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ENGLISH REGISTERED CONVEYANCING: A STUDY IN EFFECTIVE LAND TRANSFER*

Ted J. Fiflis†

REGISTRATION of title to real estate, sometimes called the Torrens system, is available in twelve states of the United States, but it is used rarely and most titles are protected under the recording system.1 Assuming that a properly drafted statute is in use, the major reasons for the infrequent use of title registration where it is available appear to be the high cost and great time delay involved in initially registering a parcel.

In the last half of the nineteenth century, the English had the same problems with title registration that we have in the United States today—great time delay and high cost of initial registration prevented any appreciable use.2 But now these problems have been minimized by

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1 The twelve states having a Torrens system are:

- Georgia .......... GA. CODE ANN. tit. 60 (1937).
- Massachusetts ... MASS. ANN. LAWS ch. 185 (1955).
- North Carolina ... N.C. GEN. STAT. ch. 43 (1950).

At one time title registration acts existed in 19 states and the former territory of Hawaii. The 8 states which have since repealed their title registration acts or allowed them to expire through failure to re-enact them are: California, Mississippi, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee and Utah.

In Hawaii, perhaps one-third of all transactions are under the title registration system. In Cook County, Illinois, about 15% of all transactions are in registered land. Except in these states, and Massachusetts, Minnesota and perhaps Ohio, the system is virtually unused.

Reference to the registration of deeds (recording) should not be confused with registration of titles.

2 Title registration in England has been the subject of a great deal of study in
several innovations, and, as a result, 1,704,426 titles were registered in England in 1961, representing £4,500,000,000 worth of real estate.\textsuperscript{3} Initial registrations in fiscal 1960 were valued at £207,883,000 and numbered 67,143.\textsuperscript{4} It has been estimated that about one-quarter of all conveyancing transactions currently are processed by the Land Registry.\textsuperscript{5}

The modern English title registration act although related to the American Torrens Acts is quite different in many ways. It was the result of sixty-seven years of studies and experimentation with acts which were notable only for their consistent failures.\textsuperscript{6} The work began in 1830 when a Royal Commission was appointed "to inquire into the Law of England respecting Real Property." Its original objective at that time was investigation of the recording system such as used in the United States. One of the witnesses before the Commissioners, Mr. T. G. Fonnerau, suggested a system of registration of titles but the suggestion was not acted upon, and no legislation resulted from the investigation.\textsuperscript{7} In

the past decade. In 1951, the government sought to extend compulsory registration to the County of Surrey, a county adjacent to London composed of suburban and rural areas. The three law societies of Surrey opposed the extension, and in accordance with the statute, Land Registration Act, 1925, 15 Geo. 5, c. 21, § 122 [hereinafter cited as Land Registration Act, 1925], a special hearing was held at which evidence pertaining to the advantages and disadvantages of registration was adduced. The hearing of evidence lasted four days and oral argument one day. The report of the hearing examiner is contained in Gray, \textit{Report on the Advisability of Extending Compulsory Registration of Title on Sale to the County of Surrey} (1951). The transcript of the hearings, of which only three copies exist, is available in the Harvard Law School Library.

This testimony and the Gray report were two of the most important sources of our information. In addition, extensive use was made of Curtis & Ruoff, \textit{The Law and Practice of Registered Conveyancing} (London, 1958), and Dowson & Shepard, \textit{Land Registration} (London, 2d ed. 1956).

For convenience, the transcript of the Surrey Hearings will hereinafter be cited as Transcript, and the two books will hereinafter be cited as Curtis & Ruoff and Dowson & Shepard, respectively.


\textsuperscript{4} \textit{Ibid.} For the four preceding years, total registrations were:

\begin{align*}
1956 & \ldots \ldots \ldots \ldots 38,319  \\
1957 & \ldots \ldots \ldots \ldots 40,761  \\
1958 & \ldots \ldots \ldots \ldots 57,349  \\
1959 & \ldots \ldots \ldots \ldots 74,077  \\
\end{align*}

\textit{Id.} at 5.

\textsuperscript{5} \textit{Gt. Brit., H. M. Land Registry, Registration of Title to Land 9} (1960); Letter From Mr. Ruoff to the author, Oct. 4, 1961.

\textsuperscript{6} The information in this paragraph, except where otherwise indicated, was obtained from Dowson & Shepard 36-46.

\textsuperscript{7} Curtis & Ruoff 4.
1850 a new Royal Commission presented its report reaffirming the need for the establishment of a recording system; the report also contained a proposal for the introduction of registration of titles. Thereafter, two bills for the establishment of a recording system were introduced but failed enactment. The 1850 Report was submitted to a committee of the House of Commons in 1853 and this committee recommended the appointment of a new Royal Commission to make a study of title registration. In its 1857 Report, the new Commission recommended rejection of a recording system and adoption of a system of title registration.

The report resulted in Lord Westbury's Act, passed in 1862. In the first five years of the act, only 507 applications for registration were received and 327 first registrations were effected, an average of fewer than 2 applications per county per annum. In the sixth year a fourth Royal Commission was appointed to investigate the reasons for this failure. This Commission concluded that there was no hope for Lord Westbury's Act. In 1875, Lord Cairn's Land Transfer Act was passed containing several changes from the 1862 Act. After three years only 47 titles had been registered and after ten years only 113 titles had been registered.

This double failure was almost disastrous, and in 1878 a majority of a committee established by Parliament reported in favor of a recording system. But the Australian successes with title registration encouraged further study, and in 1897, Lord Halsbury's Land Transfer Act was passed with some additional key changes. This act formed the basis for the successful 1925 Act now in force. Thus, after two failures and sixty-seven years of study and experimentation, a successful title registration system was enacted.

*Land Registry Act, 1862, 25 & 26 Vict., c. 53.*
*Land Transfer Act, 1875, 38 & 39 Vict., c. 87.*
*Land Transfer Act, 1897, 60 & 61 Vict., c. 65.*
*Land Registration Act, 1925.*

In England, unlike the United States, a general recording system does not exist. Since 1703, Yorkshire has had a recording act: West Riding, 1703, 2 & 3 Anne, c. 4; East Riding, 1707, 6 Anne, c. 20; North Riding, 1794, 8 Geo. 2, c. 6. And Middlesex had a recording act from 1708 (Middlesex Registry Act, 1708, 7 Anne, c. 20) to 1937 (Land Registration Act, 1936, 26 Geo. 5 & 1 Edw. 8, c. 26). But in the rest of the country "private conveyancing" exists where title registration is not used; i.e., there are no public records to be searched (save for certain types of interests which are required to be recorded in special "land charges" registers, Land Charges Act, 1925, 15 Geo. 5, c. 22), but title papers are kept by the current owner of the property and examined by the buyer's or mortgagor's attorney at the time of a sale or security transaction. Cribbet, *Conveyancing Reform,* 35 N.Y.U.L. Rev. 1291, 1293 (1961). The possibilities for loss of papers, fraud or negligence are numerous although nearly unheard of in actuality.

As the text indicates, the English thoroughly considered the desirability of a
English Title Registration Act

In the United States today, title registration is in very much the same status as it was in England in 1878; many years of failure have discouraged most would-be reformists. The question raised by this historical analogy is: Can the measures adopted to raise title registration from failure to success in England be utilized for title registration in the United States?

To help answer this question we shall determine what the English system is, and then how good it is in terms of costs, time delay, losses, title risks and objectionable features.

The Registration Processes

Initial Registration.\textsuperscript{13} In the United States, initial registration of a parcel is obtained through a judicial proceeding in which the applicant for registration proves his title and interested persons are necessary parties.

In England, the initial registration is processed through an administrator, the registrar. In some districts, registration is compulsory upon sale of a parcel; i.e., the purchaser who wishes to retain full legal title must apply for initial registration within two months of the sale (the delivery of the deed).\textsuperscript{14} The applicant files with the registrar an application form, all the title documents in his possession or under his control, a plan or general recording system, but they decided against it. DOWSON & SHEPARD state the reasons for this conclusion:

Lord Cairns, giving evidence, with the weight of his office and experience as Lord Chancellor, before the Osborne-Morgan Committee in 1878 described a Registry of Deeds [Recording Act System, as opposed to Registry of Titles] as a "blind registry" for "it tells you nothing about the title to the property, it only tells you that there are certain deeds in existence relating to the property, and having told you that, you must find aliunde what the deeds do." He also declared himself to the Committee as "entirely opposed" to anything like a General Registration of Deeds, and stated that he thought the consequences of such a system in England would be extremely serious. In a valuable essay entitled "Registration of Title v. Registration of Assurances", written on behalf of the Irish Landowners' Convention, Brougham Leech thus summarizes the position of Ireland in 1891: "We have had this system of Deeds Registration in operation for nearly two centuries, and working with all the evil consequences apprehended by Lord Cairns; it inflicts upon landowners a grievous tax, but it is tolerated partly because having become one of the institutions of the country and having been identified with professional interests, it is difficult to abolish, and partly because those who suffer under it have never, until lately, been in a position to express with authority a collective opinion." And it was shown that in Ireland, as in England, searches were generally very expensive, owing to the large number of transactions to be investigated and, in the case of names that occurred frequently (e.g., Smith, Murphy) almost impracticable.

\textit{Id.} at 16-17.

\textsuperscript{13} The information in this section, except where otherwise indicated, was obtained from CURTIS & RUOFF 250-304.

\textsuperscript{14} Land Registration Act, 1925, § 123(1).
other identification of the land based on the ordinance survey map referring to physical bounds, and pays his application fee.\textsuperscript{15}

Provision is also made for an affidavit of full disclosure of all items affecting title by an applicant not represented by a solicitor, but the registrar may require a solicitor's certificate.\textsuperscript{16} And it may be necessary to make a survey to adequately identify the land. In compulsory areas, this survey is paid for from registry funds and not by the applicant.

Upon application, the land being registered is noted on an index map. The registrar then proceeds to examine the title. Where the title has already been examined on a sale by a barrister of at least seven years' standing, the registrar may act on the barrister's opinion, or the registrar may refer the application to the barrister for further consideration and act on his further opinion.\textsuperscript{17}

In areas where registration is compulsory, for land sold at under £700, or on or within two years after a sale by public auction where the land is worth less than £1,000, the registrar is empowered to rely entirely on the solicitor's certificate to the effect that he acted for the applicant on the purchase, the title was investigated in the usual way, the full purchase price was paid to the seller, and that he believes that the conveyance validly conveyed the interest purported to be conveyed.\textsuperscript{18}

Exceptionally difficult title questions may be referred to one of a select list of conveyancers.\textsuperscript{19}

The registrar is given broad power as to whether or not to accept titles.\textsuperscript{20} As a matter of practice, he does accept them if they are "sound holding" titles—apparently a standard slightly lower than our own standard of marketable title;\textsuperscript{21} technical flaws are ignored. As a result, in compulsory areas 99 per cent of applications result in registration.

\textsuperscript{15} Land Registration Rules, 1925, 12 STAT. RULES & ORDERS (1948 Rev.), No. 1093 (L. 28), Rule 20 [hereinafter cited as Land Registration Rules, 1925].

\textsuperscript{16} Land Registration Act, 1925, § 14.

\textsuperscript{17} Land Registration Rules, 1925, Rule 26. Rule 28 gives the registrar additional discretion to modify the title examination upon a judicial sale or on a sale for value.

\textsuperscript{18} Land Registration Rules, 1925, Rule 29.

\textsuperscript{19} Land Registration Rules, 1925, Rule 26.

\textsuperscript{20} E.g., Land Registration Act, 1925, § 15(c) reads:

[If] the registrar, upon the examination of any title, is of opinion that the title is open to objection, but is nevertheless a title the holding under which will not be disturbed, he may approve of such title, or may require the applicant to apply to the court upon a statement signed by the registrar, for its sanction to the registration.

\textsuperscript{21} See note 20 supra. According to Hassam, Land Transfer Reform, The Australian System, 4 HARV. L. REV. 271, 274 (1891), a "good holding title" is one which it appears no person is likely to defeat by ejectment.
with absolute title, and in the remaining cases, title is registered with some qualification.\textsuperscript{22}

Before registration, notice is published in a newspaper, but this is discretionary with the registrar in compulsory areas.\textsuperscript{23} In addition, the registrar may serve and publish notices by mail to such occupiers as he deems necessary.\textsuperscript{24} Adjoining owners are notified only if the registrant wishes to fix the precise boundaries.\textsuperscript{25} The registrar, rather than a court, hears any objections to the registration in the first instance.\textsuperscript{26} The registrar may require any evidence of title which he sees fit to require.\textsuperscript{27}

After appropriate examination and determination of the state of the title, a certificate of title is issued. An appeal may lie to a court.\textsuperscript{28} After approval, registration is effective as of the date of application.\textsuperscript{29} A certificate of title is issued to the registered owner and the information is entered on cards in the registry.

**Transfer of Registered Land.\textsuperscript{30}** For a transfer of previously registered land, either before or after the contract is executed, the seller or his solicitor orders by mail from the Registry an official copy of the certificate of title as of a specific date. This copy plus copies of documents evidencing interests excepted from registration (e.g., short term leases) and a written authorization for the buyer or his solicitor to search the register\textsuperscript{31} are then delivered to the buyer or his solicitor. The buyer's solicitor then examines the delivered documents, checks zoning laws, tax records, and matters recorded under other local ordinances which might affect the land, checks possession, and, if necessary, or desired, orders a survey. Three or four days before the closing, the buyer's solicitor orders by mail an "official search" bringing title up to date from the date borne by the official copy of the certificate. The average time for an official search is twelve hours from receipt of the application until mailing of the result.\textsuperscript{32} For fourteen days after the date of this official search, no interest can take priority over the transfer to the buyer if the buyer

\begin{footnotes}
\item[22] Transcript, Book A, 69. In non-compulsory areas, the percentage is 93 to 95\%.
\item[23] Ibid.
\item[24] Land Registration Rules, 1925, Rule 25.
\item[25] Land Registration Rules, 1925, Rule 276.
\item[26] Land Registration Act, 1925, § 13(b).
\item[27] Land Registration Act, 1925, § 14(2).
\item[28] Land Registration Act, 1925, § 13(b).
\item[29] Land Registration Rules, 1925, Rule 42.
\item[30] The information in this section, except where otherwise indicated, was obtained from CURTIS & RUOFF 375-418.
\item[31] In England, the Registry records and certificates of title are confidential. Land Registration Rules, 1925, Rule 287.
\item[32] 1961 REPORT 7.
\end{footnotes}
presents his "transfer" (statutory form deed) for registration by the opening of the registry on or by the fifteenth day. Therefore, it is important that the deal be closed promptly after this search and the clearance of any defects which may be disclosed. As soon as the title is in proper form, the deal is closed by a delivery of a deed and the seller's title certificate. Immediately, and within the fourteen day period, the buyer's solicitor should mail or deliver the seller's title certificate, the deed, the official search certificate, an application for registration and a check for fees to the Registry. After a period for making appropriate entries in the register, the registrar will issue a new certificate of title to the new owner.

Transfer at Death or Bankruptcy. The personal representative of a deceased owner or survivor of joint owners is entitled to be registered as owner himself or have his nominee appointed on production of letters of administration. Alternatively, the personal representative may transfer the land to an heir, devisee or purchaser without being first registered himself. When a personal representative conveys the title, it is presumed that he is acting within his powers.

The registrar may enter a notice of a charge for death duties on the certificate. A transferee takes free of the charge, but before registering the transfer, the registrar must give notice of the intended transfer to the tax commissioners.

Under section 61 of the act, as soon as practicable after filing of a petition in bankruptcy of a registered owner, the registrar will register a notice presented by the bankruptcy court against the title of any land thought to be affected. Until such time the petition in bankruptcy has

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23 Land Registration Rules, 1936, 12 STAT. RULES & ORDERS (1948 Rev.), No. 1302, Rule 1 [hereinafter cited as Land Registration Rules, 1936]. The period was 3 days from 1930 to 1936. Land Registration Rules, 1930, STAT. RULES & ORDERS (1930), No. 211, Rule 1.

Land Registration Rules, 1925, Rule 138 provides for provisional registration. Under this rule a person may register a deed or other transfer with nothing more than the consent of the registered owner. The registration expires after a period of 21 days unless it is perfected. According to CURTIS & RUOFF 50, provisional registration is not used because rendered obsolete by the introduction of the 14 day priority period after the official search.

24 Land Registration Act, 1925, § 41(1).
25 Land Registration Act, 1925, § 41(4).
26 Land Registration Rules, 1925, Rule 168(1).
27 Land Registration Act, 1925, §§ 37(1) & (2); Land Registration Rules, 1925, Rule 170.
28 Land Registration Rules, 1925, Rule 170(6).
29 Land Registration Act, 1925, § 73(7).
30 Land Registration Act, 1925, § 73(1).
31 Land Registration Act, 1925, § 73(8).
32 Land Registration Act, 1925.
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no effect with respect to any registered disposition for value. Pending adjudication of bankruptcy, the registrar may register an inhibition.\(^{43}\)

After adjudication of the bankruptcy of the owner, his trustee in bankruptcy is entitled to be registered,\(^{44}\) and pending appointment of the trustee, the official receiver is entitled to be registered.\(^{46}\)

Distinctive Features of the English System

There are several distinctive features of the English registration system, but the three vital features which were instituted in the 1875 and 1897 acts for the express purpose of making initial registration cheaper and quicker are:

(a) Compulsory registration,
(b) Great discretionary and decision making power in the administrator, and
(c) The "general boundaries rule."

None of these features is contained in any American title registration act.

Compulsory Registration. The sanction for the buyer's failure to register a transfer in compulsory areas is the loss of legal title by the buyer;\(^{46}\) since 1925 a transferee of unregistered land who fails to register the title within two months after the transfer loses legal title which presumably reverts to the transferor.\(^{47}\) However, equitable title stays with the transferee subject to the usual infirmities. If the transferee occupies the land, any subsequent purchaser is under a duty to inquire of his interest and takes subject to these rights unless inquiry is made and the rights are not disclosed.\(^{48}\) This, manifestly, is no more compulsory than recording act requirements, which for all practical purposes supply the same sanction for failure to record.

Registration in compulsory areas is required on:

(a) Conveyance of a freehold,
(b) Execution of a lease for 40 years or more, or
(c) Transfer of a lease having a remaining term of more than 40 years.\(^{49}\)

In the latter two cases the lessee registers his leasehold.

\(^{43}\) Megarry & Wade, The Law of Real Property 942 (1957). For an explanation of inhibitions, see text at 480 infra.

\(^{44}\) Land Registration Act, 1925, § 42.

\(^{45}\) Ibid.; Land Registration Rules, 1925, Rule 174(1).

\(^{46}\) Land Registration Act, 1925, § 123(1).

\(^{47}\) See note 51 infra.

\(^{48}\) See note 128 infra.

\(^{49}\) Land Registration Act, 1925, § 123(1).
The concept of compulsory registration was first developed in 1850 by Mr. Robert Wilson who in an appendix to the report of the second Royal Commission to study land title protection suggested the district-by-district compulsory registration of titles. It was first enacted in Lord Halsbury's 1897 Act.

Under that act the proponents and opponents of title registration entered into a compromise whereby registration became compulsory in London on order by the Privy Council and in other areas upon application of the local county council. But in 1925 the Privy Council was given the power to initiate orders for extension of compulsory registration to other areas after January 1, 1936. The power to initiate orders for compulsory registration was also granted to the local county council at that time. If a local county council initiates the order, either House of Parliament may veto it.

If the Privy Council orders extension of compulsory registration, a hearing as to the desirability of extending it may be requested by either the local county council or the local law society. The Lord Chancellor must appoint a member of the legal profession to conduct the hearing and report to the Lord Chancellor. After the hearing, if the Lord Chancellor decides to proceed with the extension, he must then present a draft order to both Houses of Parliament, both of which must approve the Order for it to become effective.

The advantages of compulsory registration are many. Sir George Curtis has listed the following: (1) economical administration of the registry; only under compulsory registration can the registrar accurately estimate the number of applications which will be made so that an adequate staff and adequate financial arrangements may be made; and more important, maps and official surveys can be made in anticipation of registrations; (2) independent safeguards assuring sound titles—registration after sale is desirable because title has been considered good

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50 Dowson & Shepard 37.
51 Land Transfer Act, 1897, 60 & 61 Vict., c. 65, § 20. Under this act, the legal estate stayed with the grantor until registration. But by the Land Registration Act, 1925, § 123(1), the law was changed so that the legal estate went to the grantee upon the conveyance and presumably reverted to the grantor upon failure to register within two months. The registrar has discretion to extend the time for registration. Ibid.
52 Curtis & Ruoff 6.
53 Land Registration Act, 1925, § 120.
54 Ibid.
55 Land Registration Act, 1925, § 121(2).
56 Land Registration Act, 1925, § 122. This is the provision under which the Surrey Hearings, mentioned in note 2 supra, were held.
57 Ibid.
58 Land Registration Act, 1925, § 122(x).
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enough to be acceptable to at least one conveyancer; and (3) application of insurance principles—in compulsory areas, the good as well as the bad titles must be registered thus allowing insurance principles to apply.69

In his testimony in the Surrey Hearings, Mr. Curtis (as he then was) expanded his point regarding economy. He stated that costs to the state were lower in compulsory areas.60 In voluntary areas a special plan (map) had to be prepared, and the Registry was not as familiar with titles due to less frequent registrations. In addition, there is no opportunity to make certain provisions in advance in the voluntary areas; for example, when a small portion of a larger tract having a common title is conveyed in a compulsory area, a note is made so that the search need not be duplicated.

The requirement that registration be made compulsory on a district-by-district basis has provided the advantage of allowing the Registry to proceed in an orderly manner taking on only as much as it could handle at one time.

Administrative Power. Administrative discretion and decision making power, and the general boundaries rule were introduced in Lord Cairns' 1875 Act.61 They were the direct result of the report of the Royal Commission which had been established to determine the reasons for the failure of the 1862 Act. The Commission reported in 1870 that the failure was due to three major defects of the then existing system. These were stated to be:

1. That the title shown to land before it could be registered must be impeccable, with all technical imperfections cured and that the registrar had no discretion to ignore blemishes which were of no practical consequence;

2. That the boundaries of every piece of land had to be determined to the last inch by notice to adjoining owners and that this caused disputes over trifles and great expense and delay;

3. That partial interests, such as life interests, must be registered instead of confining the register to the ownership of the entirety and that this prevented the register from simplifying titles.62

The first two defects appear to be serious problems under U.S. title registration systems.

The 1875 English Act sought to avoid these defects. As a result, the registrar was given great discretion in accepting titles for registration

69 Curtis & Ruoff 240.
60 Transcript, Book A, 68.
61 Land Transfer Act, 1875, 38 & 39 Vict., c. 87.
62 Curtis & Ruoff 5.
rather than having questions determined by a court. In addition, the requirement that boundaries be precisely fixed was abolished. Finally, it was provided that only owners in fee or leaseholders could register.63

Giving the administrator power to decide questions and to exercise discretion on initial or subsequent registration has been proven wise. The number of applications for initial registration in recent years has exceeded 40,000 and for subsequent registration has exceeded one-half million64 and yet hearings before the Chief Land Registrar to decide disputes have been estimated at fewer than 15 per year.65

In addition to the power to hear and decide objections to registration,66 he may award costs,67 deal with claims under Statutes of Limitations,68 rectify the register,69 and award indemnity for losses.70 He may, among other things, after such inquiry and notices as he deems proper, cancel in whole or in part the registration on the certificate of any lease, easement or other encumbrance, or other entry which he is satisfied has determined or for any reason no longer affects the premises.71 And lost certificates may be replaced after such steps as he may deem necessary.72 Another useful power is that given to the registrar to rely on a title examination by the registrant's solicitor for certain transactions.73

Although the Land Registration Rules are legislative rules, the registrar is given broad powers to relax them. Rule 322 (1) reads:

The Registrar, if he so thinks fit, may, in any particular case, extend the time limited, or relax the regulations made by general rules, for any purpose; and may at any time adjourn any proceeding and make any new appointment.

Discretion is also given to refuse to register documents improper in form or substance.74

The General Boundaries Rule. The "general boundaries rule" is Rule 278 of the Land Registration Rules, 1925. It reads:

(1) Except in cases in which it is noted in the Property Register that the boundaries have been fixed, the filed plan or General Map shall be deemed to indicate the general boundaries only.

63 Id. at 6.
64 1961 REPORT 5-6.
65 CURTIS & RUOFF 11.
66 Land Registration Act, 1925, § 13.
67 Land Registration Act, 1925, § 17.
68 Land Registration Act, 1925, § 75.
69 Land Registration Act, 1925, § 82.
70 Land Registration Act, 1925, § 83.
71 Land Registration Act, 1925, § 46; Land Registration Rules, 1925, Rule 16.
72 Land Registration Act, 1925, § 67(2).
73 Land Registration Rules, 1925, Rule 29.
74 Land Registration Rules, 1925, Rule 78.
(2) In such cases the exact line of the boundary will be left unde-
termined—as, for instance, whether it includes a hedge or wall
and ditch, or runs along the centre of a wall or fence, or its
inner or outer face, or how far it runs within or beyond it; or
whether or not the land registered includes the whole or any
portion of an adjoining road or stream.

(3) When a general boundary only is desired to be entered in the
register, notice to the owners of the adjoining lands need not be
given.

(4) This rule shall apply notwithstanding that a part or the whole
of a ditch, wall, fence, road, stream, or other boundary is ex-
pressly included in or excluded from the title or that it forms
the whole of the land comprised in the title.

The rule has the double advantages of avoiding time delay and costs
for survey and for giving notice to and settling disputes with adjoining
owners.75

There is still much criticism of the general boundaries rule76 as there
was from the start.77 However, if a registrant wishes to have boundaries
fixed, he may.78 Notice must be given to owners and occupiers of adjoin-
ing lands,79 and if the boundaries sought to be established are disputed,
the registrar may hold a hearing.80 Curtis and Ruoff state that the fixing
of boundaries is so rare as to be almost unknown in practice.81

Other Important Features. Numerous other features of the English
system have contributed to its success. The registration act provides for
the protection of "minor interests"82 through what are termed notices,
cautions, inhibitions and restrictions.

A person such as a lessee, having an interest which is binding on a
purchaser with notice, may register a notice.83 (This device is the same
one utilized under the title registration acts in force in the United States
to evidence title exceptions.) Persons with interests in land which are not
binding on the purchaser84 may register cautions, inhibitions or restric-

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75 In the Report of the Royal Commission considering the 1862 Act, it is made clear
that the Commissioners felt the time delay and costs of survey and giving notice to
adjoining owners were the major reasons for the failure of that act. CURTIS & RUOFF
64-65.
76 See, e.g., DOWSON & SHEPARD 82-83.
77 CURTIS & RUOFF 65.
78 Land Registration Rules, 1925, Rules 276 & 277.
79 Land Registration Rules, 1925, Rule 276.
80 Land Registration Rules, 1925, Rule 298.
81 CURTIS & RUOFF 64.
82 See text at 487 infra.
83 Land Registration Act, 1925, § 48.
84 E.g., a beneficiary under an undisclosed trust, a co-trustee who does not appear
as such on the register, an owner who has allowed his nominee to be registered. In
tions as a means of protecting that interest. These precautionary steps, unlike registration of a notice, do not have the effect of causing a purchaser to take subject to the interest, but have the effect of either prohibiting transfer altogether or requiring the registrar to give notice to the interest holder or perform some other action before registration of a transfer.

One may register cautions against either original registration or subsequent registration. The effect of the caution is that before the registrar will register a transfer, he will notify the cautioner that unless he appears and persuades the registrar to issue an order to the contrary within a certain time, his caution will expire. The registrar's decisions are made appealable to a court.

Section 57 of the act provides for inhibitions. That section states that the court or the registrar upon the application of any person interested, may:

after directing such inquiries (if any) to be made and notices to be given and hearing such persons as the court or registrar thinks expedient, issue an order or make an entry inhibiting for a time, or until the occurrence of an event to be named in such order or entry, or generally until further order or entry, the registration or entry of any dealing with any registered land or registered charge.

One use for inhibitions is in respect of receiving orders in bankruptcy pending adjudication of bankruptcy.

By section 58 of the act, the proprietor of any registered land or charge who desires to place restrictions on transferring or charging of land may do so. The restriction will provide that one of the following must be done before a transaction in the registered land may be made: notice to a specified address, consent from a particular person, or any other act approved by the registrar.

Another important feature of the act, the advantages of which seem to have gone almost unnoticed by the English, is the centralized registry, until recently the only kind known in England. It would seem that this centralization has been one reason for the registry staff being well trained.

addition, there are several interests peculiar to the substantive law of England which are not binding on purchasers with notice. E.g., certain interests under the Settled Land Act, 1925, 15 Geo. 5, c. 18.

Land Registration Act, 1925, § 53.

Land Registration Act, 1925, § 54.

Land Registration Act, 1925, § 53.

Land Registration Act, 1925, § 56.

Land Registration Act, 1925, § 58.

Land Registration Act, 1925, § 126 provides for a central registry, but § 132 empowers the Lord Chancellor "with the concurrence of the Treasury" to establish branch registries.

In the last few years, branch registries have been established. See 1961 REPORT 2.
One more unpretentious but worthwhile innovation is the machinery for handling registration matters by mail.\(^{92}\) Of course, the fourteen day priority period previously mentioned is a necessary adjunct to this device.\(^{93}\) Thus, a solicitor may practice registered conveyancing without attending at the registry in person, and one central registry can serve a large area. The economies are obvious.

In addition, flexibility and adaptability of the system is enhanced by the power to make rules with respect to registration. This power is vested in a committee consisting of the Lord Chancellor, a judge of the Chancery Division of the High Court, the Chief Land Registrar and a representative of each of the General Council of the Bar, the Minister of Agriculture and Fisheries and the Council of the Law Society.\(^{94}\) These are legislative rules laid before Parliament before becoming effective as if enacted by Parliament.\(^{95}\)

A minor innovation, but one which could have prevented loss of title in several reported U.S. decisions\(^{96}\) is the practice of the registrar of sending notice of a transfer to the person appearing from the certificate of title to be the owner and allowing him three days to object.\(^{97}\)

One feature of the English system, which may be necessary to the proper functioning of the general boundaries rule, is the feature whereby title may be obtained by prescription or adverse possession.\(^{98}\) One attaining such title gets only equitable title until he registers it.\(^{99}\) Presumably this title may be divested by the registered owner where the prescriptive owner is not in possession at the time of a conveyance.\(^{100}\) If in possession the prescriptive owner holds an overriding interest.\(^{101}\)

\(^{92}\) Applications for initial registration, \textit{Curtis \& Ruoff} 289, and for subsequent registration, \textit{id.} at 340, may be mailed to the Registry.

\(^{93}\) See text at 473-74 \textit{supra}.

\(^{94}\) \textit{Land Registration Act}, 1925, § 144(1).

\(^{95}\) \textit{Land Registration Act}, 1925, § 144(2); \textit{Statutory Instruments Act}, 1946, 9 & 10 Geo. 6, c. 36, § 4(3).

\(^{96}\) See, e.g., Eliason v. Wilborn, 281 U.S. 457 (1929).

\(^{97}\) \textit{Land Registration Rules}, 1925, Rule 89.

\(^{98}\) \textit{Land Registration Act}, 1925, § 75(1). The Ontario, Canada act recognizes the relationship by providing in a single section of the act that boundaries are not fixed and that an adjoining owner may obtain title to registered land by adverse possession. \textit{Ont. Rev. Stat.} (1927) c. 158, § 23. Most Torrens type acts do not permit acquisition of title to registered land through adverse possession or prescription. \textit{E.g.}, \textit{Mass. Ann. Laws} ch. 185, § 53 (1955).

\(^{99}\) \textit{Land Registration Act}, 1925, § 75(1).

\(^{100}\) In the United States, one who acquires title by adverse possession prevails over a subsequent bona fide purchaser from the record owner even though the adverse possessor is not in possession at the time of the conveyance. Mugaas v. Smith, 33 Wash. 2d 429, 206 P.2d 332 (1949).

\(^{101}\) See \textit{Land Registration Act}, 1925, § 70. For a discussion of overriding interests, see note 128 \textit{infra}.
It is worthy of note that it is not necessary to proceed against the person who has caused a loss before seeking recovery from the indemnity fund.102

**Possessory and Qualified Titles.** Two other interesting features of the English system which could well be utilized to make the cost of initial registration in the United States almost nil deserve separate attention. The first is the concept of "possessory titles." The act provides for the registration of titles on somewhat of an "as is" basis with all subsequent matters relating to the title being subject to the act.103 On this basis all defects in title existing at the time of initial possessory registration continue to exist "as is" but all subsequent matters affecting title must be registered if the act so provides. Transfers and other transactions are executed in accordance with the act.

The title is subjected to examination by the registrar before registration with possessory title. He requires all documents of title in the applicant's possession to be submitted to him. If the applicant has less than all the necessary documents, the registrar requires a declaration that the applicant has been in possession for a stated number of years, that he is entitled for his own benefit in fee simple and is not aware of any defects in title, that there is no person in adverse possession and that he is not aware of any question or doubt affecting title.104

Such titles may be converted to absolute titles if the registrar after investigation believes they are safe.105 The registrar must register the title as absolute after the lapse of fifteen years if the registered owner is in possession and the registrar finds the title good.106 Any person injured by this registration of absolute title is entitled to be indemnified.107

The idea of possessory titles was also first conceived by Robert Wilson, in his minority report to the 1857 Report.108 The concept is not very favorably regarded by the registry; in compulsory areas, possessory titles constitute less than 1 per cent of all registered titles.109

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102 Land Registration Act, 1925, § 83.
103 Land Registration Act, 1925, § 6.
104 Land Registration Act, 1925, § 4(ii); Land Registration Rules, 1925, Rule 37; Curtis & Ruoff 251.
105 Land Registration Act, 1925, § 77(1).
106 Land Registration Act, 1925, § 77(3)(b); Land Registration Rules, 1925, Rule 48. If a leasehold is registered as a possessory title, the registrar must, subject to the same conditions, convert it to a good leasehold title after 10 years. Land Registration Act, 1925, § 77.
107 Land Registration Act, 1925, § 77(6).
108 Dowson & Shepard 37.
109 Curtis & Ruoff 77. Before the 1925 legislation, it is said that most registrations were of possessory titles; and a Report of a Royal Commission of 1911 stated that 94% of all registrations from 1899 to 1909 were of possessory titles. Powell, Registration of the Title to Land in the State of New York 279 (1938).
English Title Registration Act

Qualified titles are titles which are registered with some broad qualification such as an exception for matters arising before a certain date or between certain dates, or with respect to a certain event.\(^{110}\) It has been estimated that one in a hundred thousand registered titles is a qualified title.\(^{111}\)

Benefits of the English System

We have had a brief review of the English system. The next question is, how well does it work? Let us consider the question in terms of costs, time delay, losses, risk exposure and objectionable features.

Costs of Initial Registration. In the U.S., initial registration of a typical small residential parcel of land in any one of the five states where title registration is used to any extent, can be expected to cost $500 to $1,000.\(^{112}\) In England, the cost of initial registration is so slight that the first registered owner can more than offset the extra costs of initial registration when he sells or mortgages the parcel. For example, as can be seen from Appendix A hereto, upon a sale of registered land for a consideration of £5,000 the first registered owner makes a net saving of £11 4s. For sales at £50,000, and £100,000 the savings are £118 2s. and £243 2s., respectively.\(^{113}\)

It is apparent that the absolute cost of initial registration is slight. These costs, translated into dollars (at an exchange ratio of $2.80 per £) for parcels valued at $14,000, $140,000, and $280,000, according to Appendix A were $34.30, $104.02, and $174.02, respectively.\(^{114}\)

Costs on Transfer. The costs of transfers of registered land, as compared to unregistered land, shown in Appendix A, are 17 per cent to 39 per cent less for buyers and 33 per cent to 55 per cent less for sellers. The figures in Appendix B indicate the savings to the vendor, purchaser and mortgagor on transfers of registered land.

It should also be noted that the Registry is supported solely from its

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110 Land Registration Act, 1925, § 7.
111 Curtis & Ruoff 96.
112 Based on a survey of attorneys in each of the five states.
113 In England, solicitors' fees for unregistered land are established by a statutory committee, and for registered land by the Chief Land Registrar. Solicitor's Act, 1932, 22 & 23 Geo. 5, c.37, §§ 56 & 57. There is a possibility that the fee schedules do not clearly reflect the difference in the amount of work done by solicitors for registered and unregistered conveyancing. The point was indirectly adverted to several times throughout the Surrey Hearings, and in argument, one of the opponents expressed the thought that the fee schedules were improper. Transcript, Book E, 14. But no proof was offered in evidence.
114 In relative terms, the additional costs of initial registration for each of the three price categories was less than one per cent of the sale price of the land; i.e., 0.243%, 0.743% and 0.622%.
own income as required by statute.\textsuperscript{115} Despite inflation, the Registry fees have been reduced twice from their 1914 level.\textsuperscript{116}

Time Delay. In the U.S. the initial registration process consumes from two months to a year.\textsuperscript{117} According to statistics maintained by the Chief Land Registrar, in England, since 1949, the time period from application for first registration until issuance of the certificate (initial registration) has averaged from 16.6 to 59 days in compulsory areas, and in the same years it has averaged from 22.3 to 75 days in non-compulsory areas.\textsuperscript{118}

The initial registration process is typically begun within two months after the conveyance, and there is generally no need for quicker registration. Because the registrar in these cases relies to a certain extent on the fact that the purchaser's solicitor has accepted the title, perhaps registration at a time much after the last conveyance would take a greater amount of time.

The difference between average times required for compulsory and non-compulsory areas (in addition to the probability that initial registration in these areas does not typically follow a conveyance) may be the result of the following:

\textsuperscript{115} Land Registration Act, 1936, 26 Geo. 5 & 1 Edw. 8, c. 26, § 7; Curtis & Ruoff 890-91. At Transcript, Book C, 19, it is stated that the Registry operated at a deficit from 1938 to 1943 but up to the date of the hearings in 1951 had been making a surplus.

\textsuperscript{116} Gt. Brit., H. M. Land Registry, Registration of Title to Land 5 (1960).

\textsuperscript{117} Based on a survey of attorneys in five states where title registration is utilized.

\textsuperscript{118} The following schedule shows the average time delay in the initial registration process:

\textbf{Time Delay for Initial Registration in Compulsory and Non-Compulsory Areas}

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>First Registrations in the Compulsory Areas: Days Required</th>
<th>First Registrations in the Non-Compulsory Areas: Days Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>1949</td>
<td>46.2</td>
<td>62.6</td>
</tr>
<tr>
<td>1950</td>
<td>20.3</td>
<td>23.4</td>
</tr>
<tr>
<td>1951</td>
<td>18.0</td>
<td>22.3</td>
</tr>
<tr>
<td>1952</td>
<td>16.6</td>
<td>26.0</td>
</tr>
<tr>
<td>1953</td>
<td>25.5</td>
<td>35.3</td>
</tr>
<tr>
<td>1954</td>
<td>48.0</td>
<td>68.2</td>
</tr>
<tr>
<td>1955</td>
<td>59.0</td>
<td>75.0</td>
</tr>
<tr>
<td>1956</td>
<td>36.5</td>
<td>65.0</td>
</tr>
<tr>
<td>1957</td>
<td>32.0</td>
<td>47.4</td>
</tr>
<tr>
<td>1958</td>
<td>40.0</td>
<td>49.6</td>
</tr>
<tr>
<td>1959</td>
<td>34.6</td>
<td>45.5</td>
</tr>
<tr>
<td>1960</td>
<td>27.2</td>
<td>46.0</td>
</tr>
</tbody>
</table>

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For voluntary areas, registration is on an *ad hoc* basis, and therefore there is unlikely to be adequate advance planning, and

In voluntary areas a greater proportion of bad titles will be registered.\(^1\)

The fact that registration takes longer in non-compulsory areas adds support to the contention that compulsory registration is one of the necessary features of an improved registration system.

The time required for transfer of previously registered land (to be distinguished from the time required for registration of the transferee's interest) under the system has not been statistically computed. According to testimony of Mr. Curtis during the Surrey Hearings in 1951, the time from receipt of an application for an office copy until it is sent is two days,\(^2\) and the time from receipt of application for an official search until mailing is twelve hours.\(^3\) Under the procedure on transfer of registered lands outlined at pages 473-74 which includes mailing the requests and answers for these two items, the time required for transfer is probably increased by 6 to 7 days. The total time required for transfer of registered land without regard to non-title matters is therefore less than ten days.\(^4\) However, the use of the telegraph in urgent cases would decrease even this period.\(^5\)

**Losses, Exceptions From Protection and Objectionable Features**

We have seen that costs and time delay of both initial and subsequent

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\(^1\) Suggestive of these reasons are comments in *Curtis & Ruoff 240*.  
\(^2\) Transcript, Book A, 62.  
\(^3\) 1961 Report 7. Mr. Curtis testified in the Surrey Hearings that the time was 12 hours in 90% of cases with the other 10% falling on weekends or holidays or caused by miscellaneous matters. Transcript, Book A, 62.  
\(^4\) After the transfer, the buyer's title must be registered. The average number of days required for this registration are shown in the schedule below:  

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Compulsory Areas: Days Required</th>
<th>Non-compulsory Areas: Days Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>1949</td>
<td>37.4</td>
<td>37.4</td>
</tr>
<tr>
<td>1950</td>
<td>17.3</td>
<td>18.0</td>
</tr>
<tr>
<td>1951</td>
<td>14.0</td>
<td>14.0</td>
</tr>
<tr>
<td>1952</td>
<td>10.9</td>
<td>11.4</td>
</tr>
<tr>
<td>1953</td>
<td>19.2</td>
<td>20.9</td>
</tr>
<tr>
<td>1954</td>
<td>36.2</td>
<td>40.4</td>
</tr>
<tr>
<td>1955</td>
<td>42.0</td>
<td>48.8</td>
</tr>
<tr>
<td>1956</td>
<td>32.7</td>
<td>38.8</td>
</tr>
<tr>
<td>1957</td>
<td>27.3</td>
<td>29.3</td>
</tr>
<tr>
<td>1958</td>
<td>37.0</td>
<td>38.8</td>
</tr>
<tr>
<td>1959</td>
<td>35.5</td>
<td>35.7</td>
</tr>
<tr>
<td>1960</td>
<td>28.0</td>
<td>30.3</td>
</tr>
</tbody>
</table>


\(^5\) Telegraphic requests are answered by telegraphic replies. Transcript, Book A, 63.
registration are a great deal less under the English system than under the U.S. systems. But what is the experience with losses, what are the exceptions from protection, and what are objectionable features?

In 63 years of operation to 1962 the assurance fund had paid out £16,356 for losses arising from registration.124 This was 0.36 per cent of the total value (at date of registration) of registered lands—a negligible proportion. From 1897 to 1951 there had been only 32 claims on the fund and the aggregate amount paid out was £3,004.125 At that time, an order had also been made to pay £1,500 to one claimant, but the cash was not yet paid out.126

English registered titles are not as completely protected as are titles under the Torrens type acts in effect in the United States.127 In addition to the fact that boundaries are not fixed precisely so that all of the risks of boundary problems exist, there are numerous specific exceptions from protection (designated "overriding interests").128 A

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124 Letter From Mr. Ruoff to the author, Jan. 1, 1962.
125 Transcript, Book A, 64.
126 Ibid.
127 CURTIS & RUOFF 11, 12, 78. In addition to a lesser degree of protection, the certificate of title is merely admissible as evidence of the matters contained in it. Land Registration Act, 1925, § 68. Apparently the register (equivalent to what is called the original certificate of title in the U.S.) is not conclusive evidence as it generally is in the United States. E.g., MINN. STAT. ANN. § 508.36 (1945); ILL. REV. STAT. ch. 30, § 83 (1961).
128 Land Registration Act, 1925, § 70; Land Registration Rules, 1925, Rule 258; Tithe Act, 1936, 26 Geo. 5 & 1 Edw. 8, c. 43, § 13(11); Coal Act, 1938, 1 & 2 Geo. 6, c. 52, § 41; Coal Industry Nationalization Act, 1946, 9 & 10 Geo. 6, c. 59, § 5; Leasehold Property (Temporary Provisions) Act, 1951, 14 & 15 Geo. 6, c. 38, § 2(4); Landlord & Tenant Act, 1954, 2 & 3 Eliz. 2, c. 56, § 2(4).

The following explanation of overriding interests is quoted from the back cover of the standard form certificate of title:

Overriding Interests.

The Register kept at H. M. Land Registry under the Land Registration Act, 1925, is guaranteed by the State and takes the place of the title deeds necessary in the case of unregistered land. It does not normally, therefore, show matters which are not usually disclosed in an abstract of title.

In addition to the charges and other matters set out in the Charges Register (a sheet of the title certificate listing the known title exceptions), registered land may (like unregistered land) be subject to:—

1. Such rights as may be ascertained by
   (a) inspection of the land
   (b) enquiry of the occupier

2. Liabilities arising under Acts of Parliament

3. Local land charges, i.e., charges in favor of a local authority under an Act of Parliament and registered under the Land Charges Act, 1925, in the local registers kept by such local authority.
English Title Registration Act

third set of interests which includes all interests other than registrable interests and overriding interests is designated "minor interests." 129

The list of overriding interests to which registered land may be subject contained in §70 of the Land Registration Act, 1925, is as follows:

(1) All registered land shall, unless under provisions of the Act the contrary is expressed on the register, be deemed to be subject to such of the following overriding interests as may be for the time being subsisting in reference thereto, and such interests shall not be treated as incumbrances within the meaning of this Act, (that is to say):—

(a) Easements not being equitable easements required to be protected by notice on the register;
(b) Rents and charges (until extinguished) having their origin in tenure;
(c) Liability to repair the chancel of any church;
(d) Liability in respect to embankments, and sea and river walls;
(e) Charges or annuities payable for the redemption of tithe rent-charges;
(f) Rights acquired or in course of being acquired under the Limitation Acts;
(g) The rights of every person in actual occupation of the land or in receipt of the rents and profits thereof, save where enquiry is made of such person and the rights are not disclosed;
(h) In the case of a possessory qualified, or good leasehold title, all estates, rights, interests, and powers excepted from the effect of registration;
(i) Rights under local land charges unless and until registered or protected on the register in the prescribed manner;
(j) Rights of fishing and sporting, seignorial and manorial rights of all descriptions and franchises;
(k) Leases for any term or interest not exceeding twenty-one years, granted at a rent without taking a fine;
(l) In respect of land registered before the commencement of this Act, rights and reservations incidental to or required for the purpose of giving full effect to the enjoyment of rights to mines and minerals or of property in mines or minerals, being rights which, where the title was first registered before January 1, 1898, were created before that date, and where the title was first registered after December 31, 1897, were created before the date of first registration.

The following overriding interests have been added to the list:

(1) Adverse rights, appertaining to other land. (Land Registration Rules, 1925, Rule 258.)
(2) Redemption annuities charged on land out of which extinguished tithe rent-charge formerly issued. (Tithe Act, 1936, § 13(11).)
(3) All rights and title conferred on the National Coal Board. (Coal Act, 1938, § 41; Coal Industry Nationalization Act, 1946, § 5.)
(4) Tenancies continued by section 2(4) of the Leasehold Property (Temporary Provisions) Act, 1951, as extended by the Landlord & Tenant Act, 1954.

129 Land Registration Act, 1925, § 5, provides that on first registration the owner takes subject to entries appearing on the certificate, overriding interests, and, if he is not beneficially entitled, he takes subject to interests of beneficial owners of which he has notice. By § 20, a subsequent purchaser takes subject only to entries on the certificate and overriding interests. Where the subsequent registrant acquires title without valuable consideration, title remains subject to minor interests.

Minor interests are defined as:
Minor interests are of two types: (1) those interests capable of being made binding on a purchaser by appropriate entries on the register, and (2) those interests not capable of being made binding on a purchaser by any entry on the register. Those minor interests in the first category are protected by notices on the register, and a purchaser takes subject to the noticed interest. The minor interests in the second category are protected by cautions, restrictions and inhibitions which protect the interest holder not by causing a purchaser to take subject to the interest, but rather by preventing the transfer in the first place pending certain action. These interests seem to include legal as well as equitable interests.\footnote{130}

Many of the overriding interests listed are peculiar to English land law and arise from some tenurial relationship. Some are obsolete even in England. Some of the remaining overriding interests are similar to those matters not protected against under the U.S. acts. Thus, land taxes and leases for a term of less than a certain number of years are also excepted under many of the U.S. acts.\footnote{131}

Also, an overriding interest designated "Liabilities arising under Acts of Parliament" has a parallel in the U.S. acts which do not protect against certain of the federal government's rights, building, zoning and subdivision laws and the possibility of the exercise of eminent domain.

It seems that exceptions from protection for rights ascertainable by inspection or inquiry are inherent in the English system. If the general boundaries rule is to work well, the rights of occupiers to acquire title by adverse possession must not be precluded by registration. The reason for the rule is to avoid the necessity of requiring adjoining owners to adjudicate boundary questions. And yet if boundary questions cannot be settled by adverse possession, they may be perpetually unsettled. In addition, a related objective of the system is to avoid the necessity of stirring up dormant matters other than boundary questions. If the owner of an easement were required to have the nature of his easement established

(1) the interests not capable of being disposed of or created by registered dispositions and capable of being overriden (whether or not a purchaser has notice thereof) by the proprietors unless protected as provided by this act, and (2) all rights and interests which are not registered or protected on the register and are not overriding interests, and include—

(a) In the case of land held on trust for sale, all interests and powers which are under the Law of Property Act, 1925, capable of being overriden by the trustees for sale, whether or not such interests and powers are so protected; and

(b) In the case of settled land, all interests and powers which are under the Settled Land Act, 1925, and the Law of Property Act, 1925, or either of them, capable of being overriden by the tenant for life or statutory owner, whether or not such interests and powers are so protected as aforesaid.

\footnote{130} See also Megarry & Wade, The Law of Real Property 938 (1957).
without any prescriptive rights, the same problems sought to be avoided by the general boundaries rule would be encountered. The English approach seems to be "let sleeping dogs lie."

Registered titles are not kept intact in as many cases as under the Torrens system. Under certain circumstances, the register may be "rectified" to correct an error, and the registered owner may then be remitted to a monetary claim against the assurance fund.\textsuperscript{132}

A registered owner who has lost his title through rectification of the register is entitled to be reimbursed from the indemnity fund,\textsuperscript{133} except where he or his donor has caused or substantially contributed to the loss.\textsuperscript{134}

Objectionable Features. The Surrey Hearings provided an excellent opportunity for the airing of defects and disadvantages of the English system. Extension of registration to Surrey was strongly contested by the three Surrey law societies. As a result, it must be assumed that the opponents of the system competently exposed its worst features. Upon reading the transcript of the record,\textsuperscript{135} it is apparent that there are several defects in the system, but each of them is minor and collectively they do not offset the advantages of the system. Mr. Gray, the hearing examiner, declared:

[Concerning the matter of defects in title registration] I am satisfied that...[they do] not afford sufficient ground for delaying the extension of compulsory registration. I was satisfied that there are cases in which the present practice causes real difficulties and that some of those difficulties could be cured. But in no case was any irreparable harm proved to have been done to a land owner, and the difficulties occur in a comparatively small number of cases. They may occur in titles which have already been registered as well as in titles hereafter to be registered. If legislation is required, those who are interested can secure its initiation: in some, probably in many, cases legislation will not be necessary.\textsuperscript{136}

The specific defects which the opponents of registration exposed

\textsuperscript{128} Land Registration Act, 1925, §§ 82 & 83. But an absolute registered title cannot be rectified "save in most exceptional circumstances." \textsc{Curtis & Ruoff} 90. And under Land Registration Act, 1925, § 82(3), the registered owner in possession is substantially protected against rectification except against overriding interests unless the registered owner has contributed to the error or took under a void disposition or unless it would be "unjust not to rectify the register against him."

\textsuperscript{129} Land Registration Act, 1925, § 83(1).

\textsuperscript{130} Land Registration Act, 1925, § 83(5)(a).

\textsuperscript{131} Supplied through the courtesy of Mr. Ruoff.

\textsuperscript{132} Gray, Report on the Advisability of Extending Compulsory Registration of Title on Sale to the County of Surrey 5 (1951). A Joint Advisory Committee of the Law Society and H. M. Land Registry was subsequently appointed for the purpose of considering improvements in the system.
during the Surrey Hearings should be set forth in order to determine their importance and whether they may be remedied.

Mr. Cross summarized the contentions of the opponents to the extension of registration to Surrey. First, addressing himself to the advantages of registered over unregistered conveyancing, he summarized these as simplified title examination, state guarantee of title, and economies of transfer of title.

With respect to simplified title examination he noted undisputed evidence to the effect that unregistered titles have become simplified since the Law of Property Act, 1925, and that the typical abstract varied from 3 to 7 pages in length. He pointed out the advantage under unregistered conveyancing of being able to refer to specific provisions of title documents to determine the effect of covenants and easements. He also summarized evidence that the proportionate ease of title examination under registered conveyancing was becoming less since a great number of non-title matters must now be determined by the solicitor—e.g., planning laws and rent controls. He cited evidence devastating the proponents' contention that much registered conveyancing was done without the need of a contract of sale and also showed that the simplicity of the form of instrument of transfer was inconsequential.

With respect to the second advantage of registered conveyancing—state guarantee of title—he pointed out that most titles were good in the first place without registration, citing the facts that in compulsory areas 99 per cent of titles were accepted for first registration with absolute title, and that in 54 years only 32 claims had been made on the fund. He also stated that the large number of overriding interests weakened the proponents' argument on this score.

Concerning economies of transfer, Mr. Cross made a substantial concession when he stated:

There is no doubt at the moment the cost of dealing with unregistered land both from the point of view of the vendor and the purchaser is very substantially greater than the cost of dealing with registered land. That is perfectly true. But he goes on to say that due to the extra cost on initial registration the benefits will accrue only when the land is sold. He adds that the fee schedules are not justified due to the fact there is not sufficient difference in the work involved to justify the difference in fees (but he refers to no evidence).

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137 Transcript, Book E, 1-34.
138 Id. at 14.
139 Solicitor's fees are fixed by law. Solicitor's Act, 1932, 22 & 23 Geo. 5, c. 37, §§ 56 & 57. See also Appendix A.
(On this point Mr. Megarry for the Mid-Surrey Law Society cited evidence conceding that purchase and sale transactions were less expensive under registered conveyancing but that for long term (40 years or more) leases and transfer on death, registered conveyancing was more expensive. He concedes the great saving made on registration of subdivisions.)

The defects summarized by Mr. Cross include vague references to bureaucracy (and Professor Megarry refers to state monopoly). He also cites the susceptibility of the Registry to staff shortages in time of war and to the possible calamity of a destruction of the records.²⁴⁰

Concerning defects in the title protection function of the registration system, several deficiencies were exposed.

First, it was asserted that some matters cannot be made part of the certificate, for example, implied reciprocal covenants resulting from a building scheme instituted by a common owner.

Second, the vesting of great discretion in registry officials was deplored. Testimony had been adduced proving that the discretion to summarize the terms of easements and restrictive covenants and to omit from the register appurtenant easements which were trivial or obvious had resulted in extra work for careful conveyancers who felt constrained to determine the specific terms of the easement or covenant. In some cases the entry on the register merely referred to the original document.

A less substantial objection was that positive covenants (which in England, as in some states of the United States, do not run with the land) are omitted from the register. Although such a covenant results in no title defect, positive covenants are personal and bind the covenantor; for this reason the covenantor, on sale, customarily obtains an indemnity agreement from his purchaser to protect against a failure to perform the covenant. The lack of a notation of the positive covenant frequently caused a covenantor to neglect to obtain an indemnity agreement.²⁴¹

The proponents of title registration argued:²⁴²

The need for a title search as such is eliminated under registered conveyancing; costs of conveyancing are decreased; and title is guaranteed by the state with limited exceptions. In addition, when a defect in title does arise, generally the person in possession keeps possession rather than

²⁴⁰ Apparently lost certificates were not considered to be a major problem. However, a replacement of lost certificates is costly to the registered owner. Official fees in compulsory areas run 5 pounds and in non-compulsory areas six pounds. These fees include the costs of the necessary publication of notice required by Rule 271(1) of Land Registration Rules, 1925. The procedure is identical for lost or destroyed certificates, or certificates in the possession of a person outside the jurisdiction of the court or certificates which cannot be produced without undue delay or expense. Ibid.

²⁴¹ The problem has now been resolved by noting positive covenants arising after initial registration on the title certificate.

²⁴² Transcript, Book E, 64-80.
being remitted to a money claim on his grantor's warranties or against his solicitor for negligence. As for indefinite references to easements and restrictions and the failure to indicate positive covenants, these are remediable and the registrar will attempt to solve the problems.

The two striking things concerning this hearing and the arguments are:

(i) that only the slightest mention was made of the cost and time delay on initial registration—they were apparently considered to be nearly insignificant, and

(ii) that many of the arguments made by both sides have been made or are applicable in the United States and those arguments in favor of title registration prevailed.

CONCLUSIONS

In those states of the United States in which improvement of an existing title registration system or institution of a title registration system is feasible, much can be learned from the English system. The following appear to be desirable reforms.

Initial Registration

1. Registration of possessory titles may be of great significance in the U.S. today because of the recent popularity of modern marketable title legislation. As we have seen, registration of possessory title is simply the registration of a title "as is" guaranteeing no one's interest but providing that all future transfers must be registered and guaranteeing against title defects arising after initial registration. Because existing interests are not affected by initial possessory registration, costs and delay are minimized. No one other than the registrant need be made a party, no judicial proceeding is required, notice becomes unnecessary, and evidence of title need not be different from that required by a purchaser.

When taken in conjunction with a marketable title act, the result would be that after a sale and possessory registration, and after the period established by the marketable title act, a title would be provable simply by reference to the certificate of registration except for interests which are not protected under title registration and for interests not terminated by the marketable title act. As the English say, title would be absolute. No expensive and time consuming registration process would be necessary and all of the advantages of title registration would be available.

With this innovation, a short period under the marketable title act is obviously desirable—perhaps a 20-year period would be satisfactory.

Of course, despite the possessory registration concept, a purchaser or owner could be given the option to register absolute title (with the additional option to fix boundaries).
2. Most writers on the subject of title registration have indicated their opinion that title registration cannot succeed unless it is made compulsory, in accordance with the English system.\footnote{E.g., Powell, Registration of the Title to Land in the State of New York 74 (1938); Johnstone, Title Insurance, 66 Yale L.J. 492, 515 (1957); Cribbet, Conveyancing Reform, 35 N.Y.U.L. Rev. 1291, 1303 (1961); Colean, American Housing 333 (Twentieth Century Fund, 1944).}

Because the legal effect of non-registration is analogous to the legal effect of non-recording and the term "compulsory registration" is therefore a misnomer, and because the connotations of the word "compulsory" are distasteful, we propose to use the term "universal registration" in lieu of the term "compulsory registration."

Universal registration is a necessary first step in implementation of a successful system of title registration for several reasons. Most landowners will not register their titles if they are given the alternative choice of recording their instruments because the benefits of registration are remote except for the immediate benefit of obtaining protection against the grantor's subsequently creating an interest in another party—a benefit which the grantee could obtain by recording his title instruments. Even so, given a choice between recording and title registration, presumably the grantee would choose title registration because of the greater ultimate benefits—if costs and time delay were roughly equivalent to the costs and time delay under the recording system. But universal registration is the device which could most greatly reduce the cost and time delay on initial registration and is the necessary basis for the institution of several other devices for cutting the cost and delay of initial registration.

Within a certain number of days after the conveyance, a purchaser could be required to file his deed with the administrator of the title registration system, together with his title evidence (title insurance policy, attorney's opinion, or certificate of title) and an affidavit that he is the named grantee, that he paid value and still holds title, etc. Any question of title could be resolved by the administrator subject to appeal to a court by an aggrieved party. The administrator could be given wide discretion to require additional evidence of title, or to ignore flyspecks.

A question will be raised as to the constitutionality of universal registration. Without purporting to consider the question, it might be said that the courts have allowed the states to impose more and more restrictions and conditions on real estate transactions in order to facilitate the protection of title.\footnote{Simes & Taylor, The Improvement of Conveyancing by Legislation 255 (1960).} Indeed it is hard to see how universal registration is any less constitutional than is recording.\footnote{A consideration of the constitutional issues raised by universal registration appears in Fairchild & Gluck, Various Aspects of Compulsory Land Title Registration, 15 N.Y.U.L.Q. Rev. 545 (1938).}
3. Additional important steps to make initial registration inexpensive and quick might be aimed at eliminating as many as possible of the parties to the registration proceeding. Thus, if registration were to have no effect against the rights of parties in possession as under the English system, occupiers or owners of neighboring land need not be made parties. Of course, it could be provided that where an owner wished to make title conclusive of these rights, he might do so by joining possessors as parties.

4. As an adjunct to this innovation, it could be provided that possessory interests might be established through adverse possession but that any title so established would be an equitable title subject to defeasance by a purchaser from the registered owner without notice. Actual possession should be constructive notice so that the only adverse titles which could be valid against purchasers would be those of actual possessors or of persons who registered a notice of their interest.

5. Surveys could be made by the administrator on a systematic wholesale basis so as to avoid costly repetition and relocation of survey points. Perhaps surveys of subdivided land could be eliminated as they are in some states at present.

6. If an owner elects to preclude possessory interests and boundary claims of neighbors, the administrator could have his own inspector examine the premises.

7. Where notice to other parties is necessary, service by registered mail could be substituted for service by the sheriff.

**Improvements in Subsequent Registration**

Although the costs and time delay on subsequent registration under the U.S. title registration systems are probably satisfactory, certain improvements are suggested by the English system.

1. For the ordinary sale of real estate, use of the "office copy" and "official search" techniques of the English together with the fourteen day priority period would enable a purchaser to close out the transaction away from the Registry without any danger of intervening interests. In addition, time consuming preliminary trips to the Registry would not be necessary. The indirect result would be that such a system would enable centralized registries to be established for larger areas with the consequentially better trained personnel and other efficiencies.

2. Other problems such as how to protect against interests of beneficiaries of a trust upon a conveyance by a trustee may be readily solved by granting greater authority to the administrator. For example, at present, in Illinois, a trustee’s conveyance may be registered if two title examiners employed by the registrar determine from the trust instrument that the trustee has the power to convey. This determination in most
cases is made within a few minutes at the time when the purchaser applies to register his title.

3. The interest of a Trustee in Bankruptcy in registered land has been in a state of doubt in most jurisdictions. Clarification of this question would be helpful. Perhaps the most desirable solution, from the point of view of conveyancers, would be to give no effect to the bankruptcy until a notice of the bankruptcy and the possible effect on a particular parcel of land is filed with the registrar by the Trustee in Bankruptcy or some other interested person as in England. The change may require legislation by the federal government although this is not clear. This would not appear to place too heavy a burden on the trustee or the creditors.

4. Improvements in administration of the title registration system could be made by increasing the quasi-judicial and rule making powers of the administrator of the system. Use may be made of administrative hearing officers to determine, in the first instance, questions such as those concerning liability of the assurance fund, whether certain allegedly obsolete or expired interests registered on the title certificate should be cancelled or whether an allegedly lost duplicate should be replaced.

   In addition, the administrator should be given the power to make rules to allow the system to function more smoothly. The rules could be given the force of law when they are not merely interpretive of existing legislation by one of the usual modes familiar in the field of administrative law.

5. In order to assure consistent treatment and adequately trained personnel, a registry should be under a single administrator for the entire state and divided into only as many districts as will provide sufficient activity to insure adequately skilled personnel.

6. It goes without saying that registry personnel should be selected on a non-political basis so as to exclude unqualified personnel.

7. Finally, if the state's general credit were placed behind the assurance fund, the fears of many persons interested in the security of titles would be alleviated, thus making for wider use of registration on a voluntary basis. This change is really unnecessary in most cases, since the fund is not the primary protection against defective titles but is only a device to indemnify parties injured by errors of the administrator. However, title insurers have compared the size of the fund with their own resources in many cases in a fallacious but successful attempt to convince people of the inadequacy of title registration. Since voluntary acceptance of the system is important, this slight concession to misunderstanding might well be made.

   In conclusion, it should be stated that consideration of the practicability of many of the suggestions which have been made, their accept-
ability to conveyancers, governmental officials, and others interested in conveyancing, and their constitutionality have been purposely slighted in this article. Our basic aim is to inform the reader of the existing English experience in a limited way and to point out some of the potentialities for improvement of the title registration system by borrowing from the English. Further consideration must be left for another day.
## APPENDIX A

### COSTS AND SAVINGS ON INITIAL AND SUBSEQUENT REGISTRATION AND SALE OF LAND UNDER THE ENGLISH TITLE REGISTRATION SYSTEM

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<thead>
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<th>£50,000 sale</th>
<th>£100,000 sale</th>
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<td><strong>Assuming</strong></td>
<td><strong>Assuming</strong></td>
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<td><strong>land</strong></td>
<td><strong>A</strong></td>
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<td><strong>un-</strong></td>
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<td>67 10</td>
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<td>(12 3)</td>
<td>(37 3)</td>
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<td>on sale to B</td>
<td>43 15</td>
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<td><strong>A's savings</strong></td>
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<td><strong>Assuming</strong></td>
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<td><strong>Costs on purchase</strong></td>
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### Sources:
TABLE SHOWING COMPARISONS IN COSTS OF TRANSFERS OF REGISTERED AND UNREGISTERED LANDS

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<td>305</td>
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<td>(b) Registered Land:</td>
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</tr>
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<td>(b) Registered Land:</td>
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<td>3. Mortgagor's Costs.</td>
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<td>Saving to Mortgagor of Registered Land</td>
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<td>245</td>
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Source: GT. BRIT., H.M. Land Registry, Registration of Title to Land 5 (1960).