4

LAND TRANSFER

AND

REGISTRATION OF TITLE

IN IRELAND

UNDER THE

LOCAL REGISTRATION OF TITLE (IRELAND) ACT, 1891.

BY

THE RIGHT HONOURABLE

DODGSON HAMILTON MADDEN, M.P

HER MAJESTY'S ATTORNEY-GENERAL FOR IRELAND.

DUBLIN:

WILLIAM McGEE, 18 NASSAU STREET.

LONDON:

MESSRS. RIDGEWAY, 169 PICCADILLY, W.

1892.

PRICE ONE SHILLING.

LAND TRANSFER

AND

REGISTRATION OF TITLE IN IRELAND.

LAND TRANSFER

AND

REGISTRATION OF TITLE

IN IRELAND

UNDER THE

LOCAL REGISTRATION OF TITLE (IRELAND) ACT, 1891.

BY

THE RIGHT HONOURABLE

DODGSON HAMILTON MADDEN, M.P

HER MAJESTY'S ATTORNEY-GENERAL FOR IRELAND.

DUBLIN:

WILLIAM McGEE, 18 NASSAU STREET.

LONDON:

MESSRS. RIDGEWAY, 169 PICCADILLY, W.

1892.

PREFACE.

THE following pages have been written for laymen, not for lawyers. They are an attempt to explain, in language devoid of legal technicality, the nature and history of the system embodied in the Local Registration of Title (Ireland) Act, 1891. By this statute a system of Registration of Title and Land Transfer, involving compulsory registration and a reformed law of succession on intestacy, has been for the first time established within the limits of the United Kingdom.

This measure of reform, already accomplished for Ireland, has long been desired for England; and the practical importance of the question has been of recent years enhanced by the efforts made in both countries to increase the number of small occupying landowners—a class in whose interests some such system is urgently required. I venture, therefore, to think that these pages may interest the advocates of this important legal reform, and even to hope that my legal brethren may find them a useful introduction to the severer studies to which they are invited by the statute and rules.

It is evident that the general adoption of the new system would effect what may without exaggeration be described as a revolution in the department of land transfer. How far the Act will be adopted by landowners who are outside its compulsory provisions is an interesting inquiry which time alone can answer. On the one hand, experience of

the English Acts of 1862 and 1875, and the Irish Act of 1865, suggests that landowners are not likely voluntarily to put their estates upon the register. On the other hand, the Act of 1891 starts with many circumstances in its favour, of which the most important is the fact that it must necessarily be made use of by a large and increasing number of proprietors. The compulsory provisions of the Act secure its actual operation, on a considerable scale, in every county in Ireland. Landowners can thus profit by the experience of their neighbours; and if the new system is found to be better and cheaper than the old, its general adoption will become only a question of time. Furthermore, the legal conditions of the present day, as well as its social and political requirements, are more favourable to the development of a system of Registration of Title than those which existed when former experiments were tried. In truth, the great reforms in the law of real property effected by Lord Cairns in 1881 and 1882, rendered a satisfactory register of title for the first time possible, and the labours of the select committee of the House of Lords to which Lord Halsbury's Land Transfer Bill of 1889 was referred, have furnished what must be the framework of all future legislation on this subject.

Again, the cordial acceptance of the Irish measure on behalf of tenant purchasers as well as of landlords—irrespective of political differences—during its passage through the legislature, affords proof of a general desire on the part of all classes of proprietors to give it a fair trial; of which further evidence is supplied by the following resolution, passed unanimously at a meeting of the Irish Landowners' Convention on the 4th of February, 1892:—

"That the Convention desire to express their satisfaction at the passing of the Local Registration of Title (Ireland) Act, of last Session, and believe it to be of the highest importance to all persons interested in landed property in Ireland to take possession of its provisions."

Notwithstanding these favourable omens, I believe that even if the old system of land transfer and registration is destined to be superseded by the provisions of the Act of 1891, the process must be a gradual one. New tenant-purchasers will be brought on the register at once, and landlords who sell a portion of an estate to tenants will probably avail themselves of the provisions in the Act by which they can obtain from the Land Commission a certificate of title to the unsold portion, provided the whole be held under the same title. But in the case of existing tenant-purchasers, although they are within the compulsory provisions of the Act, the necessity of registration will only become apparent when they desire to deal in any way with their property. Landowners who have neither bought nor sold under the Land Purchase Acts, will probably wait until the new system has stood the test of time. In the meantime, while the sphere of the Act's operation is being gradually, but surely, extended, its provisions can be watched in their practical working, and developed or modified, as occasion may require, in accordance with the suggestions of experience.

D. H. MADDEN.

March 28th, 1892.

LAND TRANSFER

AND

REGISTRATION OF TITLE IN IRELAND.

On the 1st day of January, 1892, a new system of Land Transfer and Registration of Title came into operation in Ireland.

The adoption of this system is compulsory only in the case of State-assisted tenant-purchasers. To other classes of land-owners, leaseholders, and statutory tenants, it is offered as an alternative to the existing system, which they may, or may not, adopt. But when it is stated that there are now over 24,000 tenant-purchasers who are brought compulsorily within the provisions of the Local Registration of Title Act, and that a sum of thirty millions is immediately available to increase their number, it is evident that the Act must necessarily receive a fair trial. It cannot prove practically a dead letter, like former attempts at similar reforms in Ireland and in England; and Ireland must, during the next few years, afford the interesting spectacle of a Register of Title in

actual operation on an extensive scale, and existing side by side with the older Registry of Assurances. Thus the relative merits of the rival systems, on which so much theory has been expended, will be at last subjected to the only conclusive test, that of actual experience.

It occurred to me that an account, in plain language, of the new system of land transfer and registration, explaining why it became necessary, and what it really is, might be of use to practical men, interested in the matter. And there are in Ireland but few who are not somehow interested in land transfer, whether as landlords or tenants, as lenders or borrowers, as chargeants, or as creditors advancing goods or money, whose demand is ultimately enforceable against the lands of the debtor.

It would be a mistake to conclude that there is any difficulty in understanding all that a practical man need know about Registration of Title, because the Act of Parliament and general orders by which its legal details are worked out are technical and elaborate.

It is a very simple thing to read the time of the day from the dial of a clock. It is not so easy to understand the complicated mechanism used for the attainment of so simple a result. Nor is it necessary for ordinary men to attempt this knowledge. There is, likewise, no difficulty for a man who is not a lawyer to understand what a Register of Title is, and how to use it. It will

tell him plainly who is the owner of land, and what are the charges affecting it. This is what he wants to know, and this is precisely what the older system of land registration and transfer cannot tell him. If he can obtain this knowledge, he may leave to lawyers, registering authorities, and judges, the construction and working of the elaborate and (to him) unintelligible provisions of the statute and general orders. But of this he may be assured: if these complex provisions had not been carefully elaborated by skilled workmen, the statements on the face of the register might be intelligible, but they would be about as trustworthy as the time of the day told by a clock constructed on common-sense principles, by a man of genius who prided himself on being no mere mechanical clockmaker. The clock made by the skilled workman will probably require re-adjustment and repairs; but the clock constructed on common-sense principles will not go.

There are two rival systems of Land Registration. One is known as Registration of Assurances; the other as Registration of Title. The former has been in general operation in Ireland since 1708. The Local Registration Act of 1891 is based on the latter.

The landowner who is not brought compulsorily under this Act, may choose between those two systems. In order to aid him in making this choice, I will endeavour to explain how they differ. This can best be done by means of a practical illustration.

John Lloyd represents himself as the owner in fee-simple of the estate of Ballymore, subject to charges amounting to £15,000. He applies to James Berry for a loan of £2,000, which Mr. Berry is willing to advance, provided Mr. Lloyd's representations can be shown to be true. How can this be ascertained ?

First, let us suppose the land to be under a system of Registration of Assurances, such as that which now exists in Ireland. Mr. Lloyd's solicitor prepares an Abstract of Title, tracing the several dealings with Ballymore from (say) 1840, when they were purchased by Mr. Lloyd's grandfather. He furnishes this abstract to the lender's, and is prepared to verify it by furnishing copies of the various documents (or assurances, as they are technically termed) referred to. The lender's solicitor submits this abstract to his conveyancing counsel, who advises whether or not the result of all these assurances is to give Mr. Lloyd a title to Ballymore in fee-simple, and directs certain searches to be made in the Registry of Assurances as a protection against the possible existence of undisclosed dealings with the estate.

But when the Register of Assurances has done its work, the task of ascertaining the ownership of the land has only begun. The ownership of the land must be defined and declared not by the register, but by the conveyancing counsel whom the lender may happen to consult; and the register affords no protection against mistake on his

part. By way of illustration, I may mention a case within my knowledge. Three real property lawyers of the highest repute in England and Ireland gave it as their opinion, that the legal effect of the documents submitted to them was to vest in A. B. the fee-simple of a certain estate. The matter was litigated, and came before three courts in succession, the last being the House of Lords. The judges of the three courts unanimously decided that the three lawyers were wrong, and that the estate was the property of C. D. Thus, it appears that all that the most perfect system of Registration of Assurances can do is to protect against undisclosed dealings with land. It cannot relieve from the labour and expense of examining the deeds and documents which constitute the title, nor from the risk of misinterpreting their legal effect.

Let us now suppose the imaginary transaction between John Lloyd and James Berry to take place under a system of Registration of Title, such as that embodied in the Act of 1891. The lender or his solicitor would inspect the Register of Title. He would there find recorded, not a mere reference to the materials from which the required information might be deduced with a greater or less degree of certainty, but the information itself, conveyed in plain, unambiguous language, and guaranteed by the authority of Parliament.

The lender would consult an index, kept somewhat in the manner of a ledger, in a simple and

intelligible form. He would there, if the borrower's representations were true, find John Lloyd registered as owner in fee of Ballymore. He would also find a clear statement of the burdens or charges affecting Ballymore; and if they appeared to amount to £15,000, and no more, he might there and then conclude the transaction, reckless of the niceties of real property law, and of possible decisions of the House of Lords.

Now, it is plain that no reasonable man could possibly prefer the complication, delay, and ultimate uncertainty of the former system to the simplicity and conclusiveness of the latter, provided he were assured that this simplicity and conclusiveness are surely and safely attainable under the existing conditions of the law of real property. To recur to a former illustration: everyone would prefer to read the hour of the day on the dial of a clock rather than be remitted to tedious and complicated astronomical calculations, even though the result might be worked out with mathematical certainty, without danger of the calculations being upset by an adverse decision of the House of Lords.

Is, then, a register which clearly indicates the ownership of land and its burdens, without reference to deeds and documents, possible and safe under our system of law? On the answer to this question the controversy between the two rival systems really turns.

This question may be answered in two ways: theoretically by experts, and practically by ex-

perience. The answers thus returned have, up to the present time, in the main agreed. Before the recent reforms in real property law and conveyancing, I should have felt compelled to answer, and did answer, this question in the negative, as regards the great majority of estates in England and Ireland.

Where land is held under a clear title of recent origin, and is dealt with in a reasonably simple manner, a Register of Titles can be easily and safely worked. The experience of the working of the Torrens system in the Australian colonies fully justifies this statement.

On the other hand, it must be remembered that the law permits one and the same piece of land to be subjected to a vast complication of estates in possession, reversion, or remainder; estates for life; in tail (general, male, or after possibility of issue extinct); quasi in tail; inbase fee; quasi in fee; remainders and cross-remainders, vested or contingent; rent-charges; terms attendant or in gross; powers of appointing, general, or special, of jointuring, charging, leasing, with conditions precedent and subsequent; all of which may be carved out of ownership in fee-simple.

Now, when I add that the law of England (and the real property law of Ireland is the same in this respect) allows all those various interests to co-exist, one after the other, in an acre of land, and that I have myself come across attempts (more or

less successful) to create most of these limitations in regard to estates of very moderate dimensions, the difficulty of making the register an exact reflex of the state of the title is at once apparent.

Most lawyers who understood the subject, regarded it as an impossibility, and the result of the experiments, tried in England in 1862 and 1875, and in Ireland in 1865, went far to verify their predictions.

But that great lawyer and law reformer whom England owes to Ireland and to the University of Dublin changed all this by a few strokes of the pen.

In the year 1882 a Bill was introduced by Lord Cairns, and passed into law, enabling the tenant for life in possession (with certain exceptions and subject to certain restrictions) to sell the land out-and-out, all complications of title being transferred from the land to the purchase-money. Thenceforth, for all practical purposes of land transfer, it is no longer necessary that the register should reflect the exact state of the title with all its complications. It is generally sufficient if it discloses the owner of the first estate in possession.

I believe that this great reform has made a successful Register of Title possible; and the fact that a Bill providing for compulsory registration in England upon this system was introduced by Lord Halsbury, and read a second time in the House of Lords, proves that this opinion is largely shared.

But if a Registry of Title is now possible in the case of the ordinary landowner in England and Ireland, it has been for some time an absolute necessity to the Irish tenant-purchaser.

As a yearly tenant or short leaseholder he is outside the scope of the Registry of Deeds, and the estate agents' books furnished him with a rough and ready Register of Title. But the purchase of the fee-simple of his farm entailed consequences for which he scarcely bargained—namely, Registration and Primogeniture.

It is difficult for those who are not lawyers to realize, without a strong effort of imagination, what these consequences mean in the case of a tenant of a ten-acre farm who buys the fee-simple of his holding.

As to Registration; the result is to impose upon the ten-acre freeholder, if he works the system, charges not only relatively but absolutely as high as those which are payable by the largest landholder in his county, save only that each registration comprises one denomination of land only. The result is that he does not and cannot use the Registry of Deeds effectively, and partial use of the system is worse than none. This means that in a few years his title will be involved in such inextricable confusion that the cost of clearing it would exceed the value of the fee-simple of the holding.

As for Primogeniture, his death intestate may carry the entire interest in his farm away from

brothers and sisters who have aided him in working it, to the unknown descendant of some elder brother, who has emigrated half a century ago to the remotest corner of the globe, without whose concurrence title can never be made to the land save by adverse possession.

There is no reason why land purchase should entail on the tenant-purchaser consequences such as these; and to relieve him from such unwelcome results of his bargain is the primary object of the Local Registration of Title Act.

In his case, I may add, the experiment is tried under more favourable conditions than in the case of the ordinary landowner. His title starts from a clear conveyance out-and-out of recent date, and his position in this respect resembles that of grantees from the Crown in the Australian colonies.

And here, to make the history complete, I must say something about myself, for I must acknowledge, in regard to this measure, a greater degree of responsibility than that which ordinarily attaches to a law officer in relation to Bills introduced by the government.

Of the four traditional methods of getting on at the Bar, I chose "writing a law-book," and I published in 1868 a treatise on the law and practice of the Registration of Deeds in Ireland. The book was well received, and as my practice at the Bar was for some years chiefly concerned with

real property law, I came to be regarded as somewhat of a specialist in regard to registration.

In 1878 I was appointed member of a Royal Commission to inquire into the position of land registration in Ireland. Land purchase was then in its infancy, and the legal reforms which have rendered a Registry of Title possible, had not been effected. My experience of the system of registration had led me to the conclusion that its expense pressed heavily and unfairly upon the small proprietors; but the only means which then appeared possible of remedying this evil was the adoption of a higher and lower scale of charges in the registry office; and I succeeded in having a recommendation to that effect endorsed by the commission. (Second Report, 1881, Parliamentary Paper C, 2818, pp. xxiv., xxvi.) A Treasury committee was subsequently appointed to inquire into the organization of the office, who were good enough to consult me on the subject of their report. Meanwhile the Acts of 1881 and 1882 had passed, and the question of the position of small proprietors had become of greater importance by reason of the passing of the Ashbourne Act in 1885; and in a letter dated December, 1885, which was laid before the Treasury with the Report of the committee, I said:—

"There is one matter in which I take an interest, which is referred to in the Report, though not dealt with in the recommendations. I have always felt that the expenses of our registry system press unduly on the owners of small interests in land. In

practice, persons dealing with such interests usually contract themselves out of the operation of the system, and agree to forego the full protection of the Registry Acts. If peasant proprietorship should prevail in Ireland to any considerable extent, this question must attract public attention. There are only two ways of dealing with it; either by establishing local Registries of Title, or by adopting an *ad valorem* scale of charges in the Registry of Deeds. You will find the question dealt with to a certain extent in the Report of the Royal Commission, and a higher and lower scale suggested; but the subject had not then the importance which it is likely to assume in the future."

This question forced itself for the first time on the attention of the public in connection with the Ashbourne Act; and the success and subsequent extension of that measure, added to its importance. The legislature had committed itself to the principle of local registration, when it directed (by the 14th sec. of the Purchase of Land Act, 1885) the Land Commission to transmit copies of all vesting orders and conveyances "to the Clerk of the Peace of the county in which the land is situated, for the purpose of local registration." But no means were provided by the legislature by which practical effect could be given to their mandate.

Having been, by my election to the House of Commons in 1887, and my appointment as law officer in 1888, afforded an opportunity of doing something to remedy the evil to which I had called attention, I lost no time in bringing the whole question of land transfer and registration in Ireland under the notice of the Chief Secretary. I suggested the introduction of two bills, one of

which should be devoted to the reformation and development of the existing Registry of Deeds, and the other to the establishment of a system of Registration of Title, localized in the various counties, with a central office in Dublin, under the control of the Land Judge, and adapted, as far as possible, to the requirements of small tenant-purchasers, as well as of the ordinary class of landowners. Mr. Balfour took a warm interest in the proposal, especially in the latter branch, which he regarded not only as a necessary part of his scheme of land purchase, but as the inauguration of an important reform in regard to the transfer of land. The preparation of the Bills took a considerable time; and they were not completed until the year 1889, when they were formally introduced by me, and printed, not with any expectation that they could be pressed forward during the session, but in order that their provisions might be carefully examined and criticised.

Two years elapsed between the circulation of the Local Registration of Titles Bill and its passing into law. During that time the Bill was submitted for examination to members of the Bench and Bar, to the Incorporated Law Society, to representatives of the Clerks of the Crown and Peace, and to officials in the existing registries of England and Ireland. It was also carefully considered by the committee of the Landowners' Convention, and by representatives of the mercantile community. The searching criticism to which it

was thus subjected resulted in valuable suggestions, of which some were embodied in the Bill of 1891, and others were introduced by amendments in the House of Lords.

It was not possible, I need hardly say, to adopt all the suggestions that were offered. But that the Bill, in its ultimate form, met with general approval, is evidenced by the fact that it passed through all its stages unopposed, and that it was received with equal cordiality on behalf of tenants in the House of Commons, and on behalf of landowners in the House of Lords—a fact which I cannot help noting with satisfaction.

And here it is just to the solicitors of Ireland to note another fact. The legal profession is not usually credited with any extraordinary zeal on behalf of reforms which tend in the direction of the simplification and cheapening of land transfer. I have even heard it suggested that the fate of the English Land Transfer Bill in 1889 was largely due to the advice of the family solicitor. How this may be I cannot say. But I do know that if Irish solicitors had failed to take an enlightened and public-spirited view of the position, it would not have been possible to pass the Irish Bill through its several stages in the House of Commons, at any one of which its progress might have been prevented by the opposition of a single member.

The friends of the Bill urged that it was inexpedient to delay its progress, and thus to im-

peril its safety, by referring it to the grand committee on law in the House of Commons, or the standing committee of the House of Lords, to which Bills involving legal details are usually submitted. This I regretted. But the burden of responsibility thus cast on me is lightened by the considerations that the English Land Transfer Bill, on which it is founded, had been thoroughly considered and amended by a strong select committee of the House of Lords in 1888 and 1889, and that the Irish Bill had been scrutinised for upwards of two years by the critics to whom I referred.

The English Land Transfer Bill of 1889 was an adaptation to the altered and improved conditions of real property law of the system of Registration of Title embodied in Lord Cairns' Land Transfer Act, 1875. In the words of its authors, "the main features of the scheme of registration embodied in that Act are left unaltered. What has been done, in fact, has been to revise and re-edit the Land Transfer Act with reference to the Conveyancing and Settled Estates Acts of 1881 and 1882, and to re-write it, as far as possible, in the language of those Acts, with the additions and amendments contained in the Bills of 1887 and 1888." (Memorandum prefixed to the Land Transfer Bill, 1889.)

Thus the substratum of the Irish Act of 1891, so far as regards the legal process of registration, is Lord Cairns' Act of 1875, brought up to date by

the select committee of the House of Lords—a reasonably strong foundation on which to build.

The machinery for working out this legal process is peculiar to the Irish Act, and there are also in it some modifications in the general scheme which I venture to regard as improvements, of which I will only note those which are of general interest and importance.

(1.) Under the English Bill, the register was not made conclusive; that is to say, a registered owner in possession of land, might be evicted at the suit of some person who was neither in possession nor on the register, but whose title to the land had been successfully asserted by legal proceedings. A registered owner who was so evicted could obtain compensation for his loss from the insurance fund.

Under the Irish Act, the title of the registered owner of the land can never be disturbed. Should there be any person who would have been entitled to the land but for the interposition of the registered title, he can make good his claims to the value of the land, to be paid out of the insurance fund.

For several reasons the scheme of the Irish Act appears to be preferable.

In the first place, it is more in accordance with the system of final and conclusive conveyancing introduced by the Incumbered Estates Court, continued by the Landed Estates Court in its conveyances, and by the Land Commission in its vesting orders, and embodied in the Record of Title,

although without the safeguard of an insurance fund. Most of the estates which will be brought on the Register start with a root of title of this nature; and it is desirable that the attributes of finality and conclusiveness thus attached to the title in its origin, should be continued throughout its subsequent devolution, when this can be safely done. This condition is supplied by the establishment of an insurance fund as a protection against mistakes.

Again, it is comparatively easy to estimate, in moneys numbered, the value to a man of a property of which he may be the legal owner, but of which he is not in possession. To him it means simply so many acres of the earth's surface, producing a certain rental, or possessing certain qualities. To the occupier it is his home. On the whole, it appeared to be not only fairer in itself, but more in accordance with a system of State-guaranteed registration, to enact that the registered title should prevail, and that compensation should be awarded to the successful litigant.

(2.) The English Bill is burdened with complicated provisions for the registration of qualified and possessory titles, which may in time ripen into absolute ownership. These provisions are necessary where it is intended compulsorily to impose a Register of Titles upon a system of land tenure and conveyancing, such as that which exists in England. They appear to be unnecessary in Ireland. Tenant-purchasers start in all cases with a clear root of title; and it is not probable that

estates will be voluntarily brought into the office, unless they are held under titles sufficiently clear to enable their owners to register an absolute title. In other cases, owners may probably elect to remain under the Registry of Deeds. Should the new system prove sufficiently successful to justify the abolition of that office, legislation for that purpose will be necessary, of which a suitable provision for possessory and qualified titles should form part.

The Bill passed successfully through the House of Lords, under the care of Lord Ashbourne, and came back without substantial change, and with certain useful amendments in regard to matters of detail, which were adopted without discussion by the House of Commons. It received the royal assent on the 5th of August, 1891, and came into operation on the 1st of January, 1892. Carefully prepared Rules have been issued under the authority of the Lord Chancellor and the Land Judge. This part of the code has the advantage of being capable of revision and extension, in the light of experience, without the necessity of further legislation.

I have now explained what is meant by a Register of Title; how it differs from a Registry of Assurances; how it has in Ireland become necessary for tenant-purchasers, and possible for other landowners; and I have sketched in outline the history of the legislation of 1891.

I now proceed to a more detailed exposition of the Local Registration of Title Act.

II.

The general principles on which the Local Registration of Title Act is founded may be thus summarized:—

(1.) The register affords direct information as to the ownership of land, and the burdens by which it is affected, instead of referring the inquirer to certain deeds and documents from which this information may be gained.

(2.) The information thus given is absolutely conclusive. It need not be verified by reference to the materials from which it has been collected, and it cannot be gainsaid.

(3.) A fund is provided by means of insurance to indemnify those who may suffer by reason of a mistake made by the registering authorities, and the solvency of this fund is guaranteed by the State.

(4.) The owner of land or a charge on land is furnished with a certificate. This document is evidence of his title. It must be produced on the occasion of any further dealing with the land or charge. Meanwhile it can be deposited by way of equitable mortgage, and any charge thus affected need not be noted on the register until the certificate is produced for the purpose of entering on the register a subsequent dealing with the land.

(5.) Simple forms of transfer and charge are provided, by the adoption of which the cost of the transfer of land may be greatly diminished.

(6.) The register is localized in each county, the whole system being connected with a central office under the control of the Land Judge.

(7.) Opportunities are afforded of taking the opinion of the High Court, or, in suitable cases, of the County Court, upon any questions which may arise in the course of registration.

(8.) Registration is compulsory in the case of State-assisted tenant-purchasers, and voluntary in the case of other classes of landowners.

(9.) Leaseholders and owners of statutory tenancies under the Land Acts, may, if they please, have their interests protected by a register similar in principle to the register of freeholders.

(10.) The entire registered interest of a tenant who has purchased the freehold of his holding, is made to devolve, in the event of his intestacy, in the same manner as the interest which he had before his purchase, as tenant from year to year, or for a term of years.

The Act contains ninety-five sections,* and is divided into five parts, each dealing with a separate branch of the subject, which I proceed to explain.

---

* I was somewhat relieved to find that one of the latest of the Australasian systems, so much praised for their simplicity, required a statute containing more than two hundred sections for its development.

Part I.

The first part of the Act supplies the machinery necessary in order to work out the legal processes of Registration and Land Transfer.

This machinery consists of two principal parts. (1.) The Office in which the register is kept, and the necessary entries are made from time to time. (2.) The Court by which the action of the office is directed and controlled, and to which any legal questions which may arise in the course of registration, may be referred for decision.

First, as to the Office: the Act establishes in Dublin a central register, under the control of the Land Judge, and the head of this office is styled the Registrar of Titles. The first Registrar is the gentleman who has filled the place of principal officer in the Record of Title office.

That the new system, as regards Court and central office should, like that which it supersedes, be placed under the Land Judge and the Recorder of Titles, is an arrangement so obvious, and, having regard to personal qualifications, so advantageous to the public, that I should not have thought it necessary to comment on it, had not objection been publicly taken by some friends of the Bill to the appointment of Mr. M'Donnell as Registrar of Titles. It was said that he had given evidence in opposition to Registration of Title, as distinguished from Registration of Assurances; and further, that

he is old. Each statement is a half-truth. He had given evidence unfavourable to the general establishment of a Register of Title. But that was before the reforms of 1881 and 1882. He then expressed an opinion, in which I entirely concur, that to establish a Register of Title before reforming the law so as to render the success of such a system possible, would be to put the cart before the horse. Had he then expressed a different opinion, I should have attached less weight to his cordial approval of the legislation of 1891, in the preparation of which he rendered services the value of which I am glad to have this opportunity of acknowledging. As to the second objection: it is quite true that Mr. M'Donnell has been identified with the question of registration for many years; that he has been examined by Parliamentary Committees and Royal Commissions; that during many years his advice has been sought by the framers of successive Bills—notably by Lord Cairns—and that it would have been possible to appoint a younger man to the post. But the public would have been losers by the exchange of Mr. M'Donnell's knowledge and experience for a greater degree of youth in the Registrar of Titles, especially as nothing could have been gained in regard to capacity or vigour; and I consider it a fortunate circumstance that the new system came into operation while he was in office, and able to direct its course at a most critical period of its existence.

The central register is the sole register for land situated in the county of Dublin.

In each county in Ireland other than Dublin, a local register is established, to be ultimately worked by the Clerk of the Crown and Peace of the county. None but solicitors can be now appointed to this office; but inasmuch as some of the existing officials have had no training which would qualify them to act as registering authorities, the Lord Chancellor is empowered to provide for such cases, by entrusting the work to some duly qualified solicitor.

Tenant-purchasers, and any statutory tenants who may resort to the register of leaseholders, must resort to the local office (s. 22), and having registered in that office, must continue to use it, unless the registration of their land has been formally transferred to the central office (s. 27). Other landowners may chose between the local and the central office.

In every case, the office where first registration has been effected remains the register in which subsequent transactions must be entered, unless the land has been formally transferred from the central to the local office, or *vice versâ*, in the manner provided by the Act (s. 27).

Among the most important questions connected with the working of the Act, are the relation between the central and local registers, and the degree of control which the former should possess over the latter.

This is simple enough, so far as the process of book-keeping is concerned. In regard to land registered in the central office, the register kept there is the governing register, entries in which are absolutely conclusive; and each local register occupies the same position in relation to the land which has been registered in it. For convenience of reference, however, the central registry will contain duplicate entries of transactions locally registered, and similarly, the local registries, of transactions affecting land situated in the county, but registered in the central office.

But how far is the action of each local registering authority to be controlled by the central authority? The answer to this question is more difficult; and it has been designedly left to the decision of the rule-making authority—that is to say, to the Land Judge and the Lord Chancellor (s. 12). It was felt to be unwise to lay down any hard-and-fast rule by Act of Parliament. A degree of control and supervision, necessary in the commencement, in order to secure uniformity and accuracy, might be afterwards safely relaxed; and it was thought undesirable to stereotype any particular system.

The ideal course of procedure would be somewhat as follows. The local authority should receive all applications and papers. He should himself deal with entries of an ordinary character, such as sales out-and-out, mortgages, and intestacies. When any disputable question of law or

fact arises, he should consult the central authority, or through it the Court, and act under its direction, noting the date of the application, and ultimately completing the entry as of that date.

But although some such relation between the central and local offices may become possible at no distant date, it is certain that a greater degree of central control is necessary at the outset, in order to secure uniformity and security; and I do not see what better system could be devised than that laid down by the general rules.

Under the rules, the local registering authority notes the date of the application for registration, receives the papers lodged with him, and transmits them to the central office, with a draft of the entry to be made in the register. This draft is examined, and, if necessary, amended by the central authority. It is then returned to the local officer, who completes the necessary entry, as of the date of the application. It has been objected that a second visit to the local register is thus entailed on the registered owner. But I hardly think that the most sanguine of law reformers expects that operations of land transfer can ever be carried out while the applicant waits; and I believe that the trifling delay is more than compensated for by the attainment of accuracy, and uniformity of procedure throughout the whole of Ireland.

It ought not, however, to be inferred that the responsibility of the local registering authority, or

the importance of his office, is diminished by the fact that his work is, for the present at all events, subject to revision. It will be his duty to read the documents, and prepare the draft entry with as much care as if his decision was final.

This part of the Act provides the necessary funds for working the system. The general expenses of working the Act are to be provided out of the annual votes, and the insurance fund is guaranteed by the Consolidated Fund. In relief of this expenditure the fees charged in the office will be applied. The 8th section provides that in fixing the scale of fees, care shall be taken to establish a proportion between the fees on the one hand, and the valuation of the land, or the amount of the charge to which they relate, on the other; and the total amount of fees is not to exceed the working expenses of the Act. Although the system may thus ultimately become self-supporting, it will, at the outset, involve a considerable expenditure of public money, which ought not to pass unnoticed or unacknowledged.

(2.) The Court most frequently appealed to is the High Court of Justice, in the person of the Land Judge. To his decision the central registering authority may submit any question of law or fact arising in the course of registration, in regard to which he entertains a doubt (s. 14). To him likewise lies an appeal at the instance of any person who may be aggrieved by an order or decision of any registering authority, except in

certain cases, to be prescribed by general rules, when the appeal lies to the County Court Judge. It is desirable that legal questions should be decided by the Land Judge; but disputed matters of fact may occasionally arise, involving the examination of witnesses—such as questions of pedigree or identity; and issues of this kind may be conveniently decided in the County Court, when the property in question is small (s. 13).

The Record of Title is abolished, the recorded estates being placed, free of charge, upon the new register (s. 18).

Registered land is emancipated from the Registry of Deeds, so long as it remains on the register; but in other respects the Registry of Deeds is not affected by the Act (s. 19). A full owner of registered land may, if he pleases, revert to the older system (s. 20). Objection was taken to this provision by friends of the Bill, on the ground that it tended to restrict the operation of the new system. I believe its tendency to be directly opposite. If I were a landowner, inclined to register under the Act, I should be more disposed to try the experiment if I were assured that the step was not irrevocable, but that I could revert to the older system by a cheap and simple process, if experience should determine me in its favour.

Part II.

In this part of the Act the most important provisions relating to the register will be found. They are necessarily technical in their details; but I shall endeavour to explain the principles on which they are based.

As regards compulsory registration: this applies "where the land has been at any time sold and conveyed to or vested in a purchaser under any of the provisions of the Purchase of Land (Ireland) Acts, and is subject to any charge in respect of any annuity or rent-charge for the repayment of an advance made under any of the said provisions on account of the purchase-money. In all other cases registration under this Act shall be voluntary" (s. 22). The expression "Purchase of Land (Ireland) Acts" is afterwards defined, and includes all statutes, commencing with the Irish Church Act, 1869, by which tenants are enabled to purchase their holdings by the aid of the State.

Compulsion is exercised in two ways: (*a*) directly by the action of the Land Commission; (*b*) indirectly, by attaching certain disabilities to the owners of unregistered land, as long as they neglect to put it on the register.

(*a*) Where a tenant who has already purchased his holding fails to register his land, and the Land Commission have, by notice, required him

so to do, they are empowered themselves to take the necessary steps in order to have the registration effected. In the case of sales made after the commencement of the Act, it is the duty of the Land Commission or the Land Judge, as the case may be, to have the tenant-purchaser duly registered as the owner of the land (s. 23).

(*b*) Meanwhile, and so long as any land to which the compulsory provisions of the Act apply remains unregistered, no title to it can be acquired by transfer; but once the ownership of the transferee has been registered, his title relates back to the date of his conveyance (s. 25). The degree of pressure exercised by this section is considerably stronger than that which was proposed by the English Land Transfer Bill. But even this section would probably fail to effect its purpose, and to contend successfully with the *vis inertiæ* of the great mass of tenant-purchasers, had it not been supplemented by the active powers conferred on the Land Commission, to which I have already referred.

It frequently happens that a portion only of an estate is sold to tenant-purchasers. Where the unsold and sold portions are held under the same title, the Land Commission, in sanctioning a sale to a single tenant, practically decide as to the sufficiency of the title to the whole estate. A reasonable suggestion, made on behalf of the Landowners' Committee, is embodied in the 24th section, to the effect that the Land Commission

should have power in such cases to give to the selling landlord a certificate of title to the entire estate, so that both he and the tenant-purchaser may share the benefits of the registry of title.

The first step to be taken by any person who finds himself affected by the compulsory powers of the Act, or who, although he is not so affected, desires to take advantage of its provisions, is to apply to the proper office for "first registration" (s. 26). He must satisfy the registering authority that he holds under a title which may fairly be accepted as good against all the world. For, although an insurance fund exists, the object of such a fund is to protect against loss by reason of the accidental mistakes which will occasionally occur under the most favourable circumstances, and not to encourage laxity on the part of the registering authority, or to justify him in knowingly accepting a disputable title.

This application for first registration is the rock on which the English Acts of 1862 and 1875 have suffered shipwreck; and it is satisfactory to be able to point out that it has in Ireland much less terrors for landowners of any class, while in the case of the tenant-purchasers, it need cause no alarm whatever.

In England there is no body of landowners holding under parliamentary titles conclusive against all the world, such as the conveyances of the Incumbered and Landed Estates Court, and vesting orders under the Land Purchase Acts. An owner in

undisturbed possession of an estate may fairly be advised to rest and be thankful, rather than submit his title-deeds to the scrutiny of a registering authority, who may possibly hit on some unsuspected blot, and condemn the unquestioned owner of half a shire to registration as the holder of a "qualified" or "possessory" title. This consideration will always prevent the general adoption of any purely voluntary system; and the apprehension of such a result must always tend to make the landed interest in England reluctant to consent to the enactment of any general and compulsory measure of registration. They rejected the Land Transfer Bill of 1889, as the Bill for establishing a general Register of Deeds and Assurances in England, on the lines of the Irish system, was rejected sixty years ago.*

* This is one of the most elaborate and carefully prepared Bills ever presented to Parliament. It was drawn by the greatest conveyancer of the day, in accordance with the recommendations of the Real Property Commission, to whose labours we owe the Fines and Recoveries Act, the Wills Act, and other important reforms.

The whole question of registration is exhaustively discussed in the Second Report of the Commissioners, presented in 1830. It is interesting to note that on three several occasions Ireland has obtained legal institutions for which reformers in England have hitherto striven in vain. In 1708, a general Registry of Deeds was established, similar in principle to that recommended by the Real Property Commission. In 1858 we obtained in the Land Estates Court a permanent Court of final conveyancing, such as that which Lord Cairns endeavoured to obtain for England, but in vain; and now in 1892, we have a general Registry of Title, with the element of compulsion, which is necessary to its success, and the absence of which was fatal to the English Acts of 1862 and 1875.

But although the tenant-purchaser starts with a clear title to the estate which he buys from his landlord, a serious complication is caused by the facts that he possessed as tenant an interest in the holding before his purchase of the fee-simple, and that this interest may have been put into settlement, or charged with incumbrances.

The legal position will be made clear by taking an imaginary case. John Doyle had a valuable leasehold interest in 100 acres of the lands of Kilmore. He mortgaged this interest for £500 in 1870, and on his marriage in 1880 he settled it on his wife after his death. In 1890 he bought the fee-simple of his holding under the Ashbourne Act, obtaining an advance of 2,000, repayable by a limited annuity of £80. Under the 14th section of the Land Law Act of 1887, the fee-simple so acquired became what lawyers call a "graft" upon the interest which the purchaser previously had as tenant. In plain English, the two interests—leasehold and fee-simple—were consolidated, and the charges which originally affected the leasehold interest only, became after the purchase charged on the consolidated interest, subject, of course, to the annuity in favour of the Land Commission for the repayment of the advance.

Now, in the case which I have supposed, John Doyle is clearly entitled to be put on the Register as the owner in fee-simple of Kilmore. But what of the burdens, or incumbrances? The Register, to be perfect, must speak as explicitly and as conclusively in regard to incumbrances as it does

in regard to the ownership of the land. The incumbrances on the tenant's interest were not, of course, investigated by the Land Commission, which concerned itself only with the title to the landlord's estate.

It would be a hardship to compel tenant-purchasers in every case to undergo the trouble and expense of laying before the registering authority, on the occasion of first registration, a complete title to the interest which they had before the sale, and which, as I have explained, became, after the sale, consolidated with that acquired from the landlord. After much consideration, the expedient embodied in the 29th section of the Act was adopted. The tenant-purchaser is offered an option. He may, if he thinks it worth while, and is in a position to do so, clear the title to the entire interest in the land, on the occasion of his application for first registration. Otherwise, the registering authority is given power to "dispense with the ascertainment of such of the burdens affecting the land as have arisen from the interest vested in the purchaser by the conveyance or vesting order (as the case may be) being deemed to be a graft upon his previous interest in the land." When this is done, a note must be placed on the register saving any rights or equities affecting the land by reason of such graft. This note may be afterwards removed, should the owner be in a position to clear the title to the absolute interest in the land.

The difficulty to which I have referred will not

be a serious one in the case of small yearly tenants, on whose interests there are rarely specific charges requiring registration as burdens affecting the consolidated interest; and in the case of the owners of beneficial leaseholds, the expedient which has been adopted will, I hope, afford the necessary protection, and at the same time cause the minimum of interference with the efficiency of the register.

"A person may be registered either (1) as full owner of land, that is to say, as tenant in fee-simple thereof; or (2) in the case of settled land, as limited owner of the land; that is to say, as tenant in tail or tenant for life thereof, or as having, under the Settled Land Acts, 1882 and 1889, the powers of a tenant for life thereof" (s. 28).

In either case he must be prepared to satisfy the registering authority as to the title to the fee-simple, by such evidence as may be prescribed (s. 26), and he must also disclose all charges or burdens which, to his knowledge, affect the lands.

These burdens are of two classes—(1) Those which do not require registration. These are enumerated in section 47, and are of a public or easily ascertainable character, such as succession duty, annuities under the Land Purchase Acts, and ordinary agricultural tenancies. (2) Those which require registration, including mortgages, rentcharges, judgment mortgages, and the various other incumbrances specified in section 45.

Registration having been effected, an inde-

feasible title is acquired to the fee-simple of the land, in the case of a full owner by the person so registered, and in the case of settled land by the person registered as limited owner, and the other persons successively entitled to the registered land under the provisions of the settlement, according to their respective estates and interests (ss. 30, 34).

The registered owner is handed a document called a "Land Certificate" (s. 31), and the owner of each charge on registered land receives a "Certificate of Charge" (s. 40). These certificates are *prima facie* evidence of title (s. 81); that is to say, they can be produced as evidence in any Court of Justice, and can be contradicted only by the register itself, which is absolutely conclusive (s. 34). Practically there is no chance of variance between the certificate and the register, and a certificate under this Act is at once the simplest and most conclusive muniment of title known to the law.

The deposit of a land certificate or certificate of charge, by way of equitable mortgage, has the same effect in regard to registered, as the deposit of title deeds in regard to unregistered land; that is to say, a charge on the land may be created by deposit of the certificate, without registration, or even writing; and this charge may be either for a specific sum, or for the balance of a current account, according to the agreement of the parties at the time of making the deposit.

It is one of the advantages of a Registry of Title, as compared with a Registry of Assurances, that this method of charging land by unregistered dispositions can be reconciled with the efficiency of the register; inasmuch as the register discloses, not the several assurances and dispositions which go to make up the title to the land, but the actual ownership. Suppose A. B. to be registered as owner in fee of Blackacre in 1892, subject to certain specified incumbrances and burdens, and to receive a land certificate as such. If he chooses to deposit this certificate with his banker, to secure the balance on his current account, it matters nothing as regards the register. But if he should proceed to sell to C. D. in 1896, the transaction cannot be completed by the entry of C. D. as owner, until the land certificate given to A. B. is either produced to the registering authority, or satisfactorily accounted for (s. 88). Thus full protection is given both to the equitable mortgagee and to the intending purchaser, while the owner has the power of raising money for temporary purposes in a cheap and expeditious manner.

It is hardly necessary to point out that a registered owner has the same power of disposing of, or charging, his land by deed or will as the owner of unregistered land (ss. 35-37, 40, and 41). Until the transferree of land, or owner of a charge, is registered as such, the instrument under which he derives title has no operative effect (ss. 35, 40).

It is important to note that the Act does not restrict persons dealing with land to the use of statutory or prescribed forms of conveyancing. When a conveyance of registered land is produced to the registering authority, he is bound to act upon it, provided it be an instrument either in the prescribed form, or in such other form as may appear to him to be sufficient to convey the land (s. 35); and a similar provision is contained in section 40, with regard to instruments of charge.

I believe that any attempt to force upon the public the universal adoption of prescribed forms as a condition of registration would not be founded on sound policy, while it would tend to restrict the working of the Act, even if it had not proved fatal to the passing of the Bill into law. The shortening of conveyances is no doubt desirable in itself; but it is a reform which is distinct from the establishment of a Register of Title. There is no reason why a deed which is sufficient to pass unregistered land should be invalidated in regard to registered land, because it is unnecessarily long, or because it deals with other matters. The public will, I have no doubt, find it convenient to deal with registered land by separate and concise forms of transfer and charge; and this they may be trusted to discover for themselves.

The 38th section provides that "nothing in this Act shall affect the provisions of any Act of Parliament by which the alienation, assignment, subdivision, or subletting of any land is prohibited

or in any way restricted. It shall be the duty of the registering authority to note upon the register, in the prescribed manner, the prohibitive or restrictive provisions of any such Act of Parliament; but such provisions shall be deemed to be burdens to which, though not registered, all registered land is by this Act declared to be subject." This section is of special importance in connection with the provisions of Part IV., which will be found explained in detail.

A great difficulty connected with the system of Registration of Title is caused by the law conferring a title to land upon any person who has been in adverse possession of it for the statutory period, which is now twelve years. Should such a title prevail against registered ownership? This question has been answered in the negative by the Record of Title Act, and the English Act of 1875. Such a title is no doubt necessarily unregistered, and to allow a registered title to be thus displaced involves an interference with the register. On the other hand, it is not easy to defend the entire abrogation in regard to registered land of the general law, which, on grounds of public policy, attaches certain rights to undisturbed possession extending over a certain number of years. If the law allows titles to land to be acquired in this manner, why should not means be adopted for bringing them on the register? The register should be made for the title to land, whatever it may be, and not the title for

the register. An attempt is made to solve this difficulty by the 52nd section, which enables any person who would have acquired a title by adverse possession if the ownership of the land had not been registered, to apply to the Court in the prescribed manner for a declaration of his title so acquired. The Court, if satisfied that such a title would have been acquired but for the provisions of the Act, may make an order declaring the title, and directing the register to be rectified accordingly.

Provision is made for the establishment in each county of a Register of Leaseholders, to which all the enactments in regard to the register of freeholders apply, with the necessary modifications (s. 53). A similar provision is contained in the English Land Transfer Bill; but a special feature of the Irish register is its application to statutory tenancies. Registration is optional in the case of leaseholders, except where an interest of the kind has been purchased under the Land Purchase Acts. This, though theoretically possible, is, I believe, of extremely rare occurrence in practice.

Part III.

This part of the Act contains certain matters of technical detail, which need not be here explained.

Part IV.

Under this part of the Act the entire interest of a tenant-purchaser devolves upon his personal representatives, in the event of his dying intestate, in the same manner as the interest in his holding which he possessed before the purchase, as tenant from year to year, or for a term of years.

The English Land Transfer Bill went much further, and provided that all freehold land, whether registered or unregistered, should devolve as personalty in the event of intestacy; that is to say, instead of descending to the heir-at-law, subject to a rather shadowy right in the widow to dower, it was to vest in the personal representative of the intestate, to be by him distributed, after payment of debts, among the statutory next of kin.

This change in the law has been long advocated by many persons, as being in itself an improvement, without reference to any question of registration.

Primogeniture, it is urged, as a Law of general application in regard to land, has not survived the Statute of Wills, by which a man was allowed to dispose of ordinary fee-simple land by his will, as freely as of personal estate. As a Custom, in the case of the larger landowners, it is commonly guarded by marriage settlements and wills—seldom, and only casually, by the law of descent on intestacy. The law has already provided a reasonable statutory will for any man who dies intestate as regards his personal estate. Why

should not the same thing be done as regards real estate?

Intestacy is oftener the result of carelessness than of design; and in but few cases would the owner of freehold land, if he sat down to make a will, difference it from the rest of his property, by concentrating it on one member of his family. It is fairer that the exceptional landowner who deliberately refrains from making a will, in order that his estate may descend to his heir-at-law, should be put to the trouble of writing a few words on a sheet of note-paper, and signing it in the presence of two witnesses, than that the property of ninety-nine should devolve in a manner which is neither reasonable in itself, nor likely to represent the wishes of the owner.

Considerations such as these led the present Government to propose, and the House of Lords, on the second and third readings of the Land Transfer Bill, to accept a complete assimilation of the law of descent on intestacy as regards real and personal property.

It is true that Lord Halsbury's Bill was ultimately withdrawn at its final stage, in consequence of opposition which arose during its progress, by which it was defeated after it had been read a third time, and was on the eve of passing through the House of Lords.

In some shape or form, however, whether as part of a scheme of registration, or as a separate measure, it cannot be doubted that this change in the law will be effected before many years have passed.

In the meantime, what was to be done with the tenant-purchasers ?

In their case the change was all but necessary. Great as are the difficulties of working a general Register of Title in the absence of a legal representative, on whom the land devolves on intestacy, they are practically insurmountable in the case of small freeholders, among whom intestacies are more frequent, and questions of pedigree more obscure, than in the case of large landowners. Moreover, there is a special hardship in applying the present law of descent to the tenant-purchaser. For this is done by first capturing the interest in the land—often a substantial one—which he had before the purchase, and adding it on to the freehold interest, by the operation of a principle called Graft, of which he knows nothing; and then applying to the consolidated interest canons of descent unsuitable in any event, and doubly unfortunate when applied to a system of Registration of Title.

By the Local Registration of Title Bill, as introduced in 1889, all registered land was made to descend as personalty on intestacy. Opposition was threatened to this part of the Bill on the part of some landowners; and inasmuch as the Bill had no prospect of passing if opposed, the boon of a reformed law of intestacy was in the Bill as re-introduced in 1890 and 1891, conferred only on tenant-purchasers. I fully recognise the inconvenience pointed out by Lord Herschel in the House of Lords, of establishing special law of descent for

a certain class of fee-simple estates. But this distinction is not at all likely to survive the term of the earliest purchase-annuity; and while such an annuity lasts, the estate of the tenant-purchaser is sharply separated from ordinary estates in fee by more important distinctions, as, for example, by the prohibition to sublet it or subdivide it at will.

Another objection to this part of the Act, which was suggested in the House of Lords, would be serious if it were well founded. It was said that it tended in the direction of subdivision of holdings.

It is impossible to look forward without concern to what may occur when the lapse of a period —long in the lifetime of a man, but short in the history of a people—shall have emancipated the tenant-purchaser from the control of Land Commission, as well as of landlord, and he is at liberty to sublet and subdivide at will. Gloomy indeed would be the outlook, if we had to rely to any extent as a safeguard against ruinous subdivision on the so-called law of primogeniture. Even if this law should survive the termination of the earliest purchase-annuity, it would place no obstacle whatever in the way of what is most to be apprehended; that is to say, active subdivision on the part of the peasant-proprietor, effected by deed or will, or by the simpler and more probable procedure of allowing the members of his family to occupy parts of his farm.

Further, it does not by any means follow that the proposed alteration of the law of intestacy has

the same tendency towards subdivision in the case of small freeholds, as it has in regard to large estates. Where a considerable estate would, under the altered law, become divisible among a numerous class, the process of division must be carried out, either by actual partition, or by selling the estate, and dividing the proceeds among the statutory next of kin. If the estate were sold in lots, the result would be subdivision. But in the case of small agricultural freeholds, what will be generally in fact divided among the next-of-kin of an intestate owner will be, not the land itself, but the proceeds or value of the land. The land, which devolves not on the next-of-kin but on the personal representative of the intestate, will be either sold by him—presumably to a single purchaser—or conveyed to one of the next-of-kin under some kind of family arrangement. This is what ordinarily happens on the intestacy of a small leaseholder. Under the provisions of the 30th section of the Land Act of 1881 this must be the course of dealing with the interest of a tenant-purchaser, so long as the purchase-annuity subsists; and I have no doubt that those who are practically acquainted with the ordinary course of dealings with land in Ireland, will agree with me when I say that sale or assignment of the entire holding, and not subdivision, will be the ordinary result of intestacy, and that the exceptional instances are not likely to be much more numerous than the cases in which the law of primogeniture would enforce subdivision by carrying the estate directly to co-heirs.

But while the general law of descent on intestacy affords no real safeguard against subdivision, it undoubtedly places difficulties in the way of the efficient working of a Register of Titles, which are considerable, though not wholly insurmountable. It has been suggested that these difficulties might be got rid of by the institution of a "real representative," who should occupy the same position in regard to real estate as the personal representative to personal property. On the whole, it was thought wiser not to weight the Bill by the introduction of a legal novelty, or to imperil it by attempting to extend an alteration of the law of descent further than was absolutely and admittedly necessary in the case of tenant-purchasers.

Part V.

This part of the Act contains certain miscellaneous provisions, of which the most important are those relating to the establishment of the insurance fund and the making of general rules.

The insurance fund is supplied by a small fee charged on the occasion of each registered transaction; its solvency being guaranteed by the Consolidated Fund (s. 92). The fund is applicable to the indemnification of any persons who may have suffered loss, in consequence of forgery or fraud, or through error on the part of the registering authority, or any of his officers, whether on the occasion of first registration or a subsequent entry

on the register (s. 93). The claim must be made within six years, allowance being made for the case of persons under disability.

The number of cases to which this fund is applicable will, it is hoped, be small; and this anticipation is justified by experience of the Colonial system. The additional expense thus imposed on persons dealing with land will not be appreciable. But though the number of mistakes may be insignificant when compared with the total number of transactions, their consequences press heavily on the individuals concerned, and a system of insurance appears to be a necessary part of a Register of Title, especially when it is worked to a considerable extent by local authorities.

Provision is made for the regulation of various matters of detail by general rules, to be made by the Land Judge, with the approval of the Lord Chancellor (s. 95). It is desirable that the machinery of the system should be capable of adjustment from time to time, in accordance with the general principles laid down by the Act.

These pages are not intended for the instruction of lawyers, and I need not, therefore, explain the elaborate provisions contained in this, and other parts of the Act, which are intended to secure the general result that, in regard to registered land, the register shall disclose from time

to time the exact state of the title to the land and the incumbrances by which it is affected. Various complications are caused by our Irish law relating to the registration and re-registration of judgments, Crown bonds, and recognisances; to the registration of deeds and judgment mortgages; to renewable leaseholds, and other special tenures. Care has been taken to adapt the general principles of Registration of Title to the special conditions of Ireland, as regards its special laws, legal machinery, and county administration, with what success experience alone can determine.

C. W. GIBBS, Printer, 18 Wicklow Street, Dublin.