

Sale and Transfer of Land.

law, have expired or become barred. We have been reminded (*a*) that if the legislature should adopt such a rule it would be only following an analogy furnished by their predecessors. A statute of Henry 7th gave to a fine levied with proclamations after five years a conclusive effect. The proclamations were nevertheless in practice a mere fiction, and gave no real notice to others, and the period of five years was adopted at a time when communication was difficult and intercourse confined. The effect of a fine with proclamations remained in force until the Act was passed abolishing fines and recoveries; and it is said that its abolition by that Act, without a substitute, has been frequently regretted. It is contended that in the present day we have need, for the purposes of commerce, of the same policy which for different purposes and in a ruder state of society animated feudal tenures: and that the course of years has brought us round again to feel a want somewhat analogous to that felt in the early period of our history, though with different aims. It has been further urged, (*b*) that if provision be made for the due publication of the registration or the application to register, the registration ought to be allowed to attain its conclusive effect, after the lapse of some period shorter than is now required by the general Statutes of Limitation to extinguish dormant rights; in other words, that the title if not impeached in a given time, say a short term of years, after the title is put upon the register, and full notice of it published, might pass into an absolute and unimpeachable title, at least for the purposes of sale, and thus retrospective investigation of the title avoided in the case of a sale to a purchaser. Those who entertain these views consider, however, at the same time, that all parties, or their trustees, should have the power or right, within the prescribed period, to show cause against the title, and should not be obliged to wait until their interests are reduced into possession; and further, that, with the view of justifying and facilitating the application of such a provision, some moderate evidence of ownership sufficient to exclude the hypothesis of fraud, should be adduced by every applicant for registration.

The conclusion, however, to which we have come, though with some difference of opinion, is, that interests created in land before the commencement of registration should not be adversely bound or affected by the mere registration as such, but should be allowed to be claimed, notwithstanding the registration, within the period now fixed by the Statutes of Limitation.

Fourth question
(protection of
beneficial inter-
ests) considered.

L. We next proceed to consider whether registration of the legal ownership will be compatible with due protection of the equitable or beneficial interests in land.

It has sometimes been supposed that any system of registration of title will require a decision as to which of certain principles alleged to be irreconcilable touching the theory of disposition of landed property ought to prevail; whether, on the one hand, the stability of settlements, or, on the other, the safety of buyers, or, in other words, the protection of families or the marketability of land, ought to form the paramount consideration. After mature examination, however, we have been led to the conclusion that no such dilemma is in fact involved in the institution of a registry of title.

Were we to allow, however, that such a difficulty does in fact present itself, we should be able to rely (as has been well remarked (*c*), on our ancient law as affording for the present purpose a wise and useful precedent; for just as the feudal law required that the freehold should always be filled by one capable of contributing to national defence, and performing the duties of a feudal follower, so the spirit of commerce now demands that for its purposes also the fee simple in land shall always be represented and be in the possession of persons capable of fulfilling those new duties and offices which the ownership of land in the present state of society entails or involves.

As regards the sale and transfer of land, it is clear (*d*) that much good would not be obtained by merely registering the fee, or, in other words, the legal title, unless the purchaser could dispense with inquiry into the equitable title, with its incidents. Unless a purchaser be protected from inquiring into trusts, there will not be any advantage to him. In other words, (*e*) if trusts and limitations are to continue to form part of the title in all respects as they now do, the registry of title will be useless, or at least not worth the danger and difficulty attendant upon the introduction of a new system.

The question then is, (*f*) whether the present system of settlements can be modified without materially interfering with the nature of quantum of interests commonly created by them. Any material interference with the nature of such interests would be objectionable; but, under modified forms, the system may, we think, be continued consistently with the objects contemplated by a register of title.

Equitable interests and trusts cannot, (*g*) consistently with the objects to be attained by registration of title, bind or affect the ownership of a registered purchaser, unless such interests are of his own creation; but they may be allowed to confer a right against the land whilst in the possession of the owner who created the trusts, or in that of his representative, or volunteers claiming under him. When
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- (*a*) Mr. Dobbs, on the best means of giving increased facilities to the transfer of land.
 - (*b*) Mr. Clifford Lloyd's evidence.
 - (*c*) Mr. Dobbs, on the best means of giving increased facilities to the transfer of land.
 - (*d*) Messrs Nicholl and Smyth's evidence.
 - (*e*) Mr. Commissioner Longfield's evidence.
 - (*f*) Mr. Dugmore's evidence.
 - (*g*) Professor Hancock's evidence.