ON

THE BEST MEANS

OF

GIVING INCREASED FACILITY

TO THE

TRANSFER OF LAND:

A PAPER READ BEFORE

THE DUBLIN STATISTICAL SOCIETY,

ON WEDNESDAY, FEBRUARY 23RD, 1853.

BY

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DUBLIN STATISTICAL SOCIETY.

THIS society was established in November, 1847, for the purpose of promoting the study of Statistical and Economical Science. The meetings are held on the third Monday in each month, from November till June, inclusive, at 8, P. M. The business is transacted by members reading written communications on subjects of Statistical and Economical Science. No communication is read unless two members of the council certify that they consider it in accordance with the rules and objects of the society. The reading of each paper, unless by express permission of the council previously obtained, is limited to *half an hour*.

Applications for leave to read papers should be made to the secretaries at least a *week* previously to the meeting.

Proposals of candidate members should be sent to the secretaries at least a *fortnight* previously to the meeting.

The subscription to the society is one pound entrance, and *ten shillings* per annum.

On the best means of giving increased facility to the transfer of land.—By Conway E. Dobbs, Jun. Esq., Barrister-at-law.

Amongst all the various sources of national wealth, undoubtedly land is the one of most importance; and though we may not be disposed to go the length of the school of French economists who regarded it as the only real wealth, and those employed in its cultivation as the only profitable labourers, still it is impossible not to regard it as the foundation and support of all others. It was in the surplus produce of the soil that manufactures first found its capital, and it was amongst those who owned that surplus that manufacturers found their purchasers. And if at the present day the enormous value of a foreign trade, and the accumulated wealth of our manufacturers have appeared to make those other sources of wealth apparent rivals to the land in the production of national prosperity, it must never be forgotten how precarious and uncertain their continued existence as such must ever be, when compared with the land. Five hundred years ago, Italy was the emporium of wealth and the trading mart of Europe; her merchants were princes, and the seats of her foreign commerce were the envy and admiration of the world, and even in their present decay still attest the wealth and magnificence they once possessed. Where now are the fleets that once crowded their ports and circulated the wealth of the world? But amidst the decay and desolation that have befallen those marts of commerce and of wealth, the material prosperity and well-being of the inhabitants of those noble provinces has scarcely diminished. In agricultural production the plains of Lombardy still are the admiration of strangers, and support a teeming population in abundance. In Belgium, too, a similar revolution has taken place. In the middle ages the manufacturers of that wealthy province supplied the wants of all Europe, and rendered that country the most flourishing in the world. Many of those manufactures have disappeared; Utrecht, Bruges, and Liege possess not a tithe of their ancient population; and their town halls, though still the admiration of travellers, no longer resound with the busy hum of men. But though manufacturing industry has deserted these its ancient seats, and found new channels to flow in, in her agriculture Belgium still exhibits an instance of prosperity almost unrivalled, and in its successful pursuit enjoys a wealth and maintains a position only second to that it possessed in its palmiest days of manufacturing prosperity. Have we any security against similar revolutions? The emancipation of the slaves in the United States, or the destruction of the cotton-plant by natural causes, would close the factories of

Lancashire, and consign half the vessels that enter the Mersey to inactivity. The loss of our Indian empire would depopulate whole districts of London; but amidst all these losses and changes, the fertile soil of these islands and their agricultural wealth would still secure Great Britain an eminent position among the nations of the world; and if no longer the mistress of the seas, and by her colonies embracing all parts of the world in her empire, she might still be the residence of a happy and contented nation.

These considerations, I trust, will not be deemed altogether out of place in a paper in which I purpose to call your attention to the important enquiry, of the extent to which property in land is depreciated by the difficulties in the way of its transfer, and to the consideration of the means by which those difficulties may be most effectually removed.

Land, like all other commodities, is valuable to its possessors as a subject of sale; like many other commodities, but to a greater extent than any other, it is also valuable as affording to its possessor the means of raising money upon its security; and in common, with all commodities partaking of the nature of raw material, it is capable of augmentation in value by the application of industry and capital. It presents itself, therefore, to our consideration in a greater variety of forms than perhaps any other article of value; and its possessors are interested in the application of sound principles to it, to an extent that belongs to none other. If by the operation of injudicious laws, or by any other cause, its marketable value is depreciated, its possessors suffer to the extent of that depreciation. If by the same causes the capitalist in making advances on its security, requires a greater amount of interest for the loan of his money than he would in the case of loans on other property of equal value, the possessor of land of course is a loser by the difference. And if, by similar causes, the application of capital and industry to its improvement is retarded or prevented, and the full development of its intrinsic capabilities interfered with, the possessor of course is a sufferer; and with him the whole community, who are necessarily interested in the increased productiveness of the soil, and in the amount of food obtained from it. We believe that in all these ways the landowner is affected, and the nature and extent of that loss I shall briefly notice.

There are two species of property which in this country afford the capitalist the means of making permanent investment, land and the funds. Of these, undoubtedly the land would appear to offer the greatest amount of security as a permanent investment; the payment of the dividends on the national debt is more or less dependant on public credit and commercial prosperity; the vicissitudes of trade or national disaster might sweep away altogether that species of property. Not so with land; its value must continue until these countries return to their primeval state of forest and bog. Again, the last hundred years has seen the rental derived from land progressively increase; and if that progressive increase has been stayed

for the last few years, there are not wanting indications to show that, as in former years, increased population will be accompanied again by a rise in the value of land. On the other hand, the interest on the national debt has during the same period gradually diminished; the funds, which once yielded an annual dividend of five per cent. now yield but three per cent; and many anticipate a further reduction.

With these facts present to our knowledge, surely we might expect that in the market land would produce a greater amount of purchase money on its annual returns than the funds Now, what is the fact? At the present moment we find the funds in the market producing thirty-four years purchase on the annual income; whilst land, which, as we have already observed, on every principle that governs value should command the highest price, yields to its possessor under the most favourable circumstances not more than twenty-five years' purchase. Will it be said that the nature of land as an investment causes this difference? To this assertion, if made, we have a ready answer in the comparative value that land and the funds bear in other countries In Belgium, we are told it is not unusual to give as much as fifty years' purchase for land, and in France very usual to give forty-five years' purchase, in Switzerland forty, and in many other parts from thirty-five to forty. Whilst, on the other hand, the price of the three per cent. rentes in France are always less than the three per cents in London; and in Belgium a similar difference exists in favour of England, and yet in England there is more stock or funded property and less land than in France; and as the land is more thickly inhabited, it might reasonably be inferred that there would be a better market for it, greater competition, and a higher price. And though the value of this comparison may be somewhat diminished by the consideration that the stability of government in England is greater than in France, still it would not account for so marked a difference

In dealing with land as a security for money, we find the same discrepancy between the inference we would draw from general considerations as to land, and the facts as they come before our our notice in the daily transactions of life. Upon a deposit of stock, the banks at the present moment will discount freely at 3 per cent; whilst the owner of land, if he goes into the market as a borrower, cannot raise money on the most unexceptionable security on better terms than 4 per cent., and if the sum required be a small one, it cannot be obtained at less than 5 per cent. And when we add to this the expenses of investigation of title, which all fall upon the borrower, it is manifest that as a security for money, particularly small sums, land is nearly valueless; and the owner of the largest estate most frequently finds it more advantageous to offer merely his personal security than undertake to pledge his lands.

Again, in dealing with land as raw material, and obtaining for it the proper application of industry and capital, the disadvantages under which the landowner labours have so often been dwelt upon

in this Society, and the public mind is so fully alive to it, that I feel it would be useless to do more than to allude to it in passing.

Thus we see that in every particular, as an object of sale, as a security for money, as a material for the investment of industry and capital, land is under various disadvantages which unduly depress it in the market, and in their consequences inflict serious injury on the community. Whence, then, do these disadvantages arise? And are we right in attributing them to the state of the law as applicable to the transfer of land? In dealing with land, what is the language of the law to the landowner? It is this. Before you can dispose of your land either by sale or mortgage, you must show a sixty years' title to it; that is to say, you must show that all the incumbrances which have affected it during that period have been paid off. You must verify all the facts connected with it, as births, deaths, &c., by legal evidence; and you must show that either you or those over whom you have control can convey to the purchaser or mortgagee every particle of what are called the legal and equitable estates. Now, you must do this in every case of sale, whether the land be incumbered or unincumbered; and although, having 1,000 acres, you wish only to sell one acre. Again, the same estate is brought into the market, and although the former purchaser had ascertained its adventures for sixty years previous to his purchase, on the re-sale the same tedious narrative of undisputed facts is subjected to the critical acuteness of another counsel. But suppose even the second purchaser satisfied, if afterwards he wishes to raise money by way of mortgage, the mortgagee goes into the same inquiries. Every fact, though undisputed, must again be affirmatively proved, whether the money to be borrowed is wanted for a short or a long period, whether the amount be £100 or £10,000. And the mortgagor, though he may think he borrows the money for 4 or 5 per cent., if he will estimate the expenses of investigation of the title, (which are always paid by him) will find that he really pays 10 per cent. or more for the loan he obtains. Nor does it end here; the mortgage money is called in; the same investigation of title again takes place by another person; the same, or nearly the same expense is incurred It is easy to see how this state of the law must affect the value of land, and more especially the smaller proprietors of it. Practically speaking, small properties cannot be dealt with except as articles of luxury. The large proprietor is debarred from selling, and the poor man from buying by the expenses of the transfer. I may also add, that it is the same circumstance that in all cases of tenants dealing for leases obliges them to rest content with the evidence of their landlord's title that is afforded by possession; and exposes them to that insecurity which all agree has operated as a barrier to the expenditure of capital on land, and the development of its capabilities.

Such are the difficulties interposed to the transfer of land; but before entering upon a consideration of how these evils can be obviated, I think it important to call attention to the course which

public opinion has taken on this subject for the last twenty years. In 1828, a memorable speech was made by Mr. Brougham in the House of Commons, on the general question of law reform; and in consequence of his statement, commissioners were appointed to investigate the subject, and to one of these commissions the state of real property was specially referred. Their inquiries resulted in a recommendation of a general registry, and the larger portion of their report was taken up in the statement of the details by which that recommendation was to be given effect to. The plan which they adopted was one that proceeded from Mr. Duval, the eminent conveyancer, and was founded on a classification of deeds under separate heads, with reference to title; and its object was declared to be, to present at one view all the documentary evidence which a party might have occasion to see. As that plan has been to a great extent embodied in the new Registry Act for Ireland, I shall have occasion to advert to it again, but at present will not stop to consider it. The fate of this plan in England is, however, somewhat remarkable. A bill founded upon it, and prepared by Mr. Duval, was brought into the House of Commons in 1830. Parliament, however, was dissolved before it proceeded to a second reading. The bill, with some modifications, was again presented to the House in 1831; but parliament was prorogued before it arrived at a second reading. In the next session it was again brought forward, and a select committee was appointed by the House of Commons in April, 1832, to consider the expediency of a general registry. Before that committee the objections to registration in general, and to Mr Duval's plan in particular, were fully stated and considered, and the committee unanimously reported their opinion as follows:—

"After mature consideration, your committee are unanimously of opinion, that a general registry of all deeds and instruments affecting lands will be of decided advantage as regards *large purchases*. With respect to smaller transactions, especially those in the country, in which the more cumbrous and intricate proceedings of the law are generally dispensed with, your committee believe that the same facility which would be afforded by a general registry in dealings with large estates applies equally to smaller estates. Yet, inasmuch as the expense of registration will be more severely felt by the latter than the former, and as sales of small estates are so much more numerous than transfers of great properties, your committee feel some doubt whether the benefits to be derived will more than compensate for the certain expense to be incurred."

Such was the report that proceeded from the committee; and so great at the same time was the popular outcry against the proposed measure, that it was made a condition with Lord Campbell, who was about that time appointed solicitor-general, that he should not press any measure on the subject.

In 1833, a bill was brought forward by Mr. Brougham, the brother of the then Chancellor, but was opposed by Mr. Strickland, the member for Yorkshire, who had also been a member of the

Committee, and nothing was done. In 1834, the same bill was brought forward, but was opposed by Mr. Sandford, another member of the Committee, on the ground of the additional expense that it would entail on agriculturists; who would, he said, be prevented by its operation from obtaining temporary loans on the deposit of their title deeds. Another member, Mr. Prynne, also objected to it that individuals would be put to great additional expense in transactions involving small sums. On a second reading, the bill was rejected by a majority of 44, though on a former occasion its rejection was only by 13.

Thus the question remained until the session of 1846. In that year, the House of Lords appointed a committee to consider the burdens upon land. Amongst the subjects brought before that committee, as exercising a depreciating influence on the value of landed property, was the enormous expense of transfers; and some of the evidence received by them is worth stating, as affording a clue to the grounds on which they made their subsequent report.

To the question, "Do you not consider one great burden on the landowner to be the various expenses attending conveyancing?"

Mr. Blamire, Tithe Commissioner, answers "Certainly."

Mr. James Stewart gives the same answer; and Mr Senior, a Master in Chancery, says, "It imposes great difficulties, great expenses, great delay, and great uncertainty; that it naturally depreciates land in the market"

Mr. Baxter, a solicitor, says "he had made out an estimate of the expense per cent. upon sales and mortgages. With regard to sales, he found that upon a sale of £50 value the expenses, including stamps, amounted to 30 per cent.; upon a sale of £100 value expenses amouuted to 15 per cent.; upon a sale of £600 value to 5 per cent.; and onwards, no matter how large a sum up to £100,000, 4 per cent. On mortgages the expense is rather less; upon smaller sums it is equal, but upon larger sums it is much less."

Mr Senior says he thinks "that there is really little of defective titles; almost all seem to be safe for holding, but the difficulty is to transfer them. The fact is, there is scarcely any title that is marketable." And when asked, are the expenses of making out titles capable of any *a priori* calculation, he says, "Not in the least: it may cost just as much to show a title to a single acre as to a whole estate. All that a party selling knows is, that there will be an attorney's bill; how great it will be he cannot guess" Again, when asked if he attributed the greater amount of purchase-money of land abroad to the expenses of transfer at home, he says, "Certainly; a greater number of years purchase abroad could not exist unless there were greater facilities of transfer. It would have been impossible to have sales of small bits of land, if our English system of conveyancing had existed. And I am inclined to think that one of the principal reasons for the difference of value must be the different laws of conveyancing. Our system, in the first place, much diminishes the value; and in the second place, excludes all

smaller purchasers. In Belgium, where there is quite as much facility for the employment of money in commerce and manufactures as here, the value of land is higher than even in France." There is much more evidence tending to the same effect.

The committee* in their report say, "they are convinced that the marketable value of real property was seriously diminished by the tedious and expensive process attending its transfer. That it was a work of time to raise money on landed security; and the law expenses incident to the transactions were a considerable addition to the interest on the sum borrowed. That the transfer of the debt or mortgage was also attended with serious expense to the mortgagor; the process of discharging the land from one loan and subjecting it to another being both heavy burdens upon the proprietor." And they state that they are "desirous to impress on the House the necessity of a thorough revision of the whole subject of conveyancing, and the disuse of the present prolix, expensive, and vexatious system"

Lord Monteagle, who it appears prepared a separate report on the same subject, says:—"The expense of searches, of making out title, and transferring legal property, is shown not only to be grievous in its amount, but partial and unjust in its pressure on small property. Being also uncertain and incapable of any previous estimate, it involves every purchaser or seller in an undefined obligation. It also affects the credit of the landowner, by rendering the mortgage as well as the sale of lands difficult and ruinous. This affects the selling value of the land; more especially as it excludes from the market the smaller, and therefore the more numerous purchasers."

In consequence of this report of the Lords' Committee, a new commission was issued, to consider the best means of removing the burdens pressing on land by reason of the state of the law. In their report, the commissioners amongst other observations say, "that the fear of the delay as well as of the expense is a more effective cause of the depreciation of land, than the apprehension that a title may be insecure after the completion of a sale or mortgage. The experience of the delay especially, which so often attends sales and transfers, by deterring some persons from making investments in land, and others from lending money on mortgage, materially diminishes the value of landed property." The report then recommends a plan of registration similar to that brought forward by Mr Duval, with the addition of a map for reference; and much of their report is occupied with pointing out the advantages to be derived from the use of a map, and from its adoption, they anticipate a diminution in the expense of conveyances It is to be observed, that the commissioners who sat on this commission con-

* The committee comprised the names of the Dukes of Buccleugh, Richmond, and Buckingham, the Marquises of Lansdowne and Salisbury, the Earls of Haddington, Hardwicke, Clarendon, Derby, Grey, Ellenborough, and Dalhousie, Lords Cottenham, Brougham, and Monteagle.

sidered themselves precluded by the terms of reference to them, from considering any mode of registration under which the entry in the registry would afford a security not only against subsequent acts, but would also afford an assurance that the parties had the interest they possessed to convey; observing that, "Registration, to effect this, would necessarily be a judicial act; and to introduce it, means must be provided for ascertaining the title which the register is to tranfer, or to warrant. Without assuming a previous simplification of the rights to land, the question of the expediency of the system of judicial registration cannot be usefully entertained." And they add, "We have not thought ourselves warranted by the terms of our commission in entering upon the consideration of the very extensive changes in the law by which such a system of registration must obviously be preceded."

Before this report had issued from the commission, in the year 1849 a bill was brought into the House of Commons by a well-known country gentleman, Mr. H. Drummond, the member for Surrey; and the speech delivered by Mr. Drummond on that occasion is important, as shewing the views that extensive landowners were then disposed to take upon the subject. Mr. Drummond says, "I contend, unless you will cut up the whole system by the roots, you will do nothing. What I want to make the country gentlemen understand is this, that it is their business to deliver themselves out of the hands of the solicitors. You are (he says) a solicitor-ridden people. The landlords must not rest satisfied, until they have obtained the means of transferring any portion of their estates which they please to sell, in as easy and simple a manner as they could transfer stock in the books of the Bank of England. The principle, then, upon which the House has now to decide is this; first, that there shall be a registration of deeds and lands; secondly, that sales shall take place by transfer in the books of the register, just as stock is transferred and sale made in a bank. Every other method is futile. *Registration, except with the view of transfers in the book*, is merely making a catalogue of deeds, or appointing some building in which they shall be deposited." And he adds, "My object in bringing forward this measure is to endeavour to enhance the value of landed property, and to enable landed proprietors more easily to effect sales of small portions, in order to liberate them out of their difficulties, and to give them facilities for investing more capital in the cultivation of their lands." Such were the sentiments of a leading country gentleman; and his bill, which was warmly supported by the present Vice Chancellor Page Wood, was read a second time, and passed by a majority of ten. As, however, the details of that measure were defective, and it was not taken up by government, it made no further progress.

In 1851, the subject was again taken up by Lord Campbell, who introduced a bill into the House of Lords for a general registry, the machinery of which was in accordance with the report of the last real property commission, and proposed to combine Mr. Duval's

plan with references to maps. In committee, however, the clauses relative to maps were thrown out, and though many of the Lords objected to the bill, on the ground of the publicity it would give to their deeds, and strongly opposed the deposit of deeds instead of memorials, the bill was read a third time and sent down to the Commons. In the House of Commons, Sir James Graham presented a petition from the Society of Solicitors against its further progress. In that petition the objections they made were these; "That the bill as sent down would render it necessary to have all deeds in duplicate. That it would lead to a disclosure of family arrangements and settlements which they deemed most unsafe. That the experience of the registration in Middlesex afforded a very doubtful example. That the bill would be adverse to the *sale and purchase* of small properties in land." The bill was postponed, and was not brought forward again in 1852. Since the re-assembling of parliament Mr. Drummond has brought forward a bill for the same purpose as his former one. In introducing the bill, he says, "What he wished was to have a registration of titles, which was a thing totally distinct from a registration of deeds." And with regard to Lord Campbell's bill of 1851, he says, "The more he examined it the more he was convinced that while that bill would have made a great reform in practice, it would only have substituted one cumbrous machinery for another, and would have saddled the owners of land with great expense." In the House of Lords, the Lord Chancellor has introduced a registry bill, which, from his statement, agrees in its main features with Lord Campbell's former bill.

Such has been the course that discussion has taken on this important question for the last twenty years. It cannot fail to strike every person who watches the successive stages of its progress, that the conviction has gradually been taking hold of the public mind, that means must be found for facilitating the transfer of land and diminishing its expenses. The advocacy of a general register of deeds, as affording additional security to titles, no longer occupies the first place in public attention; but its supposed efficiency in removing the impediments that exist to the speedy transfer of land, have now come to form its principal recommendation in the eyes of its supporters. It is now regarded simply as a means to an end, and it is by its tendency to attain that end that all now profess to test its merits. I shall therefore now proceed to enquire how far a general register of deeds will accomplish the proposed object, namely, simplicity of transfer; and for this purpose I shall refer to two sources of evidence: the one what, according to its advocates, a general register of deeds can be expected to effect; and secondly, what, according to our experience in Ireland, it has actually accomplished. The report of the commission that issued in 1829, and which strongly recommended the establishment of a general register, after stating generally that "protection against the suppression of documentary evidence is all that is professed to be effected by the existing registers

in England and Ireland," observes "That by a register framed upon the plan proposed by them this object would be obtained with much less difficulty and risk of failure; and that there were collateral advantages belonging to their proposal, which the existing registers did not possess." At the close of their report, they give the following summary of the principal benefits which would be produced immediately or consequentially by a general register.

1st. Titles will be rendered secure against the fraudulent suppression of documents, and against their non-production through ignorance, mistake, or accident.

2nd. Titles will be simplified. Legal estates in trustees will not be kept on foot, and transferred after the purposes of their creation shall have been answered. Thus, there shall be only one title to an estate instead of many.

3rd. Titles will not be exposed to the present hazard from the equitable doctrine of notice.

4th Titles will not be liable to be defeated in consequence of the loss or destruction of documents.

6th. Forgery of deeds will become more perilous.

7th. Difficulty and expense of giving deeds in evidence in courts of justice will be greatly diminished.

8th. Attempts at fraud by concealing prior estates and incumbrances, attempts at forgery of deeds, and attempts at suppressing and defeating claims by false testimony, will be prevented or materially checked.

9th. Titles will cease to be unmarketable, from the owners not being able to produce or secure the future production of the title deeds.

10th. Equitable and secondary estates will become marketable.

11th. The dangers, both to purchasers and sellers, of entering into contracts without previous minute acquaintance with the title, will be materially diminished.

12th. Both the delay and expense attending the investigation of titles previous to the completion of the contracts will be materially diminished; abstracts will be diminished; there will be no tracing of collateral titles; no search after documents; no expense in procuring their production.

13th. The expenses attending conveyances will be materially diminished; deeds will be shortened, and they will be lessened in number; such deeds as assignments of satisfied terms and covenants for production of title deeds will become unnecessary; copies of deeds will be less required.

14th. Many causes of litigation as to titles, and as to the performance of contracts, and as to the possession and production of deeds, and as to the necessary deeds of conveyance, and the parties to them, will be avoided.

Such are the advantages expected from a general register of deeds, as enumerated by the eminent Commissioners from whom emanated that report; and I am not aware that the catalogue has been

extended by any one since. Certainly the Commission that sat in 1848 have not extended the number; and in Lord Campbell's speech in introducing his bill in 1851, we find the evils which he sought by his bill to remedy stated to be, the insecurity of titles, the expenses and delays of conveyances and mortgages, and the loss and inconvenience arising from there being no repertory where deeds were deposited, and where they might be accessible to those who wanted to inspect them.

Undoubtedly, many of these results a general register is calculated to produce. Thus, if we examine the summary given in the report, we will find that the register that has existed in this country for upwards of one hundred years, effectually guarded against the evils mentioned in the 1st, 2nd, 4th, 8th, 9th, 10th, and portions of the 12th and 13th items of their summary. In Ireland, the register has protected against suppression or forgery of deeds; has removed the whole expense arising out of long terms of years, kept on foot for protection; has rendered equitable estates marketable; has guarded against inconvenience from the loss of instruments, by the admission in evidence of the registered memorial;* and the only evils mentioned by the commissioners, which have existed in Ireland, and of which they anticipate a removal by the adoption of their proposal, are the 11th, and parts of the 12th and 13th; and the benefits there mentioned are rather anticipations indulged in by the commissioners, as to the results from the other benefits conferred by the register, than as independent and separate consequences.

Now, if the real impediment to the easy transfer of land be in the necessity of tracing the title back through a period of sixty years, and the delay consequent thereon in every dealing with land, it is obvious that if a general register of deeds had the slightest direct effect in removing this evil, it could not fail to have been dwelt upon by those who advocated it, particularly as the attention of the last commission and of Lord Campbell had been called to that very subject. But, in truth, a mere register of deeds can have no such effect. The real benefit conferred by such a register is the information it gives to those whose duty it is to draw up the abstract of title. To them it is certainly most important; for it enables them to lay, in the first instance, a more perfect statement of the title before those whose opinion on its validity may be required. And the eminent conveyancer, Mr. Duval, whose plan has been to a great degree embodied in all subsequent attempts at legislation, no doubt considered this to be the end and aim of all legislation. But the most perfect registration of deeds, the most complete information as to all the dealings with the land, will not alter the

* Sir Matthew Barrington, in his examination by the Lords' committee, says he knew one instance in which all the title deeds of the property of a gentleman in the county of Wexford were burnt during the rebellion, and yet they were able to make out the title from the registry His whole examination goes to show that the most prominent results expected from registration had long been attained in Ireland.

necessity imposed, of investigating those dealings for the period of sixty years; for that limit has been fixed on with reference to the possibility that exists that some claim, arising out of the dealings with the estate prior to that period, has not been barred by the lapse of time, and the adoption of the rule is founded on the duration of human life. Indeed, the facility the register of deeds affords of ascertaining all the dealings with the estate has led, in Ireland, to the lengthening of abstracts of title; for our practitioners, not content with the sixty years' title, have been generally in the habit of furnishing a history of the property since the foundation of the register in 1711. And as the purchaser, when thus informed of the former dealings, has a right to investigate them, in a vast majority of cases in Ireland, on the transfer of property, the abstract of title extended back for upwards of one hundred years. This, of course, was quite unnecessary, and I only mention it to show that, in practice, the registry of deeds has no operation in shortening the investigation of title.

This brings me to an important question in Ireland, namely, what effect is the last Registry Act calculated to produce when brought into operation? That act is, in a great measure, the plan proposed by Mr. Duval, engrafted upon a public map. It alters the present system of registration in many important particulars. To its adoption of the ordnance map as its foundation of course no objection can be raised; for by so doing, it affords an easy means of identification of parcels, and removes, perhaps, the greatest evil of our present registry; which, in its present state, creates much expense in searches, by the difficulty of ascertaining the particular lands to which the deed of a person, whose name is a common one, relates. Another alteration it proposes is the requiring a lodgment of the original deed, instead of a memorial. The advantages expected from this are, the fuller information thereby given to persons searching, the preservation of deeds, their more easy proof in courts of justice, and their saving the expense of deeds covenanting for their production. In England, however, no change has been more objected to than this, particularly on account of the publicity it would give to private transactions. A more valid objection is, however, to be found in the statement that, so far from diminishing expense, it would increase it, by rendering necessary in every instance the providing of duplicate deeds, as no person would be content with the existence of one over which he had no control; and that it would also exclude temporary dealings with land, by the deposit of title deeds.

With regard to the general plan of registration adopted by this Act, in the introduction of what are called roots of title, with reference to which all subsequent dealings with the estate are to be entered, I am not sure that I perfectly understand the provisions by which it is proposed to be given effect to—a predicament in which several most eminent men in England appear to be involved.

Mr Bell, the eminent Chancery barrister, when asked by the Committee in 1832 concerning the plan of Mr. Duval, whether he understood it or not, answered, "I am not sure that I comprehend it." Lord Campbell, in 1851, referring to it, says, "Although I concur in the plan, I have some misgivings respecting it" And neither the Solicitor General nor Lord Langdale, in proposing the second reading of the bill, ventured to explain its provisions, or hazard a conjecture as to how it would work in practice.* But supposing it to be perfectly capable of being brought into practical operation, one thing is quite certain, that the root is no root until sixty years have elapsed; and whatever advantages in the way of simplification the plan possesses, will belong to our grandchildren and not to us; and even to them as well as to us it appears to me that, by other provisions of the act, the abstract of title will be materially lengthened and made more complicated.

At present, decrees and orders of courts of equity and judgments of courts of law, though made specific charges on land, have operation as such only if registered within twenty years, and a search for that period informs the purchaser if any such charge exists; and they never appeared on the abstract of title. The new act converts all these, upon registration of a memorial, into actual assurances affecting the land, and gives similar operation to equitable mortgages, and vendor's lien, of which a memorial has been registered; the necessary consequence of all which will be, that all these dealings with the estate must be abstracted in future, their devolution traced, and thereby the bulk of the abstract of title in many cases doubled. And all this by a measure the proposed object of which is to shorten abstracts of titles and simplify its investigation.

I therefore cannot anticipate, from the introduction of that measure into practice, any material advantage in attaining the object we desire. And I believe that expectations have been raised as to what a register of deeds can effect, which must inevitably be disappointed. A general register of deeds can and will protect against the fraudulent suppression of deeds; it can and will provide for the more easy identification of parcels; it may disclose in consecutive order all the dealings with the estate; it may secure the formation of a perfect and complete abstract; but it can have no operation in dispensing with that retrospective deduction of title,—with that complicated system of conveyancing which is the necessary result of the retrospective title. These things will still continue, and in

* The history of the passing of this act for Ireland is not a little curious It was introduced by the solicitor-general for England in 1850, and prefaced with a short speech; in the House of Commons it never afterwards received the slightest discussion When introduced to the Lords by Lord Langdale, its objects were also briefly stated, but with the exception of a passing remark from Lord Monteagle, it did not in that house give rise to any discussion either, and a bill thus adopting all those changes which have given occasion to such opposition in England may almost be said to have passed in silence.

future, as heretofore, render the transfer of property a work of time and expense.

But it will be said: How then does it happen that in other countries a registration of deeds has accomplished all that is desired, and has rendered transfers easy and inexpensive? The answer is obvious. Where it has produced that effect, the law prohibits that power of disposition by will or deed which our law sanctions and permits. In France, Belgium, and many other of the continental nations, ownership is co-extensive with present right of enjoyment; and therefore it is that registration by itself secures immediate proof of ownership.

In this country, public opinion is still in favour of the retention of those laws which admit of divided ownership; and I believe the general feeling is, if possible, to obtain facility of transfer consistently with their existence. Any changes I would propose would be in accordance with that feeling The alterations I propose would, I believe, remove those iron bonds which now fetter the alienation of land, and at the same time would disturb none of the familiar rules respecting it. But the removal of these bonds, as it appears to me, is only to be found in the adoption of a registration of ownership as distinguished from a mere registration of deeds— a registration which would disclose at once the names of those in whom the whole right to transfer was, at the time of the enquiry, actually vested; and would thus enable those who were conducting the enquiry, to ascertain without risk of mistake that in obtaining a conveyance from those persons they were acquiring a title unimpeachable by any one. And it is to the means by which such a registration of ownership could be provided, and brought into practical operation, that I now proceed to call your attention.

In this country especially, I need hardly say that any registration, whether of ownership or of titles, would be based upon the admirable ordnance maps which we already possess. The division of land into townlands which prevails throughout Ireland, the boundaries of which are all laid down with remarkable precision, affords a ready means of identification, and of course all future registration would be directed to be made with reference to those boundaries, and in accordance to the names whereby they are designated in the ordnance map. And when we couple with this the well-known fact, that most of the property in Ireland is held by townlands, a fact abundantly proved by the sales in the Encumbered Estates Court, it is obvious that in Ireland at least, we enjoy advantages for registration founded on a map which cannot be exceeded. Bearing then in mind that the registration is to be based on the ordnance maps, and is to be a registration of ownership, the first question that arises would be, how could that ownership be ascertained so as to give to the present owners of property the advantages desired? For as ownership, when once ascertained and placed on the registry, must necessarily be made conclusive for purposes of transfer, if parties claiming to be owners were permitted without due investigation

to insert their names as owners on the register, a door would be opened to fraud and imposition. In fact, to start the register at all, registration must be made a judicial act—the result of a proper investigation of title by persons entrusted by the legislature with authority for that purpose. In this country there has already been established a court having jurisdiction, incidental to its other powers, of determining present ownership, and which is in the daily practice of investigating existing titles. In all cases, therefore, in which sales have taken place under their authority, it would be easy to authorize them to grant a certificate of ownership to purchasers from them; such certificate to authorize an immediate registration in their names. The vast amount of land which has already been sold or is in progress of sale by them would thus render the immediate operation of the new registration most extensive. The new proprietors will start with a parliamentary title, and the lands, set free from previous encumbrances by the operation of one act of parliament, would then retain unimpaired by the aid of another the facility of transfer which they had thus acquired. As, however, the Encumbered Estates Court has only jurisdiction when a sale is demanded at the instance of an encumbrancer, it would of course be necessary to give to that or to some other court jurisdiction to investigate the titles of unencumbered owners at their own instance, and of granting similar certificates of ownership to be acted upon by the officer appointed to register. In all these cases, of course, provision would be made for the due publication of the application to register, and the registration would not be allowed to attain its conclusive effect until the lapse of a fixed period. In adopting such a rule, the legislature would be only following an analogy furnished by their predecessors. A statute of Henry VII. gave to a fine levied with proclamation after five years, a much more conclusive effect than that I would thus propose to give to registration; and when we remember that the proclamations were in practice a mere fiction, and gave no real notice to others, and that the period of five years was adopted at a time when communication was difficult and intercourse confined, a much shorter limitation could probably now with safety be adopted. I may add that this effect of a fine with proclamations remained in force until the act was passed abolishing fines and recoveries; and its abolition by that act, without a substitute, has been frequently regretted.

To this proposal of the establishment of a jurisdiction to pronounce upon present ownership, I can conceive but of one objection, and that is that a commission established for such a purpose could not properly be invested with authority to adjudicate on complicated rights of property, the determination of which belongs exclusively to the courts of supreme jurisdiction. To that objection I think there is this easy answer, that in any doubtful case no certificate need be granted. Thus, indeed, there might and would exist cases in which registration might be impossible. But how small an evil that would be compared to the present one. In the vast majority of cases that

at present arise, the ownership is undisputed and clear, and upon the validity of titles the opinion of a competent barrister is taken as sufficient security for the purchaser; but as the law stands at present, the expense of investigation falls as heavily on the good as on the dubious title. The possibility of danger imposes in every case the same necessity for enquiry, and renders all dealings with land equally dangerous and expensive.

Supposing, then, a jurisdiction to exist for the investigation of titles, and for pronouncing judicially upon ownership; and supposing its exercise evoked on the application of a party, and the ownership declared. The next and greatest difficulty then presents itself in determining the form in which that ownership shall be entered upon the register. Our law permits ownership in land to be parcelled out into various interests, the aggregate of which can alone be called the ownership; thus, it may belong to A for life, remainder to B for life, remainder to C in fee, and the co-operation of A, B, and C is indispensible to a transfer passing the whole ownership, and their names would all necessarily be inserted on the register. Nor is this all; the ownership may at one moment be entirely in A, B, and C; but, immediately afterwards, the birth of a child or the exercise of a power may divest altogether the ownership of C, and substitute E or F as partial owner in his place; and a previous transfer by C would be altogether inoperative against the claim of E or F; and, of course, the name of C, in the event supposed, ought to be removed from the register, and that of E or F substituted.

To accommodate the entirety of ownership, which the register ought to evidence, with the severance of interests which our law permits, is the difficulty to be removed. And here an important analogy offers itself for our acceptance. In the case of stock, the entirety of ownership is secured by the rule of the Bank, which permits no severance of the interest, but requires every transfer to be made to one or more persons, who, upon such transfer, are invested with the entire ownership, and can exercise undisputed control over it. The necessity thus imposed of vesting the whole interest in stock in one or more persons has not been found inconsistent with the privilege conceded by our law to individuals of settling their property; and nearly as many modifications have been adopted and partial interests carved out of that species of property in the form of trusts as out of land. The analogy thus afforded by stock fails, however, in one important particular, arising out of the intrinsic difference between these two species of property. In the case of stock, the sole duty imposed on the trustees is the receipt of the dividends from time to time. Not so with land. When the ownership in it is vested in trustees, on them devolve the entire duties of management, the making of leases, the enforcing the payment of rents, and the exercise of all the various other rights which landed property confers on its possessor. I need hardly say that to expect trustees to perform such duties continuously would be hopeless, and the

impossibility of procuring persons to undertake them would necessarily lead to the entire abandonment of settlements of land.

Conceiving it then impracticable to adopt the analogy afforded by stock, without practically abolishing the power of making settlements of land, it has occurred to me that our own ancient common law affords us a precedent, which, if followed, would in a great measure preserve the power of settlement, and yet do so consistently with increased facility of transfer. Before the statute of uses, the entire ownership of land was always vested, at least for the purpose of transfer, in the person in possession and those who had vested remainders. Land might be limited to A for life, remainder to B for life, remainder to C in fee; but A, B, and C must all be in existence at the time of the limitation, to secure them against an alienation that would defeat their interest. If a limitation had been interposed after the life estate of B to the eldest son of B, B having no son, such a limitation would not operate to prevent a transfer, by A, B, and C passing the whole interest in the lands, discharged of the contingent limitation to B's son.

In cases, therefore, in which these contingent interests were to be preserved, the plan adopted for that purpose was the interposition of an estate in remainder after the life estate in B in trustees, whose duty it was to concur in no transfer, and thus preserve the contingent remainder. Their concurrence in a conveyance with the other persons having interests had the operation of transferring the whole to the person taking the conveyance, and the remedy of the party entitled to the contingent remainder was a personal one against the trustees. And so it was also with the various other modifications of ownership to which real estate was subjected. They were all mere trusts, and their preservation depended on the good faith of those in whom the legal interest was vested.

This system of trusts, however, was found to be altogether destructive of feudal rights and feudal principles, which required that the freehold should always be vested in parties capable of discharging the feudal duties, and was also made the means by which the existing statutes of mortmain were evaded; and, therefore, by an act called the statute of uses, the legislature declared that thenceforth these trusts should become legal estates; and thus all those various modifications of ownership, which, unknown to the simplicity of the common law, had been effectual only as trusts, were at once engrafted on real estate. And, undoubtedly, out of this statute, and out of the doctrine of the Court of Chancery which attaches upon the land in the hands of a purchaser those trusts of which he has had notice, either actual or constructive, has arisen almost all that complication of title which is so much complained of.

The course of years has brought us round again to feel a want somewhat analogous to that felt in the early stages of our national existence. It is true that we no longer require, in the spirit of the feudal law, that the freehold should always be filled by one capable

of contributing to national defence, and bound to perform the duties of a feudal follower. Commerce has succeeded to war; and the spirit of commerce now demands of us that, for its purposes also, the fee-simple in land shall always be represented, and be in the possession of persons capable of discharging those new duties and liabilities which the ownership of land entails on its possessors. I cannot, therefore, but think that our own ancient law thus affords us a wise and useful precedent. Let us restore to their condition of trusts all those modifications of ownership which the statute of uses introduced. In the admission of vested remainders to the register, we would provide sufficiently for the more common limitations of property; and on them, in the form of trusts, might be grafted without inconvenience those more complicated limitations, which, however they may conduce to the convenience of individuals, undoubtedly interpose an insuperable barrier to that facility of transfer which the requirements of the age so imperiously demand.

And if, in conjunction with this change, trusts were declared to be binding only on the persons of the trustees, and to be incapable of attaching on the land in the hands of a purchaser, even with notice, it appears to me as near an approach as would be desirable would be made to the rules that prevail in the transfer of stock.

To test the probable working of this change, let us see how it would operate on the general form of our marriage settlements. In a settlement by a father seized in fee on his son's marriage the ordinary limitations are to father for life, remainder to son for life, remainder to trustees to preserve contingent remainders, remainder to first and other sons in tail subject to a term of years limited to trustees to raise portions for younger children.

Now, suppose an owner of twenty townlands, anxious to make similar provisions under the altered form of registration, and suppose five of the townlands of sufficient value to secure the payment of the portions, the arrangement he might make to effect his purpose might be this. Fifteen of the townlands would be transferred into his own name for life, remainder to his son for life, remainder to trustees, whose sole duty would be, after the deaths of the tenants for life, and on the coming of age of the first tenant in tail, to retransfer into his name the whole of them. As to the other five townlands, they would be similarly entered on the register; with this difference, that the retransfer by the trustees would be on the payment of the portions, and any proceeding for enforcing their payment out of them would apply to those townlands, and not, as at present, involve dealings with the whole twenty.

As changes such as these, if adopted, would greatly extend the number of instances in which property in land would be vested in trustees, a general objection may be taken that the more extensive introduction of trusts would be accompanied with great difficulty in procuring persons to act as trustees, and would also lead to great insecurity arising out of breaches of those trusts.

With respect to the difficulty of procuring trustees, it appears to

me that settlements constructed in the form I have alluded to, would really in the majority of cases only involve a limitation in remainder to trustees after existing life estates; and when that limitation took effect in possession, the only trust to be performed would be to ascertain the person entitled to demand a transfer. And for such cases I think it would be most desirable, to enable parties to nominate an official trustee, who would not be open to those importunities which so frequently beset private trustees, and so often lead to breaches of the trust.

With respect to the insecurity that might arise in cases where private trustees would be indispensable, of course it not only would not be greater in the case of land than it is at present with respect to stock; but also in the case of registered ownership in the names of trustees, it may be in a great degree entirely obviated by the adoption of the plan of inhibitions, as proposed in the Irish Registry Act of 1850.

By the 31st section of that act, persons interested in trusts created by an instrument not registered, may by a requisition require an inhibition to be entered in the registry-office, against any person mentioned in the requisition, inhibiting that person so mentioned from alienating, charging, or affecting the lands mentioned in the requisition, without notice being first given by the registrar to the person signing the requisition at an office or place to be named.

The 33rd section enables the party against whom the inhibition is obtained to cancel the inhibition, unless restrained by an order of the Court of Chancery, which may be made by motion or petition in a summary way.

And the 38th section provides, that any person claiming under a person against whom the inhibition is obtained, and which has not been cancelled, shall be affected by the trusts as if they had been manifested by a registered deed. It is obvious that these provisions would be equally applicable to registration in the form I have mentioned, and we shall hereafter see that the plan of inhibitions may be applied extensively to effect other objects also.

Supposing, then, the admission on the register of modifications of ownership of the character I have specified, the next point to notice is in what way the nature and extent of the limitation should be described. With regard to this I do not anticipate much difficulty. Estates in fee, or in tail, for a term of years, or for life, are so well known, and the rules that regulate their transmission so well understood, that ownership expressed in those terms would be sufficient for all ordinary purposes, and would convey adequate information to all persons making inquiry.

Connected, however, with this subject there is a question that at first sight appears to involve more difficulty. In the same land there often exist different estates; one may have the substantial interest by reason of the ownership of a long term of years, subject to a mere nominal head rent, the ownership of that head rent and the reversion on the termination of the term of years belonging to ano-

ther. If therefore both interests may be brought on the register, and their registration be connected with the same townland, it would of course be necessary to distinguish in each case the actual interest, and by a reference from one to the other guide the enquirer to the necessary information. To avoid confusion arising from this cause, it would appear to me advisable to restrict admission to the register to estates exceeding 100 years in duration from their creation. This would of course exclude all the ordinary leases, and for them a separate register might be provided; in which, however, registration need not be made the test of validity for leases made in conformity with the principles proposed by Mr. Napier's Landlord and Tenant Bills, as all leases under them being in possession would inform a purchaser of their existence if he makes due enquiry.

In the cases of reversions on interests exceeding in duration 100 years, as both estates would be entitled to be entered on the register, the difficulty might be met by requiring, in all cases of registration, the extent of estate that is the subject of registration to be described, and through this there might be two or more registrations opposite the same townland. Still such cases would be limited in number, and the fullest information afforded by a reference from the one to the other.

Having in the foregoing observations dealt with the question of how the ownership is in the first instance to be brought upon the register, and how described therein, there still remains the important enquiry, in what way subsequent changes in and transfers of ownership are to be recorded, so as always to disclose at a given time the actual ownership.

Changes of ownership arise either from the devolution of the property as directed by the law upon the death of an owner having a greater interest than merely for life, or through the operation of his last will, or by voluntary transfer *inter vivos*, or by the operation of a judgment of a court of competent jurisdiction compulsorily attaching upon it. And the question now comes before us, how are these things to be brought upon the register?

In stock, when the change of ownership arises from the death of the former owner, whether there has been a will or not, no difficulty is experienced, because in either case the ownership passes to persons who are ascertained by the judicial act of a court of competent jurisdiction. The bank, in whose books the ownership of stock is registered, transfers only into the names of executors or administrators, whose character as such is certified by the probate issued out of the Court of Prerogative. With regard to real estate, except when it is a chattel interest, no such jurisdiction exists; and the obvious difficulty which this circumstance interposes in ascertaining the right of ownership on the death of a former owner, has led some of those who advocate the simplification of transfer of land to the conclusion, that the easiest way to remove the difficulty would be, to assimilate the devolution of real property with that of personal property, and vest in executors and administrators the

same control over it that they possess over personalty. This certainly is to cut the Gordian knot; but it would involve so many other changes in our land, that it would perhaps be hardly possible to expect so great a change to meet with general concurrence. The same objections would not apply to a change that would provide a jurisdiction for declaring as to real property, to whom on the death of a party the ownership should belong, either as heir-at-law or devisee; such declaration not to be conclusive on the rights of the parties, except for the purpose of registration, it being left to the party rejected to enforce his claim in the courts of justice, and pending such litigation to interpose a restraint on any alienation to his prejudice.

The next change of ownership to be provided for, is in the case of voluntary transfer *inter vivos*. If there be no check to such transfer, and if alienation by parties having estates in remainder are to be entitled to insertion on the register in the same unlimited way as at present, it appears much of the former confusion would still exist, and serious difficulties would be interposed to the easy ascertainment of ownership. I should, therefore, feel strongly disposed to revert in this instance, also, to the simplicity of our ancient law, and leaving to parties in their private dealings the same unrestricted liberty of disposition that they enjoy at present, provide only that their insertion on the register should be governed by some few fixed and easily understood rules.

Before the statute of uses, although our legal writers enumerate eleven different species of conveyances, a careful examination of them shows, that those of *general* operation resolve themselves into three, feoffments, releases, and surrenders. Now, feoffments only took effect when the party making it was in possession, and could consequently give livery of seisin. Releases, when transferring ownerships, were only available between parties having already interests in the same estate. Thus, the tenant for life in remainder could release to the tenant for life in possession, or the owner of the reversion could release to any owner of a previous estate in the same land. In the same way, surrenders had only effect between persons similarly circumstanced. When, therefore, an estate was limited to A for life, remainder to B for life, remainder to C in fee, A alone could transfer by way of feoffment, B could release to A or could surrender to C; but if he wished to transfer to a stranger, it could only be by the co-operation of A, with whom if he joined in the feoffment, his execution of the deed had all the effect of a release, and passed his estate in remainder to the feoffee. It is easy to see that, under such a system, the transfer of property *inter vivos* was sufficiently simple, and I cannot but think that an application of the same rules to all changes of ownership on the register, would produce similar results All changes of ownership must either be between those already appearing on the register as owners, or would be confined to the dealings of the person actually in possession; and though the rule might operate to interfere

with the unlimited power of disposition, or of encumbering their future estates now possessed by persons having estates in remainder, such a restriction would not be any real disadvantage; on the contrary, much good would result from the check that would thus be indirectly given to the extravagance of persons possessed of future interests.

The adoption of a rule such as I have adverted to would, however, introduce a very considerable change with respect to mortgaging. In the first place, none but a first mortgage could appear on the register, for as the ownership would on the register appear to be vested in the mortgagee, of course there would be no subsequent transfer unless the mortgagee chose to divest himself of the ownership, an event not likely to happen. This may at first create a difficulty in the minds of some, but when we recollect the many inconveniencies that have flowed from excessive encumbrances, and the greatly increased facilities for sale that would be afforded by the adoption of the plan I propose, I do not think that it will be allowed much weight.

Another change that would be rendered necessary would be the introduction of some check to guard the mortgagor against an alienation by the mortgagee that would be destructive of his right of redemption; for, as the ownership in the register would appear to be in the mortgagee for all purposes, his transfer would pass the estate to a purchaser discharged of the right to redeem. To meet this, the system of inhibitions might be applied in the same way as in the cases of direct trusts; and the officer whose duty it would be to enter the new ownership on the register might be forbidden to do so, until a consent in writing signed by the mortagor, or an order of a court having jurisdiction to foreclose the mortgagor's equity of redemption was produced, authorizing the transfer. As, however, under such changes as the foregoing, the power of mortgaging would be greatly restricted, I would further propose to enable persons lending money to owners of land for short periods, to obtain inhibitions against the transfer of their land for a limited period, say twelve months, that being the usual time for which temporary loans are required by landowners. In this way a short and inexpensive means would be provided for raising money for temporary purposes, and as the lender would be abundantly secured against alienation to his prejudice, the terms of the loan would be as favourable to the landowner as to any other owner of good security, and it would only be in the event of a permanent loan being required that the transfer of ownership would take place.

It would also produce another effect. At present, almost every considerable mortgage extends over all the estates of the mortgagor, and a sale of even a small portion of his estates involves dealings with and conveyances from every mortgagee. Such, probably, would be no longer the case: the mortgagee having, by inspection of the register, sufficient assurance that the ownership is in the borrower, would of course be content with a transfer of such an

amount as would cover his advances; and in this way, though the owner's power of mortgaging would be restricted to a first mortgage, it would be extended in another way by rendering each parcel of his estate available for the purpose.

I now come to involuntary changes of ownership, such as arise from the bankruptcy or insolvency of the owner, or from the operation of decrees or judgments of the superior courts; and with regard to the former it does not appear to me any difficulty would arise, as, of course, the transfer of ownership in each case would be made by the authority and on the production of the order of a court having jurisdiction to direct it. With regard to the latter, it would necessarily follow that their general operation of binding all the lands of the party against whom they are obtained would cease, a result most ardently wished for by all who know the embarrassments they have created, and in some degree attained by recent legislation on the subject; whilst the order of the court decreeing a a sale for payment of the debt would be the authority on which the new ownership would be entered on the register. And, in order to prevent any prejudice to the creditor by an alienation subsequent to the recovery of his judgment or the obtaining of his decree, an inhibition similar to that already proposed might be entered, which would operate in the same way to prevent a transfer without his his consent, or a lodgment of a sum of money adequate to the discharge of his debt.

Such, then, are the outlines of the plan by which, it appears to me, a registration of present ownership might in the first instance be effected, and its subsequent changes be properly recorded I have not attempted to enter into minute particulars, or point out the particular machinery by which it could be carried into effect; nor have I thought of adverting to the enquiry whether the registry proposed should be local or general. These are all matters of detail, requiring much consideration, and on which I would hardly venture to offer an opinion. My object has been to point out what are the principles on which it appears to me registration, to be effectual, must proceed; to state the difficulties that present themselves; to indicate the changes that would be involved in its adoption; and to call your attention to the paramount importance of the subject. For the plan that I have thus laid before you is not to be judged merely by the operation it would have in removing that greatest of evils, long investigations of titles; its operation would extend much farther, and in practice would abolish, as regards transfer of ownership, our whole complicated system of conveyancing.

When ownership is ascertained by the register to be in one or more persons whose names appear thereon, and whose ability to transfer cannot be questioned, if they join in the conveyance, all enquiries as to the nature of their estates, all recitals to explain their origin would be out of place; and the names of the parties granting, the names of the lands conveyed, the name of the party

to whom it is made would constitute the whole subject matter of the conveyance, and the simplicity of our ancient deeds would be again restored. Nor is this all. When, at the suit of an incumbrancer, a sale is applied for to the Court of Chancery, a preliminary investigation of title is required to ascertain the persons who are to be made parties to the suit; and this expense is incurred in proceedings under the Encumbered Estates Court to the same extent. All this would have no place hereafter; the registered ownership would of course be deemed sufficient representation of the estate in all proceedings, and they who appeared as owners alone would be made parties to the suit; and thus one of the most fertile causes of delay and most burdensome sources of expense would be at once cut off.

Still more important, perhaps, would be its effect in affording to lessees an easy means of ascertaining the person entitled to make a valid and binding lease. In the framing of Mr. Napier's Leasing Powers Bill, one great difficulty experienced was in what way the lessee, dealing with an apparent owner in possession, could be secured (without imposing on him the investigation of the landlord's title) an undisturbed enjoyment for the term of his lease. To say that the lease should be good and binding, notwithstanding the limited interest or infirmity of title of the party making it, to many appeared an unjustifiable interference with the principles on which rights of property rest. On the other hand, to involve the lessee in the consequences of an adverse suit, or make his possession contingent on the title of his landlord, was to leave him as he is at present, uncertain as to the security for his investment of capital and industry. No such insecurity could exist under the system I propose, except on his own culpable neglect. The register would disclose who was the owner in possession; and if it did not also show the nature of the interest possessed by such owner, it would at least involve only one enquiry further, namely, an inspection of the instrument upon which that ownership was registered.

Such appear to me to be the advantages which would follow from the adoption of a plan that would ascertain conclusively for the purposes of transfer, without long deductions of title, the present ownership of land. I cannot part with the subject without adverting in a few words to the great social consequences involved in this question. Among the many practical evils arising from the present system, none has been more dwelt upon than its tendency to prevent the alienation of land in small parcels. To the large mass of the community the possession of land as property is impossible; aad their exclusion not only depreciates the market value of land, by excluding what would otherwise be the largest class of customers, but also imperils the stability of society itself, and the preservation of property, by arraying against it the sympathies and feelings of the masses.

It is impossible for any one acquainted with the discussions that have occupied attention of late years, not to be aware that there are many persons to be found who, because there are many and great

social evils arising out of the accumulation of wealth in a few hands, have been led to question and object to the existence of those rights of property on the maintenance of which all civilization and society mainly depend. In those evils, socialism and communism have found their strongest arguments. But socialism and communism make few converts amongst the possessors of realized property; and in proportion as we increase the number of those who, by the possession of land, are thus armed with the strongest protection against the seductions of those who advocate such doctrines, in the same proportion undoubtedly do we strengthen society itself, and array in defence of property those by whose antagonism alone it can be effectually assailed. Nor is this all; the ownership of land does, I believe, produce many beneficial effects on the character and habits of its owners. It excites industry; it promotes frugality; it inculcates prudence. The peasant who knows that it possible, by present self-denial and exertion, to acquire a farm of his own, and who sees that many of his neighbours have done so, feels that it is his own fault if he does not rise in the social scale. He sees the path of improvement open to him; he sees many others far advanced upon the road; he knows that tney have so advanced by their own exertions, and that his own success depends entirely upon himself.

May we not also hope that the eloquent language of M. Guizot, in his work on Democracy, is not without its practical truth. That eminent statesman and author thus writes:—"Whilst property in land is more consonant than any other to the nature of man, it also affords a field of activity the most favourable to his moral developement, the most suited to inspire a just sentiment of his nature and powers. In almost all the other trades and professions, whether commercial or scientific, success appears to depend solely on himself; on his talents, address, prudence, and vigilance. In agricultural life, man is constantly in the presence of God, and of his power. Activity, talents, prudence, and vigilance are as necessary here as elsewhere; but they are evidently no less insufficient than they are necessary. It is God who rules the seasons and the temperature, the sun and the rain, and all those phenomena of nature which determine the success or failure of the labours of man on the soil which he cultivates. There is no pride which can resist this dependance; no address which can escape it. Nor is it only a sentiment of humility as to his power over his own destiny which is thus inculcated upon man; he learns also tranquillity and patience; he cannot flatter himself that the most restless activity will ensure his success. When he has done all that depends upon him for the cultivation and fertilization of the soil, he must wait with resignation. The more profoundly we examine the situation in which man is placed by the possession and cultivation of the soil, the more do we discover how rich it is in salutary lessons to his reason and benign influences on his character. Men do not analyse these facts, but they have an instinctive sentiment of them, which powerfully con-

tributes to that peculiar respect in which they hold property in land, and to the preponderance which that kind of property enjoys over every other."

If these observations are not the mere eloquent effusions of theory, but are founded on a thoughtful knowledge of man's nature and character, it is surely impossible to over-estimate the importance of those changes which have for their object the giving of increased facility for the acquisition of land to all classes of the community; and which may thus, in their effects, bring under the healthful influence which its possession engenders, the mechanic and the artizan, the tradesman and the merchant, the man of science and the man of business; and in so doing, whilst they would promote the temporal prosperity of our country, would also encourage and develope those principles and those feelings on which the real happiness and stability of every nation must ultimately depend.