

Sale and Transfer of Land.

An account of a purchaser's legal expenses incurred at various times and in different parts of the country has been furnished by one of the witnesses. (a) It gives an average of two and a-half per cent. on the purchase money, or five times the *ad valorem* stamp duty. But as an average affords no notion of the heavy burden in individual cases, it is necessary to look at the smaller properties; it will there be found that the expenses of the purchase mount up to ten, twenty, and even twenty-three per cent. Make even a slight addition to these expenses, and then a register, which is intended for the benefit of sellers and purchasers, would be the occasion of actual loss to the great mass of the persons interested. The Select Committee of the House of Commons in 1832 were so strongly impressed with this result, that when they considered that a general register of deeds and instruments would be of decided advantage to large purchases, they only recommend it as regards small purchases, upon the ground that such a measure "would be made most perfect, by being made applicable to all lands without reference to their value." We cannot think it right to do an injustice to a large body of people merely for the sake of obtaining uniformity, which is misnamed perfection. Such perfection would operate unfairly on small proprietors, and, as Lord St. Leonards has well observed, "probably it would induce them not to resort to the register at all, and then they would be exposed to evils to which they are not now liable; for if the rate of insurance be too high, the mariner prefers encountering the perils of the sea."

XIX. Increased complication is a third objection to a general system of registering assurances. If any of the instruments affecting the title are withheld from the register, then the system becomes imperfect. If memorials only are registered, the original instruments of which the memorials are given must be searched for, and copied, or abstracted; and if the instruments are once registered they must remain on the register. However occasional or however temporary their object, they cannot be destroyed; whether satisfied or not they must still be kept, and being kept they must all be examined by purchasers. Thus the machinery would be too complicated to answer its purpose, and complication would diminish the facilities of transfer, and increase the chances of miscarriage. Simplicity and accuracy are the grand objects to be attained. The absence of these must lead to uncertainty, and uncertainty is insecurity, and insecurity is impediment. But how are simplicity and accuracy to be attained, if notice of deeds, by the fact of their being registered, is to be multiplied and perpetuated? Extinct life estates, and charges or incumbrances which have been satisfied or exhausted, and other interests which have ceased to be of real importance to the title, must more or less form part of the abstract, and the purchaser's solicitor would not be justified in disregarding them. Third objection considered.

XX. Another objection raised to a general registration of assurances is the fear of unnecessary and uncalled-for disclosures. (b) No man likes to make his private affairs public; and one man has no right to pry into the affairs of another, except for some object, in which the latter has given him an interest. Now the only legitimate object of making public, or giving notoriety to any title—deeds is to prevent frauds in the transfer of property by ensuring notice to future contractors of all transactions which are to effect them. For that purpose, however, there can be no need of disclosing the whole internal history of the title for an indefinite period. There can be no reason why every particular, however secret or however confidential, should be made known. Why are the trusts which affect an estate in land to be more divulged than the trusts which affect stock or railway debentures? Why are settlements and family arrangements, which are intended to preserve property in families, to be more liable to exposure in the one case than they are in the other? These and similar questions have often been asked, but they have never received a satisfactory answer. The objection is striking; and the force of it constrained the Real Property Commissioners in 1832 to suggest (c) that in many cases, such as that of an appointment of a reversionary interest, or of portions in favor of children, the registration might be safely delayed; and that any provision which it might be desirable to conceal might be made by vesting an interest in trustees in whom confidence could be reposed. They added, moreover, that the peril would be no greater than exists in all settlements of money in the funds, and in many other cases in which trusts are not expressed in the instruments by which the property is vested in the trustees. Such suggestions are by no means unimportant. They show, that in cases like those pointed out the Commissioners considered that the difficulty of establishing a registration of assurances would be so great that they were prepared to substitute for it what in fact in the particular case amounted to a registration of title; but if a registration of title would be good for settlements, why would it not be equally good for mortgages and purchases? If requisite for one, why not for the other? If the analogy from the funds is available for determining the mode of registration in some cases, why not in all? The dread of disclosure can hardly constitute a just distinction between mortgages and settlements; for the danger of disclosures affecting credit would probably be as great as the dangers of disclosures affecting settlements and family arrangements. Nor do we think that there is any inconsistency in attributing weight to this objection, and at the same time regarding as an evil the disuse or loss of that system of public transfer of land, which in a previous part of this report we have adverted to as having prevailed in the earlier periods of our history. Fourth objection considered.

XXI. Another objection to a registration of assurances would be, the enhanced difficulty of obtaining loans by a deposit of deeds. The transactions of this kind are very numerous. At present a respectable man in possession of title deeds, may, and does often obtain relief in sudden emergencies confidentially, easily, and at a few hours' notice. But if a registry of assurances were the only means Fifth objection considered.

(a) See Mr. Sweets answers to written questions.

(b) See Lord St. Leonards's Pamphlet, pp 12, 13.

(c) See Second Report on Law of Real Property, p. 23.