

ON
THE UTILITY
OF MAKING THE
ORDNANCE SURVEY

THE BASIS OF A
GENERAL REGISTER OF DEEDS & JUDGMENTS
IN IRELAND:

A PAPER READ BEFORE
THE DUBLIN STATISTICAL SOCIETY,

BY
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On the Utility of making the Ordnance Survey the basis of a General Register of Deeds and Judgments in Ireland.—By William Neilson Hancock, LL.D. Archbishop Whately's Professor of Political Economy in the University of Dublin; and Professor of Jurisprudence and Political Economy in the Queen's College, Belfast.

GENTLEMEN,—In treating of the subject of this paper, I propose to direct your attention to the consideration of the following questions:—

1st. On what principle of classification should a general register of acts and deeds relating to land be constructed?

2nd. Are our existing registers of deeds and judgments constructed on the best principle of classification?

3rd. If not, by what changes can the best system of classification be introduced into our registers of deeds and judgments?

As to the first question—on what principle of classification ought a general register of acts and deeds relating to land be constructed—it is obvious that the only mode of selecting between different principles of classification is to consider the object for which a general register is instituted, and from thence to discover by what principle of classification this object can be best attained. The necessity of a general register is thus proved by the Real Property Commissioners:—"In all civilized countries the title to land depends, in a great measure, on written documents, and the purchaser looks, and is empowered by law to look, for proof of the seller's right beyond the fact of his possession. But it is obvious that a documentary title cannot be complete unless the party to whom it is produced can be assured that no document which may defeat or alter the effect of those which are shown to him is kept out of sight. Hence it follows that means should be afforded by the law for the manifestation of all the documents necessary to complete the title, or for the protection of purchasers against the effect of any documents, which for want of the use of such means, have not been brought to their knowledge; in other words, that there should be a general register." From this proof we may deduce that the main object of a general register is "to protect fair purchasers against prior secret deeds."

If we inquire, then, how this object can be best effected, we shall find that it is by constructing the register in such a manner as to afford to a purchaser or mortgagee the greatest facility and security in searching for prior deeds.

To whatever extent a register is troublesome, expensive, and difficult to search, it is to that extent not merely useless but posi-

tively injurious; for, whilst the defects of the register prevent the purchaser discovering every claim to the land he is purchasing, the existence of the register gives to any claim that may escape his notice, a protection that would not otherwise be extended to it. When the delay, risk, and trouble of searching are so great as to prevent searches, in the case of small properties, the effect is to leave such properties without the protection of the register; or in other words, to deny to the poor that security which the law affords to the rich. It follows, therefore, that the test to be applied to the different principles of classification which may be adopted in constructing a register, is the facility of search which they respectively afford. That principle of classification which allows of searches being made with the least expense, delay, and risk, will be the best. Bearing this in mind, let us consider the different principles of classification that have been proposed or adopted. Of these I may enumerate five. Deeds and acts affecting land may be classified:—

1st. According to the date of registry of the deed or act, without reference to the names of parties, or the descriptions of the parcels of land affected by it.

2nd. According to the nature of the deed or act.

3rd. According to the names of the grantors and grantees.

4th. According to the titles which the deed or act affects.

5th. According to the estates or portions of land affected, the estates being identified and referred to by numbers set out on a map.

The classification according to the order of dates is very convenient for the purpose of registry. Nothing can be more simple than to record every act or deed in the order in which it is presented for registry; but for the purpose of search it is as defective as can be conceived, for the purchaser has to search the entire register in order to be secure against prior conveyances. This defect is so obvious, that it has been generally met by constructing indexes of names and indexes of places; or, in other words, combining the third and fifth principles of classification with the first.

The second principle of classification, that according to the nature of the deed or act, prevails to a considerable extent. Thus we have a register of deeds distinct from the register of judgments. And formerly there was a separate register of judgments in each of the superior courts, besides a register of crown bonds, another of recognizances, another of re-dockets and revivals of judgments. These have been incorporated in one office, but the books are still kept separate. Now the only effect of classifying charges on land, according to the nature of the deed or charge, is to divide the necessary search into a number of short searches, taken in the aggregate, equal to the long search of a single register; so that there is not the slightest saving or advantage as to searches from classifying deeds and charges in separate registers, according to the nature of the deed or charge, whilst the effect of

having two or more registry offices, instead of one, is to put the purchaser to the trouble of applying in two or three places for the information which he might obtain in one place.

The third principle of classification is that according to the names of the grantors and grantees. This is partially adopted wherever, as in Ireland, an index of names is used as a guide to a register classified according to the dates of the deeds.

The objections to such an index are well stated by the Real Property Commissioners:—"An index of the names of the grantors and grantees is the most natural and simple mode of reference, and it is not attended with many inconveniencies or with uncertainty, where the names are few; but the number of names which must appear in the index, for an extensive and populous district, renders this mode of reference burdensome and liable to failure. In order to secure safety, negative searches must be made in the name of every person who may have had any alienable interest in the estate through the whole period of the ownership of such person. The difficulties attending a search in such an index are increased by the occurrence of common names, because when there are two or more persons of the same name, the identity of the party cannot be ascertained without a reference to the document, and therefore it becomes necessary to inspect all the documents relating to any other person of the same name. A similar inconvenience arises where the same person has been entitled to several different estates; this frequently happens where any owner of the estate has been a builder or speculator in land, or where a large estate has been sold in lots, or let upon building leases. In these cases it cannot be ascertained without a reference to the document, whether it relate to the estate which is the object of the search, and consequently it becomes necessary to examine all the documents relating to every estate of the party. From these causes, where the title is extensive and complicated, the labour and expense of a search become enormous. In the index for Middlesex for one year, the names under one letter of the alphabet have filled nearly fifty pages, containing about thirty-nine names each. We have been told that a search is rarely made at the present offices, except from the time of the last purchase or mortgage; that such a limited and inadequate search for one title has occupied a solicitor and his clerk more than ten days; that one search has cost upwards of £200, and that in some cases where the estate has belonged to persons of very common names, or to speculative builders, the search has been considered impracticable." The objection to a registry classified or indexed by names of persons is, that the search never can be simplified or prevented from being dilatory; because to know what names to search for, the title to the land must be known, therefore the search cannot commence till after the examination of title is completed, so that the delay of the search is added to the delay of investigation of the title. Should the first search disclose any

deeds not previously known, the title must be re-examined before further searches can be directed. What a purchaser wants to know is, what deeds or acts affect the portion of land that he is buying. The method of ascertaining this information, which an index by names affords him is, that having ascertained from the title-deeds the names of all persons who, for sixty years, had any power of conveying, settling, or charging the land, he must search for all their acts, and having found all their acts, he must examine each of these separately, to ascertain whether it relates to the land in question. In any other subject such a round-about method of arriving at a simple result would not be tolerated.

The defects of the principles of classification, to which I have directed your attention, were fully perceived and acknowledged by the Real Property Commissioners; and as they were convinced of the importance of a general register, they proceeded to frame a plan for having it carried out. As several of them were eminent conveyancers, they seem to have taken a conveyancer's view of the subject; and, being accustomed to see deeds classified in abstracts of title, it occurred to them that a classification of titles would be the best basis for a register. They proposed, therefore, an elaborate system, by which all deeds were to be classified according to the titles they belonged to. The different titles were to be denoted by numbers or symbols. Such a plan would be certainly a great improvement on a registry by dates or names, but still it is open to serious objections. In the first place, it would be impossible to incorporate with it the registration of judgments and debts to the crown, or of wills, or commissions of bankruptcy, or conveyances to assignees of insolvent debtors; so that searches in separate registers of these documents, kept on the defective system of an index of names, would still have to be made. But even with regard to the deeds proposed to be classed scientifically, the system by symbols affords no protection to a purchaser against the risk of doubt as to the identification of parcels in deeds. It is manifest, therefore, that classification by titles is only a rude approximation to the result to be attained. It recognizes the necessity of classifying deeds according to the titles, or, in other words, to the lands that they affect; but then, instead of identifying the lands thus really, though not nominally, taken as the basis of classification, and marking them in a simple and lasting form on a map, it marks the title by an arbitrary symbol. This symbol no one can understand without examination of the deeds registered under it. So strongly did the commissioners feel this difficulty, that they contemplated the case of a man being entitled to property, and not knowing its symbol. And to enable him to execute a valid conveyance, whilst he was searching for his symbol, they proposed to enable parties to enter prohibitions for limited periods, although they thereby entailed on purchasers the necessity of searching a register of inhibitions in addition to the searches for judgments, wills, and commissions of bankruptcy; so

the system of registration by symbols would still expose the purchasers to great delay and expense in searching, and this delay would be added to the delay of investigating the title.

The last principle of classification which I mentioned is according to the estates or portions of land affected by the deeds or acts, the estates being identified and referred to by numbers set out on a map. In the first place it will naturally occur to you that every advantage which can be obtained by the system of symbols can be secured on this plan, for the deeds are classified in the same way in the one plan as in the other, only the name of each class of deeds, instead of being an arbitrary symbol, is the graphic description of the exact portions of the land actually affected by the deeds classified. The Real Property Commissioners have fairly stated the advantages of this principle of classification. They say, "Indexes referring to every different estate are not open to the objections which belong to indexes of names and places; they prevent the danger of error or omission in making searches, because all the documents relating to the title appear in one book, and may be seen in one view; they require as little trouble as possible in making the entries, because no more than one entry of any document is necessary, and they diminish the expense and delay attending the alienation of real property, by rendering unnecessary, in most cases, any personal search by the solicitor, because an office copy of the index relating to the estate will show all the documents affecting it." The system of registering deeds by reference to a map affords the most simple, complete, and perfect system of search. There is no delay looking for a symbol, or investigating what names to search for. The purchaser must know the name and local position of the land he is buying. He has only to order a copy of the register relating to that portion of land, and the copy can be made out whilst his solicitor is investigating the title. Under such a system there would be no occasion to have a separate register of wills and judgments, for an index of the names of owners of land would disclose at once all the property that a testator or creditor was entitled to, and there would, therefore, be no difficulty, under such a register, in abolishing the general lien of judgments, or of postponing the effect of a will in case the testator or his executors neglected to register it against the land affected by it. It appears, then, from a careful comparison of these five different principles of classification, that a register, based on a general map, is superior to every other kind of register, in that which is the test of the merits of such institutions, since it is the register under which searches can be made with the least expense, delay, and risk; or, in other words, under which a fair purchaser obtains, at the least cost, the most perfect protection against prior secret deeds.

Having concluded the consideration of the first question, I now propose to direct your attention to the second question:—Are our existing registers of deeds and judgments constructed on the best

principle of classification? In investigating this question, it will be only necessary to observe, as to the registry of judgments and similar charges, that such charges are registered in separate books, according to the nature of the charge; and that the registry office itself is separate from the registry office for deeds, instead of being incorporated with it. In the register of deeds, the means of search used is an index of names, with a subsidiary index of places. The objections to an index of names have been already noticed. An index of places, when the places are merely counties, baronies, or other large descriptions, only serves as an assistance or check in searching, but never dispenses with the necessity of searching the index of names. Unless the names of estates or buildings be made compulsory, or their changes authenticated, an index of places may often mislead, for nothing is more common than to change the name of a country residence, and after some time it may be described in a deed by the new name, which has no connexion with the old name.

The third question for consideration is, by what changes can the best system of classification be introduced into our registers for deeds and judgments?

From the conclusions we have arrived at, it is manifest that the introduction of a system of classification based on a reference to a map is the first step required for the improvement of our registers. The only point to investigate is, whether the Ordnance Survey is suited to be used as such a basis of reference; but it clearly is so adapted, for the survey is used to ascertain boundaries for all public purposes; it is also extensively used by private parties. The townland maps are complete for all Ireland, on which the name of every townland is marked, with the number of acres contained in it. From the structure of the maps, they afford the greatest facility for having tenements marked on them as well as townlands, for all the boundaries of tenements are on the townland sheets, except in some of the northern counties, which were first published, and on which these boundaries are now being inserted. These boundary lines of the tenements are all laid down in brass on the plates from which the maps are taken, so as to be of a permanent and unalterable character. The map of Dublin is on a very large scale, and shows how the distinct tenements in large cities can be marked on the ordnance sheets. The materials exist for having every other town in Ireland laid down on the same scale. Now if the officers of the survey were authorised to mark out on sheets, to be deposited in the registry office, the boundaries of distinct tenements, less than townlands, and to distinguish such tenements by numbers or letters, or both, it might then be enacted that all townlands should be sufficiently described by using the name marked in the Ordnance Survey; and that all tenements should be sufficiently described by using the name of the townland, and the number or letter distinguishing such tenement on the map deposited at the registry office; that the different

interests in the same land, arising from leases and sub-leases should be distinguished by calling such demised interests leasehold, first sub-leasehold, second sub-leasehold, and third sub-leasehold respectively. I may observe that the chief reason assigned by the Real Property Commissioners for not considering the plan of registering land with reference to a general map was the expense of making such a map; but in Ireland this expense has, since their report, been incurred.

The next change, after adopting the survey as a basis, would be in the law with regard to the registration of deeds. By the registry acts memorials of all deeds are required to be registered. The memorials are required to contain the names and additions of all the parties to the deed, and the names of counties, baronies, cities, towns corporate, parishes, townships, hamlets, villages, and precincts where the lands are situated. In the last Registry Act, 2d and 3d William IV., c. 87, s. 29, there are more explicit provisions on this subject, by which it is required that in every memorial there shall be specified the county and barony in which the lands, and every of them, to be affected by registering such memorial, are by the deed stated to be situated; and there is a power of supplying the omission in any deed by affidavit. Now, legislative provision might be made that memorials be required to contain the names not only of the parties to the deed, but of all parties taking any estate or interest under it, on which judgments could attach, and of all trustees and other parties, who, in consequence of the deed, should receive notice of any sale of the lands; that memorials be required to contain the residences of all such persons in the same manner as each memorandum of a judgment is required to contain such residences—that parties be enabled to record a change of residence—that notice at the registered residence be conclusive on all parties for the purposes of a sale—that memorials be required to contain the names of the townlands and numbers of the tenements less than townlands, both taken from the Ordnance Survey, with the numbers of the ordnance sheets, and the interest, whether freehold or leasehold, or sub-leasehold, of any degree in such townlands or tenements, to be affected by the registering of such memorial, and that no other description of the lands to be affected be required—that such memorial be registered as well against the name of every grantor in such deed, as also against the townlands and tenements named therein, and in a separate index against the grantees, taking any estate or interest on which judgments can attach. The next subject to be considered would be the changes in the law with regard to judgments. On this point it is not necessary to enter into the general question whether judgments should be allowed to be a permanent charge on land. It is only necessary to point out what changes in the law are sufficient to secure the object of having a single register of all the deeds and acts relating to land classified on the basis of a general map. If it be con-

sidered politic to allow judgments to remain a permanent charge on land, there can be no hardship in requiring the judgment creditor to search for the land which he wants to have a charge on, particularly as the new register would afford the means of discovering at once all the lands on which the judgment could attach.

As to the changes with regard to the registration of judgments; at present, under the provisions of Sir Edward Sugden's act for the registration of judgments, 7 and 8 Vic. c. 90, s. 4, no judgment or similiar charge can affect any lands as to purchasers, mortgagees, or creditors, unless and until a minute or memorandum has been left with the officer appointed under that act. And the memorandum is required to contain the name or title of the cause or matter in which the same shall have been made or pronounced; and the names, and the usual or last place of abode, and title, trade, or profession of the plaintiff, if there be such; and of the defendant or person whose estate is intended to be affected thereby; and the court in which such judgment, rule, or order shall have been pronounced; and the date of the same; and the amount of the debt, damages, costs, and moneys thereby recovered or ordered to be paid. Now it might be enacted, that the memorandum of every future judgment or similar charge should be required to contain the names of the townlands, and the numbers of the tenements less than townlands, both taken from the Ordnance Survey, with the numbers of the Ordnance sheets, and the interest, whether freehold, or leasehold, or sub-leasehold of any degree, in such townlands or tenements on which such judgment was intended to be a charge—that every such memorandum should be registered as well against the name of the defendant or person whose estate was intended to be affected, as also against the townlands or tenements named therein—that the residence of the plaintiff should be registered under the townlands and tenements to be charged, and that every notice sent to such plaintiff at such residence should be sufficiently served on him—that the plaintiff might, on change of residence, apply to registrar, and have his new residence entered—that in case the defendant, or person whose estate was to be affected by said judgment, should become entitled to any lands not mentioned in the memorandum first registered, the plaintiff might present a further memorandum, mentioning such lands, and have the judgment registered against them.

The effect of the adoption of these suggestions would be to get rid of the delay and cost of negative searches, which must now be incurred on every sale of every portion of land. The cost does not make much difference in large sales, but on small sales it is a serious impediment to transfer. The delay on every sale, however simple, arising from searches for judgments alone, is at present a fortnight. Such would be the effect in every case; but there is a large class of cases where the effect would be still more beneficial

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If a search for judgments be directed against a person having the misfortune of possessing a common name, then the search discloses a number of judgments having nothing to do with the land to be sold, and great expense and delay arise in satisfying the purchaser as to all these judgments. These changes would also enable the cost and delay of chancery proceedings to be diminished without any infringement of the principles of equity or of the interests of suitors; as the names, and residences, and amount of charges of all judgment creditors, and other persons interested in any lands, would be disclosed in the first instance, without any reference to a Master to ascertain them. As to deeds and judgments registered before a change in the law was adopted, a period, say of one or two years, should be given to have them re-registered in the new form. The register might be so arranged, that the names and residences of parties having judgments should be public, and the amount should be private. The most important effect of the alterations in the registry of judgments and of deeds would be, that a foundation would be laid for applying the doctrine of market overt to land. As the registry would disclose, with respect to each portion of land, the names and residences of all parties entitled to notice on its sale; it might be safely enacted that a public sale of such land, after a due notice to all parties on the register, by a party having power of sale, should confer a parliamentary title; the purchase money, if any party required it, being lodged in the Court of Chancery.

In conclusion, let me observe that it is not easy to exaggerate the importance of the subject which I have thus ventured, ~~in a very imperfect manner,~~ to bring under your notice; whether we consider it as a subject of general jurisprudence, or as one of immediate pressing importance in the present social condition of Ireland. As a branch of jurisprudence, the Real Property Commissioners state, with regard to a general registry: "This has appeared to us to exceed in magnitude and importance all the other subjects within the scope of our commission; it has excited general interest, and we have found it to be so connected with almost every part of the law of real property, that the nature and details of any improvements to be proposed by us must greatly depend on the question whether all deeds and instruments affecting the title to land shall be registered, or whether the security of title is still to rest on other expedients."

But the question of a general register is also of immediate pressing importance; for the application of political economy to an investigation of the causes of the present state of agriculture in Ireland, and of the distress consequent on that state, has shown that of those causes which are within human control, of those causes which legislation can remove, and of those causes, consequently, for which the intelligent portion of the community are responsible, the chief sources of distress are the legal impediments to the transfer of land, and the legal impediments to the applica-

tion of capital to agricultural improvements. But the basis of every successful attempt to remove such impediments must be a general register of land by reference to a public map. And when we hear so much of the natural resources of Ireland that are neglected, and of the indolence of the poor in not taking advantage of those gifts of nature, what can we say of the intelligent and influential portion of the community, if an artificial resource of such value as the Ordnance Survey, not a gift of nature, but created by well-directed human ability and enlightenment, created too at great public expense, is left, so far as the formation of a public register is concerned, entirely unused ? /