

THE TORRENS LAW.

In describing the Torrens system to our readers, we are not writing essays on law matters merely for exercise, nor on general principles; we are telling our fellow-citizens, in other states as well as in Nebraska, of a matter that concerns them very closely, and in which our state governments, except in a few progressive states, are failing to give the public the protection that they have a right to expect. This is the ownership of land. There are very few people indeed to whom this is an indifferent question; whether you own a big house or a little house, or a lot where you hope to build, whether you own a farm, a shop, or stock in a mill, you are affected by the condition of the law bearing on real estate; if the law at present leaves you, or your wife or children after you, open to attack, trouble, and loss in a matter in which a large part of your savings are very probably invested, you should know it; and if the law can be improved, you should see to it that it is done.

One of America's very great lawyers has left this statement: "The whole

FALSE SECURITY. tendency of modern legislation concerning real estate has been to lull the student into a false security. Many a man has lost his all by assuming the sufficiency of his own knowledge and judgment in real estate matters. Sharp schemers do not overlook this fact, and many of them thrive by it." He is arguing that a man should always employ a skillful lawyer in every transaction concerning land; but since his day men have gone further, and proclaimed that in so important a matter as the ownership of land, everything should not be left to the "knowledge and judgment" even of an attorney, since if his skill should by chance prove to have been insufficient, the trusting purchaser is not a bit better off than if he had merely trusted to luck in the first place. This is strictly true; nothing stands between you and the loss of your land but the promise of the man you bought of, that he would "defend" it through all time; what you paid your lawyer for was merely to give you his opinion as to whether the land was that man's to sell. Nothing was proved, nothing is binding. Another authority has expressed himself thus: "Title by deed can never be demonstrated as an ascertained fact; it can only be presented as an inference more or less probable, deducible from the documentary evidence accessible at the time being."

If you are a land-owner, large or small, are you fully aware that all that

YOUR WARRANTY. guarantees to you the possession of the land you have paid for, is the promise of the man who sold it to you; and that only in case you got a warranty deed, properly executed in every respect? Have you not a kind of an idea that the

law, or the records at the court house, or something make you safe, and that you are through with him? That is a mistake, if you have such an idea; and it would be a good plan for you to stop and consider whether that man, or his heirs, are in a position altogether to make his guarantee good, if trouble should arise. The truth is, that a purchaser of real estate, under the system that William the Conqueror brought from France 800 years ago, and which we still follow, buys it at his own peril; the law expects him to satisfy himself first that the seller has a right to sell it; and if he buys and pays for property that belongs to somebody else, the law will do nothing for him, as things are at present. That trouble arises so seldom is due, first, to the fact that most men are really honest, and second, to the great care which the multitude of lawyers we have bred up for the purpose really do take in watching the transfers. The seller's promise to "defend" is in fact of very little force; in England it is seldom called for, buyers pinning their faith entirely to the competence and faithfulness of their attorneys; an English writer says, as if it were something curious to him, that "in the United States, purchasers are usually content to accept the hazardous alternative of the personal guarantee of vendors."

Those who are familiar with real estate law must pardon us for repeating

IN THE DARK. some first principles rather frequently. The fact is, that the enormous majority of owners of real property have no notion, or only a very vague one, of how it really comes that they can call certain pieces of ground their own. To put it plainly, land is passed about by a mere hand-to-hand transfer, such as is not tolerated with any other class of property that at all approaches it in importance. A man, in selling a piece of land, gives his purchaser, at best, such a title as he got from the man he himself bought of; he cannot give a better, and he may very easily give a worse. There is no department of the courts nor of the government that interests itself in seeing what he sells nor how he sells it. If the purchaser can prove that he paid him for something he did not deliver, the courts will enforce the contract, but that is all. He is naturally supposed to have gotten a good title from his predecessor, and to pass it on in like condition when he sells; but if he has allowed his title to be impaired, by liens of any sort, tax sales, adverse occupation, or anything of the kind, it is nothing to the courts: that is the purchaser's own lookout.

And so it goes on back, step after step, every transfer a source of infinite

CHAIN OF TITLE. fresh dangers; the title never becoming better, but every transaction of which the land is the subject opening up its own prospect of mistakes, and the

whole accumulating into an intolerably obnoxious mass of possible trouble. This is what is meant by the "chain of title;" you must not only know what you got from your seller, but what he got from his, he from his, and so on indefinitely. Now, no chain is stronger than its weakest link; and if any of the previous holders of your property overlooked any of the little matters to be mentioned presently, you are simply liable to be thrown out of your property by any one who is in a position to take advantage of it; lawful representative of the person who made or suffered the mistake, or sharp lawyer who happens to stumble upon it; and the courts will tell you that it is your own fault; that you were supposed to know all about those things. That is the attitude of the law at the present time.

Many people suppose that the abstract which they get with their deed makes them all right.

ABSTRACTS. Nothing could be further from the truth, as was pointed out in an earlier number. Mr. H. H. Harder, secretary of the Omaha Real Estate Exchange, speaks of them thus. "Abstracts are a delusion and a snare. They grow longer, but never better. The ignorant hang on to them in fancied security under the delusion that in some way they secure them a title in a home when they do nothing of the kind."

As a matter of fact, an abstract is merely a memorandum of the history of the land concerned, meant to guide you, or your lawyer, in deciding whether the party who offers you the land is in a position to sell it; which question, remember, you must decide, and be forever bound by the consequences of your decision.

And as to the records at the court-house, which mark the one sole move

COUNTY RECORDS. made by our legislators to indicate that they care whether or not we get land when we pay for it, they amount to just this: the kind government consents that in a book, kept in that public place, shall be copied whatever written bargains in regard to land are brought thither for that purpose. That is all. If your grantor makes a mistake, the mistake is solemnly copied in the book. The law supposes the copy to be correct, but does not trouble itself as to whether the thing copied is of any value or not. Such as it is, the bargain is preserved for all future interested parties to inspect, and make their abstracts and draw their conclusions from. It is a protection in this way: suppose the man who offers to sell you land is dishonest, and has already sold it to someone else; this record will show that, or if it is not there and you get your deed recorded first, then you keep the land, and it is the other purchaser that loses his money. This record will also show