AN ESSAY

ON

THE TRANSFER OF LAND BY REGISTRATION.

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TRANSFER OF LAND

BY REGISTRATION

UNDER THE DUPLICATE METHOD OPERATIVE IN BRITISH COLONIES.

BY

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PREFACE.

THE present volume is, for the most part, a compilation from papers read and addresses delivered on various occasions within the last eighteen years. It is published at the suggestion of several Members of Parliament and others, who deem the present juncture peculiarly appropriate for the discussion of a measure calculated to afford material relief to all who are interested in land.

Avoiding, as altogether outside the subject matter, all reference to the more or less party questions of primogeniture and entail, the system of conveyancing herein explained does not interfere with the principles or rules of law, or with the powers of landowners or their rights or liberties; but only with the machinery by which such rights or liberties may be created or protected without the intervention of the statute of uses.

At the same time, the advantages to be derived from the adoption of the system of land transfer advocated in the following pages, are not by any means confined to the simplification of the machinery by which land is conveyed. For perhaps the most important ultimate result of its introduction into the United Kingdom will be, the substitution of indefeasibility of title, in all cases, in lieu of the present

insecurity of title, which leaves people in doubt as to whether land, which they call their own, and which has usually been acquired at great cost, legally belongs to them. This result can, as will be subsequently indicated (page 22), be attained without doing injustice to any one. Moreover, by effluxion of time, many doubtful titles will soon be *in a condition* to be declared indefeasible, a result which a recent statute ("The Real Property Limitation Act, 1874") will hasten.

In bringing forward a measure which has been grappled with in vain by three Lord Chancellors, I am aware that I render myself obnoxious to the charge of presumption. My defence is that the question as here treated is not one of law, but rather of official mechanism, by means of which the principles advocated by those high authorities may be rendered operative to the almost incalculable benefit of all who are now, or hope to become, interested in land; and for that work my official employment in connection with the transfer of property in shipping, and subsequently in registration of assurances, afforded an experience of a special character which neither the study nor the practice of the law are calculated to impart. And, again, I would plead that the complete success which has attended the application of that mechanism in the nine colonies in which it is in operation, warrants the belief that the like result will follow its adoption in this country.

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CHAPTER I.

CONTRASTS THE PRINCIPAL SYSTEMS OF CONVEYANCING IN OPERATION IN THE UNITED KINGDOM AND ELSEWHERE.

CONVEYANCING by deed without registration is in operation throughout the greater part of England. In Middlesex and in Yorkshire we find a system of conveyancing by deed with registration, but without barring "the doctrine of notice." In the United States of America, in portions of the Dominion of Canada, in Ireland, and notably in Scotland, the principle of conveyancing by deed with registration, and barring "notice" (whether actual or imputed), obtains with more or less diversity in the method of its application. Conveyancing by "registration of title" has been in operation for over a century in Prussia, in Bavaria, and other European States, notably in Hamburg, where, during an experience of over 600 years, it has yielded advantages immeasurably superior to those of any other system. In England also, as applied to lands under "copyhold tenure," the same principle has been observed ever since the Norman period, though on a limited scale and encumbered with many obnoxious conditions of

feudalism. For twenty-three years the same system has been in operation in South Australia; and the results of experience there have been such as to induce its adoption in the other Australian colonies, as well as in New Zealand, British Columbia, and Fiji.

Contrasting these four systems, we find that operating in Middlesex and Yorkshire to be generally—not to say universally—condemned as adding considerably to expense and delay, without any compensating advantage in the shape of security or otherwise. In short, it may be accepted as an axiom that any system of registration, not based upon the principle that registered instruments shall have priority amongst themselves, according to the date of registration, and over all unregistered instruments whatsoever, is worse than useless.

Regarding the relative advantages of conveyancing without registration and those of conveyancing with registration according to the Scotch method, there is much diversity of opinion. (See Report and Evidence, Land Titles and Transfer Committee, House of Commons, June, 1879.) Against that method it is objected that it does not afford adequate safeguard against frauds such as have been recently practised by Dimsdale and others; whilst it affords facilities for frauds of another class which do not exist under conveyancing without registration, a matter to which I will by-and-bye revert. Again, exception is taken to the publicity supposed to be unavoidable under any system of registration; and, thirdly, the opponents of that system dwell upon the costs and delays, especially those attendant on indexing and search, as counterbalancing any benefits attained thereby.

In reply to these objections it is justly argued that the absolute prevention of fraud is unattainable so long as knaves and dupes exist in the world, and all that can be expected from the best system is that fraud may thereby be rendered more difficult and its detection more probable. Secondly, it is a mistake to represent publicity as indispensable to regis-

tration. If the policy of secrecy be approved nothing would be easier than to limit the privilege of search to beneficiaries and their agents. But the opposite policy has been thoroughly tested, and has produced none but beneficial results, as applied to wills, and estates, and interests, under the various systems of registration. Thirdly, recent improvements in the method pursued in the Edinburgh Registry have materially diminished the delay and expense as regards index and search.

Upon the whole, the superiority of the Scotch conveyancing over that in operation in England would seem to be established by the evidence taken before the Parliamentary Committee of last year.

It remains to consider its relative advantages when contrasted with those afforded by registration of title as in operation in the colonies; and, as I have a sort of paternal interest in the latter, I will avail myself rather of arguments furnished to hand by recognised authorities who are free from the suspicion of any such bias. Mr. Denny Urlin, a barrister who had long official experience in Ireland, giving evidence before the Select Committee, last year, on "Land Titles and Transfer," states the conclusions he had arrived at thus: "I had considered the question [registration of titles as opposed to registration of deeds] for some years, and it appeared to me that there were weighty, in fact, insuperable, difficulties to a registry of deeds as distinguished from a registry of titles. The result of the former has been to increase the expense and delay incident to every dealing with land; to preserve as blots upon titles a very large number of deeds executed for temporary purposes, because a mortgage, or other deed, once coming on the register, remains there for ever; it is never removed, even although the mortgage is paid off—the blot remains, and a satisfied or extinct transaction remains on the abstract of title for ever afterwards. The result has shown that the registration of titles is much more efficient and much less costly than the registration of deeds. The mode of regis-

tration is so simple, and so analogous to the system of book-keeping as used in banks, that all the transactions relating to a certain title necessarily appear upon the same folio, and therefore it is not necessary to search either against a man's name or in any other book whatever."

Again, Mr. Freshfield, a member of one of the first conveyancing firms in England, in evidence before the Royal Commission of 1856, deposes that "title by deed can never be demonstrated as an ascertained fact; it can only be presented as an inference more or less probable, deducible from the documentary evidence accessible at the time being."

The late Lord Chancellor, when Attorney-General, in 1859, in his speech on this question in the House of Commons, pronounced "the objections to a register of deeds to be so manifest that hardly any person in the present day would venture to propose it. It would not simplify title in the least. It only puts on a formal record the whole of that multitude of deeds and conveyances of the extent and complexity of which we already have so much reason to complain. You have to investigate and search just as before; in addition to that you have to pay for searches in the register, and also to pay, in some shape or other, the expense of placing the deeds upon it. Moreover, the costs to the country of the establishment by which a registration of deeds could be managed would be something which, I should think, none of us would like to contemplate. I believe the calculation is that in this country you must have the materials for registering a thousand deeds every day. In the next place, a register of deeds would interfere with and render nugatory a very large portion of the dealings in land which run upon the deposit of deeds."

Lord Cairns, in the same speech, thus describes the evil results attendant on the English system of conveyancing, and for which he above declared that registration of deeds can afford no remedy: "You buy an estate at an auction, or you enter into a contract for the purchase of the estate. You are

very anxious to get possession of the property you have bought, and the vendor is very anxious to get his money. But do you get possession of the property? On the contrary, you cannot get the estate, nor can the vendor get his money, until after a lapse—sometimes no inconsiderable portion of a man's life-time—spent in the preparation of abstracts, in the comparison of deeds, in searches for encumbrances, in objections made to the title, in answers to those objections, in disputes which arise upon the answers, in endeavours to cure the defects—not only months but years frequently pass in a history of that kind; and I should say that it is an uncommon thing in this country for a purchase of any magnitude to be completed—completed by possession and payment of the price—in a period under, at all events, twelve months. Sir, the consequences of this were stated in the report of the Commission to which I have referred in words so apposite that, if the House will permit me, I should desire to read to them. The Commissioners state in their report: 'When a contract is duly entered into the investigation of the title often causes not only expense, but delay and disappointment, sickening both to the buyer and seller. The seller does not receive his money, nor the buyer his land, until the advantage or pleasure of the bargain is lost or has passed away.' Unquestionably, Sir, that is one, and a very great, evil under which we labour. But that is not the greatest evil. I can well imagine that the purchaser of an estate would be content to submit to delay, and even to some considerable expense, if he were assured that, when the delay and expense were over—upon that occasion at all events—he would have a title as to the dealings with which, for the future, there would be no difficulty; but, unfortunately, that is not the case. Suppose I buy an estate to-day. I spend a year, or two or three years, in ascertaining whether the title is a good one. I am at last satisfied. I pay the expense—the considerable expense—which is incurred, in addition to the price which I have paid for my estate, and I obtain a convey-

ance of my estate. About a year afterwards I desire to raise money upon mortgage of this estate. I find some one willing to lend me money, provided I have a good title to the land. The man says: 'It is very true that you bought this estate, and that you investigated the title, but I cannot be bound by your investigation of the title, nor can I be satisfied by it.' Perhaps he is a trustee who is lending money which he holds upon trust. He says: 'My solicitor must examine the title, and my counsel must advise upon it.' And then as between me, the owner of the estate, and the lender of the money, there is a repetition of the same process which took place upon my purchase of the estate, and, consequently, the same expense is incurred as when I bought it; and for the whole of that I, the owner of the estate and the borrower of the money, must pay."

In the United States, rather than encounter these vexations, delays, complications, and costs, purchasers are usually content to accept the hazardous alternative of the personal guarantee of vendors.

Reverting to an objection raised some time back, "that registration of deeds affords no safeguard against frauds such as those of Dimsdale and others, whilst it opened the door to frauds of another kind," I will now state a few cases which have come under my own observation.

Some time previous to the adoption of registration of title in South Australia, A deposited at the bank, by way of equitable mortgage, the deeds of his property, and subsequently executed a regular deed of mortgage of the same lands to B, accounting for the non-delivery of title-deeds by saying that he had left them at his station many miles up country. B registered the mortgage deed, and thus obtained priority. The bank lost the money. This could not have happened had registration of title been in operation, because the registrar could not register without production of A's certificate of title, which would be locked up in the banker's safe, and a caveat lodged by the banker would afford complete protection.

Another case :—A lodged £1,500 with his solicitor to be invested on mortgage. The solicitor forged a mortgage deed of lands of B for the amount, and registered it. For some years the interest was paid with exemplary punctuality. Ultimately, A and B happening to meet and becoming communicative, the fraud was discovered. The solicitor bolted. A lost his money. This could not have occurred had registration of title been in operation, because, instead of the fraud being concocted in the privacy of the solicitor's office, the mortgagor, mortgagee, and attesting witnesses would be required to attend at the public office of the registrar or other authorised functionary to establish their identity by prescribed formalities, and produce B's certificate of title for endorsement of the mortgage by the Registrar.

Against these and other frauds, such as that practised by the notorious Downs, who succeeded in mortgaging the same property to fourteen different persons, each of whom believed it to be unencumbered, a further safeguard is provided under my duplicate system of conducting "registration of titles;" for although it might be possible to forge a certificate of title, it would be quite impossible to get the forged duplicate bound up in the register-book, and consequently the intending mortgagee or purchaser applying for the customary "certificate of search" (cost 2s. 6d.) before completing, would immediately learn the true state of the case.

Amongst the more damaging incidents arising out of the retrospective or derivative character of titles under the system presently in force in this country, I would mention the inevitable tendency to produce what are generally designated "blistered titles"—that is, titles which in the opinion of the most punctilious conveyancers would be pronounced good holding titles, yet, owing to some technical defect, cannot be forced upon an unwilling purchaser, and may even interfere with the power to eject a tortuous holder in possession. Such a condition of affairs cannot arise under "registration

of titles," because the retrospect is cut off on the completion of each transaction, the certificate of title being in the register, and the sole and sufficient evidence of it, the duplicate "certificate of title," in the hands of the proprietor.

Again, the value of land as a basis of credit is seriously depreciated by the curiously factitious, we may say absurd, procedure in the case of mortgage; the object being to hypothecate or charge the land with a sum of money as security for a loan. Instead of doing this in a straightforward and direct manner, as is done by a dozen lines, in the space of fifteen minutes, under registration of title, the estate of the mortgagor is conveyed to the mortgagee by deed subject to a right of redemption. The latter then gets possession of the deeds, and, as the conveyancers express it, "sits on them." The consequence is that the mortgagor, in the event of his requiring a further loan, is placed in a most injurious position; for the second mortgagee would not only be hampered in his remedies in case of default, but also liable to be ousted of his security by a subsequent mortgage tacked on to the first. The consequence is that, however ample the security may be in point of value, second mortgages are, as a rule, interdicted in settlements, shunned by prudent men, and only accepted at exorbitant rates. For example, suppose a borrower to offer a second mortgage on an estate value £100,000, but already charged with £10,000, and another borrower to offer a first mortgage of the same amount on an estate worth £20,000 only, the latter would have no difficulty in finding a mortgagee at 4 per cent., whilst the former would have considerable difficulty in finding a mortgagee at a much higher rate, though the cover he had to offer was £80,000, as against £10,000 offered by the latter.*

It were needless to add any further counts to this in-

* It is only right to mention that "The Conveyancing and Law of Property Act, 1881," greatly simplifies the law relating to mortgages, though it does not obviate the inconveniences above referred to.

dictment in order to prove that "the system of conveyancing presently in operation in this kingdom" is, by reason of its insecurity, costliness, delays, complexities, and cumbrousness, unsuited to the requirements of this commercial age, and does seriously depreciate the natural value of land.

These evil conditions have a common origin in the retrospective or dependent character of titles under the existing system. Such a chain is no stronger than its weakest link. Each fresh transaction induces a fresh element of uncertainty. On each such occasion the ancestral parchments must be examined, and an abstract of the dealings during the preceding forty years prepared for that purpose. Hence the DELAY. This work, from its peculiar intricacy, can only be entrusted to gentlemen especially and at great expense educated for the work. Hence the COSTLINESS.

The first essential, therefore, in any remedial measure must be that it cuts off the retrospective character of titles, and substitutes a method of conveyancing under which future dealings will not induce fresh complications.

The succeeding chapters describe a method which complies with this requirement, and has been tested by an experience of over twenty years, during which upwards of 539,000 transactions of various kinds have been completed at a reduction in cost from pounds to shillings, and in time from months to days. (See Report on Registration of Title in British Colonies, House of Commons Blue Book, May, 1881.)

CHAPTER II.

HOW TITLES ARE PLACED ON THE REGISTER.

COLONIAL lands alienated from the Crown subsequent to the date appointed for registration of titles to come into operation remain thenceforth subject to its provisions. Lands granted prior to that date are brought under that system upon the voluntary application of the proprietors, and cannot be withdrawn from its operation. The procedure is as follows:—The person or persons in whom, singly or collectively, the fee simple is vested, either at law or in equity, may apply to have the land placed on the register of titles. These applications, together with the deeds and other evidences and abstracts of title, accompanied by plans of the lands, furnished by licensed surveyors and certified correct by statutory declaration, are submitted for examination to a barrister and to a conveyancer, who are styled "examiners of titles." These gentlemen examine the titles precisely as they would do on behalf of an intending purchaser under the old law. They report to the "Registrar," or "Recorder of Titles," as he is styled in some colonies—1st. Whether the description of the parcels of land is definite and clear; and in this they are assisted by a land surveyor and draughtsman. 2nd. Is the applicant in undisputed possession of the property? 3rd. Does he appear in equity and justice rightfully entitled thereto? 4th. Does he produce such evidence of title as leads to the conclusion that no other person is in a position to succeed against him in an action for ejectment? Should the applicant fail to satisfy the examiners in these particulars the application is at once

rejected, without putting him to any further expense. Should the applicant, being in possession, be enabled to show such a title, although the evidence he adduces might not be sufficient to enable him to compel an unwilling purchaser to complete, the examiners would report the case to the registrar, with recommendation that notices should be served, and the claim advertised more or less extensively, according to the nature of the case and the domicile of the parties likely to be interested.

Notices are served upon the persons in possession, upon such persons, if any, as the examiners may indicate as likely to be interested either at law or in equity, and who have not joined in the application, and also upon the owners and occupiers of contiguous land.

These notices set forth the purport of the application, and intimate that unless objection be made by lodging caveat within the time prescribed by the registrar, the land will be brought under the provisions of the Act, and indefeasible title granted to the applicant.

If within the time appointed caveat be lodged, the action of the registrar is suspended until it be withdrawn, or until he receives the final judgment of the Supreme Court upon the question raised.

If no caveat be lodged within the prescribed time, or if caveat so lodged be withdrawn, or set aside by the final judgment of the Court, the land is brought under the operation of the Act by the issue of certificate of title, vesting the estate indefeasibly in the applicant.

These certificates are in duplicate. They define the land in respect to which they are issued, by description and reference to the Ordnance Tithe, or other officially recognised maps, and where necessary by diagram on the certificate. They set forth the nature of the estate of the applicant, whether a fee-simple or limited owner, and notify by memorials endorsed all lesser estates, leases, charges, ease-

ments, rights, or other interests current and affecting the land at the time. Ample space is left for the endorsement of subsequent memorials, recording the transfer or extinction of these, and the creation, transfer, or extinction of future estates or interests.

Under this method the jurisdiction of the ordinary courts of the country is left undisturbed. No special court, such as the "Estates Court, Ireland," is required, and the applicants are not subjected to the expense of putting the paraphernalia of a court of justice in motion, unless there be some adverse claim to be adjudicated upon.

That this principle of granting title to parties in undisputed possession, and showing "good holding" title in the event of non-claim after due advertisement and service of notice is practically free from risk, is proved by the all but complete immunity from error in granting indefeasible titles by the Estates Court to about one-sixth of the land of Ireland, and to over 152,000 separate titles in the colonies under the procedure above described.

CHAPTER III.

HOW TRANSFERS AND OTHER DEALINGS ARE CONDUCTED UNDER THIS DUPLICATE METHOD OF CONVEYANCING BY REGISTRATION OF TITLE.

THE register is compiled by binding together the duplicates of all certificates of title representing the freehold. Each of these certificates represents a distinct root of title, and constitutes a distinct folium of the register, which folium may comprise one or more pages for recording the memorials of mortgages or other dealings, whether with the fee-simple or any lesser estate or interest, and whether subsisting at the time of issuing the certificates, or subsequently created.

In the case of transfer of the fee of part only of the land comprised in any certificate of title, the memorial of such transfer may be entered on the existing certificate, or the transferor may take out a fresh certificate for the balance unsold, but in such cases it is obligatory on the transferee to take out a fresh certificate, which will then form a fresh root of title, occupying a separate folium of the register. (See Model Register Book and Examples, Schedule A, annexed.) Printed forms of contract are provided at the Registry Office and at stationers' shops. All covenants essential to the use and enjoyment of estates and interest, the subject of contract, are declared to be implied and usual, though not essential. Covenants may, by the use of brief forms of words, be stipulated as effectually as if set forth at length. These instruments when executed are valid as agreements between the parties, and as authority for the registrar to enter the memorial.

Entry of memorial of any transfer charge, or other dealing, upon the folium of the register appropriated to the land dealt with, constitutes registration.

Registered estates are held subject to such charges, estates and interests as are notified on the appropriate folium of the register, and endorsed on the certificate of title held by the proprietor, but free from all other charges, estates, or interests whatsoever. They take priority among themselves according to the date of registration, and over all unregistered estates or interests whatsoever, except when registration has been obtained by fraud, and the registration of a dealing (*bonâ fide*) for value is indefeasible, even though it be from or through a party who may have obtained registration fraudulently.

Indefeasibility is indispensable if the dependent or derivative character of titles, out of which, as has already been demonstrated, all the evils of the English system of conveyance originate, is to be got rid of; and as, despite every precaution, a mistake may be made in granting indefeasible titles, it becomes necessary to provide compensation for persons who may possibly thereby be deprived of land. For this purpose a fund is created by a contribution of ½d. in the pound sterling, levied upon the value of land when first brought under the system, and upon the value of land transmitted by will, or upon the intestacy of a registered proprietor.

This almost inappreciable sum has been found far more than sufficient for the object, insomuch that a large assurance fund has accumulated in the colonies in which the system has been for any time in operation.

This principle of compensating a rightful owner by a money payment, instead of allowing him to recover the land, commends itself to our sense of natural justice, as contrasted with the principle of English law, which in such case would place the rightful owner in possession, not only of his inheritance in the land itself, but also of the capital of parties who, innocent of all fraudulent intent, may have invested

their fortunes in buildings and other improvements thereon. If it be borne in mind that at the time of granting the indefeasible title, possession must have been in the applicant, the case of the rightful heir will be seen in its true light, as one of exclusion, not of extrusion, and capable of being compensated by a money payment, without inflicting hardship. On the other hand, a great economic principle is subserved by a system which gives the encouragement of security to the employment of capital in improving land, the practical result of which has been already to add largely to the wealth of the community, by restoring to their intrinsic value as building sites, many blocks of land deprived of that special value by technical defects and uncertainties attaching to the title.

Instruments marked with certificate of registration are held to be embodied constructively in the register. One original of each is filed in the Registry Office, the other is held by the party entitled. This duplicate system is of essential service, both as facilitating dealings and safeguarding against fraud, as explained in a future chapter.

A registered proprietor may, at any time, on payment of a trifling fee, in exchange for his existing certificate of title obtain a fresh one from which the memorials of all released mortgages, encumbrances, and other charges, or lesser estates which have ceased to be operative or to affect the land, would be omitted. The registrar also is empowered, whenever he may deem a certificate of title to be inconveniently encumbered with memorials of defunct charges and other lesser estates, to require the registered proprietor to take out a fresh certificate freed from such defunct memorials.

Under this method accumulation of instruments of title with voluminous indexes, the fatal objection to other systems, is avoided, as each separate estate, or interest in each parcel of land is represented by one instrument only, which instrument is held by the registered proprietor, and discloses all

that it may concern a party dealing with him to be cognisant of. The duplicate being filed in the Registry Office, searches are needless, except to ascertain the non-existence of caveats or inhibitions, and even that is accomplished without reference to an index, as each registered instrument bears a number or symbol indicating the volume and folium of the register where the history of the title is recorded. Charges and leases are created, transferred, released, or surrendered by brief endorsement on the certificate of title and entry in the register as above described. This duplicate method has the further recommendation that in the event of destruction by fire, or otherwise, of any instrument evidencing title, the duplicate remains available for every purpose.

In mortgage and incumbrance, the old fiction of transferring the legal estate is abolished, and the object is attained by a direct instead of a circuitous procedure. The usual remedies are declared by the act to be secured to the mortgagee or encumbrancee. The mortgagor retains his certificate of title, bearing endorsement notifying the mortgage. He can thus deceive no one, yet he retains full facilities for a second mortgage; and when all such charges are cleared he may, if he desire it, obtain a clean certificate freed from all record of the past. It is no uncommon thing for a mortgage to be completed in the space of an hour, at a cost of ten shillings to twenty shillings. No portion of the system has worked so beneficially for the community.

The following is the practice as regards equitable mortgage. The borrower executes a contract for charge in the authorised form, either for a specified sum, or, as is more usual, for such sum as may appear due upon balance of account at any future date. This instrument, with the certificate of title, is held by the creditor, who does not register, but lodges a caveat forbidding the registration of any dealing with the land until fourteen days, or other named period, have elapsed after notice of intention to register the same has been served by the

registrar at an address given. A red ink cross, with the number of the caveat, is then inscribed on the proper folium of the register. The creditor, upon receipt of such notice, or at any time, may turn his equitable mortgage into a registered charge, by presenting the contract for charge with the deposited certificate of title at the Registry Office.

Direct settlements and entails are created as follows. The registered proprietor executes a form of transfer to himself or any other person for life, with reversion to others in succession, with or without powers of appointment, and with remainder over as he may prescribe. In such case the existing certificate of title of the land is cancelled, the register folium closed, a fresh folium opened, and a fresh certificate issued for a life estate. Upon the death of the tenant for life this must be surrendered, and a fresh certificate issued to the next reversioner for the estate, to which he succeeds in accordance with the terms of the instrument of transfer executed by the original settlor. Reversioners may be registered as such to enable them to sell or otherwise deal with their reversionary interests or expectancies.

As regards indirect settlements, no notice of trusts can be entered on the register, but a proprietor desiring to settle his estate through the instrumentality of trustees may transfer his estate to one or more persons, and then deposit in the registry for safe custody and reference any instrument declaratory of trusts executed by the transferees, and by caveat prohibit the registration of any dealing, except in accordance therewith, or with the sanction of the Supreme Court. He may also direct the words "No Survivorship" to be entered on the certificate of title, the effect of which will be, that without the sanction of the Supreme Court no dealing with the property can take place until any vacancy occasioned by death or otherwise in the original number of trustees has been filled up. Persons beneficially interested in any settled estate may, in like manner, by caveat, bar the registration of any dealing

therewith, either absolutely or until after notice for a time specified has been lodged at an address given. The registrar is also empowered, if he deems fit, in the interests of *cestui que* trusts, to lodge caveat for their protection.

The system is metropolitan. Under it a vendor meeting his purchaser, or a mortgagor meeting his mortgagee, at Cork, would procure the prescribed form of contract at the nearest stationer's, fill it in, and sign it in presence of a notary. The purchaser or mortgagee would see the exact state of the title upon the inspection of the duplicate certificate in the hands of the registered owner; and, having ascertained by telegram that there were no caveats prohibiting the dealing, might, with perfect safety, pay over the stipulated sum in exchange for the contract of transfer, or of charge, together with the certificate of title, which he would forward through the post to the capital to be registered, with a Post Office order for the fees, and receive back the instruments endorsed, with certificate of registration. In such cases the sole advantage of "district," over "central" registration appears represented in the cost of postage and telegrams. As this central method works satisfactorily in the widely-scattered population of Australia, there can be no doubt of its success in this country, where the facilities of communication are so superior.

Probably the best mode of conveying to my readers a clear perception of the manner in which dealings in land under this method are conducted, will be by quoting the evidence given to the House of Commons Committee of 1879 by Sir Arthur Blyth, Agent-General for South Australia, in which colony he had resided over twenty years, holding a high political and commercial position. He says (pars. 1778 to 1867 of his examination): "Registration of title is almost universal; for one transaction under deeds now there are a thousand under the Real Property Act; it is a curiosity if you get a person with deeds. To a person wanting to borrow money of me I should say first, 'Real Property Act, I suppose?'

Then the next thing would be, 'You do not want a lawyer, I suppose?' He would probably say, 'No.' I should accordingly say, 'Come with me to the Registry Office; you have got your certificate with you.' I should draw out a mortgage on the counter at the Registry Office, where printed forms are provided, and have it witnessed, and hand it in to the clerk, and say to him, 'It will be ready to-morrow afternoon, I suppose?' When the mortgage is paid off the transaction is even simpler. Supposing you were the mortgagor and I were the mortgagee. Before you gave me the money, I should sign this receipt before a well-known person, a credible witness, and give it to you, and let you go and clear your title. There is no necessity for the intervention of a lawyer; such a thing is never heard of. Marriage settlements are as common in the colony as here. In such cases as drawing wills and settlements the lawyers are called in; but in ordinary transactions they have very little business except as brokers. They get a commission on that business, but not in respect to services connected with registering, transfer, mortgage, &c. The Torrens Act is just as popular in the other colonies as it is in ours. I notice in the Sydney papers, just at foot of advertisements for sales of land, that 'Torrens's Title' is always put. It seems to me that there is so great an advantage in the holders of property having a simple, intelligible, indefeasible title, as far as it can humanly be made, that no difficulties ought to stand in the way of carrying out such a wonderful reform. That is all I can say."

A model register, together with samples of the books and instruments used in the transaction of business, will be found in the Appendix.

CHAPTER IV.

REPLIES TO STOCK OBJECTIONS.

THE objectors to this system are of two classes—the one denying the practicability of its application to this country, the other denying its utility if applied.

As from the first the system was confessedly an adaptation of the method by which property in shipping is dealt with, and as it was impossible to ignore the patent fact that, as applied to shipping, that method acts to perfection, it became necessary for objectors of the first class to deny that there was any such analogy between the two descriptions of property as would admit of the same method being applied to both. Accordingly, we find the Royal Commission of 1868, par. 65 of their report, arguing that "The system is inapplicable to dealings with land, because ships are legally divided into sixty-four parts. The share in a ship is an abstract thing; the ship itself a concrete thing, and of the simplest kind, and unalterable so long as it remains in existence at all. But land is concrete altogether. There is no such thing as an abstract acre of land, and the same acre may vary in appearance and description at different times." Here a false conclusion is drawn from erroneous premisses. So far from a "ship being unalterable so long as it remains in existence at all," it is a matter of everyday occurrence for ships to be altered both in rig and hull—schooners converted into barks, barks into ships, and *vice versa;* hulls cut in two, lengthened or shortened, increasing or diminishing the tonnage, and necessitating a fresh register. Again, shares in shipping are no more "abstract things" than undivided

shares in land held by co-parceners, joint tenants, or tenants in common. The logical conclusion from these premisses is not that drawn by this class of objectors, but as follows: "There exist essential differences inherent in shipping as contrasted with land, therefore it does not necessarily follow that a method of dealing which is applicable to the former should also be applicable to the latter. Nevertheless, it is possible that these differences may be of a nature to render that method more facile and effectual when applied to land, and such is actually the case; for example, if the indivisibility of a ship involves the possibility of there being sixty-four owners, that characteristic, far from facilitating transfer by registration of title, creates difficulty and risk of confusion through the necessity of recording the dealings of so many shareholders on the same record, and it will not, I imagine, be contended that the liability of ships to be removed thousands of miles from their ports of registration can afford any special facilities for working that system."

Herein we have example of the wondrous power of professional bias. We find nine Royal Commissioners selected from a profession the training for which might be expected in a special degree to ensure a general knowledge of affairs, and a power of drawing logical inferences; yet so as it were smitten with mental colour blindness, that they have failed to perceive the most patent facts familiarly known to every board school child in our seaport towns, and then draw from false premisses a conclusion so transparently illogical that it would check the academical career of any freshman at the "little-go" stage.

I have dealt at length with this "abstract and concrete" objection, because first enunciated by a Royal Commission. It has been echoed by the learned chairman of the recent House of Commons Committee, and generally urged with considerable emphasis by the opponents of registration of title.

The complete success which has attended the application, on a great scale and under diverse conditions, of the principles

of the shipping act to land in nine of the principal colonies, has become so popularly known that the negation of its practicability has had to be abandoned, and the opponents of the measure have recently dwelt upon the argument that (to use the language of the Royal Commissioners) "the success of the system in the Australasian Colonies would only mislead us were we to attempt to imitate them, because in these colonies the land has been recently granted out by the Crown, after official survey." Now it is a fact that the official survey here referred to is so inaccurate that it constituted the most serious difficulty we had to deal with in locating parcels and defining boundaries, there being in many cases no occupation, and survey marks obliterated. In this respect the conditions existing in this country, where ancient hedge-rows and parish bound-stones afford ready means of identification, are far more favourable. The evidence of Col. Leach is conclusive on this point (see his evidence before the Royal Commission, Queries 318—390, and 441). "The cases in which we have to require a new survey are very few; as a rule, the tithe maps are found to be sufficiently correct. I may say that our entire expenses, including the examination of documents, the perambulation of the property, and the preparation of maps, &c., have varied from about £3, the lowest, to £20, the highest. Since the commencement of work, we have not found the slightest difficulty, either as regards maps, or as ascertaining all necessary particulars respecting the boundaries of the properties registered."

To the argument from the more recent origin of titles in the colonies, it is only necessary to observe that many of the titles there dealt with, and those amongst the most valuable, date back sixty years or upwards; and that, owing in part to unskilful conveyancing in the earlier days, and in part to the frequency of dealings with land in new countries, complications and difficulties, no less grievous than those which oppress the landed interest in this country, had been superinduced upon comparatively recent titles.

Admitting freely that there are in this country some titles so defectively evidenced that it would be unsafe to place them on the register as indefeasible, I must remark that titles of the like character are by no means unknown in the colonies, and here as there they must be left to be cleared by efflux of time under the Statute of Limitations.* Such titles are admittedly rare and exceptional, and their existence is no argument against, but on the contrary a cogent reason in favour of, applying to the great mass of good holding titles a system which will guarantee them against ever falling into the like predicament. The conveyance or declaration of title issued by the Estates Court, and by the Church Commissioners in Ireland, together with the titles issued by the Copyhold Commissioners in England, and the parliamentary and judicial titles in both countries, place a considerable portion of the lands of the United Kingdom, to all intents, for the purpose of applying to them immediately the system of conveyancing by registration of titles, on all fours with Crown grants in the colonies.

Again, the comparative unfrequency of settlements and entails in the colonies is persistently dwelt upon, as evidencing that the system of conveyancing which works so beneficially in those countries cannot be successful in this country. The Parliamentary Committee in their report pronounce registration of titles to be "impossible in this country, unless an Act of Parliament be first passed prohibiting the owner of property from tying it up, or charging it, or dealing with it as his own;" and the learned chairman of that committee (Mr. Osborne Morgan) in an article in the *Fortnightly Review*, puts his argument thus: "Settlements are rare, entails unknown, and the devolution of title following upon the

* "The Real Property Limitation Act, 1874," shortens very considerably the time within which actions for the recovery of land or rent must be brought. Thus proceedings which must formerly have been commenced within twenty years must now be taken within twelve years, or the claim is effectually barred.

original grant consists mainly of simple transfer from one hand to another, either by way of sale or mortgage. It cannot be too often repeated that the first step towards making a registration of titles practicable, is to make a clean sweep of our present real property laws; and, until this is done, any further attempt to put Australian wine into English bottles, like all other legislation which ignores existing fact, will end, as such attempts have hitherto done, in failure and disappointment." In this statement of the case the learned Chairman, like many other eminent jurists who, as Lord Brougham has put it, "love and revere the mysteries which they have spent so much time in learning, and cannot bear the rude hand that would sweep away the cobwebs in spinning which they have spent their zeal and their days for perhaps half a century," regards with distorted vision the facts on the other side, and assumes that Englishmen and Germans when they emigrate beyond the seas *animam cum cœlo mutant*, and leave behind them all sense of duty as regards making provision for their families.

The statement that entails are unknown is erroneous, and the comparative rarity of those and of indirect settlements is due, not to any difficulty in conducting these operations under registration of titles, but to the necessity colonists are under, during the early struggle of colonial life, to reserve their land free of encumbrances as a basis of credit. These struggles over, and they feel the ground solid under their feet, the old-country instinct to make provision for their families prevails, and settlements and entails become less rare. I have already described the procedure in both cases; and the experience has been sufficient to place the possibility and efficacy of that procedure beyond doubt. The object aimed at as regards settlement is the same in the colonies as in this country. The difference lies in the procedure by which it is attained.

As this question of settlement has been urged as fatal to

the introduction of registration of titles in this country, by so many professional men of high repute, as well as by the Royal Commission of 1868, and House of Commons Committee of last year, I will quote the very clear and able report of Mr. Henry Gawler, barrister, many years examiner of titles in South Australia, upon it, as follows :—

"Settlements may be divided into two classes—First, those in which the legal estate is vested in trustees, the '*cestui que* trusts,' or persons beneficially interested, taking only equitable interests; this is the most common form of settlement at the present day. Second, those in which the persons beneficially interested take the legal estate in the land in possession or remainder, each one in his own right, without the intervention of trustees; and this is the form most commonly used when land is to be strictly entailed.

"Settlements under the first class most usually contain provisions empowering the trustees to sell or to make exchanges, and exempting purchasers from such trustees from all liability to inquire into the *bona fides* of any sale, or to see to the application of the purchase-money; consequently, if the title of the trustees be otherwise correct, a purchaser from them cannot be ejected by the *cestui que* trusts on the ground of a breach of trust or improper sale by trustees. Under the Torrens Act such a settlement would be effected by the settlor conveying to the trustees by memorandum of transfer, and the trusts would be declared in the usual form, either in such memorandum of transfer or in a separate deed, and the trustees would receive a 'declaration of title.' Now in what respect would the *cestui que* trusts in this case be in a worse position than they would have been under the old system? In either case they must depend principally upon the honour of the trustees, and would only have a personal remedy in the event of a breach of trust. But *cestui que* trusts under the Torrens Act, so far from being in a worse position than they would have been under the old system,

are actually in a better position, because they, or any person on their behalf, may enter a caveat, and so prevent any improper dealing by the trustees. This is the system adopted at the Bank of England in the case of stock in the funds, and it has been found by experience that property so circumstanced is practically safe. Can it be believed that what is safe for beneficial interests in such property will be otherwise than safe when applied to land? The second class of settlements can be effected under the Torrens Act with the same facility as under the old system. The Torrens Act in no way interferes with the principles or rules of law, or with the powers of landowners or their rights or liberties, but only with the machinery by which such rights or liberties may be created or protected: consequently the second class of settlements is fully and effectually provided for without the intervention of the Statute of Uses. Instead of conveying to A. for the use of B. for life, with remainder to the use of C. in fee, it conveys direct to B. for life, with remainder to C. Upon the execution of such a settlement, the Recorder of Titles would issue a 'declaration of title' to the first tenant for life or owner of the first estate of freehold vested in possession. Such declaration would set forth the nature of the estate, and all powers given to the tenant for life by the settlement, such as powers of appointing the fee or of releasing. Each remainderman as his estate became vested in possession, would receive a declaration of title, and in the meantime he could deal with his interest, though a purchaser would not receive a declaration of title until the estate fell into possession. The only difference, in fact, between a settlement of land under the Torrens system and of land under the old system is, that in the former case no estate would pass or become vested until the settlement was registered; but, so soon as registered, the settlement would have exactly the same effect; estates and interest would vest or be divested exactly as under the old system."

Mr. Gawler has also furnished a model register and forms of instruments, together with explanatory remarks, showing in minute detail the machinery by which settlements are effected under the system. These will be found in the Blue Book of the 8th May, 1876, pages 186—201.

I have next to deal with a class of objectors authoritative from their position, and persistent in putting forward fallacies which have again and again been exposed. Their contention is that, even if the system of registration of titles were applicable to this country (which they deny), it would be inoperative because titles are of two classes, viz., bad and good. The bad could not get on the register, and the owner of the good would have no object in placing them there, being perfectly satisfied as they stood. (See Article by Professor Jevons, *Fortnightly* of March last.) The fallacy here lies in limiting the classification of titles to two. There are, in fact, three—namely, bad titles, blistered or holding titles, and marketable or perfect titles. To place the first on the register with indefeasible title would simply be to steal land—a thing which nobody, so far as I am aware, advocates or proposes. As regards the second class (a very considerable section; some will say as much as 20 per cent. of the whole), the indefeasible title affords an enormous inducement, by restoring land to its natural value, relieved from technical objections and doubts induced by the present system of conveyancing. The holders of perfect titles, far from being "content as they are," have a powerful inducement to place their lands under the system which would save the expense and delay of subjecting it to be re-examined and approved by the solicitor of his transferee or mortgagee every time the property is dealt with. In short, the case of land with a perfect marketable title is analogous to that of a nugget or ingot of gold. It requires to be re-weighed and re-assayed on the occasion of each transfer, for which purpose a piece is chopped off. But, once passed through the Mint, the sovereign-stamp passes it freely from hand to hand

without any reduction or delay. Registration of title affords the equivalent of that sovereign-stamp.

This same argument is boldly, I would say audaciously, advanced by the Royal Commissioners of 1868, par. 63 of their report, thus: "We have conclusively shown that purchasers do not want indefeasible title;" so little do they want "indefeasible title that, for the sake of saving cost, they overlook certain blots and defects, forego requisitions, and are content with slender investigation." Surely, these learned jurists insult the intelligence of ordinary mortals when they represent as the outcome of free and deliberate choice that which they themselves admit is submitted to "for the sake of saving costs" and ruinous delay.

This branch of the subject may be appropriately summed up by referring to a higher authority than that of the learned Commissioners. Lord Cairns, in the speech which I have before quoted, says: "I can assure the noble lord (Palmerston) that we have no plan in contemplation for turning a bad into a good title. What we propose is, that those who have a good title should be entitled to procure a declaration of it." I believe that, in point of fact, there are few titles which are not good. But there are titles which, though substantially good, are open to certain technical objections that are generally guarded against by conditions of sale, and which, in strictness, are of a nature which prevents you from saying a title is absolutely good; and it is very rarely the case, in regard to any one of these, that it could not, by a little trouble or expense, be cured. At present there are no inducements for a man whose title is open to such defects to have them removed, because their removal would occasion him expense, without any corresponding advantage upon a sale. But if you were able to assure him that by some such arrangement as I have described he could cure the technical defects which now exist, and then have a declaration of title *once and for all*, I am much mistaken if numbers of titles liable to these objections would

not be cured and made good in form, as in substance, and be found to deserve the sanction of this measure. The course, therefore, which I anticipate is this, that those who desire to avail themselves of it, and have perfectly good titles, will at once obtain a declaration in their favour, while those whose titles are open to technical defects *will do what is required to cure them*, and so come in time to secure the same advantage.

Mr. Jevons, in his article above referred to, denies that the costs and difficulties of conveyancing have any deterrent effect, "for if so the result would show itself in the price, and land would, owing to the expense of dealing with it, command a less price in proportion than other investments offering an equally certain return." This inference is not warranted by the premises. All the world over, but especially in the contracted area of these islands, there are conditions arising out of the ownership of land which tend to enhance its price comparatively with that of other descriptions of property. For example, the feeling of exhilaration which most men experience when treading on their own land. The social status it confers, and the agreeable occupation it affords. These compensate the yeoman and the squire for the heavy costs and uncertainties of conveyancing, as well as for the lower rate of interest than stock or railway debentures would afford him.

Again, it is affirmed that the security, cheapness, and expedition afforded by registration of title would not have the effect of encouraging a yeoman proprietory, because forsooth, "The tendency of the land market has been and is for land to be purchased by large owners and sold by small ones. The old English yeoman and the Cumberland statesman were holders of small farms, and they have to a great extent been bought out, obviously for the reason that the money price of a small holding of land was worth more than the land itself."

That this consideration has had more or less influence in the direction indicated cannot be denied; but that the grievous

yoke laid by the conveyancers on the neck of the small proprietors had at least an equal efficacy in the same direction is capable of demonstration. To the large proprietor, purchasing his thousand acres, or mortgaging them for £50,000 to £60,000, the cost of conveyancing would probably not exceed a half per cent.; whilst the yeoman, purchasing his twenty acres, or mortgaging them for £100, might consider himself fortunate if the cost from first to last did not exceed 20 per cent. It cannot, therefore, be matter of surprise that the yeoman thus handicapped has been improved off the soil of these islands, and cannot be rehabilitated until a secure, cheap, and expeditious method—such as that by registration of titles, in operation in the colonies—has been substituted for the present system of conveyancing, which Lord Brougham denounced as "rendering the ownership of land in small parcels a luxury which a rich man may indulge in, but a ruinous extravagance in a man of small means."

CHAPTER V.

WHY ALL ATTEMPTS TO APPLY THIS SYSTEM HAVE HITHERTO FAILED IN THIS COUNTRY.

How, then, comes it to pass that hitherto all attempts to apply this system to the lands of this country have completely failed, though taken in hand by three Lord Chancellors?

The answer is, that none of the measures referred to have either enunciated or kept steadily in view the fundamental principle upon which registration of title is based. The governing section, the 63rd of Lord Westbury's Act, runs as follows: "Registered land may be conveyed, charged, settled, or dealt with in or by any of the following modes or disposition; that is to say, by statutory disposition in any of the forms described in this Act. 2ndly. By endorsement on the 'land certificate.' 3rdly. By deposit of the 'land certificate.' 4thly. By *any deed, will, judgment, decree, or instrument, by which such land, if not registered, might now according to law be charged, settled, devised, dealt with, or affected.*"

Here distinctly it is the execution of the instrument, and not the entry in the register, which is made operative to pass or affect the land.

The true principle is thus set forth in the corresponding provision, section 31 of my Bill of 1863, presently referred to "No deed or instrument shall be effectual to pass, charge, deal with, or affect any estate or interest in land subject to the provisions of this Act; but upon receipt of any instrument of contract, or other instrument in conformity with the provisions of this Act, and of the proper fee for each case prescribed, the

'Registrar' shall record the transfer, charge, dealing, or matter specified in such instrument in manner hereinbefore provided; and thereupon the estate or interest shall pass or become charged, dealt with, or affected in manner and subject to the covenants, conditions, and contingencies specified in such instrument, or by this Act declared to be implied in instruments of the like nature."

The permissive use of deeds sanctioned by Lord Westbury's Act, involves a combination of two incompatible principles—"registration of deeds" and "registration of titles"—producing a hybrid measure, which Sir Henry Thring (member of the Royal Commission of 1868) pronounces to be "entirely unworkable, and to differ little from an incomplete registry of assurances, and to possess all the disadvantages without any of the advantages of the numerous schemes formerly proposed for the registry of deeds, and therefore should be altogether discontinued."

Again, the 14th section of Lord Westbury's Act prescribes that the register shall consist of three separate books, viz., the "Register of Estates," to contain merely the map and description of each parcel of land; the "Record of Titles," in which are to be set forth the various estates and interests held in each parcel; and the "Registry of Mortgages and Encumbrances," affecting the same; reference from each of these books to the other to be maintained by a series of numbers. After an experience of over twenty years in conducting registration in shipping and in land, I have no hesitation in saying that such a method as this trebles the work, and gives occasion for error and confusion which scarcely any vigilance could entirely prevent; and Mr. Spencer Follett, Q.C., himself, the chief of the department, in his evidence before the same Commission, repeated before the recent Committee of the Commons, admits that "this cumbrous and involved mechanism does not admit of its operating on any such scale as would render it of sufficient public advantage."

Again, the provision that "no title shall be accepted for

registration except such as a court of equity would hold to be a valid marketable title," has been justly complained of as causing unnecessary expense and delay, at the same time limiting seriously the scope of the measure, and depriving it of what has proved to be a most valuable provision of the Australian method—namely, the conversion of good holding titles into indefeasible titles, as already pointed out.

In the memorandum submitted to the Royal Commissioners of 1868 by Mr. Follett and the Assistant-Registrar, these, the chief officers of the department, state that in their opinion "the title in certain cases taken by a purchaser is not necessarily indefeasible, and the question whether a purchaser does or does not take an indefeasible title is not decided by the Registrar, but he, the purchaser, has to satisfy himself whether the title shown by the deed or will is such as he intends to purchase, and he takes it on his own responsibility. In all such cases, therefore, the entry in the register is merely a registration of the deed of conveyance, and it has been doubted whether the title does not in these cases cease to be within the Act." Surely this defect, if even it stood alone, is sufficient to condemn this measure.

Lord Cairns's Act is to some extent obnoxious to the same objections which caused the miscarriage of that introduced by Lord Westbury. Notably, section 49 admits of conveyancing of registered land being carried on by deed for an indefinite period. So far it is but a hybrid measure, an attempt to carry on two antagonistic principles in dealing with land.

Again, as indefeasible title is given to purchasers only, it affords no inducement to holders to register, as they would not get their titles freed from technical defects and doubts, but would continue, as regards future dealings, such as leases, mortgages, encumbrances, &c., under the present law, subject to all its cost, uncertainties, and delays.

The official mechanism for carrying out this measure,

though a great improvement on that prescribed by Lord Westbury, is yet sufficiently cumbrous to warrant the opinion of Mr. Spencer Follett, "that it could not be carried on on such a scale as would compensate for the expense." The *ad valorem* charges also appear excessive and deterrent.

Finally, even if free from these defects, the result of giving, nominally to the proprietor, but practically to his solicitor, the option to place land under the system, and the power to withdraw it again from that system, is in itself sufficient to ensure its failure, as has been demonstrated in the case of the Irish Act.

It would be difficult, not to say impossible, to imagine conditions more favourable for introducing the system of conveyancing by registration of titles than those which exist in Ireland.

An admirable Ordnance survey, and the subdivision of the country into town lands corresponding generally with holdings, afford the utmost facilities for describing parcels. About one-sixth of all the titles in Ireland have, within a recent period, been purged of all defects and obscurities by being passed through the alembic of the Estates Court, and the people have been taught by experience to appreciate the value of indefeasible title.

In order to avail of these advantages, an association was formed in 1863 in Dublin, headed by the late Duke of Leinster and other influential persons, for the purpose of procuring the introduction of a measure for Ireland analogous to that which had proved so beneficial in Australia; and a Bill adapting that measure to the special requirements of Ireland was prepared by me, with the valuable aid of Mr. H. D. Hutton, Mr. Denny Urlin, and other legal gentlemen, members of the association. That Bill was presented to the Lord-Lieutenant by a highly influential deputation, together with an address, from which I quote the following:—

"We feel that the insecurity, delay, and expense incident

to the present system of conveyancing, are a hindrance in the transaction of our private affairs, seriously reducing the value of landed property in Ireland, and obstructing the free investment of capital in land and landed securities.

"We are of opinion that the Landed Estates Court, though affording some alleviation in the case of large estates, fails to provide an effectual remedy for many of the evils complained of. Titles, which, at considerable expense and delay, have been cleared of complexities by being passed through that Court, are left to be dealt with subsequently under the same system of conveyancing which induced those complexities, and consequently, in a short period of time, become embarrassed and deteriorated by similar accumulations.

"We therefore think that the Landed Estates Court Act requires to be supplemented by some measure which will enable future dealings with land to be conducted with security, expedition, and economy."

The Bill above referred to was introduced into the House of Commons by the Right Hon. W. Monsell, now Lord Emly, endorsed by the Right Hon. Col. Herbert and Sir Colman O'Loghlin, and was read a first time late in the session of 1863, rather with a view to inform the House upon the subject than with any hope of its being carried beyond that preliminary stage, it being understood that the Government proposed to deal with the question in the next session.

Unfortunately, the legal gentlemen who undertook to revise my Bill of 1863, preparatory to its reintroduction in the following session, deemed it politic, in order to propitiate Lord Westbury and induce him to undertake the carriage of it through the House of Lords, to import into it certain provisions of his own measure, which were antagonistic to the principle of registration of titles, and my remonstrances were ignored. The result may be learned by reference to the evidence of Mr. Denny Urlin, an English barrister, formerly examiner in the Estates Court, Ireland, and for ten years in

charge of the Record of Title Department. Mr. Urlin, examined before the Committee of 1879, in reply to Queries 1986 and subsequent, informs us that "the Irish Act embodies all the mistakes of Lord Westbury's which Lord Cairns's Act proposed to remedy. It is an imperfect system following rather closely Lord Westbury's system. It is permissive, so that any one by signing a simple requisition could exclude the operation of the Act as regards his land on its passing through the Estates Court." Section 32 enables persons whose properties were upon the register to withdraw them at any period. "A gentleman applied to me to remove his land from the register, and assigned as his reason for so doing that he wished to effect a loan, and the solicitors through whom he was to obtain the loan required him to remove his title from the record. I think when a title is once on the register it should, in the public interest, always stay there, otherwise owners are exposed to unfair pressure."

I have heard of similar incidents, and as a matter of fact, English landowners being an attorney-ridden people, option in these matters, though nominally given to the proprietor, is virtually given to his solicitor. We are not, however, in a position to condemn professional men for opposing measures which, by the admission of the officials appointed to carry them out, are so defective and so "incapable of being worked upon any such scale as would render it of sufficient public advantage;" and even when a method free from these defects is brought forward, we must not look for any superhuman disinterestedness from conveyancers or any other class of men. As the old conveyancer, the stage-coachman along the turnpike road, regarded the locomotive and the rail, so must the legal conveyancer regard a system which would cut down his emoluments from pounds to shillings, and enable every man of ordinary education to transact his own transfers and other ordinary business.

CHAPTER VI.

THE DEAD-LOCK DIFFICULTY FOUNDED ON MISAPPREHENSION.

THE committee of 1879 wind up their report with the following dilemma:—"On the one hand we are informed, on the authority of Mr. Follett and Mr. Holt, that no system of registration of title can be devised which will be voluntarily adopted; and on the other hand we are told by the Lord Chancellor that he has not yet seen any way by which registration of titles may be made compulsory. If you make registration of land compulsory, you must at once open out throughout the whole country a complete system of local offices, because you cannot make it compulsory upon a man to come up to London to register a few acres of land; you must have the whole machinery ready before the Act begins to work. That is an enormous thing in this country, and frightful to contemplate, and in the next place you must be prepared to do this at a very much smaller expense than any fees of registration have been proposed to be."

If there existed no machinery for conducting registration of titles other than by district registries "throughout the whole of the country," as assumed by Lord Cairns, the proposal would indeed be, as he has represented it, "something frightful to contemplate." But, in the first place, we have in Dublin and in Edinburgh metropolitan registration of deeds in operation for more than a century, and no inconvenience or complaint upon that score has arisen; and in the next place we have throughout the wide expanse of the British colonies demonstrated on a great scale not merely the feasibility, but also the

vast superiority of metropolitan as distinguished from district registration. There is no occasion for the parties to any dealing to visit the metropolis. The transferror would have in his possession his certificate bearing endorsed thereon memorials of all that it concerns a transferee to be made acquainted with, except the existence of inhibitions or caveats. The parties appear before a mayor, notary public, or commissioner for taking affidavits, to have their identity proved in the prescribed manner. The brief form of transfer printed on the back of the certificate of title is then signed by the transferror, and attested by the mayor or other functionary. The transferee then by post or wire enquires of the registrar whether caveats or inhibitions are entered against the title, and directs caveat to be lodged for the protection of his interest. The certificate is then sent by post to the metropolis to be registered, and is returned to the transferee with registration stamp. The cost of such a transaction, postage and telegrams inclusive, would seldom exceed twenty shillings, and the business may be completed within a day or two in ordinary cases.

It is altogether a mistake to suppose that any advantage or even convenience is secured by having a registry office in the neighbourhood of the land which may be the subject of a dealing. The advantage, such as it is—and that is scarcely appreciable—lies in having the registry near where the parties may happen to be together at the time of the dealing, and that, in the majority of cases, would be the metropolis.

The electric wire and the penny post solve all the difficulty, rendering the saving of a few hours the only advantage which parties at the place of registration have over parties at a distance.

There are many other objections to district registration as compared with metropolitan; but it may suffice to mention in addition to the "enormous, we may say the prohibitory, cost" of the former, the immense patronage it would place in the hands of Government throughout the boroughs and chief towns of

the kingdom, tending to jobbery and undue influence; and finally the consideration that, should the metropolitan system prove unsatisfactory, despite all experience to the contrary, there would be no difficulty in substituting the district method. Whereas the converse course would be attended with very great expense and serious entanglements.

In the Colonial Acts, the admission of land to the register is limited to fee-simple estates, and to lesser estates or interests created subsequent to the registration of the fee simple.

This limitation greatly facilitates the official procedure, by causing the folium appropriated to each parcel of land to commence with the root of title, and, in a much greater degree, by causing the process of placing land on the register to be gradual.

Lord Cairns (query 3006 of his evidence before the recent committee) estimated the number of transactions in land in this country annually at 300,000. It may safely be assumed that of these, less than one-tenth, or 30,000, would be dealings with the fee, requiring to be placed on the register. The statistical returns in the Blue Book referred to show that in Australia a staff of 14 officers and clerks suffice for a business of 17,000 transactions annually, costing in salaries and office expenses something under £7,000 per annum. Therefore, making allowance on the one side for comparative economy in working on a greater scale, and on the other for greater complexity of the titles to be dealt with, it would appear that an addition of thirty employées, and an increase of £15,000 in the expenditure, should suffice to render the staff under Mr. Spencer Follett fully competent to the efficient working of the department for some years to come. These additions, moreover, would be required, not all at once, but gradually, as the number of estates on the register increased, and the costs would be more than covered under the moderate scale of fees in the schedule annexed.

From the above, it will, I think, be admitted that the district

system of registration would be unworkable, and break down of its own weight, whilst the metropolitan system, as administered in the colonies, affords effectual safeguard against the danger of a dead-lock; and, further, I submit that neither in the cost nor in the magnitude of the work is there anything formidable, or anything that should be allowed to stand in the way of a system which, after abundant experience in the colonies as applied to property in land, and in this country as applied to property in shipping, has been found adequate to every requirement, and has conferred enormous—it may almost be said incalculable—benefit on the community.

In 1872, Lord Coleridge (then Attorney-General), presiding at the Congress of the Law Amendment Society, at Cheltenham, declared that he "had never been able to perceive the obstacle to applying to land the system of a transfer which answered so well when applied to shipping; but as his learned brethren, one and all, had declared that to be impossible, he had become impressed with the belief that there must be something wrong in his intellect, as he failed to perceive the impossibility. The remarkably clear and logical paper which was read by Sir R. R. Torrens relieved him from that painful impression, and the statistics of the successful working of his system in Australia amounted to demonstration, so that the man who denied the practicability of applying it might as well deny that two and two make four." If Lord Cairns had had before him the evidence referred to by Lord Coleridge, together with the supplementary information contained in the Blue Book of May, 1881, it can scarcely be doubted that he would have concurred in the above opinion.

CHAPTER VII.

LEGISLATION REQUIRED IN ORDER TO THE SUCCESSFUL APPLICATION OF THE SYSTEM TO LAND IN THE UNITED KINGDOM.

THE exceptionally favourable conditions for applying registration of titles there existing, as well as the tendency to subdivision of the land into small freeholds, encouraged by recent legislation, as also the diversity of tenure in the two countries, indicate the expediency of having a separate Act for Ireland.

As has been already stated, the Bill introduced in 1863 with that object was marred by the introduction of certain provisions taken from Lord Westbury's Act, especially by those authorising the withdrawal of titles from the Register, by permitting the use of deeds, and by a prohibitory schedule of fees.

The consequence was that the Irish Act of 1865, like its congeners on this side the Channel, became practically a dead letter, and an amending Bill, drafted by Mr. Denny Urlin, and introduced into the House of Commons by me, was read a first time and ordered to be printed, the 25th February, 1873. That Bill, however, never got beyond the preliminary stage. It will be found in the Appendix* ready to hand, and should registration of title be taken up as a Government measure, that Bill (brief though it be, containing only 14 clauses) would suffice to rescue Irish titles from having reimposed upon them, under the existing law, the cumbrous complexities, uncertainties, and costs, from which they have been delivered by being passed through the Estates Court, and would render the Bright Clauses of the Land Act a real boon to the

* Page 86 post.

yeomen proprietors whom it is the object of those clauses to establish.

Doctor Hancock, during his labours of thirty-three years to amend the land laws of Ireland, has consistently put forward the view, that a radical reform in our conveyancing system is an indispensable condition for creating a peasant proprietary.

Mr. Urlin (draftsman of the Bill referred to), in a paper read before the Social Science Congress, held in Edinburgh, in 1880, gave his opinion on this branch of the subject, as follows :—

"The general result, so far as Ireland is concerned, is that admirable opportunities have been thrown away, and several thousands of titles, after passing through the renovating process of the Land Court, are now year by year deteriorating, fast losing the signal benefit which was conferred, and becoming as cloudy and confused as titles were a quarter of a century ago. It is very unfortunate at the present moment that opportunities of this kind have been lost, and that land transfer is fast becoming almost as difficult and as costly in Ireland as it is elsewhere. For there are large numbers of Irish tenants ready to purchase their holdings, and the unhappy events of the last few months have rendered many landlords willing to sell at a reasonable price. The delay and cost is, however, such as to impede these transactions. I strongly recommend that existing methods be simplified in favour of such purchases by occupying tenants, and that the expense of them be reduced, as it might be, by two-thirds. Of course, an effective and compulsory registration of title should form part of the scheme, for it would be almost a mockery to subject these small freeholds to all the vexatious incidents of the ordinary system of conveyancing and real-property law, a branch of law which, it may be remarked, is, except in a few minor details, the same in Ireland as in England. It is of high moment to the peace and welfare of the Empire that discontented tenants should be turned into satisfied and industrious freeholders ; and if the

legal process be simplified (as it might be), the operation might in numberless cases be carried through on terms satisfactory to the present landlords. From what I have endeavoured to express in the fewest possible words, it follows that simplification of existing methods, supplemented by a general registration of ownership, is especially important at the present moment. And what is required for Ireland at a critical time like this is equally suited for, and would be warmly welcomed by, small proprietors of land in other portions of the Empire."

Mr. Henry Dix Hutton, through whose valuable assistance (as I have already acknowledged) I was enabled in the Bill of 1863 to modify the provisions of the Australian Act to meet the conditions existing in Ireland, has contributed a valuable paper on Peasant Proprietorship to the recent Congress of the Social Science Association in Dublin.

The following extracts from that paper bear with special force on this branch of our subject. Mr. Hutton says:—

"Since the year 1870 Irish Church lands have been sold to about 7,000 purchasers. Of these purchasers, it is estimated 5,000 were *bona fide* occupiers engaged in farming operations, and converted by sales under the Irish Church Act into peasant proprietors. By an omission, which is strange and regrettable, no provision was made for enabling the Church Commissioners to grant, either directly or through the Landed Estates Court, a Parliamentary title, which might have been entered on the Record of Title. The same remark applies to purchasers under the Bright clauses of the Land Act of 1870. Consequently these small landowners are left under the operation of the old system of conveyancing, although the practicability and importance of registration of title for peasant proprietors is not contestable or contested.

"The 5,000 peasant proprietors who purchased the Irish Church lands have not a Landed Estates Court title, and consequently could not record their titles. Every sale and mortgage by them, as well as by the majority of purchasers

under the "Bright clauses" of the Land Act of 1870, involves the delay and expense of the old system of conveyancing.

"Now both reason and experience prove that a peasant proprietary cannot prosper, or even long subsist, under the incubus of a costly and dilatory system of conveyancing. Yet such is the English and Irish system; for, though the Irish Registry of Deeds adds considerably to the security of titles to land, it in no degree diminishes the cost and delay of our cumbrous semi-feudal machinery for dealings with land. The prejudices which formerly existed as to the social danger of facilities for transferring and mortgaging land are fast giving way to a rational appreciation of their necessity in modern society for all classes, and for none more than small landowners. A ready and inexpensive mode of selling is indispensable to meet the exigencies of a farming proprietary who require to augment, or diminish, or transfer their small properties as occasion may necessitate or suggest. How then can we in reason create small landowners in Ireland as a social experiment, and yet withhold the legal conditions essential for their prosperity, and even their continuance?

"Surely it is time to cast away the unwisdom that deliberately creates a class of peasant proprietors, yet withholds from them the essential conditions of prosperity—nay, of existence."

In the measure for applying the system to England the contingency of a dead-lock through pressure of business at first starting may be safe-guarded, and the posting of the register facilitated, by limiting the application of the compulsory registration to dealings with the "fee," and with lesser estates and interests in land, the greater estate in which has previously been placed on the register, as also to copyhold and to parliamentary and judicial titles.

Again, in order to secure any beneficial results, the title must be indefeasible, and although we have it in evidence, on the highest authority, that the occurrence of titles so defective that they cannot with safety be placed on the

register with indefeasible titles, is "rare and altogether exceptional," provision may be made for these by registration as "possessory titles only," as is the case in the colony of Victoria. Dealings with these subsequent to the date of registration should, however, be held indefeasible, and provision made for the transfer of them to the general register upon the fault of title being cured by the production of further evidence, or through the statute of limitations.

The measure for England should therefore be framed on the following principles:—1st. The estate should pass on registration, not on the execution of a deed. 2nd. The title under it should (except so far as regards possessory registration) be indefeasible. 3rd. The registration should be compulsory upon the first dealing with the freehold after the date appointed for the Act to become operative. 4th. The register should be metropolitan. 5th. The adoption of the duplicate method of conducting registration, as in operation in the Australasian colonies. 6th. Lands once placed on the register should not be withdrawn.

CHAPTER VIII.

OFFICIAL REPORTS ON THE WORKING OF THE SYSTEM IN THE COLONIES, IN REPLY TO LORD KIMBERLEY'S CIRCULAR (*See Blue Book, 10th May*, 1881).

Mr. Henry Gawler, for twenty years Examiner of Titles in Adelaide, in reply to the questions put in Lord Kimberley's circular to the several colonial governments, states as follows:—"Up to the present time (October, 1880), no difficulty whatever has occurred in carrying out the ordinary transactions in land such as transfers, mortgages, and leases; and there can be no question, as regards such transactions, the Torrens' system is a complete success, land in fact being as easily and as securely dealt with as stock in the funds."

"As to trusts, it appears to me that the question is, Do we by virtue of the machinery of the Real Property Act place *cestui que* trusts of land in a worse position than they are placed under the ordinary system? In my opinion *cestui que* trusts of land under that Act are, if anything, in a better position. The power of caveating, whether by the Registrar-General or others in their behalf, is ample, and, in addition, the words 'no survivorship' in a certificate of title issued to two or more persons as trustees has been found a most valuable protection to beneficiaries. As to indefeasibility of title, this important result of the Torrens' system of registration of titles has not yet been upset."

The Registrar-General of Queensland replies:—"About 15 per cent. of the lands alienated from the Crown before

the Real Property Act came into force is now brought under the operation of that Act. The amount so alienated since that date is 3,826,634, which, being all under the Real Property Act, if added to the quantity brought under it by application, gives 3,913,947 acres under the Act, being about 98 per cent. of all the lands alienated."

From the reply of the Registrar-General of New Zealand, I extract the following :—"There are few questions incident to conveyancing with which the Land Transfer Department is not called upon to deal. Titles complicated by wills, settlements, &c., are not unfrequent, and the system of caveats is found sufficient for the conservation of trusts, whilst life estates, and estates in reversion or remainder, are fully capable of demonstration on the register. In fact, the system so far has been found equal to all purposes of conveyancing."

The Registrar-General of Victoria replies : "The proportion of land under the Act is now about 7,557,715 acres, or nearly one-eighth of the whole land of the colony. Titles of every sort and kind, simple and complicated, have been registered, and from the value of £5 to £100,000 and more. The facilities for carrying out mortgages and paying them off are very great, and thoroughly appreciated by the public. The expense of either transaction is comparatively trifling."

The reply of the Registrar-General of New South Wales contains the following :—"Although the Act has been in operation eighteen years, no compensation has been made for the deprivation of property, nor has any claim been sustained against the Assurance Fund, which at the present time amounts to £38,060. The popularity of the Act is so well secured, and the public generally have become so accustomed to our certificates, and have such faith in their undoubted value, as in many instances to decline accepting a property unless the title is registered under what is universally styled Torrens' system."

The Registrar-General of Tasmania, in his reply, states :—"The Real Property Act has now been in operation in this

colony for more than eighteen years, during which time 13,714 dealings, all sorts included, have been registered, and I consider that indefeasibility of title has been practically secured, inasmuch as I am not aware of any case in which a registered title has been upset upon reference to the law courts. More than one-sixth of all the lands alienated from the Crown in this colony are now under the Act. It may therefore, I think, be predicated that the majority of transactions in real property will soon be conducted through the Lands Titles Office, which may now be considered the statutory conveyancer of the colony."

The Registrar-General of British Columbia sums up the results of the measure in that colony thus :—"The title to real property has been greatly simplified, without radical changes in the general law. Stability of title, with safety to purchasers and mortgagees, has been secured. The ownership of property, both in town and country, is shown by the register at a glance, and whether encumbered or not. It increases the saleable value of property. It enables both vendors and purchasers to accurately ascertain the expense of carrying out any sale or transfer. It protects trusts, estates, and beneficiaries. It prevents frauds, and protects purchasers and mortgagees, and has operated so as to almost entirely dispense with the investigation of prior title. Loans on mortgage are effected, and transfers of the fee are made, with as much ease as the transfer of bank stock is made in England, a search of from five to ten minutes being all that is necessary to disclose the state of any registered title."

Lest it should be supposed that the highly favourable testimony given above may be coloured by official prejudice, I will quote briefly from a letter recently addressed to me by the Hon. Thomas Holt, many years a distinguished member of the Legislative Council of New South Wales, and from a recent work, "A Glance at Australia in 1880," by Mr. J. Franklyn. Mr. Holt says : "The working men of New South

Wales are almost all becoming landed proprietors; but hardly one of them would ever attend a sale of land if it were not announced in the advertisement 'that the title was that of Torrens' Act.'" Mr. Franklyn, page 126, writes thus: "Nor must we forget to remind our readers in England that under the Land Transfer Act (New Zealand), which is almost a transcript of the admirable measure introduced into South Australia by Sir Robert Torrens, and afterwards adopted by the Legislature of Victoria, real estate can be bought, sold, or encumbered by a very simple and inexpensive process. The Government guarantees an indefeasible title, and all transactions relating to land are so expeditiously and cheaply effected that, in the year ended the 30th June, 1879, the cost of each of 17,422 registration sales and mortgages, covering property to the value of £7,585,291, was only 22s. 9d. Let any one who knows anything of conveyancers' bills in the mother country, ponder well upon the full force and meaning of these highly significant statistics." "Land can be dealt with as easily as a share in a ship or a joint-stock company, and with the same security as regards title. Trusts are not registered; but instruments declaring trusts may be deposited with the registrar for safe custody and reference. These deeds are binding between the parties to them, but they in no way affect persons dealing with trustees who are registered proprietors. Under the Land Transfer Act it is not necessary to examine the deeds in the abstract of title: these no longer exist. They have been delivered up to the registrar, and when a certificate of title is granted they are cancelled. An investor, therefore, does not run the risk of a mistake or blunder of his solicitor. Every transaction has its finality and complete security."

In fine, the benefits which have attended this measure, wherever it has been adopted in its integrity, as proved on the foregoing evidence, may thus be summed up:—

1st. It has substituted security for insecurity.

2nd. It has reduced the cost of conveyancing from pounds to shillings, and the time occupied from months to days.

3rd. It has substituted clearness and brevity for obscurity and verbiage.

4th. It has so simplified ordinary dealings that any person who has mastered the "three R.'s" can transact his own conveyancing.

5th. It affords protection against the largest class of frauds, such as those practised by the notorious Down, and recently by J. F. Cooper.

6th. It has restored to their natural value many estates held under good holding titles, but depreciated in consequence of some blot or technical defect, and has barred the recurrence of any such defect.

7th. It has largely diminished the number of Chancery suits, by removing the conditions which afford grounds for them.

The foregoing pages have been written with a twofold object. First, to demonstrate that there is no exaggeration in the estimate of the Royal Commission of 1858, backed by that of John Stuart Mill and others of experience and authority on such subjects: that the application to land in this country of a safe, cheap, simple, and expeditious method of transfer, such as that adopted for property in shipping, would have the effect of adding five years' purchase, some will say ten, to all the land in this country. Second:—that there exists no insurmountable obstacle, or even serious difficulty, in applying that system, by the duplicate method, to estates and interests in land in this country.

ROBERT R. TORRENS.

APPENDIX.

FORM A.—APPLICATION BOOK.

Application.		Name.	Residence.	Description of Property.	Date of advertisement in Gazette.	Number of advertisements in local or other papers.	Period within which after date of advertisement caveat may be lodged.	Caveat, by whom lodged.	Date when received	Time for issue of certificate.	When issued.	Vol.	Folio
No.	Date.												
50	1858. Aug. 27	S. Jones	Adelaide	Town Acre, 800	Rejected	—	—	—	—	—	—	—	—
185	Oct. 1	J. Brown	Norwood	Section 201, Survey B	Oct. 14	Three	Two Months	—	—	Dec. 22	1859 Jan. 4	VI.	129
231	Nov. 29	J. White	Port Adelaide ...	Section 21, Hnd. Port Adelaide.	Dec. 6	Three	One Month	J. Scott	Dec. 8	1859 Feb. 23	—	—	—
306	1859. Mar. 27	S. Smith	Kapunda	Section 12, Hundred Kapunda.	Mar. 31	One	One Month	—	—	April 30	May 2	VI.	130

FORM B.

MODEL REGISTER BOOK.

COMPILED by binding together duplicates of all Grants from the Crown, and duplicates of all Certificates of Title, representing the fee of lands brought under the operation of the Act; to each of which Grants and Certificates a distinct folium of the Register is appropriated, with space for recording Lesser Estates and Interests, existing at the time of registration or subsequently created, affecting such land.

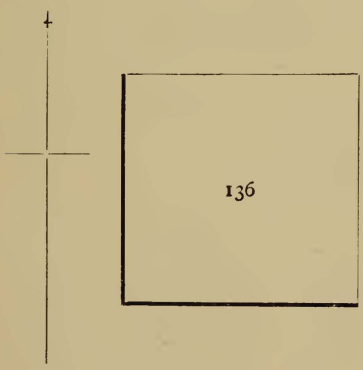
(Seal.)
(Signed)
R. G. MacDonnell, Governor.

Land Grant,
Register Book,
Vol. V., folio 7.

SOUTH AUSTRALIA.

COUNTRY SECTION.

Know all men by these presents that I, Sir Richard Graves MacDonnell, Knight Companion of the Most Honourable Order of the Bath, Captain-General and Governor-in-Chief of the Province of South Australia, in consideration of the sum of One Thousand Five Hundred Pounds sterling to the Treasurer on behalf of Her Majesty paid by John Adams and William Smith, of Adelaide, merchants, do hereby in name and on behalf of Her Majesty, grant unto the said John Adams and William Smith, all that Section of land containing one thousand acres, be the same more or less, and numbered 136, situate in the Hundred of Clare, County of Clare, and delineated in the public map deposited in the Survey Office at Adelaide, and in the plan in the margin hereof, together with all timbers, minerals, and appurtenances, to hold unto the said John Adams and William Smith, their heirs and assigns for ever.



In witness whereof I have hereunto set my hand and seal, at Adelaide, this twenty-first day of August, one thousand eight hundred and fifty-eight.

Signed, sealed, and delivered, in the presence of

(Signed) ARTHUR KINLOCK.

I acknowledge to have received from the above-mentioned John Adams and William Smith the before-mentioned sum of One Thousand Five Hundred Pounds sterling. £1,500.

Witness—
W. W. Hutton.

(Signed) B. T. FINNISS,
Treasurer.

Certificate of Title,
Register Book,
Vol. V., folio 13.

SOUTH AUSTRALIA.

Pursuant to Memorandum of Sale No. 560, dated 15th day of January, 1859, by John Adams and William Smith, John Adams, of Adelaide, merchant, is now seised of an estate in fee simple, subject nevertheless to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Clare, County of Clare, being the south-eastern portion of the Section numbered 136 in the said Hundred, and formed by drawing a line from the north-east corner to the south-west corner of the said Section, which said piece of land contains 500 acres be the same more or less, and is bounded as appears in the plan drawn in the margin hereof, and therein marked by a thick line, and is laid out as the township called Milltown, according to the plan of the said township deposited in the Lands Titles Registration Office No. 36, which said Section No. 136 is delineated in the public map of the said Hundred deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and seal of Sir Richard Graves MacDonnell, Governor-in-Chief of the said Province, to the said John Adams and William Smith, as appears by land grant, Vol. V., folio 7, now delivered up and cancelled.

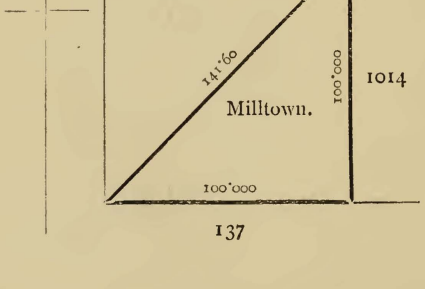
In witness whereof, I have hereunto signed my hand and affixed my seal this sixteenth day of January, one thousand eight hundred and fifty-nine.

(Seal.)

Registrar-General.

Signed, sealed, and delivered, the 16th day of January, 1859, in the presence of

W. B. T. A.



Memorandum of Sale No. 715, dated the 20th day of January, 1859, produced the same day at two o'clock in the afternoon, from the above-named John Adams to William Brown, of Kapunda, Esquire, Lot 2 in plan of township of Milltown No. 36. Consideration money paid, Six Pounds.

Cancelled as regards Lot 2. Certificate of Title of said Lot 2 registered Vol. VI., folio 7.

Registrar-General.

Memorandum of Sale No. 816, dated the 25th day of January, 1859, produced to me the twenty-sixth day of January, 1859, at three o'clock in the afternoon, from the above-named John Adams to Henry Jones, of Clare, farmer, Lot 19 in plan of township of Milltown No. 36. Consideration money paid, Fifteen Pounds.

Cancelled as regards Lot 19, Certificate of Title of said Lot 19, registered Vol. VI., folio 21.

Registrar-General.

Memorandum of Sale No. 827, dated twenty-eighth day of January, 1859, produced the same day at eleven o'clock in the forenoon, from the within-named John Adams to Mary Robinson, of Adelaide, spinster, Lot 26 in plan of township of Milltown No. 36. Consideration money paid, Twenty Pounds.

Cancelled as regards Lot 26, Certificate of Title of said Lot 26, registered Vol. VI., folio 33.

Registrar-General.

Certificate of Title,
Register Book,
Vol. V., folio 14.

SOUTH AUSTRALIA.

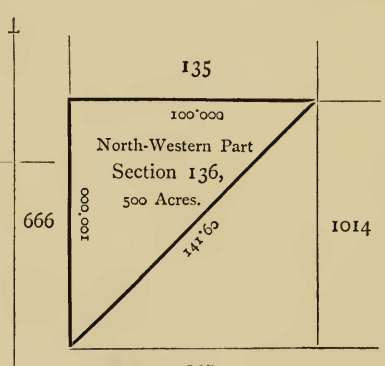
Pursuant to Memorandum of Sale No. 561, dated 15th day of January, 1859, by John Adams and William Smith, William Smith of Adelaide, merchant, is now seized of an estate in fee simple, subject nevertheless to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Clare, County of Clare, being the north-western portion of the Section numbered 136 in the said Hundred, and formed by drawing a line from the north-east corner to the south-west corner of the said Section, which said piece of land contains five hundred acres be the same more or less, and is bounded as appears in the plan drawn in the margin hereof, and therein marked by a thick line, which said Section numbered 136 is delineated in the public map of the said Hundred deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and seal of Sir Richard Graves MacDonnell, Governor-in-Chief of the said Province, to the said John Adams and William Smith, as appears by Land Grant, Vol. V., folio, 7, now delivered up and cancelled.

In witness whereof I have hereunto signed my name and affixed my seal the sixteenth day of January one thousand eight hundred and fifty-nine.

Registrar-General. (Seal.)

Signed, sealed, and delivered the 16th day of January, 1859, in presence of

W. B. T. A.



Lease No. 718, dated the twentieth day of January, 1859, from the above-named William Smith to John Brown, of Adelaide, carpenter, of the above-described land Term, 21 years. Rent £500 per annum, payable half-yearly, on the 20th July and 20th day of January.

Recorded the 21st day of January, 1859, at half-past eleven o'clock in the forenoon.

Registrar-General.

Certificate of Title,
Register Book,
Vol. V., folio 190.

SOUTH AUSTRALIA.

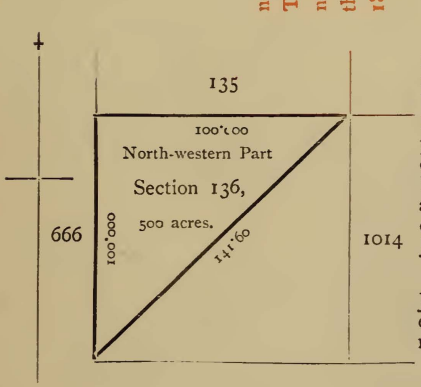
Pursuant to Memorandum of Sale No. 720, dated the twentieth day of March, 1860, by William Smith, Thomas Wilson, of Norwood, baker, is now seised of an estate in fee simple, subject nevertheless to such encumbrances, liens and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Clare, County of Clare, being the north-western portion of the Section numbered 136 in the said Hundred, and formed by drawing a line from the north-east corner to the south-west corner of the said Section, which said piece of land contains five hundred acres, be the same more or less, and is bounded as appears in the plan drawn in the margin hereof, and therein marked by a dark line, which said Section numbered 136 is delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and seal of Sir Richard Graves MacDonnell, Governor-in-Chief of the said Province, to John Adams and William Smith, of Adelaide, merchants, as appears by Certificate of Title, Vol. V., folio 14, now delivered up and cancelled.

In witness whereof I have hereunto signed my name and affixed my seal this twenty-first day of March, one thousand eight hundred and sixty.

Registrar-General. (Seal.)

Signed, sealed, and delivered, the 21st day of March, 1860, in presence of

W. B. T. A.



Lease No. 718, dated the twentieth day of January, 1859, from the above-named William Smith to John Brown, of Adelaide, carpenter, of the above-described land. Term, 21 years. Rent, £500 per annum, payable half-yearly, on the 20th day of July, and 20th day of January.

Recorded the 21st day of January, 1859, at half-past eleven o'clock in the forenoon.

Registrar-General.

E

Bill of Mortgage, No. 1121, dated twenty-third day of March, 1860, produced to me the same day at two o'clock in the afternoon, from the within-named Thomas Wilson to Henry Johnston, of Kensington, builder. Principal sum secured, £2,000. Rate of interest, 10 per cent. Date appointed for redemption, 23rd day of March, 1864. Interest to be paid half-yearly, on the 23rd day of September, and 23rd day of March.

Recorded the twenty-third day of March, 1860, at two o'clock in the afternoon.

Registrar-General.

Bill of Mortgage, No. 1132, dated the 1st day of April, 1860, produced to me the same day at noon, from the within-named John Brown, the lessee described in the within-mentioned lease No. 718, to William Carter, of Norwood, shoemaker. Principal sum secured, £500. Rate of interest, 10 per centum. Date appointed for redemption, 1st April, 1862. Interest to be paid half-yearly, on the 1st day of October and 1st day of April.

Recorded the 1st day of April, 1860, at noon.

Registrar-General.

Transfer of the within-mentioned Lease, No. 718, by endorsement thereon dated 4th day of April, 1860, from John Brown, the said lessee, to Charles Roberts, of Adelaide, gentleman, subject to the above-mentioned Bill of Mortgage No. 1132.

Recorded the 6th day of April, 1860.

Registrar-General.

Transfer of the above-mentioned Mortgage No. 1132 of the Lease No. 718 by endorsement thereon, dated the 18th January, 1861, from William Carter, the said mortgagee, to the within-named Thomas Wilson.

Recorded the 19th day of January, 1861.

Registrar-General.

Surrender of the within-mentioned Lease No. 718 by endorsement thereon, dated the fifth day of July, 1861, by the said Charles Roberts, the transferee of the said lease to the within-named Thomas Wilson.

Recorded the 7th day of July, 1861.

Registrar General.

The estate of the within-named Thomas Wilson in the land within-described became transmitted on the 10th day of January, 1863, to Thomas Jones, of Adelaide, gentleman, as the administrator to the goods, chattels, and effects of the said Thomas Wilson, in consequence of the death of the said Thomas Wilson, intestate, on the 10th day of January, 1863, as appears by letters of Administration dated the 1st day of February, 1863, produced to me the same day at noon, and by declaration in writing by the said Thomas Jones, dated the 1st day of February, 1863.

Registrar-General.

Certificate of Title,
Register Book,
Vol. VI., folio 33.

SOUTH AUSTRALIA.

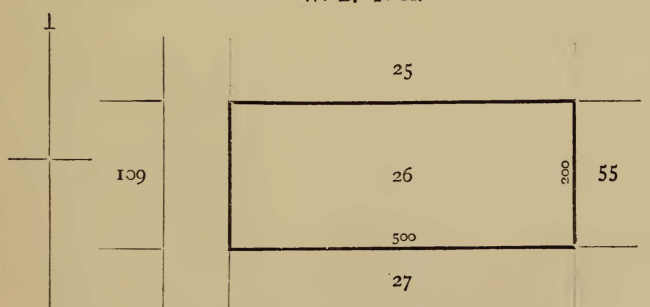
Pursuant to Memorandum of Sale No. 827, dated twenty-eighth day of January, 1859, by John Adams, Mary Robinson, of Adelaide, spinster, is now seised of an estate in fee simple, subject nevertheless to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the township of Milltown, being Allotment numbered 26 in the plan of the said township deposited in the Lands Titles Registration Office No. 36, containing one acre, be the same more or less, and bounded as appears in the plan drawn in the margin hereof, and therein marked by a thick line, which said piece of land is part of the Section numbered 136 in the Hundred of Clare, County of Clare, and is delineated in the public map of the said Hundred deposited in the office of the Surveyor-General, and was originally granted the 21st day of August, 1858, under the hand and seal of Sir Richard Graves MacDonnell, Governor-in-Chief of the said Province, to John Adams and William Smith, of Adelaide, merchants, as appears by Certificate of Title, Vol. V., folio 13, delivered up and cancelled as regards the said allotment.

In witness whereof, I have hereunto signed my hand and affixed my seal this thirtieth day of January, one thousand eight hundred and fifty-nine.

Registrar-General. (Seal.)

Signed, sealed, and delivered the 30th day of January, 1859, in presence of

W. B. T. A.



Marriage of the within-named Mary Robinson to Charles Giles, of Norwood, builder, on the 1st March, 1859, as appears by the register of such marriage, and by the declaration of identity produced to me on the fourth day of March, 1859, at noon.

Registrar-General.

FORM C.—

Date.	Hour.	Name.	Opposite Party.
1859. January 5	11 a.m.	John Brown	
,, 20	1 p.m.	Frederick Sanderson	
February 4	2 p.m.	Edward Wilson	Henry Green
,, 15	1 p.m.	Alfred Jennings	Robert Owen
,, 20	noon	William Roberts	James Cummings
March 3	1 p.m.	Henry Loveday	John Guthrie
,, 5	2 p.m.	Richard MacDonald	Frederick Curtis
,, 10	11 a.m.	Edward Ward	
,, 14	2 p.m.	Charles Young	Thomas Brown
,, 20	noon	Robert Going	William Wilson
,, 26	2 p.m.	Henry Heath	

—JOURNAL.

Property.	Distinguishing Letter.	No. of Instrument.	Volume and Folio of the Register Book	
			Vol.	Folio.
Section 1150, Hundred of Adelaide, County Adelaide	G.	70	II.	60
Section 40, Hundred of Moorooroo, County of Light	C.	95	II.	180
Section 250, Hundred of Yatala, County of Adelaide...	T.	104	II.	260
Lot 20, Township of Gawler	M.	130	II.	272
Lot 51, Township of Goolwa	E.	189	II.	299
Section 1160, Hundred of Saddleworth, County of Light	T.L.	200	III.	50
Section 400, Hundred of Adelaide, County of Adelaide	L.	218	III.	81
Town Acre, 750	R.	242	III.	111
Section 1210, Hundred of Yatala, County of Adelaide	T.M.	269	III.	166
Allotment 6, Township of Port Adelaide	S.L.	283	III.	204
	P.	286	III.	214

NOTE EXPLANATORY OF DISTINGUISHING LETTERS.

G. Signifies Grant from the Crown.
C. Certificate of Title.
T. Transfer of the Fee.
L. Lease.
T.L. Transfer of a Lease.
S.L. Surrender of a Lease.
M.L. Mortgage of a Lease.
M. Mortgage.
T.M. Transfer of Mortgage.
E. Encumbrance.
T.E. Transfer of an Encumbrance.
D. Discharge of Mortgage or Encumbrance.
N. Nomination of Trustees to Settlement of Estate.
P. Power of Attorney.
R. Registration Abstract.
A. Appointment of Assignees or Administrators.
X. A Caveat.
Z. A Deed declaratory of Trusts or any Instrument deposited for safe custody and reference, without being registered.

FORM E.—WARRANT BOOK.

WARRANT OF LANDS TITLES COMMISSIONERS.

Name.	Date of Application.	Property.	Class.	No. of Notifications in *Gazette*.	Period within which after date of advertisement, caveat may be lodged.	No. of Advertisements in Local Papers.
	1858.					
John Adams	Oct. 21	Section 136, Hundred of Clare, County of Clare	2	1	One month	3
Thomas Wilson	,, 21	Lot 80, Bowden, part of Section 354, Survey B... ...	5	1	Two months	3
William Smith	,, 28	Portion of Town Acre 20, City of Adelaide	3	1	Two months	3, & 3 in Melbourne *Argus*
Robert Brown	,, 29	Section 24, Hundred of Grey, County Grey	2	1	One month	3
James Willis	Nov. 7	Lot 19, Town of Port Adelaide	3	1	Twelve months	3, and in London *Gazette* 3. In Victorian *Government Gazette* 1, Melbourne *Argus* 3, New South Wales *Government Gazette* 1, *Sydney Herald* 3.

Whereas. the parties named in the above list have requested that the lands therein described be brought under the Real Property Act, and the said applications have been referred to us by the Registrar-General, we hereby direct that publication of the same may be made as above specified, and particularised opposite the name of each respectively; and in case no caveat be received by the Registrar-General in respect to such lands, on or before the expiration of the periods set opposite each name respectively, from the date of the *South Australian Government Gazette* notice, we direct the Registrar-General to take such steps as are by law directed for bringing such land under the operation of the said Act.

Dated this Thirtieth day of October, 1858.

W. H. M.
J. H. } Lands Titles Commissioners.

FORM D.

INDEX.

EXAMPLES OF INSTRUMENTS USED IN THE TRANSACTION OF BUSINESS IN THE LAND TRANSFER OFFICE, ADELAIDE.

Property, Allotment in Township, subject to Mortgage; reference for description to map deposited in terms of Real Property Act. Mortgagee concurs.

(I) [SOUTH AUSTRALIA.

APPLICATION FOR LANDS TO BE BROUGHT UNDER OPERATION OF THE REAL PROPERTY ACT.

I, Thomas Bone, of Kensington, do declare that I am seised in possession of an estate in fee simple in all that allotment of land, No. 430, containing one-quarter of an acre, be the same little more or less; and being part and parcel of the Sections of land, numbered 1129 and 1130, in the Hundred of Port Adelaide, County Adelaide; which Sections have been laid out by Messrs. Watts and Levi, as and for a Township, as the said allotment, No. 430, is more particularly delineated in plan of said Sections deposited in Lands Title Registration Office, No. 3; and which said Sections were originally granted to Philip Levi, by land-grant, under the hand and Seal of Sir H. E. F. Young, Lieutenant-Governor of the said Province, dated 26th day of July, 1850, and are delineated on the public maps of the Province deposited in the Survey Office in Adelaide: And I do further declare, that I am not aware of any mortgage, encumbrance, or claim affecting the said lands, or that any person hath any claim, estate or interest in the said lands at law or in equity, in possession or in expectancy, other than is set forth and stated as follows, that is to say—that the above property is subject to a mortgage to John Watson for the sum of £100; and I make this solemn declaration conscientiously believing the same to be true.

I consent hereto, (Signed) John Watson.
Witness——

Dated at Adelaide, this 14th day of March, 1859.
(Signed) THOMAS BONE.

Made and subscribed by the above-named Thomas Bone, this 14th day of March, 1859, in the presence of me,
———, Registrar-General.

I, Thomas Bone, the above declarant, do hereby apply to have the piece of land described in the above declaration brought under the operation of the Real Property Act.

Dated at Adelaide, this 14th day of March, 1859.
(Signed) THOMAS BONE.

Witness to Signature, ———.

[ENDORSEMENT TO THE ABOVE.]

I declare the within described land to be of the value of £500 sterling and no more, and I make this declaration conscientiously believing the same to be true.

Made and subscribed by the above named Thomas Bone, in my presence, this 14th day of March, 1879.
———, Registrar-General.

When Title is deed for part of an original Section, referring for description to diagram on paper annexed; applicant being purchaser under contract, and vendor concurring.

(I) [SOUTH AUSTRALIA.

APPLICATION FOR LANDS TO BE BROUGHT UNDER OPERATION OF THE REAL PROPERTY ACT.

I, Thomas Atkins, of Bowden, do declare that I am seised in possession, as intending purchaser from Edward Martin, in all that piece of land, containing twenty acres, being part of and situate at the northern extremity of the Section of land, numbered 250, situate in the Hundred of Adelaide, County of Adelaide, which piece of land is more particularly delineated in plan annexed hereto; which said Section, No. 250, was originally granted to Edward Martin by land grant under the hand and seal of Sir H. E. F. Young, Lieutenant-Governor of the said Province, dated 8th July, 1853, and is delineated on the public maps of the Province deposited in the Survey Office in Adelaide: And I do further declare, that I am not aware of any mortgage, encumbrance, or claim affecting the said land, or that any person hath any claim, estate, or interest in the said lands at law or in equity, in possession or in expectancy, and I make this solemn declaration conscientiously believing the same to be true.

I consent hereto,
(Signed)
Edward Martin (Vendor.)
Witness—

Dated at Adelaide, this 12th day of March, 1859.

(Signed) THOMAS ATKINS.

Made and subscribed by the above-named Thomas Atkins, this 12th day of March, 1859, in the presence of me,

———, Registrar-General.

I, Thomas Atkins, the above declarant, do hereby apply to have the piece of land described in the above declaration brought under operation of the Real Property Act.

Dated at Adelaide, this 12th day of March, 1859.

(Signed) THOMAS ATKINS.

Witness to Signature, ———

[ENDORSEMENT TO THE ABOVE.]

I declare the within described land to be of the value of £30 sterling, and no more, and I make this solemn declaration conscientiously believing the same to be true.

(Signed) THOMAS ATKINS.

Made and subscribed by the above-named Thomas Atkins, in my presence, this 12th day of March, 1859.

SCHEDULES REFERRED TO.

A

SOUTH [*Royal Arms.*] AUSTRALIA.

Certificate of Title.

A.B., of (*here insert description, and if certificate be issued pursuant to any sale, reference to memorandum of sale, reciting particulars*) is now seised of an estate (*here state whether in fee simple*), subject nevertheless to such encumbrances, liens, and interests, as are notified by memorandum endorsed hereon, in that piece of land situated in the (*County, Hundred, or Township*) of bounded on the (*here set forth boundaries, in chains, links, or feet*) containing (*here state area*), be the same a little more or less (*exclusive of roads intersecting the same, if any*), with right of way over (*state rights of way, and other privileges, or easements, if any*); plan of which piece of land is delineated in (*margin, or in map No. , deposited in Registry Office*), which said piece of land is (*or is part of*) the (*Country Section or Town Allotment*), marked , delineated in the public map of the said (*County, Hundred, or Township*), deposited in the office of the Surveyor-General, which was originally granted the day of , under the hand and seal of Governor (*or Resident Commissioner*) of the said Province, to *C.D.*, of (*here insert description*), as appears by (*land grant, former certificate, or other instrument of title*), now delivered up and cancelled.

In witness whereof, I have hereunto signed my name, and affixed my seal, this day of .

Registrar-General (*L.S.*).

Signed, sealed, and delivered in presence of the day of

TRANSFERS.

Form to be endorsed on Certificate of Title when the whole of the land comprised therein is intended to be transferred.

I, the within named John Smith, in consideration of £200 this day paid to me by William Robinson, of Adelaide, bricklayer, the receipt of which sum I do hereby acknowledge, hereby transfer to him the estate or interest in respect to which I am registered proprietor as set forth and described in the within Certificate of Title, together with all my rights, powers, estate, and interest therein. In witness whereof I have hereto subscribed my name this twenty-second day of January, 1859.

Signed on the day above named by the said John Smith, in the presence of Thomas Browne, of Adelaide, store-keeper.

Where land transferred is portion of a Section of land included in Certificate of Title.

(B) [SOUTH AUSTRALIA.

MEMORANDUM OF SALE.

I, John Smith, of Adelaide, carpenter, being registered as proprietor (certificate of title, vol. I., folio 93) of an estate in fee simple in all that piece or parcel of land, situate in the Hundred of Goolwa, County of Hindmarsh, containing fifteen acres, be the same a little more or less, being the northern portion of the section of land No. 1300 in said Hundred, and bounded as appears in plan drawn in margin hereof, which said piece of land measures on the south and north sides thereof severally 300 links, and on the east and west sides thereof severally 100 links, which said Section is delineated in the public map of the said Hundred in the office of the Surveyor-General, and was originally granted on the fifth day of May, 1849, under the hand and seal of Sir H. E. F. Young, Lieutenant-Governor of the said Province, to Thomas Jones, of Willunga, farmer, in consideration of the sum of £85, paid to me by William Robinson, of Adelaide, aforesaid, bricklayer, the receipt of which sum I hereby acknowledge, do hereby transfer to the said William Robinson all my estate and interest in the said piece of land. In witness whereof I have hereunto subscribed my name, this twenty-second day of January, 1859.

JOHN SMITH.

Signed on the day above named by the said John Smith, in the presence of Thomas Browne, Adelaide.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration.—WILLIAM ROBINSON.

Appeared before me at Adelaide, the 24th day of January, 1859, John Smith, of Adelaide, the party executing the within instrument, and did freely and voluntarily sign the same.

(Signed) THOMAS JOHNSON, J.P.

When land is transferred subject to a lease and mortgage.

(B) [SOUTH AUSTRALIA.

MEMORANDUM OF SALE.

I, John Smith, of Adelaide, carpenter, being registered as proprietor (certificate of title, vol. III., folio 54) of an estate in fee simple, subject, however, to such encumbrance and interest hereinafter mentioned, in all that Section of land situate in the Hundred of Goolwa, County of Hindmarsh, containing eighty acres, be the same a little more or less, and numbered 1300, bounded as described in certificate of title aforesaid, which said Section is delineated in the public map of the said Hundred, in the office of the Surveyor-General, and was originally granted the fifth day of May, 1849, under the hand and seal of Sir H. E. F. Young, Lieutenant-Governor of the said Province, to Thomas Jones, of Willunga, farmer, in consideration of the sum of £200, paid to me by William Robinson, of Adelaide, bricklayer, the receipt of which sum I hereby acknowledge, do hereby transfer to the said

William Robinson, all my estate and interest in the said piece of land, subject as follows, that is to say—a lease, No. 20, dated 4th August, 1858, from me the said John Smith, to John Morris, of Kapunda, miller, at the yearly rent of £70, payable half-yearly. Term—seven years, and right of purchase at any time during the said term at the price or sum of £1,000; and subject also to bill of mortgage, No. 30, dated 6th November, 1858, from me, the said John Smith to Alfred Perkins, of Norwood, Esquire, for the sum of £400. Date when payable, 6th November, 1860. Rate of interest, £10 by the £100 in every year. In witness whereof I have hereunto signed my name, this twenty-second day of January, 1859. JOHN SMITH.

Signed on the day above named by the said John Smith in the presence of Thomas Browne, Adelaide.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of Registration—WILLIAM ROBINSON.

Appeared before me, at Adelaide, the 24th day of January, 1859, Thomas Browne, of Adelaide, the attesting witness to this instrument, and acknowledged his signature to the same; and did further declare than John Smith, the party executing the same, was personally known to him, the said Thomas Browne, and that the signature of this said instrument is the handwriting of the said John Smith. (Signed) THOMAS JOHNSON, J.P.

Grant of Right of Way.

(B) [SOUTH AUSTRALIA.

MEMORANDUM OF SALE.

I, John Smith, of Adelaide, carpenter, being registered as proprietor (certificate of title, vol. V., folio 37) of an estate in fee simple in all that Section of land situated in the Hundred of Goolwa, County of Hindmarsh, containing eighty acres, be the same little more or less, and No. 1300, bounded as described in certificate of title aforesaid, in consideration of the sum of Twenty Pounds paid to me by John Watkins, of Adelaide, the receipt of which sum I hereby acknowledge, do hereby grant to the said John Watkins and others claiming through or under him, owners or occupiers of the Section of land, No. 1300, in the said Hundred, full liberty and right of way, and of driving of horses and other cattle, and either on foot or on horseback, and with carts or other carriages to or from the well or pond situated on said Section No. 1300, for the purpose of watering such horses and other cattle, or of carrying away and using the water therefrom, such well or pond to be approached from eastern corner of said Section, No. 1300. In witness whereof I have hereunto subscribed my name, this twenty-seventh day of January, 1859.

JOHN SMITH.

Signed on the day above-named by the said John Smith in the presence of Thomas Browne, of Adelaide.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of Registration—JOHN WATKINS.

Mortgage with Covenant to Insure.

(D) [SOUTH AUSTRALIA.

BILL OF MORTGAGE.

I, John Smith, of Willunga, farmer, being registered as proprietor (certificate of title, vol. I., folio 169) of an estate in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in that piece of land situated in the Hundred of Willunga, County of Adelaide, bounded as described in certificate of title aforesaid, containing eighty acres, be the same a little more or less; plan of which piece of land is delineated in aforesaid certificate of title, which said piece of land is the Country Section marked 258, delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, which was originally granted the twelfth day of August, 1857, under the hand and seal of Sir R. G. MacDonnell, Governor-in-Chief of the said Province, to Thomas Jenkins, of Adelaide, in consideration of the sum of Three Hundred Pounds sterling, this day lent to me by James Brown, of Adelaide, the receipt of which sum I hereby acknowledge, do hereby covenant with the said James Brown, that I will pay to him, the said James Brown, the above sum of Three Hundred Pounds on the twelfth day of September, 1861: Secondly, that I will pay interest on the said sum at the rate of Ten Pounds by the One Hundred Pounds in the year, by equal quarterly payments, on the twelfth day of December, twelfth day of March, twelfth day of June, and on the twelfth day of September, in every year: Thirdly, that I will insure the dwelling-house, stable, and out-buildings erected and built on the above Section, in such Insurance Office as the said James Brown may direct: And for the better securing to the said James Brown the repayment in manner aforesaid of the said principal sum and interest, I hereby mortgage to the said James Brown all my estate and interest in the said land above described. In witness whereof I have hereto signed my name, this twelfth day of September, 1858.

JOHN SMITH, Mortgagor.

Signed by the above-named John Smith, as mortgagor, this twelfth day of September, 1858, in the presence of William Jones, of Adelaide.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of Registration—JAMES BROWN.

ENDORSEMENT OF TRANSFER OF MORTGAGE.

I, the within-mentioned James Brown, in consideration of Three Hundred Pounds this day paid to me by George Brooks, of Adelaide, the receipt of which sum I do hereby acknowledge, hereby transfer to him the estate or interest in respect to which I am registered as proprietor, as set forth and described in the within written security, together with all my rights, powers, estate, and interest therein.

In witness whereof I have hereunto subscribed my name, this tenth day of January, 1861.

JAMES BROWN.

Signed by the above-named James Brown, in the presence of William Stokes, this 10th day of January, 1861.

WM. STOKES.

ENDORSEMENT OF DISCHARGE OF MORTGAGE.

Received from the within-named John Smith, this twelfth day of September, 1861, the sum of Three Hundred Pounds, being in full satisfaction and discharge of the within obligation.

JAMES BROWN, Mortgagee.

Witness—THOMAS STYLES.

Mortgage to a Building Society.

[SOUTH AUSTRALIA.

BILL OF MORTGAGE.

I, John Smith, of Adelaide, carpenter, being a shareholder in the Society known as the "East Torrens Land, Building, and Investment Society," and being registered as the proprietor of an estate, in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memoranda, endorsed hereon, in that Section of land situated in the Hundred of Adelaide, County of Adelaide, bounded as described in certificate of title, vol. I., folio 63, containing eighty acres, be the same little more or less, plan of which piece of land is delineated in aforesaid certificate of title, which said piece of land is the Country Section numbered 842, delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, which was originally granted the fourth day of June, 1852, under the hand and seal of Sir Henry Edward Fox Young, Lieutenant-Governor of the said Province, to Charles Tomkins, of Adelaide, in consideration of the sum of One Hundred Pounds, lent to me by Alfred Johnson, Thomas Stokes, and George Robinson, the present trustees of the said Society, out of the funds of the said Society, the receipt of which sum I hereby acknowledge, do hereby covenant with the said present and future trustees of the said Society, that I will pay to the Secretary of the said Society, or the person appointed to receive the same, the sum of Two Shillings on every Wednesday in each week, and all subscriptions, fines, interest, and other payments to become due according to the rules of the said Society upon the said share, and upon the said principal sum of One Hundred Pounds so advanced to me as aforesaid. And also, that I will, during the continuance of the said Society, observe all the rules and regulations of the said Society until, with the consent of the present or future trustees of the said Society, I shall pay off such balance as according to the rules of the said Society may be owing to the said Society in respect of the said principal sum of

One Hundred Pounds, with all arrears of subscriptions, fines, and other payments hereby covenanted to be paid to the said Society. And for the better securing to the present and future trustees of the said Society the payment at the times aforesaid, of such weekly sums and subscriptions, fines, interest, and other payments as aforesaid, I hereby mortgage to the said present and future trustees of the said Society all my estate and interest in the said land above described. And I empower the present and future trustees of the said Society to sell the estate and interest hereby pledged to them as security whenever I shall make default for the space of five weeks in payment of the said weekly sum of Two Shillings, and the subscriptions, fines, and interest, or other moneys to become due in respect of the said share, and of the said principal sum of One Hundred Pounds, according to the rules of the Society, without serving me with any written demand for payment of such moneys pursuant to the provisions contained in the 33rd section of the Real Property Law Amendment Act, 1858, or complying with the other requirements and provisions of the said Act in reference to the power of sale conferred on mortgagees claiming under any Bill of Mortgage; and save, as hereinbefore-mentioned, I hereby confirm unto the present and future trustees of the said Society all powers and remedies given by a bill of mortgage under the Real Property Act. In witness whereof I have hereto signed my name this fifth day of January, 1859.

JOHN SMITH, Mortgagor.

Signed by the above-named John Smith, as mortgagor, this fifth day of January, 1859, in presence of Robert Lloyd.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of Registration—ALFRED JOHNSON, THOMAS STOKES, GEORGE ROBINSON, Trustees.

Lease of House, with Covenant to Insure and Paint.

(C) [SOUTH AUSTRALIA.

LEASE.

I, John Smith, of Adelaide, carpenter, being registered as proprietor (certificate of title, vol. I., folio 180) of an estate in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the City of Adelaide, being part of the Town Acre of land No. 59, bounded as described in certificate of title aforesaid, containing one quarter of an acre, be the same a little more or less, plan of which piece of land is delineated in aforesaid certificate of title; which said piece of land is the eastern quarter of said acre No. 59, survey marked A, as delineated in the public map of the said survey, deposited in the office of the Surveyor-General, which was originally granted the fourth day of March, 1837, under the hand and seal of James Hurtle Fisher, Esquire, Resident Commissioner of the said Province, to William Johnson, of

Adelaide, do hereby lease to Thomas Jones, of Adelaide, all the said piece of land, together with the dwelling-house, outbuildings, and premises erected thereon, to be held by him, the said Thomas Jones, as tenant, for the space of five years, at the yearly rental of Fifty Pounds, payable half-yearly, on the first day of July and first day of January in each year, from the date hereof; subject to the following covenants, conditions, and restrictions, that is to say—that the said Thomas Jones shall insure the said premises for the sum of Five Hundred Pounds at the least; also, that the said Thomas Jones shall paint the outside of the before-mentioned dwelling-house every alternate year; and also shall paint and paper the inside of the said dwelling-house every third year.

I, Thomas Jones, of Adelaide, hereby accept this lease of the above-described lands to be held by me, as tenant, for the term, and subject to the conditions, restrictions, and covenants above set forth.

Dated this first day of January, 1859.

JOHN SMITH, Lessor.
THOMAS JONES, Lessee.

Signed by the above-named John Smith, as lessor, and by the above-named Thomas Jones, as lessee, this first day of January, 1859, in presence of Richard Watkins.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration—THOMAS JONES.

Lease with Right of Purchase.

(C) [SOUTH AUSTRALIA.

LEASE.

I, John Smith, of Adelaide, carpenter, being registered as proprietor (certificate of title vol. I., folio 210) of an estate in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in that piece of land situated in the Hundred of Saddleworth, County of Light, bounded as described in certificate of title aforesaid, containing eighty acres, be the same a little more or less, plan of which piece of land is delineated in aforesaid certificate of title, which said piece of land is the Country Section, marked 285, delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, which was originally granted the twelfth day of December, 1852, under the hand and seal of Sir Henry Edward Fox Young, Lieutenant-Governor of the said Province, to William Jones, of Adelaide, do hereby lease to Robert Mundy, of Adelaide, all the said lands, to be held by him the said Robert Mundy, as tenant, for the space of ten years, at the yearly rent of Forty Pounds, payable half-yearly, on first day of March and first day of October, from the day of date hereof; subject to the following covenants, conditions, and restrictions, that is to say—that the said Robert Mundy shall have the right of purchasing

the fee simple of the land hereby leased, at any time within the time hereinafter mentioned, for the sum of Five Hundred Pounds.

I, Robert Mundy, of Adelaide, do hereby accept this lease of the above-described lands to be held by me, as tenant, for the term, and subject to the conditions, restrictions, and covenants above set forth.

Dated this first day of March, 1858.

JOHN SMITH, Lessor.
ROBERT MUNDY, Lessee.

Signed by the above-named John Smith, as lessor, and by the above-named Robert Mundy, as lessee, this first day of March, 1858, in presence of Thomas James.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration—ROBERT MUNDY.

(K) [SOUTH AUSTRALIA.

NOMINATION OF TRUSTEES.

I, John Jones, being registered as the proprietor of an estate in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memoranda endorsed hereon, in that Section of land situated in the Hundred of Light, County of Light, bounded as described in certificate of title, vol. II., folio 75, containing eighty acres, be the same more or less, and numbered 49, which said Section of land is delineated in the public map of the said Hundred, deposited in the office of the Surveyor-General, and was originally granted the tenth day of July, 1850, under the hand and seal of Sir Henry Edward Fox Young, Lieutenant-Governor of the said Province, to James Williams, of Adelaide, do hereby transfer all my estate or interest in the said land above described, to William Robinson, of Adelaide, Thomas Jenkins, of the same place, and Robert Baker, of Mitcham, near Adelaide, as Trustees of the same, under the provisions of the Real Property Act. In witness whereof I have hereunto signed my name, this fourteenth day of January, 1859.

JOHN JONES.

Accepted { WILLIAM ROBINSON. / THOMAS JENKINS. / ROBERT BAKER.

In the presence of Edward Morrison.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration—WILLIAM ROBINSON, THOS. JENKINS, ROBERT BAKER.

(G) [SOUTH AUSTRALIA.

POWER OF ATTORNEY.

I, Richard Stokes, of Adelaide, gentleman, being seised of an estate in fee simple, subject, however, to such encumbrances, liens, and interests as are notified by memorandum endorsed hereon, in those pieces

of land, described in the Schedule hereto annexed, and bounded as described in land grants, vol. I., folios 44, 102, and 215, containing two hundred and fifty-eight acres, be the same a little more or less, do hereby appoint Thomas Robinson, of Adelaide, attorney on my behalf, to sell, lease, or mortgage the lands described in aforesaid Schedule, subject, nevertheless, to the restrictions and limitations declared and set forth at the foot hereof, and to execute all such instruments, and do all such acts, matters, and things, as may be necessary for carrying out the powers hereby given, and for the recovery of all rents and sums of money that may become or are now due or owing to me in respect of the said lands, and for the enforcements of all contracts, covenants, or conditions binding upon any lessee or occupier of the said lands, or upon any other person in respect of the same, and for the taking and maintaining possession of the said lands, and for protecting the same from waste, damage, or trespass:—

I declare the above lands shall not be sold for less than One Thousand Pounds, or unless upon the following conditions, that is to say—that not less than one-half of the purchase-money shall be paid on execution of memorandum of sale.

I declare the amount of money to be raised by mortgage on the security of the said lands under this power shall not exceed Five Hundred Pounds, or be less than Two Hundred Pounds, and that the rate of interest at which the same is raised shall not exceed Ten Pounds for every One Hundred Pounds by the year.

I declare the above land shall not be leased for any term of years exceeding twenty-one, or at a less rent than Ten Shillings per acre, or unless subject to the following covenants and restrictions, that is to say—that right of purchase may be granted at any time during the continuance of lease, at not less than Three Pounds per acre.

I declare that this power shall not be exercised after the expiration of two years from the date hereof.

SCHEDULE.

No. of Section.	Hundred.	Area.	No. of entry in Register Book.
2945	Macclesfield	One hundred and eighty acres	Vol. I., folio 44.
145	Kapunda	Eighty-three acres	Vol. I., folio 102.
2940	Macclesfield	Sixty-seven acres	Vol. I., folio 215.

In witness whereof I have hereunto subscribed my name this tenth day of January, 1859.

RICHARD STOKES.

Signed by the above-named Richard Stokes this tenth day of January, 1859, in presence of John Jones.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration.—THOS. ROBINSON.

SOUTH AUSTRALIA.

Form of Transfer of Land under Decree or Order of Supreme Court.

I (*insert name*), in pursuance of a decree or order of the Supreme Court, dated the day of , one thousand eight hundred and , and entered in the register book, vol. , fol. , hereby transfer to E. F. (*insert addition*), subject to the encumbrances notified hereunder, all the estate and interest of [who is registered as the proprietor of an estate (*here state nature of the estate*) in the land hereinafter described] in all that piece of land being (*here insert a sufficient description of the land, and refer to the certificate of title or land grant*).

Dated the day of one thousand eight hundred and

Signed by the said in the presence of }

Signed by the said E. F., in the presence of }

Mortgages and Encumbrances referred to.

SOUTH AUSTRALIA.

Form of Transfer of Lease, Mortgage, or Encumbrance, under Decree or Order of Supreme Court.

I (*insert name*), in pursuance of a decree or order of the Supreme Court, dated the day of , one thousand eight hundred and , and entered in the register book, vol. , fol. , hereby transfer to E. F. (*insert addition*), subject to the mortgages or encumbrances notified hereunder, all the estate and interest of (who is registered as the proprietor of a lease [*or* mortgage, *or* encumbrance, *as the case may be*], numbered of [*or* upon the land hereinafter described] in all that piece of land (*here insert description of the land, according to the description in the lease, mortgage, or encumbrance, and refer to the registered instruments*).

Dated the day of one thousand eight hundred and

Signed by the said in the presence of }

Signed by the said E. F., in the presence of }

Mortgage and Encumbrances referred to.

SOUTH AUSTRALIA.

Form of Transfer of Land under Writ of Fieri Facias.

I (*insert name*), as the Sheriff of South Australia [the person appointed to execute the writ hereinafter mentioned], in pursuance of a writ of *fieri facias*, tested the day of , one thousand eight hundred and , and issued out of the Supreme Court in an action wherein is the the plaintiff and the defendant, which said is registered as the proprietor of an estate (*here state*

nature of the estate) in the land hereinafter described, subject to the mortgages or encumbrances notified hereunder, to effectuate the sale, do hereby in consideration of the sum of paid to me by E. F. (*insert addition*), transfer to the said E. F. all the estate and interest of the said in all that piece of land being (*here insert a sufficient description of the land, and refer to the debtor's certificate of title or land grant*).

Dated the day of one thousand eight hundred and

Signed by the said in the presence of

Signed by the said E. F., in the presence of

Mortgages and Encumbrances referred to.

SOUTH AUSTRALIA.

Form of Transfer of Lease, Mortgage, or Encumbrance under Writ of Fieri Facias.

I (*insert name*), as the Sheriff of South Australia, as the person appointed to execute the writ hereinafter mentioned (*or otherwise as the case may be*), in pursuance of a writ of *fieri facias*, tested the day of , one thousand eight hundred and , and issued out of the Supreme Court in an action wherein is the plaintiff, and the defendant, which said is registered as the proprietor of a lease [mortgage *or* encumbrance, *as the case may be*], numbered of [*or* upon] the land hereinafter described, subject to the mortgages and encumbrances notified hereunder, and to effectuate such sale made, and having sold the land, do hereby, in consideration of the sum of paid to me by E. F. [*insert addition*] transfer to the said E. F. all the estate, and interest of the said , as such registered proprietor in all that piece of land [*here describe the land according to the description in the lease, mortgage, or encumbrance, and refer to the registered instrument*].

Dated the day of , one thousand eight hundred and

Signed by the said in the presence of

Signed by the said E. F., in the presence of

Mortgage and Encumbrances referred to.

(L)

CAVEAT.

Take notice that I, Robert Smith, of Adelaide, gentleman, claiming estate or interest, as devisee, under the will of Thomas Smith, deceased, in lands described as part of Town Acre 456, Survey A, in notice dated the tenth day of January, 1859, advertising the same as land in respect to which claim has been made to have the same

brought under the operation of Act of Council, No. 15 of 1858, intituled the Real Property Act, do hereby forbid the bringing of the said lands under the operation of the said Act. Dated this twenty-eighth day of January, 1859.

ROBERT SMITH.

Signed in my presence, this twenty-eighth day of January, 1859, at Adelaide.

WILLIAM JACKSON, J.P.

To the Registrar-General of the Province of South Australia.

(P)

CAVEAT FORBIDDING REGISTRATION OF CONTRACT FOR DEALING WITH ESTATE OR INTEREST IN FUTURO.

To the Registrar-General of South Australia—

Take notice that I, Thomas Jones, of Adelaide, gentleman, claiming estate or interest as beneficially entitled under deed of settlement, dated second day of November, 1858, in all that Section of land No. 59, in Hundred of Willunga, County of Adelaide, forbid the registration of any memorandum of sale, or other instrument, made, signed, or executed by John Smith, Robert Robinson, and Henry Jackson, the Trustees appointed by instrument of nomination, dated fourteenth October, 1858, affecting the said land, until this caveat be by me, or by the order of the Supreme Court, or some Judge thereof, withdrawn. Dated this third day of January, 1859.

THOMAS JONES.

Signed in my presence, this third day of January, 1859.

FRED. THOMPSON, J.P.

[ENDORSEMENT TO THE ABOVE.]

Correct for the purpose of registration.—THOMAS JONES.

CAVEAT FORBIDDING REGISTRATION, OR DEALING WITH ESTATE OR INTEREST.

To the Registrar-General of South Australia—

Take notice that I, A. B., of (*residence*) (*description*) claiming (*here state the nature of the estate or interest claimed, and the grounds upon which such claim is founded*) in (*describe land, and refer to land grant or certificate of title*) forbid the registration of any dealing with the before-mentioned estate or interest until this caveat be withdrawn by the caveator, or by the order of the Supreme Court, or a judge thereof, or unless such dealing be subject to the claim of the caveator, or until after the lapse of twenty-one days from the date of the service of notice by the caveatee, at the following address—

Dated this day of 18 .

I, the above-named A. B., or C. D., of (*residence and description*) agent for the above A. B., make oath (*or* affirm, *as the case may be*) and say that the allegations in the above caveat are true in substance and in fact [*or, if no personal knowledge*, as I have been informed and verily believe].

Sworn, &c.

SUMMONS.

In the matter of the Real Property Act.

A. B. (*insert addition*) is hereby summoned to appear before me at the Lands Titles Office, on the day of , one thousand eight hundred and , at of the clock in the [fore *or* after] noon, then and there to be examined at the instance of C. D. (*insert addition*) concerning , and the said A. B. is hereby required to bring with him, and produce at the time and place aforesaid (*describe documents*), and all other writings and documents in his custody or power in anywise relating to the premises.

Given under my hand the day of 18 .

———, Registrar-General.

A BILL

TO EXTEND AND AMEND THE PROVISIONS OF THE "RECORD OF TITLE (IRELAND) ACT, 1865."

WHEREAS the Commissioners acting under a Commission issued by Her Majesty to inquire, amongst other matters, into registration of title to real estates, by their report, dated the twenty-fourth November one thousand eight hundred and sixty-nine, reported that it was expedient to continue the system of registering titles, and to improve the same in certain respects :

And whereas it is expedient to extend and amend the provisions of the Record of Title Act (Ireland), 1865 :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This Act may be cited for all purposes as "The Record of Title (Ireland) Extension Act, 1873," and it shall come into operation on the *tenth day of August one thousand eight hundred and seventy-three*.

2. This Act and the "Record of Title Act (Ireland), 1865," (hereinafter referred to as the "principal Act,") so far as the same is not inconsistent with this Act, shall be read and construed together as one Act.

3. In the construction of this Act—

The word "office" shall mean the Record of Title Office established by the principal Act :

The word "prescribed" shall mean prescribed by any rule or direction of the court made under the powers of this Act or of the principal Act :

Other words and expressions shall have the meanings which are assigned to them by the principal Act.

PART I.

EXTENSION OF THE RECORD OF TITLE ACT.

4. Every conveyance and every declaration of title granted by the Landed Estates Court after the commencement of this Act shall be prepared and signed in duplicate, and shall have annexed a map of any land conveyed thereby or included therein.

5. Section seven of the principal Act is hereby repealed, and every conveyance and declaration of title granted by the court after the commencement of this Act shall forthwith, on the signature and completion thereof, be transmitted to the Record of Title Office to be recorded.

PART II.

AMENDMENTS OF THE RECORD OF TITLE ACT.

6. For the purposes of sections eight and nine of the principal Act, the counterpart or duplicate of any conveyance or declaration shall be equivalent to the original thereof, and shall be entered on the record of title where the original is issued to the person entitled thereto.

7. Section nineteen of the principal Act shall be read as if there were inserted therein a proviso that the production of the certificate may be dispensed with where the same is shown to be deposited by way of security with a prior creditor.

8. Section twenty of the principal Act, providing for the issue of a "special" land certificate, is hereby repealed.

9. Sections fifteen, twenty-six, and twenty-eight of the principal Act are hereby repealed, and in lieu thereof be it enacted that no deed or instrument or other act shall be effectual to transfer, charge, or otherwise deal with or affect any recorded estate or charge. A deed or instrument shall take effect only by way of contract between the parties thereto, and as authority to the recording officer to make a suitable entry on the record, and on the making of such entry on the record the estate or charge shall become transferred, charged, dealt with, or otherwise affected according to the nature of the transaction.

10. Section thirty-two of the principal Act, enabling the record to be closed on the requisition of the recorded owner, is hereby repealed.

11. Every contract, covenant, or agreement, made or entered into after the commencement of this Act, to the effect that any estate or charge shall not be placed on the record of title, or shall be removed therefrom, shall be null and void both at law and in equity.

12. The period of six months prescribed by section thirty-five of the principal Act in the case of an application by the heir-at-law of a deceased owner of land may, if the court think fit, be computed from the day of the death of such deceased owner, and not from the date of the application.

13. Every instrument to be received by the officer for entry on the record shall follow some one of the forms annexed to the principal Act or

to be framed by authority of the court, or shall be as near to the prescribed form as the circumstances will permit.

Provided always, that the rights of parties claiming otherwise than under deeds and instruments in the prescribed form may be declared by order of the court, and any such order or an abstract thereof shall be noted on the record.

§ 14. The following additional rules shall be observed in maintaining the record of title :—

(1.) No notice of any trust, express, implied, or constructive, shall be receivable by the officer or entered upon the record unless the same shall appear upon a conveyance or declaration of title of the Landed Estates Court, or upon some order of the said court or of some other court of competent jurisdiction :

(2.) The officer may decline to enter the names of more than five persons on the record as joint owners of any estate or charge :

(3.) The officer may decline to receive any deed purporting to transfer or deal with part of an estate unless there be a sufficient map annexed to the same :

(4.) On being satisfied by sufficient evidence that any lease or tenancy on a recorded estate has determined, the officer may make an entry of the fact on the record.

[*Note.—A few words in this draft bill would require alteration, in consequence of the passing of the Irish Judicature Act.*]