty of the farm loan board to investigate these questions in each State and to declare mortgages ineligible as security for farm loan bonds in those States where the laws do not give adequate protection to those loaning on first mortgage.

As the principle here enunciated by your committee accords with that on which the National Conference of Commissioners on Uniform State Laws have proceeded for many years, there is no doubt that a degree of joint cooperation between the farm loan board when

organized and our National Conference may be effected, and that our legislative committee and the three State commissioners from each State will be able to forward your plans as to desired uniform State laws as a basis for the successful establishment of a Federal system of rural credits.

Section 32 of your Rural Credits bill, authorizing the farm loan board to declare ineligible for farm loans the lands of such State as fails to provide the necessary uniform laws relating to the conveying and recording of land titles, and the foreclosure of mortgages and other instruments securing loans, will doubtless have an important effect in securing a more prompt compliance with the State uniformity principle.

It will be noted, also, in the testimony of Hon. David Lubin, delegate of the United States to the International Institute of Agriculture (pt. 5 of your committee hearings), that his proposition to adapt the Landschaft system of rural credits, established for 151 years in Germany, to conditions in this country, upon which a part of the plan submitted by your committee is apparently modelled, presupposes not only a Federal law but uniform State laws. It appears that the result of such uniform legislation in Germany, where the nation, the states, and the local districts cooperate in financing agriculture, has been to make the bond secured by mortgages on lands more popular and stable than the Imperial Government bonds, with interest rates thereon at $3\frac{1}{2}$ to 4%.

The rural credits systems of Europe illustrate the practical working out of the principle of uniformity as affecting farm credits. Commercial credits in Europe are no lower than in the United States. As testified by Comptroller Williams before your committee, there is no reason why the farmer in this country should not borrow as cheaply, if not more cheaply, than the merchant or manufacturer.

The farm property of the United States in 1909 was valued in the census at \$40,000,000,000 and doubtless will exceed \$50,000,000,000 in the census now being compiled. What is required is a proper mechanism for effectively financing this greatest American asset. Railroads maintained by the farms float their bonds at 4 per cent. Commercial paper in New York is 3 to $3\frac{1}{2}$ per cent; and on Minneapolis and Chicago grain warehouse receipts is 3 to 4 per cent. There is every reason to believe that, under a proper Federal system, with effective State cooperation under uniform State laws, the American farmer eventually will enjoy the same adequate and economical use of capital which we find among the most favored agricultural countries of Europe.

Respectfully submitted.

S. R. CHILD,
*Chairman Committee on Adoption of Approved
Acts of National Conference of
Commissioners on Uniform State Laws.*

UNIFORM LAND REGISTRATION ACT

AS ADOPTED BY THE TWENTY-FIFTH NATIONAL
CONFERENCE OF COMMISSIONERS ON UNIFORM
STATE LAWS, HELD AT HOTEL UTAH, SALT LAKE
CITY, UTAH, AUGUST 10-16, 1915.

NOTE.

[The Uniform Land Registration Act, in the form following, was adopted, approved, and recommended to the various States for adoption by the National Conference at its twenty-fifth annual meeting as shown by the votes and discussion printed in the minutes in this volume, pp. 56-64, 90, 94.] With certain verbal changes and annotations by the committee on registration of title to land.

AN ACT¹ To provide for the settlements, registration, transfer, and assurance of titles to land, and to establish or designate courts of land registration, with jurisdiction for said purposes, and to make uniform the laws of the States enacting the same.

Be it enacted as follows:

PART I.

PRELIMINARY PROVISIONS.

SECTION 1. [Name of act.] This act may be cited as the Uniform Land Registration Act.

SEC. 2. [Definitions.] Words and phrases used in this act are to be construed as follows:

(1). The words "voluntary transaction" means all devises and all contractual or other acts or dealings, by any registered owner of any

¹ *Illinois* and *Colorado*: "An act concerning land titles." *Massachusetts* and *Washington*: "An act relating to the registration and conformation of titles to land." *California*: "An act for the certification of land titles and the simplification of the transfer of real estate." *Minnesota*: "An act concerning the registration of lands and the title thereto in the State of Minnesota." *Mississippi*, *North Carolina*, and *Ohio*: "An act to provide for the assurance and registration of land titles." *New York*: "An act in relation to registering titles to real property and facilitating and expediting its transfer." *Oregon*: "An act concerning land titles, creating the offices of registrars of titles, prescribing the duties of said offices, providing for the registration of title to real estate, prescribing the manner in which registration of title may be obtained and the rights accruing thereunder." *Virginia*: Adopted the uniform act, with several inconsequential changes, February 12, 1916; approved ——. *California* and *Colorado* are the only States in which the act has been attacked as unconstitutional on account of its title. In *Robinson v. Kerrigan*, 151 Cal. 41 the court said: "The same criticism might be made of many acts on a general subject which have always been considered as valid. * * * If it were necessary to mention every subdivision of the general subject of an act in the title to the extent here claimed, our statutes would present a somewhat ludicrous appearance. The statement of the subject in the title would generally occupy almost as much space as the act itself. Furthermore, if subjects, as intended by the Constitution, must be so minutely subdivided, it would be impracticable to enact any comprehensive law on any general subject, by reason of the necessity of dividing it into so many separate acts. The provision must receive, and it has received a more liberal construction." The title was therefore held sufficient. See also *People v. Crissman*, 41 Colo. 450, holding *Colorado* title sufficient.

Registration of title has been employed in certain parts of Europe from time immemorial. The original act among English speaking peoples was prepared by Sir Robert Richard Torrens, not a lawyer but collector of customs at Port Adelaide, in South Australia. This act took effect in South Australia in 1858. Similar acts were adopted in Queensland in 1861, in Victoria, New South Wales

estate or interest in land with reference to such estate or interest, and to any statutory right or exemption claimed therein.

(2). The words "involuntary transaction" mean the transmission of registered land or any interest therein by descent, the rights of curtesy and dower, all equitable rights and claims, judicial proceedings or statutory liens or charges, the exercise of the right of eminent domain, the lien of delinquent taxes and levies, affecting registered land, or any interest therein.

(3). The phrase "writing, instrument, or record," means all transactions, whether voluntary or involuntary, as herein defined.

(4). The word "registrar" means the clerk of the court having jurisdiction of the cause within the county or city in which the land lies.

(5). The word "decree" means judgment, order, or decree.

(6). The word "appeal" means writ of error, supersedeas, or appeal.

(7). Except where the context requires a different construction, the word "court" means the court having jurisdiction for the settlement, registration, transfer, and assurance of titles to lands in the county or city where the land lies.²

SEC. 3. [Purposes.] For the certain, cheaper, and more speedy settlement, registration, transfer, and assurance of titles to land, there is hereby established a system of land title registration, having the following purposes in detail:

(1). To establish or designate courts of land registration.

(2). To provide for the appointment and duties of registrars of title.

and Tasmania in 1862, and in New Zealand in 1870. It then crossed the seas to British Columbia. They are generally known as "Torrens Acts." The system has spread throughout the Dominion of Canada and obtains in the Provinces of Manitoba, Saskatchewan, and Alberta and in the Northwest territories and also in Nova Scotia and in parts of Ontario. In the United States it has been adopted by *California* (Stats. 1897, pp. 138-167); *Colorado* (Laws 1903, pp. 311-352; Rev. Stats. 1908, pp. 334-355); *Illinois* (Laws 1897, pp. 141-165, 207-212, amended by acts of 1907, 1909, 1910 and 1913); *Massachusetts* (Laws 1898, pp. 682-722, amended by acts 1899, 1900, 1903, 1904, 1905 and 1910); *Minnesota* (General Laws 1901, pp. 348-378, amended 1903 and 1905); *Mississippi* (Laws 1914); *New York* (Laws 1908, vol. 2, pp. 1247-1283, amended 1909 and 1910); *Nebraska* (Laws 1915, pp. 494-526); *North Carolina* (Acts 1913, pp. 147-159); *Ohio* (constitution, art. 2, sec. 40, amendment of 1913; Laws 1913, pp. 914-960, amended 1914); *Oregon* (Gen. Laws 1901, pp. 438-467); *Virginia* (Acts 1916, pp. —); *Washington* (Session Laws 1907, pp. 693-738); *Hawaii* (Laws 1903, act 56, pp. 273-328); *Philippine Islands* (Compilation Laws 1908, pp. 777-820). There have been a series of acts leading up to registration in England since 1862, culminating in the land transfer act of 1897. This act renders registration of titles compulsory in certain places by order of certain local authorities, and the whole of London County, and city has been placed under the compulsory order. The London land registry office is located in a building specially erected for its purposes at a cost of \$1,325,000. As to the constitutionality of such legislation in the United States see *Robinson v. Kerrigan*, 151 Cal. 40; *People v. Crissman*, 41 Colo. 450; *People v. Simon*, 176 Ill. 165; *McMahon v. Rowley*, 238 Ill. 31; *Brooke v. Glos*, 243 Ill. 392; *Waugh v. Glos*, 246 Ill. 604; *Tower v. Glos*, 256 Ill. 121; *Tyler v. Judges*, 175 Mass. 68; *Tyler v. Judges*, 179 U. S. 405; *State v. Westfall*, 85 Minn. 437; *National Bond Co. v. Hopkins*, 96 Minn. 119; *Peters v. Duluth*, 119 Minn. 96; *American Land Co. v. Zeiss*, 219 U. S. 47; *Hammond v. Glos*, 250 Ill. 32.

²The definitions given in this section materially aid in reducing the length of the act. None of the State acts contain any definitions, but this feature obtains in the Australian and Canadian acts and is believed to be of value.

- (3). To regulate proceedings to obtain registration of title.
- (4). To authorize the adjudication of title.
- (5). To prescribe the nature of certificates of title.
- (6). To provide for the registration of subsequent dealings with registered titles.
- (7). To regulate sundry proceedings after registration of title.
- (8). To determine the legal effects of registration of title.
- (9). To establish an assurance fund.
- (10). And to regulate the fees for registration of titles.

PART II.

COURTS OF LAND REGISTRATION.

SEC. 4. [Courts of Land Registration.] The³ * * * courts throughout those portions of the State specified in section 89 of this act, and in those portions of the State which shall so elect as provided in said section, are hereby constituted or designated courts of land registration for the purpose of the settlement, registration, transfer, and assurance of titles to lands (or any interest therein as hereinafter provided) within their respective jurisdictions.

Minnesota, § 3379.

Mississippi, § 1.

North Carolina, § 1.

New York, § 371.

Ohio, § 1.

Oregon, § 14.

Washington, § 8.

SEC. 5. [Jurisdiction.] Such courts shall have exclusive, original, and general jurisdiction,⁴ subject to the right of appeal hereinafter allowed.

³ *Superior Court*: California, Illinois, North Carolina, Washington. *District Court*: Colorado and Minnesota. *Chancery Court*: Mississippi. *Supreme Court*: New York. *Common Pleas Court*: Ohio. *Circuit Court*: Oregon. *Land Court*: Massachusetts. One of the crowning excellencies of the *Massachusetts* act is the establishment of a special court for registering titles. This has done much to make the *Massachusetts* act popular and effective. Wherever it is possible, administration of the act should be committed to a special court. It is only on account of the cost of conducting such a court that it is not suggested in this act. The *Ohio* act, section 1, provides: "In counties having three or more common pleas judges said judges may select one or more of their number who shall act as judge or judges in land registration cases and matters." This affords the best substitute for a special court.

⁴ Jury trial is provided for by the acts of *Massachusetts*, *Mississippi*, *North Carolina*, and *New York*. No jury trial is provided for by the acts of *California*, *Colorado*, *Illinois*, *Minnesota*, *Ohio*, *Oregon*, and *Washington*. In *Peters v. Duluth*, 119 Minn. 96, held: *That Torrens* laws have the general purpose to clear up and settle land titles, and are nothing more or less than an enlargement of remedy to quiet title. Hence there is no constitutional right to a jury trial in *Minnesota* under article 1, section 4, which says: "The right of trial by jury shall remain inviolate, and shall extend to all cases of law without regard to the amount in controversy." The court said: "There was no such right upon the ancient bill to remove cloud and quiet title, and it has been held in this State that the constitutional guaranty does not apply thereto. *Yanish v. Pioneer Co.*, 64 Minn. 175." The provisions fixing the character of the proceedings *in rem* are vital and are found in all the acts in practically the same terms. As to the preparation of rules and forms, *California* places this duty on the attorney general, State controller and secretary of state; *Massachusetts* on the land court; *Minnesota* permits each court to adopt general forms. In *New York* each registrar must provide a book of covenants, restrictions and forms. Section 408. In *Ohio* the attorney general is to prepare a uniform system of books and forms.

(1) Of all petitions⁵ and proceedings for the registration of titles to lands,

(2) And of all transactions affecting registered titles to lands lying within their respective jurisdictions.

SEC. 6. [Powers.] Their powers shall include all the powers possessed by the (circuit and corporation) courts of the State, in law and equity, for the purpose of enforcing any of the provisions of this act.

SEC. 7. [Sessions.] They shall be open as courts of land registration, except on Sundays and legal holidays; and their process as such may be issued at any time, returnable as they may direct.

SEC. 8. [Mode of Trial.] The whole matter of law and fact⁶ in any case shall be heard and determined by the court; provided, however, that, on the motion of any person interested, the court shall direct and frame an issue or issues to be tried by jury.⁷

California, § 14, 17, 110.

Colorado, § 5, 8, 23-6.

Illinois, § 15, 25.

Massachusetts, § 1, 9, 13, 48.

Minnesota, § 3379, 3406, 3388.

Mississippi, § 218.

North Carolina, § 2, 8, 31.

New York, § 371, 390.

Ohio, § 1, 19, 94, 95.

Oregon, § 14, 24.

Washington, § 5, 8, 23-6.

SEC. 9. [Proceedings to be *in rem*.] The proceedings under any petition for the registration of land, and all proceedings or transactions in relation to registered land, shall be proceedings *in rem* against the land, and the decrees of the court and registered transactions shall operate directly on the land, and shall vest and establish title thereto in accordance with the provisions of this act.

SEC. 10. [Rules of Court.] The * * * court (court of last resort) shall from time to time make general rules and forms for procedure, subject to the provisions of this act and the general laws, and such rules and forms shall be uniform throughout the State.

⁵ *People v. Crissman*, 41 Colo. 450. Replying to the objection that no judgment or decree can be rendered or entered, in favor of a defendant, regardless of the showing he may make, the court said: "The act does accord to all persons equal rights and privileges. Anyone desiring to avail himself of its terms can do so by filling his application, and can obtain the registration of his title by complying with the requirements of the statute. Although the legislature has seen fit to allow affirmative relief only to the applicant who initiates the proceedings, this does not render the proceedings objectionable for the reason assigned. The right to a particular remedy is not a vested right. Every State has complete control over the remedies which it offers to suitors in its courts."

⁶ *Foss v. Atkins*, 201 Mass. 158: Facts found by land court become final upon dismissal of appeal to superior court. *Marvel v. Cobb*, 204 Mass. 117: Finding of facts by land court can not be revised by supreme court. *Id. Gorton v. Tolman*, 210 Mass. 402. Findings of fact by land court when no trial by jury is claimed are conclusive. *Van Ness v. Boiney*, 214 Mass. 340.

⁷ Issues must be framed in land court for appeal. *McQuesten v. Attorney General*, 187 Mass. 185. Issues for jury trial may be amended by superior court. *Luce v. Parsons*, 192 Mass. 8; *Foss v. Atkins*, 193 Mass. 486. The judge of land court may refuse to certify immaterial issue for appeal. *Dunbar v. Kronmuller*, 198 Mass. 591. The court has no right to refuse jury trial when title to land is in issue. *Weeks v. Brooks*, 205 Mass. 458. *Torrens'* laws have the general purpose to clear up and settle land titles, and are nothing more or less than an enlargement of the remedy to quiet title. Hence there is no constitutional right to a jury trial in Minnesota. *Peters v. Duluth*, 119 Minn. 96. On appeal petitioner for registration has the right to open and conclude before the jury. *Bigelow v. Wiggin*, 209 Mass. 542.

SEC. 11. [Petitions for Rehearing, Appeals, and Bills of Review.] A petition for rehearing or an appeal may be taken (or a bill of review or bill of exceptions, or writ of certiorari) may be filed, within 90 days,⁸ and not afterwards, from any decree of the court, under the same circumstances, in the same manner and on the same condition as if such decree had been rendered by a * * * court.

Said period may not be extended by any disability.

California, § 45.	Oregon, § 25, 26, 27.
Colorado, § 27, 28, 29.	Washington, § 27-29.
Illinois, § 26, 27, 28.	Massachusetts, § 13, 15.
Minnesota, § 3394, 3396-7.	Mississippi, § 8, 25.
New York, § 380, 392.	North Carolina, § 8, 25.
Ohio, § 25, 80.	

SEC. 12. [Books and Cases for Records.] It shall be the duty of the * * * of each county (or the * * * of each city) in which the office of a registrar of titles may be located to provide appropriate cases and other furniture for the safe and convenient keeping of all the books, documents, and papers in the custody of such registrar, and also an official seal, and all necessary books and such printed blanks and stationery for use in registration in such county or corporation as may be ordered by the court.

California, §109.	New York, §376.
Ohio, §91.	

SEC. 13. [Court May be Held by Designated Judge.] If the judge of the court, for any reason shall become disqualified or temporarily incapacitated, the court may be held by any other judge of a court of record designated according to law.

Ohio, §1.

PART III.

REGISTRARS AND EXAMINERS OF TITLES.

SEC. 14. [Clerks to be Registrars of Title.] The clerks⁹ of said courts shall be registrars of title under this act.

⁸This section is in effect a 90-day statute of limitations. *Tyler v. Judges*, 175 Mass. 68; *California* limitation 5 years; *Colorado* and *Washington* 90 days; *Illinois* and *Oregon* 2 years; *Minnesota* and *New York* 6 months; *Massachusetts* and *Ohio* 30 days. Limitation of 60 days not unconstitutional. *State v. Westfall*, 85 Minn. 437. Illinois limitation good. *People v. Simon*, 176 Ill. 165. In North Carolina an appeal may be taken "as in other special proceedings"; and in Mississippi "as in other cases." But in these States the bars seem to be wholly let down by another provision permitting an adverse claim existing at initial registry to be filed at any time thereafter, and requiring action thereon to be brought within six months after the entry of such claim, unless the clerk for cause shall extend the time. In practice, registration of title is only resorted to for business reasons and purposes. Business demands clear and quick and certain results. A long statute of limitation must destroy the usefulness of any registration act. The two years' limitation has been one of the greatest handicaps in Illinois. The five-year limitation in California has been one of the reasons preventing any general resort to that act.

⁹The act creates no new office. "It was clearly within the provisions of the legislature to impose upon the clerk in his capacity of recorder of deeds the duties enjoined upon him by this statute. Making him registrar of titles, does not constitute him a new county officer." *People v. Crissman*, 41 Colo. 450.

(1). They shall do all things required of them by this act, under the direction¹⁰ of their respective courts, and pursuant to rules and regulations established for such courts, and shall be governed by the same general laws as clerks of (circuit and municipal) courts in so far as the same may be applicable.

(2). Their official designation under this act shall be registrar of title for their respective counties or cities.

(3). They shall qualify and give bond in accordance with law for the faithful performance of their duties as such.

California, §1, 4.

Colorado, §9.

Illinois, §1.

Massachusetts, §, 73.

Minnesota, §3398, 3400.

New York, §372, 406.

Ohio, §1, 2.

Oregon, §1.

Washington, §9.

SEC. 15. [Duties and Powers of Registrars of Title.] Registrars of title and their deputies shall be authorized and required, under the direction of their respective courts:

(1). To issue process and to enter the decree of the court touching lands in their respective counties or cities.

(2). To enter and issue certificates of title as provided herein.

(3). To affix the seal of the court to such certificates and their duplicates.

(4). To make entries and memoranda and perform all acts of registration affecting the title to such lands.

(5). To keep a separate account of all moneys with which they may be chargeable under this act, and to make a special return thereof in accordance with the general laws and the special provisions of this act.

(6). And generally to perform such other acts as the court may prescribe.

California, §1, 4.

Colorado, §9, 10, 11.

Illinois, §2, 3, 6, 29.

Massachusetts, §8.

Minnesota, §3399, 3401.

New York, §373-4.

Ohio, §2.

Oregon, §2.

Washington, §9, 10, 11.

SEC. 16. [Examiners of Titles.] The courts of land registration shall appoint,¹¹ subject to removal at any time, one or more attorneys

¹⁰ Under this provision registration is the act of the court. *Tyler v. Judges*, 175 Mass. 68. See also *People v. Simon*, 176 Ill. 165 and *State v. Westfall*, 85 Minn. 437. Fierce battles have raged over the duties of registrars. The first Illinois act of 1895 was successfully assailed and declared unconstitutional because it conferred judicial powers on the registrars. *People v. Chase*, 165 Ill. 526; and the same fate befell the first Ohio act of 1897. *State v. Guilbert*, 56 Ohio St. 575. Subsequent acts have, however, been upheld over such objections. To avoid any difficulty or doubt in this regard article II of the Constitution of Ohio has been amended by the addition of section 40 for the establishment of a land registration system and especially providing that "Judicial powers with right of appeal may by law be conferred upon county recorders or other officers in matters arising under the operation of such system." The provisions of the above section are believed to be sufficient to avoid any constitutional question.

¹¹ *California*: Referee appointed by court in each case; \$10,000 bond. *Colorado* and *Washington*: One attorney in each county appointed by court; bond. *Illinois* and *Oregon*: Two or more attorneys appointed by registrar in each county; bond fixed by court. *Massachusetts*: One or more attorneys in each county appointed by judge; removal by supreme judicial court. *Min-*

at law in their respective counties or cities, to be examiners¹² of titles, or the court may, in any case on motion, appoint special examiners.

(2). Their duty shall be to search the records and investigate all facts stated in the petition or otherwise brought to their notice in any case referred to them.

(3). They shall have the powers of (commissioners in chancery) and may hear the parties and receive evidence.¹³

(4). They shall make report to the court, in the form required by it, with a certificate of their examination of the title and their findings of fact.

California, §16, 18, 19.

Colorado, §13, 24.

Illinois, §5.

Massachusetts, §11.

Minnesota, §3381.

Mississippi, §8.

North Carolina, §3.

New York, §377, 380.

Ohio, §3.

Oregon, §5.

Washington, §13, 24.

PART IV.

PROCEEDINGS TO OBTAIN REGISTRATION.

SEC. 17. [Petition for Registration.] Suit for registration of title shall be begun by a petition¹⁴ to the court, by a person or persons claiming, singly or collectively,

(1). To own,

(2). Or to have the power of appointing or disposing of, an estate in fee simple in any land, whether subject to liens or not.

SEC. 18. [Petition by Representative.] Infants and other persons under disability may sue and defend by guardian, committee, or trustee, as the case may be, and corporations by an officer duly authorized.

nesota: One or more attorneys appointed by judges; no provision for removal. *Mississippi* and *North Carolina*: Three attorneys in each county appointed by clerk for two years; removal at will of clerk or court. *New York*: Attorneys or corporations authorized to guarantee or insure titles qualified under rules of court of appeals; bond fixed by court. *Ohio*: One or more attorneys appointed by court; bond \$1,000 to \$10,000.

¹² Examiners of title not county officers but court officers. *State v. Westfall*, 85 Minn. 437. Examiner acts as a master in chancery. *Gage v. Consumers' Co.*, 194 Ill. 30.

¹³ Objections to testimony must be made before examiner of titles. *O'Loughlin v. Covell*, 222 Ill. 162. Examiner must not make *ex parte* examinations of abstracts and other evidence of title. *Glos v. Grant Building Association*, 229 Ill. 387. Objections to admissibility of evidence before examiner must be made at the time it is offered, or will otherwise be excluded. Exceptions to examiner's report must not be general but specific, and must point out the evidence objected to and give reasons for the objections. *Bjork v. Glos*, 256 Ill. 447.

¹⁴ Complaint in action for registration need not set out the statute. It is sufficient to plead facts showing the right to registration. *Duffy v. Shirden*; 139 N. Y. App. Div. 755. Applicant for registration must prove fee simple title either by the production of a regular chain of conveyances from the General Government, or by proof of the creation of a title by adverse, open, continuous and hostile possession under claim of title for the period of 20 years, or by the acquisition of a good tax title. *Glos v. Kingman*, 207 Ill. 26; *Glos v. Holberg*, 220 Ill. 167. It is not incumbent on applicant to affirmatively establish the invalidity of tax deeds held by parties defendant. *McMahon v. Rowley*, 238 Ill. 31. The filing of application for registration stops the running of statute limitations and prevents

(2). But the person in whose behalf the petition is made shall always be named as petitioner.

(3). A nonresident petitioner shall appoint a resident agent upon whom process and notices may be served.

SEC. 19. [Equity Practice.] Except¹⁵ as otherwise provided, the suit shall be subject to the general rules of pleading and practice in equitable actions.

California, §5, 8, 9.
 Colorado, §1-3, 5, 6, 66.
 Illinois, §7-10, 12.
 Massachusetts, §18.
 Minnesota, §3372-3, 3377.
 Mississippi, §4, 5.

North Carolina, §4, 5.
 New York, §370, 378.
 Ohio, §4-7, 90.
 Oregon, §5-8, 11.
 Washington, §1-3, 5, 6, 65.

SEC. 20. [Signature and Oath to Petition.] The petition and any amendment thereto shall be signed and sworn to by each petitioner, or in the case of a corporation or person under disability by the person authorized to file the petition.

SEC. 21. [Contents of Petition.] The petition shall set forth

(1). A full description of the land, and any improvements thereon, with the description and valuation in its last assessment for taxation.

(2). When, how, and from whom it was acquired.

(3). Whether or not it is occupied.¹⁶

(4). An enumeration of all known¹⁷ liens, interests, and claims, adverse or otherwise, vested or contingent.

holder of tax title from mending his hold. *Woods v. Glos*, 257 Ill. 125. Any "owner" of land, whether his title be of record or not, may maintain proceedings for registration. A case in which title under an unrecorded deed was registered. *National Bond Co. v. Alderson*, 99 Minn. 137. A party not in possession may bring suit for registration of title against party in possession. "The purpose of the statute is to provide a speedy and summary remedy to clear up title to land. *Reed v. Siddall*, 94 Minn. 216. The remedy provided is not a substitute for an action of ejectment. * * * Moreover, the relief in ejectment is not coextensive with that which may be had upon an application to register * * * it needs no argument to show that a title could never, in ejectment, be settled as against the whole world, as can be done in an application to register." The several pieces of land must form one compact body or must have the identical chain of title; must not be in different blocks separated by a street, nor in the same block separated by other lots owned by others. *Culver v. Waters*, 248 Ill. 163.

¹⁵ Procedure under the act is same as in chancery practice unless as otherwise provided. *O'Laughlin v. Covell*, 222 Ill. 162. "All rules and principles of law applicable to equitable actions and proceedings, and rules and practice with respect to trial, introduction of evidence, findings and order of judgment, should so far as not clearly inappropriate or otherwise provided for by the act, be followed and applied." *Owsley v. Johnson*, 95 Minn. 168. It is well settled that proceedings to register title to land are of an equitable nature. *Brown v. Haggadorn*, 119 Minn. 491.

¹⁶ If applicant alleges lot is unoccupied, he must prove it, otherwise title can not be registered. *Jackson v. Glos*, 243 Ill. 280. Title can not be registered without proof of occupancy or vacancy. *Brooke v. Glos*, 243 Ill. 392; *Mihalik v. Glos*, 247, Ill. 597.

¹⁷ If applicant asks for tax deed to 1 vigintillionth of the lot to be set aside as a cloud on the title, he must reimburse tax holders. *Jackson v. Glos*, 243 Ill. 280.

(5). And the full names and addresses,¹⁸ if known, of all persons that may be interested by marriage or otherwise, including adjoining¹⁹ owners and occupants.

(6). The petition shall be accompanied by a plan made in accordance with the rules of court.

California, \$6.

Colorado, \$4.

Illinois, \$11, 14, 16.

Massachusetts, \$20.

Minnesota, \$3374, 3375, 3378.

Mississippi, \$5.

North Carolina, \$5.

New York, \$379, 384.

Ohio, \$8, 10, 11.

Oregon, \$9, 12, 13.

Washington, \$4.

SEC. 22. [Petition to be Filed and Docketed.] The petition shall be filed with the registrar of titles, and shall be forthwith docketed, numbered, and indexed by him in a book to be known as the land registration docket of his county or city.

SEC. 23. [Notice of *Lis Pendens*.] The registrar shall also forthwith cause to be recorded and indexed in the proper record book of such county or city a notice, such as is required by law for notice of *lis pendens*, which shall be filed with the petition, and which shall have the full force and effect of a notice of *lis pendens*.

SEC. 24. [Memorandum of Other Papers.] A memorandum of all other pleadings and papers filed with said registrar shall in each case be entered upon his registration docket under the proper number as aforesaid, and the papers in the cause and all writings, instruments and records filed with him shall be safely kept by him in his office, duly numbered, dated, and indexed.

California, \$11.

Colorado, \$15, 16, 43.

Illinois, \$16, 17.

Massachusetts, \$12, 48.

Minnesota, \$3380.

New York, \$370, 382.

Ohio, \$7, 36, 38, 92.

Oregon, \$15, 16.

Washington, \$15, 16, 42.

SEC. 25. [Reference to Examiner of Titles.] Upon the filing²⁰ of a petition for the registration of any land, the court shall refer the

¹⁸ Street address of applicants should be given, but may be supplied later. *Creger v. Spitzer*, 244 Ill. 208.

¹⁹ An abutting owner claiming interest in land to be registered can not attack constitutionality of act, nor can he plead that complaint fails to state a cause of action; and if not shown by examiner's report to have any interest in tract to be registered and not designated by order of court as a party to be served, he is not a necessary party; if made a party by complaint, it is subject to demurrer. *Duffy v. Shirden*, 139 N. Y. App. Div. 755.

²⁰ In Mississippi and North Carolina no reference is made to the examiner until after the publication of notice and service of process. In other States reference is made as soon as the application or petition is filed. In Illinois, however, the examiner does not report until after expiration of the time specified in the order of publication for the appearance of defendants, and until opportunity is given them to contest the rights of the applicant. An abstract of title is required to be filed in Mississippi and North Carolina. In other States the examiner is required to report his opinion, and sometimes to report the facts on which it is based. Such a report as is contemplated by this section will probably disclose the name and addresses of all persons having any interest in or claim against the land. If any should be omitted or overruled, they will be discovered under subsequent proceedings. In New York an examiner's certificate must accompany the complaint, and it is for the court to decide whether that is sufficient. It seems better to have an impartial examiner appointed by the court. As he has the powers of a master in chancery, he can compel the testimony of witnesses. He is required to make a report with full extracts from the records, so that the court can judge for itself of the condition of the title.

same to one of the examiners of title provided for by the act, to examine and report thereon.

SEC. 26. [Report of Examiner.] Such report²¹ shall include:

(1) An abstract of title to the land, made from the records and all other evidence²² that can be reasonably obtained by the examiner.

(2) Full extracts from the records to enable the court to decide the questions involved.

(3) The names and addresses so far as ascertained of all persons interested in the land, as well as adjoining owners and occupants, showing their several interests, and indicating upon whom²³ and in what manner process should be served or notice given in accordance with the provisions of this act.

California, §6, 18, 19.
Colorado, §17, 24.
Illinois, §18.
Massachusetts, §29.
Minnesota, §3382.
Mississippi, §8.

North Carolina, §8.
New York, §380.
Ohio, §13.
Oregon, §17.
Washington, §17, 24.

SEC. 27. [Order of Publication *in rem*.] Upon the filing of the report of the examiner of titles, the court shall cause notice²⁴ thereof to all persons shown therein to be entitled to the same, and "to all whom it may concern," to be published, and to be posted in the county or city where the land lies, in the same manner and with the same effect as an order of publication in other proceedings *in rem*, subject, however, to the limitation imposed by section 11 of this act.

California, §13.
Colorado, §17, 19, 20.
Illinois, §20.
Massachusetts, §30.
Minnesota, §3383-4.
Mississippi, §6, 7.

North Carolina, §6.
New York, §385-6.
Ohio, §14.
Oregon, §19.
Washington, §17, 19, 20.

SEC. 28. [Notice by Mail.] A copy of the order of publication shall in all cases be mailed by registered letter demanding a return, to every person interested, named in the petition or in the report of the examiner of titles whose address is given or known.

²¹ It will be presumed that the examiner considered only competent evidence in making his findings, if the report contains sufficient competent testimony to support such findings. *McMahon v. Rowley*, 238 Ill. 31. Substance of proofs need only be reported by examiner, unless otherwise required by some party. If evidence be not returned, party complaining should ask trial judge for rule on examiner. *Creger v. Spitzer*, 244 Ill. 208. Procedure where examiner fails to report evidence on request. Harmless errors not regarded. *Mundt v. Glos*, 246 Ill. 636. If no exception be taken to report of examiner, it is conclusive. *Kenney v. Glos*, 258 Ill. 555. Exceptions to master's report; practice on appeal. *Welsh v. Briggs*, 204 Mass. 540.

²² Objections to evidence must be made by exceptions to examiner's report *Gage v. Consumer's Co.*, 194 Ill. 30. Rules for objections to examiner's report. *Glos v. Hobane*, 212 Ill. 222; *Glos v. Holberg*, 220 Ill. 167.

²³ If State holds tax liens, it should be made a party. *National Bond Co. v. Hopkins*, 96 Minn. 119. Persons whose claims are barred are not necessary parties. *O'Laughlin v. Covell*, 222 Ill. 162. Court can not disregard examiner's report nor decline to make defendant any party whom the examiner finds to have such an interest as to require that he shall be so named. Registration is void against any such party and his privies not made parties. *Dewey v. Kimball*, 89 Minn. 454.

²⁴ When application omits names of parties holding easements, but examiner's report gives names and recommends that they be made parties, if not made parties the registration is void and subject to collateral attack on account of constructive fraud. *Riley v. Pearson*, 120 Minn. 210.

SEC. 29. [Notice by Posting on Land.] The court shall also cause an attested copy of said order to be posted in a conspicuous place by the sheriff on each parcel of land included in the petition.

It shall require such sheriff to go upon the lands and ascertain and report to court the names and addresses of any person or persons actually occupying the premises under any claim of title.

SEC. 30. [Notice to State.] If the petition involves the determination of any public rights or interests, the court shall cause a copy of the order of publication to be delivered by the registrar to the proper attorney for the State, county, or city.

SEC. 31. [Other Notice.] The court may cause other or further notice to be given in such manner and to such person as it may deem proper.

And such personal service of process as is required in equitable actions shall also be made upon residents of the State, not under disability, who are made known²⁵ to the court before final decree and can be reached by its process, unless such service be waived by appearance or otherwise.

SEC. 32. [Effect of Notice.] Notice²⁶ given under the preceding sections shall be in lieu of personal service of process, except as provided in section 31, and shall be conclusive and binding on all the world.

California, §13.

Colorado, §20a.

Illinois, §19, 21.

Massachusetts, §31.

Minnesota, §3384.

Mississippi, §6.

North Carolina, §6.

New York, §385-7.

Ohio, §15.

Oregon, §18, 20.

Washington, §20a.

²⁵ When a name of a claimant is known to applicant, he must be summoned and an order of publication does not bind him. "As he is not an 'unknown party' the concealment of his claim is a fraud on the court, and the decree therein is as to him of no force and effect." *Baart v. Martin*, 99 Minn. 197. Failure to republish notice after amendment of description of lots in application is not fatal where all parties having or claiming to have any interest in the lots were personally served by summons or entered their appearance in writing. *Tower v. Glos*, 256 Ill. 121. If written consent be given to application for registration, no summons against such party is necessary, nor that he be given an opportunity to be heard. He can not appeal. Such written consent need not be acknowledged before a notary, and it is immaterial whether the statute expressly provides for such consent. *Mooney v. Valentynovicz*, 262 Ill. 355.

²⁶ This statute changes the rule of law as to notice, but the legislature has the right to do this without violating the constitution. "Even if the proper construction of the provision were that it attempted to authorize judgment against a resident notified only by publication, yet the law can be given practical effect, in which event only the particular provision would fail and not the whole law." *People v. Simon*, 176 Ill. 165. By section 31 service of process is required to be made on all known residents interested. In delivering the opinion of the court in the suit of *Tyler v. Judges*, 175 Mass. 68, Chief Justice Holmes said: "I am free to confess, however, that with the rest of my brethren, I think the act ought to be amended in the direction of still further precautions to secure actual notice before a decree is entered, and that, if it is not amended, the judges of the court ought to do all that is in their power to satisfy themselves that there has been no failure in this regard before they admit a title to registration." Acting on this suggestion the Massachusetts act was amended in 1898 and in 1900 to this effect: "The court shall, so far as it considers it possible, require proof of actual notice to all adjoining owners, and to all persons who appear to have any interest in or claim to the land included in the application. Notice to such person by mail shall be by registered letter." In this section we have gone even further to meet all objections and to insure as far as possible the discovery and notification of all possible claimants.

SEC. 33. [Certificate of Service.] Certificates from the registrar and sheriff, or their deputies, showing the due execution of said order of publication and the mailing and posting of copies thereof, as required by sections 27 to 30, inclusive, shall be filed among the papers in the cause and be conclusive²⁷ proof of such service.

Colorado, §20a.

Massachusetts, §31, 32.

Mississippi, §7.

North Carolina, §7.

New York, §387-8.

Ohio, §16.

Washington, §20a.

SEC. 34. [Time of Hearing.] After the expiration of at least 15 days from the publication and posting of said order of publication as aforesaid, the cause shall be set down for hearing.

SEC. 35. [Guardian *ad litem*.] And thereupon the court shall appoint some discreet and competent (attorney at law) of the county or city in which the land lies, as guardian *ad litem* for all persons under disability, not in being, unascertained, unknown, or out of the State, who may have or appear to have an interest in or claim against the land.

SEC. 36. [Answer to Petition.] Any person having any interest in or claim against the land, whether named in the petition and order of publication or not, may appear and file an answer at any²⁸ time before final decree, unless such person shall have been served personally with notice.

SEC. 37. [Signature and Oath to Answer.] The answer shall be personally signed and sworn to, by the claimant, or in case of a corporation or a person under disability, by the person authorized to file the answer, unless the court, for good cause shown, otherwise direct.

PART V.

ADJUDICATION OF TITLE.

SEC. 38. [Action on Report of Examiner of Titles.] After the expiration of the time as provided by section 34, the court may proceed to take such action as may be proper,²⁹ upon the report of the examiner of titles and all other evidence before it with reference to the rights of all persons appearing to have any interest in or claim against the land, and may refer the cause again or require further proof.

California, §14, 18.

Colorado, §18, 23, 25.

Illinois, §23, 24.

Massachusetts, §36.

Minnesota, §3382.

Mississippi, §8.

North Carolina, §8.

Ohio, §18, 19.

Oregon, §23, 24.

Washington, §18, 23, 25.

²⁷ "The Torrens system of registration of land titles is different from the prevalent method of recording; the manner of bringing lands under such system must be provided by statute; the proceeding is of a different nature from an ordinary action at law or suit in chancery; and we can not say that the legislature acted unreasonably in providing for a rule of evidence applicable to the proceeding without extending it to all other forms of action in which the title of real estate is involved." *Waugh v. Glos*, 246 Ill. 604.

²⁸ The Colorado and other acts having special provisions on this subject provide that an answer may be filed within the time named in the summons, "or within such further time as may be allowed by the court." It is fairer and better to allow an answer at any time before final decree.

²⁹ Under this provision the cause will be taken for confessed as to all persons who have not appeared and answered and the court will proceed to dispose of the claims of those who have not appeared. *People v. Crissman*, 41 Colo. 450, expressly decides that the court is not bound by the examiner's report.

SEC. 39. [Order of Survey, etc.] While the cause is pending before the examiner of titles, or at any time before final decree, and whenever after initial registration a tract of land is subdivided, the court

(1) May require³⁰ the land to be surveyed, after due notice to owners of adjoining land, by a competent surveyor appointed by the court.

(2) Shall order durable bounds to be set and a plat thereof to be filed among the papers of the suit.

(3) Shall enter all necessary decrees for the establishment, declaration, and protection of the right and title of all persons appearing to have any interest in or claim against the land.

North Carolina, §5, 13, 15.

New York, §381.

Ohio, §19.

Oregon, §24.

California, §14.

Illinois, §25.

Massachusetts, §35.

Mississippi, §5, 13, 15.

SEC. 40. [Petition May Be Dismissed.] If in any case the petitioner so desires, or if the court is of opinion that the petitioner's title is not and can not be made proper for registration, the petition may be dismissed³¹ without prejudice, on terms to be determined by the court.

California, §12.

Colorado, §26.

Minnesota, §3382.

Ohio, §20.

Washington, §26.

SEC. 41. [Amendments to Petition and Other Pleadings.] Amendments³² to petitions or other pleadings, or the severance³³ thereof,

³⁰ When property is subdivided for registration of any subdivision there must be proof thereof by plat or other evidence sufficient for conveyance. *Glos v. Erhardt*, 224, Ill. 532. Decree reversed because no plat was proved before registration, and it was impossible to locate the subdivision from the evidence. *Glos v. Bragdon*, 229 Ill. 223; *Glos v. Grant Building Association*, 229 Ill. 387. A survey is of prime importance and necessity, especially in States in which lands have not been laid off by Government survey.

³¹ Petitioner must comply with terms fixed by court in withdrawing petition. *McQuesten v. Commonwealth*, 198 Mass. 172. After decree for petitioner, when on appeal and trial by jury a verdict is given for respondent, petition must be dismissed. *Robinson v. Richards*, 209, Mass. 295. A provision authorizing a dismissal of application does not violate constitution. *Peters v. Duluth*, 119 Minn. 96. Court must dismiss application, on motion, without prejudice, upon such terms as may be fixed by it. "The Torrens Act makes provisions for a special proceeding * * * In a special proceeding, it being within the power of the legislature to limit the jurisdiction of the court, the bounds of the court's jurisdiction are to be found in the limitations of the act under which its jurisdiction is invoked. The legislature might have provided for a determination of conflicting interests if it had been so inclined. But it did not do so. * * * There is more or less difference in the Torrens Act as adopted in the several States. Where, as in Illinois, no provision is made for a voluntary dismissal, but the court is put to a final determination of the issue, it has been held that the court may grant relief as to such portion of the land as the evidence shows the title in fee to be in the applicant, and deny it as to the remainder. *Glos v. Holberg*, 220 Ill. 167. But our law was drawn upon a different theory." *Krutz v. Dodge*, 66 Wash. 178.

³² Amendment of petition by substituting name of respondent for petitioner is illegal and void. "If the respondents had wished to become petitioners they should have brought their own petition." *Foss v. Atkins*, 204 Mass. 337. Court properly permitted answer to be amended. *Kuby v. Ryder*, 114 Minn. 217.

³³ Title to a portion of the property may be registered when properly established. *Glos v. Holberg*, 220 Ill. 167. G holding tax title to a portion of land offered for registration, claims ownership. Examiner of titles reported against validity of G's claim, but applicant dismissed application as to said portion of

including joinder, substitution of any person or persons, or discontinuance of parties, and the omission or severance of any portion or parcel of the land, may be ordered or allowed by the court at any time before final decree upon terms that may be just and reasonable; and the court may require facts to be stated in an amended petition in addition to those prescribed by this act.

California, §10.

Colorado, §4.

Massachusetts, §20, 21, 23; 27.

Minnesota, §3378.

Illinois, §14.

Oregon, §13.

Washington, §4.

SEC. 42. [Land May be Dealt With, Pending Registration, Subject to Decree of the Court.] The land described in any petition may be dealt with pending³⁴ registration as if no such petition had been filed.

(1). But any instrument admitted to record under the general laws in relation to such land pending action on said petition shall also be docketed and indexed as required by section 22 of this act.

(2). And any person who shall acquire any interest in or claim against such land shall at once appear as a petitioner, or answer as a party defendant, in the proceedings for registration, and such interest or claims shall be subject to the decree of the court.

Massachusetts, §22, 28.

Colorado, §32.

Minnesota, §3395.

New York, §398.

Ohio, §12.

Washington, §32.

SEC. 43. [Certificates of Taxes Paid.] No final decree of registration shall be entered until proof is made by certificate from the proper officer that all taxes and levies assessed on said land and then due or delinquent have been paid in full.

SEC. 44. [Decree of Registration is Final, Quiets Title, and Binds All the World, Subject to Appeal, etc.] If the court, after final hearing, is of opinion that the petitioner has title³⁵ proper for registra-

land. *Held*: G can not complain because his claim was allowed; also can not complain of the application, nor because not allowed to make unnecessary amendments to his answer. *Glos v. Murphy*, 225 Ill. 58. See also *Tower v. Glos*, 256 Ill. 121. The provisions of this section have been broadened in the interest of business under the act. It covers the amendments to the Massachusetts act and adopts suggestions made by Hon. Charles Thornton Davis, chief judge of the Massachusetts Land Court, as to the omission or severance of any portion or parcel of the land.

³⁴ Alienees of claimant pending registration proceedings are not entitled to answer as a matter of right, but answer must be filed in a reasonable time; a delay of six months is unreasonable, and the court did not abuse its discretion in denying the right to answer after such delay. *Brown v. Haggadorn*, 119 Minn. 491.

³⁵ Applicant must prove fee simple title in himself by tracing back the Government grant or by statutory limitations. *Glos v. Holberg*, 220 Ill. 167. Applicant must show title good against the world; *prima facie* title not sufficient. *Glos v. Wheeler*, 229 Ill. 272. Defendant to application can not complain of title to lots in which he claims no interest. *Mundt v. Glos*, 231 Ill. 158. A good tax title may be registered. *Tobias v. Kaspzyk*, 247 Ill., 80. In a petition for registration of tax title, former owner was made defendant. Time for redemption had not expired when application was filed, but owner failed to take advantage of this and the title was registered in name of claimant after redemption period. *Held*: A good registry, and that no one but former owner might have complained; State could not. *Gates v. Keigher*, 99 Minn. 138. Tax title registered subject to lien of city assessments. *Gould v. City of St. Paul*, 110 Minn. 324. Tax title registered. *Hendricks v. Hess*, 112 Minn. 252. Title by adverse possession under statute of limitations may be registered; partition decree gives color of title. *Peters v. Dicus*, 254 Ill. 379. When one consents to reg-

tion, a decree of confirmation and registration shall be entered; and every decree of registration entered in accordance with the provisions of this act,

(1) Shall bind ³⁶ the land and quiet the title thereto, except as herein otherwise provided.

(2) Shall be forever binding and conclusive upon all persons, resident or nonresident, including the State, whether mentioned by name in the order of publication or included under the general description, "To all whom it may concern."

(3) And shall not be attacked or opened or set aside by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding at law or in equity for rehearing or reversing judgments or decrees, except as herein especially provided.

California, §9, 14, 15, 17.

Colorado, §23, 27.

Illinois, §25, 26.

Massachusetts, §34, 37.

Minnesota, §3390.

Mississippi, §8, 9.

North Carolina, §8, 9.

New York, §391.

Ohio, §22.

Oregon, §24, 25.

Washington, §23, 27.

SEC. 45. [Form of Decree and Manner of Registration.] Every decree of initial registration and subsequent memorial shall be made in convenient form for transcription upon the certificate of title, showing the following items:

(1) *Owners*.—Name and residence of the owner, and whether married or unmarried, and the name of the consort, if any.

If the owner is under disability, the nature thereof, and if an infant, his age.

If a corporation, the place of incorporation and its chief office.

If a personal representative or trustee, the name of decedent or beneficiary.

(2) *Land*.—Description of the land as finally determined by the court.

The estate of the owner therein.

Also all the rights and easements appurtenant to said land.

And also a description of all particular estates, easements,³⁷ liens, or other encumbrances, or rights to which the land or the owner's estate is subject, showing their relative priorities.

(3) *Other Matters*.—Any other matter determined in pursuance of the provisions of this act.

SEC. 46. [Time of Taking Effect.] Such decree or memorial shall take effect upon the land described therein as of the day, hour, and minute it is filed for registration in the office of the proper registrar.

istration, decree is final as to him and can not be set aside at a subsequent term. *Mooney v. Valentynovicz*, 255 Ill. 118. Petitioner's right to fee in land under R. R. right of way and station may be registered. *Battelle v. N. Y. & C. Ry.*, 211 Mass. 442. Petitioner must recover upon strength of his own title, and not upon the weakness of his adversary's title. *Owsley v. Jackson*, 95 Minn. 168.

³⁶A decree of registration can not be collaterally attacked for error or fraud. *State v. Ries*, 123 Minn. 397.

³⁷"There is no provision in the land registration act for an application by the owner of an easement for the registration of his title * * * It seems to us, therefore, that the statute was not intended to afford a remedy by which owners of easements in the same land could have the nature and extent of their rights settled, and should be so construed." *Minot v. Cotting*, 179 Mass. 325. Land court may determine boundaries of highway. *First National Bank v. Woburn*, 192 Mass. 220.

SEC. 47. [Registra's Memorandum.] The registrar shall forthwith record the said decree in the proper book of the court, and shall forthwith enter and properly number, minutely date, and index a memorandum thereof on his land registration docket and in the entry book hereinafter directed to be kept by him, and shall cause to be recorded and indexed a like memorandum in the proper deed book of the county or city.

PART VI.

CERTIFICATES OF TITLE.

SEC. 48. [Entry in Registry of Titles.] Said decree or memorial, or so much thereof as may be ordered by the court, shall be copied, numbered, signed, and sealed with the seal of the court by said registrar and registered in the book hereinafter directed to be kept by him, to be known as the register of titles, for his county or city; and when so registered shall constitute the original certificate of title.

Subsequent certificates covering the same land shall be in a like form, but shall be designated "transfer certificate No. — (the number of the next previous certificate covering the same land), original certificate registered — (date, volume, and page of registration)."

New and appropriate numbers shall be adopted for any subsequent certificates not covering the whole of said land.

California, §15, 16, 23, 31, 57.
 Colorado, §31, 36, 39, 41.
 Illinois, §29-33, 38, 56.
 Massachusetts, §39, 41, 53, 54.
 Minnesota, §3391.

New York, §394.
 Ohio, §22, 23, 37, 75, 76.
 Oregon, §28, 32.
 Washington, §31, 35, 33, 40.

SEC. 49. [Entry Book Kept by Registrars.] (1) Each registrar shall keep an entry book in which he shall enter, in the order of their reception, a memorandum of any writing, instrument, or record filed with him for registration, and shall note in such book the year, month, day, hour, and minute of such filing.

(2) Every such writing, instrument, or record shall be numbered, indexed, and indorsed with reference to the entry thereof and securely kept in the office of the registrar.

(3) Every such entry shall be minutely dated, numbered, and indexed, and shall refer to the certificate of title hereinafter mentioned, upon which, as well as upon its duplicate or duplicates, a memorandum of such entry shall be made.

California, §22, 51.
 Colorado, §47.
 Illinois, §49-51.
 Massachusetts, §55.
 Minnesota, §3402, 3406.

New York, §409.
 Ohio, §35.
 Oregon, §48-50.
 Washington, §46.

SEC. 50. [Register of Titles Kept by Registrar.] Each registrar shall also keep a register of titles book, in which, under the direction of the court, he shall:

(1) Register, number, and index the original certificates of title and all subsequent certificates of title, and all voluntary or involuntary transactions authorized to be registered under this act; and

(2) Note thereon, and also upon the duplicate certificate thereof, when originally issued or subsequently presented, the day, hour, and

minute of registration in each case in conformity with the date shown by the entry book.

California, \$29.
 Colorado, \$35.
 Illinois, \$35, 98.
 Massachusetts, \$55.
 Minnesota, \$3402, 3406.
 Mississippi, \$10.

North Carolina, \$10.
 New York, \$395.
 Ohio, \$23, 82.
 Oregon, \$34, 97.
 Washington, \$34.

SEC. 51. [Certificate of Title.] (1) Every certificate of title entered in the register of titles as aforesaid, together with the memorials thereon, if any, shall be known as "the certificate of title."

(2) Said certificate shall be conclusive evidence of all matters contained therein, except as otherwise provided in this act.

(3) No erasure, alteration, or amendment of said certificate, or of any memorial thereon, shall be made except by order of court.

California, \$23, 30.
 Colorado, \$35, 37, 48, 57.
 Illinois, \$35-37, 39.
 Massachusetts, \$40, 46, 107.
 Minnesota, \$3404, 3408, 3439.

New York, \$395-397, 399.
 Ohio, \$23, 27, 72, 93, 98.
 Oregon, \$34-36, 38.
 Washington, \$34, 36, 47, 50.

SEC. 52. [Owner's Duplicate Certificate.] An exact copy of the certificate of title shall be made, except that it shall be conspicuously stamped or marked "owner's duplicate," and shall be delivered to the owner, or his attorney, duly appointed, upon his receipt therefor in writing upon said certificate of title attested by the registrar or his deputy.

SEC. 53. [Certificates of Title to be Numbered, and Memorials Thereon to be Signed and Sealed.] (1) All the certificates of title of land in each county or city shall be numbered consecutively.

(2) A separate folium, with appropriate spaces for subsequent memorials, shall be devoted to each title in the register of titles for each county or city.

(3) Every certificate and memorial thereon shall appropriately conform to the requirements of sections 45 and 48 of this act as to particulars of form.

(4) Every memorial made upon any certificate of title or duplicate certificate under any provision of this act shall be signed by the registrar and sealed with the seal of the court and minutely dated and numbered in conformity with the date and number shown by the entry book.

California \$23, 50.
 Colorado \$36, 81.
 Illinois \$35, 56.
 Massachusetts \$40.
 Minnesota \$3403.

Mississippi \$11.
 North Carolina \$11.
 New York \$394.
 Ohio \$23, 37.
 Oregon \$34, 55.

PART VII.

REGISTRATION OF TRANSFERS AND OTHER TRANSACTIONS.

SEC. 54. [Transfers of the Whole of any Registered Estate.] Whenever the whole of any registered estate is transferred, the transaction shall be duly noted and registered in accordance with the provisions of this act.

Thereupon the certificate of title and any duplicate certificate relating to such estate shall be canceled by the registrar of each county or city in which the land, or any part thereof, lies, if desired by the registered owner, and a new certificate or certificates of title shall be entered in the register of titles for such county or city, and a duplicate or duplicates thereof issued, as the case may require.

California \$25, 26, 48.	North Carolina \$12.
Colorado \$38, 52, 60, 61.	New York \$413.
Illinois \$34, 47, 57, 64.	Ohio \$37.
Massachusetts \$56.	Oregon \$33, 46, 56, 63.
Minnesota \$3409, 3417, 3420.	Washington \$37, 51, 59, 60.
Mississippi \$12.	

SEC. 55. [Partial Transfers, Encumbrances, Leases.] If only a portion of such estate is transferred, or in case of an encumbrance or lease for more than one year, the transaction shall be duly noted and registered as aforesaid; and a new certificate of title shall be entered in the register of titles and new owner's duplicate certificate shall be issued for the portion transferred and the portion untransferred, or a beneficiary's duplicate or lessee's duplicate may be issued as the case may require.

California \$25, 26, 49.	North Carolina \$13, 14.
Colorado \$40, 49, 52, 63.	New York \$407.
Illinois \$48, 64.	Ohio \$3, 8, 39.
Massachusetts \$47, 57, 59.	Oregon \$47, 63.
Minnesota \$3417, 3420, 3422.	Washington \$39, 48, 51, 62.
Mississippi \$13, 14.	

SEC. 56. [Memorials to be Noted.] All registered encumbrances, rights, or adverse claims affecting the estate represented thereby shall continue to be noted upon every outstanding certificate of title and duplicate certificate until the same shall have been released or discharged or terminated.

California \$43.	North Carolina \$14.
Colorado \$56, 57.	New York \$403.
Illinois \$45.	Ohio \$33.
Massachusetts \$58.	Oregon \$44.
Minnesota \$3420.	Washington \$55, 56.
Mississippi \$14.	

SEC. 57. [Registration of Voluntary Transactions.] In voluntary transactions the duplicate certificate of title must be presented alone with the writing or instrument filed for registration; and thereupon, and not otherwise, the registrar shall be authorized to register the transaction, under the direction of the court, upon proof of payment of all delinquent taxes and levies, if any.

California \$58-65.	North Carolina \$14, 15.
Colorado \$50, 52-3, 57-8, 63.	New York \$406, 415.
Illinois \$54-5, 59-67, 80-81.	Ohio \$44-49.
Massachusetts \$60.	Oregon \$53-54, 58-66.
Minnesota \$3419, 3420, 3423.	Washington \$49, 51-2.
Mississippi \$14, 15.	

SEC. 58. [Registration of Involuntary Transactions.] In involuntary transactions, a certificate from the proper State, county, city, or court officer, or a certified copy of the order, decree, or judgment of any court of competent jurisdiction, or other appropriate evidence of compliance with the statute in relation to such transaction, when filed in the office of the proper registrar, shall be authority for him to register the transaction under the direction of the court.

Provided that any writing or instrument for the purpose of transferring, encumbering, or otherwise dealing with equitable interests in registered land may be registered with such effect as it may be entitled to have.

California, §72-3.
 Colorado, §60-61, 72, 76, 91.
 Massachusetts, §66, 70, 75, 77, 79-86
 Minnesota, §3419, 3426-7, 3430,
 3434-5, 3441.
 Mississippi, §14, 16.
 North Carolina, §14, 16.

New York, §417.
 Ohio, §43, 50-6, 59-64, 66-7,
 78.
 Oregon, §79-80, 83-90.
 Illinois, §80-81, 84-91.
 Washington, §59, 60.

SEC. 59. [Production of Duplicate Certificate Required.] Whenever a duplicate certificate is not presented to the registrar along with any writing, instrument, or record filed for registration under this act, he shall forthwith send notice by registered mail to the owner of such duplicate requesting him forthwith to produce the same, in order that a memorial of the transaction may be made thereon; and such production may be required by suitable process of the court, if necessary.

Colorado, §50, 78.
 Illinois, §60, 64, 88.
 Massachusetts, §51, 71, 106.
 Minnesota, §3413, 3419, 3430.
 Mississippi, §14, 17.

North Carolina, §14, 17.
 Ohio, §28, 37, 41, 74, 78,
 100.
 Oregon, §59, 63, 87.
 Washington, §49, 77.

SEC. 60. [Registration of Trusts, Conditions, Limitations, and Other Equitable Interests and Estates.] Whenever a writing, instrument, or record is filed for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest in such land without transfer, the particulars of the trust, condition, limitation, or other equitable interest shall not be entered on the certificates, but it shall be sufficient to enter in the entry book and upon the certificates a memorial thereof by the terms "in trust," or "upon condition," or other apt words, and to refer by number to the writing, instrument, or record authorizing or creating the same.

And if express power is given to sell, encumber, or deal with the land in any manner, such power shall be noted upon the certificates by the terms "with power to sell," or "with power to encumber," or by other apt words.

And unless express power be given, as aforesaid, no subsequent transfer or memorial shall be registered on such certificate except by special order of court.

California, §67, 70.
 Colorado, §64.
 Illinois, §63-9.
 Massachusetts, §64-8.
 Minnesota, §3429.

Mississippi, §10, 19.
 North Carolina, §10, 19.
 Ohio, §42-3.
 Oregon, §67-8.

SEC. 61. [Registration of Estates of Decedents.] (1) Lands and any estate or interest therein registered under this act shall, upon the death⁸⁸ of the owner, testate or intestate, go to his personal rep-

⁸⁸ "We are not impressed with the soundness of the objections to those sections of the statutes which relate to the descent of lands on the death of a registered owner." (People v. Simon, 176 Ill. 165.)

representative in like manner as personal estate, and shall be subject to the same rules of administration as personalty, except as otherwise provided in this act.

(2) But nothing herein contained shall alter or affect

(a) The course of ultimate descent under the statute of descents and distributions and the rights of dower and courtesy, when duly registered;

(b) Nor the order in which real and personal assets respectively are now applicable in and toward the payment of funeral and testamentary expenses, debts, or legacies;

(c) Nor the liability of real estate to be charged with the payment of debts and legacies.

California, §74-5.

Colorado, §74.

Illinois, §70-2.

Massachusetts, §91.

Minnesota, §3436.

New York, §423-5.

Ohio, §69-71.

Oregon, §69-71.

Washington, §73.

SEC. 62. [Powers of Personal Representatives.] (1) Subject to the powers, rights, and duties of administration, the personal representatives of such deceased owner shall hold such real estate as trustees for the persons by law beneficially entitled thereto,

(2) But, unless otherwise entitled by law to commissions, shall be entitled to no commissions thereon except in cases of necessary sales in due course of administration.

(3) And the heirs at law or beneficiaries aforesaid shall have the same power of requiring a transfer of such estate as if it were personal estate.

Illinois, §70-72.

Oregon, §69-78.

SEC. 63. [Registration of Delinquent Taxes and Levies.] (1) It shall be the duty of the treasurer or other collector of taxes or levies of each county, town, or city, not later than the — day of — in each year, to file an exact memorandum of the delinquency, if any, of any registered land for the nonpayment of the taxes or levies thereon, including the penalty therefor, in the office of the proper registrar for registration.

(2) If any such officer fail to perform said duty, he and his sureties shall be liable for the payment of said taxes and levies, with the penalty and interest thereon.

Mississippi, §21.

Illinois, §82.

North Carolina, §21.

SEC. 64. [Registration of Sales for Delinquent Taxes or Levies.]

(1) Whenever any sale of registered land is made for delinquent taxes or levies, it shall be the duty of the treasurer or other officer making such sale, forthwith to file a memorandum thereof for registration in the office of the proper registrar.

(2) Thereupon the registered owner shall be required to produce his duplicate certificate for cancellation, and a new duplicate certificate shall be issued in favor of the purchaser, and the land shall be transferred on the land books to the name of such purchaser, unless such delinquent charges and all penalties and interest thereon be paid in full within 90 days after the date of such sale.

(3) But a memorial shall be entered upon the certificate of title, and also upon any such new duplicate certificate, reserving the privilege of redemption in accordance with law.

California, §77-83.
Illinois, §82-3.
Mississippi, §22.

North Carolina, §22.
Ohio, §57-8.
Oregon, §81-2.

SEC. 65. [Same: Registration of Redemption.] In case of any redemption under the preceding section, a memorial of the fact shall be duly registered; and if a duplicate certificate has been issued to any purchaser, the same shall be canceled and a new duplicate shall be issued to the person who has redeemed.

SEC. 66. [Same: Registration of Final Sale, if No Redemption.] (1) If there be no redemption under said section in accordance with law, it shall be the duty of the treasurer, or other collector of taxes of the county or corporation in which the land lies, to sell the same at public auction for cash, having first given reasonable notice of the time and place of sale.

(2) The proceeds of sale shall be applied—

First, to the payment of all taxes then due the State, and all levies then due the county, town, or city, with interest, penalty, and costs;

Second, to the payment of all sums paid by any person who purchased at the former tax sale, with interest and the additional sum of \$5;

Third, to the payment of a commission to the officer making the sale of 5 per centum on the first \$300 and 2 per centum on the residue of the proceeds;

Fourth, to the satisfaction of any liens other than said taxes and levies registered against said land in the order of their priorities;

Fifth, and the surplus, if any, to the person in whose name the land was previously sold for taxes, subject to redemption, as provided by section 64 of this act, his heirs, personal representatives, or assigns.

(3) A memorial of the sale under this section shall be duly registered, and a new certificate shall be entered and a duplicate issued in favor of the purchaser, in whom title shall be thereby vested as registered owner, in accordance with the provisions of this act.

SEC. 67. [Same: Future Interests Not Affected.] Nothing in the preceding section shall be so construed as to affect, or divest the title of a tenant in reversion or remainder to any real estate which has been returned delinquent and sold on account of the default of the tenant for life in paying the taxes or levies assessed thereon.

California, §77-83.
Illinois, §82-3.
Mississippi, §23.

North Carolina, §23.
Ohio, §57.
Oregon, §81-2.

PART VIII.

SUNDRY PROCEEDINGS AFTER REGISTRATION.

SEC. 68. [Petitions Concerning Registered Land and Caveats and Decrees Thereon.] Any registered owner of any estate or interest in land, or any person having any claim against registered land arising

from any other cause than fraud or forgery since the land was registered, may, within 90 days after the claim or cause of complaint shall have arisen, petition the court for relief in any matter within its jurisdiction; and it shall be the duty of the proper registrar, upon the request of any such person, to register a memorial that such petition has been or will be filed, which memorial shall serve as a caveat and be notice to all persons.

(2). And whenever any registrar is in doubt as to the proper registration to be made in any case, or when any person is aggrieved by any act or refusal to act by the registrar, the question may be likewise submitted by petition.

SEC. 69. [Same: Hearing and Decree.] After notice to the parties interested, the court shall hear the cause, and, with due regard to the provisions of this act, shall enter such decree as justice and equity may require, which shall be registered and take effect in like manner as the original decree for registration.

SEC. 70. [Same: Service of Notice.] Notice in lieu of process under this act or otherwise in relation to registered land may be served upon any person by registered mail, and the post-office registry return receipt shall be evidence of such service and shall be binding, whether such person resides within or without the State; but the court may in any case order different or further service by publication once a week for four successive weeks in some convenient newspaper or otherwise, which shall be likewise binding.

California, §39, 97-100.
Colorado, §49, 62, 78, 82, 89.
Illinois, §92-96.
Massachusetts, §52, 105, 107.
Minnesota, §3407, 3426, 3435,
3438-3439.

Mississippi, §25.
North Carolina, §25.
New York, §383, 422.
Ohio, §40, 68, 70, 79.
Oregon, §91-95.
Washington, §48, 61, 77, 81, 88.

SEC. 71. [Proceedings Upon Loss or Destruction of Duplicate Certificate.] (1). Whenever a duplicate certificate of title is lost or destroyed, the owner, or his personal representative, may petition the court for the issuance of a new duplicate.

(2). Notice of such petition shall be published once a week for four successive weeks, under the direction of the court, in some convenient newspaper.

(3). Upon satisfactory proof that said duplicate certificate has been lost or destroyed, the court may direct the issuance of a new duplicate certificate, which shall be appropriately designated and take the place of the original duplicate.

California, §27.
Colorado, §51.
Illinois, §58.
Massachusetts, §104.
Minnesota, §3412.

Mississippi, §24.
North Carolina, §24.
New York, §414.
Oregon, §57.
Washington, §50.

PART IX.

LEGAL EFFECTS OF REGISTRATION OF TITLE.

SEC. 72. [Effect of Registration as Notice to Subsequent Purchasers.] Every voluntary or involuntary transaction which, if recorded, filed, or entered in any clerk's office, would affect unregistered

land, shall, if duly registered in the office of the proper registrar, and not otherwise, be notice to all persons from the time of such registration, and operate in accordance with law and with the provisions of this act upon any registered land in the county or city of such registrar to which it relates.

SEC. 73. [Effect of Registration Upon Adverse Claims.] Every registered owner of any estate or interest in land brought under this act shall hold the land free³⁹ from any and all adverse claims, rights, or encumbrances not noted on the certificate of title, except—

First. Liens, claims, or rights arising or existing under the laws or Constitution of the United States which the statutes of this State can not require to appear of record under registry laws.

Second. Taxes and levies assessed thereon but not delinquent.

Third. Any lease for a term not exceeding one year under which the land is actually occupied.

California, §37-38, 41, 45-46.
 Colorado, §30.
 Illinois, §40, 42-44.
 Massachusetts, §37-38, 54, 63.
 Minnesota, §3393.
 Mississippi, §25.

North Carolina, §25.
 New York, §392, 400.
 Ohio, §22, 25, 98.
 Oregon, §39.
 Washington, §30.

SEC. 74. [Fraud or Forgery.] The protection of the foregoing section shall not apply to the benefit of a registered owner in cases of fraud or forgery* to which he is a party, or in which he is a privy without valuable consideration paid in good faith.

SEC. 75. [Effect of Registration Procured Through Fraud or Forgery.] Any registration procured through fraud or forgery may be set aside by the court according to the rules of equity; but the rights and title of an innocent intervening registered encumbrancer or purchaser for value and without notice shall not be affected thereby except as provided in section 73. And in all such cases the injured

³⁹ Registration is good against purchaser at tax sale who fails to take out tax deed, and bars any claim for reimbursement of taxes and special assessments paid by claimant while holding certificate of tax sale, upon which the time for the execution of a deed subsequently expired without any deed being taken. *Snow v. Glos*, 258 Ill. 275.

* The effect of this and the preceding section is to give an absolute and unassailable title to every innocent registered purchaser for value, even though the registration of his title was obtained through fraud or forgery. In other words, the theory of this act is that every certificate of title imports absolute verity, and that the title passes by the transfer of certificates by registration as title to a genuine bank note or genuine negotiable paper passes by delivery, thus preventing the genuineness of any certificate being questioned. One of the chief benefits of this registration system is that it makes land titles commercial assets and facilitates transactions in lands. But to those legislatures which are unwilling to protect the title of innocent registered purchasers for value against forgery the following substitute section is recommended:

SEC. 74. [Fraud or Forgery.] The protection of the foregoing section shall not apply to the benefit of a registered owner:

(1) In cases of forgery, whether or not he be a party or privy thereto.

(2) In cases of fraud to which he is a party or in which he is a privy without valuable consideration paid in good faith.

party may pursue all his legal and equitable remedies ⁴⁰ against the party or parties to such fraud or forgery.

Colorado, §46.
 Illinois, §42-3, 65.
 Massachusetts, §59, 70.
 Minnesota, §3416, 3430, 3440-1.
 Mississippi, §18.

North Carolina, §18.
 New York, §392, 402, 410.
 Ohio, §41, 50, 88, 89.
 Oregon, §41-2.
 Washington, §45.

SEC. 76. [Land to Remain Forever Registered.] The obtaining of a decree of registration and the entry of a certificate of title shall be construed as an agreement running with the land, and the same shall forever remain registered land, subject to the provisions of this act and all amendments thereof.

California, §44.
 Colorado, §33.
 Illinois, §46.
 Massachusetts, §44.
 Mississippi, §26.

North Carolina, §26.
 New York, §404.
 Ohio, §26, 86.
 Oregon, §45.
 Washington, §33.

SEC. 77. [No Rights by Adverse Possession of Prescription.] No title to, nor right nor interest in, registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession.

California, §35.
 Colorado, §34.
 Illinois, §41.
 Massachusetts, §45.
 Minnesota, §3371.

Mississippi, §27.
 North Carolina, §27.
 New York, §401.
 Ohio, §85.
 Oregon, §40.

⁴⁰Application to vacate a decree of registration for fraud is governed by general equitable considerations. "The fact that a statute does not expressly provide that fraud shall invalidate acts authorized to be done under it does not deprive the courts of the general power to protect the rights of the parties. * * * The 60-day limitation contained in the statute when these transactions occurred (now made six months by R. L. 1905, sec. 3396) has no application to the case at bar. If the defrauded party is not guilty of laches he may attack the decree on the ground that it was obtained by fraud, so long as the land stands registered in the name of the party who was guilty of the fraud." *Baart v. Martin*, 99 Minn. 197. In this case the court said: "An examination of the Torrens laws of the different States and colonies discloses the fact that those of Minnesota and the Fiji Islands only contain no express exception of cases of fraud. All the original Torrens statutes carefully guard against the possibility of an owner being fraudulently deprived of his property." When applicant omits names of parties holding easements and examiner mentions them and recommends that they be made parties, registration without making them parties is void and subject to collateral attack for constructive fraud. "Any other conclusion would go far to remove the safeguards which make the law constitutional. It would make a strong argument for holding that the act was invalid, because the proceedings do not constitute due process of law." *Riley v. Pearson*, 120 Minn. 210. Decree of registration is not good against claimant whose name, though known, is given incorrectly in application, and who has no actual notice. *Arnold v. Smith*, 121 Minn. 116. The question whether an innocent purchaser of a registered Torrens title is protected against the fraud of his grantor in failing to disclose in the registration proceedings an unrecorded mortgage can not be raised by demurrer to answer pleading innocent purchase and a general denial of all the allegations of the complaint. *Henry v. White*, 121 Minn. 527. Where owner fraudulently fails to mention unrecorded mortgage in application, and does not make mortgagee a party to proceedings for registration, held that innocent purchaser of registered title takes it free of lien. "It is difficult to see what would remain of the indefeasible character of a Torrens title if the decree is open to collateral

SEC. 78. [Effect of Subsequent Dealings With Registered Land.] Except as otherwise specially provided by this act, registered land and ownership therein shall be subject to the same rights, burdens, and incidents as unregistered land, and may be dealt with by the owner, and shall be subject to the jurisdiction of the courts in the same ⁴¹ manner as if it had not been registered.

(2). But registration ⁴² shall be the only operative act to transfer or affect the title to registered land, and shall date from the time the writing, instrument, or record to be registered is duly filed and entered in the office of the proper registrar.

(3) Subject to the provisions of section 74 hereof, no voluntary nor involuntary transaction shall affect the title to registered land until registered in accordance with the requirements of this act.

California, §32, 39, 48, 53, 55-6, 58, 71, 84-8, 89-97, 101, 104.
 Colorado, §41, 45-7, 52, 54-5, 59, 61, 65, 67-8, 70-1, 76-7.
 Illinois, §38, 42-4, 47, 49, 52, 54-5, 59-67, 80-1, 84-91.
 Massachusetts, §49, 50, 55, 56, 59-62, 67, 69, 70, 72-3, 77-90, 103.
 Minnesota, §3371, 3411, 3414-15, 3422-5, 3431-2, 3440.
 Mississippi, §14, 21, 28, 31.
 North Carolina, §14, 21, 28.
 New York, §402, 405-6, 410, 412, 415-21.
 Ohio, §26, 31, 35, 39, 44-56, 59-64, 66-7, 70-1, 77, 81, 84, 87-97.
 Oregon, §37, 41-3, 46, 48, 51, 53-4, 58-66, 79-80, 83-90.
 Washington, §40, 44-6, 51, 53-4, 58, 60, 64, 66-7, 69-70, 75-6.

SEC. 79. [Conflicting Claims Between Registered Owners.] In case of conflicting claims between registered owners, the right, title, or estate derived from or held under the older certificate of title shall prevail.

Mississippi, §29.

North Carolina, §29.

attack as against one who purchases in good faith for a valuable consideration, and with nothing to put him on inquiry as to fraud on the part of the applicant. *Henry v. White*, 123 Minn. 182. "Good faith in the acquirement of title, within the meaning of the statute does not require ignorance of adverse claims or defects in the title. Notice, actual or constructive, is of no consequence." So held in a suit for registering title by adverse possession. *Peters v. Dicus*, 254 Ill. 379.

⁴¹ Mechanic's liens can not be foreclosed in registration proceedings. This section "shows beyond doubt an intention on the part of the legislature to require all such liens to be foreclosed in the usual manner and under the provisions of the general statutes providing for their foreclosure and enforcement." *Reed v. Siddall*, 94 Minn. 216.

⁴² "Our construction of this section is in keeping with the obvious purpose of the Torrens act to create an absolute presumption that the certificate of registration in the registrar's office at all times speaks the last word as to the title, thus doing away with secret liens and hidden equities. * * * This is the distinctive feature, the vital principle of the Torrens system. For the courts to refuse to recognize and enforce it would be to emasculate the law, and by construction make it not the Torrens system of land titles, but a mere change in the form of the record, a mere modification of the recording act." *Brace v. Superior Land Co.*, 65 Wash. 681. A mechanic's lien, recorded prior to registration but with insufficient description of land, of which applicant had no actual notice, and which was not reported by examiner, is barred by registration, and does not affect title. "The registration proceedings were regular, and there was no fraud in obtaining the decree. It follows that the plaintiffs were bound by the decree, although it did not recognize or establish their lien." *Doyle v. Wagner*, 108 Minn. 443.

PART X.

ASSURANCE FUND.

SEC. 80. [Fee for Original Registration.] Upon the filing of the petition for the original registration of any land under this act there shall be paid to the registrar one-tenth of 1 per cent of the assessed value of such land as an assurance fund, which shall be subject to the trusts and conditions hereinafter declared for the uses and purposes of this act.

Colorado, \$83.
Illinois, \$9.
Massachusetts, \$93.
Minnesota, \$3442.
Mississippi, \$32.

North Carolina, \$33.
New York, \$426.
Ohio, \$102.
Oregon, \$98.
Washington, \$82.

SEC. 81. [Payments Into State Treasury Upon Trust.] All moneys received by the registrars under the preceding section shall be kept in a separate account, and shall be paid into the State treasury upon the special trust and condition that the same shall be set aside by the * * * in trust as a separate fund for the uses and purposes of this act, to be known as the "land registration assurance fund," which said fund is hereby appropriated to the uses and purposes set forth in this act.

California, \$108.
Colorado, \$84.
Illinois, \$100.
Massachusetts, \$94.
Minnesota, \$3443.
Mississippi, \$32.

North Carolina, \$33.
New York, \$426.
Ohio, \$103.
Oregon, \$99.
Washington, \$83.

SEC. 82. [Funds to Be Invested.] Said moneys, in so far as the same may not be required to satisfy any judgment certified against the assurance fund under section 85 of this act, shall be invested by the treasurer of the State in State bonds in trust for the uses and purposes set forth in this act until said fund amounts to the sum of \$500,000; but the income, or so much thereof as may be required therefor, may be applied toward the payment of the expenses of the administration of this act and the satisfaction of any such judgment.

Whenever and so long as the face value of the bonds purchased as aforesaid equals said sum of \$500,000, other moneys thereafter coming into said fund, together with any income not required for the purposes aforesaid, shall be transferred from the land registration assurance fund to the general treasury.

Colorado, \$84.
Illinois, \$100.
Massachusetts, \$100.
Minnesota, \$3443.
Mississippi, \$32.

North Carolina, \$33.
New York, \$426.
Ohio, \$103, 111.
Oregon, \$99.
Washington, \$83.

SEC. 83. [Suits Against the Assurance Fund.] Any person who had no actual notice of any registration under this act by which he may be deprived of any estate or interest in land, and who is without remedy hereunder, may within two years next after the time at which the right to bring such action shall have first accrued to him or to some person through whom he claims, bring an action against the treasurer of the State in the * * * court of * * * for the

recovery out of the assurance fund of any damages to which he may be entitled by reason of such deprivation.

(2) The assurance fund shall be defended in such action and in any appeal by the attorney general for the State.

(3) The measure of damages in such action shall be the value of the property at the time the right to bring such action first accrued, and any judgment rendered therefor shall be paid as hereinafter provided.

(4) If any person entitled to bring such action be under the disability of infancy, insanity, imprisonment, or absence from the State in the service of the State or of the United States at the time the right to bring such action first accrued, the same may be brought by him or his privies within two years after the removal of such disability.

Colorado \$85, 88.

Illinois \$101, 103.

Massachusetts \$95, 102.

Minnesota \$3444, 3446-3447.

Mississippi \$33, 38.

North Carolina \$34, 39.

New York \$427, 429.

Ohio \$104, 107-109.

Oregon \$100, 102.

Washington \$84, 87.

SEC. 84. [Defendants to Suits Against Assurance Fund.] If such action be brought to recover for loss or damage arising only through the legal operation of this act, then the treasurer of the State shall be the sole defendant.

(2) But if such action be brought to recover for loss or damage arising on account of any registration made or procured through the fraud or wrongful act of any person not exercising a judicial function, then both the treasurer of the State and such person shall be made parties defendant.

Colorado \$86.

Illinois \$102.

Massachusetts \$96.

Minnesota \$3445.

Mississippi \$34.

North Carolina \$35.

New York \$428.

Ohio \$105.

Oregon \$101.

Washington \$85.

SEC. 85. [Judgments Against the Assurance Fund.] If judgment be rendered for the plaintiff in any such action, execution shall issue against the defendants, if any, other than the treasurer of the State.

(2) And if such execution be returned unsatisfied in whole or in part, or if there be no such defendants, then the clerk of the court in which the judgment was rendered shall certify to the ——— the amount due on account thereof, and the same shall then be paid by said treasurer out of the assurance fund on warrant from said ——— under the special appropriation hereby made of said fund for that purpose.

(3) Any person other than the treasurer of the State against whom any such judgment may have been rendered shall remain liable therefor, or for so much thereof as may be paid out of the assurance fund, and said treasurer may bring suit at any time to enforce the lien of such judgment against such person or his estate for the recovery of any amount, with interest, paid out of the assurance fund as aforesaid.

Colorado \$86.

Illinois \$102.

Massachusetts \$97.

Minnesota \$3445.

Ohio \$106.

Washington \$85.

SEC. 86. [When Assurance Fund Not Liable.] The assurance fund shall not, under any circumstances, be liable for any loss, damage, or deprivation occasioned by a breach of trust, whether express, implied, or constructive, on the part of the registered owner of any estate or interest in land.

Colorado \$87.
Massachusetts \$101.
Minnesota \$3446.
Mississippi \$37.

North Carolina \$38.
New York \$429.
Ohio \$108.
Washington \$86.

SEC. 87. [How Judgments Shall be Satisfied Out of Assurance Fund.] If at any time the assurance fund be insufficient to satisfy any judgment certified against it as aforesaid, the unpaid amount shall bear interest and be paid in its order out of any moneys thereafter coming into said fund.

Massachusetts \$98.
Minnesota \$3445.
Mississippi \$35.

North Carolina \$36.
Ohio \$110.

PART XI.

FEES FOR REGISTRATION.

SEC. 88. [Fees of Registrar and Other Officers of the Court.] The fees payable under this act shall be as follows:

(a) [To Registrars.] For docketing, indexing, and filing any original petition and exhibits therewith and publishing and mailing the notices thereof, the postage required and \$3.

For docketing, indexing, and filing any other paper, 50 cents.

For the entry of the original certificate of title and issuing one duplicate certificate and recording and indexing memorandum, \$3.

For each additional duplicate, 50 cents.

For the registration of any writing, instrument, or record, or any memorial, including every act necessary therefor, \$1.

(b) [To Examiners of Titles.] For examining title and making report to the court, one-tenth of 1 per cent of the value of the land, and postage, and \$10.

(c) [To Sheriffs.] For ascertaining and reporting to court the names and addresses of the persons actually occupying the premises described in any petition, \$1.

(d) For any service of the registrars, or of any sheriff or surveyor not specially provided for herein, such fee as may be allowed by law for like services in other cases.

California, \$114.
Colorado, \$95-6.
Illinois, \$107-8.
Massachusetts, \$109.
Minnesota, \$3449-50.

Mississippi, \$30.
North Carolina, \$30.
New York, \$432.
Oregon, \$106-7.
Washington, \$94-5.

PART XII.

APPLICATION OF ACT.

SEC. 89. [Referendum.] This act shall be construed liberally for the purpose of effecting its general intent (but shall not apply to

land in any city or county, except the ———, until ⁴³ it shall be so determined by the votes of a majority of those voting for or against the adoption thereof at any general or special election to be held [in such city or county,] after notices thereof shall have been duly posted for at least 30 days at each voting precinct [in such city or county] by order of the judge of the ——— court of such city or county] upon the petition of (100) freeholders residing in [such city or 50 freeholders residing in such county,] the question to be submitted by ballots upon which the words "FOR LAND REGISTRATION" and "AGAINST LAND REGISTRATION" shall be printed, and one or the other of said expressions being stricken out as the voter may favor or oppose the act).

Illinois, §110.

SEC. 90. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

⁴³The referendum is not unconstitutional. Legislative power is not "delegated," but takes effect under certain conditions. *People v. Simon*, 176 Ill. 165. Legislature may amend act without a second referendum. *Brooke v. Glos*, 243 Ill. 392. And to the same effect is *Waugh v. Glos*, 246 Ill. 604, and *Mihalik v. Glos*, 247 Ill. 597, and *Culver v. Waters*, 248 Ill. 163. Illinois act is not unconstitutional as local law because only yet adopted by Cook County. *Tower v. Glos*, 256 Ill. 121.

