

REGISTRATION OF TITLE ASSOCIATION.

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REASONS FOR RECORDING  
PARLIAMENTARY TITLES

TO

Land in Ireland.

Issued pursuant to a Resolution of the Committee of the "*Registration of Title Association*," 2nd December, 1865; revised November, 1867.

WITH THE

STATUTORY FORMS OF TRANSFER AND CHARGE.

BY

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BY HENRY DIX HUTTON,

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## REASONS FOR RECORDING,

&c.



THE Landed Proprietors of Ireland are offered most important benefits by the Record of Title Act. It is, however, *permissive*. It is therefore essential that those interested should maturely consider the matter, and decide for themselves whether they will adopt or forego these benefits. The legislature *assumes* that titles will be recorded, since it casts on the owner of parliamentary titles, created *after* the 2nd of November, 1865, the burden of refusing the boon of a safe, ready, and economic mode of selling, mortgaging, and otherwise dealing with their land. The following brief statement is intended to show the principal reasons\* why the legislature is justified in thus assuming that the proprietary of Ireland will, in the mature and unbiassed exercise of their judgment, determine to place their land on the Record of Title.

Landed property to the value of £40,000,000, and embracing about one-fifth of Ireland, has, since 1849, passed through the Encumbered and Landed Estates Courts. The benefits thus conferred are well known. They may be resumed in one phrase—*an indefeasible title clearly set forth in an intelligible form.*

At present, however, the parliamentary title, as an eminent authority (Judge Longfield) has stated, *deteriorates* rapidly. Invaluable as a protection, it benefits the owner very little as a means of carrying out dealings. The proprietor wants not only to keep, but to *use* his land. Some day he requires to sell the whole or part. He then discovers even with his indefeasible title, the delay, difficulty

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\* For information as to the progress made by the new system, and means of promoting it, see "*The Record of Title in Ireland: its working and advantages.*" By H. D. Hutton. Hodges, Smith and Co., 104, Grafton-street, Dublin.

and expense is little, if at all, less than it would have been without one. Yet he has, if a purchaser, paid for it an advanced price, say, on an average, two years' rental. As vendor he now loses this benefit, since his conveyance is not unquestionable. The old proprietor has paid heavy court fees and duties for his declaration of title. He practically loses the benefit of this expense in a very few years. The holder of the parliamentary title suffers by the present system in two ways—directly, because it creates fresh complications, causing delay, uncertainty and expense; indirectly, because, as the late Judge Hargreave justly observed, he loses the benefit of ready sales when prices are high.

The owner of a parliamentary title who wants to mortgage his estate, finds that the process remains what it was, expensive, dilatory, and uncertain. Trust-funds, for example, to an enormous amount, are invested in stock and shares; but they rarely find their way to land-securities. A bad system of conveyancing injures alike the landowner and the capitalist—the one by preventing him from obtaining, and the other from lending, money for a moderate expense, and at a low rate of interest.

Thus as regards both sales and mortgages the present system, notwithstanding the parliamentary title, inflicts personal loss and social injury by hindering the free interchange of land and capital.

To meet these difficulties the "RECORD OF TITLE ACT" has been passed.

It provides a safe, ready, and economic mode of conducting sales, mortgages, and leases, with all other dealings. The system, or general legal provisions of the act, combine, to a great extent, the views of Lord Westbury, Lord Cairns, and the late Judge Hargreave, as well as other eminent authorities. The mechanism is founded mainly on that invented by Mr. R. Torrens, and applied with the greatest success in the Australian Colonies during nine years. Thus the Act combines *security* with *facility* in conducting dealings with recorded land.

The Record of Title Office is now in operation as a branch of the Landed Estates Court.\*

PARLIAMENTARY TITLES can alone be recorded. Of these, two kinds are included—

First.—Parliamentary titles created *before* the end of November, 1865,† or *after* that date but not recorded at the time of execution, may be recorded on Summary Petition. Both classes, when application is made before the end of 1867, or within a year from execution, pay only a Court Fee of 2s. 6d. for every £500 in value (see “Land Transfer,” p. 188). In most cases two months from the time of applying will be sufficient for placing these titles on the Record. The expense varies, according to the date of the parliamentary conveyance and complication caused by subsequent acts of the owner, from £5 to £18. Unless the application be made before the end of 1867, or within a year from the execution of the deed by the Court, the same duty must be paid as on obtaining an original conveyance or declaration of title.

Secondly.—Parliamentary titles, hereafter granted by the Court, will be recorded (without court fee or stamp duty) unless the owner *refuse*, in writing, within seven days after execution of the conveyance or declaration, to come under the Act. The expense of recording such deeds, including solicitor’s fees, varies from 10s. to £1 15s. 6d.‡ Persons so refusing can record afterwards, but only on summary petition, and, *after one year*, they must pay the *full* court fees and duties as charged on obtaining a declaration of title or conveyance (see “Land Transfer,” p. 188).

The owners of Settled Estates, where the deed or will

\* The Record of Title Office is open to the public daily, and a principal officer attends in vacation as well as in term. The office closes at 2 o’clock when the Court is not sitting, and at 3 o’clock when the Court is sitting. It seems very desirable that owners or their solicitors should apply for information as regards the procedure and working of the new system to the Recording Officer.

† There are about 12,000 of these.

‡ The memorial of the fact of recording required by the Act to be registered in the Registry of Deeds Office, costs about the same as the Memorial of the Registration of the Deed if *not* recorded.

contains a power of sale, can have the title declared and recorded—a new and important benefit to old proprietors.

The parliamentary title being recorded, provision is made for conducting all future dealings, including settlements, in a safe, easy, and economic method.\*

Sales and mortgages can be conducted by STATUTORY FORMS (see these, pp. 7 and 8), which admit of being varied to suit circumstances. They may be executed at the office, or elsewhere in town or country.

The Judges of the Landed Estates Court have, under the Record of Title Act, sanctioned a Scale of Costs, by which solicitors will be remunerated, not for length of deeds, but with reference to skill, trouble, and the amount of property. This scale (see "Land Transfer," p. 190), while advantageous to the public, will be found liberal towards the profession, being based on the principle of encouraging *numerous transactions with a moderate remuneration for each*.

Land Certificates and Certificates of Charge are issued conferring an indefeasible title to the land or charge, and greatly facilitating future dealings.

The LAND DEBENTURES' ACT, introduced by Mr. Vincent Scully, Q.C., and which has Judge Longfield's general approval, applies only to *recorded* land. By it the owner of a fee-simple title is authorized to issue, under the control of the Landed Estates' Court, Debentures for £50 and upwards, combining an indefeasible title with a *practical* guarantee for value. The amount issued cannot exceed ten years' purchase of the annual value of the land charged, as estimated by the public valuation of Ireland. They will be easily transferable by entry in the debenture books of the Landed Estates' Court, and will afford great facilities for realizing the principal and enforcing the punctual payment of interest.

November, 1867.

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\* The recording of settlements of recorded land is much simplified by inserting a power of sale, as usually done by English conveyancers.

*Record of Title.*

STATUTORY FORM FOR TRANSFER OF RECORDED LAND.

I, \_\_\_\_\_ the recorded owner of the under-mentioned  
land, pursuant to the "Record of Title Act, Ireland, 1865," in consideration of  
£ \_\_\_\_\_ sterling, paid to me by  
of \_\_\_\_\_ &c., do grant to the  
said \_\_\_\_\_ all [*Insert description of land taken from or*  
*referring to the Record, and refer to map, if any*] to hold to him and his heirs  
for ever [*Or otherwise, according to the nature of the interest transferred*]

Dated this \_\_\_\_\_ day of \_\_\_\_\_

\* *Signed and sealed at the Record of Title  
Office, Landed Estates Court, Ireland  
in the presence of*

*a solicitor of the court.*

*Signature.*

*(Seal.)*

*I accept the above transfer.*

*Signature,  
Address,*

\* Where the Statutory Form is executed IN THE COUNTRY or elsewhere than at the Record of Title Office the following should be substituted for the above attestation clause.

*Signed, sealed, and delivered in the  
presence of †*

*In that case also the following will be the Form of Affidavit by an attesting  
witness:—*

*[This affidavit may be endorsed on the deed, and may be altered so as to verify  
the acceptance by the grantee.]*

I, \_\_\_\_\_, of \_\_\_\_\_, make  
oath and say:

THAT I am an attesting witness to the instrument dated \_\_\_\_\_,  
on which I have endorsed my name at the time of swearing this affidavit,  
and that my name subscribed as a witness is my proper name and hand-  
writing.

THAT I was present, and saw such instrument duly signed, sealed, and delivered,  
by \_\_\_\_\_ of \_\_\_\_\_, party thereto, who  
was fully aware of the purport thereof, and who is personally known to  
me. \_\_\_\_\_ Sworn, &c.

† The Judges PREFER, as indicated in the 21st Rule, that deeds should be attested by *solicitors*. If, however, there is any reason why the aid of a solicitor could not conveniently be procured, the deed may be attested, and the affidavit made, by any other suitable person, as, for example, a *magistrate, notary public, or consul*.

See the Practical Directions issued by the Landed Estates Court ("Land Transfer" by H. D. Hutton, p. 173) as to the execution by transferor, and the acceptance of the transferee, both of which may be included in the same affidavit.

*Record of Title.*

## STATUTORY FORM FOR RECORDED CHARGE.

I, \_\_\_\_\_ the recorded owner of the under-mentioned land, pursuant to the "Record of Title Act, Ireland, 1865," in consideration of £ \_\_\_\_\_ sterling, lent to me by \_\_\_\_\_ of \_\_\_\_\_, do charge in favour of the said the hereditaments described in the Schedule hereto with the principal sum of \_\_\_\_\_ repayable on the \_\_\_\_\_ day of \_\_\_\_\_ together with interest thereon at the rate of \_\_\_\_\_ per cent. [reducible to \_\_\_\_\_ if paid within a month after due], and payable half-yearly, every day of \_\_\_\_\_ and \_\_\_\_\_ day of \_\_\_\_\_

[The following additional clause is suggested for cases where the lender desires the further security of a covenant to pay, so as to affect other property by action at law, or in the administration of assets, &c. :—

"And I, the said \_\_\_\_\_ for myself, my heirs, executors, and administrators, hereby covenant with the said his executors and administrators, that I, my heirs, executors, or administrators, will pay to the said \_\_\_\_\_ his executors, administrators, or assigns the said principal sum and interest, at the time or times, and in the manner aforesaid."]

Dated this \_\_\_\_\_ day of \_\_\_\_\_

\* *Signed and sealed at the Record of Title Office, Landed Estates Court, Ireland, in the presence of*

*a solicitor of the court.*

*Signature.*

*(Seal.)*

## SCHEDULE ABOVE REFERRED TO.

I hereby accept the above charge.

*Signature,  
Address,*

N.B.—This form may be adapted to the case of an annuity charged on land.

\* Where the Statutory Form is executed IN THE COUNTRY or elsewhere than at the Record of Title Office, the following should be substituted for the above attestation clause.

*Signed, sealed, and delivered in the presence of* }

*In that case also the Form of Affidavit by an attesting witness will be as already pointed out. See same, with observations, page 7.*