

There are several minor points, which though outside of the method of guarantee, still affect the tramways and their shareholders and the ratepayers, and may, therefore, be shortly mentioned. A large increase in the rateable value of a district arises by the construction of a tramway, not only from external sources, but from the actual railway or tramway line itself and its earnings, together with its houses, depôts, stations, etc., being valued for rating purposes, such as for poor-rate, county cess, the tramway guarantee rate (the tramway thus paying towards its own guarantee), and last, though not least, for income tax; these rates have, in the first instance, to be paid by the tramway company, but are actually and really paid out of the guarantee, and so fall on those who pay the guarantee-rate. When the guaranteeing district is conterminous with the poor-rate and the county cess district, it, of course, does not matter much; but when these are not conterminous, as is generally the case, it is very hard that those who pay the guarantee, should have to pay on property which was created by their guarantee, whilst much of this increased rate goes off to another district which gave no guarantee, and pays nothing to it, whilst the income tax is collected not only on the enhanced rateable value, but as it has to be deducted from the shareholders, and paid over to the income tax collector, it is thus actually paid by the ratepayers who pay the guarantee, and thus often paid twice over.

It might be reasonably asked, therefore, in the interest of the ratepayers, that the line itself, its depôts, stations, etc., might be free from taxation so long as the tramway was calling upon the guarantee in aid.

The annexed list of tramways and light railways, under the Act of 1883, is taken from the latest, "The Fifty-eighth Annual Report of the Commissioners of Public Works, Ireland, for the year 1889-90."

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### III.—"The Registration of Assurances Bill." By Joseph Maguire, B.L.

[Read Tuesday, 24th February, 1891.]

"THE Registration of Assurances Bill" of the Attorney-General, Mr. Madden, is the complement of his "Registration of Titles Bill"; combined they cover the entire field of land transfer in Ireland. Last session an able paper on the latter of these bills was read by Mr. Lawson, B.L. and discussed by the society. It seems desirable, however, that a subject of primary importance, like land transfer should be viewed by the society in its totality. This paper, then, is intended to place before the society, that portion of the land transfer proposals of the Attorney-General which is outside the scope of the able paper referred to.

"The Registration of Assurances Bill" is a large and comprehensive measure, aiming at the consolidation of the statutes, and involving important changes in the law and practice of deeds registration in Ireland. Like its companion measure it is framed on a

principle, widely and wisely recognized in modern legislation, of leaving most of the details of practice to be settled by competent authority by means of rules to be framed in accordance with the express provisions of the bill.

It is pre-eminently a bill for the protection of purchasers. Its leading provisions are all directed towards this—the main end of registration. Clauses 8 and 15 deal with two glaring defects in our law of priority, which it was the intention of the present writer to have long since brought under the consideration of this society. These are:—

- (a) The state of the law of notice ;
- (b) The priority accorded to a mortgage, by deposit of title deeds unaccompanied by writing.

As regards the former of these, the anomalous condition of the law of notice, it is well established that in cases of conflicting equities, by the application of a principle of agency an innocent party will be held to be affected with notice of matters of which he is wholly ignorant, provided his solicitor has knowledge of the same. The leading case on this subject is *Le Neve v. Le Neve*, reported in (2) White and Tudor's leading cases (44). The decision in this case is generally disapproved of in its results, although it is a fair deduction from well-recognized principles of equity. It is interesting to the student of jurisprudence, as an illustration of the overgrowth of equity and its correction at the legislative hands of the Attorney-General, if his proposal becomes law, will illustrate the theory of Sir Henry Maine on the relations between equity and legislation as remedial agencies.

The remedy embodied in clause 8 is as sweeping as could be desired, proposing, as it does, that no kind of notice, unless accompanied by fraud, should deprive a purchaser of the statutory priority acquired by registration. The bill, of course, does not attempt the impolitic, if not impossible, task, of defining fraud, as fraud however difficult of definition, is easily enough recognized in the circumstances of a particular case. The second glaring defect above referred to, and which the bill proposes to remedy, is the anomalous priority which has been accorded to a mortgage, by deposit of title deeds unaccompanied by writing.

That an equitable mortgage by deposit, without writing, should ever have been held valid, to say nothing about its priority to other transactions, seems totally inconsistent with what might be almost called a fundamental law—the Statute of Frauds. The validity of a mortgage of this kind was first established more than a century ago, in the case of *Russell v. Russell* (1 Bro. C. C. 269), but this decision has since been judicially spoken of as “a determination repeatedly reprobated and regretted.” Nevertheless it was followed in an English register county in 1828, in *Sumpster v. Cooper* (2 B. and Ad. 223), where a registered assignment was postponed to an equitable deposit without writing. In short the priority accorded to a mere equitable deposit without writing, seems not only to over-rule the Statute of Frauds, but to defy the Registry Act as well. It has been pointed out by judicial authority as an extraordinary anomaly, *by which the*

very informality of a transaction is made the ground of its superior validity. The decision in *re Burke's trusts* declared that the equitable mortgage without writing, was from its very nature incapable of registration and therefore outside the Registry Act. Clause 15 of the bill simply provides that such a transaction may be registered by means of a memorial stating the principal facts of the deposit, thus bringing the matter clearly within the scope of the bill; while clause 18 renders it void as against purchasers if unregistered. The same clause operates similarly on liens for unpaid purchase money, and the vesting of lands under acts of Parliament, these transactions being brought within the scope of the bill by clauses 16 and 14.

It would be difficult to overestimate the value of these proposals by which the law is to be placed on a reasonable and satisfactory basis, by which transactions outside the Registry Act are to be brought within it, to the great advantage of purchasers; by which the process of search is to be centralized, and the symmetry of the system secured by reducing matters differing in form and nature, but capable of similar treatment, to one uniform law of registration and priority. These desirable results are further aimed at by the provisions for registration in the Registry of Deeds Office of Judgments entered up before 1850—*lis pendens*, crown bonds, recognizances, private acts of Parliament, and other matters, which, at present are either not registered at all, or have to be sought for in some other office. The saving of trouble and expense likely to follow from thus centralizing the process of searching is sufficiently obvious.

But even these provisions do not represent all this bill does for the protection of purchasers. Under the system, as it exists at present, some time must elapse between the completion of a search and the registration of the purchase deed, to which the search is antecedent. To be mathematically accurate in this particular, it would be necessary to conclude a search at four p.m. and register the deed at ten on the following morning. To meet this difficulty, and for the protection of contracts generally, a system of caveats is proposed and regulated by clauses 51 to 54. This system of caveats ought to work satisfactorily. It is likely to cause little official friction; as the intention of the bill appears to be that caveats shall be assimilated as far as possible in form and treatment to memorials of deeds.

Another most important feature in the bill, and apparently directed towards the same end as those already referred to, is the provision for the registration of wills and intestacies. This matter is dealt with by clauses 39 to 50, which are mainly founded on the Act 14 and 15 Vic. c. 72, an act which never became operative. There must always be a difficulty in regulating the priority of wills in a registration of deeds, a difficulty in assimilating in reference to priority, two things which, in this very matter of priority, are from this very nature widely different. Apart entirely from registration the maxim "*qui prior est tempore potior est jure*" regulates the priority of deeds, while in the case of wills, the maxim is reversed; the will of later date taking priority over the earlier one.

The main defect of the existing law, however, lies in the fact that

no protection is afforded to a purchaser as against a party claiming under an unregistered will. This arises from the absence from the Irish Registry Act, of any provision declaring unregistered wills void as against purchasers. The provisions, however, embodied in clauses 39 to 50 will, if found practicable, do much more than remedy this defect in the existing law. They are very elaborate in their character and highly tentative so that we have no actual experience to guide us in our estimate of their practicability. There can be little doubt, however, that if they are found to work successfully, they will be a great gain to the system of Registration of Assurances: besides affording additional protection to purchasers they will fill up the interstices of our system of registration. At present wills are rarely registered in Ireland, and devolutions, by operation of law, from their very nature—never. As a consequence registry searches seldom disclose any other than acts *inter-vivos*. The proposals now under consideration, if adopted, will change all this. Those missing links in the chain of title, and which have to be sought for elsewhere than in the Deeds' Office, will be supplied, and a registry search, if properly directed, ought to disclose a perfect abstract of title.

These provisions regarding wills and intestacies would appear to be the crucial point in this bill. If they are found impracticable it will show that the ideal excellence aimed at by the Attorney-General is unattainable in a Registration of Assurances; while, on the other hand, if they are found to work well, the result will be to bring the Registry of Deeds Office to a condition bordering on theoretic perfection. The deduction of title would be greatly facilitated and the path of progress cleared for the system of Registration of Title which it is proposed to re-create, if, instead of summoning and examining witnesses to ascertain facts material to the title, and directing searches in other offices for other facts equally material, the Examiner of Titles were enabled to turn to a single office for all the facts constituting the title which it is proposed to record.

In the system of judgment mortgages now largely availed of, the bill proposes little change. Clause 24, dealing with errors and misdescriptions in affidavits of judgment seems merely declaratory of the existing law, that is to say, that such errors and misdescriptions do not invalidate where they are not calculated to mislead. The earlier decisions on errors and misdescriptions in affidavits of judgment, were more technical than those more recently declared, and proceeded on the principle that a judgment mortgage being a mortgage *in invitum*, and the creature of the statute, its advantages could not be gained without a strict compliance with statutory requirements. The stringency of earlier decisions, however, appears to have been relaxed in the direction of the principle embodied in clause 24, by which a substantial as distinguished from a literal compliance with the requirements of the bill will be sufficient to validate the mortgage.

Having considered the bill in its main features with respect to priority, the protection of contracts by caveats, the registration of wills and intestacies of judgment mortgages, and other acts affecting

land, I shall proceed to consider those provisions that are intended (a) to facilitate registration; (b) to simplify official procedure. Both these objects would be promoted by clauses 68 and 69, which abolish the necessity for affidavits of perfection in the case of deeds duly attested and registered within a year, and wills duly attested and registered within two years. At present an affidavit proving the execution of an instrument, and the signing and sealing of the memorial, is in the case of all deeds a condition precedent to registration; and in the case of wills, an affidavit proving the signing and sealing of the memorial must be made. In many cases this condition is difficult of fulfilment, involving long journeys, expense, and delay. Sometimes it is impossible of fulfilment, as when the necessary witnesses are dead or out of the way, or where they refuse to make the affidavit of perfection. Under the present law there is absolutely no remedy for the latter cases, and a deed so circumstanced as regards the witnesses is incapable of registration. Clause 70, however, provides for the making of the affidavit in such cases, where necessary, by a person who can depose to the handwriting of some one of the grantors in the instrument. The abolition of affidavits of perfection in the majority of cases, as the bill proposes, would undoubtedly be a great saving of time and expense to the public; it would save the office the double duty which it now discharges of examining the affidavit prior to registration, and transcribing it afterwards. It would involve, however, a considerable loss to the revenue, which it is presumed would require to be made good from some kindred source.

The abolition of the affidavits of perfection, as I have shown, would simplify the process of registration for the outside public, as well as save some trouble to the office. It would be done, however, at the expense of the revenue; but even so, it appears to be an exception to the general rule as regards proposals for official reform—the general rule being, that if you relieve the office of any part of its duties and responsibilities you must throw additional duty and responsibility on the public or their professional agents, the registering public being the people who must ultimately pay. The proposals for the adoption of the Ordnance Survey names of townlands, and for making the Ordnance Survey maps the basis of registration and of the indexes, are a good illustration of the rule above stated. No doubt it would greatly simplify the official procedure to have the Ordnance Survey names, and the parochial and city or baronial and county situations supplied by the memorial in every case. It would in the first place do away with the necessity that now exists for the “No Barony,” “No Parish,” and “General Index” series in the Lands Index. It would facilitate searching and the identification of the premises searched against. Those *bêtes noires* of the Registry of Deeds “General Acts” would disappear. The Ordnance Survey denominations could be arranged in dictionary order, and the official references to all acts affecting a townland for an indefinite period could be brought into juxtaposition so as vastly to facilitate and simplify the process of searching. These are some of the advantages to accrue from the adoption of the

Ordnance Survey as the basis of registration. A more remote, but perhaps not less important advantage, would be that taking this proposal in connection with the proposals for the registration of intestacies and other trans-vestitives facts, its adoption would seem to favour the possibility of evolving from the Registry of Deeds a system of Registration of Title, if it were found desirable to do so. At all events the Registry of Title, no matter how or where established, will have its business facilitated if the highly tentative proposals embodied in this bill are found to work successfully.

It is but right, however, to point out that the advantages, both immediate and remote, are not to be had for nothing. The basis of registration will in the first place be changed from a nominal to a cadastral one, from verbal description to position on a map. While the official procedure connected with registration would be simplified and facilitated, the extra official procedure would be less simple and easy. The present memorial is a very different document from the memorial contemplated by the bill. The former is very simply and easily prepared from the deed, the copyist omitting those portions which are not required by the statute, and which it may not be thought desirable to record, and adding the names and descriptions of the witnesses at the end. The memorial contemplated by the bill is more in the nature of an abstract of the deed, involving an analysis of it, and stating in addition, matter which may not be contained in the deed at all, that is to say, the denomination on the Ordnance Survey in which the premises are included, and the barony or parish and county or city in which they are situated.

The additional trouble thus cast upon the registering public appears to have been recognised by the framer of the bill ; and for the purpose of ensuring that no instrument shall lose its priority on account of possible delay in ascertaining the Ordnance Survey name or names of the property comprised in it, clause 62 provides a method of provisional registration for deeds, and clause 63 for affidavits of ownership ; the registration in each case to become absolute on the production of a perfect memorial or affidavit.

Having regard to this proposal by which the priority of an instrument is secured, pending the ascertainment of the Ordnance name of the property comprised in it, and bearing in mind the official advantages referred to as likely to be reaped by the adoption of the Ordnance Survey denominations, and the great saving of expense involved in the abolition of affidavits of perfection in most cases, I am inclined to think that these advantages would outweigh the additional cost and trouble which the public would undoubtedly have to bear, consequent on the adoption of a new form of memorial, and of the Ordnance Survey maps and denominations as the basis of registration.

The interpretation clause of the bill is very full, as might be expected in a quasi-codifying measure ; but one important omission is to be noted. There is no definition for the word "denomination." For fiscal purposes alone this word ought to be defined, as the number of denominations must always be an important factor in estimating the fees both for registering and searching. It cannot be

supposed to mean "denominations on the Ordnance Survey maps," for the word occurs frequently in clauses taken from other statutes in which the Ordnance Survey names were not contemplated. Besides the expression "names of denominations" occurs frequently in the bill, but would hardly bear strict analysis.

In so hasty a review of so comprehensive a measure, there are many important points necessarily untouched, but looking at this bill as a whole, it seems a splendid piece of workmanship, in which the skill of a master-hand is everywhere apparent. Whatever be its fate, its framer may be congratulated on having evolved a re-constructive scheme which few men in the community might undertake with reasonable hope of success.

It is not the purpose of this paper to place the two systems of registration in unfriendly rivalry. They are both intended for the public good, and the reasons put forward for the improvement of each are advanced by one who has the public interest at heart. His name has been long and closely identified with one of these systems, yet that does not preclude him from bringing forward a means to re-construct—almost to re-create the other. For my own part I sincerely hope the registration of titles thus proposed in the public interest, will in the public interest, get a fair trial. I believe there is now, and will be for many years to come, ample room for two systems of registration and land transfer in Ireland. I believe it will be the interest and the desire of some proprietors to register their ownerships, while it will be the interest and desire of others to register their deeds only. I say this independently of the classification of owners into occupying and non-occupying, and having regard rather to the manner in which each property has hitherto been dealt with, and the present state of its owner's title. A uniform system is under certain conditions desirable, but it would be a great mistake to sacrifice utility to uniformity.

In a work of characteristic ability, Mr. Brougham Leech assails the principle of this bill, which he declares to be vicious in the extreme, but confines his detailed criticism mainly to the twelve clauses dealing with the Registration of Wills and Affidavits of Intestacy. In support of his views he quotes at length the opinion of the Royal Commission, adverse to Registration of Intestacies or Heirships, etc., but omits to point out that the bill contains a provision which neutralizes the force of an important objection, urged by the Royal Commission to the registration of these matters. I submit, however, that a measure of this kind ought not to be disposed of by a system of piecemeal criticism. Notwithstanding the *ex parte* character of Mr. Leech's work there is much in it in which I cordially concur. I do not think, however, that the rather narrow survey that he has taken of this bill, justifies the sweeping conclusions at which he has arrived. It seems to me that had he given to the consideration of this measure, that careful analysis which he has labouriously bestowed on other departments of his subject, he would not so rashly assume that this bill is not calculated to simplify the system, and diminish the cost of registration; nor would he indulge in the somewhat gratuitous assumption that the introduction of well-considered

reforms in the law and practice of deeds' registration, would be inimical to the success of a Registration of Title.

Mr. Leech was associated with Mr. Holmes, C.B., Treasury Remembrancer in his inquiry into the Registry of Deeds Office, 1884-5. He has, therefore, special knowledge of the matters dealt with by the details of this bill. It is a significant fact then, and one that tells very much in favour of this measure, that so able and so uncompromising an opponent should practically confine his attack to one feature, leaving the major part of those provisions to which I have the honour to invite the society's attention this evening, to go unchallenged. It would be disingenuous not to admit that Mr. Leech's attack is directed against a cardinal point in the bill. It would be unjust to under-rate the value of his criticism, considering his position, his attainments, and his special knowledge of his subject. But putting aside the wider question dealt with in his work, his line of criticism regarding this measure is open to this objection—that not content with attacking the principle of the bill, he went into the provisions of it, but went only so far as seemed to suit the contention he desired to establish. What I have said of the general subject of Land Transfer is true also of this bill—namely, that it should be viewed in its totality. To assist the society in doing so, is the object of this paper.

IV.—*Our Industrial and Reformatory School Systems in relation to the Poor.* By E. D. Daly, Esq.

[Read Tuesday, 17th March, 1891.]

THE subject of my paper is an old one, often treated of in this society and elsewhere by abler pens than mine.

My purpose in again bringing it before you can only be to refresh our minds on a subject of importance, apt to be somewhat overlooked in the rush of politics around us.

It is a subject on which a great deal of learning can be brought to bear, from theories of high philosophy, to the numerical arguments of statistics; but it can also be approached from points of view which involve no learning beyond such as may be acquired by most of us, who in the homely duties of life gain some practical knowledge of human nature.

From such a standpoint the discussion must consist chiefly in generalizing from those principles and tendencies of human conduct which everyday life tests and illustrates.

Every day we have opportunities of understanding what over-kindness leads to in dealing with kinsfolk or employes. We may study also how selfishness, like the recoil of an ill-charged gun, is sure to hurt the selfish. We may observe how much more easily the young are influenced for good or evil, than is the case with those of confirmed habits; and the kind of care they most need is learned every day. We may note, that one of the most precious links of