

## ULRICH HÜBBE'S ROLE IN THE CREATION OF THE 'TORRENS' SYSTEM OF LAND REGISTRATION IN SOUTH AUSTRALIA

### ABSTRACT

As is well known, the Torrens system of land registration adopted in South Australia by the *Real Property Act 1858* ('the Act') proved so successful that it was adopted in all other Australian colonies and in many other English-speaking jurisdictions around the world. The question of its origin has been debated for many decades without a sufficiently convincing conclusion.<sup>1</sup> One might think that the 'Torrens' system must have been invented by Torrens himself, but there is a competing candidate for that honour: Dr Ulrich Hübbe, a German lawyer who was present in South Australia at the time of the invention of the system. This article seeks to contribute to this debate. First, the author will examine German-language and other contemporary sources from South Australia which have not been considered either at all or satisfactorily by other authors until now. These sources throw a new light on English-language sources which have already been dealt with elsewhere and confirm the thesis that the principal drafter of the Act was Hübbe. Secondly, Dr Hübbe's activities during and after the passing of the Act are analysed in light of these and other sources, and the conclusion reached is that the extent of his involvement can best be explained by postulating that he was the principal drafter of the Act.

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<sup>1</sup> R Fox, 'The Story Behind the Torrens System' (1950) 23 *Australian Law Journal* 489; S Robinson, *Equity and Systems of Title to Land by Registration* (PhD thesis, Monash University, 1973) 1; R Stein and M Stone, *Torrens Title* (1991) 17; D Whalan, 'The Origins of the Torrens System and its Introduction in New Zealand', in M Hinde (ed), *The New Zealand Torrens System Centennial Essays* (1971) 4; M Geyer, *Robert Richard Torrens and the Real Property Act: The Creation of a Myth* (Unpublished, BA (Honours) thesis, University of Adelaide, 1991) 1; P Howell, 'Constitutional and Political Development, 1857-1890', in D Jaensch (ed), *The Flinders History of South Australia* (1986) 158.

## I INTRODUCTION

**H**übbe was a German lawyer who had immigrated from Hamburg for religious reasons.<sup>2</sup> His great-grandson, Alfred Simpson, still lives in Adelaide and has confirmed to the author the oral family tradition that Hübbe was the chief drafter of the Act.<sup>3</sup> Hübbe had read law in Jena and Berlin (1826–30) and held a doctorate from the University of Kiel (1837). Before Hübbe left for Adelaide in 1842 he had helped members of religious groups to migrate to South Australia. He opened German schools in Kensington and Buchfelde, near Adelaide. In 1855 he started to teach languages in Adelaide. When the press made land law reform an issue in the elections of 1856, Hübbe, as we shall see, started to advocate the system of registration used in Hamburg.

Torrens, of course, also participated in the debates on land law reform which commenced in 1856. It seems generally accepted that it dawned on Torrens at some point in the process of drafting the Bill that the proposed new land registration system could not be modelled exclusively on the *Merchant Shipping Act 1854* (Imp), and that, following this realisation, Torrens, either alone or with the help of friends, improved on an earlier draft version of the Bill for the Act using several sources.<sup>4</sup> This assumption, however, ignores the claim of Dr Hübbe. Hübbe asserted in 1884 that, after Torrens had abandoned the shipping law as a model, he and Torrens managed to draft a sound Bill on the lines of Hamburg land law<sup>5</sup> and that the inaugural *Real Property Act 1858* was virtually a copy of Hamburg's law.

Part of the reason why Hübbe's claim requires further investigation is that gaps in the assessment of the available primary source material bearing on it are still to be filled. This gap in the research may be the result of several significant factors. Mary Geyer, in her thesis 'R.R. Torrens and the *Real Property Act* – The Creation of a Myth',<sup>6</sup> demonstrates clearly that later researchers no longer questioned Torrens' sole authorship because it had been glorified as 'fact' for too long. The late development of Australian, as opposed to British, legal history may also have contributed to the gap. But perhaps the principal factor impeding research into Hübbe's claim is that many of the sources supporting it are available only in

<sup>2</sup> F Blaess, 'One Hundred and Twenty Years Ago, the "Taglione"', *Lutheran Almanac* 1967–1968, 28.

<sup>3</sup> Interview with Hübbe's great-grandson, Mr Simpson (Adelaide, 1 November 1996).

<sup>4</sup> A Bradbrook, S MacCallum and A Moore, *Australian Real Property Law* (3<sup>rd</sup> ed, 2002) 107; P Butt, *Land Law* (2001) 620; R Sackville, M Neave, C Rossiter and M Stone, *Property Law* (1999) 418.

<sup>5</sup> For a detailed comparison of Hamburg's land law with the South Australian Act, see the author's 'A Comparison of the Australian ("Torrens") System of Land Registration of 1858 and the Law of Hamburg in the 1850s' (*Australian Journal of Legal History*, forthcoming).

<sup>6</sup> M Geyer, above n 1.

German. The sources dealt with in the following section of this article, many of which have remained unanalysed by other authors, will show that Hamburg's law was stated by knowledgeable contemporaries, both German and English-speaking, to have been the true source of the Torrens system. Once, this even occurred in Torrens' presence and at a function held in his honour. It will then be shown that the statements in those sources correlate with and confirm inferences that be drawn from other available material.

## II CONTEMPORARY STATEMENTS

### A *German Newspapers in the Relevant Time Period*

South Australia had a lively German-speaking population in the 1850s and 1860s with its own newspapers. However, contemporary German newspapers have been neglected until now as a source of material. Unfortunately, the editions preserved in the South Australian Archives only start in 1862, four years after the enactment of the Torrens system. Nevertheless, the author has found three articles that refer directly to the German origins of the *Real Property Act*; these date from 1862, 1882 and 1892. Whilst the English-language sources which will be considered below point to Hübbe's indispensable contribution to the drafting of the statute, the contemporary reports in these newspaper articles show that the Germans in South Australia were convinced that the *Real Property Act 1858* implemented a German system and that this was basically due to the work of Dr Ulrich Hübbe. Moreover, they asserted this fact in Torrens' presence. These articles do not merely confirm the statements in the English-language sources that Hübbe did most of the work in the drafting process. They additionally characterise his work on the draft as an attempt to transplant the land registration system of Hübbe's German homeland.

The earliest preserved report can be found in the *Adelaiders Deutsche Zeitung* (Adelaide German Newspaper) from 1862.<sup>7</sup> In the edition of 7 November of that year the paper reports a reception held by the German community in honour of Torrens at Tanunda. The reception had been organised by the German community on the occasion of Torrens' imminent departure for England.<sup>8</sup> Among those present were Torrens himself as well as assorted other Members of Parliament who had been involved in the enactment of the *Real Property Act*, together with Anthony Forster, the editor of the *South Australian Register* which had campaigned for land law reform. The *Adelaiders Deutsche Zeitung* reports:<sup>9</sup>

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<sup>7</sup> South Australian Archives, Microfiche.

<sup>8</sup> D Pike (ed), *Australian Dictionary of Biography* (1976) Vol 6, (R-Z), 292.

<sup>9</sup> *Adelaiders Deutsche Zeitung* (Adelaide), 7 November 1862.

*Nahe dem Tanunda-Hotel redete Herr Pastor Mücke die Versammlung an und sagte etwa Folgendes: 'Deutsche Brüder. - Ihr habt einen Ehrenmann in eure Mitte geladen, lasset uns ihn hier willkommen! Doch nicht mit bloßen Worten. Herr Torrens hat eine Gesetzesreform ins Leben gerufen, welche einen neuen Grundstein der Kolonie legte. Diese Reform ist ein deutsches Kind, das wir wohl kennen ... Wie ein britischer Mann ein deutsches Kind einführte; lasset es uns geloben, alles Große der britischen Nation anzunehmen ...'.*

*... Der Redner (Herr Pastor Mücke) sprach über den Wert des Real Property Actes, der Neigung der Deutschen für diese eigentlich vaterländische Maßregel und drückte dann dem Mr Torrens die Anhänglichkeit aller Kolonisten speziell der Deutschen aus... .*

This may be translated as follows:

Near the Tanunda Hotel, Pastor Mücke talked to the assembly and said something to the following effect: 'German Brothers. You have invited an honourable man in your midst; let us welcome him here. But not just with words. Mr Torrens has brought a measure of law reform into existence which has laid a new foundation for this colony. This reform is a German child that we know well. ... Just as a British man has thus introduced a German child, let us all solemnly promise to adopt all great things of the British Nation ...'.

The speaker (Pastor Mücke) then talked about the significance of the *Real Property Act* and the inclination of the German settlers towards this in truth German measure, and then assured Mr Torrens of the loyalty of all the colony's settlers, especially of the Germans ...

Pastor Mücke, to which this German newspaper report refers, held a Doctorate of Philosophy from the University of Jena (in Thuringia). In 1850 he went to Tanunda and became a Lutheran pastor.<sup>10</sup> Mücke was very influential in South Australia's German community, especially in the 1860s.<sup>11</sup>

It seems logical to assume that, when Pastor Mücke addressed Torrens, Forster and the others in public, he would not knowingly have said something in his welcoming speech which any of the guests present might have disagreed with or found offensive. The whole tenor of the speech was to express Mücke's devotion to Torrens as the guest of honour. Mücke called the *Real Property Act 1858* a 'German child introduced by Torrens'. This is clearly much more than merely pointing out that German law coincidentally resembled the South Australian

<sup>10</sup> M Geyer, pamphlet on the Germans in South Australia, Migration Museum, Adelaide 1992; I Harmsdorf, *Germans in the South Australian Parliament, 1857–1901* (PhD thesis, The University of Adelaide, 1959) 29.

<sup>11</sup> I Harmsdorf, *ibid* 12.

system. Mücke rather stated that the South Australian land registration system was an adoption of German law. Mücke emphasises this when he contrasts the introduction of the *Real Property Act 1858* with the adoption of British things by the German colonists: 'As a British man introduced a German child let us ... adopt all great things of the British Nation'.

Mücke's reference to an adoption of German law makes sense only if a German had really played a prominent part in the drafting of the Act and this was well known to Torrens. Whereas the English-language sources from 1880 onwards may contain exaggerations because, as we shall shortly see, they are found in connection with or in the wake of petitions for government pensions based on claims to the invention of the Torrens system, Mücke's speech in 1862 cannot be related to such personal claims for recognition. Indeed Mücke did not mention Hübbe at all, although he is clearly the only German candidate for the honour of co-invention of the Torrens system.

Mücke's speech, however, stands out for two further reasons. The first is that, unlike all the other sources, Mücke's speech was not only given in the presence of Torrens, but was also addressed to Torrens as the guest of honour. It is unlikely that Mücke would have said something in that context with which Torrens would have not agreed or which he might have resented. Secondly, Mücke's speech is seemingly the earliest preserved source which clearly refers to the German origins of the Torrens system. In 1862, only four years after the enactment of the system, undoubtedly the memory of the colonists was fresh, and at all events fresher than it was in the 1880s, the period in which most preserved English-language sources may be found.

It might however be objected that Mücke's speech is phrased in rather broad terms. After all, Mücke's remark that the Torrens system was a German child could have been a mere reference to the fact that there had been similar systems in Germany before the Torrens system was introduced in South Australia. Such an interpretation would ignore, however, the fact that Mücke, as the editor of the then *Australische Zeitung* (Australian Newspaper), explained almost 20 years later what he had meant when speaking of a 'German child'. In 1882, the *Australische Zeitung*, in a series of articles headed 'Die Richter und der *Real Property Act*' (The Judges and the *Real Property Act*), reported on the emerging discussion on the need for further reform of Australian land law. On 28 March 1882, Mücke and his co-editor of the *Australische Zeitung*, Basedow, commented on an article of a certain Mr Opie that had appeared in the *South Australian Register*:<sup>12</sup>

*Wie schwer es aber für den einsichtsvollen Briten ist, sich von solchen Vorurteilen ganz frei zu machen, zeigt Herr Opie selbst, indem er fortfährt:*

<sup>12</sup> *The South Australian Register*, 2 March 1882.

*'Frankreich, Deutschland und einige andere Länder haben ähnliche Systeme als unser Real Property Act, jedoch mit dem Vorzuge, daß sie Beamte besitzen, welche das Gesetz so verwalten wie sie es geschrieben finden.'* Hier kann Herr Opie sich nicht überwinden einzugestehen, dass der Vater des Real Property Actes in Südastralien es aus Deutschland im Ganzen einführte und nur in unbedeutenden Einzelheiten es veränderte, wahrlich nicht zu seinem Vorteile, und gerade in dieser Veränderungen liegt ein wichtiger Grund, daß dieses Real Property Verfahren sich immer noch nicht völlig eingebürgert hat, so daß es jeder Richter vermag, daran rumzuzupfen, zu mäkeln und zu beschneiden.<sup>13</sup>

Mr Opie himself provided a translation of this German article in a pamphlet in which he compiled relevant sources (including those attacking his own view) on the discussions on law reform in 1882:<sup>14</sup>

How difficult it is even for this intelligent Englishman to free himself entirely from such prejudices, is shown by Mr Opie himself, when he continues: 'France, Germany and some other countries have similar systems to our *Real Property Act*, but with the advantage that they have officers that administer the law as they find it written.' Here Mr Opie cannot constrain himself to admit that the father of the *Real Property Act* in South Australia [Torrens] introduced it as a whole from Germany, and altered it only in unimportant details, but certainly not to its advantage, and there is an important reason in these alterations that the procedure of the *Real Property Act* is not yet fully known to everyone, so that every Judge dares to pull at it, to find fault in it, and to curtail it.

The article by Mücke and his co-editor Basedow which has just been cited and translated stands out for two reasons. First, as regards the German origins of the *Real Property Act 1858*, the statement is much clearer than that of 1862. Secondly, the German authors ask the British colonists indirectly to admit the allegedly known fact that German law had been adopted. It implies that the German origins of the system were not publicly acknowledged even though sufficiently well-known. Mücke and Basedow do not confine themselves to stating that the Torrens system merely took some ideas or basic principles from German law. They allege that 'the father of the *Real Property Act* in South Australia introduced it as a whole from Germany'.<sup>15</sup> This is an important supplement to and explanation of the article of 1862 which spoke more broadly of a German child. The article from 1882 leaves no room for the view that, besides the German law, other sources (such as the *Merchant Shipping Act 1854* (Imp)) were merged additionally in the first version of the *Real Property Act*. Rather, the statement expresses the conviction that the *Real Property Act 1858* was exclusively an adoption of German law.

<sup>13</sup> *Australische Zeitung*, (Adelaide), 28 March 1882.

<sup>14</sup> E Opie, *Correspondence on the Real Property Act* (1882) 35.

<sup>15</sup> *Ibid.*

It is noteworthy that the statements in the article of 1882 are made without any attempt to sustain the point of view with further arguments. This is surprising because seemingly until 1882 the possibility that the Torrens system was derived from German law (as distinct from the contribution made by individual persons to its drafting) had not been seriously discussed. Mücke's article of 1882 seemingly presupposes therefore that the German-Australian reader takes it for granted that the *Real Property Act* is a system adopted completely from Germany. In this respect there are parallels to the speech of Mücke given at the function held in honour of Torrens at Tanunda in 1862. Furthermore Mücke apparently saw no need to give explanations for calling the *Real Property Act* 'a German child'.

Mücke's and Basedow's newspaper article is also of significance for another reason. That is because Opie himself refrained from objecting to the criticism given in the article. In his pamphlet called the 'Correspondence on the *Real Property Act*', Opie compiled relevant newspaper correspondence in South Australia on land law reform in the years 1881 and 1882. In this pamphlet he incorporated both his own article in the *South Australian Register* and the commentary in the *Australische Zeitung* reproduced above. Even though the latter accused Opie of not admitting publicly the German origins of the *Real Property Act*, Opie even provided his reader with a proper translation of the German article without any comment. It is likely that Opie, in his pamphlet, would have objected to the German criticism if he felt unjustly attacked. He commented on other statements which he found wanting in some respect. Even if Opie did not comment on the article for other reasons, the fact that he incorporated the German commentary in his collection shows that he thought it had to be taken into consideration.

Ten years after Opie's publication, in 1892, Dr Ulrich Hübbe died. On 10 February 1892 the *Australische Zeitung*, still under the editorship of Mücke and Basedow, published an obituary of Hübbe. This source, as distinct from the two articles above, emphasised Hübbe's personal role as a German lawyer in the creation of the Act.<sup>16</sup>

*Dr Ulrich Hübbe, der eigentliche Vater des Real Property Acts, dem Sir R. Torrens die Standeserhöhung verdankte, ist gestern im Alter von 86 Jahren in Mt. Barker gestorben. Die letzte Ehrbezeugung, welche unserem verdienten Landesmanne zu Teil wurde, fand 1862 bei dem Torrensfeste in Schlinke's Creek bei Tanunda statt, sonst hatte der bescheidene Advokat wenig Vorteil von dem durch ihn ins Leben gerufenen Gesetz, welches so bedeutenden Einfluß auf die Sicherheit des Grundbesitzes ausübte. Er war die rechte Hand des Sir Robert. ... Leider wurden seine Verdienste um den Real Property Act niemals ordentlich von Südastralien anerkannt, andere schöpften das Fett ab, und Dr Ulrich Hübbe hatte nicht an Überfluß zu leiden, im Gegenteil, da er sein Licht unter den Scheffel stellte, so fiel es dem Staat nicht ein, ihm eine*

<sup>16</sup> *Australische Zeitung*, (Adelaide), 10 February 1892.

*klingende Anerkennung, vielleicht zur Verschönerung seines Lebensabend zukommen zu lassen.*

In translation:

Dr Ulrich Hübbe, the real father of the *Real Property Act*, to whom Sir R. Torrens owes his elevation in status [his Knighthood], died yesterday at the age of 86 in Mt. Barker. The last token of honour which was received by our meritorious countryman occurred in 1862 in Schlinke's Creek at the Torrens Celebration; other than that he was little rewarded for the law that he brought into existence, which was of such immense importance for the security of land ownership. He was the right hand of Sir Robert Torrens. Unfortunately his services relating to the *Real Property Act* have never been properly acknowledged by South Australia. Others received all the rewards, whereas Dr Ulrich Hübbe never received any remuneration. The converse is the case: since he hid his light under a bushel, it did not occur to the government to give him a monetary recognition for his services, perhaps also to assist him in the last years of his life.

Mücke's and Basedow's view, as stated in this obituary, is that Hübbe was the 'real father of the *Real Property Act*'. The editors conclude that Torrens owed his Knighthood to Dr Ulrich Hübbe. The most striking statement of the obituary regarding Hübbe's role in the drafting of the Act, however, is that the editors call the *Real Property Act 1858* the 'law that he [Hübbe] brought into existence'. Unlike the articles previously referred to, the obituary does not expressly state that the system was based on German law. This, however, goes without saying once it is accepted that Hübbe was the 'real father' of the law.

The importance of the analysis of articles of German newspapers in South Australia naturally lies partly in the fact that they have not yet been considered in the examination of the German origins of the *Real Property Act 1858*. The German newspaper articles, however, also differ from the English-language sources in content. The articles from 1862 and 1882 both emphasise the source of the Act, ie German land law, more than questions of personal recognition. They do not limit themselves to claiming credit for Dr Ulrich Hübbe as do some English-language sources. As distinct from those sources, those German-language articles do not mention Hübbe, but do state that the Torrens system was adapted from German law. But in Hübbe's obituary, the German newspaper pointed out to whom the allegedly German origins of the South Australian land registration system were due. Thus, the German-language sources provide a coherent picture both of the origins of the Act and, later, of the identity of the principal drafter. This consistency over such a long period is impressive and attests to an oral tradition which remained constant among the German settlers, or some of them, over a number of decades.



The English-language sources which will now be considered have already been unearthed by scholars working in this field. However, they have not been the subject of proper consideration in the light of the German sources summarised above. It is suggested that, if the English-language sources are read in light of the German-language sources, a more complete picture emerges.

B *The Debate of 20 July 1880: The Granting of a Pension to Sir R. R. Torrens*

On 20 July 1880, the Attorney General, W H Bunday, introduced in Parliament a petition on behalf of Sir R R Torrens.<sup>17</sup> The petition asked the South Australian Government to grant an additional pension to Torrens and his wife. At that stage Torrens was already receiving a monthly sum of £325 in recognition of his role in the enactment of the land registration system. In the petition Torrens requested an additional £500 for his services in connection with the *Real Property Act 1858*. According to Hansard, 15 members of the South Australian Parliament participated in the debate.<sup>18</sup> The first speakers, however, did not raise the issue of the origins of the Act itself. Rather, the discussion centred around whether it made sense at all that inventors and benefactors of the colony should be able to claim a reward<sup>19</sup> and whether it was not too bold of Torrens to ask for a pension amounting to £825.<sup>20</sup> Only the eighth speaker, Mr Ross, brought up the question of what contribution Torrens actually made in the drafting of the Act. Surprisingly, he did not describe Torrens' part in the drafting, but referred to the work of Dr Ulrich Hübbe. He stated:

He was sorry that no reference had been made to a gentleman who had done a great deal of hard work in connection with the *Real Property Act*, viz. Dr Hübbe.<sup>21</sup>

The following speaker, Mr Kriechauff, took up Ross' statement:

He thanked the member for Wallaroo [Mr Ross] for mentioning the name of Dr Hübbe. He had been requested by several parties to forward that gentleman's name ... He hoped that the house would pass this small sum of £500 [to Hübbe] ...

Even though the debate was supposed to be about a pension for Torrens in return for his work in connection with the *Real Property Act*, at this point it seemed that some Members of Parliament wanted to grant financial recognition to Hübbe instead. After Kriechauff's remarks, the following speakers (Messrs Bray, Furner

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<sup>17</sup> South Australia, *Parliamentary Debates*, House of Assembly, 20 July 1880, 420.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid 421 (Hardy, MP).

<sup>20</sup> Ibid 422 (Glyde, MP).

<sup>21</sup> Ibid 424 (Ross, MP).

and Cavenagh) all agreed that Torrens should be remunerated only for services performed. Whereas the three named Members discussed whether the remuneration should be in the form of a pension or a lump sum, the next speaker, Mr Henning, stated:

The honorable member for Wallaroo (Mr Ross) had mentioned the name of Dr Hübbe. He believed that all would agree with him that it was perfectly well known that Sir R.R. Torrens brought in the *Real Property Act*, that Dr Hübbe provided the ideas, the brains and the work of the measure, and that Sir R.R. Torrens merely fought the battle of the Bill in the House. He would make it a condition upon his voting for the granting of any sum to Sir R.R. Torrens that they also rewarded Dr Hübbe.<sup>22</sup>

With this statement the debate had clearly reached a turning point. Instead of discussing Torrens' demand for an additional pension, it seemed that the parliamentarians felt compelled to recognise Hübbe's contribution. Whenever the actual drafting of the *Real Property Act 1858* came up for discussion, attention had been drawn to Dr Ulrich Hübbe instead of recognising Torrens' work, and Henning's comments tried to establish clearly how the work associated with the law reform was divided between Torrens and Hübbe. Although Hübbe had not yet publicly claimed recognition for his services in connection with the *Real Property Act 1858*, the 1880 debate inevitably also had to discuss his part in the founding of the Act. After all, Torrens' petition asked for a pension solely on the grounds of his services connected with the drafting of the *Real Property Act*.

Even though Henning's statement in the debate ('Hübbe provided the ideas, the brains and the work of the measure') clearly expressed the view that Hübbe was the main draftsman of the *Real Property Act 1858*, the statement needs to be considered in more depth. It is not enough merely to quote from Henning's statement as Robinson does in his examination of the debate.<sup>23</sup> Rather, the statement needs to be set in context. It raises the questions as to what intention can be read from the exact wording of the statement, what follows from the reactions of the other parliamentarians to it and what can be said about the probative weight of the debate in general. All these aspects are crucial in order to judge the importance and the evidential significance of Henning's statement, which the author regards as central to the question of the origin of the *Real Property Act 1858*.

Henning's statement in Parliament in 1880 is particularly persuasive because of the reaction of the other Members of Parliament present. No-one stood up and accused Henning of misinterpreting the history of the *Real Property Act*. None of the other speakers even voiced any doubts about the description of Hübbe's contribution.

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<sup>22</sup> Ibid 427 (Henning, MP).

<sup>23</sup> S Robinson, above n 1, 50.

There were not even any interjections. The converse is the case. The two speakers who followed Henning confirmed his view that Torrens' work had been merely of a political character. Mr Haines said:

He believed Sir R.R. Torrens had done good work in introducing the *Real Property Act*, but he also believed that every member of the House at that time did an equally good work in supporting the Act.<sup>24</sup>

Mr Bright then concluded the debate on Torrens' pension saying that:

He hoped, after the expression of opinion that had fallen from all sides of the House, that the Government would consent to withdraw the resolution, and instead place a sum of money to the Estimates.<sup>25</sup>

To evaluate these reactions of the politicians, one must take into consideration that a number of the parliamentarians present were already members of Parliament when the *Real Property Act* had been passed 22 years earlier in 1857. The apparent agreement with Henning's statement can therefore not be explained by a lack of knowledge or indifference in 1880. In particular Kriechauff,<sup>26</sup> Hardy,<sup>27</sup> West-Erskine<sup>28</sup> and Hare<sup>29</sup> referred in their speeches to their active part in the passing of the Act and their knowledge of the circumstances of the Bill's origins in 1857/58. It is likely that these politicians who partly favoured Torrens' petitions for a pension would have objected to a misrepresentation of Hübbe's contribution at the expense of R R Torrens.

It appears that the reactions of his colleagues in Parliament had been anticipated by Mr Henning. This follows from his introductory remarks in connection to his statement. Henning had said that:

He would believe that all would agree with him that it was perfectly well known that ... Dr Hübbe provided the ideas, the brains and the work of the measure.

In order to believe that everyone would agree with him and that the stated facts were 'perfectly well known', Henning had to be quite sure of what he was about to say. He might have expected objections to be raised if he had falsely attributed to Hübbe full credit for drafting the *Real Property Act 1858*. There seems to be no

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<sup>24</sup> South Australia, *Parliamentary Debates*, House of Assembly, 20 July 1880, 427 (Haines, MP).

<sup>25</sup> Ibid 428 (Bright, MP).

<sup>26</sup> Ibid 425 (Kriechauff, MP).

<sup>27</sup> Ibid 421 (Hardy, MP).

<sup>28</sup> Ibid 422 (West-Erskine, MP).

<sup>29</sup> Ibid 424 (Hare, MP).

other explanation for this other than that Henning assumed that South Australian members of Parliament in 1880 knew that Hübbe and not Torrens was the founder of the *Real Property Act 1858*. The statements of the following speakers appear to prove Henning correct in this assumption.

It is therefore not surprising that the outcome was that Torrens was not granted an additional pension by the South Australian Parliament.<sup>30</sup> It appears that the parliamentarians were convinced or had become convinced during the debate that Hübbe and not Torrens did the work of drafting the Bill and that, even though Torrens' political devotion to the reform had to be honoured, it did not justify an additional pension amounting to £825. And certainly the statements made in this debate, as interpreted and explained above, are consistent with the German-language sources giving full credit to Hübbe.

*C The Debate of 17 September 1884: Remuneration of Dr Ulrich Hübbe for the Drafting of the Real Property Act 1858*

Four years after Torrens' petition to Parliament, Hübbe submitted a petition of his own.<sup>31</sup> On 17 September 1884 the petition was presented by Mr Hawker, who asked on Hübbe's behalf for some kind of monetary recognition for the services rendered in connection with the *Real Property Act 1858*. The speakers who participated in the debate included a number of politicians who had joined the debate in 1880 regarding Torrens' petition, namely Messrs Hardy,<sup>32</sup> Henning,<sup>33</sup> Furner<sup>34</sup> and Krichauff<sup>35</sup> MP.

Despite the fact that the 1884 debate was about Hübbe's contribution to the *Real Property Act 1858*, the statements describing Hübbe's work were of a more general kind than in 1880.<sup>36</sup> The statements given in the speeches did not specify what Hübbe had actually done in the process of drafting the *Real Property Act 1858*. Hübbe's petition would have been an excellent opportunity to do so. However, the statements were limited to acknowledging Hübbe's role in general. At first glance, it is open to question what role Hübbe eventually had played in relation to others, such as Sir R.R. Torrens. Yet the significance of the speeches in the debate becomes clearer when they are seen in light of the statements of Hübbe which he had produced in connection with the petition. In these statements, Hübbe had

<sup>30</sup> He received a lump sum however.

<sup>31</sup> South Australia, *Parliamentary Debates*, (House of Assembly), 17 September 1884, 1024.

<sup>32</sup> *Ibid* 1024 (Hardy MP).

<sup>33</sup> *Ibid* 1025 (Henning, MP).

<sup>34</sup> *Ibid* 1025 (Furner, MP).

<sup>35</sup> *Ibid* 1025 (Krichauff, MP).

<sup>36</sup> *Ibid* 1024.

produced a written account of the history of the *Real Property Act 1858* and his share in it. It is likely that at least some of the politicians would have read these statements which supported the petition before it was discussed. The 1884 debate on Hübbe's petition can therefore not be analysed independently of Hübbe's statements attached to it, a point that Robinson appears to miss in his account.<sup>37</sup>

Hübbe's account is found in a file of the former Chief Secretary's Office,<sup>38</sup> in the Proceedings of the Royal Geographical Society of South Australia for the 1930–31 Session<sup>39</sup> and notes in summary form provided by Mrs Isabella May, née Hübbe, in 1932.<sup>40</sup> In his statements, Hübbe gave at first a general account of how he became acquainted with Torrens, then described how they worked together and what he did in connection with the drafting of the *Real Property Act 1858*. According to this account, Hübbe's activity in the drafting process can be divided into three stages.

In the first phase, Hübbe states, he convinced Torrens of the superiority of the system implemented in Hanseatic cities such as Hamburg.<sup>41</sup> He supported his argument by a comparative overview of other Continental systems such as the French system.<sup>42</sup> Hübbe stayed at Torrens' house for several days, and by the end of these discussions Torrens had dropped the idea of applying the shipping laws to land and decided to establish a form of a Continental system.<sup>43</sup> In the second phase, Torrens sought Hübbe's detailed explanation of the Hanseatic system. Hübbe translated certificates of title which were the crux of the register books in Hamburg.<sup>44</sup> Using this as a basis, he explained the essential principles and institutions of the system in Hamburg. Armed with this knowledge, Torrens tried to remodel his first draft. In the third phase Hübbe redrafted the Bill, since Torrens had not succeeded in incorporating the principles sufficiently well. Hübbe states that he worked many days on revising the draft.<sup>45</sup> The product of that work was the final version of the Bill which was introduced into Parliament.<sup>46</sup>

In examining Hübbe's statements, it has to be borne in mind that these statements were connected to the debate on his petition for a pension. But the speeches in the

<sup>37</sup> S Robinson, above n 1; see p 50 on one hand and p 56 on the other.

<sup>38</sup> Official Statement accepted by Secretary Office, 1884, No 2230, SA-Archives, D 5257 (T).

<sup>39</sup> 32 *Royal Geographical Society Proceedings* (SA) 109–12.

<sup>40</sup> South Australian Archives, No: D 2558 (T).

<sup>41</sup> Official Statement accepted by Secretary Office, 1884, No 2230, SA-Archives, D 5257 (T), 3.

<sup>42</sup> 32 *Royal Geographical Society Proceedings* (SA) 111.

<sup>43</sup> 32 *Royal Geographical Society Proceedings* (SA) 112.

<sup>44</sup> Official Statement accepted by Secretary Office, 1884, No 2230, SA-Archives, D 5257 (T), 3.

<sup>45</sup> Notes by I May, nee Hübbe, 1932: SA-Archives D 2558 (T), 3.

<sup>46</sup> 32 *Royal Geographical Society Proceedings* (SA) 112.

debate of 1884 often appear to make reference to Hübbe's statements on the assumption that they constituted a reliable source. An example illustrates this. In the debate, Mr Hawker said:

No doubt Dr Hübbe did assist the late Sir R.R. Torrens to work out the details of the measure, and sent to Germany for information as to the certificates of title from that Country.<sup>47</sup>

Mr Coglin MP was even more specific:

If it had not been for Dr Hübbe's assistance Sir R.R. Torrens would not have been able to frame this Act as perfectly as he did.<sup>48</sup>

None of the speakers questioned the accuracy of Hübbe's account which he gave to justify the petition. However, if the 1884 debate is interpreted without reference to Hübbe's statements prior to the debate, inappropriate inferences may arise. Stein and Stone<sup>49</sup> for instance say that Hübbe's legal advice during the drafting of the Act must have been limited because the outcome of the 1884 debate was that he was paid expressly for translation work. Declaring Hübbe's work to have been 'translation work', however, appears in a different light when one takes a closer look at the relevant part of his statement of 1884:

I translated the German system as used in Hanseatic cities, of which Hamburg was one. ... Mr Torrens adopted the system and I drafted the Bill finally on those lines. ...<sup>50</sup>

This shows that Hübbe claimed a much greater role than merely that of the translator: he was the drafter of the Bill and the originator of the idea which Torrens then adopted. It is noteworthy that it is reported that there was an inscription on Hübbe's grave which said: 'Der geistige Vater des *Real Property Acts*' (the spiritual father of the *Real Property Act*).<sup>51</sup>

In order to interpret the 1884 debate as regards Hübbe's contribution to the drafting of the *Real Property Act*, the 1880 debate also has to be taken into consideration. It seems that the 1884 debate confirms the view which gained acceptance in the 1880 debate, ie that Hübbe and not Torrens was responsible for the drafting of the system. It seems that during the four years between the debates no other view had been expressed. Most other possible drafters who might have taken part were still

<sup>47</sup> South Australia, *Parliamentary Debates*, House of Assembly, 17 September 1884, 1024 (Hawker, MP).

<sup>48</sup> Ibid 1025 (Coglin, MP).

<sup>49</sup> R Stein and M Stone, above n 1, 22.

<sup>50</sup> 32 *Royal Geographical Society Proceedings* (SA), 112.

<sup>51</sup> Dr Ian Harmsdorf in *The Advertiser* (Adelaide), 13 April 1992.

alive at this time and could have given their accounts of the story. Even though Torrens had moved to England, Hübbe together with Andrews and Forster (all of whom had participated in the debates leading up to the enactment of the Torrens system) were still present in Adelaide. The principal exception was Sir Richard Hanson, who had died in 1876.

An analysis of the 1880 and the 1884 debates confirms Hübbe's later claim to having drafted the *Real Property Act* 1858 in the form of an adoption of Hanseatic law. The question does arise, however, as to what extent probative weight can be reasonably attributed to such political debates. Admittedly the weight of statements in political debates is usually limited, since the character of such debates is based quite often on political goals instead of a quest for truth. It is submitted, however, that the two controversial debates on basically the same subject would not have allowed much misrepresentation of the facts. In both debates there had been opponents who were against any form of remuneration for the drafter of the *Real Property Act* and who would not have hesitated to produce evidence against Hübbe if it had been available. Instead, evidence only against Torrens was produced. Equally, it cannot be ignored that persons who had been involved in the drafting process were still alive and present in Adelaide at the time. Thus, although it cannot be established precisely how much evidential significance should be attached to the debates, they form the primary evidential record as an officially documented discussion by Torrens' and Hübbe's contemporaries on the question of the origins of the *Real Property Act* 1858. And they confirm what was said in the German-language sources quoted earlier.

D *Letter from Mr Anthony Foster to Miss Annie Ridley, 15 May 1892*<sup>52</sup>

An important aspect in the interpretation of the sources presented so far is the reaction of contemporaries to them. A contemporary of Torrens and Hübbe, who knew a lot about what went on during the law reform process, was Anthony Forster. In 1857 he had been an ardent law reformer. He advocated such reform in his capacity as the Editor of the *South Australian Register* and also fought for it as a member of the Legislative Council.<sup>53</sup> His collaboration with Torrens is proved by letters between the two.<sup>54</sup>

Even though it is not known what Forster's immediate reactions were to the 1880 and 1884 debates, a letter which Forster wrote on 15 May 1892 to his niece, Annie Ridley, has been preserved.<sup>55</sup> In this private letter, eight years after the debate on

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<sup>52</sup> Forster to Ridley, 15 May 1892, South Australian Archives, A 792.

<sup>53</sup> R Stein and M Stone, above n 1, 24.

<sup>54</sup> Letter Summary Record: Anthony Forster, South Australian Library, PRG 1043/8.

<sup>55</sup> Forster to Ridley, 15 May 1892, South Australian Archives, A 792.

Hübbe's petition, Forster described his view of the history of the *Real Property Act 1858*. The relevant passage reads as follows:

I may however say, at the close of a long life, that the *Real Property Act* originated in a series of leading articles that I wrote in the South Australian Register calling attention to the great and unnecessary expense of the transfer of land under the system then prevailing. I pointed out the absurd and apparently unfair practice of charging heavy fees for the retrospective investigation of title in every separate transaction, although the same title had been investigated a dozen of times before. Mr Torrens was attracted by the articles and he received the idea of getting rid of deeds altogether and substituting for them an indefeasible certificate of title which was to be registered in the Real Property Office, a counterpart being issued to the transferee.

But as all the lawyers of the colony were hostile to the proposed new measure, it never could have been brought to a final consummation but for the efficient help of a German lawyer, Dr Hübbe who has unfortunately had too little recognition in connection with it. The provisions of the bill were settled by Mr Torrens and a few friends and put into proper form by Dr Hübbe and passed triumphantly through the local legislature, notwithstanding fierce and uncompromising opposition of the lawyers. Mr Torrens took charge of it in the House of Assembly and I in the Legislative Council.

Even though this letter is written in very precise language, the part referring to Hübbe needs to be analysed further. It is not enough just to summarise it, as did Stein and Stone,<sup>56</sup> by saying that Forster admitted in the letter that Hübbe played an important part in originating the Act. Nor does Robinson<sup>57</sup> give the letter enough weight when he merely contrasts the view given in the letter with the story put about by Torrens himself. The author submits that the letter has considerably greater evidential weight than other sources and warrants therefore a closer examination.

According to Forster's account, the story of the *Real Property Act 1858* can be divided chiefly into three parts. The first part was the initiation of the law reform by Forster himself, who published articles calling for land law reform. In the second stage, Torrens took over the matter and tried with the help of friends to settle provisions for a draft Bill. Then Hübbe joined Torrens in the third phase and was responsible for the 'final consummation' of the draft, and it was he who 'put [the provisions] into proper form'. It is obvious that Forster's account in the letter of 1892 corresponds closely with the account given by Hübbe in his statement with regard to his petition to Parliament in 1884 and with the German-language sources.

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<sup>56</sup> R Stein and M Stone, above n 1, 22.

<sup>57</sup> S Robinson, above n 1, 45.



Hübbe also explained additionally why he had to redraft the Bill. According to Hübbe, Torrens had not succeeded sufficiently in incorporating the principles explained by Hübbe.<sup>58</sup> Hübbe and Forster agree that the draft as revised by Hübbe became the final version of the Bill which was eventually introduced into Parliament.<sup>59</sup> In this respect Forster's letter obviously confirms Hübbe's account and what may be deduced from the German-language sources.

It should also not be overlooked that Forster's letter also incorporated an evaluation of Hübbe's work in drafting the legislation. When Forster said that the bill 'never could have been brought to a final consummation but for the efficient help of a German lawyer, Dr Hübbe', this was more than a mere acknowledgement of Hübbe as one legal adviser amongst many others. Rather, Forster's choice of expression characterised Hübbe's work as indispensable in the creation of the Torrens system. In this evaluation Forster evidently agreed with what Mr Henning MP said in the debate on Torrens' petition 12 years earlier in 1880.

Thus, Forster's letter confirms views expressed in the 1880 debate and in Hübbe's statements produced for the 1884 debate. It is likely that Forster knew of the outcome of the debates. He was a member of the upper echelons of Adelaide society and interested in all public affairs, especially those connected with the land law reform. After all, Adelaide was still a rather small community at that time.<sup>60</sup> Forster might also have been referring to the outcome of those debates when he said that 'Dr Hübbe has unfortunately had too little recognition in connection with it [the *Real Property Act*]'.

Despite the fact that Forster's letter supports the prior analysis of the debates in 1880 and 1884, it has to be pointed that the sources are quite different. As distinct from the parliamentarians of 1880 and 1884, Forster had been a part of the inner circle in which Torrens discussed details of the intended legislation.<sup>61</sup> Undoubtedly he was one of the contemporary Adelaideans who had most inside knowledge of the drafting work. Another aspect that makes Forster's letter significant is that, unlike political debates and newspaper articles, it cannot be accused of having a political goal or of serving a personal interest. One might suggest that Hübbe's statements were of a biased character as they were intended to support his case for monetary recognition. Forster in his letter to his niece, however, would have had no reason whatsoever to exaggerate Hübbe's contribution. On the contrary, it made no sense to take the credit from Torrens. Forster had been a very close ally of Torrens

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<sup>58</sup> 32 *Royal Geographical Society Proceedings* (SA) 112.

<sup>59</sup> 32 *Royal Geographical Society Proceedings* (SA) 112.

<sup>60</sup> In 1872 the City of Adelaide still had less than 30,000 inhabitants: See I Harmsdorf, above n 10, appendix.

<sup>61</sup> D Whalan, above n 1, 7, speaks of 'committee' quoting from a letter from Torrens to Forster, 14 November (SA-Archives No. 1055/6).

during the reform debate in 1857. They had been allies in the political battle over the introduction of the Act. Torrens took care of it in Parliament and promoted it in his election campaign. Forster, on the other hand, fought for it in the Legislative Council<sup>62</sup> and brought it to the public's attention in his newspaper.<sup>63</sup> This collaboration led to a close friendship,<sup>64</sup> confirmed by several letters between the two which also touched on personal matters.<sup>65</sup> Indeed Forster, prior to his letter to his niece, had always given Torrens full credit for the creation of the Act.<sup>66</sup> He had even played down his own major role in the initiation of the reform debate in 1856/1857. Geyer argues that Forster in his book even deliberately misrepresented the order of the events in order to give Torrens all the credit for the reform.<sup>67</sup>

Nor can it be argued that Forster was aiming to do Hübbe a favour. First, the letter to his niece was strictly personal and was evidently not meant to be made public. Secondly, Hübbe had died at Mt Barker in February 1892,<sup>68</sup> three months before the letter in question was written, so that he would not have been able to enjoy the late acknowledgement. The letter from Forster to Ridley in May 1892 is therefore of great evidential weight, being a private letter which reflects the memories of a person who has been very much involved personally in the land law reform, knowing Torrens as well as Hübbe, and which confirms the statements in the obituary of Hübbe quoted above which had been published in the German-language press only a matter of weeks earlier.

E 'Notable South Australians' by George Loyau (1885)

A further source distinct from those previously discussed is the account of Dr Ulrich Hübbe given by George Loyau in his book 'Notable South Australians', published in 1885.<sup>69</sup> Whereas neither the statements in the 1880 and the 1884 debate nor Forster's letter to his niece purported to give an historical account for the public, that was Loyau's intention. Loyau's book was independent of any special occasion. It is a collection of brief biographies of outstanding South Australians from the beginnings of the colony. The book is the successor of a prior publication of Loyau called 'Representative Men of South Australia'.<sup>70</sup> Both books purport to give objective historical accounts, and therefore claim impartiality. Loyau's

<sup>62</sup> R Stein and M Stone, above n 1, 24.

<sup>63</sup> D Pike, 'Introduction of The *Real Property Act* in South Australia', *The Adelaide Law Review*, 1960–1962, Vol 1, 178.

<sup>64</sup> R Stein and M Stone, above n1, 22; M Geyer, above n 1, 30.

<sup>65</sup> Torrens for Forster, SA-Archives: 2 April 1858 (No 1055/7); 16 May 1858 (no 1055/8); 2 March 1865 (No. 1055/9).

<sup>66</sup> Forster, *South Australia: Its Progress and Prosperity* (1866) 219.

<sup>67</sup> M Geyer, above n 1, 30.

<sup>68</sup> A Brauer, 'Dr Hübbe', in *The Australian Lutheran Almanac* (1934) 48.

<sup>69</sup> G Loyau, *Notable South Australians* (1885) 156.

<sup>70</sup> G Loyau, *Representative Men of South Australia* (1883).

historical account of Hübbe's life is relevant for this analysis because it provides, apart from personal data, a detailed description of the drafting of the *Real Property Act 1858*. The relevant part of the work is as follows:

Dr Ulrich Hübbe, who has rendered great services to this colony in connection with the *Real Property Act* is a native of Hamburg ... Though the working of the *Real Property Act* is now universally known, few of those most benefited thereby have the slightest idea of the prominent part which Dr Hübbe played in its construction. He it was who explained to Sir R. R. Torrens the form of certificates of title and encumbrances in force in the Hanseatic towns of his native land; and Sir Robert Torrens was so much pleased with the simple way in which the charges were detailed that, with Dr Hübbe's assistance, he transferred the idea as far as was practicable into the Bill. From this source in particular was embodied the principle that mortgages should not change the freehold property, but they should simply be charges on the property in priority one over the other. The result of the disclosure of these facts led to the re-drafting of the Bill by Mr R. B. Andrews; but on its being submitted to Dr Hübbe, he expressed his disapproval of it, chiefly on the grounds that it did not contain an efficient repeal of the old system, the absence of stringent provisions for bringing equitable estates and interests under the Act, and the necessity that existed for providing more definitely that no estate or interest on such lands should pass at all by deed or any documentary evidence, but exclusively by registration of each special transaction in the public books of the colony. He thereupon drew the very comprehensive repeal clause printed in the Act, and he subsequently spent several days in remodelling the draft. He submitted his alterations to Sir R. R. Torrens, and the draft Bill thus revised was placed before parliament ... A recent government voted him a sum of money, but of so small an amount that it cannot be said he has been compensated for his services in connection with the R.P.A.<sup>71</sup>

Loyau, as a contemporary, provides a very detailed description of the drafting of the *Real Property Act 1858*. Nevertheless this account has been largely neglected by other authors. Pike,<sup>72</sup> Whalan<sup>73</sup> and surprisingly also Robinson,<sup>74</sup> who conducted considerable research on Hübbe, do not even mention Loyau. Stein and Stone<sup>75</sup> recite from the source, but do not interpret or evaluate it. Even though the form of a short biography differentiates Loyau from other sources, it still falls into the category of statements of contemporaries. It cannot be treated like a biography which was written a hundred years later. In 1885 Loyau was a contemporary Adelaidean of Hübbe, Andrews and Forster.

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<sup>71</sup> G Loyau, above n 69, 156.

<sup>72</sup> D Pike, above n 63, 169–89.

<sup>73</sup> D Whalan, above n 41, 1–32.

<sup>74</sup> S Robinson, above n 1, 1–147.

<sup>75</sup> R Stein and M Stone, above n 1, 21.

Evidently Loyau's account gives Hübbe the most credit for the drafting of the Act. The congruence between Loyau and the other sources referred to might be partly explained by the possibility that they had been based on each other. This ignores, however, the fact that in some aspects the sources differ considerably. In any case Loyau's description is more detailed. According to Loyau, Hübbe was the one who explained the system to Torrens, and Hübbe was responsible for the final version of the Act which eventually became law: 'he [Hübbe] subsequently spent several days in remodelling the draft ... and the draft Bill thus revised was placed before Parliament'. Loyau's account also confirms therefore Hübbe's statements made in connection with his petition in 1884, a year before Loyau's publication.<sup>76</sup>

Before the accuracy and credibility of Loyau's account is further discussed, however, a peculiarity in this source which distinguishes it from all other sources should be noted: the fact that Loyau mentions the lawyer Richard Bullock Andrews for the first time in connection with the actual drafting of the Act. It had been known that Torrens had befriended R B Andrews and supported him in his election campaign. Only because of Torrens' assistance did Andrews enter Parliament.<sup>77</sup> Nevertheless, until Loyau's biographical account on Hübbe, Andrews' part in the drafting process had never been mentioned. It is noticeable that neither the 1880/1884 debates nor Hübbe's statements mentioned Andrews' contribution. Forster's private letter to Ridley had mentioned that Torrens with the help of 'friends' had tried to settle the first draft. It is true that this could have been a reference to Andrews' help, but his name was nonetheless not mentioned by Forster either.

In a speech in Andrews' electorate in June 1857, Torrens had asked the voters to support Andrews because he 'had no lawyer to assist him' and he 'sought for some time for a sensible man, who would have courage enough to throw off the prejudice of his craft'.<sup>78</sup> This alliance started and sustained Andrews' career. Andrews had come to Australia only in 1852 and worked as a criminal lawyer with rather little success.<sup>79</sup> In the short-lived Torrens ministry, Andrews was appointed as Attorney General, and in 1865 he became a Queen's Counsel.<sup>80</sup> In 1870 he was appointed Crown Solicitor and Public Prosecutor; later, he became a Judge of the Supreme Court of South Australia.

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<sup>76</sup> 32 *Royal Geographical Society Proceedings* (SA) 109–12; Official Statement accepted by Secretary Office, 1884, No 2230, SA-Archives, D 5257 (T).

<sup>77</sup> D Pike, above n 63, 179.

<sup>78</sup> *The South Australian Register*, 1 and 2 June 1857.

<sup>79</sup> B Nairn, G Serle and D Ward (eds), *Australian Dictionary of Biography* (1969) Vol 3, 35.

<sup>80</sup> *Ibid* 36.

There is certainly nothing which points to Andrews as an originator of the idea of the Torrens system as distinct from someone who helped in the drafting of the Bill after the idea had been developed and then agreed to promote it in Parliament. Loyau states that Andrews' work was presented to Hübbe, almost as if Hübbe were the chief drafter. Loyau's account therefore, even by mentioning Andrews, does not contradict the German-language and other sources considered above.

Despite the fact that there is a high probability that Andrews was considerably involved in the drafting process, it is not self-evident that the work was divided between him and Hübbe as Loyau described it. However, there are two considerations that speak in favour of the reliability of Loyau's account from 1885. First, Loyau's account was published in a collection of biographies which are noteworthy for their attempt to report with high accuracy.<sup>81</sup> Secondly, Loyau as a contemporary Adelaidean had direct access to first-hand information because he was able to question most people involved in the matter while they were still alive.

As regards the first aspect, the account of an independent historian cannot be categorised in the same way as a possibly biased parliamentary debate, an occasional newspaper article or even a private letter. In the introduction to his book *Notable South Australians*, Loyau points to the research that preceded the publication and the sources on which it was based. He thanks the newspapers, especially the *South Australian Register* and the *Advertiser*, for allowing him access to their files. Besides that, Loyau also makes clear that he drew on oral interviews. He describes himself as indebted to numerous 'authorities on matters relative to the early days'.<sup>82</sup> In evaluating Loyau's accuracy, the second aspect, the fact that Loyau was a contemporary of Torrens, Hübbe, Andrews and Forster, should not be underestimated. Unlike other authors, Loyau had the chance to interview in person people allegedly involved in the drafting process. Moreover, it must be remembered that, at the time of Loyau's account in 1885, the history of the drafting of the *Real Property Act 1858* was in the public arena owing to relatively recent debates in Parliament. In 1880 parliamentarians had discussed what contribution Torrens made to the drafting, and in 1884, just a year before Loyau's publication, the parliamentarians had argued about Hübbe's part in the creation of the system. Hence Loyau's book was published at a time in which the matter was still likely to have been under discussion, so that Loyau exposed himself to the criticism of persons who were acquainted with the matter.

To sum up, it can be concluded that Loyau's account on Hübbe in his book *Notable South Australians* from 1885 stands out for several reasons. It is an account of a contemporary historian working in Adelaide who tried to base his statements on an

<sup>81</sup> On the reliability of Loyau's accounts, see further P Low, 'George Loyau', *Australian Dictionary of Biography* (1974) Vol 5, S 107.

<sup>82</sup> G Loyau, above n 69, preface.

impartial inquiry. The account confirms other sources in the view that Hübbe played the determinative role in the drafting of the Act. The chief importance of the account lies, however, in its description of how Torrens divided the drafting process between Hübbe and Andrews. According to this account, Torrens functioned as a kind of conduit. Hübbe explained the land registration system to Torrens who subsequently charged Andrews to draft a Bill which implemented that system. Subsequently Torrens made Hübbe check this draft and re-draft it where necessary.

### III HÜBBE'S ACTIVITIES IN CONNECTION WITH THE LAND LAW REFORM

Distinct from the sources discussed hitherto are the activities that Hübbe undertook in relation to South Australia's land law reform. Of what importance, for instance, was Hübbe's book *The Voice of Reason*,<sup>83</sup> written and published in 1857? Why did Torrens consult Hübbe during the debate on the second reading? Why did Hübbe have a desk at the Lands Titles Office until 1861, even though he never had a position at that authority? Why did the South Australian Parliament request him to write a pamphlet on Hanseatic law two years after the passing of original Act in 1858, when it was realised that the system needed refinement? These and other activities of Hübbe during and after the time of the reform are undisputed, yet they lack proper interpretation. It will be shown that these activities are also consistent with the role which Hübbe is said to have played according to sources such as Forster's letter and the German newspaper accounts.

#### A *Voice of Reason* (1857)

Hübbe's activities regarding the land law reform seemingly started with letters which he had written to the editor of the South Australian Register, Mr Anthony Forster, and which supported Torrens' plan.<sup>84</sup> Hübbe had joined the newspaper discussion on land law reform in February 1857 under the pseudonyms 'Sincerus'<sup>85</sup> and 'A Reformer'.<sup>86</sup> These letters, however, were only a forerunner to a proper publication on the land law reform that followed in mid-1857. Just before the second reading of Torrens' Bill, Hübbe published his 100-page book entitled *The Voice of Reason*.<sup>87</sup> George Fife Angas, a significant landowner, had encouraged Hübbe to write the book to advance the cause of land law reform. Angas had also

<sup>83</sup> Dr Ulrich Hübbe, *The Voice of Reason and History Brought to Bear Against the Present Absurd and Expensive Method of Transferring and Encumbering Immovable Property* (1857).

<sup>84</sup> 32 *Royal Geographical Proceedings* (SA) 110

<sup>85</sup> *The South Australian Register*, 18, 26 February 1857 and 29 April 1857.

<sup>86</sup> *The South Australian Register*, 11 February 1857.

<sup>87</sup> D Whalan, above n 1, 6.

paid for the printing of the book.<sup>88</sup> Pike asserts that Angas also requested Hübbe to draft a bill,<sup>89</sup> but no evidence can be found for this. Every parliamentarian was furnished with an edition of Hübbe's book, and it allegedly helped a great deal in the passing of the second reading of the *Real Property Act 1858*.<sup>90</sup>

The Bill, as read a first time, was actually the second draft of the Bill. As the earlier authors cited below have shown, an earlier draft ('the first draft') had been published in the newspapers for public comment. The third draft emerged during the Parliamentary debates on the Bill. Hübbe's book was thus published between the appearance of the second and third drafts and commented extensively on the former.

Hübbe's book shows his personal attitude towards law reform and Torrens' Bill. Stein and Stone<sup>91</sup> quote from the book but overlook its significance; moreover, they do not draw conclusions from its contents about Hübbe's role in the reform. An analysis of the book shows, however, that Hübbe advocated land law reform in the form of an adoption of Hanseatic law. The book also reveals Hübbe's attitude towards the second draft: despite suggesting some amendments, he did not want to change the second draft, but rather to strengthen and supplement it.

Hübbe's book described the inherited English law and then moved to a consideration of French land law under the Napoleonic Code, which provided a registration of charges on land only. The final part was subdivided into three sections. In the first section, a comparative overview of several land law systems throughout the world was given. The emphasis in this section, however, was clearly placed on Hanseatic land law. The second section referred to the form of registration that was already in existence in South Australia, ie the registration of deeds. The third section discussed the so-called Torrens Bill.

Part III of Hübbe's book is the most significant. Here, Hübbe indirectly expresses his attitude to the second draft of Torrens' Bill as well as indicating the role that the law of his home city, Hamburg, had played in his thinking. Other authors have also made this part of the book the centre of their attention. In this regard, however, the emphasis has been chiefly put on Hübbe's opposition to the Bill in its then form (the second draft) rather than on his explanation of Hamburg's system. Whalan takes the view that Hübbe's suggestions for improvement show that he had not been involved in the drafting process at all.<sup>92</sup> He argues that no one would criticise a draft if he were the draftsman himself. Robinson, on the other hand, has taken a

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<sup>88</sup> D Pike, above n 63, 179.

<sup>89</sup> Ibid 179.

<sup>90</sup> S Robinson, above n 1, 59.

<sup>91</sup> R Stein and M Stone, above n 1, 1.

<sup>92</sup> D Whalan, above n 1, 7.

closer look at the suggestions and relates them to the provisions of the third draft.<sup>93</sup> He provides an impressive comparative analysis of Hübbe's suggestions and the third draft presented afterwards in Parliament at the second and third reading of the Bill. Robinson's comparison shows that almost all of Hübbe's suggestions were incorporated into that draft. From this Robinson draws the conclusion that, although Hübbe only had a consultative function in the early stages of the drafting of the Bill, he was very influential in the production of the third draft, the draft which eventually was passed by Parliament in a considerably revised form.<sup>94</sup>

The author submits, however, that both Whalan and Robinson overlook the true character of the suggestions that Hübbe made in his book. Almost all these suggestions have a supplementary character and indeed do not contradict the second draft of the Bill. The suggestions did propose alterations to that draft, but exclusively in order to enforce, secure and complete the rules and the principles contained in it. This is important because suggestions of this kind do not exclude the possibility that Hübbe was involved in the first and second drafts. For example, Hübbe demanded a strengthening of the punishment for counterfeiting instruments.<sup>95</sup> He thought that he had found a better penalty rule in earlier legislation. With regards to identifying witnesses, he also traced prior legislation which he proposed as a replacement for the prior draft provisions, because of its 'sound principles'.<sup>96</sup> Hübbe also pointed out that New Zealand had been overlooked in the second draft's gazetting provisions.<sup>97</sup>

The general aim of the Bill to lower the costs of land transactions was achieved by Hübbe's specific suggestions in connection with the introduction of the land registration system. Hübbe suggested that, as opposed to the South Australian Ordinance No. 6 of 1845, it should be legal also for non-professionals to conduct land dealings.<sup>98</sup> This suggestion — like that advocating the introduction of inexpensive arbitration, another of Hübbe's proposals — meant that poor people also could afford to bring their land under the Act.<sup>99</sup> Allowing non-lawyers to provide conveyancing services under the Act was a very important, indeed revolutionary suggestion, being the origin of the institution of the non-legally-trained 'land broker' by whom almost all land transactions are carried out to this day in South Australia. These additional suggestions for improvement do not tell against the thesis presented here: it is not surprising that someone involved in drafting a Bill might have further suggestions after the draft is completed, either

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<sup>93</sup> S Robinson, above n 1, 79.

<sup>94</sup> Ibid 77.

<sup>95</sup> U Hübbe, above n 84, 81.

<sup>96</sup> Ibid 95.

<sup>97</sup> Ibid 84.

<sup>98</sup> Ibid 95.

<sup>99</sup> Ibid 84.



because his suggestions were not accepted by the other drafters or because further points had occurred to him after the drafting had been concluded.

A further set of suggestions by Hübbe aimed at one common goal, which was to enforce and secure the main principles of the system, ie the conclusiveness of the register and the indefeasibility of title. In his book, Hübbe argued that the draft had to provide for mechanisms to ensure that the old law could not undermine the new principles.<sup>100</sup> That is why Hübbe wanted it to be made clearer in the Bill that exceptions to the principle of indefeasibility of title should be limited to cases of fraud only.<sup>101</sup> It should be ensured that interests that did not appear on the register should not affect real property rights. This purpose was also served by Hübbe's suggestion that land grants from the Crown should be required to be deposited when land was brought under the Act.<sup>102</sup> In this way, land grants could not be simultaneously used to create land rights under the old system. Hübbe's suggestion that declarations of trust should not be effective unless they were registered (and optionally deposited) also fell into the same category.<sup>103</sup> Accordingly, he thought, it would be possible to abolish the equitable principle of constructive notice.<sup>104</sup> Again, it is easy to explain the making of these suggestions in a manner consistent with Hübbe's involvement in the drafting from its beginning. That they were made is not only consistent with the thesis that the second draft was a very imperfect attempt to adapt Hamburg's system (which did not contain a division between equitable and legal rights at all) for South Australia in accordance with an explanation of it provided by Hübbe; it confirms and is confirmed by the statements in the primary sources to that effect that were summarised above.

The most striking of Hübbe's proposals was to shift clause 68 to an earlier part of the draft in order to emphasise its importance.<sup>105</sup> Clause 68 provided that an instrument was effective only when it was registered and accordingly endorsed. This provision derived directly from the principle of the conclusiveness of the register, and Hübbe wanted it to be made clear at the outset in the first sections of the legislation instead of being lost 'somewhat late in the vineyard'.<sup>106</sup> Hübbe's critique purported in this respect to complete and enforce the provisions already in existence in the draft. For this reason this suggestion does not imply at all that Hübbe did not participate in the drafting process before the third draft, nor that he was only influential in drafting the third draft that implemented his suggestions. Rather, Hübbe's discussion of the draft Bill as it stood between the second and third

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<sup>100</sup> Ibid 82.

<sup>101</sup> Ibid 82.

<sup>102</sup> Ibid 86.

<sup>103</sup> Ibid 94.

<sup>104</sup> Ibid 93.

<sup>105</sup> Ibid 86.

<sup>106</sup> Ibid 86.

drafts leaves his part in the drafting process open. The supplementary character of his suggestions makes it possible that he was already the dominant force in the Bill's drafting during work on the second draft and only tried to refine the system before the second reading.

Robinson has pointed out, however, that two of Hübbe's suggestions were not adopted in the third draft. One was to call all certificates 'land grants', no matter whether issued for the first time or not. That would have made the underlying principle clear that every new certificate guaranteed that the title was just as indefeasible as the first title granted by the Crown.<sup>107</sup> The second suggestion subsequently ignored was that the Registrar General (like the equivalent official in Hamburg) should be liable for damages and the full cost of litigation arising out of any mistakes by him. It is not surprising that the latter suggestion was not successful, since Torrens wanted to become Registrar General himself and would have not had much interest in personal liability. The former suggestion to call all certificates 'land grants' was a matter of mere terminology not affecting the legal substance of the Act. The fact that these suggestions were not followed is irrelevant to the question whether Hübbe was the predominant drafter of the third draft or not. In particular, it must be recalled that the Assurance Fund established under the Torrens system provides for compensation in cases of mistakes by the Registrar General, even though this compensation is not paid by the Registrar General personally.

Whereas other authors have limited their analysis of Hübbe's book to Hübbe's suggestions for the amendment of the second draft of the Torrens Bill, the overall structure of the book and the particular description of Hamburg's legal system need further examination because both strongly suggest that Hübbe wanted to adopt Hanseatic law. Apart from the critical description of the old common law,<sup>108</sup> there are only two systems that are fully described: the French system of conveyancing<sup>109</sup> and Hamburg's land law system.<sup>110</sup> Hübbe stated that chapters on French and English law had not been incorporated because he thought they were necessary, but 'at the desire of some friends' and 'the wish of others'.<sup>111</sup> The Hanseatic law was the only system which Hübbe described at length and which, being a system of complete registration, corresponded with Torrens' proposal. The French system only provided registration of charges, not of ownership (other than exceptionally). Hübbe emphasised this difference by classifying all systems in one of two categories of registration.<sup>112</sup> According to Hübbe, land registration systems were

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<sup>107</sup> Ibid 80.

<sup>108</sup> Ibid 8–25.

<sup>109</sup> Ibid 33–50.

<sup>110</sup> Ibid 64–75.

<sup>111</sup> Ibid, preface.

<sup>112</sup> Ibid 55.

either systems of complete registration (ownership and charges) or systems similar to the French system, which chiefly registered charges. Since Torrens' draft proposal discussed by Hübbe in the end of his book suggested a system of complete registration, the Hanseatic system and not the French system corresponded to it.

A second aspect that makes the description of Hanseatic law a crucial point in Hübbe's book is that, on reading it, one has the distinct impression that he is indirectly suggesting the adoption of Hamburg's land law system in South Australia. This is because Hübbe did not limit himself to merely describing the law of Hamburg, but gave an actual original example of a certificate of a title to land from Hamburg and showed how it would look if those provisions were applied to a possible register book in Adelaide. The fictitious certificate of title provided by Hübbe for land in Adelaide covered various important land dealings and thereby applied the Hanseatic law to a parcel of land situated in Adelaide. Hübbe's certificate can be regarded as a draft sheet of a possible South Australian register book, modelled on a certificate from Hamburg.

Hübbe's book, the *Voice of Reason*, shows, first, that Hübbe already had the adoption of Hanseatic law in mind at the time of the law reform. Secondly, Hübbe's discussion of the second draft shows that Hübbe also believed that he could push his plan through. The character of his suggestions to alter the second draft — they were clearly improvements rather than wholesale root-and-branch reforms — indicates also that the draft corresponded already to a great extent with his conception of the system. It might have been for these reasons that the *Voice of Reason* was the first book at the time that discussed at length the legal aspects of the Torrens system.

#### B *Hübbe's Relationship with Torrens after the Passing of the Act*

This did not, however, remain Hübbe's only contribution to promoting the Torrens system. During the parliamentary debates as well as in his work at the Lands Titles Office, it seems that he advised Torrens to a surprisingly large extent and in a very noticeable fashion. Regarding his activity in Parliament, the Royal Geographical Proceedings record:

... the late Sir Edwin Smith used to tell how Dr Hübbe sat outside the bar of the House during the passage of the Bill in 1858 and was frequently consulted there by Sir Robert R Torrens.<sup>113</sup>

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<sup>113</sup> 32 *Royal Geographical Proceedings* (SA) 110; R Hague, *History of the Law in South Australia* (unpublished; Flinders University of South Australia) cited by S Robinson, above n 1, 52.

The question arises what relevance this record has to Hübbe's possible role in the drafting of the Bill. Whalan<sup>114</sup> and Pike<sup>115</sup> totally omit this important aspect of Hübbe's presence during the debate. Stein and Stone merely establish that it showed Hübbe's political helpfulness in the passing of the Act.<sup>116</sup> Of course his consultative presence was in line with his publication of a book immediately before the second reading. However, it does not seem enough to speak of pure political help.

It seems odd that Torrens needed a consultant at all if he himself was the actual draftsman. If he really was the draftsman, why did he want to discuss things with Hübbe during the debate? When Stein and Stone speak of 'help in Parliament', this cannot merely refer to political advice. Hübbe had no political functions at all; he had not been elected to any office. Torrens, on the other hand, was a fully-fledged politician. Thus, if Hübbe gave any useful advice it must have been of a technical legal kind. Robinson argues that Torrens did not really understand the interrelatedness of the final provisions.<sup>117</sup> His own explanation of the system in 1862<sup>118</sup> showed some considerable contradictions. Torrens' deficiencies might well have necessitated Hübbe's advice and his insight into the system which he had demonstrated in his book. In any case it is reasonable to conclude that Hübbe's legal skills were needed and somehow special; otherwise, it cannot be explained why Hübbe and not someone else was consulted during the debate. By the time of the second reading a few lawyers had abandoned their opposition and favoured the law reform. R B Andrews was one such.<sup>119</sup> Why did Torrens then pick a German lawyer instead of an English one to give him legal advice? One reason might have been that Hübbe had worked with Torrens on the matter all along, so they were a good 'team' from the beginning. However, what made Hübbe particularly special compared with other lawyers in South Australia was obviously his knowledge of German/Hanseatic law, ie of a system of title by registration already in operation. Hübbe had not studied or practised English law, but German law. Here lay the real difference between himself and English lawyers who favoured the system. Hence, when Torrens picked him and not someone else, it must have been partly due to the importance of Hübbe's specific knowledge of German law.

Taking into consideration that Hübbe was frequently consulted by Torrens during the debates, Torrens might have been referring to Hübbe when, at the end of his speech on the second reading, he thanked 'a member of the legal profession from

<sup>114</sup> D Whalan, above n 1, 6.

<sup>115</sup> D Pike, above n 63, 180.

<sup>116</sup> R Stein and M Stone, above n 1, 24.

<sup>117</sup> S Robinson, above n 1, 77.

<sup>118</sup> Sir Robert R Torrens, *An Essay on the Transfer of Land by Registration under the Duplicate Method operative in British Colonies* (1862).

<sup>119</sup> Andrews did not participate in the debate because he was sick.

whom he had received great assistance, but whose name he was not at liberty to mention'.<sup>120</sup> Already at an earlier stage in November 1856, Torrens had spoken of a 'high legal authority that helped him'.<sup>121</sup> It has been suggested that Torrens could also have been referring to Andrews or Hanson.<sup>122</sup> At least until the end of January 1857 he could have not been referring to Andrews, because until then Andrews was still expressly opposed to any kind of real property reform.<sup>123</sup> As regards Hanson, it is true that he had also changed sides and supported the reform by the middle of 1857.<sup>124</sup> Nevertheless, Hanson had drawn up his own scheme of registration which differed considerably from Torrens' Bill; Hanson advocated this scheme in Parliament instead.<sup>125</sup> Apart from that, Mr Hare MP reports that Torrens, because of this rivalry, was reluctant to accept any of Hanson's suggestions whether they made sense or not.<sup>126</sup> On the other hand, it is easy to understand that Torrens might have wished to suppress the name of Hübbe in order not to provide his opponents with further ammunition along the lines that he was proposing to introduce a foreign system. Concern was often expressed at that stage in South Australian history that the Province was being germanised to an undue extent.<sup>127</sup>

The impression that Torrens had indeed been referring to Hübbe in his speech in Parliament is strengthened by the fact that Torrens seemingly drew on Hübbe's advice even after the enactment of the *Real Property Act* 1858. The fact that Hübbe had a desk at the Land Titles Office speaks in favour of this hypothesis. This is confirmed by the evidence of Mr Gawler, a solicitor employed at the Lands Titles Office, given before the reform commission of 1861, the background to which will be explained further below. Mr Barrow, a member of the reform commission, questioned Mr Gawler on 24 April 1861:<sup>128</sup>

Question 788: Do the Germans avail themselves as much as they did of this Act? — Quite as much, I believe.

Question 789: Was not Dr Hübbe engaged in some capacity in this office some time ago? — No, he was not engaged in any capacity; he was allowed a desk.

Question 790: Has he that desk now? — No.

<sup>120</sup> *The South Australian Register*, 13 November 1857

<sup>121</sup> *The South Australian Register*, 21 November 1856.

<sup>122</sup> D Whalan, above n 1, 6.

<sup>123</sup> *The South Australian Register*, 26 January 1857.

<sup>124</sup> D Whalan, above n 1, 10.

<sup>125</sup> South Australia, *Parliamentary Debates*, House of Assembly, 12 November 1857, 648

<sup>126</sup> South Australia, *Parliamentary Debates*, House of Assembly, 20 July 1880, 424.

<sup>127</sup> See below, fn 176.

<sup>128</sup> South Australian Report of the Real Property Law Commission with Minutes of Evidence and Appendix (Adelaide 1861), South Australian Papers No 192.

Question 791: How came he to be allowed to have a desk here? — I do not know.

Surprisingly, this evidence has been disregarded by other authors. It is important, however, because Hübbe's activities after the enactment of the Torrens system cannot be explained merely by Hübbe's political help. Hübbe seemingly occupied the desk at the Lands Titles Office until January 1861. The *Süd-Australische Zeitung* (South Australian Newspaper) at least makes mention of the Attorney-General's expelling Dr Hübbe from the Office on 12 January 1861.<sup>129</sup> The editor of the *Süd-Australische Zeitung* pointed out that the Attorney General expelled Hübbe while Torrens was on leave. It raises the question why Hübbe had a desk at the Lands Titles Office to begin with. After all, he had no position there and was thus not paid for any work. In his statements attached to his petition for a pension in 1884, Hübbe had emphasised that his hope for a position in the office had been rejected by Torrens.<sup>130</sup>

If Hübbe had no proper position at the office, he may voluntarily have been working there occasionally as a translator. It seems that Mr Barrow was referring to that when he asked Mr Gawler:<sup>131</sup>

Question 792: Are you aware whether any difficulty has been experienced by the Germans in bringing their property under the Act, since the removal of Dr Hübbe's desk? — I am not aware of any complaint on that score.

Nevertheless, it seems rather unlikely that Hübbe would have worked as a translator at the Lands Titles Office without his 'colleagues' knowing it, as this would have necessitated at least some collaboration with the other employees. After all, the purpose of a German translator would have indeed been to help the employees of the Lands Titles Office in dealing with German clients.

The fact that the employees at the Lands Titles Office seemingly did not know why Hübbe had a desk at the office indicates that Hübbe did not do the same work as they did. He was apparently not involved in the daily business of the Office, yet Hübbe must have done some work at the Office that required a desk. As he had a desk, he probably worked on a rather regular basis, which necessitated his presence for more than just short periods. Furthermore, it must have been some kind of work which was useful to Mr Torrens, or he would not, as Registrar General, have furnished Hübbe with a desk at the Office. That is in line with the *Süd-Australische*

<sup>129</sup> *Süd-Australische Zeitung*, (Adelaide), 12 January 1861, 1.

<sup>130</sup> Official Statement accepted by Secretary Office, 1884, No 2230, SA-Archives, D 5257 (T), 6.

<sup>131</sup> Report of Commission appointed to inquire into the Intestacy, Real Property, and Testamentary Causes Acts (1873).

*Zeitung*'s reporting on Hübbe's expulsion from the office in January 1861.<sup>132</sup> The editors implied in the article that Torrens would have not allowed Hübbe to be expelled if had been present.

Taking into consideration that Hübbe had already advised Torrens during the debate on the Act in 1857, all this suggests that Hübbe continued to be a legal adviser to Torrens in the Lands Titles Office even after the debates. In the first years after the enactment of the system several problems appeared in its application.<sup>133</sup> Hübbe may have helped Torrens in finding solutions for these problems. In this respect it is noteworthy that the first proposals for the amendments to the Act came almost exclusively from the Lands Titles Office.<sup>134</sup> If Hübbe really was the legal mind behind the *Real Property Act 1858*, ie if he was the chief draftsman of the final version of the Act, it is plausible that he was so devoted to the Act that he continued to work with Torrens without salary even after the enactment. In any case, Hübbe's consultative presence during the crucial debate in Parliament, as well as in the Lands Titles Office immediately after the enactment of the system, would have been in line with the prominent role that he allegedly played in the drafting of the Act according to the historical statements (especially the debates in 1880/1884 and Forster's letter and Loyau's account) analysed above.

### C *The Commission of 1861*

After Torrens had guided the Act through the Lower House of Parliament with Hübbe's assistance, the *Real Property Act* passed through the Legislative Council with some delay and became law in January 1858.<sup>135</sup> Anthony Forster forwarded the measure in the Legislative Council with the support of a petition signed by 2700 colonists.<sup>136</sup> However, after the Bill had won the battle in Parliament, it was attacked in the courts. A Supreme Court decision in April 1860 necessitated alterations to the Act.<sup>137</sup> The Court had established that certificates of title had no greater validity than the title surrendered for it. The new Act of 1860<sup>138</sup> had tried without much effect to remove this defect, and even under this Act the Supreme Court still declared certificates defective.<sup>139</sup> In the wake of these decisions the Parliament decided to call for a commission to correct the defects of the *Real*

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<sup>132</sup> *Süd-Australische Zeitung*, (Adelaide), 12 January 1861, 1.

<sup>133</sup> R Stein and M Stone, above n 1, 25.

<sup>134</sup> D Whalan, above n 1, 9 f.

<sup>135</sup> D Pike, above n 63, 180.

<sup>136</sup> *The South Australian Register*, 6 January 1858.

<sup>137</sup> *Hutchinson v Leeworth*, *The South Australian Register*, 29 May 1860.

<sup>138</sup> No. 6 of 1860.

<sup>139</sup> *Payne v Dench*, cited by D Pike, above n 63, 186.

*Property Act*.<sup>140</sup> The leading members of the commission were Sir Charles Cooper CJ, R D Hanson, G M Waterhouse, J H Barrow and R R Torrens.<sup>141</sup>

Two aspects of the commission's work are of significance to the questions considered here. First, the Legislative Council ordered a description of Hanseatic law by Hübbe to be printed. Secondly, an inquiry was held in which Torrens asked colonists from Hamburg about the law in their home town in order to show its similarity to the *Real Property Act 1858*. Both aspects illustrate that, at least three years after the enactment of the *Real Property Act 1858*, the Hamburg system of land registration was still regarded as the model.

Hübbe's 25-page pamphlet on Hanseatic law entitled 'Title by Registration in the Hanse Towns' was printed by order of the Legislative Council.<sup>142</sup> Whalan regards this pamphlet as Hübbe's first translation of Hanseatic law which therefore could not have influenced the drafting in 1857.<sup>143</sup> That is not true, however. The above analysis of the book *Voice of Reason* (1857) proves that Hübbe had written an earlier description of Hanseatic law. Hübbe's brief report on Hanseatic law in 1861 appears to be a combination of descriptions prepared between 1857 and 1861. Thus, contrary to Whalan's conclusion, it is possible that the translations which were printed in 1861 were influential much earlier, for instance in the amendment of the Act in 1860. Whalan was also incorrect in referring to Hübbe's pamphlet as translations of a 'Hanseatic code of 1860'. There had not been any codification of Hanseatic law by 1860.<sup>144</sup> It was still based on a mixture of ancient ordinances, case law and customary law.<sup>145</sup> The provisions that Hübbe had referred to in the pamphlet were not drawn from an official code, but from a draft statute produced by a textbook writer (Lührsen)<sup>146</sup> which purported to put the law in existence into the form of comprehensible provisions. Because of this lack of statute law, Hübbe had used textbooks and manuals to complete his description.

Even if the inferences drawn in earlier sections of this article from Hübbe's activities prior to 1861 are disregarded, the fact that Hübbe was asked by a parliamentary reform commission to produce a description of Hanseatic land law is of considerable significance. It affirms Hübbe's recognition as a legal advisor on Hanseatic land law in particular and also suggests that Parliament was merely continuing an earlier practice of asking the expert on Hanseatic law for advice. It

<sup>140</sup> D Pike, *ibid*.

<sup>141</sup> D Whalan, above n 1, 10.

<sup>142</sup> South Australian Parliamentary Papers 1861, No. 212.

<sup>143</sup> D Whalan, above n 1, 6.

<sup>144</sup> Only in 1868 was Hamburg's law consolidated.

<sup>145</sup> See below.

<sup>146</sup> G Lührsen, *Der Stadt Hamburg Erbe- und Rentenbuch oder Grund-Eigenthum- und Hypothekenbuch-Ordnung. Ein Gesetzesentwurf* (1860), Hamburger Staatsarchiv.



also raises the question, however, why the Legislative Council placed such importance on a description of Hanseatic law as to order a report of it. No other foreign system of law received such attention, and no one suggested, for example, producing a report on the law regulating the transfer of ships or on French law.<sup>147</sup> It may have simply been that having a German lawyer at hand led to this decision. But if that is all that the commission had wanted, it would have sufficed to question Hübbe in the same way as the other lawyers; there would have been no need to commission a report from him.

The demand for a general description of Hanseatic law showed that there was considerable interest in the complete Hanseatic system, and especially in the manner in which the rules of that system were inter-related and formed a coherent whole. All things considered, this would make sense only if Hübbe's later assertion — that the South Australian land registration system was originally modelled on Hamburg's land law in the first place — was correct. If the members of the commission viewed Hamburg's land law as the original model, they would most likely have taken a closer look at it in order to perfect the South Australian land registration system.

On the other hand, one might argue that the Hanseatic system became a model later on, only in 1861, once the South Australians realised that the system of title by registration they had enacted was not adequate. This would ignore the fact, however, that Hübbe had already intensively collaborated with Torrens in 1857. If it is conceded that Hamburg's system was conceived as an appropriate model in 1861, it is but a short step to recognising that it was conceived as such in 1857. And it is otherwise difficult to explain why Torrens drew on the help of a specialist in Hanseatic law during the second reading of the Act.

That Torrens already regarded Hamburg's law as a model for the original system seems to be supported by questions that Torrens as a member of the reform commission posed to the German colonist, Schuhmacher. Robinson argues that the questioning purported to show that the Hanseatic system of title by registration was basically identical to the original South Australian land registration system enacted in 1858, and accordingly, that the Hanseatic system was worthy of further examination in the course of the reform.<sup>148</sup> The questioning of Schuhmacher concluded with a promise by him to provide a memorandum on the differences between Hanseatic and the new South Australian law.<sup>149</sup>

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<sup>147</sup> Torrens had claimed that he had been inspired by the *Imperial Shipping Act 1854*: R Torrens, *The South Australian System of Conveyancing by Registration of Title* (1859) vi.

<sup>148</sup> S Robinson, above n 1, 82.

<sup>149</sup> South Australian Parliamentary Papers 1861 No. 192.

It is not recorded whether Schuhmacher eventually handed in a memorandum, but it seems unlikely, not only because there is no record of its being done but also because Hübbe, being more knowledgeable, was subsequently commissioned to produce a monograph. As may be seen by a reference to the original record, the questions directed to Schuhmacher by Torrens demonstrate that Torrens intended to show that the South Australian land registration system was in essence identical with the system that was working successfully in Hamburg. Robinson infers from this that Hübbe must have been responsible for this similarity between the systems.<sup>150</sup>

The author agrees with Robinson's basic evaluation. From the mere questioning alone, however, this inference is difficult to draw. Rather, the questioning must be put in context with the monograph that Hübbe was asked to produce as well as with his earlier activities, ie his assistance during the law reform in 1857/58. It is first of all clear that Hübbe made a major contribution to Torrens' thought, especially in the last phase of the final drafting. It is also reasonably clear that Hübbe's view was that Hanseatic land law should be adapted for South Australian needs; this is shown by his book in 1857 and emerges from the German-language newspaper sources. Against this background, Torrens' questioning of Schuhmacher in 1861 appears in a different light: it may best be explained by postulating that Torrens had intended to adopt, with Hübbe's assistance, the Hanseatic land registration system in the form of the *Real Property Act*. His questioning may be seen not as an attempt to elicit information from Schuhmacher, but as an attempt to show the other members of the commission that he had in fact succeeded in adopting Hamburg's law.

The alternative hypothesis is that Hamburg's law was recognised as an appropriate model for the South Australian land registration system only in 1861, and that Torrens' questions were indeed designed to elicit information about the workings of this system to which he had previously not had access. Hübbe's close collaboration with Torrens during the law reform and Hübbe's engagement in the Lands Titles Office immediately after the passing of the Act strongly suggest that this is not the case.

#### D Hübbe's Activities in 1872/1873

The work of the 1861 commission culminated in the reform of the 1858 Act contained in the *Real Property Act 1861*.<sup>151</sup> As it turned out, the reform was only half-hearted. The Supreme Court still found problems in the application of the Act. In *Lange v Ruwoldt*, the Court decided that contracts for sale were not recognised by the *Real Property Act*.<sup>152</sup> The general dissatisfaction with this decision led, to a great extent, to the appointment of a second reform commission in December

<sup>150</sup> S Robinson, above n 1, 84.

<sup>151</sup> D Whalan, above n 1, 10.

<sup>152</sup> *Lange v Rudwolt* (1872) 6 SALR 75.

1872.<sup>153</sup> It was called the ‘Commission to inquire into the Intestacy, Real Property, and Testamentary Causes Acts’ (‘the 1873 Commission’). The commissioners (Belt, Brind, Kriechauff and Thrupp) began their work at the beginning of 1873.<sup>154</sup>

As already noted, Hübbe played an important role in the deliberations of the 1861 reform commission. Similarly, the work of the 1873 commission gains importance in regard to the examination of the German origins of the *Real Property Act 1858* because Hübbe was again involved in the inquiry to a great extent. Hübbe’s questioning by the 1873 Commission is therefore examined in this section in regard to Hübbe’s latter claim to authorship of the original *Real Property Act*. In this light, two further points which have not been considered by other authors are significant. First, by the beginning of January 1873, Hübbe had prepared a pamphlet on the subject, similar to the one he had written in 1861.<sup>155</sup> This occurred even before the deliberations of the 1873 commission had started. Secondly, Hübbe founded an association for the protection of the *Real Property Act* after the report of the Commission was issued.<sup>156</sup>

When the 1873 Commission commenced its work, Hübbe was about 68 years old. Despite his age he was called three times before the commission for questioning about the working of the *Real Property Act* and the intestacy law.<sup>157</sup> Hübbe’s extensive evidence totalled 226 separate statements. Nevertheless, only Robinson<sup>158</sup> and Hogg<sup>159</sup> considered this activity by Hübbe in connection with the development of the *Real Property Act*. Robinson, however, draws no inferences from Hübbe’s evidence in 1873 as to the origins of the Act.<sup>160</sup> This applies to Hogg also, who seems not even to know about Hübbe’s possible involvement in the very first drafting in 1856/1857, and who mentions Hübbe only in connection with his evidence given in 1873.<sup>161</sup> One can, however, draw important conclusions from the questioning of Hübbe in 1873 about his contribution to the early drafts of the Act.

There are three important aspects which are in line with the assumption that Hübbe was the chief draftsman of the *Real Property Act 1858*. First, the 1873 questioning shows once again that Hübbe was regarded as an expert on the system, even though he was not trained at all in English law. Secondly, Hübbe’s evidence demonstrates

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<sup>153</sup> J Hogg, *The Australian Torrens System* (1905) 56.

<sup>154</sup> Report of Commission appointed to inquire into the Intestacy, Real Property, and Testamentary Causes Acts (1873).

<sup>155</sup> *Deutsche Australische Zeitung*, (Adelaide), 2 January 1873.

<sup>156</sup> *Australische Zeitung*, (Adelaide), 2 February 1875.

<sup>157</sup> 4 February/ 27 March/ 21 April.

<sup>158</sup> S Robinson, above n 1, 96.

<sup>159</sup> J Hogg, above n 154, 58.

<sup>160</sup> S Robinson, above n 1, 96.

<sup>161</sup> J Hogg, above n 154, 14.

that his knowledge of the interrelatedness of the provisions of the Act proved to be particularly valuable. Thirdly, Hübbe's answers to the questions evidently implied that he claimed to know the original purpose behind the provisions of the *Real Property Act*.

The first point — ie that, like the 1861 Commission, the 1873 Commission still regarded Hübbe as a legal authority worth consulting — is evident from the extensive questioning of Hübbe. It cannot be argued that, by 1873, Hübbe was perhaps only involved because not enough British lawyers were willing to support the reform commission. By 1873, the system had been successfully working for 15 years and had been adopted almost everywhere in Australia.<sup>162</sup> Accordingly, there were enough property lawyers in 1873 who were experienced with the system and who would have been willing to give evidence before the reform commission. Why then did the commissioners care so much about the statements of a German lawyer who had not been practising for more than 30 years? Hübbe's involvement in 1873 cannot only be explained by his knowledge of Hanseatic law and the need of the commissioners to ascertain how certain problems in a system of title by registration were resolved in Germany. This can be seen from the type of questions the Commissioners posed to Dr Hübbe; only a small portion of the questions referred directly to the Hanseatic system.<sup>163</sup> The bulk of the questions sought to obtain Hübbe's opinion on the defects of the South Australian statutes under discussion. Accordingly, Hübbe avoided expounding the Hanseatic system and instead referred to his description from 1861 in the Parliamentary Papers.<sup>164</sup> Thus, Hübbe was not questioned particularly as an adviser on Hanseatic law. Rather, it must be acknowledged that he had been accepted as a legal authority on the very system set up by the *Real Property Act* of South Australia.

The second inference which can be drawn from Hübbe's evidence in 1873 is that he knew in particular detail how the provisions of the *Real Property Act 1858* related to one another. Indeed the questions and answers show that it was not Hübbe's suggestions regarding specific problems, but his view of the working of the system as a whole that were of central importance. Robinson's and Hogg's analyses of Hübbe's evidence reflect this. Robinson stresses in particular Hübbe's opinion on the relationship between caveats and priority rules, equitable rights and the conclusiveness of the register.<sup>165</sup> Similarly, Hogg refers specifically to Hübbe for his views on equitable rights and the conclusiveness of the register.<sup>166</sup>

<sup>162</sup> A Bradbrook, S MacCallum and A Moore, *Australian Real Property Law*, (2<sup>nd</sup> ed, 1997) 129.

<sup>163</sup> See Questions 66 to 71; 95; 115; 116; 133; 160 and 1725.

<sup>164</sup> Answer to Question 37.

<sup>165</sup> S Robinson, above n 1, 105.

<sup>166</sup> J Hogg, above n 154, 58.

The third matter of interest is that Hübbe's answers imply that he claimed to know which legal principles the original provisions of the Act purported to establish. Hübbe was seemingly of the view that the law, as it was intended to be enacted by the *Real Property Act 1858*, was a well-functioning concept, and that the task in 1873 was merely to bring the influence of the principles of 1858 to fruition. Some extracts from Hübbe's answers to the Commissioners illustrate this point.<sup>167</sup>

One such example is Hübbe's answer to question 75:

I think it desirable that forms of nomination of trustees should be introduced and improved upon. In the first *Real Property Act* we had nomination of trustees; in the present Act we have no form for that.

Another is his answer to question 103:

It appears to me that in order to maintain the principles of the *Real Property Act*, three classes of rights should be kept constantly distinct ...

Finally, the answer to question 110 also suggests that Hübbe was concerned to bring a system he well knew into full flower:

I am inclined to think that the practice should be more elaborately laid down and defined with proper safeguards. The principle, I beg to say decidedly, should be retained.<sup>168</sup>

Robinson suggests that the principles Hübbe wanted to preserve were actually 'sought to be embodied in the Original Act'.<sup>169</sup> This need not be resolved here. It is, however, suggested that Hübbe's aim to retain those 'original' principles is in line with the hypothesis that he was a chief draftsman. Assuming that he was the main instigator of the principles in the first place, he would have considered them valuable and worth preserving and enhancing in the light of his experience and observations of the actual operation of the Act which he had played such a major role in drafting.

The above conclusion, ie the acknowledgement of Hübbe as a legal authority for the original *Real Property Act 1858* and Hübbe's intention to preserve the original principles of the Act, is confirmed by Hübbe's activities associated with the working of the 1873 Commission. First, he wrote another pamphlet covering the whole of real property law and intestate inheritance. This pamphlet was so

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<sup>167</sup> Report of Commission appointed to inquire into the Intestacy, Real Property, and Testamentary Causes Acts (1873).

<sup>168</sup> In his answer Hübbe was referring to the judicial functions of the Land Title Commission.

<sup>169</sup> S Robinson, above n 1, 104.

elaborate, however, that the cost of printing it was too great.<sup>170</sup> Secondly, Hübbe was active in the ‘Verein zum Schutze des *Real Property Act*’ (Association for the Protection of the *Real Property Act*) of which he was a founding father no later than 1874 or 1875.<sup>171</sup> Neither the pamphlet nor the Association for the Protection of the Act have yet been considered by other authors who inquired into Hübbe’s 1873 evidence. That is perhaps due to the fact that neither activity appears in the official records. References to these activities can be found only in the German newspaper *Australische Deutsche Zeitung* (Australian German Newspaper).<sup>172</sup> On 2 January 1873, just before the beginning of the 1873 Commission’s work, the *Australische Deutsche Zeitung* asked the public for financial support (£30) for the printing of Hübbe’s pamphlet. Two years later, in February 1875, the ‘Verein zum Schutze des *Real Property Act*’ inserted an article in the *Australische Zeitung* asking the candidates running for election to promise to protect the *Real Property Act*.

The existence of a further pamphlet written by Hübbe, as well as the foundation of the ‘Verein zum Schutze des *Real Property Act*’, confirm the results of the interpretation of Hübbe’s evidence given in 1873. The production of an elaborate pamphlet suggests that Hübbe had an overview of the principles of the system, which is something that one of its chief architects would have enjoyed; it also suggests that he was very concerned to preserve the system which was in essence his. This confirms the above interpretation of his questioning, ie that the commissioners chiefly asked Hübbe to give evidence because of his insight into the interrelationship of the principles and rules of the system. Even though the 1873 pamphlet remained unprinted, it is likely that Hübbe gave the commissioners a hand-written copy as he, in his answers to the questions,<sup>173</sup> referred to papers that he had handed in.<sup>174</sup> The foundation of an ‘Association for the Protection of the *Real Property Act*’ reinforces this impression. It shows that Hübbe did not want to change the principles of the Act, but only wanted to make sure that its principles were not watered down. Of course, this does not in itself prove that Hübbe was a chief draftsman, but the fact that he stood so strongly behind its principles is clearly in line with his later claim that he was in effect the originator of the system.

It might also be noted in this context that one of the commissioners, Mr Kriechhauff, later participated in the 1880 and 1884 debates, and gave statements favouring the recognition of Hübbe’s services in founding the Act.

<sup>170</sup> *Deutsche Australische Zeitung*, (Adelaide) 2 January 1873.

<sup>171</sup> *Australische Zeitung*, (Adelaide) 2 February 1875.

<sup>172</sup> In 1875 the paper was renamed the *Australische Zeitung* (Australian Newspaper).

<sup>173</sup> Nos. 1819 to 1822.

<sup>174</sup> Report of Commission appointed to inquire into the Intestacy, Real Property, and Testamentary Causes Acts (1873).

## IV CONCLUSION

In her analysis, Geyer elaborates on the mechanisms and the social background that led to the 'myths' of Torrens' sole authorship from the very start.<sup>175</sup> It is moreover quite possible that the failure to mention the German origins of the Act at and shortly after its enactment was due to hostility to the allegedly excessive numbers of Germans in and their great influence on the ethnic composition of South Australia in the 1850s.<sup>176</sup> But the evidence — and in particular the previously unevaluated statements recorded in German-language newspapers and made in the presence of Torrens as a guest of honour, which lend considerable support to other statements about Hübbe's contribution also mentioned above — leaves little doubt that Hübbe was to a great extent involved in the drafting process of the *Real Property Act 1858*. This is reinforced by Hübbe's actions during and after the passing of the Act, which can best be explained on the basis that his contribution to its drafting was substantial. Nevertheless, none of the statements or other historical sources can prove conclusively the truth of Hübbe's assertion that the Act was an adoption of Hanseatic law,<sup>177</sup> not even the statements found in Loyau's book — although they come closest of all to resolving the question in favour of Hübbe given their clarity, detail, independence of the principal actors and reliability. This difficulty is not unexpected, however. We are dealing with the history of a complex matter, and even at the time the drafting of the *Real Property Act 1858* was concealed from the public.<sup>178</sup> In a retrospective analysis of such events one is limited in determining whether one or the other view of history is more likely to be true.

Nevertheless, aside from the points made above, the circumstantial evidence collected in this article strongly suggests that the *Real Property Act 1858* was an adoption of Hanseatic law and thus the work of Hübbe as regards the principles adopted. At the time of law reform in 1857, the adoption of the Hanseatic land law system seems in retrospect to have been the most suitable and easiest solution to the problems presented by the existing system. Whereas the English law commissioners' reports<sup>179</sup> and the series of articles by Forster<sup>180</sup> merely pointed to the desirable goals of the reform, the Hanseatic land law system provided a system of land registration already in operation. The most important principles which the

<sup>175</sup> M Geyer, above n 1, 30.

<sup>176</sup> This may be seen, for example, in sources such as *The South Australian Register*, 5 May 1857. Further details may be found at pp 75–7 of the author's LL.M. thesis (unpublished, Law School, The University of Adelaide, January 2000).

<sup>177</sup> 32 *Royal Geographical Society Proceedings* (SA) 112.

<sup>178</sup> D Pike, above n 63, 180, citing a letter of C Fenn of 29 June 1858.

<sup>179</sup> Reports of the Real Property Commissions (appointed to inquire into the law of England respective land) of 1830 and 1850.

<sup>180</sup> *The South Australian Register*, 3, 4, 5, 9, 11, 12, 15, 29, 23, 29 and 31 July 1856; 4 and 5 August 1856.

commissioners and reformers sought to install were therefore found in the already operational Hanseatic land law. The system has been working successfully in Hamburg for centuries,<sup>181</sup> so the risk in adopting it seemed to be quite limited. Furthermore, there was a German lawyer at hand who was willing to collaborate with Torrens and to adopt the system in the provisions of a South Australian statute. The alternatives to adopting Hanseatic land law seemed much less attractive under the political pressure for speedy and effective reform. The law of ship registration, for instance, which was first considered as a model, would have caused difficulties since ships were movable property and thus raised different problems to those of immovable property.<sup>182</sup> Again, instead of taking Hamburg's land law as a model, Torrens might have tried to develop a brand new system. In order to do that, however, he would have needed the help of well-trained lawyers and enough time to work on the matter. Both time and eager lawyers were in short supply at the time of the law reform.

Summing up the arguments for assuming that the South Australian land law reform was based on Hanseatic law, four important aspects can be recognised. First, the assumption explains numerous circumstances of the history of the reform and the behaviour of the principal actors that otherwise would be hard to comprehend. Secondly, Hübbe's account is affirmed by trustworthy contemporary statements, some actually made in Torrens' presence, that declare him to have been the chief draftsman. Thirdly, it seems that, given the pressure for reform, Hamburg's law presented a suitable solution. Fourthly, Hübbe's activities after the passing of the Act suggest that he was intimately involved in its drafting. The author submits that these four aspects make the theory that Hanseatic law was adopted as a result of Hübbe's work at least as plausible as, if not more plausible than, the assumption that the original system was as a mixture of different sources and ideas, or a system developed without significant input from outside.

Further examination of the 'Torrens' system as a legal transplant is therefore required. Above all, it would be interesting to ascertain whether a comparison between the 'Torrens' and Hamburg systems confirms the conclusions drawn from the historical sources. Further, it would be of value to establish what changes Hamburg's law would have had to go through in order to be adopted in the provisions of a South Australian statute and against the background of the interests in land recognised by the common law and equity. Could perhaps the numerous amendments that the system had to undergo immediately after its enactment be explained by a lack of adaptation of the initial transplant? Can the most outstanding difficulty within the system, ie its lack of provision for equitable rights, be

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<sup>181</sup> Torrens himself pointed out the situation in Hamburg in his speech during the second reading of the Bill: South Australia, *Parliamentary Debates*, House of Assembly, 4 June 1857, 205.

<sup>182</sup> 32 *Royal Geographical Society Proceedings* (SA) 112.



explained by the fact that Hamburg's law did not differentiate between equitable and legal rights and therefore did not provide a solution for this? These and other questions surrounding the hypothesis that the *Real Property Act 1858* was a legal transplant from Hamburg, which the author has explored elsewhere,<sup>183</sup> open up a wide field of research and new ways of looking at problems associated with the South Australian land titles system.

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<sup>183</sup> See the author's 'A Comparison of the Australian ("Torrens") System of Land Registration of 1858 and the Law of Hamburg in the 1850s', (2003) 7 *Australian Journal of Legal History* 193.

