TRANSFER of LAND ACT
Property

Volume 4

Robert S. Menzies
May 2, 1915
Mell University

$96. Rater only as censurne a.p.ment, and not as censurne

$75. Asumand statement 7 censurne on certificate of dom.

Statement does not preclude nominate profit. From applying any
censurne a.p.ment he may be entitled to.
<1915 Act amended in Red.

165 $122
166 $134.

167 $135.

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173 $175.

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The question of the abandonment of a right of way is one of intention, be derived on the facts of each case. Now non-use, unaccompanied by enjoyment adverse to the user, or by indications of an intention to abandon the right, will not constitute abandonment.

Conviction by the Register to enter an easement as an encumbrance on the certificate of the servient tenure does not relieve the servient tenure of its liability, and does not preclude the owner of the servient tenure from establishing such easement otherwise.

§57. Commissions were not interpreters of the laws unless a claim lodged on behalf of one owner of the property.

The Bankruptcy Trustee, Coyle & O'Halloran 1911 V.L.R. 197

W. G. V. Damaker 1911 V.L.R. 214

Person registered as proprietor of land under Sec. 193 of the Transfer of Land Act 1890 as executrix administrator holds the land in a capacity distinct from his personal capacity, and may in that capacity as executor administrator transfer the land to himself personally.

§144. More equitable dispossession of the owner by confession of judgment will support a caveat.
Steele v James 15 V.L.R. 615
1893 B.C. 162

271 $292. Prove Jennings' right of an abandoned easement of the curvatures of the

Secrecy dealing will benefit the parties. To prove
that interests shall not appear on registry, and persons dealing
not concerned to inquire into trusts. But as same
time the act also makes special provision for the protection
of beneficiaries under trusts.

55 §57 Fines paid of any Trusts be entered in Register Book,
but prior to depositing documents declaring trusts.
That the register being at a registry can't affect in any way
dealing with the registered profession.

Perhaps the whole Commission may protect beneficial
interests seems rather doubtful.

While it's clear that Commission can refuse to register
improper dealings which are such to his knowledge; if the
dealing is one good on the face of it, then he should not
require any further information.

253 §449. Provides one of the means in which them may protect
beneficiary under a trust. (Sub.see III)
Beneficiaries may protect themselves by lodging $449. Due to
dealing with land. §449 183
L V Rep Jn in P. Expate Millet 1914. 25287  approved by H. Court

only the representative of a person who was registered in his own right as proprietor of an estate in land under the Transfer of Land Act 1870 is entitled to be registered under sec 193 of that Act. Accordingly, an executor of a person who was registered as executor of a deceased proprietor is not entitled to be registered unless it shows that the first executor was sole executor, or that any other executor successor of such deceased proprietor predeceased the applicant, or that instatement after citation, or remains in probate.

Clause 9. I have come to conclusion that sec 193 intended only bona fide persons the registered who are the reps. of the person named in the body of the certificate. That depends on meaning begining to the words 'any deceased person.' I think this means any deceased person whose name appears with body of the certificate.
§ 231. Proof that proprietor shall allow to come near when used in certain cases.

Under General law, if a man was trustee of land, it was necessary that the owner should allow his name to be used in connection with the trust. This provision will be necessary if the owner does not allow his name to be used in connection with the trust. It will not, however, be necessary if the owner does not allow his name to be used in connection with the trust.

Here and now under this Act § 238 deals with personal property.

§ 232. § 232 with realty. The sections practically identical. The only person entitled to be represented as to his own rights.

Suppose A is the proprietor, and B was administrator, and C became registered under this Act. If A was entitled to register as proprietor, D's claim to register as proprietor of D's land under this Act.

§ 233. Registration under this Act. Registration of judgments under this Act does not affect land under Transfer of Land Act. Has been held that a purchase from the sheriff only gets what the judgment debtor held in the land, not a new position as person dealing with registered proprietor. So and purchase makes subject to registration.
§ 139. Rescission was notwithstanding the transfer from the sheriff has been lodged the bond will render such transfer to the actual register, and in some cases even after such registration, allowing person having any prior equity to establish the same, and this notwithstanding the latter having lodged any caveat to protect his interest.

In re: City v. Butler

Where a judgment debtor is entitled to a mixed interest in real, personal, and bodily goods held in trust for him under a will, the sheriff may sell and give title under debtor's title, in the real estate.

Two National Bank v. Morose, a purchaser from the sheriff who had lodged his transfer for registration, was held to be affected by a prior unregistered mortgage. The sheriff, although the party had not lodged a caveat to protect his interest, was held to be affected. The ground of the decision was that the purchaser from the sheriff bought only a charge on the judgment debtor's interest in the land, and that such charge was only a new prior charge existing at the date of service of the copy notice.

Land v. Equity: In re: In re: Trustees of the First Bank. The court held that the purchaser from the sheriff who had lodged a transfer within 30 days was not entitled to have an order restraining the registration of a transfer which had been lodged during the operation of the court, and which had been declared a deficiency of a covenant in a voluntary settlement made prior to the lodgment of the deed by which settlement the registered proprietor of the land had no effect divested himself of all his interest except the bare legal estate.
Section 71

Trustees v Butler

Sonden v Trigg.

Section only applies where the judgment instalment has not been registered.

All that the sheriff sells is the interest of a judgment debtor. So held that person who buys at sheriff's sale takes away all interests created by judgment, unless he lodges 7 copy writs of fi. fa.

Rome v Equity Trustees

National Bank v Morris

Bank equities may be established, and also, where person who has equity might establish it even after later purchase from the sheriff has been registered.

Only equity registered at time is copy writ of fi. fa. lodged as so inscribable.

Suppose sheriff doesn't sell within the time—then dealings by registered proprietor will be registered.

Will cease to bind on certain dates (last page 17 Dec 139).

Held that fi. fa. could not be renewed by lodging further copy.

But despite this, the practice appears to allow each second lodging, thus giving another three months. And this upheld in Re Jules v. Leason 25 V.L.R. 355 by a Beker 9.

Held in Jules v. Leason 5 V.L.R. 69 38 that it was only as an act purchase price falls that was erased behind the land after three months. And that 139 only operated to as to land the land. Since then see 98 passed.

See 98 provide for setting out 99 a fee before the expiration of three months. By paying off of the judgment debt.

See 235 deals with its pensions. Person dealing with land under the Act was affected by his pensions.

Insolvency. Original position was that the land or insolvency was not entered upon the register, and any person

insolvency. Benson Section 236 prov. That the purchase funds insolvency he may deal freely.

Sec 237 has cured certain amount of doubt. Apparently, read literally, means that unless the insolvent may deal with his land. Re 16 V.L.R. 793
Caveats. Sec 145 to 150 to protect witness of persons who have been not registered.

Caveat, except caveat under Insolvency Act, and poverty caveat lodged by Commissioner under 194, will not prevent registration. Any unregistered lodged before the lodging of the caveat. Suppose you had equal interest in land and you heard that someone had registered a transfer. Unless you file a caveat! Must at once bring an action claiming injunctive restraining registration from registering the instrument.

If registered prop of land: sells to you after partition of purchase money. Then A sells same land to B. If B registers before you get injunction, loses the land. See 145.

See 146.

See 147.

See 148.

See 149. Caveat lodged by beneficiary under a will or settlement. This one is the case where caveat doesn’t take effect after 14 days (Sec 149). Reason for this — many dealings may be authorized by the will or settlement — and without consequent whether the action “caveat” and is good!

See 153. Registration abstract. Idea was this — only door to register land by having the first, registered, and only
way of enquiring is by searching the Register. There is not every
field dealt with. This land out of Victoria! Person, it’s up and
have to have names at registered land. So there is no way to
remedy this difficulty. But two exceptions have
rained the registration abstract of small value

Section 72 § 157, 196 Search certificate. To answer Jack known
the offer, but not yet registered. Beaver may have been
bought, but not yet on the certificate
$138-177 Search certificate does not claim to state anything
about the certificate of title. The latter may be examined.
157, 198 Impo. provisions enacting persons to obtain clay
orders:
160, 199
161, 200

These sections (157-161) designed to meet this position
under it. Get you must deal with the registered prospecta
2. Get your dealing registered.
Result — if you deal with registered props with previous
past good title, but who has created equities in the land.
or had judgments issued against him to the extent
enable you to find out these things
But on the interval best searching the title & concluding
the transaction. Some other information may have been registered
But see 159 steps in, the 58 days' grace you get, 48 tons grace. But person has person and an equity might be able to get an "injunction" against your stayer. ("Injunction" left out by legislature, possibly unwittingly.)

Terms in that many separate land was to create estate in fee simple, if he has power to break the entail.

These powers the entail under Act as unenforceable as.

187. Certain powers of commissioners. As will not house to slaverfully follow the form of the schedules, so long as you do not alter the substance.

187. Inplied contract to re enforcement.

188. Words of limitation.

188. Way in which enforcements + powers of attorney under the Act shall be witnessed.

Assurance Fund

When Act 1st bit into operation, it was thought that various fine owners might be required to lend land; i.e., a fund provided; and on bringing land under Act it you land to make payments to the assurance fund, i.e., person injured an compensated out of this fund. But naturally the latter office that to pay out of the fund. Huge fund accumulated, called H T. Gregory believes, by the Treasurer of Vic. (on Thomas Kent)

But sufficient know that such fund exists. See 213

Said 28 V. L. 756, that unnecessary, that 100 and more been caused by wrongful interest by Corn. of any person.
1904. Amending Act, providing that, by a means by which persons entitled by adverse possession under the Act must get themselves placed on register. These repealed by Transfer of Land Act 1911, but in substance the same remedy exists, but now by application to commissioners by the person claiming to be entitled by adverse possession to land under the Act. Same act provides that when abandoned homestead may remove the easement.

Married women's property

As common law husband must absolutely be prop., and wife other than chattels real and choses in action. Had the right of remedy to come into possession, and then they became absolutely his. If he did not remove them, and he predeceased his wife, they remained his prop. If his wife predeceased him, he ed. take out letters of admin. or called the choses in action.

As re. chattels real, husband had right to rents and profits; in re. appoints of her chattels real, he entitled to purchase money.
But if he did not so dispose, but survived him, she was absolutely entitled

Realty. During coverture, husband entitled to the rents, profits of the real estate, and had no power to dispose of real estate. If wife predeceased him, then husband was still entitled to real estate in his estate, without a discretion by the surviving party. If she outlived the coverture, the realty of wife went to her heirs. If wife survived husband, she was full owner of her real estate. During coverture, wife could not dispose of her real estate without consent of the husband, but might convey away with his consent. But, that such conveyance shall be effectual, the wife must have acknowledged the husband. The deed by which was heard to be clear that no conveyance was. She was examined separately, and it was understood effect of such conveyance.

6 Geo IV c 22. NSW PC

Deb no 213 p 1 IV

now. Real estate Dec 1890 part IV

During coverture, m. w. cd. not make will; really own with husband's consent; but cd. make a will of personally.

This the last at C. L.
But as equally the doctrine of "separate estate" was developed.

Prior to C. L. who presented with property, it was held that in W. C. E. she beneficially entitled to property apart from her husband.

In other words, she is entitled, whereas, before that prior to husband, she held in trust from her

esp. property. In that case, wife had had the free conduct of husband and free will. Later, more to convey her share, as long as property conveyed to new, will constitute that the wife have it as esp. profis. Equity will compel legal estate to hold for wife.

And woman might get esp. profis. by settlement made before or after marriage. Husband may give

profis to his wife as her esp. property.

In the esp. profis in equity, the wife stood in

same position as the wife. She disposes, but only of the equitable interest. And in equity, a m. W. or make contract so as to bind her esp. estate.

Second stage - development of the doctrine of mechanic on anticipation. Profits were protected from legal, husband moral control of husband. Husband was

conce. To meet this, the doctrine was invented by Furlong.
By this, if a prov. married in asset that wife and
not during common is entitled to anticipate the
income century was prevented of becoming of it minus
actually occur one. This only prove as regards
married woman.

Lecture 73. Thus the one exception to rule that person entitled
to income = canalization. Corpus

Suppose property given to unmarried woman; she has
full power of disposition. But if the marriage, and all time of
marriage, cannot disposed, the remainder operates. Prop. will not
be liable for her acts. Only thing that can be taken is income as
by actualy become. If her husband die, again she has
all the powers of a feme sole. If she marries again, the
remainder will come into effect again. That is, if the remainder is
given in will terms.

Some now has power to break the remainder when it
comes. A be in the benefit. Corney act 1904 sec 48

This operate till Corney act 1912 sec 6

Thus the position apart from Statute. Then the
legislative became active, and change made.

Legs. approached the rule in this way: didn't simply
provide has m. w. she be in position of feme sole; but also
held it equitable domicile separate estate, enlarged on it.
act 384. came into force Jan 19th 1871

Sec 2. prov. that m.w. shall be capable of holding, acq., alienating, acquiring or demising real estate as if she were a yeoman. A perfect general section.

Sec 3. Every woman married after the Act shall nonetheless hold all real estate which beloning to her before marriage free from the act, etc. If her husband is from his own or her possessions in every way.

Sec 4. Every woman married before the Act shall hold all real estate which accrues after the act free from control of her husband as of a yeoman.

Question. Has arrived as to whether woman married before 1871 could acquire property, e.g. helps, etc. as she was before act? Sec 2 read literally, a whether concurrence of husband & sep. examination necessary?

In case of Clive v. Glossop 15 V.C. R 805 & Beckitt J.

 Held that Sec 2 to be read together with Sec 3 & 4, so the operation of Sec 2. cannot now apply only to cases of women married after 1871; and as d. women married before 1871, it only applies to property acquired by them after that date.

As general know in 384 re chattels real. And all transfer dealing with particular kinds of personal property.

Sec 10. M.W. becoming entitled to personal property, as next of kin, etc., an intestate, only will varied, to private property. This & fact.
See 237384. Had been consigned to a doctor's 
'rechantment and inquisition!'

Dec no 736 1882

Dec no 828 1884

1890.
Dec 1926. Act hr. and enlarged. 384. Prov that farm.
classes 7 personal prop and from separate estate. Act also
contemplated prov re real estate (which was construed as sec 2.
§ 384) to abolish restraint on anticipation!!! That re the
act affected restraint on anticipation imposed on married
women. So from 384 - 1936 no restraint on anticipation
after 1926, restraint restored.


Repealed the previous acts and general effect was thus:
that all to a married woman married after the Act, all the
W. P. prop held by her at date of marriage, unearned after
the marriage was her separate prop. As a woman
marries above Act, she shall be entitled to hold as sep. estate
all her W. P. prop. The title to which shall have occurred
before or which shall occur after her marriage. The commencement
of the Act. (See 8.) Impe what effect that might have re.
reposition which might have been made of her prop. Prior to
the Act is doubtful.

1884 Act re enacted in Married Women's Prop Act 1890.
Infants. An infant cannot convey land as common law. (under certain statutes in state or compulsory or under the infant may convey)

and conveyance to an infant is voidable at any time before the infant reaches 21 unless upon acceptance by him.

Infants cannot quit-claim conveyances or cannot make wills.

Lunatics Position - that conveyance or will a conveyance implies no law a mental capacity - an understanding on the part of the person who makes it: a conveyance by a lunatic is void, and a will by a lunatic is void.

But in persons having conveyances from lunatics on sale, that is void if the person dealing didn’t know of the incapacity. To set aside such conveyances, will be necessary to show knowledge.

Committee may be appointed to manage prop. of a lunatic, and in case of person found lunatic a confined in asylum, property of lunatic goes to husband in lunacy - who must take care of it, may dispose of it

Convicts. As 8:1 when person convicted of felony, all his prop. was forfeit. But this no longer continues. But prov. has been, convict was given the management of prop. of conv. to a curate.
Aliens

At b. I. an alien without enemy or friend, ca. not hold prop real or personal. But now prov. by Alien Act 1870 that every alien friend resident in Vt. may inherit it and may convey assign devise in every description of property whether real or personal in same manner as if natural born (see 3).

Secy. Every such grant to made prior to Act is valid.

Alien enemies - the prop they cannot hold in Vt. or even the possess. But ao. it means that Brown alone can profit such property.

Curtain

The mellow voice of B. H. and profound.
Distilled versus Purchased we get a flop!
Smoky a voice the sweetest as to round
Which we spoke of "mummy" or the shop.

From this point the book contained blank pages (not captured).
Transfer of Land Act 1890.

by

Guest.

Transfer of Land Act not a code. Land mean it is subject to the same general law as land not under it except when otherwise provided by the Act, which introduces a new system of conveying.

§ 19. Land alienated in fee by the crown after 30th December 1862, under Acts extended this to households granted after Sept. 9th 1863.

Registration under the Act equivalent to enforcement.

§ 21. Land may be tit under operation of Act by an application made by certain persons. When once brought under Act, cannot afterwards be withdrawn when somebody has acquired by adverse possession. The owner by deeds cannot bring the land under the Act.

Sub sec (1) enables trustees in fee simple to bring land under the Act as owners as law. Similarly in case of two or more executors. (Re Bunn v Grace 12 V.L.R. 366)
Library Digitised Collections

Author/s:
Menzies, Robert Gordon

Title:
Robert Menzies' student notes: Property [volume 4]

Date:
1915

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