Comments and Case Notes

DO THE INDEFEASIBILITY PROVISIONS OF THE REAL PROPERTY ACTS (QLD) 1861 TO 1975 APPLY TO A REGISTERED MORTGAGEE?

V.F.P. GREEN*

It is the purpose of this article to examine the indefeasibility provisions of the Real Property Acts (Qld.) 1861-1975 with reference to whether or not they are applicable to a mortgagee registered pursuant to such provisions. Whilst the problem is both interesting and challenging, it is at the same time muddled by some shoddy drafting and conflicting judicial interpretations.

Introduction

Crucial to understanding this problem is the concept of "indefeasibility". Possibly the most comprehensive description of indefeasibility of title was that given by the Privy Council in *Frazer* v. *Walker*. When delivering the advice of the board Lord Wilberforce stated:[1]

> "The expression [indefeasibility of title], not used in the Act itself,[2] is a convenient description of the immunity from attack by adverse claim to the land or interest in respect of which he is registered, which a registered proprietor enjoys. This conception is central to the system of registration. It does not involve that the registered proprietor is protected against any claim whatsoever ... there are provisions by which the entry on which he relies may be cancelled or corrected, or he may be exposed to claims in personam. These are matters not to be overlooked when a total description of his rights is required. But as registered proprietor ... no adverse claim (except as specifically admitted) may be bought against him".

Thus, subject to the comments of Lord Wilberforce, it will be seen that if a proprietor of land or an estate or interest in land becomes registered under the Real Property Acts (Qld.) 1861-1975,[3] he will gain an indefeasible title.

Section 44 of the 1861 Real Property Act is the basic indefeasibility section. Basically the problem this paper will try to answer is whether or not a registered mortgagee was intended to have the benefit of this section. In other words, can a registered mortgagee be described as a registered proprietor of an estate or interest in land so to qualify for protection?

A Problem of Terminology?

Even a passing acquaintance with the "Torrens scheme" would suggest the answer to this is palpably clear cut. However, a closer examination of the Act[3] and nineteenth century Queensland case law[4] may suggest otherwise. The problem lies inter alia with s.60:

* LL. B. Student, University of Queensland.

1. [1967] 1 A.C. 569, 580-581.
2. The expression used in the Qld. Real Property Acts 1861-1975 is "paramountcy".
3. Real Property Act 1861-1975; s.60.
3. Real Property Act 1861-1975, s.60.
4. *Conroy* v. *Knox* [1901] Q.L.J. 122.

> "Every bill of mortgage ... shall be construed and have effect only as security for the sum of money annuity or rent charge intended to be thereby secured and shall not operate or take effect as a transfer of any land estate or interest intended to be thereby charged with the payment of any money ... ".

Thus under a bill of mortgage it is said that no "interest" passes to the registered mortgagee. Having no land, estate or interest in land, a mortgagee thus lacked the basic credentials to qualify under s.44. *Conroy* v. *Knox* certainly supports this view. It was held that a registered mortgagee having been passed no interest in land could not take advantage of s.44. Against subsequent registered mortgagees he would obtain priority,[5] but not against subsequent purchasers. MacNaughton A.J. also stated that s.109[6] only applied to the holder of some estate or interest in land which, he said, by virtue of s.60 a registered mortgagee clearly is not.

I intend to show that the MacNaughton A.J.'s interpretation of s.44 is based on a misunderstanding of the whole concept of the term "registered proprietor". There may be some slight "technical" substance in his interpretation of s.109,[7] but even this is open to doubt. In his defence it can be said that he was struggling to produce a "fair" decision—after all, the conduct of Affleck [in the light of the several letters and public notice of Mr. Conroy's claim to be "owner" of the land[8]] in his use of his position of mortgagee was far from "fair".

The first comment we have on the correctness of the *Conroy* v. *Knox* interpretation is that of Griffith C.J. on appeal (on the question of costs only):[9]

> " ... on a supposed technical rule of law the learned judge said that the purchase by one of the other defendants from Knox was invalid. Whether he was right or not is a matter with which we are not concerned. There is no appeal on that point ... ".

On the wording of Griffith C.J., whilst it is certainly not possible to contend that he was suggesting he would have found otherwise had the particular point arisen on appeal, it could be suggested that in the use of the words " ... supposed technical rule of law ... " he may have been hinting at a ground for review. However, his statement is far from conclusive.

Further doubts were cast on the decision of *Conroy* v. *Knox* by Webb J. in *E.S.A. Bank* v. *The City National Bank*[10] where, when referring to a bill of mortgage he says[11]

> " ... although I do not take the restricted view of the mortgagee's position expressed in *Conroy* v. *Knox* ... ".[12]

In two Queensland cases the court has referred to mortgagees as enjoying a statutory protection under registration equal to that of the registered owner of the land. In *Finucane* v. *Registrar of Titles*[13] Griffith C.J. referring to the Real Property Acts (Qld.) 1861-1975 says:

5. Real Property Act 1861-1975, s.56: every registered bill of mortgage shall be entitled to priority in order of time of registration.
6. The "notice" Sec.
7. See discussions below.
8. (1901) Q.L.J. 112, 116.
9. [1902] St.R.Qd. 20, 21-22.
10. (1933) St.R.Qd. 81, 91.
11. This was after he had stated that a bill of mortgage was not a certificate of title because it is not evidence of seisin or other estate or interest.
12. However, unfortunately Webb J. does not expand on this statement.
13. [1902] St.R.Qd. 75.

> "There is no express prohibition of an action to set aside a mortgage, but, having regard to the whole scheme of the Act, and remembering that one of the rights of the mortgagee is to take possession on default, it seems clear that the title of a registered mortgagee bona fide for value cannot be impeached".[14]

Here there seems to be the suggestion[15] that because of the whole scheme of the Act, the registered mortgagee must surely be as unassailable as the registered proprietor of a freehold estate. The compelling logic of such a view will be later taken up in detail.[16] The second case again concerned comments by Griffith C.J., this time in *Bond* v. *McClay*[17]

> "But it is said further that although the term 'proprietor' in the Act of 1861 only included persons seised or possessed of a freehold estate or interest in land at law or in equity—words which strictly construed would not include a registered mortgagee ... (s.60)—yet by the 1877 Act (s.3) the meaning of the term is enlarged to include persons possessed of or entitled to any charge upon any land. Now the term "charge" was a term used in Sec. 56 and Sec. 60 of the Principal Act in describing the nature of the interest of a mortgagee ... The enlargement of the meaning of the term 'proprietor' obviously covered those cases, and therefore effectually protected registered mortgagees ... ".[18]

Further, when contrasting the "charge" of the mortgagee to that right of recourse to the land available to execution creditors[19] he states[20]

> "We think that the word charge, as used in Sec. 3, prima facie means a charge which a person may be possessed of or entitled to as a right of property".

The net result of these two cases is simply that a registered mortgagee is the registered proprietor of a "charge" and as such should be accorded the same protection as a registered proprietor of an "estate or interest" in land. We are now in the position of having to ask the question: Is a "mortgage" (registered)[21] an "estate" or "interest" in land capable of forming the subject of "proprietorship" so as to qualify for the indefeasibility cloak afforded by Sec. 44? Some jurisdictions[22] have avoided the mental gymnastics and semantics in attempting to answer this question by simply stating in the interpretative section that a mortgage is an estate or interest in land.

What does the case law have to say in answer to this question? The Privy Council dictum in *Gibbs* v. *Messer*[23] is interesting:

> " ... it was maintained ... that the protection given by statute to the proprietors of a mere interest in land, such as a statutory mortgage, is less extensive than the protection afforded to the proprietors of the land itself. Their Lordships do not find it necessary to determine that point, although, prima facie, it does seem to have been the intention of the Act to confer the same kind and degree of security upon all persons who, transacting in reliance on the register, acquire either proprietary rights or mere 'interests' in land in good faith and for valuable consideration. They assume for the purposes of this case, that the statute, in that respect, makes no distinction between

14. Ibid., at 93.
15. Although only obiter, not being necessary for the decision.
16. See discussion, below.
17. [1903] St.R.Qd. 1.
18. Ibid., at p.11.
19. Also sometimes referred to as a "charge".
20. Ibid., at p.11.
21. The position of the "unregistered" or common law mortgage of old system land entails a "conveyance": a passing of the legal title to the creditor.
22. New Zealand and Victoria.
23. [1891] A.C. 248, (J.C.).

these two classes of proprietors".[24]

Two High Court decisions, *Partridge* v. *McIntosh Sons Pty. Ltd.*[25] and *E.S. & A. Bank* v. *Phillips*[26] support the proposition that a mortgagee has an interest in land. In the former case Dixon J.,[27] speaking of the interest of a mortgagee under a Torrens mortgage said:

> "The statutory mortgage does not upon registration effect a transfer of the mortgage to the mortgagee of an estate or interest in land or confer upon him an immediate right to possession. He has of course an interest in the land at law, but it is in the nature of a charge".

However, it is the comments of Dixon, Evatt and McTiernan JJ. in the latter case which are most informative:[28]

> "The Statutory charge described as a mortgage is a distinct interest. It involves no ownership of land the subject of the security. Like a lease it is a separate interest in land which may be dealt with apart altogether from the fee simple or other estate or interest mortgaged. But, like a lease it involves, or usually includes personal obligations. It is impossible to treat the personal obligations in the same way entirely as the interest in land is treated by the registration system. The register cannot be made the source of information as to the fulfilment or performance of such obligations ... Thus, although a proposing transferee of a mortgage may rely upon the register for the existence and validity of the mortgage, he may be unable to depend upon anything but inquiries from the parties to ascertain how much of the principal sum secured remains unpaid. But nevertheless, the plan of the legislation is to enable the proprietor to transfer by registration not only the interest in land, but also all the accompanying personal obligations normally incident thereto. The statute is concerned with dealings in land, and it is because a mortgage involves such a dealing that the statute prescribes how a mortgage may be transferred ... It is concerned with the mortgage transaction in its entirety as it affects the land, and, therefore, extends to the personal liability of the mortgagor for the mortgage debt because that liability is intimately connected with the rights of property arising out of the mortgage transaction".[29]

Here it will be seen that the High Court impliedly contrasts the Torrens mortgage with that of a common law mortgage, in which the mortgagor's legal estate is conveyed to the mortgagee subject to a proviso for redemption. Obviously the Torrens mortgage involves no such transfer of the legal estate but it does involve the "creation"[30] and possibly the transfer[31] of a "distinct interest in land". What sort of protection is given to such an interest under the Real Property Acts 1861-1975?

Admittedly the Real Property Acts 1861-1975 do not expressly make the register conclusive in favour of the mortgagee, but he is protected as against his mortgagor the owner of the land and against other encumbrances registered after his own by the principle which has been thus enunciated in New Zealand:

> " ... there is no certificate of title given to the mortgagee, what he gets is an entry in

24. Ibid., at p.254. Here the P.C. seems to contrast the mere "interest" [statutory mortgage] with proprietary rights. This makes for an interesting comparison with the view of Griffith C.J. (supra, p.4) that a statutory mortgage is a right of property.
25. (1933) 49 C.L.R. 453.
26. (1967) 57 C.L.R. 302.
27. Ibid., at p.466.
28. Baalman, "The Torrens System in N.S.W." (1974 edn.) at p.270 uses this extract to establish the nature of a Torrens mortgage and seems to think that it establishes that a mortgage is an "interest" in land.
29. (1937) 57 C.L.R. 302, 321-322.
30. Sykes, "The Law of Securities" (1973) at p. 384.
31. This point is discussed in detail below.

the registry of the existence of a mortgage, and that being registered, it is the duty of all persons dealing with the property to examine the mortgage and see what it contains".[32]

With respect to this question of the applicability of the warranty of registered title to a registered mortgagee, another New Zealand case is even more favourable. In *Campbell* v. *Auckland District Registrar*[33] Williams A.C.J. said:

"Apart altogether from the interpretation clause a mortgagee who after default has the right to the possession of the land has an interest in land if any reasonable meaning is to be given to the word interest".[34]

In this particular case a majority of the New Zealand Court of Appeal was prepared to place a logical, in the sense of in keeping with the spirit of the Act, interpretation on the word "registered proprietor" in their s.61 so as to give a registered mortgagee the same sort of protection against adverse possession as the registered proprietor of a freehold estate in land. It could possibly be argued with reference to our s.109 that it would be just as "logical" to include within the ambit of "transferee" the word "mortgagee" for the purpose of notice.[35] The views of Chapman J. in the minority in this case forces me to digress because it is interesting to see how he approaches the terminology and interpretation problem not dissimilar from the one which unquestionably confronts any attempt to rationalize s.109 [i.e. the word "transferee" not the concept of "notice" itself] with the concept of "indefeasibility" vis a vis a registered mortgagee in the Queensland Real Property Acts. Chapman J. displays a cautious, conservative attitude. He argues that because expanded expressions are used throughout the N.Z. Act (in that particular case "registered proprietor of land" versus "registered proprietor of some interest in land less than the whole interest") and there is "suddenly" a departure from expanded expressions to restricted ones with the following results:[36]

"In the face of this, I do not think we can speculate as to the meaning of s.61. It seems to me that the Legislature has deliberately worded it in more restricted terms than the other sections and what we are asked to do is to remove the restriction [through the interpretation clause].[37] As this cannot be done without doing violence to the language selected, I have come to the conclusion that s.61 must be read to the restricted terms in which it is expressed".

By analogy it could be argued that a similar reasoning process would produce the same result in our Real Property Act 1861-1975, s.109, the word "transferee" supposedly constituting an act of deliberate choice on the part of the parliamentary draftsman.[38]

In support of the argument that a registered mortgagee has an "interest" in land one final case may be cited: *Lyons* v. *Lyons*.[39] This case is similar in one

32. [1916] N.Z.R. 19, 26 per Stout C.J. citing J.E. Hogg, "Australian Torrens System" 760 and 945 in *Re Goldstone's Mortgage*. The registered mortgagee has statutory protection under Sec. 56.
33. (1960) 29 N.Z.L.R. 332.
34. Ibid., p.337; see supra, p.4.
35. Sykes, op. cit., p.384, supporting the decision in *Conroy* v. *Knox* says that no amount of quibbling re the definition of "transfer" can alter the fact that a Torrens mortgage "creates" and does not "transfer" an interest. But see pp. infra 13-15.
36. (1960) N.Z.L.R. 332, at 349.
37. My parenthesis.
38. Hence a restricted interpretation of "transferee". Personally I feel the exclusion of "mortgagee" in this section is a case of unconscious omission. It may be possible to avoid the draconic result: infra p. 13 on the effect of s.60.
39. (1967) V.R. 169, 176.

sense to *Campbell* v. *Auckland District Registrar*[40] in so far as it says there is no need to define a mortgage as an estate or interest in land in the interpretation clause because that this is so is abundantly clear. McInerney A.J. when referring to the nature of a Torrens mortgage says:

> "If these passages correctly state the nature of a mortgage under the Torrens system, then the addition ... of the words 'and be an interest in land' ... does no more than declare the existing position".

Further, at p.179, he says, when referring to the statutory mortgage:

> "That is seen to be an interest in land in the nature of a change".

What I have attempted to do so far in this paper is to point to the vast amount of dicta which can be cited against *Conroy* v. *Knox* and the implication in s.60 which seem to suggest that a Torrens mortgage does not constitute an "interest" in land, and thus is not capable of protection under s.44. Apart from the weight of case law there is another argument based on the statute itself which suggests that a Torrens mortgagee has an "interest" capable of "registered proprietorship". There surely can be little objection to the argument that a registered mortgagee is a "registered proprietor" and thus receives the same protection as the "registered proprietor" of freehold land. Clearly it can be argued that there can be more than one "registered proprietor" at the same point in time in respect of the same parcel of land.

This argument is taken up by Professor Harrison[41] when referring to s.33:

> "it (sic.) works in favour not only of the fee simple owner to whom the certificate has been issued, but also of any other person who is recorded on the certificate as having an interest ... e.g. a mortgage, and who is thus the 'registered proprietor of that interest'. The certificate of title is just as much evidence of title to that interest as it is to title of the principal estate for which the certificate was issued".[42]

How appealingly simple and logical this argument is! It obviously shows a rare but commendable approach to the basis of the Torrens system. This can be illustrated with reference to the position of a Torrens mortgagee under the Act. As a mortgagee after default has a right to possession and this mortgage has to be registered before he can acquire any right under the Act, then on the statutory definition of "proprietor"[43] as being any person seised of any estate or interest in land, [and an estate or interest must surely include a charge over land][44] to use the words of Williams A.C.J.[45]

> "A mortgagee seems, therefore, by what is certainly a somewhat roundabout process, to have a sufficient estate or interest in the mortgaged land to entitle him to be properly described as the registered proprietor of such land to the extent of his rights over such land".

In the pre *Conroy* v. *Knox* period it was thought that a mortgagee was in a

40. (1960) 29 N.Z.L.R. 332.
41. "Indefeasibility of Torrens Title" (1952) U.Q.L.J. 206, 207.
42. S.33 is the conclusive "evidence" section. See also *The Queensland Investment and Land Mortgage Co. Ltd.* v. *Grimley* (1892) 4 Q.L.J. Supp. 10; *Fraser* v. *Walker* (1967) 1 A.C. 569, 580-581 (J.C.).
43. S.3 of the Real Property Act (Qld.) 1861-1975.
44. Apart from this, s.3 of the Real Property Act (Qld.) says a "registered proprietor" shall include a person seised or entitled to any charge upon land.
45. *Campbell* v. *Auckland District Registrar*, supra, p.8.

similar position to a transferee. Power[46] seems to suggest the correct interpretation when he says, explaining the word transferee in Sec. 109:

> " ... the rights of a mortgagee or other person having a registrable interest are probably based on similar principles, although the legal estate does not pass except in the case of a transfer".

Basic to understanding the problem is to appreciate that when a registered mortgagee claims to have an indefeasible interest, he does so on the basis of a prior registered interest which for all intents and purposes gives him the same powers as the registered proprietor of a freehold estate, should the latter default. Admittedly he does not possess a "certificate of title" in name as he would under the common law when in possession of the actual title deeds, but surely it is not the intention of the Act to place him in a worse position than he was at common law? However, that there was doubt as to the position of the registered mortgagee, and that confusion did exist regarding what the mortgagee actually acquired when exercising his power of sale is clearly demonstrated by the comments of Lilley Q.C. in *Oelkers* v. *Merry*:[47]

> "He [mortgagee] may sell the land though he has no interest in it. That is the most extraordinary part of it. There is nothing to show what interest he has when he recovers it, whether he holds it in fee simple or subject only to a power of sale under Sec. 57 ... When a mortgagee gains possession under Sec. 60 he is still only a mortgagee in possession ... the mortgagee is not a registered proprietor claiming under a prior certificate of title. The bill of mortgage gave no estate whatever in the land ... ".

However, despite this, it is submitted that the position of the registered mortgagee is really that of a registered proprietor of an interest under the Real Property Acts. The *Conroy* v. *Knox* reasoning based on s.60 and the comments in *Oelkers* v. *Merry* clearly disregard other provisions of the Real Property Acts. S.65 of the 1861 Act provides:

> "A registered mortgagee ... or the interest of a registered encumbrancee may be transferred to any person by memorandum of transfer ... and upon such memorandum of transfer being registered the estate or interest of the transferor as set forth in such transfer ... shall pass to the transferee".

Obviously a mortgagee is here regarded as having an "estate or interest" in the land. Furthermore, other sections seem to state or assume a similar position. A reading of ss. 23 and 98 of the 1861 Act regarding caveats speak of a person "claiming an estate or interest in any land", thus it seems clear that it is the intention of the Act to include a mortgagee who is not registered as having a sufficient interest to support a caveat.[48]

One of the greatest anomalies results[49] when we turn our attention to s.109. Clearly a registered proprietor of a freehold estate is able to create equities which are binding on himself. However, such equities are defeasible when transferred to a third party even if such third party has notice actual or constructive of these claims. What the *Conroy* v. *Knox* interpretation of s.109 in the

46. Power, Groom and Graham, "The Real Property Acts of Qld." (1902) at p.143. However, in the Addenda Et Errata p. (xxxi) the decision of *Conroy* v. *Knox* saying that a mortgagee was distinguishable from a transferee on the basis of s.60 is noted. [With some incredulity one would think!]
47. (1872) 2 Q.S.C.R. 193, 196, 196. Lilley Q.C.'s comments appear to be representative of the legal profession's antipathy towards the Real Property Acts at the time.
48. Also under s.30 1877 Act an equitable mortgagee [by deposit of title deeds] may caveat.
49. If warranty of title is not extended to a registered mortgagee.

light of s.60 does is to exclude the registered mortgagee from the definition of transferee, and consequently he would not gain an indefeasible title. That is, upon the mortgagor's default when the mortgagee attempted to exercise his power of sale, the mortgagee, if he had notice of claims or interests not protected by entry in the register, would take subject to such claims. Not only is this provision unique[50] but it leads to the following absurd anomaly. On the restrictive interpretation of transfer[51] if land under the Act is mortgaged and the mortgage then transferred, this transfer when registered passes an "estate or interest".[52] In other words, it is only the original mortgagee who is not protected by s.109 while any transferee of the mortgage from him is protected! With regard to the point on prior equities, Sykes[53] says such an interpretation shows the fallacy of regarding the notice section (s.109) as the sole bulwark against prior equities.[54] Whilst I am prepared to concede this latter point, I feel Professor Sykes does not really meet the inconsistency[55] which is a corollary of his interpretation of "transfer".

A basis for reform

Certainly statements in support of the accepted view of a Torrens mortgage that it takes effect by way of security only and does not operate as a "transfer" of the "estate or interest" charged, can be quite readily found.[56] Furthermore, it is not surprising that such views exist considering the fact that we have applied traditional legal concepts, the products of centuries of development, to an entirely new creature of statute: the Torrens system mortgage. Moreover, in strict theory, as far as these views go within the rigid definitions of the common law, they are probably very sound. What we require is a restatement in the form of a statutory definition of mortgage which recognizes the realities of a mortgagor-mortgagee relationship.

Put simply, I submit, it is this. When a registered proprietor of a freehold estate in land desires to mortgage such land, what he in effect does is to transfer to the Registrar the right to "create" a bill of mortgage in favour of the mortgagee. The Registrar is given authority to place the mortgagee on the Register as the "registered proprietor" of that interest. Consistent with the Sykes' view an interest is "created". However, two points need to be made. Firstly, the "creation" of this interest is dependent upon the "transfer" from the mortgagor/registered proprietor to the Registrar of the "right to create" the bill of mortgage. Accordingly, it could not be argued that the Registrar "creates" an interest without authority. Secondly, what the Registrar "creates" in the form of a bill of mortgage is not "created" out of thin air. It is equivalent exactly to that part of the mortgagor's estate that he has chosen to part with.

Perhaps the point may be clearer if put this way. The mortgagor/registered proprietor has an abstract bundle of proprietary rights attaching to his estate. When he authorizes the Registrar to create a bill of mortgage he impliedly parts

50. According to Sykes, op. cit., p.383, Queensland is the only State which confers benefits on a "transferee" in this restricted sense. Supra 10.
51. Aykes, op. cit., pp. 383-384.
52. By virtue of s.65. Discussed above.
53. Op. cit., 384.
54. Op. cit., 384. The gap is covered by ss. 44 and 126.
55. See note 57 infra.
56. D. Kerr, "The Principles of the Australian Lands Titles (Torrens) System", at pp. 356-7. J.E. Hogg, "Registration of Title to Land Throughout the Empire", at pp. 207-8, 236. Francis, "The Law and Practice Relating to Torrens Title in Australia" (Vol. 1), p.123.

with some of these propreitary rights via the Registrar to the mortgagee. In other words, the mortgage is a passive part of the mortgagor's estate until given life by the Registrar upon the authority of the mortgagor. The registered proprietor of those rights is the mortgagee—evidence of his rights or interest being noted on the certificate of title. It is upon registration of those "rights" or "interests" which arise pursuant to a transfer of obligations under a contract of loan between the mortgagor and mortgagee that the mortgagee becomes registered proprietor of same under s.44. His "title" to those interests is indefeasible. Considered from this point of view, it can certainly be said that the indefeasibility provisions of the Real Property Acts (Qld.) 1861-1975 apply to registered mortgagees.

Another argument that statutory warranty of title extends to interests like mortgages, as well as ownership of land, is that a mortgage constitutes an interest for the loss of which indemnity from the State funds can be had, and the warranty of title and the right to indemnity are in the nature of interchangeable rights.[58] I suggest that the "deprivation"[59] of any "estate or interest" in land will necessarily include a registered mortgage on the previous analysis. Hogg[60] points out that judicial decision has made it clear that indemnity can be recovered in respect of such an interest as a mortgage, as well as of the land itself.

In conclusion, I feel the courts would have little trouble in extending the indefeasibility provisions to registered mortgages. Hopefully this horrific collection of Acts will by then be re-drafted and consolidated—dare I suggest codified!

57. Surely the transferee from a mortgagee of the mortgage cannot be in any better position than the transferor.
58. If due to the misfeasance of the Registrar you cannot recover your land due to the conclusiveness of title provisions, then you have a right in the form of a monetary compensation.
59. S.126 and s.128 Real Property Acts (Qld.) 1861-1975.
60. Op. cit., p.202. He cites *Tolley & Co.* v. *Byrne* (1902) 28 V.L.R. 95.