

EARLY LAND DEALINGS IN TASMANIA **FROM SETTLEMENT TO 1827**

When the English settled in Australia in 1788, they brought with them their land law. This law had evolved over the 800 years since the Battle of Hastings and appeared to work well in England where there were already two County Registries and where land ownership was static and well known. In Australia all land was deemed to belong to the Crown and the Governors, as Crown representatives, made grants of land to private individuals. Subsequent ownership, however, became uncertain giving rise to fraudulent dealings as people came and went with limited knowledge of who owned what.

Tasmania was administered from Sydney during some of this period with the first land grants being issued to free settlers in 1805, the year after Collins settled in Hobart. Grants continued to be issued from Sydney until Governor Arthur began issuing them in Tasmania in 1826 (*However, refer paper on 'Void Grants and Located Land' in which it appears that grants commenced being issued from Hobart in 1820 by Governor Sorell*). With no Registry of Deeds in which to record land dealings until 1827, the settlement was left to deal with land ownership as best it could. There were no solicitors, other than convicts, as late as 1821 so the settlers were left to rely upon government clerks and other persons who practiced as conveyancers of land.

It was common practice for Grantees to sell their land before the grant to them had been issued. On issue, the grant would be handed to the purchaser, sometimes with details of the sale endorsed on the grant. It is not certain whether it was the practice in Van Diemens Land to send deeds to Sydney for registration; some deeds were registered in the Governor's Secretary's Office in Hobart. Probably some deeds were registered in both Hobart and Sydney and many were not registered at all.

Until Governor Lachlan Macquarie arrived in Hobart in 1811 with surveyor James Meehan the settlement had developed without plan to about 150 houses with narrow meandering muddy lanes and no control on building. Surveyor Meehan set out the main Hobart streets as they now appear and returned in 1813 to satisfy disputes and compensation brought about by the implementation of his plan. Many huts had to be removed as they stood in the way of proposed streets. Compensation was paid to owners from the Police Fund.

Deputy Surveyor General G.W. Evans and his staff were responsible for surveying and marking off town lots. Many lots were allocated to prisoners of ticket of leave status. These were not by way of leases conveying property

rights but as tickets of occupation which were rights, provided certain conditions were met, to erect a house and occupy a piece of Crown Land. In some cases, depending on the type of house built, leases were issued for terms of 14 or 21 years or Crown Grants were made.

In 1820 Commissioner Bigge arrived in Hobart to inquire into the governance, commerce and general practices of the colony, which included looking at the granting of Crown Land and the buying and selling of this land and by whom. The Commissioner found that there were people who drew up deeds and conveyances, but not professional men. He asked G.W. Evans why there were so many more houses built than were described in his survey map as being held under leases and upon what tenure they were held and granted. He was told that they were held by a verbal permission only to build given by Governor Sorell. Some had asked for leases and the majority of those persons considered that the permission to build was equal to grant or lease. These tickets of occupation could be sold with the permission of the Governor.

Publicity was given to land transactions by advertising in local newspapers in an effort to prevent dishonest dealings such as selling land twice or selling land while money was owing on mortgage. The following are some examples of advertising to give publicity to dealings prior to the setting up of the Registry of Deeds:

HOBART TOWN GAZETTE

6 January 1821

Warning by R.L. Murray, in consequence of an advertisement in the last Hobart Town Gazette of the proposed sale by auction of Col Davey's farms, that the farms are under mortgage to Mr. Birnie for over 1,000 pounds and proceedings for foreclosure of the farms is in due process in the Supreme Court.

7 December 1822

Caution: 10 acres in front of the farm now occupied by Silvester Lush, my husband, situate at the Black Bush having been legally transferred over to me by an instrument in writing, this is to caution the public against purchasing the 10 acres or any part.

8 October 1824

Notice: I hereby give notice that by a certain deed poll or instrument in writing bearing the date 22-5-1822 and duly registered, John Clapson of Kangaroo Point bargained sold and made over to me the undersigned all that allotment of ground at K/Pt bounded on the banks of Kang Bay with all buildings etc thereto

belonging for securing the payment of the sum of 30 pounds 10 shillings on the 22-5-1824 of which instrument all persons are required to take notice.

Ben Nokes.

22 June 1827

Caution: The public are cautioned against purchasing a grant of land from a person named George Hodgetts, situate at the Long Meadow near Launceston between the farms of Prosser and Townsend, the same being long since purchased and paid for by me.

Ed French.

There was always the problem of establishing whether or not the vendor had a legal title to sell and also where you would find someone to draw up a legally binding deed ? The affluent members of the community seemed to find ways and means of dealing with, or creating such problems. It is noticeable that these people appeared frequently in cases of dispute before the Caveat Board, in part by accumulating land, but also by creating a dispute with an owner in which their superior resources would win out. The Caveat Board was set up to hear and settle boundary and title disputes.

As early as 1800 Acting Governor King enacted the registration of legal documents, excepting land grants. It was enacted that no claim to property would be admitted by the court of civil jurisdiction unless a written agreement between the parties or under any entry of the transaction in books kept for that purpose at Sydney, Parramatta and Hawkesbury (be registered). The entries in the register of 1802 were very brief, the following are some examples:

No. 1 dated 1-3-1802 *Augustus Alt esq. to John Palmer esq. assignment by endorsement of Heritage Farm for 300 pounds sterling.*

No. 132 dated 22-1-1794 *David Collins to John Palmer of Surry Hill Farm, no quantity of acres specified, for 43 pounds sterling.*

The final entry is dated 10-11-1807 *Lease of Cudoris Farm House from Wlm Cuddy to Jno Smith 5 years at 16 pounds per year.*

This system of registration was satisfactory while the transactions were few, but as the population increased and interests being dealt with became more complex a more detailed system was required. The existing register also contained recordings other than land dealings and it was evident that a register specifically for land dealings was required, as in the Register Counties of England.

In 1827 Governor Arthur introduced the Tasmanian Registration of Deeds Act. Unlike the Torrens title system adopted across the Australian colonies in the mid 1800s, a documentary title to an estate in land depended upon the validity of every deed by which transactions in such land had been made. This meant that every time a dealing with land was prepared, a search and legal examination of the deeds forming the chain of title which comprised all prior dealings following on from the original grant (now a root of title more than 20 years old) was necessary.

There are some points of interest in this Act, beginning with its purpose set out prior to Section 1 as follows: *"Whereas it is expedient to prevent secret and fraudulent Conveyances in this Island and to provide means whereby the Title to Real Property may be more certainly known"*. Section 11 of the Act set out the penalties for the *"Registrar or any Clerk or person employed in the Register office (who) shall wilfully neglect or omit to number register or enter in the manner hereinbefore directed any memorial or certificate delivered into the said Office he shall for every such offence forfeit and be liable to pay to His Majesty his heirs and successors the penalty or sum of One hundred Pounds and be further liable in damages"* etc., and as if this was not deterrent enough, the Section continued *'And if the Registrar or any Clerk or person whatsoever shall wilfully destroy embezzle or secrete forge counterfeit raze deface or alter any memorial or any part thereof or any endorsement made thereon or any entry or registry thereof in any book in the said office with intent to defraud or injure any person or persons such Registrar Clerk or person so offending shall be (and be deemed to be) guilty of felony and being thereof duly convicted shall suffer death without benefit of clergy"*.

The exhaustive research conducted by Mr. John Marrison, upon which the foregoing is based and which has helped to paint a picture of land dealings prior to 1827, is gratefully acknowledged.

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(Compiled circa 2000 AD)*

Readers may also wish to refer to the article on the Land Titles Office website entitled [‘The Development of Land Titles in Tasmania’](#).