

The History of Property Law. Tutorial on Old System Title.

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1. OLD SYSTEM TITLE AND WHERE IT CAME FROM This tutorial will address Old System Title, now receding in the history of the law of real property in New South Wales. The Old System is the Ancien Regime, Torrens Title is Modern Times. Title under the Old System or common law is obsolete but has not disappeared, and almost all Old System land has been converted to Qualified Title in the Torrens System. Old System Title and all its problems are still there, hiding behind the Caution in every Qualified Title. There will be an account of what was done in a solicitors' office when acting for the purchaser of Old System land.
2. Old System Title is, obviously enough, the common law and statute law of Property and the system of land title and conveyancing in effect before the Torrens System began in 1863. With minimal exceptions, all Crown Grants have been made under the Torrens System since it began on 1 January 1863. The old law of property still applied to land granted before 1863, and still applies (with many later changes) unless title has been brought under the Torrens System by a Primary Application or Qualified Title and a register folio has been created for the land. Primary Applications involve difficulty and expense, and reluctant landowners found it difficult to understand the advantages of Torrens Title over Old System Title.
3. Under the Common Law the owner is the person who has the best right to possession of the land. A court decides a contested title only between the contesting parties, in favour of the party with the better title: the decision is about relative strengths. All you have to do to establish who has legal title to land under the Torrens System is to read the register folio, which also shows whether there are any easements, rights of way, restrictive covenants or other interests, all on the one folio. Under the Old System you have to examine the available facts and consider whether those facts show that the person who asserts that he owns the land actually does own it. To show a purchaser that the vendor owns the land sold the vendor must show that he is in

possession, and must show that he has a right to possession: both are necessary.

4. The best way of proving a right to possession is to prove a clear chain of documents conveying title and connecting the present owner with the grantee in the Crown Grant, and possession for long enough for the Statute of Limitations to have run out against any rival claimant. The Crown Grant was before 1863, a long time ago, so the vendor usually bases his title on the transaction by which possession and title passed to him; if that was not sufficiently long ago he also refers to the transactions by which title passed to the vendor to him, and so on until he traces title back long enough to show that it is very improbable that anyone could be a rival claimant. It is enough, at least in theory, for the vendor to show that he is in possession and that he acquired title for value more than 30 years ago by a deed of conveyance which in one instrument assigned to him the whole legal and equitable ownership of the land: provided that the deed is perfectly regular on its face, has a proper duty stamp and has been registered in the General Register of Deeds: and provided that he has not dealt with title in any way in the mean time. Actuality is rarely as simple as that.
5. In the Old System the purchaser's solicitor's effort and carefulness went into establishing whether title could be shown by a chain of documents with no irregularities or anomalies: a good safe holding and marketable title. With a title like that, when the present purchaser became a vendor he would be able to convince another purchaser that he should accept the title. This was the more important object. Almost equally important was the object of showing how well a theoretical rival claim could be resisted, if a rival claim and a lawsuit ever emerged. The purchaser's solicitor was not likely to discover a rival claim to own the land: a rival ownership claim was a minimal possibility, yet a recognisable possibility. He was more likely to find rights or claims which the vendor did not reveal and perhaps did not know of, such as mortgages and charges, rights-of-way, easements, profits à prendre and restrictive covenants, or attempts to create such rights. These may have been created earlier than thirty years ago, not necessarily by a document by which good conveyancing practice would create them and not necessarily in clear

terms. In their own way these could be just as disruptive to a good safe holding and marketable title as a competing claim to own the freehold.

6. The modern form of conveyance looks simple and more or less does what it says. It is found in Schedule II to the Conveyancing Act 1919. Extending it slightly, what it says is this:

THIS DEED made the first day of January 2017 between John Doe of Sydney, in New South Wales, merchant as Vendor of the one part, and Richard Roe, of the same place, Carpenter as Purchaser of the other part **WHEREAS** the Vendor is seized of the land hereinafter described for an estate in fee simple free from encumbrances and has agreed to sell the same to the Purchaser for the sum of \$100,000 **NOW THIS DEED WITNESSETH** that in consideration of the sum of \$100,000 paid by the said Richard Roe to the said John Doe (the receipt whereof is hereby acknowledged) the said John Doe, as beneficial owner doth hereby convey under the said Richard Roe in fee simple all that piece of land in the County of Cumberland City of Sydney and Parish of Saint James bounded on the south by *[and there follows a description of the metes and bounds, in surveyor's language]* containing 1 hectare be the same a little more or less and being the whole of Lot 123 in Deposited Plan 45678 **IN WITNESS WHEREOF** the said John Doe has hereunto subscribed his name and affixed his seal

SIGNED SEALED AND DELIVERED by the abovenamed John Doe in the presence of Thomas Atkins *[place of abode and description]*

(The conveyance is not sealed by the purchaser because he does not undertake any obligation by its terms.) This simple language is in code, because the Conveyancing Act extends the meaning of some of its expressions so that they imply longer provisions which were in use in earlier times.

7. The English land law and system of conveyancing were parts of the law of England received in New South Wales in 1788 and again in 1828. In Medieval England the Feudal System evolved over centuries from a complex ordering of Society to a complex system of Land Law. Feudal Incidents and Services which had once been valuable came to be worth little or nothing, except to the Crown, the ultimate Feudal Lord. In 1660 Charles II exchanged his income from what remained of significant feudal entitlements for an excise on beer and brought the Feudal System to its practical end. In feudal terms, all freehold land in New South Wales is held of the Queen in the feudal tenure Free and Common Socage; but tenure now has next to no practical importance. Freehold is as close to absolute ownership as it is possible to reach.
8. The land law received in New South Wales in 1828 was simplified by the sheer simplicity of the economy and institutions which existed here, and by the nature of society where no-one was long-settled, hardly anyone had inherited land or created an elaborate settlement, and land did not represent social or family continuity but was a commodity and could be bought and sold with little sentiment. The Torrens System reflected societal differences in the mentality of land ownership which supported simplicity and certainty.
9. New South Wales received a strange form of conveyancing which had evolved largely to avoid transferring land ownership by the feudal method, a ceremony called Livery of Seizin in which the parties acted out handing over the land on the land itself before witnesses. The ceremony was often recorded in a Charter of Feoffment, but the ceremony was essential and the Charter was merely evidential. In the Feudal System a freehold estate could not be assigned: it was only possible to create a new and lower rung in the feudal ladder by enfeoffing the purchaser as the feudal tenant of the vendor by this ceremony. By 1290 there were sometimes four or five rungs below the King who was the ultimate feudal lord, and a Statute called Quia Emptores enabled assignment, for which the same ceremony was necessary.
10. Over some centuries English lawyers devised other methods of assigning freehold estates without actually going through that

ceremony, or by doing so nominally by creating estoppels by recitals in deeds. An early method was a contrived lawsuit leading to a judgment establishing ownership in the way desired, by a Final Concord or by a calculated default of appearance at trial. With the rise of the Court of Chancery and its enforcement of Uses it became important to rebut a conclusion that a feoffment created a Resulting Use and that the apparent purchaser held the land to the use of the vendor: a Charter of Feoffment would expressly declare that the purchaser was to hold to the use of the purchaser, with a recital that the price had been paid. The Chancery came to treat a vendor who had agreed to sell land and had been paid the full price as holding the land to the use of the purchaser: so a Bargain and Sale conveyed equitable ownership whether or not there had been Livery of Seizin or a Charter of Feoffment. Tudor legislation required a Bargain and Sale to be enrolled in the records of a Court. After the Statute of Uses 1535 executed the Use (or did so in most cases) an enrolled Bargain and Sale conveyed legal title to the purchaser.

11. The crowning ingenuity was the Lease and release. The Common Law did not allow assignment of claims of ownership to land by a person who was not in possession: they were choses in action: but did allow a lessor to release his reversion to a tenant who was actually in possession. Then in 1535 a provision of the Statute of Uses deemed a leasehold tenant who held his leasehold interest to the use of himself to be in lawful seizin estate and possession, whether or not he was actually in possession. Some late Tudor lawyer invented the device of granting the purchaser a written lease for a year (or even for a few days) and then, a day or two later, releasing the freehold reversion to the purchaser by a further deed. In this way the freehold estate could be conveyed wholly by documents without any ceremony.
12. The practicalities supporting using documents for a conveyance became necessities when the Statute of Frauds 1677 required written evidence.
13. By the end of the Eighteenth Century when English law was received here the documents usually prepared to convey freehold land used all these methods. According to the words in it, a conveyance usually enfeoffed the purchaser, created a use in his favour, expressed a

Bargain and Sale with payment of the purchase price, and recited that the vendor had granted a lease to and to the use of the purchaser a few days earlier and now released the reversion of the freehold. The lease had not necessarily existed in reality and hardly ever did, but estoppels bound the parties to the proposition that it had.

14. A conveyance conventionally contained a recital that the vendor as beneficial owner was seized in fee of the land for an estate in fee simple. Almost invariably the vendor gave a series of covenants which supported the purchaser's security of title. These were covenants for the Right to Convey, for Quiet Enjoyment, for Freedom from Encumbrances and for Further Assurance. A considerable body of law surrounds each of these covenants. They were collected and restated in Conveyancing Act 1919 section 78(1)A.
15. A conveyance was thus a lengthy document which attained its ends in obscure ways with difficult terminology which could be understood only by the learned. In the Nineteenth Century the document was handwritten and there was no punctuation. Provisions of the Conveyancing Act 1919 enabled effective results to be achieved by simple language with implications created by provisions of that Act. The extended provisions are still there, disguised behind the implications.
16. "Freehold," "Fee Simple" and a few other strange terms from the feudal system remain in use here, far from their original contexts. Fee Simple is the estate in which land is usually held: in their feudal origin these curious words signified an estate which could continue for ever: the freeholder could dispose of it, but if he did not the estate passed for ever to the successive heirs of the person who last acquired the land by Crown Grant or for value and not by inheritance. There can be a freehold estate for life, behind which someone must own the reversionary estate in fee simple in the same land. For over six Centuries there could be an estate tail, in which the current owner could not dispose of the land and it descended for ever down the chain of heirs designated when the grantor created the entail. Estates tail were always rare in New South Wales and were abolished in 1920, and it is enough to say that they were a complicated nuisance. Law of great strictness required exact formulas of words for creation of estates.

These formulas were Terms of Art: they did not have the meanings they had in ordinary language, but had meanings given to them by rules of law. The words necessary to create a fee simple were “unto and to the use of [grantee] and his heirs:” any variation, such as “and his descendants” meant that there was no more than a life estate, and the worst blunder was to say “to [grantee] in fee simple” which created a life estate. This was reformed in 1920 and words creating an estate in land now have their plain meaning.

17. Statute law in New South Wales has created new systems and complexities which this paper will not examine. A notable system relates to disposal of Crown lands, usually by Conditional Purchases or Perpetual Leases. Contracts for Sale of Land and other dealings with Crown Land are minutely regulated, and for well over a Century there was a separate system of registering transfers and other dealings, but these have now been brought under the Torrens System.
18. TWO PILLARS OF OLD SYSTEM TITLE Freehold land granted by the Crown since 1 January 1863 under the Torrens System has had certainty of title and relative ease of transactions. The pillar of the Torrens System is Indefeasibility of the title on the register under s42 of the Real Property Act 1900. (Indefeasibility is a complex concept.) Torrens title is legal title, and the equitable interests are elsewhere. In the Old System any document can create any interest, legal or equitable. You have to read each document right through to find out what is there. There is nothing like Indefeasibility for Old System Title.
19. Two pillars of the Old System can be seen amid its many complexities. The first pillar is that a purchaser is entitled to a good safe holding and marketable title and cannot be compelled to accept the vendor’s title and complete his purchase unless the vendor establishes a title which starts at a Good Root of Title. This means in essence a title which starts with a conveyance which shows on its face without extrinsic evidence that the whole legal and equitable interest in the land was dealt with for value in terms which raise no doubt: a conveyance which shows this makes it highly probable that before that conveyance there was an investigation into whether there was a good title. A gift is not a Good Root of Title, nor is a conveyance by trustees to a beneficiary. A legal

mortgage is said to be a Good Root of Title, but a conveyance on sale would be better if one exists. A Good Root of Title shows that an adverse claim is highly unlikely, but does not completely demonstrate that there can be no adverse claim. Complete certainty is not attainable.

20. The period of commencement of a Good Root of Title which a purchaser may require is 30 years before contract: Conveyancing Act s53 (1) as amended in 1930. The period had been sixty years until 1920, and until 1930 it was 40 years. The purchaser can search earlier than the Good Root of Title if he wants to, and if he finds a defect in title he is bound by notice of it, and can raise it against the vendor as an objection to title: but Conveyancing Act subs53(3) protects him against Constructive Notice if he does not make the earlier search. If a purchaser searches earlier he raises the suspicion that he knew some ground for doing so.
21. The period of a Good Root of Title is related to the statute law of limitation of actions for recovery of land. Until 1769 no limitation period ran against the Crown. From 1769 the Crown was subject to a limitation period of 60 years: Crown Suits Act 1769, 9 Geo 3 c 16. From 1837 in New South Wales the limitation period against claimants other than the Crown was 20 years of adverse possession under the Real Property Limitation Act 1833 (Imp) 3&4 Wm 4 c 28 s33, adopted by the Limitations Act 1837 8 Wm 4 No 3. Now by the Limitation Act 1969 subs27 (1) the limitation period against the Crown is 30 years of adverse possession, and against others it is 12 years of adverse possession. (Adverse Possession is a complex concept.) Twelve years adverse possession may not be long enough if there is a disability. Under Part III s 51 titles are barred after 30 years, and under Part IV s 65 a barred title is extinguished. Extinguishment has greatly enhanced the strength of Old System Titles. Time runs from the accrual date of the claim for possession, so until someone is in adverse possession time does not run. Application of these provisions depends on establishing the accrual date and on the possibility that the claimant was under a disability: these may not be simple.
22. Sometimes defects in title are known before exchange of contracts and the vendor requires a Special Condition limiting the title he has to show. If the purchaser decides to accept some limit he makes a judgement

about the risk involved. If there is a Good Root of Title 25 years old and the purchaser intends to live in the house for a long time he might decide to accept the risk, and in economic theory a discount for the risk is an element in the price. Some vendors such as the Australian Agricultural Company were in extremely strong positions and insisted that purchasers accept their Old System title without enquiry and without any covenant as to title. As their Crown Grant covered thousands of acres and was more than a century old, any title search would have involved analysing the land descriptions in all their previous conveyances, to make sure that the AA Co had not earlier conveyed this particular parcel to someone else: this enquiry was not practically possible, the AA Co was honest anyway, and solicitors for purchasers accepted this.

23. The second pillar is Priority on Registration. Registration in the Old System and registration in the Torrens System are entirely different in concept and effects. What is registered in the Old System is the document; a deed conveying title has whatever effect it has and registration does not give effect to it. What is registered in the Torrens System is title to the land, not the document which conveyed the title, and registered title is indefeasible. (Indefeasibility is a complex concept.) Conveyancing Act 1919 subs 184G (1) and (2) give an instrument executed bona fide and registered in the General Register of Deeds priority over interests legal or equitable under an earlier instrument if the earlier instrument was registered later, or was unregistered. There have been similar statutes since 1825. Priority is in accordance with dates of registration, and not with the dates of the documents themselves. Whether an instrument was executed bona fide can only be answered on detailed consideration of a particular case: a test of good faith is not a precise test. On first reading subs 184G(1) reads a little awkwardly and seems to speak only about competition between registered instruments, but courts have always read it as giving registered instruments priority over unregistered instruments, and also as governing priorities of both legal and equitable interests: see *Darbyshire v Darbyshire* (1905) 5 CLR 787 for extensive history. Priority on registration was an Australian innovation and was not part of

English Law received here. Provisions for registration of deeds existed for some English counties and for Ireland; they were not uniform and none were adopted here.

24. Section 184G:

(1) All instruments (wills excepted) affecting, or intended to affect, any lands within New South Wales which are executed or made bona fide, and for valuable consideration, and are duly registered under the provisions of this Division, the Registration of Deeds Act 1897, or any Act repealed by the Registration of Deeds Act 1897, shall have and take priority not according to their respective dates but according to the priority of the registration thereof only.

(2) No instrument registered under the provisions of this Division or the Registration of Deeds Act 1897 shall lose priority to which it would be entitled by virtue of registration thereunder by reason only of bad faith in the conveying party, if the party beneficially taking under the instrument acted bona fide, and there was valuable consideration given therefor.

(3)...

25. Conveyances and other deeds affecting title can be registered in the General Register of Deeds. Registration of these deeds is not essential for their validity and is not compulsory, but the advantages of registration are completely compelling and it would be a ridiculous folly not to register a conveyance or a mortgage. Registration protects against competing interests under prior unregistered but otherwise bona fide instruments for value; but these are quite rare because most people are honorable in their dealings and do not sign away their land in several inconsistent directions. The far greater significance of registration is that it creates a public record which can be searched, and that process is vital when the owner comes to sell or mortgage his land and needs to convince the buyer or lender that he has a good title: practically impossible to do without registration. Statute law makes registration essential for some documents to take effect including

Discharges of Mortgage, Appointments of New Trustees and some other documents relating to holding office as a trustee, Acknowledgements by Executors, some Appointments of Receivers and some Powers of Attorney: not quite the same as compulsory. There are other cases where validity depends on registration: be wary. However registration has not been made essential for the validity of a Deed of Conveyance or of a Mortgage.

26. In the old days horror stories were passed around about verbal arrangements in public bars to sell low-valued houses, completed without writing by handing over the keys for a wad of money: this could be called keyhold tenure, and there was no document to register. There were stories about people who after years of toil paid off the mortgage: the bank or building society handed the owners the mortgage with a Discharge of Mortgage written on the back, and did not explain what they should do with it. The owners gave a party to celebrate freedom from debt, and to rousing cheers the document was put on the fire and burnt: the Discharge of Mortgage could not be registered. Lawyers did not hear how things had been mishandled until the owner wished to sell again after many years, by which time perhaps the bank had destroyed its records, or the building society had been wound up and its directors were in jail. Or a family bought the farm on terms in 1875, paid off the price by 1900, did not ever obtain a conveyance and passed the farm down three or four generations without any wills, probates, conveyances or paper at all: and then came to town and saw their solicitor about selling the farm and complained about the delay. These stories illustrate the prudence of registering Old System deeds.

27. CONSTRUCTIVE NOTICE Whether or not a purchaser is prejudicially affected by Constructive Notice is significant for competition between equitable interests, not between legal interests. If a legal competing interest exists it exists, and you cannot be prejudicially affected by notice of it because you are bound by it whether or not you know about it: whether or not you could possibly know about it. Whether or not you are bound by a competing equitable interest depends on notice of it (and on other things as well.) A great weakness of title under English law was that not only was the purchaser's title subject to prior equitable

interests if he had notice of them, but also that Chancery Judges attributed Constructive Notice of prior equitable interests to a purchaser if the Judges decided that he would have found out about them if he had made the inquiries which a reasonable man of business would have made for protection of his own interests.

28. Equity Judges are wise in their own generation, they must think and speak in their own times and they sometimes make innovations while seeking to apply in their own times the deeply underlying principle by which equity restrains reliance on common law rights where reliance on them would be unconscionable: a concept of no precision applied anew in each Age. (This is what Equity Judges do, even while they are denying it.) Equity Judges do not all think alike; some are immobilised by precedent and some have high confidence in their own innovations and go too far, as on the clouded morning when Lord Denning invented the Deserted Wife's Equity. When they go too far there are statutory interventions. Victorian Chancery Judges' nicety in protecting equitable interests the existence of which was far from obvious conflicted with the spirit of enterprise, innovation and rapid economic change abroad in their Age. Uncertainty of titles went too far and got in the road of business. Circumstances in England were not quite the same as those in New South Wales where elaborate settlements of land were little known and registration of deeds gave priority over earlier competing interests.
29. The Torrens System was one of those statutory interventions. In the Torrens System what you see in the register is the reality and equitable interests are only as good as initiatives taken to protect them. This serves values characteristic of the Victorian age: efficiency and certitude support transactions in land, and those who own interests below the surface are only protected if they lodge a caveat: sturdy Victorian thinking. This involves accepting State certification of titles; less sturdy but beneficial in context.
30. In England statutory intervention was much milder and attempted to state and limit the circumstances in which a purchaser is affected by Constructive Notice. In England this was the Conveyancing Act 1882 (Imp) 45&46 Vic c 39 s3, a modified version of which was enacted as

subs164(1) of the Conveyancing Act 1919 (NSW) and states the circumstances in which a purchaser is to be prejudicially affected by Constructive Notice of an instrument fact or thing. (Subsection 164(1) is supplemented in minor ways by subs53(3), subs 164(1A), and ss165 and 167.) Section 164 only limits Constructive Notice. It gives no protection against knowledge which the purchaser actually has.

31.Subsection 164(1):

A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless:

- (a) it is within the purchaser's own knowledge, or would have come to the purchaser's knowledge, if such searches as to instruments registered or deposited under any Act of Parliament, inquiries, and inspections had been made as ought reasonably to have been made by the purchaser, or
- (b) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of the purchaser's counsel as such, or of the purchaser's solicitor or other agent as such, or would have come to the knowledge of the purchaser's solicitor or other agent as such, if such searches, inquiries, and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

32.Subsection 164(1) is central to what the purchaser's solicitor does to achieve protection against competing equitable interests: it says nothing about competing legal interests. It has the practical effect that a purchaser has Constructive Notice of anything he would have found by making reasonable searches, including searching the General Register of Deeds and reading the documents the search discloses. In other words, you must search. Subsection 164(1) turns on tests of reasonableness, and their application depends on evidence and judicial notice about practice, and like all reasonableness tests the outcome is debatable. This Section puts a boundary to judicial imagination and ungenerosity when attributing Constructive Notice to a purchaser, but falls far short of indefeasibility. (Note, incidentally, that purchasers sometimes got counsel's advice before accepting titles.)

33. DESCENT AND INHERITANCE The English law of inheritance and descent was part of the law received in 1828. Land could be disposed of by a written will, executed with formalities. Widows had Dower rights, but these could be barred easily and did not arise in marriages which took place after 1837. Wills often devised real estate to the executor, upon trusts which the executor was to carry out by further conveyance. Otherwise land did not pass to the executor. Land not disposed of by will descended to heirs, the eldest surviving son if there was one, all daughters together or the sole daughter if there was no son, and so on to grandsons, brothers, or others under rules of some complexity; the inquiry was for the heir of the original grantee or last purchaser, not necessarily of the last inheritor.
34. Land no longer passes to the heir, and if not disposed of by will land now passes in the same way as personal property does on intestacy. By the Real Estate of Intestates Distribution Act 1862 26 Vic No 20 s1 known as Lang's Act, restated by the Probate Act 1890 s32, land not disposed of by will passed to the administrator and was distributed under the rules for personalty, not to the heir. A similar provision in the Probate Act 1890 54 Vic No 25 ss 15 and 19 vested all land in the executor who held it according to the dispositions of the will. If the appropriate outcome after administering the estate is for the land to pass to the devisee, it passes under an Acknowledgement executed by the executor, which must be registered: Probate and Administration Act 1898 s83. Until 1890 the will itself was the document which conferred title to land on the devisee, and it did so whether or not anyone had taken out a grant of Probate.
35. FREEHOLD TITLE AND MORTGAGES Under the Old System a mortgage operates in a different way to a mortgage under the Torrens System. In the Torrens System the mortgagor continues to be the registered proprietor of the freehold estate, and the mortgagee's interest is notified on the register folio and enforced by statutory powers conferred on the mortgagee. In the Old System legal title is conveyed to the mortgagee and the mortgagor no longer has a legal estate but owns the equity of redemption, an equitable interest protected only by equitable remedies. The court supervises compliance with the mortgage

and if all debt has been paid compels the mortgagee to execute a re-conveyance. The words of a mortgage under the Old System usually reflect this. When the mortgage is discharged, legal title is reconveyed to the mortgagor. It is possible to do less and to draft a mortgage which creates only an equitable charge in favour of the mortgagee: but this is not what usually happens. Nineteenth Century legislation simplified the re-conveyance so that the mortgagee executed a Memorandum of Discharge of Mortgage which was little more than a receipt written on the back of the mortgage but operated as a re-conveyance when it was registered. This is now found in subs 91 (3) of the Conveyancing Act 1919.

36. If a mortgagor and mortgagee joined to bring land under the Torrens System by a Primary Application the Certificate of Title would once show the Mortgagee as registered proprietor with a memorial of the mortgagor's interest under the Old System mortgage. The practice is different now. Since s12B was inserted in the Real Property Act 1900 in 1979 the register folio usually shows the mortgagor as registered proprietor and a notification of the interest of the mortgagee; the mortgagee has the remedies he would have had under a Torrens System mortgage. There were Old School solicitors long ago who would not rely on a mortgage under the Torrens System, but insisted that the borrower transfer Torrens Title to the freehold to the mortgagee and execute an Old System mortgage. This Old School has died out, and so they should have.
37. Sometimes solicitors acting for purchasers, with inconvenient carelessness, registered the contract of purchase immediately after exchange. Later after settlement the conveyance was registered: in the meantime the purchaser's priority had been protected. After the conveyance was registered the terms of the contract mattered little, but any searcher had to look through the whole contract in case it put him on notice of something or other.
38. PROBLEMS AND CHANGES IN THE EARLY DAYS In the first thirty years of settlement in New South Wales there were few lawyers, apart from transported convicts who could not be relied on, and elegant complexities of conveyancing escaped most vendors and purchasers:

conveyancing was not well handled, and land was sometimes sold without a written conveyance. By about 1823 there were a handful of lawyers here and by 1840 there was a recognisable profession with the skills to conduct conveyancing. By that time there were many irregular documents in chains of title and the Court had to cope with them, and largely did so with tolerance.

39. Early Crown Grants contained conditions and reservations which could adversely affect a later owner. Reservations enabled the Crown to take land for roads or other public purposes; they usually reserved minerals, resources such as timber, and foreshore land. Grants in eastern Sydney sometimes included a condition that no building was to obstruct visibility of the Macquarie Lighthouse. There were conditions that no timber suitable for naval purposes was to be cut down. Until 1831 Crown Grants usually reserved Quit Rent, but in 1846 regulations limited the Crown to the first 20 years. There were no active steps to collect Quit Rent, except that any unpaid Quit rent was deducted from Resumption Moneys when land was resumed. Until 1964 requisitions on title always included: "Quit Rent must be paid or redeemed before settlement" to which the reply always was "This must first be shown to be due." Quit Rent was abolished in 1964.
40. After 1837 many reforms and alterations enacted in England were not adopted here, while New South Wales legislation made changes suitable to conditions which existed here but not in England. From 1825 New South Wales legislation enacted priority of deeds according to their dates of registration. Section 21 of the Deeds Registration Act 1842 validated what had clearly become the practice here, that a conveyance by Lease and Release released the reversion of a fictitious earlier lease. Conveyancing by Lease and Release and by Bargain and Sale were simplified by ss20 and 21 which made registration equivalent to a feoffment. Legislation rectified other problems along the way, such as by validating grants issued by early Governors under their personal seals and not a Public Seal of the Colony.
41. The Titles to Land Act 1859 remedied a number of real or possible defects in land titles and conveyancing. Recitals in s1 show that there had not always been appropriate use of words of limitation to create a

fee simple, and remedied these for the past while requiring the correct words of limitation for the future. Section 19 in effect dispensed with Livery of Seizin for the past and future where the conveyance was registered.

42. In the Eighteen Fifties the possible weaknesses of land titles were clearly shown in a series of lawsuits in which relatives of Nicholas Devine claimed that they had inherited his 210 acres of farmland in Newtown and Erskineville after his death in 1830. This had become a fashionable district of mansions, houses and farms, and the titles of the thirty defendants were traced through documents supposedly executed by Nicholas Devine when he was old and decayed and there was evidence that he was out of his wits, and also evidence that the documents were forgeries. The claimants sued to eject some of the most prominent respectable and wealthy colonists: merchants, aldermen, bank directors and other worthies. Juries found against their claims although there was much evidence to support them. Their appeal was settled by paying them money which they then used to sue more householders on the same grounds, and pressed on until they failed in the Privy Council. All this took about fourteen years and made the Great and Good of New South Wales receptive to indefeasible Torrens title when it was invented a few years later.
43. The Conveyancing Act 1919 took effect on 1 July 1920 and enacted many reforms which had been enacted for England earlier. Livery of Seizin and conveyancing devices to avoid it were put to rest, as interests in land can be conveyed by deed: see Conveyancing Act s14 and subs50(1). Section 14 says: "All land shall as regards the immediate freehold thereof be deemed to lie in grant as well as in livery." This arrestingly obscure language means that title can be granted, meaning conveyed, in grant, meaning by deed. Livery of Seizin was not actually abolished: it became unnecessary. Subsection 50(1) does its work in more direct language: "... may be conveyed by deed." Sometimes the reform had already been achieved in other ways, so the reforms of 1919 sometimes trod on each other's toes, and brought about the same result two or three times. There were further amendments to the Conveyancing Act in 1930. Extensive reforms in 1925 reshaped English

land law in ways which have not been adopted here. Deep study of the Conveyancing Act 1919 for what it says about the principles of the Law of Property, not only of real property, is worth any lawyer's time: and in many ways the law before 1920 was different.

44. CONVERSION TO TORRENS SYSTEM The Old System is melting under the glare of Part 4A of the Real Property Act which created Qualified Title and new and simple processes of conversion to Torrens title. Legislation first provided for Qualified Title in 1967 but after several slow or false starts significant initiatives for conversion began in 1984 and have now progressed very far. According to the Practice Book Baalman and Wells Land Titles Office Practice NSW, conversion is "virtually automatic:" [480.100]. When an Old System conveyance is registered the Registrar General brings the land under the Torrens System, routinely and with little consideration of the title, by issuing a Qualified Folio recording a Caution. A Caution warns persons dealing with the registered proprietor that the land is subject to any subsisting interest whether recorded or not: in other words, it says that there is no Indefeasibility.
45. A Statement of Title Particulars must accompany lodgement of a conveyance for registration, and the Registrar General can require a Statement of Title Particulars when he wishes to have one. Conversion Action takes place on the initiative of the Registrar General, not of the owner, but it is not hard to set him in motion. A conveyance and almost any other transaction will now set off Conversion Action and take land into the Torrens System: a Primary Application, an Official Search or a Plan of Subdivision. Old System Title is like Fairy Gold: if you touch it, it vanishes, and re-emerges as a Qualified Folio. Or a closer analogy could be with kissing a frog which changes into a prince.
46. If there were an adverse claim while the Caution remained, Qualified Title would produce no advantage or disadvantage for the registered proprietor, because what the Caution says was also true of his Old System title before the register folio was created. The Registrar General may omit a Caution but place a record of some specific interest or a caveat on the register folio, but this is most unusual. A Caution usually lapses after 12 years, or after six years if the land is dealt with for value: s28J. A Caution based on Possessory Title and a Statute of Limitations

does not ever lapse but the registered proprietor can have it removed if, after more than 12 years, the Registrar General is satisfied that the land is held free from any subsisting competing interests. (Lapse and removal of Cautions is a complex subject and requires study of ss28J to 28MH.) It may not suit the registered proprietor to wait for the Caution to lapse in 12 years' time: he may have economic reasons to press on with a sale or a subdivision, and he can seek an unqualified title by making a Primary Application, or he can apply under s28MC for cancellation of the Caution, in effect an abbreviated Primary Application, requiring an Official Search and a survey plan and report.

47. For as long as a Caution is on the register folio the title is not yet out of the Old System. If there is a sale, title must still be established in the way it would have been established under the Old System. A solicitor acting for a purchaser must consider whether there is a Good Root of Title, make all due searches and enquiries and evaluate the title which the vendor wishes to convey. All new dealings such as transfers, transmissions, leases, mortgages, creations of easements and restrictive covenants take place under the Torrens System: but the underlying shortcomings are still there and there is no Indefeasibility, no benefit from s42 against any subsisting interest. When a Caution lapses, s42 and Indefeasibility apply. Anyone whose rival claim is barred by this process can claim compensation: but there can have been few such claims, if there have been any. It is possible that while the Caution remains some rival claimant may emerge and sue to establish his title, but this is no more possible or likely than it already was, and seems to be an extremely rare event.

48. The Registrar General once had a large Title Conversion Branch but his initiatives have taken Conversion so far that parcels of privately-owned land with Old System Title are now altogether exceptional, and deeds of conveyance come in for registration at intervals of many months or several years. There are still Primary Applications, usually for Possessory Title where there is no identifiable owner of small anomalous strips, or lanes of which no-one has acted as owner for many decades. A few conversions continue for Crown Lands and Tenures and State Forests, and there are still some Railway leases under the Old System. The

conversion process is close to its practical end, but for as long as there are any Cautions there will be some Old System Title.

49. **BOUNDARIES AND LIMITED TITLE** In the early years in New South Wales descriptions of land in Grants and conveyances could be inexact or obscure and plans were unsatisfactory. Sometimes boundary lines were measured by a convict pushing a wheelbarrow and counting the number of times the wheel went round. This worked well enough if the convict understood $2 \pi r$. Plans of subdivision were sometimes incorporated in Conveyances, even in Memoranda of Transfer. As time passed the quality of survey work improved. The high quality of plans and the clear identification of land is an ornament of the Torrens System, improving with time and advances in survey techniques and professionalism. Plans of survey deposited in the registry are now universal for subdivisions and are a huge advantage to the public.
50. Under Part 4B the Registrar General may create a Limited Folio where boundaries are not sufficiently defined. The limitation may be removed after survey and investigation and notice to persons possibly affected. In this respect, definition of boundaries in the Torrens System is not as close to perfect as it formerly was.
51. **EXAMINERS OF TITLE** Before there were Qualified Folios and from 1863 Old System land could be brought under the Torrens System by a Primary Application. Examiners of Title were lawyers who spent their careers reporting on Primary Applications. There are no longer Examiners of Titles; there are still a few Primary Applications. The Registrar General was required to cause the title in a Primary Application to be examined for such period as he considered sufficient, and asked Examiners of Title to report. As many decades passed a huge resource of information was collected in records and files of old Primary Applications. In 1962, when the writer last managed an Old System purchase, Examiners of Title knew more about Old System Title than anyone else. They shared an accumulated resource of experience and information about things which could be wrong with Old System titles. What had been established in earlier Primary Applications for other land nearby could limit their consideration to examining title only from the point where chains of title diverged. They were equipped with arcane

knowledge not available to anyone else, about things like the mode of execution of deeds in the constitutions of building societies wound up long ago, and special requirements in the Private Acts creating long-defunct companies. Their opinions were practically conclusive, as the Registrar General acted on them. They behaved as if an Examiner of Titles who could not find anything wrong and actually reported in favour of a Primary Application was diminished as a person.

52. In the earliest years from 1863 the first Examiners of Title understood that accepting risk was a principle of the Torrens System, but their successors were extremely difficult to convince, and a Royal Commission of 1879 reported that they had faults of extreme and meticulous technicality and timidity. They remained extremely exacting. Until 1921 Examiners always investigated title back to the Crown Grant: this was excessive, and the Registrar General told them this was not required. They were terrified that they might accept a title and later be confronted with a claim against the Assurance Fund. Their concerns were inappropriately high: that was what the Assurance Fund was for, and accepting risks and paying claims were not disasters but were functions of the Torrens System. The heart and soul of insurance is that you accept risks and when the risks mature you pay the claims: if you are not paying claims you are not accepting risks and you are a failure. The Assurance Fund continued to be collected until 1941, by which time £700,000 had been collected and £21,000 paid out. This was not a success story, but demonstrated that the Examiners had been excessively cautious. The one really large claim had not arisen from misjudgement of a risk, but from the Examiner simply overlooking one of the documents which had been put before him. Now there is a new Fund and money for it is collected from Lodgement Fees again.

53. ACTING FOR THE PURCHASER OF OLD SYSTEM TITLE Old System Title required elaborate routines when a solicitor acted for a purchaser. After exchange of contracts the vendor's solicitor supplied an abstract of the documents and events by which the vendor claimed to show a Good Root of Title. The Abstract of Title showed the nature of each document, its date, its parties, the description of the land with which it dealt, and details of its registration. The abstract also showed events

such as dates of death and particulars of grants of probate and of wills. In good practice the abstract showed the Crown Grant, but this was not always done. It was prudent for the purchaser's solicitor to search the Crown Grant to see whether it contained any unusual reservations or conditions.

54. It was important for the vendor's solicitor to prepare the abstract with care and not to go back further than was necessary, because the purchaser was on notice of the full terms of any document referred to in the abstract and might raise some objection to title if he were told too much. It was dangerous to reuse an old abstract from an earlier sale because it might disclose more than was necessary and make needless trouble. There were conventions about the language used in abstracts, the layout of their contents and the size of the paper. It was clear that many solicitors with whom one dealt had no idea what they were doing with Old System Title, and on the other hand some old practitioners lived and breathed it and it took the place of culture and music in their lives. In suburbs and towns where there were many Old System titles there were usually one or two old solicitors who knew much local history and had clearly in their minds chains of title and the personalities who had owned large estates and subdivided them, which solicitors in town had been sharp or careless practitioners fifty or eighty years earlier and whose work was reliable, where all the weaknesses were and what was wrong. They knew things like whether there had ever been a Primary Application for adjacent land with some common chain of title, and whether the Examiners of Title had found any defect in it. They could talk for hours.

55. The purchaser's solicitor perused the abstract with care and considered whether it truly demonstrated a Good Root of Title and effective subsequent transactions down to the vendor. Then the purchaser's solicitor called for and inspected the documents produced in support of the abstract. Usually these were held at the vendor's solicitor's office, and the tattered and dusty bundle had to be inspected there. Sometimes the documents or some of them were held by another solicitor whose client was an earlier subdivider, who had obligations to produce them to those to whom he had conveyed subdivided lots, and

had to retain the deeds and produce them when called for. The obligation to produce documents could be discharged by lodging them in the Registry, where they were (and still are) produced for inspection to anyone who pays a small fee. Otherwise a steady stream of production fees continued until the client parted with all the lots: then the deeds had to be deposited in the Registrar General's Department: Conveyancing Act subs53(2)(e).

56. On inspection each document had to be considered to see whether it conformed with what the abstract said about it. This involved checking the names of the parties, the date, the registration particulars, the executions, the description of the land conveyed and whether there were covenants for title appropriate for a sale for value. Any variances in names needed to be explained and resolved. A conveyance might open by naming the conveying parties but close with executions by a smaller number. The formal requirements for execution of a conveyance before 1 July 1920 were greater than they later were. Sometimes the vendor's solicitor produced yellowing Statutory Declarations by persons now long dead explaining anomalies. The purchaser was entitled to rely on recitals in deeds twenty or more years old: s53(2) Conveyancing Act. Sometimes there were small disasters such as a registration date earlier than the date of the deed. The duty stamp had to be examined to see whether appropriate duty had been paid. Each document had to be perused to see whether it contained provisions which were relevant but had not been disclosed in the abstract. If the purchaser's solicitor came to know that the conveying party in an earlier conveyance had been a trustee, he should consider whether the disposal of the land was within the trustee's powers, which might appear from the terms of a will or settlement, or in some statutory provision.

57. The Metes and Bounds description as well as the reference to survey plan had to be checked against the descriptions in the contract. In Old System conveyances it was good practice to describe the land conveyed by its Metes and Bounds as well as by reference to the Deposited Plan. Descriptions by Metes and Bounds were technical and were drafted by the surveyor who prepared the plan. The description started at a point

established by reference to a monument meaning a fixed point such as a survey mark, and followed the plan around the boundaries, stating the compass bearing and the length of each line forming part of the boundary: not simple even in the case of a perfect rectangle, and quite complex if any of the bounds were curved, or followed a natural feature such as a river. These descriptions had to be meticulously checked when inspecting deeds, and the implications of any apparent discrepancy had to be considered.

58. It was also necessary to search the General Register of Deeds. If the abstract relied on, say, a conveyance from John Smith to William Brown registered on 1 January 1910, and then on a conveyance by William Brown to Thomas Atkins registered on 1 January 1925 the searcher needed to look through the Vendors Index, the names of all vendors, to see whether William Brown conveyed or otherwise dealt with title to the same land in some other transaction earlier than 1 January 1925. This involved looking through many pages of alphabetically indexed lists of names of parties to deeds, year by year, from 1 January 1910 to 1 January 1925 to find a reference to any dealing with title by William Brown, and if there was, to see whether it related to the land under consideration, which might require reference to the registration copy. If there were plural purchasers, search each name: if seven, search seven. So too for Thomas Atkins from 1 January 1925, and for each conveyance in the abstract. The process might be baffling. A conveyance might have been registered many years after its date. (It might never have been registered at all.) William Brown might have been a developer who sold 2000 parcels of land in that period. There might be many William Browns who conveyed land in the search period. There are several ways of spelling Brown, Browne, Broun. There were said to be 50 ways of spelling Hughes, Hughs, Hews, Hewes, Huse, Hues and so on.
59. Searching was a highly specialised skill, requiring detailed knowledge of all the Registrar General's Indexes and recording methods, their obscurities, anomalies and changes over the years and Centuries, and how to deal with baffling anomalies such as people who changed their names, once or more often. Few solicitors made searches themselves: they almost invariably engaged title searchers who spent their days and

their lives running their eyes down the pages of Manual Indexes looking for names. The process called out for computerisation. Computerisation of the Register Books, Vendors Index (and much else) began in 1992 and has now been carried back much earlier: this project has a long future. Searches cost money and time. Any anomalies had to be the subject of requisitions on title, or perhaps objection to title and refusal to complete. Searches of computerised Indexes are now far easier and can be conducted on-line. An Official Search by the Registrar General's Department could be obtained for a fee, and the better course was to leave searching to these experts: still the case.

60. Some events in the abstract were not evidenced by title documents; there might be a need for searches in the Probate Office to confirm what the abstract said about grants of representation and the terms of wills. The purchaser's solicitor made enquiries of public authorities such as the Water Board and the Municipal Council, which were entitled to statutory charges over land for unpaid rates. The purchaser's solicitor also searched the Register of Causes Writs and Orders to find whether the land was affected by any Court Orders, Writs of Execution, sequestrations or pending litigation.
61. The purchaser was also concerned to ascertain who was in actual occupation and what interest they claimed to have. If someone has been in adverse possession for twelve months, a conveyance of a documentary title, even a title good on its face, may be void: Conveyancing Act subs 50(2). The purchaser was usually entitled to vacant possession on completion, but may have agreed to continuing tenancies or some other arrangement. The purchaser should get a clear and apparently good explanation from the vendor about who was in occupation, and if he said there was a lease the purchaser should see the lease and find out what it said. The purchaser should find out what was actually happening on the land itself, and if the vendor is not the occupant the purchaser should knock on the door and ask the occupant what rights he had or claimed to have. If he said there was no lease but he was there by the permission of the vendor, find what the vendor says. If the occupant said he had some claim of his own, or refused to say why he was there, the vendor must remove him before settlement.

There may be indications on the land that someone is behaving as if he had a right-of-way or an easement.

62. After making requisitions on title and assessing the replies, the purchaser might be entitled to resist completion, but would not do so without assessing whether the apparent risk of some defect outweighed the advantages of taking whatever title was available.
63. The purchaser's solicitor prepared a conveyance. The conveyance almost always followed the short form in Schedule II to the Conveyancing Act 1919, which was set out earlier. The abbreviated form, by a number of statutory implications, did all the work which a much longer document did in an earlier Age. The words "as beneficial owner" imply covenants by the vendor to ensure that the title conveyed is a good title: Right to Convey, Quiet Enjoyment, Freedom from Encumbrances and Further Assurance. These covenants were given when land is conveyed for value: Conveyancing Act s78 (1). Before 1920 they had to be set out in full.
64. Using the word "convey" was sufficient: s46. Stating that the consideration had been received effectively established that it had: ss 39 and 40. The covenant for Further Assurance gave some protection against any later discovery of a defect in the conveyance: s78. Saying that the conveyance to the purchaser was in fee simple was a sufficient limitation of the estate: s47. Provisions creating easements and restrictive covenants were aided by extended meanings given by ss88 and 88A, if technical requirements in those sections were observed. The operation of the conveyance was also assisted by ss67 and 68 which gave extended meanings to general words. The short form contemplated that the conveyance would identify the land by describing it by Metes and Bounds and quoting the lot number and number of the Deposited Plan. The conveyance was expressed to be a deed, and was taken to be sealed if attested by one witness who was not a party: s38. Alterations in a conveyance were a potential source of its avoidance or of great difficulty. Even filling in the date had hazards in theory. The full effect of using this simple form can only be understood from historical study and of course this tutorial gives no more than an introduction.

65. Soon after exchange the purchaser's solicitor produced the contract at the Stamp Duties office, had duty assessed and paid, and later had the conveyance executed by the purchaser, and marked by the Stamp office to show that duty had been paid on the contract. Another Stamp Duty was paid on the conveyance itself. He also prepared a registration copy of the conveyance, signed in one corner by a party and ready to be completed with all details such as the date, and to be examined and verified on affidavit by a clerk.
66. Eventually the date of settlement arrived. If all hazards had been successfully negotiated, the solicitors for vendor and purchaser met, usually at the vendor's solicitor's office, the conveyance was checked for due execution and the date was inserted, the balance of purchase money was paid over by bank cheque or occasionally in cash, and the vendor's solicitor delivered the conveyance executed by the vendors and the registration copy and handed over the bundle of documents which had been inspected earlier, and the keys. A slight advantage of the Old System over Torrens is that the conveyance takes effect and passes title when it is delivered: when the vendor's solicitor hands it to the purchaser's solicitor at the settlement, not later when it is registered.
67. At the Registrar General's Department there was a queue to see the Deputy Registrar receiving registrations; he checked the Discharge of Mortgage, Conveyance and Mortgage and their registration copies for good order, assigned registration numbers to the copies and entered the numbers on the backs of the originals. Small fees were payable at most stages, always in cash, generating a trail of receipt slips in the file, each receipt laboriously written out by hand. Your conveyance had been registered. What competing document had been registered earlier that morning? It was hardly possible to know.
68. The Department's practices for Registration of Deeds now, with the assistance of word processing, photocopying and computer searching, are far simpler than they were in 1962 when the writer grappled with them. They are described in Old System Information and Search Guide, March 2013, available on line from NSW Government Land & Property Information. If you are actually engaged in an Old System transaction

you should look through this for the practicalities. Talk things over with a more experienced practitioner, even if this means being polite to an older person. For a fee the Department will prepare the Registration Copy, relieving you of the arcana of paper sizes and so on. Some spare themselves the agony of truly investigating the title and take the chance that things are as they seem and accept the risk that an adverse claim may turn up. Taking the chance is not wise. Do what you think best, and watch your insurance.

69. **INHERENT WEAKNESSES AND SOURCES OF DANGER** There are inherent weaknesses in Old System title. There are possible sources of danger even if the vendor has documents of title which appear to show that he or a chain of earlier owners has had title to the land for more than 30 years and it is unlikely that there is anyone who has a better title and could enforce it. Someone may be entitled to an easement or right-of-way or some such interest created long ago. A person who on the surface was the unchallenged proprietor of land and to all appearances controlled its occupation for decades might actually hold subject to interests and contingent interests created in a Deed of Settlement many years ago, belonging to persons who had not taken any action to assert their interests, and may not have had occasion or been able to do so because their interests were contingent on events which had not yet happened and might never happen. There might be some person whose interest was contingent on some event which only happened recently. This danger is extremely remote: it is not impossible.

70. Another danger is that the vendor may have conveyed away or mortgaged his land by some deed which he has not told the purchaser about, through deceit or amnesia: and that deed may have been registered, or may be yet be registered before the purchaser pays the purchase money and registers his conveyance. Another danger is that someone may be in adverse possession of the land and that time is already running against the vendor, or perhaps has run out. Another danger is that the vendor may be a fraud, pretending to be the owner in the chain of title and intending to forge the signature on the conveyance, which will have no effect because it is a forgery. Even if the vendor is quite innocent there may be a forgery earlier in his chain of

title. Another danger, at least as important as all the others, is that there is some shortcoming in the documents in the chain of title, perhaps formal and not apparently important, which will make it difficult for the purchaser to show that he has a good title in the future when he comes to sell the land he is now buying.

71. Forgers and frauds will be with us always, and they can disrupt any system. Defects in title and competing interests have become more unlikely as time passes, statutory limitations of actions have become shorter and the Limitation Act 1969 goes beyond limiting actions and actually extinguishes rights. In the Nineteenth Century some people were still interested in tying up succession to land for a long future: in Twentieth Century Australia there were hardly any people with that idea: there were still a few of them. With changes in society and *mores*, the times when complex settlements of land with contingent interests which would or might arise when and if contingencies happened in distant futures have receded into the distant past. It is almost a hundred years since estates tail were abolished, and not many complicated settlements were made in the Twentieth Century. This inherent weakness is almost a ghost, but it is still there. The purchaser and his solicitor may take all imaginable care and still encounter one of these dangers. Still they must take all steps reasonably available to find out whether any of these dangers exist.
72. I suggest that you include thanks for Robert Richard Torrens and his System in your evening prayers.
73. For further reading, consult Baalman & Wells Land Titles Office Practice NSW or a current Conveyancing Service. The usual reference in 1962 was to works by Dr Basil Helmore, a profoundly learned Newcastle solicitor. He published several works on Property Law, notably the concise *An Introduction to the Principles of Land Law*, co-authored with A.D. Hargreaves, Law Book Co 1963. He also published *The Law of Real Property in New South Wales*, Law Book Co 1961. Much of the law as it was in those days can be understood from the *Conveyancing Acts and Regulations* by G.D. Stuckey Q.C. and G.D. Needham Law Book Co 1953 and its second edition 1970. The story of the Newtown Ejectment Case

is well told in “Weight of Evidence” author Matt Murphy published 2013
Sydney by Hale and Iremonger.