

Sale and Transfer of Land.

REPORT

TO THE QUEEN'S MOST EXCELLENT MAJESTY, IN HER HIGH COURT OF CHANCERY.

In pursuance of Your Majesty's Commission authorizing and appointing us to "consider the subject of the Registration of Title with reference to the sale and transfer of land, and generally to inquire into and consider the advantages and disadvantages attending such a system," We, Your Majesty's Commissioners, humbly beg leave to present to Your Majesty the following Report:

Origin of inquiry.

I. The issuing of this Commission was recommended by a Select Committee of the House of Commons, to whom a Bill for the registration of assurances, and certain other Bills for facilitating the sale and transfer of land, were referred for consideration during the Parliamentary session of 1853. Under these circumstances we deem it right to advert to the report of that Committee and the evidence appended to it, in order that we may ascertain and constantly bear in mind the full scope and object of the inquiry, which by Your Majesty's command, we have undertaken.

Report of Select Committee of the House of Commons on Registration Assurances Bill, 1853, and other Bills.

II. We find that three Bills were submitted to the consideration of the Committee, the first of which had been sent down from the House of Lords. These Bills were entitled: 1. A Bill for the registration of assurances. 2. A Bill to facilitate the sale and purchase of land. And 3. A Bill to facilitate the transfer of land in Ireland. The Committee reported that the first of these Bills contained within itself two distinct principles of registration; the one, contemplating the registration of all assurances in any manner relating to land, and the legal or equitable estate and interest therein; the other, proposing that the legal title alone should be entered in the registry, and that there should be no necessity to register the instruments which declare or transmit the beneficial interest or equitable ownership. They also stated that the two other Bills proceeded upon a principle similar to that last referred to as contained in the first Bill, namely, the principle of keeping the registered ownership wholly separate and apart from the equitable right or title. And they further observed, that "pursuing that idea, and confining their attention to that principle, they had examined some witnesses of high professional reputation, who had brought under their notice a scheme for the registration of title or of legal ownership, which, if it could be fully developed and made capable of easy practical operation, would appear to them to fulfil the most important conditions of registration, and to afford the means of ensuring great facility for the transfer of land, combined with great simplicity and security of title."

The advantages to be derived from some system of registration of land are therefore assumed by the Committee, provided that the difficulties which have hitherto stood in the way of a practical settlement of this important question can be removed or obviated.

Evidence made use of in this inquiry.

III. In prosecuting our inquiries we have availed ourselves of the labors of former Commissioners, especially the second report of the Real Property Commissioners in 1832, and the report of the Registration and Conveyancing Commissioners in 1850. We have also consulted the report of the Commissioners appointed to inquire into the working of the Encumbered Estates Court in Ireland in 1855, and the evidence taken before the Select Committee of the House of Commons on the Registration of Assurances in 1853, and we have referred to the report in 1856 of the Select Committee of the House of Commons, on the Court of Chancery (Ireland) Bills.

We have further directed a series of questions to be circulated in different parts of the kingdom among persons practically acquainted with the subject; and these questions, together with the answers thereto, will be found in the Appendix. We have likewise examined some witnesses *visà voce*, partly with the view of ascertaining more accurately the nature of the plan submitted to the House of Commons in 1853; partly to obtain information on the subject of maps, which afford in the opinion of many persons the best means of describing and identifying landed property, and indexing registered titles of it; and partly to learn how the system of stop-orders or distringases, works at the Bank of England, in restraining the transfer of the public funds.

We have also the pleasure of acknowledging that we have been assisted in our inquiries by different observations and suggestions which have been communicated to us upon the subject of registration, two of which papers we have printed in the Appendix (a), and by several publications upon the subject of registration, and the means of improving the title to landed property, which have been laid before us by the authors of them, and which are mentioned in the note below. (b)

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(a) "A Plan for the Registration of Titles to Land," by Mr. Randal Macdonnell. Letter and Plan by Mr. Edward Thomas Wakefield.

(b) "Shall we Transfer our Lands by Register?" by Joseph Goodeve, Esq. "Suggestions for a General Index of Title to Real and Personal Property," by W. R. A. Boyle, Esq. "The Annihilation of past Titles considered as the only effectual Amelioration of present Titles, with a Scheme for its Accomplishment," by T. P. Keene, Esq. There has also been published since this Report was in print, a pamphlet entitled "The Transfer of Land by means of a Judicial Assurance: its Practicability and Advantages considered in a Letter to Sir Richard Bethell, M. P." By Isaac Butt, Esq., Q. C.