

### *Sale and Transfer of Land.*

injustice to third parties, the State may guarantee the title, upon payment of such small fees or premiums of insurance as will provide an indemnity fund to compensate persons whose prior rights might be superseded; but this guarantee is not an essential portion of the plan.

The privileges considered to be incident to this plan are—

1. A Parliamentary or indefeasible title, when conclusively declared by the Tribunal;
2. A power to transfer by simple entry the registered land;
3. A further power to obtain on its credit terminable land debentures, transferable either by simple entry, like Government stock, or by simple delivery, like bank notes or bills of exchange.

With a view to impart to these debentures an immediate marketable currency, and consequent increase in value, their amount is to be limited—say, for example, to ten times the annual value of the land; and they are to be for uniform sums, without priority *inter se*, and bearing a similar rate of interest. The leading object of these debentures is to avoid the existing complexity of incumbrances, and gradually to supersede all other kinds of charge, such as mortgages, legacies, family portions, quit rents, tithe rent charges, annuities, judgments, recognisances, crown bonds, decrees, orders, and rules of Court.

As to family settlements and trusts, it is suggested that they might still be sufficiently effectuated (like settlements of Government stock or of railway shares) through personal confidences, and the equitable jurisdiction of the Land Tribunal; also that equitable mortgages or loans from bankers might be effected easily and without expense. The plan further recommends that the new system should be introduced gradually, and in a voluntary form; though, after some years' experience of its beneficial working, it might be considered expedient to render its application universal as to all land not specially exempted from its operation.

The professed principle of the whole plan is to facilitate the sale and transfer of land through the most simple machinery for the registration of an absolute title, both to the land itself and to the charges upon land; with a subsequent capacity in the owner of any registered land or charge to transfer the former by entry, the latter by entry or delivery.

XXVII. Such being the general outline of this plan, we have to observe, that it has unquestionably the merit of great simplicity, and it contains valuable suggestions of which we propose to avail ourselves. Its contemplated advantages are in a great degree based upon those already derived from the Incumbered Estates Court in Ireland, and indeed it was framed for that part of the United Kingdom, though it is said to be capable of easy adaptation to any English measure of land reform. Ireland possesses superior machinery for carrying into immediate operation a complete system of Registration of Title through its Registry of Deeds, its Ordnance survey, and its General Valuation of lands.

The conclusion to which we have come is adverse to the institution of a Land Tribunal, (a) with judicial powers to decide conclusively upon all titles to land. Such a court may advantageously be established where estates generally are so heavily encumbered that their owners can neither emancipate themselves from existing burdens, nor discharge the duties which attach to the ownership of land. The object in that case is to obtain altogether a new proprietary, and to provide for payment of debts; but the same principle is hardly applicable in a state of society where there is no paramount need of encouraging absolute changes of ownership, as contradistinguished from temporary changes or family settlements, and where a considerable portion of the property will, not improbably, whatever may be the state of the law, still remain in the same families.

XXVIII. Another objection to this plan is the want of provisions for protecting beneficial and equitable interests. Without such provisions those who are entitled to beneficial interests in the registered land would not feel satisfied of having adequate protection against the wrongful acts of the registered owners.

XXIX. With regard to the proposed system of debentures, we conceive that it is not within the range of the enquiry submitted to us, and therefore we do not recommend it. We may observe that we are not prepared to concur in recommending that the owner of registered land shall be deprived of his legal power to incumber his own land, with the same kinds of charge as he can create at present. Furthermore, we may observe that if it would not be advisable to establish a Land Tribunal for the purpose of investigating the title to land, the same objection would also apply to the establishment of such a tribunal for the creation and issue of land debentures. Moreover, there is not in England any adequate machinery for ascertaining judicially the value of land through a public map or general valuation, such as exists in Ireland. The preferable way of enabling persons readily to obtain loans on the security of land, is to alter the expensive forms and incidents of mortgages, so that they may be at law what they are in equity, securities merely; and that thus the dry legal estate may not be left outstanding on payment of the money secured, but that the mortgage may then cease for ever. A

statutory

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(a) Mr. Scully retains his preference for the Land Tribunal and Land Debentures proposed by his plan in Appendix A. See his paper at the end of this report.

Objections to  
first plan Land  
Tribunal.

Objections con-  
tinued.

Land Deben-  
tures.