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I.—*Report on the best means of facilitating Land Transfer, by means of Local Registry.* By Professor Donnell.

[Read Tuesday, 16th December, 1873.]

THE question of the comparative merits of large and small farms has been one of the best debated in Political Economy. The controversy cannot be said to be yet terminated. But some portions of the field have become neutral ground. The advocates of large farms admit that under certain conditions their favorite system is physically impossible; and that social circumstances may sometimes render its introduction a matter of far-off futurity. And I think the advocates of small farms have, from a very wide induction, established beyond dispute one position at all events, that if the system of small farms is to exist, peasant proprietorship is economically preferable to any system of limited interest in the cultivator.

THE PURCHASE CLAUSES OF THE IRISH LAND ACT.

This last admission has become embodied in English legislation. The purchase clauses of the Irish Land Act are founded on the idea that the encouragement of peasant proprietorship is as proper an object of state policy as the improvement of their estates by landlords, or the reclamation of waste lands. For the purpose of converting Irish tenants into proprietors of their farms, the Landed Estates' Court has been directed to afford special facilities to tenants desirous of purchasing their own holdings, and the money of the state is advanced on peculiarly easy terms. To a tenant purchasing his own farm, two-thirds of its value is lent at $3\frac{1}{2}$ per cent., so that principal and interest are repaid by an annuity of 5 per cent. in thirty-five years. £1,000,000 was ordered to be set aside for these loans. On this portion of the Land Bill a single hostile division did not take place in either house. Not a word of adverse criticism marked its passage through Parliament.

We may take it, then, that the encouragement of the ownership of

their farms by Irish tenants is now a matter of settled policy, to which all parties are pledged. If there is anything in our system of law which prevents or impedes the operation of the principle we are endeavouring to promote, we are bound to remove it. If peasant proprietorship is to be encouraged by loans of state money, it is folly to subject peasant proprietors to laws which, devised for a different system, make peasant proprietorship practically impossible. New wine cannot be put into old bottles. Old laws must be accommodated to new circumstances. If we call small properties into existence, we should allow them the fair conditions of successful existence. Confining myself to the subject matter of this Report, I venture to assert that to subject small proprietors to the present system of land transfer is to render their existence socially impossible.

Surprise has been expressed that the tenants had to so trifling an extent availed themselves of the advantages of the Purchase Clauses of the Land Act. From the passing of the act up to the 31st March, 1873, the sums lent by the Board of Works amounted only to £134,549. This sum was allocated amongst 225 applicants, holding among them 15,940 acres, or an average of $70\frac{3}{4}$ acres each. By far the larger number owned a smaller acreage; so that the practical result, so far, has been to promote ownership of land by small farmers. The smallest of these small proprietors is now subject to a system of law, under which if he gets into a dispute with a neighbour, no matter how trifling, in which title is involved, he must resort to the expensive procedure of the Superior Courts; if his assets are to be administered, resort must be had to the costly machinery of the Court of Chancery; and if he wishes to sell or mortgage his land, he will incur an amount of delay and expense little less than would the owner of a property ten or twenty times as large. To one who considers this aspect of the matter, the surprise will be that so many persons have been found willing to assume with the ownership of their farms, the burdens and responsibilities of dealing with their property under a system of law so unsuited to their circumstances.

GRANTS OF THE IRISH CHURCH TEMPORALITIES COMMISSIONERS.

Under the operations of the Irish Church Temporalities' Commissioners, a large number of peasant proprietors are being called into existence. They are attracted by peculiarly favourable terms of sale. A right of pre-emption is by the statute conferred on the occupying tenants, and the price named by the Commissioners is such, as in almost every instance, to secure a ready acceptance of their offer by the tenants. One-fourth only of the purchase money need be paid in cash; the remainder may be secured by simple mortgage at 4 per cent., or by mortgage under which principal and interest are repayable at about $5\frac{1}{2}$ per cent. by sixty-four yearly instalments. The result of these facilities is the creation on the church land of a large number of peasant proprietors, who are liable to all the disadvantages of their new position which I have just described.

THE PRESENT SYSTEM OF LAND TRANSFER.

With only one of those disadvantages have I now to deal—the difficulties arising from the present system of land transfer. The cost,

the delay, the danger, the uncertainty which the present system entails, I need not expatiate upon. Mr. T. B. C. Smith, lately Master of the Rolls in Ireland, has denounced "the complicated system at present in operation, and the intolerable expense, delay, and injustice to which it constantly leads." A succession of English Chancellors—Lords Westbury, Cairns, Hatherley, and Selborne—have expressed themselves in terms almost as strong. The evils are on all hands admitted to be of enormous magnitude. Royal Commissions have reported that they are not insurmountable. They have recommended schemes for cheapening and facilitating dealings with land, by means of a Registration of Title. The Legislature has embodied some of these schemes, more or less modified, in working measures—the Record of Title (Ireland) Act of 1865, and Lord Westbury's English Act of 1862.

But what I am concerned to point out is that, great as are the difficulties of land transfer in general, they are immeasurably greater in the case of small properties; and that the schemes which have been suggested, and the measures which have been put into operation, have been directed to a general system of land transfer; and I think I may add that their authors have had mainly in view the large estates which are so prevalent in this country.

The difficulties, in many instances almost prohibitive, of land transfer in the case of small properties, are well illustrated in a document submitted to the Registration of Title Commissioners of 1857. It contained an account of local expenses incurred in purchases of land at various times. Whilst the general average was $2\frac{1}{2}$ per cent. on the purchase money—a sufficiently startling amount, five times the amount of the *ad valorem* stamp duty—in the case of the smaller properties the costs reached 10, 20, and even 23 per cent. on the purchase money. Such expenses present extreme difficulty to dealings in small parcels of land.

FREE LAND.

It is to the advantage of the whole community that dealings in land, no less than dealings in other commodities, should be made as free as possible. It is the source of subsistence and the great instrument of production in every country. Whatever impedes its transfer from one to another who can more effectively use it, diminishes its productive capacity.

"The seller," Mr. Mill well says, "whether moved by necessity or choice, is probably some one who is either without the means, or without the capacity, to make the most advantageous use of the property for productive purposes; while the buyer, on the other hand, is at any rate not needy, and is frequently both inclined and able to improve the property; since, as it is worth more to such a person than to any other, he is likely to offer the highest price for it."*

Whilst, then, whatever trammels the sale of land in any form is detrimental to the whole community, in small dealings the evil is greater. Land is wanted in small quantities, not merely as a direct productive instrument, but as affording one of the physical conditions of manufacturing industry.

Small lots of land are required for sites for factories and for space

* *Principles of Political Economy*, bk. v, chap. v. §2.

for manufacturing operations generally. There should be no special difficulties in a country like this, where manufactures are in their infancy—in obtaining sites and spaces for carrying them on. The beginning of a manufacture is necessarily a period of precarious struggle for existence. The chances of competition are in themselves sufficiently adverse against the introduction of manufactures into Ireland, without being increased by artificial barriers, preventing free dealings in a commodity of such essential importance to the manufacturer as land.

STATISTICS OF THE RECORD OF TITLE OFFICE.

It thus appears that in the case of small properties the evils of the present system are peculiarly burdensome to the individual, and prejudicial to the common weal. It is in such cases also that the advantages of a simplified system are most appreciated. This is very markedly shown in the statistics of the proceedings in the Record of Title Office. Notwithstanding the inconvenience necessarily incident to a central system, and which would naturally be most felt by small owners, we find that of the 520 estates or properties which, since 1865, the date of its establishment, have been entered on the Record, 226 were value below £1,000; whilst only 259 were value above that limit, and under £10,000; and only 44 value £10,000 and upwards. The tendency exemplified in these figures has become more marked in recent years. In 1871, of 42 estates recorded, 19 were less than £1,000 in value; 19 were valued above £1,000 and under £10,000; and 4 were estimated at £10,000 and upwards. In 1872, of 27 recorded, 17 were valued under £1,000; 9 at £1,000 and less than £10,000, whilst only 1 exceeded £10,000.*

Various attempts have been made, both here and in England, to remedy the evils thus described and thus condemned. It is important to know what has been done, and how far it has succeeded—as well to avail ourselves of what has been found practicable and efficient, as to avoid the errors and oversights of previous legislation.

THE IRISH REGISTRY OF DEEDS.

Since 1708 a public registry of deeds, conveyances, and wills has existed in Ireland. Leases for years not exceeding twenty-one, “where the actual possession goeth with the lease,” are excepted from its operation. Like so many other peculiar Irish institutions, it had its origin in the penal laws. Its object, as declared in the preamble of the statute† establishing the Registry, was to secure purchasers, prevent forgeries and fraudulent gifts and conveyances of lands, “which have been frequently practised in this kingdom, especially by Papists, to the great injury of the Protestant interest.” Under this act, memorials of all deeds, whose priority it is desired to preserve, are registered. Deeds are registered, not titles: dealings are disclosed, not ownership. The system has made, owing to

* *Criminal and Judicial Statistics of Ireland for 1872*: By W. N. Hancock, LL.D. p. 218.

† 6 Anne, c. 2, 1r.

the expensive searches it necessitates, the transfer of land still more costly. A conveyance once registered remains on the register for ever, there being no provisions for cancelling memorials of conveyances, which have ceased to have any operation. Consequently, the expense of complete searches is very great, and in the case of small properties is so burdensome as to be generally dispensed with. As all dealings appear upon the Register, abstracts of title became very voluminous and expensive.

LORD ROMILLY'S REGISTRATION OF DEEDS ACT.

In 1850, Lord Romilly, then Sir John Romilly, Solicitor-General for England in Lord John Russell's administration, introducing a bill for the Registration of Deeds in Ireland, said :

"The expense of searches was often enormous. Mr. Pierce Mahony had in his evidence instanced one search, of which the cost was £2,000. This operated so as to make it impossible to dispose of small properties at all ; the expense of search being the same with a property worth half a million, and one worth half a thousand. Who would think of selling a property worth £500, if the expense of searches was to be from £300 to £400 ? This evil was so great that it was a matter for consideration whether or not it would be better to abolish the system of Registration altogether." (*Hansard*, vol. 108, p. 411.)

He proposed to make use of the Ordnance Survey maps for the purpose of making a complete land index. The bill was passed without opposition, and now stands on the statute book of England, 13 & 14 Vic., c. 72, from that day to this a dead letter ! The act set out in its opening clauses that it might be lawful for the Commissioners of Her Majesty's Treasury to authorise and direct the Ordnance Survey maps to be used for the purposes of the act, and to cause maps, copied or reprinted, with variations convenient for the purposes of the act, to be published and sold. It also authorised the Commissioners of the Treasury to direct to be made out a Land Index for each county and for each town which they might think it expedient to index separately, having references to the maps. And then it was enacted that when the maps and land indexes should have been completed, it should be lawful for the Commissioners of Her Majesty's Treasury to cause to be published in the *Dublin Gazette* notice of the time when registration, under the provisions of the act, should commence. That time never came. Was the act discovered to be a bad or a worthless act ? Nothing of the sort. When Lord Selborne last session had expounded in the House of Lords the latest and best conceived of the schemes for the Registration of Title in England, Lord Romilly got up and claimed for his forgotten Irish act the merit of including many of the provisions of the new bill :

"That Act," added Lord Romilly, "provided that great care should be taken with respect to maps ; but a direction from the Treasury was necessary upon this point, and as the direction was never given, the act never came into operation." (*Hansard*, vol. 215, p. 1134.)

One can readily guess why the direction of the Treasury was never given. The expense of the scheme would have been considerable ; and it would have fallen upon the Imperial taxpayer, for the expense of the Ordnance Survey was wholly defrayed by the Treasury ; and

the Commissioners of Her Majesty's Treasury, no doubt, thought that the land of Ireland had been already sufficiently favoured in being eased of the cost of the Irish constabulary and of the Incumbered Estates' Court. But whatever the reason, it is certainly owing to an unsatisfactory system of administration that an excellent act of Parliament should have been put upon the statute book, to remain a dead letter for so many years, because the department entrusted with carrying it out had some objection to it.

The act provided that assurances should be registered by depositing an original in the Register Office, and making entries in the proper indexes. An index for all Ireland was to be kept, called the Index of Titles, in which all assurances were to be indexed, under heads to be designated by numbers, an entry being at the same time made in the Land Index for the county, opposite to the name or number of the division of land affected, and containing a reference to the proper head in the Index of Titles. It also directed to be kept an Alphabetical Index to wills and administrations, and a similar index to bankrupts and insolvents. Provisions were made in favour of persons interested under uses and trusts affecting estates vested under registered assurances, enabling them on affidavit to enter an inhibition against alienation without notice to the inhibitor. The inhibition was to be entered in the Index of Titles, and the Registrar, on being required, was to cancel the inhibition, unless within a limited time restrained by the Court of Chancery. There was also provided a mode of entering a *caveat*, whereby three months' provisional protection was given to a contract or assurance entered into or in contemplation at the date of the *caveat*.

This was an admirable scheme of registration of assurances—for a registration of title it did not aim at—and yet so completely has it been forgotten, that Lord Selborne, on the occasion I have already referred to, confessed his ignorance of its existence, though in his speech introducing the bill, he showed a minute acquaintance with the history of registration in England, Ireland, and the colonies.

THE REGISTRATION OF TITLE COMMISSION.

In 1854 the Registration of Title Commission was appointed, including among its members Lord Westbury, Sir Alexander Cockburn, Sir Joseph Napier, Mr. Lowe, and Mr. Headlam; and in 1857 their report was presented to Parliament. The labours of the Commission were very valuable in directing attention to the evils of the existing system, and in showing the feasibility of replacing it by a system which should ensure great facility for the transfer of land, combined with great simplicity and security of title. The wisdom of most of their recommendations has been proved by events—the Land Transfer Commission, in their report, published in 1870,* endorsing many of their recommendations which had been passed over by Lord Westbury; and Lord Selborne, in his bill of last session, reverting still more largely to their original scheme.

The Land Transfer Commission admirably summarize the main features of their predecessors' report. They say :

* The Report is dated 24th Nov. 1869, but was not published till 1870.

“The leading principle is that the fee-simple alone should be registered, subject, however, to the exception that charges and leases should have a separate registry of their own. The Report proposes that beneficial interests in the land not amounting to the fee, and dealings with such interests, should not be registered or, at least, not inserted into the register of the fee—for that such a system would practically amount to a registry of assurances; that the registered title should not necessarily amount to a parliamentary or impeachable title; that interests created before the commencement of registration should not necessarily be affected by it; that equitable interests should be protected by cautions or notices on the register; that it should be competent to a landowner to register with a statutory or indefeasible title, if he desired it, and that such title should be guaranteed by the state; that all registered titles should be subject to easements, general charges, and ordinary occupation leases; that both central and district registries should be established; and that the authority of the Registrar should be ministerial and executive in its nature, and not judicial.”

LORD CAIRNS'S BILLS FOR REGISTRATION OF TITLE.

In 1859 Lord Cairns introduced two bills for Registration of Title in England, which passed through Committee in the House of Commons. Their future progress was stopped by a dissolution of Parliament. One of the bills proposed to establish a Landed Estates' Court, which was to grant declarations of title and conveyances to purchasers. The second bill proposed to establish a Registry of Landed Estates. The registry of proprietorship was without prejudice to any estates or equities subsisting on such land at the time of registration; and the indefeasible title was not granted until the estate was sold for valuable consideration. Charges could be registered and transferred. An exact description and identification of the lands by maps was required. The Landed Estates' Court could appoint a real representative, who when registered in the place of any deceased proprietor of land, should hold the land in trust; but for the purpose of any registered dealings with any such land in favour of a purchaser for valuable consideration, he should be deemed to be absolute proprietor thereof. It was provided that the Registrar should not receive notice of any trust; but all unregistered interests in land (including leases) were protected by a system of cautions and notices, to be entered in the register, and calculated to give ample opportunity to all persons so interested to intervene in any proceedings affecting their interests. The bill followed the report of 1857 in protecting partial interests by cautions and notices. It differed from the report in allowing no one to register whose title had not passed the new court which it proposed to establish.

LORD WESTBURY'S LAND TRANSFER ACT.

In 1862 Lord Westbury's Land Transfer Act (25 & 26 Vic. c. 53), was passed. This act proposed to register not only estates with indefeasible title, investigated by the Registrar, and guaranteed, but also authorized registration without an indefeasible title; but of this portion of the act Lord Selborne says: “It was fettered with conditions almost as onerous as if the title were to be guaranteed.”* Of the other portion of the measure—registration with indefeasible title—his lordship says:

* *Hansard*, vol. 215, p. 1122.

"The perfection of title demanded was greater than under the ordinary conditions of English titles it was possible to obtain. The title required to be made out was such as the Court of Chancery would compel a purchaser to make who had bought in open market [in other words, a sixty years' title.]"

"In like manner," he adds, "Lord Westbury's bill required that in every case notice should be affixed on the land, and that not only all persons who had interests in the land themselves, but all persons who had interest in the adjoining properties should have notice, in order that they might come forward and be present at the settlement of the boundaries of the estate. Notices of this kind may often raise dormant questions of difficulty, and may lead to litigation, and this has been felt to be a serious obstacle to the working of the measure. In short, this system, as the event has proved, is encumbered by conditions so difficult and severe as to take away the inducements from the owners of property to avail themselves of it." (*Hansard*, vol. 215, p. 1122.)

In 1867 a Royal Commission was appointed to inquire into the operation of the Land Transfer Act in England. Their Report, dated 24th Nov. 1869, bears out the strictures of Lord Selborne. They say :

"We find that persons who come to register their title are subjected to delay, expense, and vexation, far beyond what occurs in an ordinary sale ; that these evils have deterred nearly all who have tried the system from persevering in it ; that they are not to be attributed to shortcomings in the office, or in the officials personally ; that they are directly and visibly traceable to the main principle of the act—that is to say, to the necessity which it imposes of (a) showing a marketable title ; (b) defining boundaries ; (c) registering partial interests ; that to compensate these immediate disadvantages there is no subsequent advantage to be hoped for, but, on the contrary, that a registered owner may rather look for (a) expense in future entries ; (b) a clouded title ; (c) possible litigation at the option of the Registrar or a Judge of the Court of Chancery ; and that under these circumstances, and for these reasons, the system has failed." *

THE IRISH RECORD OF TITLE.

In this connection, the Irish Record[†] of Title Act, passed in 1865, claims attention, inasmuch as it has borrowed many of the objectionable features of Lord Westbury's act. The record is under the control of the Landed Estates' Court. It is confined to titles declared indefeasible by the Landed Estates' Court. Any person, upon obtaining from that court a conveyance or declaration of title of any land or lease, or any interest therein, may have it recorded. The owner may afterwards, with the consent of those interested in the estate, remove it from the record, and remit it to the operation of the old law. Holders of Landed Estates' Court titles issued before the commencement of the record (2nd Nov. 1865), of which there were about 12,000, representing a money value of about £33,000,000, were entitled to make a summary application to the judge, and to have them placed on the record, unless, by reason of unusual complications, the judge should direct that they should adopt the ordinary procedure for obtaining title in the Landed Estates' Court. To such as applied before the end of 1857, considerable remission of fees was offered—viz. 5s. for the first £1000, and 2s. 6d. for each subsequent £500. All conveyances and declarations of the Landed Estates' Court, executed after 2nd November, 1865, are, as a matter of course, re-

* *Report, Land Transfer Commission, 1870, p. 24.*

† This word is used in Ireland instead of registry, which is appropriated to the Registry of Deeds.

corded, unless the owner, within seven days, requires, by writing under his own hand, that his title shall not be recorded. An owner thus declining can only by summary application afterwards obtain the advantage of the record ; but if a year has elapsed, the same fees are payable as in the case of Declaration of Title—that is, 10s. on every £100 of value.

If in making up or continuing the record any question arises as to the construction or validity of any deed, will, or other instrument, or as to the persons entitled, or the extent or nature of any estate, interest, or power, or as to priorities, the question may be disposed of by the judge, who may either decide the same, or direct any proceeding at law or in equity for the purpose, or the entry of a qualification on the record.

The owner of the record has thus conferred upon him an indefeasible title, subject only to any such qualification and to the interests recorded as subsisting, and to certain unrecorded interests defined in the statute—viz., leases not exceeding 31 years, tithe rent-charges, crown rents, and drainage and improvement charges created before 2nd November, 1865. The judge, on grounds of actual fraud, may alter or amend the record.

The conveyance or declaration is entered in a book—space being left for further entries—these together forming a division or folio of the record. There are two indexes—one the Index to Recorded Estates, and the other the Index of Names and Addresses of Owners and Cautioners. These have references to the folios.

When any land or lease is recorded, every settlement, transfer, mortgage, charge, lease, or sub-lease affecting it must be recorded—recorded charges ranking according to the date of their record.

The officer, when directed by a fiat of a judge, but not further or otherwise, is to make any amendment or correct any error in the record or in the map thereto annexed.

The Land Certificate.

The instrument of title to recorded land is a certificate of the record, or it may be a duplicate of the Landed Estates' Court conveyance or declaration of title, marked as recorded, which is declared for all purposes equivalent to a certificate. The certificate must be produced at every record of any dealing (except a lease), and is returned altered so as to correspond with the record. The officer will from time to time on request of the owner, alter the certificate so as to correspond with the record ; or if more convenient he may issue a new certificate instead. The certificate may be deposited by way of equitable mortgage.

A "special land certificate" may be obtained by an owner desirous of selling or charging land, which is made conclusive evidence of title, and no entry will for fourteen days be recorded affecting the estate, except on delivery of the certificate. During this period the transfer or charge may be safely executed and the money paid—the purchaser or mortgagee obtaining possession of the certificate, and handing it within the fourteen days, accompanied by the deed of transfer, to the officer. The special certificate does not apply to charges.

Statutory forms of charge and of transfers of land and of charge are provided, but their use is not imperative. Other deeds or instruments may be recorded, on evidence of due execution; but the officer may refuse to receive any instrument not in the statutory form, unless a judge has, by fiat endorsed thereon, directed it to be received.

Dealings with Recorded Land.

Recorded estates and charges may be transferred by statutory deed or by endorsement on the certificate; or they may be dealt with by deposit of the certificate (but not of the title deeds), so as to create an equitable mortgage; or by deed, will, or any other means by which unrecorded land or charges may now be dealt with; but any dealing of the latter sort has no effect until noted in the record. Statutory forms, when executed at the office, must be attested by a solicitor. An instrument may be executed in or out of the office by power of attorney. When an instrument is executed out of the office, by power of attorney, the due execution of the instrument and of the power of attorney, and the identity of the recorded owner, must be satisfactorily verified. In every case of execution out of the office, unless the recorded owner comes in and is duly identified, the officer is bound to serve him with notice before recording the instrument.

Judgments.

Judgments, to affect a recorded estate, must be entered on the record, but no affidavit is to be registered; and unless re-entered every five years, they do not affect purchasers for valuable consideration. On entry thereof, the officer is bound to serve notice on the recorded owner. On discharge of the judgment, the land is released by a note on the record.

Judgments do not of themselves affect charges; but a *caveat* may be entered in the record on foot thereof. Payment or part payment of a charge may be noted on the record; and a formal release or reconveyance is unnecessary.

Leases.

Leases not made by recorded owners, can only be recorded after declaration of title. The lease is not, through being recorded, made indefeasible as regards the lessor's title, unless the court, after investigation, orders an official note to that effect to be entered.

All leases granted by recorded owners *may* be recorded; and all *must* be recorded—unless leases for a term not exceeding 31 years—granted at the best rent without fine, where the tenant is in possession.

Real Representative.

On the death of a recorded owner of real estate, the devisee or heir-at-law (as the case may be) must apply to the judge for a fiat directing the officer to record the applicant as owner; and in case of doubt, dispute, or litigation, the court may appoint a real representative, who in the management and letting of the estate is to act under the directions of the judge.

A similar application to the judge must be made by the personal representative on the death of the recorded owner of a chattel interest, by the assignee on insolvency or bankruptcy of the recorded owner, and by the husband on the marriage of a female owner.

Protection of Trusts.

Cestuique trusts and beneficiaries are protected in three ways :

- (1) The "no-survivorship" clause. Where two or more persons are recorded as owners of an estate or charge, with their consent or by direction of the court, a note may be recorded that, when the number of such owners is reduced below a specified number, no disposition thereof can be made by the survivors, unless the judge otherwise directs. This is founded on the fact that fraud in trusts is rare, except when a single trustee gets uncontrolled authority.
- (2) The "consenting party" clause. Where trustees with power of sale are recorded as owners, any tenant for life or other person, may by their consent, or by direction of a judge, be entered as a consenting party, without whose consent no dealing by the trustees can be recorded.
- (3) The *caveat*, which any person interested in any recorded land may, on affidavit, lodge with the Registrar. This is good for twenty-one days. Any disposition in the meantime is made subject to the claim of the cautioner. After this time the *caveat* lapses ; but the judge may extend its operation. If a *caveat* be lodged without reasonable cause, the cautioner is liable to pay compensation.

Settlements.

There are two methods of recording settlements. First, where the settlement contains a power of sale, the estate is recorded in the names of the trustees, and the record may be subjected to the security of the "consenting party" clause and the "no-survivorship" clause. Secondly, in the absence of a power of sale in the settlement, or where generally a judge may direct, estates and interests under settlements may be separately recorded, or recorded by means of a note of reference to the settlement. This provision—the "limited ownership" clause, as it has been called—is taken from Lord Cairns's bill.

AMOUNT OF DEALINGS IN RECORD OF TITLE OFFICE.

Such is the Irish Record of Title scheme—a scheme based on indefeasible title, and aiming at a complete record of every form of dealing with land which the law now recognises. Whatever be the cause, its perfection has not won public confidence. Up to the 1st November, 1871, there had been recorded only 520 estates, amounting in value to £1,820,333. Up to that date, the Incumbered and Landed Estates' Courts had given title to estates valued at about £42,000,000. Part of this large sum was the produce of re-sales ; but allowing for this, the disproportion between record transactions and court sales is very startling. In 1871, land to the amount of

£1,008,524 was conveyed in the Landed Estates' Court; in the same year, the value of land recorded amounted only to £105,000, though the record was open not merely to the purchasers of the year, but to the holders of the titles of all previous years.

CAUSES OF FAILURE.

Sir R. R. Torrens attributes the comparative failure of his system in Ireland to "the excessive fees that are charged on placing land first upon the record." "The Duke of Leinster," he adds, "wanted to bring his estates under it; but he was deterred from doing so by the enormous fees imposed by the Government."* The fees, when a year has elapsed from the grant of Landed Estates' Court title, are no doubt considerable, and would in the case of a large estate look a very formidable item in the bulk; but as the fees are very moderate for recording within the year, the explanation does not suffice. Far more deterrent than the stamp fees is the scale of costs under the section (51) which prescribes the mode of application to the Court to have an estate recorded, the title of which has passed the Landed Estates' Court. On the lower scale even, these costs amount to nearly £10, exclusive of the costs of advertisements, maps, etc. Up to the present time the number of applications made under this section, on which orders were made, has been 50, involving 70 conveyances or declarations of title.† I have reason to believe that most of the estates thus recorded were large estates.

But if the estate has not passed the Landed Estates' Court, then the tedious, costly, and dangerous process of obtaining a declaration of title must be gone through, with the prospect of reviving dormant claims, the certainty, almost, of tedious contentions in court, with all classes of objections, and the possibility of having an undisputed title rejected in the practically unnecessary effort to make it indisputable. And all this for remote and ill-understood advantages. When we consider that a declaration of title cannot be had in the smallest case under £50, and may cost several times that amount, the procedure is prohibitive of the record of small estates,‡ which

* *Evidence before Land Transfer Commission, 1870, page 29.*

† Number of cases under the 51st section of the Record of Title Act, up to 15th December, 1873:

Total number of applications 60

N.B.—These applications included more than one conveyance in some cases. The total number of conveyances and declarations of title recorded as above is 70, of which two have since been removed.

Number of said applications in which orders were made and the estates recorded 50

Number not proceeded with 4

Number on which no order was made 6

— 60

‡ In the appendix to the Report of the Encumbered Estates' Inquiry Commissioners, 1855, there is a paper showing the taxed bills of costs of petitioners or parties having the carriage of the sale. The amount of over 800 bills of costs is given, and out of the entire number only in 8 cases were the costs under £50, and in 145 cases under £100. There are in the list 24 instances of sales of estates, the rental of which did not exceed £30; and the average cost was over £80 15s. 6d., or an average of more than 3½ years' rent. In the case of those

are not held under Landed Estates' Court title. The investigation of title by the Registrar under Lord Westbury's act is a less formal and formidable course of procedure, yet the trouble, delay, and expense, far exceeding those of an ordinary sale, have, as the Land Transfer Commission show, gone far to nullify the whole scheme.

The centralisation of the office has also largely contributed to the result. Even under the English Registry, the want of district registries has been felt. Messrs. Sewell and Co., an eminent firm of solicitors, say, in their replies to the Land Transfer Commission:—
 "The necessity at present existing of the business being transacted in London, instead of on the spot, occasions an amount of inconvenience and expense to persons resident in the country, which *prohibit* the registration of titles to small properties."*

REQUIREMENTS OF SMALL OWNERS.

What the necessities of the recent legislation for Ireland, which at the outset of this Report I described, require, is a registry suited for small properties. It must, therefore, be local. It must be simple in working, and free from provocatives to litigation or expense. It must be directed to the necessities of small holders, and the peculiarities of their position; for it cannot be too strongly insisted upon that their position is peculiar. The same intricate law of real property affects, in theory, the small equally with the large proprietor; but, in practice, it is far otherwise. The great portion of the difficulties of conveyancing, no less than those of Land Registration, arise from the existence of settlements. But settlements, though the rule on large, are the exception on small properties. They become rarer as we descend in the scale of value, until we reach a point when they hardly ever exist. Legislation must be adapted to the existing state of things. If we propose to legislate for small holders, we must regard their customary modes of dealing with land. That is not by complicated settlements. A registry for small estates will, necessarily, differ from a registry for large estates, if the scheme is to adapt itself to the peculiarities and wants of both.

In proposing, therefore, a scheme of registration for small holdings, I shall not consider it a valid objection thereto that the scheme is unsuited for large owners, or unfit to be made the basis of a general scheme to supersede existing systems, and include the whole country in its range. Large land-owners customarily dispose of land in ways unusual or unknown to small proprietors. They want different things, and those wants must be differently supplied. No legislation is more mischievous than that which aims at uniformity where the state of facts is essentially different.

If the scheme I propose meets the majority of cases to which it is proposed to apply it, it suffices. I do not propose a compulsory

the rental of which was under £20, the average costs were £71 12s., or nearly 5 years' rent. In the two smallest estates sold the rentals were £11 3s. 10d. and £13 6s. 11d. respectively; and the costs of sale were respectively, £97 os. 11d. and £85 15s. 5d. A declaration of title costs about one-fourth or one-fifth less than a sale.

* *Land Transfer Commission*, p. 66.

system. Those who want it will resort to it; those whose wants it does not meet will avoid it.

We must, then, limit our local registry to small properties. Where shall the line be drawn? I suggest at £100 rent or tenement valuation, in analogy with the limit in the civil bill jurisdiction for non-payment of rent, which is limited to holdings where the rent reserved does not exceed £100 yearly.

LOCAL REGISTRATION.

The registry, then, for such holdings must be local. The establishment of district registries was one of the proposals of the Commission of 1857. The Report of 1869 has a similar recommendation. "It will be seen," the Commissioners say, "from the evidence that one cause of complaint is that the whole business has to be transacted in London, which, it is said, and with reason, causes delay and expense in small transactions. The objection to this is, doubtless, a practical one, the expense of establishing that which may have little or no business to do. They might, however, be set up on a very humble scale at first, perhaps at an attorney's office or at the county court." (*Land Transfer Commission*, 1870, p. xxxii.) The bills of Lords Hatherley and Selborne provided for district registries.

A county is quite too large a district for an Irish registry. The local registry should be within an easy journey, even on foot, from the verge of the district. The barony has no buildings. The petty sessions district is too small. There are 600 such districts in Ireland. The adoption of so small a district would involve a needless multiplication of officials. Probably no legal division of the county would be so convenient as the poor-law union. There are 163 unions; they are conterminous with townlands, and the valuation is made up separately for the portion of each parish, barony, or county that is in a separate union. The union buildings are centrally situated. Modern convenience, not the accident of centuries, has determined the size of the union and the location of the buildings. There are other reasons suggestive of the union as the most appropriate for registration work, which it will be convenient to indicate at the outset. The rate-books of the union are already in some sort a record of ownership; the occupying tenant and his immediate lessor on the one hand, the occupier in fee on the other, are registered for rating purposes; all changes in occupation or ownership are immediately notified, by the parties themselves or by the rate collector, to the clerk of the union.

THE TENEMENT VALUATION BOOKS.

A glance at the tenement valuation books, a specimen of which I subjoin, will show how appropriate and adaptable to registration purposes is the machinery of union rating.

COUNTY OF ARMAGH.
 BARONY OF ORIOR UPPER.—UNION OF NEWRY.
 PARISH OF FORKHILL.

1874.]

No. and Letters of Reference to Map	NAMES.		Description of Tenement.	Area.	Rateable Annual Valuation.		Total Annual Valuation.
	Townlands & Occupiers.	Immediate Lessors.			Land.	Buildings.	
	LONGFIELD.			A. R. P.	£ s. d.	£ s. d.	£ s. d.
29 A } — B } — C }	Francis O'Neill	Henry Alexander	House, offices, and land.	36 3 5	9 1 30	5 10 0	9 5 0
					1 3 35	1 5 0	
					1 3 25	1 5 0	
30	Henry Alexander	In fee	Land		1 3 20	0 5 0	0 5 0
31	James Hughes	Henry Alexander	House, offices and land.		25 0 25	20 0 0	6 0 0
32	a James Lawless	Same	House, offices, and land.	36 3 5	4 5 0	1 0 0	5 5 0
—	b Thomas Lawless		House, offices, and land.		4 5 0	1 0 0	5 5 0
—	c Owen Murphy		House, offices, and land.		8 0 0	1 0 0	9 0 0
—	d Thomas Fegan		House, offices, and land.		3 5 0	0 15 0	4 0 0
—	e Michael Fegan		House, offices, and land.		4 10 0	0 15 0	5 5 0

The first column indicates the number and letter with reference to the map which is kept in the General Valuation and Boundary Survey Office, Dublin. The capital letters indicate the subdivisions of a consolidated holding; the small italics, the subdivisions of a subdivided holding. The second column shows the name of the occupier; the third, the name of the immediate lessor, or, if the occupier is owner, states that he holds in fee. The other columns show the description of tenement, the acreage, and the valuation of buildings and of land separately, and of both together.

by Professor Donnell.

THE REVISION OF VALUATION.

If existing machinery can be adapted, and with slight modification, to the purposes of land transfer, one of the practical difficulties in the way of the introduction of a new system, viz., the expense, will be obviated. We have seen how important is an accurate survey as the basis of any improved system of registration, and how Lord Romilly's scheme of 1850 never got into working order because it necessitated the preparation of special maps by the Ordnance Survey at a considerable expense. The Registration Commissioners of 1857 say that a uniform map furnishes "the best means of identifying the property, and the clearest mode of indexing correctly the registered title to it." Well, in the General Valuation Office, we have a map ready prepared, and with references to the rate books, which would equally suit our system of local land transfer. This map is annually revised, in accordance with the changes of occupation and ownership which have taken place since the last revision. The poor-rate collector is bound, under penalty, to make out and deliver to the Clerk of the Union, before the 15th November in each year, a list of all tenements and rateable hereditaments in his district requiring revision. Any ratepayer may hand in a similar list. The reviser of valuation, an official of the Valuation Office, furnished with these lists by the clerk of the union, proceeds to the spot, and marks upon the map the changes caused by alteration of farm boundaries, consequent upon consolidation or subdivision of holdings. Changes in the names of occupiers and lessors are also recorded. We shall best describe the nature of this work in the words of J. Ball Greene, Esq., the Commissioner of Valuation, in his evidence before the O'Conor Don's Committee on the Tenement Valuation of Ireland:—

Every tenement in Ireland, from the largest farm to the most minute, is laid down on our map (the Ordnance map) and corrected annually. Then we have a schedule corresponding with the map of owners and occupiers, the area, value of the land, and the value of the buildings. The boundaries of every tenement are laid down and numbered to correspond with the terrier. As soon as a map gets worn out we give it to the draughtsman to make another map. The old map is kept among the records to show the changes. Every change of boundary is compared by one of our officers on the ground with the map. Every new fence that forms a farm boundary is accurately measured on the map. We give tracings, copies, and certificates of valuation to any person requiring them, at the actual expense. (Q.Q. 508-523.)

How accurately this work is done, and how satisfactory it is, appears from some other observations of Mr. Greene before the same committee:—

If there is a dispute between landlord and tenant, one of them will write to say that the quantity is wrong, and that he cannot make it out, and will ask us to send a tracing and a copy of the valuation. We send it, and it generally settles the question. (Q. 526.)

This revision has been in operation since the first issue of the tenement valuation in each county or city. The first county completed was Carlow, in 1853, and the last, Armagh, in 1865. The cost of this revision was, at first, wholly paid by each county by presentment until 1860; ever since the government have undertaken payment of one-half of the cost. Objections have, however, been taken,

on behalf of the treasury, to this payment, as, except for income-tax rating, the revision is a matter of local, not of imperial concern.

Additional work would require to be done by the reviser in making tracings of maps for the purpose of the registry; and as the revision is, except for assessment of income-tax, of purely local concern, the cost of the revision would fairly be payable out of local rates; and thus the treasury would be relieved of a payment to which, even at present, the objections are, to a large extent, well founded.

FUNCTIONS OF THE UNION OFFICIALS.

On more general grounds, the proposal to make the union the centre of local administration falls in with a growing tendency of the times. To the proper functions of the union officials—the administration of the Poor Law—have been added those of sanitation, and the preparation of lists of voters and jurors. The latter work, discharged by the clerk of the union and the rate-collectors, necessarily involves a knowledge of the ownership and the occupation of lands in the union; and the employment of these officials, in connection with the land registry, would consequently form a decided check upon fraudulent transfers. Under 26 Vic., c. 41, and 26 & 27 Vic., c. 90, each poor law union is constituted a district for registration of births, deaths, and marriages, and the clerk of the union acts as superintendent registrar of the district. Under these acts a register office has been provided in each union, at the expense of the rates, on the security of which the guardians might borrow money for the purpose.

THE LOCAL REGISTRAR.

Who should be the local registrar? This must depend on the nature of the registry, and the duties which the officer would have to discharge. If those duties are at all of a judicial or semi-judicial character, obviously a trained lawyer would be required; and we should have to create not only a new office, but a new official. But if the duties are purely ministerial, as I think they can be made, then the clerk of the union, as a resident official of great intelligence, already employed in those analogous duties to which I have referred, is marked out as the proper person to have charge of the local registry. The duties would not be very serious, for some time at least, as the plan of registry I propose is voluntary. The waste of great machinery on first efforts is of all things to be deprecated. Humble instrumentality benefits small beginnings. If the scheme succeeds, larger results will bring with them improved instruments; if it fails, little has been lost; and we can begin again on a more elaborate plan.

ADAPTATION OF THE RECORD OF TITLE TO THE LOCAL REGISTRY.

A local registry on the plan of the central Record of Title, and subordinate to that office, is an obvious expedient, which would not involve the payment of a large staff. Not a single new official needs to be created. Let the Clerk of the Union act as the recording officer. Where the statutory or prescribed forms are used, his function will be purely ministerial. All such instruments will be exe-

cuted in duplicate—one copy to be retained in the Local Registry office, the other to be transmitted, by the next post, to the Central Registry. The statutory forms may be largely added to, so as to embrace all ordinary transactions. Where non-statutory instruments are executed, let the Local Registrar, having satisfied himself by proper evidence that the instrument has been duly executed, send a duplicate, or copy, to the Central Registrar, and obtain his directions—the register of the estate to be closed, pending the receipt of these directions. The district registrar could serve notices in the cases required in the central office.

This duplicate system of registry, besides its local convenience for purposes of registration, search, and transfer, would give protection against loss of records by fire or outrage, and fraudulent alteration of entries. It would be analogous to the duplicate system, recognized and adopted in the Marriage Registry Act, 1844, the Marriage Registration Act, 1863, the Births and Deaths Registration Act, 1863, and the Probate Act (20 & 21 Vic., c. 79).*

With the necessary modifications, an analogous system of district and general registry of land is an obvious and easy expedient. A localization of the record of title office would only start with infeasible titles, newly granted; but thus limited, it would embrace all the peasant properties acquired under Bright's clauses of the Land Act, or through grant from the Church Temporalities Commissioners.

Witnessing Transactions.

Modifications suited to the means of owners on the district registry, might, and I think should be, introduced. A union official should witness transactions *vice* the solicitor prescribed by the Record of Title Act. If the Clerk of the Union is the registrar, let the witness be an *ex officio* guardian who knows the owner, the poor-rate collector of his district, or the guardian of his division.

Jurisdiction of Civil Bill Court.

Another modification of the Record of Title Act should be, that in cases of recorded owners valued under a certain amount, applications for amendments of the record, for appointments of real or personal representative, and the like, directed to be made to the Landed Estates' Court, should be made to the Civil Bill Court, with appeal to

* Under the first of these acts, the marriage registers are directed to be kept in duplicate; the duplicates and certified copies of the registers are sent to the district registrar of marriages, who regularly sends certified copies of the registers in his office to the general registry office; and indexes are kept both at the district and general registry offices. Under the Registration Acts of 1863, the provisions are similar. Under the Probate Act, applications at the district registry for probate must be transmitted to the principal registry by the next post—the probate not being granted till a certificate arrives from the principal registry, that no other application has been made there. The district registrar is ordered, in cases of doubt, to take the direction of the judge. Every fortnight he transmits lists of probates and administrations granted, and copies of wills received at the district to the principal registry—the original wills being preserved in the district registry. Caveats lodged in the district or central registry are sent to the other.

the Landed Estates' Court; just as under the Probate Act, appeal is given from the Barrister to the Court of Probate. It may be objected that, as the chairman only sits four times a year, the intervals would be too great for the promptitude required in a land registry; and that, as the chairman is still without equity jurisdiction, the time is not ripe for giving him jurisdiction in the registration of title. To the latter objection I reply that nine years should be sufficient to ripen for Ireland the legislative crop which was reaped in England in 1865. Since that year the English county court judge has exercised, with the best results, equity jurisdiction. The time is surely nigh at hand when this reform, still more urgently demanded by our peculiar land legislation, shall be extended to Ireland; and if this is done, more frequent sittings of the county court will become indispensable. Lord Selborne's and Lord Hatherley's bills proposed to confer on the English county court, with appeal to the Court of Chancery, similar powers under their system of land registry to that I have suggested.

Other simplifications of the system, suitable to a registry of small estates, would be advisable. These I shall refer to when discussing a scheme of local registry, open to *bona fide*, but not indefeasible titles, to which I now proceed.

THE OPEN REGISTRY.

An open registry—*i. e.*, a registry open to all *prima facie* titles—is recommended by the Land Transfer Commissioners. They think that the registrar should accept good titles, though not technically marketable; that any person claiming a fee-simple or power to dispose of the fee should be enabled to present his title for registration, and that the recency of the date should be no objection—precaution being taken against bringing in merely fictitious titles by requiring affidavits, and notices, and inquiries on the spot. They think that an investigation of title is necessary as from the date to which the owner desires to have his title fixed.

And, in accordance with these recommendations, Lord Selborne's bill proposes to allow registration, with or without a certified title, with certain precautions against fictitious claims; but the certified title may be either absolute (*i. e.*, good without any exception or reservation except those on the register, or in the act), or limited (as good from the date of some conveyance for valuable consideration to be mentioned on the register)—in both cases, the registrar being empowered to accept good holding titles, though not technically marketable.

PRELIMINARY INVESTIGATION OF TITLE.

I am of opinion that any preliminary investigation of title will partake, though in a less degree, of the evils which marred the working of Lord Westbury's act. It will lead to delay, expense, and vexation. It will deter applicants from registration. There should be no obstacles put in the way to the registry, if the admission of the register implies no certificate of title, and ousts no existing rights. A partial investigation will be conducted under a weaker sense of responsibility; and a limited certificate may readily be taken for more

than it is worth. Besides, the partial will be almost as distasteful as a complete investigation to owners who are reluctant to disclose their titles ; it may equally revive ill-founded claims, and start litigation, and it will only be of use to owners contemplating a sale. I therefore doubt the expediency of any examination which is incomplete, and of the granting of any certificate of title by the investigating tribunal, whether court or registrar. If any title is certified, it should be perfectly indefeasible. Lord Hatherley's bill appears to me to be based on a sounder principle than Lord Selborne's. It permits all applicants to the registry, on satisfactory evidence that they are *prima facie* entitled to the land ; and an absolute title is only conferred after judicial sale.

It is obvious that in the case of small properties, the most limited investigation will involve burdensome expense. The Report of the Registration of Title Commissioners of 1857 is emphatic upon this point. They say :

To make a judicial or quasi-judicial examination of title an indispensable preliminary to admission to the register would greatly narrow the benefits of registration. The expense alone of the examination would exclude nearly all small properties, and the trouble and expense combined would exclude many others. Defective titles would necessarily be excluded, and we do not see why a defect in the title to land anterior to the introduction of registration, need deprive that land of the benefit of an improved mode of transfer subsequently.

We think that a registration, founded on ostensible or possessory ownership should be permitted in the first instance ; and that, on such registration, the antecedent title might be left to be the subject of investigation until, by lapse of time or otherwise, that investigation should become unnecessary.*

We are not now devising a general system of registration, but one suited to small properties. Our system must be applicable to the smallest. Admission to the registry must not involve more than a simple application on a form supplied, and must not necessitate service of notices, advertisements or searches. A simple test of *bona fide* ownership is alone necessary ; and this, I think, might be found in the appearance of the applicant's name on the rate-books, as holding in fee or as immediate lessor, if he proposes to register as a proprietor ; rated occupier with immediate lessor if he proposes to register as lessee. For reasons which I shall state hereafter, I think the registration of land should be confined to fee simple proprietors and lessees. The registration would be subject to such rights and interests as affected the property, and to any adverse interest or title subsisting in or to the land at the time of registration ; but it would not be subject to any rights or interests arising or created at any time subsequent to the registration, except charges, if admitted, as I think they should, to the registry, and except interests protected by cautions or stops.

REGISTERED OWNERSHIP.

The registered ownership will involve the right to dispose of and transfer the land, and to charge and lease the same ; but it would thenceforth not be capable of being cut up into partial or limited estates or interests. The registered ownership would also be subject

* Report of Registration of Title Commissioners, Sec. 48.

to certain charges and interests declared in the statute not to be incumbrances, such as rights of way and other easements, rights of sporting, etc., tithe rent charges, fee farm rents, taxes and rates of a general character, and to leases not exceeding thirty-five years, where the tenant is in occupation. I adopt the term of thirty-five years, because that is the term which, under the leasing powers clauses of the Land Act, a limited owner may now grant. The course of the title thenceforward cannot be better described than in the words of the Report of the Commissioners of 1857: "Thenceforward the title to the property, for the purposes of transfer, will be manifested by the register, and by that alone; and so eventually the only title to land which a purchaser need examine will be the last transfer, as the same will be recorded on the registrar's books. At the commencement, indeed, the validity of the title of the first registered owner will still depend, as it does now, on the validity of the title of the party by whom the transfer has been made. But as time passes on, this title will gradually strengthen itself, until it has reached a period which, under the operation of the Statute of Limitations, will make it complete, and mature it into an unimpeachable title. Year by year the purchaser will be brought nearer to this result, and so the expenses which attend the retrospective investigation of title will be gradually diminished, until they reach their minimum point."* "It is," say the Commissioners of 1870, "as if a filter were placed across a muddy stream; the water above remains muddy; but below it is clear, and when you get so far down the stream as never to have occasion to ascend above the filter, it is the same thing as though the stream was clear from its source."†

SHORTENING OF PERIODS OF LIMITATION.

This effect of the registry, in clearing titles in course of time, would be much facilitated by a shortening of the periods of limitation. This reform might be confined to registered estates, as a boon to those registering, as Lord Cairns had suggested; or it might be effected by a general act, applicable to the whole kingdom, as was intended by the Bill of Lord Selborne, which accompanied his Land Transfer Bill. Lord Selborne proposed to reduce the period of limitation of actions or suits relating to real property from twenty to ten years; in cases of disability to reduce the period from five to three years; and, as has been done by Lord Campbell's Act, in the case of personal actions, to allow no time for absence beyond seas. The bill was read a second time in the House of Lords. It would be preferable, I think, at present to adopt the suggestion of Lord Cairns, and to offer this reform to those registering, who would be at liberty to accept it or not. The reform would be only a return to the old law,‡ which gave to a fine, levied with proclamations after five years, a conclusive effect, not only against the seller, but all strangers. Lord Coke describes the fine as furnishing a market overt for assurance of land. The proclamation or reading of the fine in the Court

* *Report of Land Registration Commissioners, 1857.*

† *Report of Land Transfer Commissioners, sec. 57.*

‡ *Stat. 4, Hen. VII. c. 24.*

of Common Pleas, once in each of the three terms succeeding the engrossing of the same,* was in those days of rare and slow communication but scanty notification of a dealing with land which was to conclude all claims, compared with local registration for the same time, accompanied with all the incidents of publicity which I suggest.

MAPS AND BOUNDARIES.

A tracing from the Ordnance Survey map, made and certified by the Valuation office, should accompany the application to register. This should be accepted as the description of parcels—*prima facie* evidence, of course, but in no way determining boundaries as against neighbouring owners. The Land Transfer Commissioners say:—“It is clearly very onerous to the registering owner, and it seems very vexatious to others, that they should be compelled to watch a legal process, and perhaps to adjust an undefined boundary, because one of their neighbours wants to register his title. We think the purchaser ought to identify them for himself in the usual way, a process found to be practically very simple and easy.”† Seldom in Ireland would any difficulty arise. The Ordnance Survey, the Tenement Valuation, and the annual revision have practically settled all difficulties of boundaries in Ireland. Not only have ratings been made on the several holdings as they have been definitely delineated on the Ordnance maps, but, as we have seen, these maps are frequently appealed to as ultimate arbiters in matters of dispute as to boundaries.

PRECAUTIONS AGAINST FRAUD.

As an additional precaution against improper attempts at registration, a declaration in writing, but not on oath, might be required, signed by the applicant, stating that he is in actual enjoyment of the rents and profits, and that he is absolutely entitled to the lands described as so and so in the rate-book, and of which a trace map is lodged, in fee simple or under lease (describing it), as the case may be, free from incumbrances, or subject only to such incumbrances as are distinctly specified. He should be punishable for making a false declaration. He might be required, or at all events be at liberty, to lodge with the registrar the last instrument of conveyance or the lease (as the case may be). Notice of the application to register should be posted up in the board-room of the Union buildings; and no registration should be made until ten days after the meeting of the Board of Guardians, next succeeding such publication of the notice. Any person objecting to the registration, should be at liberty to do so, on objection to be lodged with the Clerk of the Union, and on deposit of a prescribed sum to meet costs and damages. The registration would be stayed pending the order of the local court, which should have power to award costs and damages for frivolous or vexatious objections.

These precautions would be perfectly effectual against the making of unfounded claims.

* Stat. 31, Eliz., c. 2.

† Report of Land Transfer Commission, 1870, sec. 80.

Similar precautions, in case of dealings with the land when recorded, should also be adopted. No transfer should be made, except after notice similarly published, and after a like interval.

PUBLICITY OF THE LOCAL REGISTERS.

It is to be remembered that the smaller the area of the registry district, the greater will be the chance of detection of fraud, and the less likely will it be that the attempt will be made. A local registry in the Union, under the inspection, at every step, of the Board of Guardians—a body comprising the resident gentry and an intelligent representative of each division of the Union—will constitute a *market overt* for land, the publicity of which will pre-suppose the unlikelihood of any attempt at fraudulent transfer, especially if the registry is open, as it should be, to public inspection at specified hours. Publicity is a great check upon fraud, either in the form of personation, or tampering with the registry. The Record of Title Act only permits inspection of the record by the recorded owner, or by those authorized by him. The provision is borrowed from Lord Westbury's Act. Either it was thought expedient to conciliate the prejudices of English landowners against disclosing their titles, or the analogy of registers of stock was followed too closely. If the former was the motive for keeping the record secret, it must be remembered that, except in a few districts, no public registry of deeds ever existed in England. A policy perhaps necessary there, was not required in this country, where all titles have been exposed in the Registry of Deeds since the days of Queen Anne. If, however, it was intended as a protection against fraud, the analogy of the registry of stock in this particular is inapplicable. The concealment of the amount of stock standing to an individual's credit is an efficient check upon any attempt to forge a transfer of funded property, as the personator is asked to name the amount, and, if he displays ignorance on the point, he is at once suspected. But the quantity of land in anyone's possession is a matter of common notoriety. Its transfer is usually known to tenants and other persons in the locality.

The provision of secrecy, whatever may be its origin, is a mistake. It affords a cover for fraud, and should not exist in a local registry.

REAL REPRESENTATIVES.

On the death of a registered proprietor, a representative must be entered in his stead, upon whom the registered ownership shall devolve, and with whom purchasers can safely deal. Here I would suggest a change in the law of descent, suited to the small properties, the subject-matter of our local registry. The change would not be so much an innovation as a return to ancient custom. It is that, in case of intestacy the law of primogeniture should be abolished as to all lands on the local registry, the distribution to be assimilated to that of personal property. Of the law of primogeniture in the abstract, I say nothing here. I can well understand why, whilst it continues the custom among proprietors of great estates to devise them to the eldest son, the law should, on intestacy, do what it may be

presumed the deceased would himself have done, had he made a will. But the presumption is different in the case of small proprietors. The political and social considerations usually adduced in favour of primogeniture have no application to small properties. If this change were made, the executor or administrator would, in all cases, take the place of the registered owner as real representative—a return to the principle of single heirship in the Roman law.

If, however, it is not thought advisable to alter the law in this respect, on the death of the registered proprietor of real estate, the local court should have power, on the application of any person interested in the land, to appoint a real representative to be registered in place of the deceased proprietor. No registered estate should be deemed to pass by any will purporting to create any tenancy for life, or other particular estate, less than the fee-simple in the land devised; but such partial interests should operate by way of trust only as between the beneficiary and the real representative. The executor or administrator of a proprietor of a lease for years would, on his death, be entitled to be registered in his place. A specific legatee should acquire title by transfer, made by the representative.

PARTIAL INTERESTS.

I have already intimated an opinion that the registry should be confined to a simple record of transfers and transmissions of ownership, with, possibly, a record of charges. The registrar and assistant registrar of the English Land Registry are of opinion "that a continuous registration of title can be carried on advantageously only while confined to a fee-simple estate, or where the limitations of the estate are in a simple form."* The Land Transfer Commissioners, fearing that "the burden of entering on the registry all subsequent transactions will be found to be very great, and that the titles will thereby become as much involved as before," recommend that in analogy to the registries of stock, only those who represent absolute ownership shall be placed on the register, and that all partial interests shall be kept off the register, and protected only by a system of cautions or stops."† The Commission of 1857 foresaw the failure of any attempt at complete registration. "If equitable interests," they say, "are put upon the registry, it is demonstrable that the advantages of a record of title would soon be lost, since it would, in fact, become little else than a registry of assurances, and a very imperfect one. . . . The register ought to be composed of a successive of simple transfers merely, and should manifest only the actual and existing ownership of the land for the time being, without laying open the history or past deduction of it."‡ The working of the Irish Record of Title, though a shorter time in existence than Lord Westbury's Registry, seems to have disclosed the imminence of similar complexity in the titles on the record, if we may judge from a provision in the amending bill of last session, introduced by Sir R. R. Torrens—that every deed or instrument, whether in the statutory

* *Report of Land Transfer Commission*, Appendix, p. 84.

† *Report of Land Transfer Commissioners*, secs. 57, 66.

‡ *Report of Registration of Title Commissioners*, secs. 65, 43.

form or not, affecting recorded land, should only take effect by way of contract between the parties, and as authority to the recording officer to make a suitable entry on the register—the entry on the record, not the execution of the deed, affecting the recorded land. I fear there would be some danger that, in the effort to attain conciseness on the record, the intention of the instrument might occasionally be imperfectly described. The true remedy, in my opinion, is not to be found in laconic condensations of complicated instruments, but in the omission altogether from the Registry of Title of partial estates and equitable interests, other than charges created as hereinafter described.

No doubt such interests will be much rarer among the small owners for whom the local registry is intended, than in the case of great estates. But if they are permitted to exist, they must be accorded some form of protection against improper dealing on the part of the registered owner, who will be entitled to transfer the entire ownership to a purchaser free from all estates or interests created since the commencement of the registry.

PROTECTION OF UNREGISTERED INTERESTS BY CAUTIONS OR NOTICES.

I propose that all unregistered interests in the nature of trusts, limitations, non-occupation leases, etc., should be protected by cautions or notices.

Lessees may protect themselves by notices of their leases, specifying their nature, and the portion of the land to which they apply. The notice should be accompanied by a trace-map, and the lease should be deposited.

Any person interested under any form of unregistered instrument other than a lease, should be entitled to lodge a caution to the effect that no dealing with the registered land be had on the part of the registered owner, until notice has been served on the cautioner.

The operation of these cautions is very lucidly described in the report of the Land Transfer Commissioners. They say :

These should be of two kinds—one founded on interests in the retention of the land ; the other on money interests. We will here call them “land-stops” and “money-stops.” All persons interested in the land itself should, unless over-riden by a power of sale, be entitled to a land-stop : all persons interested in the proceeds to a money-stop. Thus, if land be vested by settlement in trustees (registered owners) in trust for A for life, remainder to B and others, and subject to charges in favour of C and others ; and if in the settlement they have a power of sale at their own discretion, no one would be entitled to a land-stop ; if to a power of sale with consent of A, A alone would be entitled to a land-stop : all would be entitled to money-stops : if no power of sale, B and his congeners would be entitled to land-stops, C and his congeners to money-stops.

When the landowner comes to sell, the purchaser demands the removal of all the stops. The vendor makes his arrangements accordingly, and on their removal the land is transferred. This will, in the vast majority of cases, be done with ease, for the difficulty and expense now experienced where they are carved out into different interests, is usually not to procure the joinder of the various interests, but to satisfy the purchaser that they are all joining.*

On an owner then desiring to sell, notice would be given to all

* *Report of Land Transfer Commissioners, 1870, secs. 85, 86.*

cautioners that, unless objection was made within a limited time, the sale would proceed. If a cautioner objects, the local court should determine whether the sale should proceed. When the land is sold the equities and trusts will attach to the funds arising from the sale; the purchaser will be freed from inquiry into and will take the lands discharged of the trusts. In the event of dispute as to the distribution of the proceeds of the sale, the money should be paid into the nearest Post-office savings bank, there to await the result of any proceedings taken by cautioners in the local court; but these should not interfere with the completion of the sale.*

This system of cautions has been pronounced by the Commissioners of 1857 and 1870 sufficient to adequately secure the owners of unregistered interests against improper dealings by the registered owner. It has been adopted in the bills of Lord Cairns, Lord Hatherley, and Lord Selborne.

FREING LAND FROM TRUSTS.

Moreover the doctrine on which it rests that trusts shall not attach to the land is not new. At first "uses were considered as annexed to the estate of the feoffees in the land, and not to the land itself."† It was a doctrine of later times that the trust should fasten upon and attach to the land. We are returning to the old paths of the law, in detaching the trusts from the land, and fastening them upon the trustee.

It falls in with the tendency in modern conveyancing, as well as with the ancient doctrines of the law. Most well-drawn settlements contain clauses which render it unnecessary for purchasers to see to the mode in which the purchase-money is applied. Frequently, too, the trusts are declared by a separate deed.

But, more than all, it is the system which has governed trusts in the case of stocks and shares and ships, where it has been found practically safe. "There are," say the Registration Commissioners of 1857, "millions of money in the funds, railways, canals, docks, and other undertakings, left to a great extent in the names of trustees; and yet it has been found that property so circumstanced is practically safe. Can it be believed that what is safe for beneficial interests in such property, when prudently looked after, will be otherwise than safe when applied to land, especially if there are thrown over it those additional protections which we recommend (*caveats* or inhibitions, a 'no-survivorship' clause, and injunction). With such protections prudently claimed and carefully acted on, we conceive the answer must be in the negative."‡

REGISTRY OF CHARGES.

Whilst I am of opinion that partial estates and equitable interests should be kept off the register, but protected by cautions or stops, I think the usefulness of the register would be very much dimi-

* Further protection could be given, as in the Record of Title Act, by the use of the "No-Survivorship" clause and the "Consenting Party" clause.

† *Sanders on Uses and Trusts*, 5th edn., vol. i. p. 385, quoted by the Rt. Hon. T. B. C. Smith in his pamphlet on Law Reform.

‡ *Report*, sec. 50.

nished if charges were excluded from it. The Land Transfer Commission have reported against their admission on the register ; but in this they were far from unanimous. Lord Justice Gifford, Sir H. Thring, Mr. Walpole, Mr. Waley, and Mr. Wolstenholme dissented on this point ; and the Bills of Lords Hatherley and Selborne followed the views of the dissenters.

Charges, it is true, are not admitted on registries of stock ; but an owner of stock can get money by selling out the amount of stock which will produce the very sum he wants ; whilst land is not capable of such exact division and calculation of price. The analogy of the shipping registry, where mortgages are allowed, is more in point.

I am mainly determined in my view by the consideration of the necessities of the class for whom the local registry is intended. Purchasers under Bright's clauses, and from the Church Temporalities' Commissioners, will, at the outset, and for some time, be more or less encumbered, not only by the public advances, but by loans obtained from friends for the purchase of their farms. Every facility should be afforded them for borrowing, consistent with the main objects of the registry. Difficulty of mortgaging, distrust in an unregistered security, only protected by cautions, would probably increase the rate of interest they would have to pay. The Record of Title shows how facile a transaction of this sort may be made. Facility means cheapness. If confined to statutory forms of a simple kind, the register will not be confused, and the registered owner may make a mortgage without parting with the registered ownership—the incidents of an ordinary mortgage being statutorily implied in the creation of the charge. In this way great facility of charging may be attained without introducing any appreciable complexity into the registry.

The creation and registration of charges may be regulated by the following provisions :—

1. The registered proprietor of any land may charge the same with the payment of any principal sum of money, with or without interest.

2. The instrument of charge shall be in a statutory form, with or without a power of sale, and be executed in the manner and with the safeguards I have already suggested ; after which the particulars shall be entered on the registry.

3. The owner of the charge shall be entitled to a certificate containing the particulars of the entry on the registry.

4. The land and the charge may be transferred independently of one another.

5. Judgments may be registered against the land, without an affidavit, and shall have the effect of charges created in the prescribed manner.

6. The charge created in the statutory form, and registered, shall imply a covenant to pay the amount charged, with power to the owner of the charge to enter into possession, and to foreclose, and (if the instrument creating the charge contains a power of sale), to sell.

7. Registered charges shall have priority, according to their entry

on the registry, and be discharged by entry of a memorandum thereon.

8. Unregistered charges shall only take effect as unregistered interests, but may be protected in like manner as unregistered interests.

THE LAND WARRANT.

A land warrant or certificate, such as prescribed by the Record of Title Act, and which has been adopted in all the recent schemes of land transfer, could be granted to the registered owner, and would be found a convenient evidence of title, and afford a facile means of making an equitable mortgage. It should be in a simple form, attesting the name of the owner, the nature of his ownership, the description of the land, the incumbrances (if any) appearing on the registry, and reference to the rate-books, land-map and indices. I do not, however, attach much importance to this, as the facilities for charging on the registry will, probably, be found sufficient; and the production of the land warrant as a check on fraud, though an admirable device in a central registry, will be quite unnecessary in a local registry, where attempts at personation would be sure of detection. But old habit had so associated ownership of land with possession of title-deeds, that it may be necessary, to ensure confidence in the scheme among the less intelligent portion of the community, to continue the use of the land-warrant. The warrant should be produced when the land is transferred, or a charge upon it created.

REGISTRY OF LEASES.

The subject of leases has already been partially dealt with.

Occupation leases need not appear on the register of the estate. As to these, the purchaser will be left to his ordinary duty of inquiry. Other leases affecting a registered estate may be protected by cautions.

I am of opinion that all leases should be entitled to substantive registration—to be transferred, transmitted, and charged, *mutatis mutandis*, in the modes already suggested. There is no reason why in this country the benefits of local registration should be confined to “beneficial leases originally created for more than twenty-one years”—as recommended by the Land Transfer Commission.

The Irish Record of Title Act makes valid, without record, as against a recorded owner, a tenancy or lease at a rack rent for not more than thirty-one years; but it allows any such leases to be recorded—as also leases of any length, the title to which has passed the Landed Estates’ Court.

The benefits of a cheap and easy mode of transfer and charging will be as great a boon to the small leaseholder as to the small proprietor.

Parol tenancies from year to year, being in many cases interests under the Land Act as valuable as leases, might, at a future time, be entitled to substantive registration; but I do not recommend their inclusion at present in the scheme, as the admission of so numerous a class to the benefits of the registry would probably tax too severely the strength of the simple machinery I have sug-

gested. Hereafter, should the scheme work well and become popular, the system might be extended so as to include these interests which, as the fourth section of the Land Act virtually makes future improvements the tenants' property to all time, must henceforth have an ever-increasing value.

REMOVAL OF LAND FROM THE REGISTRY.

Finally, I am of opinion that land once put upon the local registry should not be removable from it except to the central registry. For removal of land from the local to the central, and from the central to the local registry, every facility should be provided.

SUMMARY OF CONCLUSIONS.

I sum up the conclusions at which I have arrived in this report as follows:—

1. The establishment of a local registry, subordinate to the Record of Title office, in every union, and registering all lands or leases to which titles have been immediately granted by the Landed Estates' Court, is perfectly feasible, and would confer a great boon upon small owners.

2. The local registry should also be open to *primâ facie* titles not certified as absolute or limited.

3. The district of the local registry should be the Poor Law union; and the local registrar the Clerk of the union.

4. In adapting the Record of Title system to the necessities of a local registry, the following modifications are advisable:

(a) The statutory forms should be added to, so as to include all ordinary transactions.

(b) Where statutory forms are used, a prescribed entry suited to each should be made by the local registrar; where non-statutory forms are used, the local registrar should take the directions of the Central Registrar.

(c) A duplicate or authenticated copy of each instrument recorded should be transmitted to the Central Registrar.

(d) All dealings in the registry should be witnessed by an ex-officio guardian, the poor-rate collector of the district, or the guardian of the division in which the lands dealt with are situate.

(e) The Civil Bill Court, with appeal to the Landed Estates' Court, should be substituted for the Landed Estates' Court, in case of applications for amendment of the record, appointment of real representatives, and the like.

(f) Such other simplifications and modifications suggested in the scheme of registration of *primâ facie* titles, as are applicable to indefeasible titles, and which it might be thought expedient to incorporate with the Record of Title scheme.

5. An open registry should not necessitate any investigation of a technical character. Evidence of *bona fides* should be the appearance of the applicant's name in the rate-books.

6. The open registry should be confined to owners in fee and to lessees for any term of years

7. The registered ownership should be subject to all rights and interests affecting the property, and to any adverse interest or title subsisting therein at the time of registration; and also to easements, profits *a prendre*, occupation tenancies, and the like.

8. Registration should not involve the fixing of boundaries between neighbours; but a tracing of the Valuation Office map should be lodged as the best, but merely a *prima facie*, definition of boundaries.

9. The registered ownership should not be subject to any rights or interests created after registration, except charges: all other partial interests should be protected by stops.

10. The registered owners would be entitled to transfer the entire ownership to a purchaser, free from all partial or limited estates or interests created since the commencement of the registry.

11. Hence a purchaser need only investigate the title antecedent to registration, and this retrospective investigation will gradually diminish, until at length it becomes unnecessary.

12. This self-clearing operation of the registry of title would be greatly aided by a shortening of the periods of limitation.

13. On the death of a registered owner a real representative should be appointed.

14. The law of succession to real estate should, as to land locally registered, be assimilated to the law of succession to personal estate; and if so the executor or administrator should be the real representative.

15. Charges should be admitted to the register, if created in simple statutory forms; the land and the charge to be transferable independently of each other.

16. A registered owner of land or charge should be entitled to a certificate or warrant.

17. The registry should be public.

18. The Local Court, with appeal to the Landed Estates' Court, should decide all questions and do all acts relating to the local registry.

19. A registered title should be removable to the Central Registry only.

SUMMARY OF BENEFITS.

Such a registry as I have just sketched out—limited as it is to the registration of fee-simple estates, leases, and charges—will, I am persuaded, meet the wants of the vast majority of the holders of land valued under £100 yearly. The interests to which it is confined are, after all, among all portions of the community, the most usual, but amongst small owners the almost exclusive subjects of sale and transfer. Its benefits I may sum up as follows:

1. The open registry would render unnecessary, and thus save the expense of all retrospective investigation of title subsequent to the date of registration.

2. The title would, in course of time, clear itself, and without the cost, trouble, delay, and danger of a preliminary declaration or examination of title, so that purchasers would be saved all the trouble and expense of examining, and sellers of showing the title.

3. Not only the expense, but what is a still worse evil economically, the uncertainty of the present system of conveyancing would be avoided.

4. The instruments of transfer and mortgage would be enormously simplified and cheapened.

5. All land on the registry would, in the future, be freed from all impediments to its sale, and would thus readily and speedily find its way to those who could turn it to the best account.

6. It would take those forms of aggregation or division which the tendencies of the times and the wants of society indicated as most productive and convenient.

7. It would relieve small portions of land from the disproportionate burden of expense with which their transfer is at present weighted.

8. The establishment and extension of manufactures would be encouraged by the increased facility and rapidity with which small lots for sites and spaces for works could be obtained and transferred.

9. The production of human food would be increased by the facilities for enabling the cultivators of the land to become its proprietors.

10. The working classes would have increased opportunities of obtaining small plots of land.

11. The facilities for obtaining and transferring building lots would lead to an improvement in human habitations.

12. The saleable value of land would be enhanced by the amount saved in expenses of transfer, and by the increased demand which would set in.

13. Certainty of title and facility of charging would make land as favourite an investment as stock, and thus the rate of interest on loans on land would be lowered.

14. The safe investment of savings in land thus provided, would increase the desire to save, and would prevent the misery and poverty which result, mostly to widows and single women, and to the helpless and ignorant, through lending on landed security which is worthless.*

Such are some of the many benefits which would attend a reform in the transfer of land such as I have recommended. That such a scheme is perfectly practicable I am most firmly persuaded. When I began the investigation of this subject, its difficulties loomed upon me large and appalling. On nearer acquaintance they have become dwarfed to insignificance, or have totally disappeared. Whether the scheme I have recommended is or is not the best—and I feel it is far from perfect, is not indeed as perfect as, less controlled by considerations of expense, I myself could have made it—of this I have no doubt, that the cheap and ready transfer of land can be effected

* “The greatest condemnation of the existing system of lending money on land is the reluctance which bankers, the natural traders in loans, have to lend on mortgage. The security which they refuse, careless trustees, ignorant people who have savings, widows and others who have small provision, are advised to accept, and in this way the whole risk of bad security is thrown on the classes least able to bear it.”—Evidence of W. N. Hancock, LL.D., *Registration of Title Commission*, 1857, p. 441.

by means of a local registry, and that the removal of the old world impediments, which interfere with its free circulation, is a necessity of our times. The absorbing passion for the ownership of land which pervades the Irish people, no less than the commercial requirements of the age, the demands of our nascent manufactures, the claims of agriculture, and the requirements of labour, now roused from its lethargy and asking a foothold on the soil, makes this reform one of pressing and primary importance. Let no one say it is impossible. What has been done can be done again. What has proved a success in Australia and all over the continent of Europe can be attempted here. My scheme may not be perfect; but the resources of the system cannot be fully known till it is put into practical operation. The time is propitious for urging this reform upon the attention of parliament. This Society, in days when remedial legislation was almost at a standstill, never lost heart or hope, but pursued the even tenor of its way in indicating needful reforms, and influencing the intelligent opinion of the country. Now that we have fallen on better days; now that our eyes have seen achieved in five years reforms which seemed the work of fifty, I am confident that if the scheme I have sketched should, as it stands, or in some modified form, meet the approval of this Society, the interval will be but short until the accomplishment of a reform which will increase the motives and the products of industry, elevate the national character, and give stability to all that is best in our ancient institutions.

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