

THE BASIS OF TITLE TO LAND

By JAMES DUNDAS WHITE, LL.D., M.P.

The policy of the land-value movement is to enforce the rights of the people to the land by requiring those who hold the land to pay to the community a rent or tax proportioned to the value of the land which they hold, whatever their titles may be. It aims at socialising the value of the land, and is not concerned directly with questions of title. As, however, questions of title are often raised, reference may be made to some leading features of title to land in England.

Title founded on Possession

An introduction to the subject may be found in the opening words of the chapter on "Title" in a well-known work, "Williams on Real Property" (22nd ed. 1914, p. 592):

"To have a good title to land is to have the essential part of ownership, namely, the right to maintain or recover possession of the land as against all others. In English law, all title to land is founded on possession. Thus a person who is in possession of land, although wrongfully, has a title to the land which is good against all except those who can show a better title; that is, can prove that they or their predecessors had earlier possession, of which they were wrongfully deprived."

Effect of mere Possession

This important proposition, which is at the root of title to land in England, was stated by Lord Chief Justice Cockburn in these words in the case of *Asher v. Whitlock*, 1865, 35 L.J. Q.B. 17, at p. 20:

"I take it to be established by authority that possession is good against all the world except the person who can show a better title than the one in possession."

Thus the law protects the mere possession of land as it protects the mere possession of a chattel—by maintaining the right of the possessor against all except those who can show a better title—and the person who seeks to recover land from the possessor must found his case not on the weakness of the possessor's title but on the strength of his own.

Limitation of Actions

The next point is that the considerations which have led to the placing of a time-limit on the recovery of debts generally have also led to the placing of a time-limit (though for a longer period) on the recovery of land. The present provision as regards land (other than land belonging to the Crown) is in the Real Property Limitation Act, 1874, which provides that

"No person shall make any entry or distress, or bring any action or suit to recover any land or rent, but within twelve years next after the time at which the right . . . shall have first accrued,"

with provisions allowing an additional period in case of the claimant being under age or subject to certain disabilities; but even in case of disabilities the land cannot be recovered after the expiration of more than thirty years from the accrual of the right. Thus, again, to quote "Williams on Real Property" (pp. 592-3):

"Not only does possession of land give a good title as against all but rightful owners (whose claim, as we have seen, is founded on prior possession), but it continually tends to bar the rights of all who have such prior title. For if those who are rightfully entitled to

land take no steps to assert their rights within the period prescribed by statute, their remedies will be barred and their titles extinguished. So that the possession of land will give a good title thereto as against all the world."

The General Position

These fundamental propositions were summarized thus by Lord Macnaghten in delivering the judgment of the Privy Council in the case of *Perry v. Clissold*, 1907, A.C. 73, at p. 79:

"It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is for ever extinguished, and the possessory owner acquires an absolute title."

Lessors and Lessees

Subject to these fundamental principles, where the relations between the persons interested in the land are based on a lease or any other contract, the terms of the contract are interpreted according to rules which have been gradually developed and are well known. A person cannot, of course, give a better title than he himself has and, speaking generally, the title of the lessee stands or falls with the title of the lessor. It would be out of place to make further reference to the relations between the persons interested in the same piece of land, or to refer in detail to the arrangements for the registration of title. The object is rather to indicate the principles on which existing titles to land rest as against persons who seek to challenge them.

Title and Title-deeds

Title, of course, must not be confounded with title-deeds, which are only a convenient kind of evidence. One person, for instance, may get title-deeds—such as a lease—from another who has no title-deeds and whose title is based on long possession; and a title based on clear evidence of undisputed possession for a sufficiently long period may be stronger than some of the titles which are encased in title-deeds. From the land-value standpoint, even the strongest title cannot confer more than the right of possession, subject to the possessor paying to the community a rent or tax corresponding to the value of the land, to which all have equal rights. So long as this payment is made, title to land is placed in its true position, as determining the possession of the land but not its ownership, which belongs inalienably to the people as a whole. As a technical point of law, land is not the subject of absolute ownership, but of tenure, the theory being that all land is held directly or indirectly of the Crown, as under the feudal system. In practice, however, the landholders gradually got rid of their obligations, and the present state of things is such that for all practical purposes title to land confers ownership so effectively that the words "owner" and "ownership" are in use not only colloquially, but even in legal books and judicial decisions as illustrated by the passages already quoted.

Possession and Ownership

These considerations show the futility of proposals to solve the land problem by calling upon "landowners" to produce their title-deeds, and show also that attempts

to deal with title are aimed at the wrong object. The defect is in the confusion between possession and ownership, which has enabled the persons who have titles to the land to deprive the others of their just rights. The problem is how to enable the community as a whole to obtain their heritage in the land. As Henry George said in "Progress and Poverty" (viii. 2):

"Let the individuals who now hold it still retain, if they want to, possession of what they are pleased to call *their* land. Let them continue to call it *their* land. Let them buy and sell, and bequeath and devise it. We may safely leave them the shell, if we take the kernel."

The kernel is the rent. Title, as we have seen, is founded on possession, and we need not challenge the law as to titles, provided that we regard them as relating to possession only and that we require the entitled persons to pay to the community a rent or tax proportioned to the value of the land which they hold as a condition of asserting their titles to it. This procedure would readjust the whole land system on the fundamental principle of justice, and incidentally, as the present writer has shown in his pamphlet on "A Scheme of Land Value Taxation," the proper application of it would do much to simplify title to land.

Note regarding Scots Law

What has been said relates to England, but the general principles are applicable to Scotland as well. The land laws of both countries are the outcome of the feudal system. There are, of course, important differences between them. In Scotland subinfeudation still continues under the name of feuing; the acquisition of an absolute title by long undisputed possession is subject to rules somewhat different from those already mentioned; and title to land is in a more satisfactory condition, owing to a long-established system of registration. But, notwithstanding these and other differences, there is no small similarity in essential features. In Scotland, as in England, possession—actual or constructive—occupies an important place; and it is significant that Professor Rankin's "Law of Land-Ownership in Scotland" begins with a chapter on Possession, which is followed by one on Possessory Remedies, which again is followed by one on Positive Prescription by lapse of time. The well-known English expression "seisin," which is still used to denote the possession of an estate of freehold, has its equivalent in the Scottish term "sasine"; and the Register of rights to the land is known as the Register of Sasines. More important still, from the present standpoint, is the way in which, in Scotland as in England, title to land has come to be regarded as evidence not merely of possession but of ownership, and this state of things has become so reflected in the language even of lawyers that Professor Rankin has used that word in the name of his standard work already mentioned. Our quarrel is not with the word, but with the state of things which the word aptly describes. In every country the land ought to be treated as the property of the people, and those who hold it should be required to pay the community a rent or tax corresponding to its value, whatever their titles may be.

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"ALLOTMENTS FOR ALL"

One of the most remarkable things of the war has been the extension of the allotment movement. The allotment holders up and down the country, now numbering over 1,000,000, have been driving home the lesson that the waste of land is a crime, and, as a result of this great activity among small growers, thousands of people, who perhaps never before gave heed to the land question, have now come to realise that the land, which is a social necessity, must, in the future, be put to its best and most effective use. In "Allotments for All," Mr. G. W. Butcher, Superintendent and Instructor of the Vacant Land Cultivation Society, tells the gripping story of the rise and progress of the movement, and of that part which has been played by the Vacant Land Cultivation Society. This Society was inaugurated by Mr. Joseph Fels in 1907, and until the war it made little progress, but when the war broke out and the necessity for conserving and exploiting our resources to the fullest extent became apparent, the V.L.C.S. made rapid, and, in a sense, extraordinary headway, until now some 8,000 allotment holders are under its charge. The Society also took a leading part in the formation of the London and Southern Federation of Allotment Holders and the National Union, and a feature of Mr. Butcher's book is the programme and demands of these bodies. The two principal demands are the wide extension of the movement on the principle that everyone willing and able to cultivate a piece of land should not be denied the opportunity, and also that the greatest possible measure of security of tenure should be extended to allotment workers. Mr. Butcher deals with the £ s. d. of allotments, the disposal of surplus produce, intensive culture, the methods by which allotments may be obtained, the organising of allotment societies, and co-operation among allotment workers, and he gives many timely hints which are the outcome of a wide and varied experience among several thousands of allotment holders. A valuable section contains the Cultivation of Lands Orders and the documents relating to them. It contains some interesting illustrations, one of which is a characteristic portrait of the late Mr. Joseph Fels. The book, which is published by Messrs. Allen & Unwin at 2s. net, and which may be had from the Vacant Land Cultivation Society, 8, Buckingham Street, Strand, W.C., may be recommended to all who are interested in the allotment movement.

Sir Arthur Yapp declared recently that the allotment holders of the country had saved the situation as far as food was concerned. The allotment movement has done an incalculable service to reform in demonstrating to townsmen and other sceptics what can be produced from the land by men who are unskilled in the arts of cultivating the soil. It has been demonstrated that to keep building sites unused is an act of criminal folly even from the point of view of the food they might produce, apart altogether from the service they would render to the community if put to their proper use. The allotment and housing phases of the land question will undoubtedly take a prominent place in political discussion after the war. The Vacant Land Cultivation Society is to be congratulated on the work it has done in educating public opinion on the land question while at the same time increasing the nation's food supply. Everyone interested in the land question should read the well-told story of its labours.

HOUSING

The Bradford Corporation Health Committee on 27th March passed several resolutions with reference to the new Government scheme of financing housing on a large scale. One of these resolutions called on the Government "to confer upon local authorities powers enabling them to acquire at reasonable prices any lands which may be needed for the purposes of housing schemes, and thus to relieve local authorities of the difficulties and financial burdens which will probably otherwise be encountered."

A correspondent writes: There is a Debating Society for the Upper Form at a well-known Secondary School for Boys in the North of London. The other day, sitting as a "Mock Parliament," on a motion by the Prime Minister that "the present rates of pay of all soldiers and sailors be doubled," the Home Secretary moved to add "and that a special tax upon the value of all land be imposed to meet the cost of the increase." This was unanimously agreed to.