

Sale and Transfer of Land.

6. If such a title be desired, the registrar will examine (a) the previous title, and warrant it, if good, on payment of a small charge.

7. The warranted title will absolutely indefeasible, and any person prejudiced by such warranty will be compensated by the Consolidated Fund.

8. All estates other than the fee, except charges and leases, shall be excluded from the register and protected by *caveat*.

9. A caveat may be entered *by the consent of the registered owner, or if that be improperly refused by the order of a Court of Justice.*

10. The registered owner shall have absolute power to transfer, subject to charges and leases, *if all caveats be withdrawn.*

11. The registrar shall give to every registered owner a certificate, which may be pledged by way of equitable mortgage for temporary advances, and must be given up to the registrar before a transfer can be made.

12. The Court of Chancery shall have jurisdiction over the registered ownership.

13. Notice of an unregistered interest shall not of itself, without fraud, bind a purchaser.

14. Charges and leases may be manifested and transferred upon the register.

Such being the outlines of the plan for a Registration of Title recommended by the Report, I beg to append the following observations :—

FIRSTLY—It appears to me that a Land Tribunal, of high position and character (b), with ^{Land Tribunal,} avowed judicial powers for deciding questions affecting registered land, and with equitable jurisdiction to enforce rights or to prevent fraud and wrong, would, upon several obvious grounds, be preferable to a Land Registry Office, professing to be merely ministerial, but in effect exercising quasi-judicial functions to confer and to transfer indefeasible titles. The Report, however, affirms the principle of Parliamentary Title; and whilst professing to repudiate a judicial investigation, adopts it in substance by authorizing the Registrar to grant a warranted title, after an investigation by counsel and solicitors. It is a secondary question, or rather one of detail, whether the investigation shall be made by a Registrar and persons acting under his direction, or by a judicial tribunal. In either case the result is alike, and the investigation partakes of a judicial character.

Thus it appears, as had been anticipated, that for the purposes of registration of title—"it will be necessary to institute some new jurisdiction, which may be called a Land Tribunal, a Land Court, a Land Register, or a Land Transfer Office" (c). The Land Registry Office will in effect be a Land Tribunal, but with inferior position and authority; and deficient in those high qualities which ought to accompany an office of such grave trust, and so important to the best interests of these countries.

SECONDLY—I cannot concur with that portion of the Report (d) which declines to adopt a ^{Land Debentures,} system of uniform Land Debentures, limited in amount and transferable by simple entry or delivery but proceeds to recommend an inferior description of Land Debenture, in the form of registered charges unlimited in their number or amount. Recent experiences in Ireland have shown that it is not desirable to confer upon landowners increased facilities for indefinitely encumbering their land, and I retain the opinion that a good system of Land Debentures is essential to any perfect plan for simplifying the title to land and facilitating its transfer.

Some of the advantages of Land Debentures have been already mentioned, along with authorities in their favor (e); which are now sustained by the additional evidence of experienced persons who have well considered the subject (f). One eminent witness (g) has, however, compared Land Debentures to the "Donegal Debentures," which were neither limited in amount nor with Parliamentary Title, but were impeached securities, issued by private persons, and were not charged upon land, but upon certain shares in a Canal Company (h). Debentures upon land have also been confounded with those French Assignats, which a revolutionary Government charged in vast quantities

(a) "The Registrar shall cause the title to be fully investigated, by counsel and solicitors, &c." See the Report, sect. 57.

(b) The Right Hon. A. Brewster, to Question 3636 of Select Committee on Court of Chancery (Ireland) Bill of 1856

(c) See note to paragraph 7 of Mr. Scully's Plan in Appendix A.

(d) See Sect. 29.

(e) Appendix A., paragraphs 12 to 19 of Mr. Scully's Plan; and Notes *ibid.*

(f) See evidence referred to in Note to Sect. 29 of the Report.

(g) The Right Hon. A. Brewster, Attorney-General for Ireland, to Question 35.

(h) Ba. and Be. Rep. temp., Hart, p. 146.