

### *Sale and Transfer of Land.*

For my own part, I think it is quite possible that leaseholders and mortgagees, and also every other person having a partial interest or estate in registered land, should be allowed (subject of course to proper precautions) to place upon the register a note of the nature and duration of his interest, and that during the continuance of his interest it should be the duty of the registrar and of the registered owner not to permit a transfer, except subject to his interest or with his concurrence.

Moreover, there is no reason why the subsequent changes and devolutions of a partial estate so noted upon the register should not also be entered upon the register.

It should, however be clearly and distinctly stated that a purchaser has never occasion himself to investigate the title for mortgages, leases, or for any other estates or interest in the land, accruing subsequent to the period of registration.

If an estate should be offered for sale without incumbrance, the purchaser should have no other duty imposed upon him, than to see that the land is transferred on the register into his own name, without note of any claim or interest.

If the land be so transferred, the purchaser should be safe, however wrongful the act; and the persons injured will be left to their redress against those who have transferred it. If again an estate be offered for sale, subject only to a mortgage, say, for £1,000 in A B, or to a jointure of £500 a year in C D, then the purchaser should have no other duty than to see that the estate is transferred into his name, with no other note or qualification than, in the one case, the mortgage in A B, and in the other the jointure in C D.

I object to the plan, first, because it makes a distinction between mortgagees and leaseholders on the one hand, and the owners of all other partial interests on the other hand.

I object to it, secondly, because it throws upon the purchaser the duty of searching for registered leases and mortgages, a duty which appears to me inconsistent with the principle of the scheme.

It may be observed, that if it were deemed expedient to have a separate register with respect to the land contained in any conveyance of a partial estate—for instance, a lease, mortgage, or other subordinate estate—there seems no insuperable difficulty in providing in such a case that the original register of the land should be modified, and should then consist of the fee simple of the land, subject to the particular estate carved out of it.

In this case neither a purchaser of the partial estate independently registered, nor a purchaser of the original estate, would have any further duty imposed upon him, than that of investigating the register itself. A transfer on the register, of either the one estate or the other, would express clearly what he purchased, and for what he had to pay.

This, however, is inconsistent with the plan as it is now framed, which provides that “the right to dispose of and transfer the ownership of land in fee, including the right to charge and lease the same, will belong and be incident to, and in fact be taken as, forming part of the registered ownership.”—See Par. LX.

There is another material portion of the scheme recommended by the Report, to which I am compelled to object.

I allude to the warranty of titles by the Government. The plan is this, that upon the registration by any person of his land, he may with the sanction of the registrar enter into a contract with the State, under which the State shall warrant the title to the land, guaranteeing to pay compensation out of the Consolidated Fund to all rightful claimants upon it, and receiving a certain premium from the landowner in consideration of the guarantee.

I think it is contrary to the general policy of the country to allow the State to enter into pecuniary speculations of any description; it is true that there are reasons for believing that the sum which landowners would be willing to pay for such a warranty would be more than equivalent to the risk incurred by the Government; or in other words, that the speculation would be a good one; yet, as there is no experience on the subject, no confident opinion can be expressed; and it is obvious that if at any time there should be carelessness or fraud on the part of the officers of the Government who have the management of the scheme, the loss to the State might of a most serious description.

In the second place, there is a great objection to the plan, arising out of the manner in which it deals with the rights of individuals. It provides that any person establishing a claim on land guaranteed by the Government, shall forfeit his right or interest in the land itself, and in lieu receive a money compensation to be paid by the State, and apparently to be also estimated by the State. It seems most objectionable, that the contract between an individual and the State should be allowed to affect the rights and interests of a third person, who is not in any way cognizant of or a party to the contract.

Independently