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*Tenure of Land in the United Kingdom
and its Principal Colonies*

BEING

THE INAUGURAL ADDRESS
TO THE ACTUARIAL SOCIETY OF EDINBURGH
FOR THE SESSION 1890-91

BY

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HONORARY PRESIDENT OF THE SOCIETY

Tenure of Land in the United Kingdom and its Principal Colonies.

(Read before the Actuarial Society of Edinburgh, 13th Nov. 1890.)

GENTLEMEN,—At the time you did me the honour to elect me President of your Society, I was collecting information regarding the land laws and conveyancing systems of our Australasian Colonies, and also endeavouring to master the details of the legislation for Ireland which gradually led up to the passing of the Ashbourne Act, and left us with the prospect of still more sweeping measures.

It appeared to me that information on these matters could not fail to be of interest, and might be of use to you, so I determined to make them the subject of my Address, and that my paper might be more worthy of the occasion, and might better show my appreciation of the honour you have for the third time conferred on me, I decided to widen the subject and give you a sketch of the “Tenure of Land in the United Kingdom and its principal Colonies,” and in doing so to touch on cognate subjects of interest to all concerned in land as a security.

I may say at once that I under-estimated the time and research necessary to do my subject justice, that the notes I have brought together, though lengthy, are not so comprehensive as I could desire, and that I have been unable to obtain much reliable information regarding the older land laws of some important Colonies, and have had to omit all reference to that most important dependency—India.

You must pardon my shortcomings, and in particular look with a friendly eye upon the effort of a layman to comprehend and endeavour to explain ENGLISH land laws and conveyancing, an attempt in which I received great assistance from

an admirable work on the *Law of Property*, published last summer by Mr. Thomas Raleigh, M.A., Fellow of All Souls College, Oxford, "with an exclusive regard to the needs of those who are beginning the study of English Law," an inexpensive work, which I have pleasure in recommending to your notice as being singularly clear, well illustrated by leading cases, and yet most concise.

Of other works to which I am indebted, and to which I desire to refer the student for further information on the subjects treated of, I would here mention, Bell on *Conveyancing*, Prideaux's *Precedents*, *Systems of Land Tenure in various Countries*, and Torrens on the *Transfer of Land by Registration* (both of which last-mentioned works are published under the sanction of the Cobden Club), Jones of Toronto on *The Torrens System*, and notably the *Encyclopædia Britannica*. I have also within the last few days obtained some valuable information, and corroboration of many of the notes I had previously made, from a volume of *Reports from the Consuls of the United States* on "Mortgages in Foreign Countries," quite recently published by their Government, which sent a few copies to Australia, for one of which, as for much of the information I give regarding Australasian practice, I am indebted to my friend and colleague Mr. Joseph Mills of Sydney.

ANCIENT CUSTOMS AND TENURES.

Land, of all man's possessions, ever has been and ever will be the most highly prized; and properly so, for from it he derives directly or indirectly his sustenance, his luxuries, and—in civilised society at least—a consideration which attaches to no other possession.

In the most primitive state of society, examples of which are still to be found in the remote places of the world, when man lives on the natural products of the earth, with what he can obtain by hunting and fishing, each tribe claims a district as its own, holding it in common, and woe to the stranger who is caught in it—his life is forfeited.

Even when man has attained a somewhat higher stage, and has flocks and herds, land may continue a tribal property. It is only when cultivation is resorted to, and he comes to have a settled home, that subdivision commences—first almost always into

village lots, cultivated in common by the villagers, then into holdings shared by a family, and lastly into the property of the individual, the form in which land is held in this country and in its colonies, though under different forms of title.

Of ancient tenures the two to which we would most naturally look for prototypes of our own are those of the Israelites and Romans, whose civil polities have had an abiding influence on the practices of modern times. This cannot be said with equal certainty of their regulations concerning the tenure of land.

Very early in the history of his race the individual Hebrew was allowed to hold land. In the Pentateuch the subject is treated as if such were the practice of the age; directions were given for the appropriation of the promised land among families so soon as it should be acquired, and commands were issued for the regulation of sales, and of dedications of land, or of houses, to the service of religion, in all of which a power of redemption was reserved to the owner, who in the Jubilee year regained possession. In practice the Hebrew could not pledge or sell his land for longer than the time between the date of the transaction and the Jubilee year when it must again be his, or his heirs, free from incumbrance.

This is suggestive. Our legislators by pledging the national credit, are making many tenant farmers in Ireland what is practically a present of their holdings, so as to create a class of peasant proprietors, in the belief that they will thereby benefit the nation; yet in dealing with a people who, through force of circumstances, doubtless, have been for generations improvident, they take no steps to secure that the estate thus created shall remain the property of a peasant proprietor, and not become that of the worst of all landlords, the gombeen man. Why should not the occupiers' right to sell or pledge the land be limited, as in the case of the Hebrew, at all events for the forty-nine years during which it is to be subject to rent, so that it may really be a peasant proprietor's in the fiftieth year? The suggestion may appear impracticable, not to say absurd, but what would have been thought twenty years ago, or less, of the measures it is intended to supplement?¹

The attachment of the Hebrew to the "inheritance of his fathers" is well brought out in the story of Naboth's vineyard, and his desire to be remembered as a landowner, if as nothing else, in that passage of the Psalms in which we are told the Israelites called "their lands after their own names."

In the early years of Rome her people appear to have held land

¹ The Bill now before Parliament contains a clause prohibiting the sale of small holdings in congested districts, acquired under the Act, except to the occupier of a neighbouring holding, or to the Land Commission.

as individuals, in families, and in common, this last being property of the State, let for rent. The individual holdings were small at first—about one and a quarter acre per householder, but as Rome enlarged her territory, and wealth increased, many Romans acquired larger estates, partly no doubt in fee-simple by buying out smaller holders and by obtaining grants through interest in high places, two practices common in all ages, all the world over, but principally, it is now thought, as tenants of public land to which they ultimately claimed a “tenant right,” which the poorer classes disputed; the disputes leading to the passing of Agrarian Laws, which were long supposed to have had for their object the division of the private property of those who acquired more than their neighbours, but which were really enactments for the management of public domains.

To the state of society brought about by the substitution of slave labour on large estates for free labour (freeholders) on small holdings some writers attribute the fall of Rome, and, reminding us that history is apt to repeat itself, call on us to take heed to the effect the substitution of the gentleman farmer and machinery for the yeoman and agricultural labourer may have upon the future of our own country.

FEUDALISM.

The holdings in Palestine were certainly not feudal. Those of Rome were more nearly so; for though the original small allotments do not appear to have been given in connection with liability to military service, yet when Romans attained to larger holdings their rulers looked to them to furnish a military support in keeping with their means.

The Germans are credited with having introduced the feudal system into Europe. In ancient days they appeared to have lived in villages and to have cultivated land in common under the sway of chiefs and magistrates who assigned to communities, and families who lived together, such land, in such spots, as to them seemed desirable, never letting a community remain long in one place.

It is supposed that, as population and the struggle for existence increased, those leaders of tribes who at first assigned to families the land of which they were to have temporary possession, gave more permanent rights on condition that the holders gave their leaders support in the wars then constantly being waged, the leaders in time coming under the domination of the strongest of their number, an Eorl, Aethling, Duke, Count, King, or what he might be called, who would have a principal voice in the disposal of lands acquired by conquest, and to whom as superior they in like manner came under obligations of military service.

However it came about, feudalism was in its origin closely allied to military service, and the necessities of that service gave a character to feudal tenure which to some extent survives to the present day.

It is thought that the earliest feudal grants were but for such time as the holder could personally perform the service for which he held one, or for his life. That may have been so, but it is clear that ere long the grantee's heir acquired an interest in the holding, and as he or she might be a minor, unable to perform the service for which the holding was given, the superior had a right of guardianship, drawing the full rents of his ward's estate during minority, and assisting his vassal in the choice of a wife or husband, if not married before succession, for which service he was recompensed according as the lady, or gentleman he recommended was acceptable or not; by far the larger payment or fine being exacted when the vassal took his or her own way in the matter.

These rights, and a right of forfeiture should the vassal alienate his holding without his superior's consent, are the prototypes of the fines known in Scotland as casualties attaching to a superiority.

That the superior should have a voice in the disposal of the hand of a vassal, particularly if a lady, was not unreasonable, for in early times great inconvenience might arise through the alliance of a vassal with an enemy of the superior—a contingency provided against in the laws of Moses, which required that "every daughter that possesseth an inheritance in any tribe of the children of Israel shall be wife unto one of the family of the tribe of her father."

SCOTLAND.

You are doubtless all more or less familiar with the tenure of land in Scotland, which, with the exception of some holdings in Orkney and Shetland, is feudal. Indeed it is believed that nowhere else did the system exist, until quite recently, in so perfect and yet in so simple a form.

It is supposed to have been introduced from England, probably by Malcolm Canmore, in the time of William the Conqueror. It does not appear to have been forced on the country, but to have been adopted gradually, as its advantages became evident to a race long a prey to internal feuds, as well as to incursions from outside.

The smaller landholders would see it to be for their advantage to put themselves and their estates—it might be clans—under the protection of powerful neighbours, who in return would require the service common in feudalism.

All that has now passed, and military service is otherwise provided for, but the system of land tenure remains much the same in principle, though very different in detail, particularly since 1874, when an Act was passed which practically destroyed the relation of superior and vassal as previously understood, all payments of a contingent nature being forbidden in feus thereafter granted, and provision being made for the commutation of those already existing.

In early times it was in the superior's option to decline to admit a stranger (technically known as a singular successor) as a new vassal, though he usually did so on receipt of a fine. The first to gain a footing of right were the vassal's creditors, but they lost it again until 1469, when an Act was passed conferring on creditors the right to "apprise" their debtor's lands for payment of his debts. This Act ordained the superior to receive the creditor as the holder of the feu on payment of a year's maill or rent, and the lawyers of the day managed to work it so as to compel superiors to admit purchasers as creditor's apprisers. The lawyers had other ways of coercing superiors, though no direct legal remedy, in the event of a refusal of entry until 1747, when superiors were ordained to enter purchasers or disponees upon their paying or tendering such fees or casualties as the superior was by law entitled to receive upon their entry.

Professor Bell points out that, though before the passing of this Act it was by no means unusual for a vassal to give his successor an infeftment which the superior when agreeable confirmed, termed an entry by confirmation, such practice was ignored by the framers of the Act, who required the old and more strictly feudal form of entry by resignation, in which the vassal resigned his feu to the superior "in favour of his (the vassal's) disponee, in order that the superior might receive and enter and infeft the disponee as his vassal."

Just one hundred years later, in 1847, an Act was passed requiring superiors to enter any person having a formal title from the last vassal.

It is a fundamental principle of the feudal system, as developed in Scotland, to allow sub-infeudation to any extent: every vassal, unless restrained by special agreement—and such agreements are illegal if made since 1874—may feu the whole or any part of his lands to another, who becomes his sub-vassal.

No one holding land under a feudal system is absolute owner of it. Every one has a superior with whom the radical right to the land remains, and to whom under certain circumstances this will revert for a time, or altogether, though under ordinary circumstances the holder holds in perpetuity. There is essentially joint

ownership. The superior gives his vassal the *dominium utile* or proprietary rights to the results or fruit of the soil (which, unless otherwise stipulated, carries liability to the public and parish burdens), retaining the *dominium directum* or radical right to the land, and not unfrequently the right to minerals. To preserve to Her Majesty and her heirs or successors their rights in her private property, as distinct from the right of the Crown, a clause is introduced into Acts such as that of 1874, declaring that the *dominium utile* of such estates as Her Majesty holds of and under herself as sovereign, shall not be held to merge in the *dominium directum* or superiority, or to be consolidated therewith.

The Crown has by legislation acquired right to gold and silver mines found in the country, but “is bound to make grants to the proprietors of the lands in which they are found, subject to a lordship of one-tenth of the find.” If this principle be correct, why was not a similar interest acquired in all that is mined?

FEUDAL TENURES.

Of five feudal tenures recognised in Scotland—Ward, Soccage or Feu-Farm, Blench, Mortification, and Burgage—but three exist; and practically only one—Feu-Farm—is now in use.

Ward was the military tenure, which was abolished shortly after “the 'Forty-five.”

Soccage, at first the payment of agricultural service by the vassal to the superior, and afterwards payment in kind, was finally commuted for a fixed rent in money—a feu-duty—with a liability for casualties—the feu-farm or feu of the present day.

Blench or *Blenche-farm* was a tenure obtained by an immediate payment along with a nominal yearly rent, as a pepper-corn or penny Scots, payable only if asked for.

Mortification or *Mortmain* was a tenure abolished at the Reformation, at which time nearly one-half of Scotland belonged to the Church, having been given or mortified by the faithful of many generations for religious services.

Burgage is the tenure under which lands granted by the Crown to royal burghs are held, and for which in early times the burgess had to perform military service, or at all events watch and ward. Under this tenure no restraints were placed on alienation, the Crown never objecting to receive a new proprietor in burgage land as vassal in place of the old, and no feu-duties or casualties were payable.

CASUALTIES.

The Casualties now recognised in Scotland are :—

Relief.—The fine payable by an heir on succeeding, formerly a

year's rent, but now a year's feu or blench duty. This casualty has been abolished, as regards all feus created after 1874.

Composition—that payable by a stranger (a singular successor) on entry—formerly a matter of bargain, latterly one year's rent or value of the land.

Life-rent Escheat.—A forfeiture to the superior while the vassal is civilly dead, through failure to answer for a crime, the holding returning to the vassal's heir on the vassal's death.

GROUND-ANNUALS.

Land in Scotland held Burgage, or under a feu-charter in which sub-infeudation is prohibited, is frequently subject to a perpetual charge termed a "ground-annual." This is substantially the same as a feu-duty, but does not set up or perpetuate the relation of superior and vassal, and is in reality but a real burden on the estate charged with it as part of the price, and as such has to be embodied or referred to in the original and subsequent titles, otherwise it will in time be lost by prescription, a risk that does not attach to a feu-duty. It is generally met with in connection with land used for building purposes, and is sometimes framed so as to carry a personal obligation, which the granter or holder cannot divest himself of. Since 1874 it has not been necessary to resort to this expedient to create a perpetual annual charge on burgage, a right to feu it having been then conferred.

It may not be out of place here to mention that as securities of this class, be they feu-duties, ground-annuals, or ground-rents, are frequently created to cover part of the cost of a building as well as the price of the land on which the building stands, intending purchasers of such charges should hesitate to acquire what cannot be a perfect security without fire insurance, if then, and limit their purchases to charges undoubtedly within the value of the bare land.

ENTAIL.

An account of the tenure of land in Scotland would not be complete without some reference to Entail.

Every feudal and burgage right in property in Scotland can be entailed in perpetuity.

The practice of entailing is of long standing. It was first recognised by Parliament in an Act of 1685, which allowed of very strict entails. Under them the heirs in possession could not feu the land unless specially empowered by the deed, which few would be, nor grant leases for more than twenty-one years; one result being that land was frequently retained for generations in hands that could do nothing to improve its value, even if so dis-

posed. In the words of the preamble to the Entail Amendment Act of 1848, "the Law of Entail in Scotland has been found to be attended with serious evils, both to the heirs of entail and to the community at large."

Between 1848 and 1882 inclusive, several Entail Amendment and other Acts were passed giving heirs of entail facilities for borrowing for the improvement of their estates and permitting them to sub-feu, to grant long leases, and to disentail. This last right, disentail, could at first only be exercised with consents for which many an heir in possession had to pay heavily. Now consents can be compulsorily acquired, the consenting interests being valued at sight of the Court, and a right has been conferred on the creditor of an heir in possession to take the necessary steps for disentail of his debtor's entailed estate.

The Courts are said never to have favoured entailers, always putting a strict construction on the wording of deeds of entail, and leaving heirs in possession very much to the freedom of their own will, if not effectually restrained. If there be further legislation, it will probably be in the direction of increasing the power of the heir and of his creditors to disentail. The first seems hardly necessary, as ere long most heirs in possession will have been born since the passing of the Act of 1848, and consequently be in a position to disentail without compensating the heir-apparent or heirs-presumptive, except in the probably few cases in which the heir in possession is born before the date of the entail.

INFEEFTMENT,

or the manner in which a vassal is placed in possession of a freehold estate, is very different now from formerly.

In early times an estate in land in Scotland was created by the proprietor going on the land, and in the presence of witnesses, personally delivering into the hands of the intended vassal a portion of the lands as for the whole. This not being always convenient, a practice arose of empowering another (a bailie) to give possession. When formal charters came to be granted, sasine, or symbolic delivery, was still given by a bailie and attested in an instrument under the hand of a notary and witnesses, and after 1617 registration of such instruments was required. As recently as 1845 symbolic delivery was necessary; it was then dispensed with, and the giving of sasine, thus made a matter of mere words, was likewise dispensed with in 1858, "registration of a charter, with warrant of registration thereon, in the Register of Sasines, being declared to have the same legal force and effect, as if the charter so recorded had been followed by an instrument of sasine

duly expedite and recorded." Burton, the historian, thus describes the out-of-door proceedings just referred to—

"Until the other day there might frequently have been seen in Scotland a small ceremony which represented in minute perfection a portion of the solemnities of the old feudal investiture. . . . Let us suppose that the owner of suburban property disposes of a patch of it to some fellow-citizen, who intends there to build a villa. . . . A small group of men appear on the ground itself. One takes from his pocket the actual feu-charter; he is the attorney, or representative of the purchaser or vassal. He hands it to another, and desires him to read from it the precept of sasine or the direction which the superior therein gives for giving his new vassal seisin, or absolute possession of the land. The receiver of this document—who, like the giver of it, is probably a clerk in the office where the business is transacted—represents the bailie, bailiff, or executive officer, of the superior's seignorial court. He receives the precept of his lord and master with due reverence and obedience. Giving effect to its directions he would stoop down, and, lifting a stone and a handful of earth, hand these over to the new vassal's attorney, thereby conferring on him 'real, actual, and corporal possession' of the fief. The next duty of the purchaser's attorney was what was termed to 'take instruments,' to enter a solemn protest that his client's infeftment, infeofment or placing in the fief, was completed, and this he did by handing a piece of money—the canonical sum was a shilling—to a notary public in attendance." (*Burton*, vol. i. p. 397.)

In a case where stones were given without earth, the infeftment was declared invalid.

BOND AND DISPOSITION IN SECURITY.

The borrower upon heritable property in Scotland gives the lender a *Bond and Disposition in Security*, which until recorded is a mere personal obligation, giving no valid security over the heritable estate. In it the borrower binds himself to repay the advance with interest, and "consents to registration for execution," the effect of which is that, if on default the creditor has reason to fear that the property disposed in security will not sell for sufficient to meet his claim, he has it in his power to "enter the bond for registration, not meaning thereby the usual record, and may then obtain from the court an extract (equivalent to a judgment), by virtue of which any property whatever of the debtor may be seized and sold if the real estate does not bring enough to extinguish the debt."

Every bond contains a power of sale which under "The Titles to Land Consolidation (Scotland) Act, 1868," is thus exercised. The usual three months' notice is given to the debtor that repayment is required, with the additional notice that failing repayment, the property held in security of the advance will be advertised for sale. This is done by serving upon the debtor a schedule of intimation, requisition, and protest in presence of a Notary Public. Should a sale be determined on, it must be at public auction after advertisement once a week for at least six weeks. If not sold

at the first exposure, any subsequent attempt to sell must be advertised for three weeks.

The estates of borrowers in embarrassed circumstances are not always readily saleable. In that case the lender can practically enter into possession by bringing an action of "maills and duties," which entitles him to collect all rents due at the time of the execution of the summons, and falling due thereafter.

REGISTRATION.

Reference has been more than once made to Registration and its effects. Compulsory registration of transactions, affecting interests in land, has long given a security of title to lands in Scotland, of which her sons are not a little proud. Professor Bell quotes from one of his predecessors—"No circumstance distinguishes the jurisprudence of Scotland from the other European nations more than their early invention of public registers," and from another writer the following remarkable deliverance on the same subject—"Some inventions flourish more in one country than another, nature allowing no universal excellency, and God designing to gratify every country He hath created; so Scotland hath, above all other nations, by a serious and long experience, obviated all fraud by their public registers." Professor Bell appears to have had some doubts as to Scotland's right to the claim of "invention," and contents himself with suggesting that "we should not be over-sparing of acknowledgments to our ancestors for having had the good sense to recognise what was valuable in the institutions of any other country and to give us the benefit of a good and sound system, wherever they could fall in with it."

The first statutes, requiring registration of instruments within a given time of their execution (forty days) on pain of nullity, were passed in 1599 and 1600, when James VI. was king. Before that time notaries were bound to keep records of all the instruments they granted, but did so very irregularly. Records had also been kept of the sasines of vassals of the Crown. Within ten years these Acts were repealed, but were re-enacted in 1617, and the system then established, improved on from time to time, and still capable of improvement, has continued to the present time.

There was at the outset a general register in Edinburgh and local registers throughout Scotland, and it seems to have been optional in which register a deed should be recorded. In 1868 local registers were abolished except for burgage, or what was burgage, for since 1874 the proprietors of estates so held have been at liberty to grant feus of the same as if such estates in land had been held by feudal tenure.

At first deeds took priority by their dates, though those of later date might have been first registered. This serious blot on the system was removed as early as 1693, nearly 200 years ago, and at the same time registrars were required to keep minute-books in which the day and hour of presentment for registration and some other particulars were given, and full registration followed in like order. Separate sets of minute-books and registers for each county have been kept since 1868.

The registers now kept of transactions relating to land are :—

1. A General Register of Sasines kept in Edinburgh in divisions applicable to each county ;
2. A Register of Inhibitions and Adjudications also kept in Edinburgh ; and
3. Burgh Register of Sasines kept in each burgh for the land within it.

In one or other of these registers, every succession, entail, sale, trust, bond, adjudication or other matter affecting a heritable estate in Scotland, except leases to tenants, must be registered, and a careful search, usually going back forty years, should disclose all the deeds and dealings the conveyancer needs to examine to ascertain the exact position of any estate, large or small.

The registers are open to the public, but searches are usually made by officials or by gentlemen who devote themselves to the work, and purchasers of land, or lenders on it, are not bound to accept searches not made by the officials.

A printed abridgment of the division of the principal Register of Sasines applicable to each county is furnished to the Sheriff Clerk of that county and made patent to the public on payment of reasonable fees. The general Register of Sasines contains merely abstracts of deeds carefully prepared in the Register Office, but deeds competent to be registered in that register, if presented for registration in the "Books of Council and Session," for the purpose of preservation, or preservation and execution, are retained in the writ department of the Register Office, and an officially certified copy termed an "extract" is delivered to the ingiver. These official extracts are accepted in the Courts and otherwise as equivalent to the original deeds.

DESCRIPTION OF LANDS.

The description of lands in grants and conveyances is frequently a source of difficulty and sometimes a source of error, particularly when the property is not compact, or when portions have been sold out of it. From time to time attempts have been made to simplify description, and since 1874 it has been sufficient to give (1) the name of the County or Burgh and County in which the

lands are situated, and (2) a reference in set form to a particular description of the lands as contained in a prior conveyance or other deed recorded in the appropriate Register of Sasines.

The admirable Ordnance Maps we now have might be made use of for the delineation and simple identification of lands in Scotland, as it is proposed they shall be in Ireland, and as less perfect maps have long been in our Colonies.

ENGLAND.

We will now proceed to consider the Tenure of land in England, which is in the main feudal, or of feudal origin ; but in a struggle for centuries, with churchmen and lawyers seeking to evade stringent feudal requirements, and with a people anxious to recover privileges of which feudalism had deprived them, it has lost almost all that distinguished it in the time of the Conqueror, save the name.

Some writers hold that the tenures of the Saxons were more or less feudal. If so it was a very different feudalism from that introduced by the Normans, which abrogated the most important of the Saxon tenants' rights—the rights of alienation and of disposal by will, the right of children, or at least of sons, to share an inheritance, and rights in public property—all being rights enjoyed by the Romans, and not unlikely to have been learnt from them. Under Saxon rule a man was a landowner first, a soldier or militiaman after ; under the Normans, the reverse.

The feudalism introduced by the Normans was at the outset as nearly similar to that already described as having grown up in Scotland about the same date as the same institution could be when forced on a people by a conqueror who ruthlessly swept away existing land laws, made no distinction between public and what had been private property in his grants of land, and with his successors did his best to be the direct superior of every landowner in the kingdom ; while to avoid the risks of vassals attaining to power sufficient to rival their kings, as had happened in Gaul and Germany, exacting a harsher servitude than was known in any other country.

In the eighteenth year of Edward I. (1290), probably before feudalism had made much advance in Scotland, subinfeudation—as has been seen, a special feature of the system of that country—was practically prohibited in England, and the struggles above indicated commenced there which have made the tenure of land in the two countries very different, and English conveyancing what it is—to the laymen a mystery, and to the lawyer who is not a specialist a matter he does not care to meddle with.

English law abounds with legal fiction, which we are told the older writers regard as "a beautiful device for reconciling the strict letter of the Law with common sense and justice," while a more recent authority (Bentham) defines it as "a wilful falsehood, having for its object the stealing legislative powers by and for hands which could not, or durst not, openly claim it, and but for the delusion thus produced could not exercise it." There is truth in each view.

Among fictions created in connection with the acquisition and holding of land, some of which were in use within living memory, were *Recoveries*, said to have been invented by, or in the interest of, churchmen, to defeat a clause appended to the reissue of Magna Charta about 1225, prohibiting grants of land to religious houses, the would-be grantor being made a party to a collusive undefended action to "recover" from him what the would-be grantee had never possessed: *Fines and recoveries*, also a collusive action, by which entails could be broken, and which was recognised by the Courts down to the time of William IV.: *Uses* said to have originated in the practice of lands, vested in several proprietors, being secretly held to the use of another person, who thus escaped some of the onerous charges of feudalism: *Bargain and Sale* following on the passing of the "Statute of Uses" in the time of Henry VIII., "the bargain and sale raising the *use* and the statute transferring the legal estate to the bargainee": *Lease and release*, also depending on the Statute of Uses, the lease being a bargain and sale for a year, which made the purchaser legal tenant in possession under the statute, and left the vendor with only a reversion, which, being a proper subject of release at common law, was released to the purchaser by deed dated a day later than the lease.

The text-books explain that these last roundabout forms of transfer were made use of long after the original objections to transfer had ceased, because corporeal hereditaments lay in livery (were originally conveyed by a feoffment with livery of seisin), and could not be conveyed by grant. An Act, 8-9 Vic. c. 106, cut the Gordian knot by making such hereditaments lie in grant as well as livery.

English jurists hold that there is no such thing as absolute property in land in England, whether held under feudal-tenure, and consequently with a "superior," or not that a man can only have an estate or interest in it, the most extensive of which is known as "fee-simple," and that every piece of land has an owner in "fee-simple," though more restricted estates or interests in it, as for instance a lease for a term, or a life interest, may have been acquired by others.

Land in England is mainly held in Freehold, Copyhold, Gavelkind and Borough English.

FREEHOLD

was originally the estate which was considered suitable to the position of a freeman—an estate of inheritance or an estate for life; and it is doubtless on this account that a lease for life or lives still gives the lessee an estate of freehold, although a lease for a fixed term of years, which may be longer than most lives, gives only a chattel interest in the land.

Colloquially, freehold land is land in which the owner has the largest interest law and custom can give him (fee-simple), and in which no other has an interest however restricted—of which a man is, in fact, though not in theory, absolute owner.

COPYHOLD

originated in the holding by villeins, or non-freemen, of land belonging to a feudal lord. Such holdings are, or rather were, “at the will of the landlord according to the custom of the manor”; but gradually a tenant-right in them developed, and, first by custom, afterwards by statute, the landlord’s right was restricted to mines, minerals, and growing timber, with fines or “Heriots” on succession and alienation, varying with the custom of the manor. The fines are the counterparts of the Scottish casualties, “Heriots” the name under which the lord seizes a deceased tenant’s best beast or other chattel.

The ancient rights of the landlord are recognised, and payment of his fines and his steward’s fees, secured by the form followed on succession and alienation of the holding, it being surrendered to the lord of the manor who admits the new copyholder. The proceeding is entered on the court rolls, and a copy of the entry is delivered to the successor or purchaser. The copyholder holds by copy of the roll of the manorial court. Hence his designation.

A lord is not bound to admit a corporation, as it could not discharge the feudal services, if any, attaching to the holding, and, what is perhaps of more importance to the lord of the present day, he would lose the fines and heriots consequent on death. Copyholds can only be entailed when the custom of the manor allows of the entail of the legal estate, and cannot be leased for more than a year without the lord’s consent, unless a custom of the manor to the contrary exists.

In recent years (1852, 1858, 1887) Copyhold Acts have been passed which give the copyholder and his lord each power to require and compel enfranchisement, the consideration to be fixed by the Land Commissioners if the parties cannot agree between themselves. When the copyholder has been required to take enfranchisement, or when the compensation amounts to more than

a year's value, and the Commissioners approve, the compensation may take the form of a redeemable rent-charge equal to 4 per cent. per annum on its gross value.

When copyhold is enfranchised, the land is thenceforth held in soccage, not of the lord (which would be subinfeudation), but of the Crown, as before held by the lord.

Commonable rights attaching to a copyhold continue with it after enfranchisement, which, however, does not give the right to mines, minerals, or quarries.

Customary Freeholds are held according to the custom of the manor, but not at the will of the lord—some pass by deed, and others by deed and admittance.

GAVELKIND.

This tenure, properly "a soccage tenure, subject to the custom of gravelkind," is believed to be a remnant of the Saxon land law. Its principal custom is that, in cases of intestacy, the estate is divided among all the sons, if more than one, equally. There are, or were, two or three other "customs," including exemption from escheat on attainder for felony—a valuable privilege in the old days, but in ours common to all property. All land in Kent is presumed to be held in gavelkind till proved otherwise, and the tenure is known in some other parts of England.

BOROUGH ENGLISH.

is the name given to customs recognised in some ancient boroughs and in the districts attached to them (where the lands are held in soccage), and also in some of the Middlesex and Surrey copyright manors, the principle of which is, that an intestate's lands descend to his youngest son when he leaves more than one.

ESTATE FOR YEARS.

The most common form of this estate is the contract of lease with which we are more or less familiar, but we sometimes come across another form in connection with English loan transactions. In settlements, estates for years are given to enable trustees to raise money, the land being conveyed to them for a long term—it may be for hundreds of years—so that they may have an interest in it sufficient to enable them to give a valid charge for money raised to portion children and the like. Terms are likewise sometimes granted to mortgagees.

ENTAIL.

Though the law of England, like that of Scotland, is said to be unfavourable to the settlement of property in perpetuity, most large English family estates are entailed.

The Common Law rule is, that an estate in land cannot be given to an unborn person for life, followed by an estate to any child of such unborn person, and the Courts have framed a rule against perpetuities, enjoining that property, "real or personal, cannot be rendered inalienable beyond the period of a life or lives in being, and twenty-one years after," which rule applies to all settlements other than Common Law settlements of land.

Entails are allowed, and *may* endure for centuries, but the entailor can have no assurance that it will be so, as every tenant-in-tail in possession can acquire in fee-simple by executing a disentailing deed.

From what has been said above, it will be seen that the strictest family settlement possible is one which gives an estate tail to an unborn person, as that will carry the land to his issue *if he does not disentail*.

To preserve estates in families it is usual for the life tenant, when his eldest son comes of age, to arrange with him to break the entail and re-settle, the son giving up his right to what would be practically the fee-simple of the estate at his father's death in consideration of a secured allowance during his father's lifetime, and not unusually a sum down for the payment of his debts, and taking but a life interest in succession to his father's, with rights to charge for a widow and younger children, the estate tail being given to his unborn son, who, when born and attaining twenty-one, is treated in the same way.

This method of settlement, though in some respects objectionable, is preferable to a perpetual entail, such as that long used in Scotland, and, until comparatively recently, unbreakable, as each settlement can be made in keeping with the requirements of the time, or nearly so. It has appeared in Scotland since heirs of entail in possession were given power to disentail.

Under the Settled Land Act (1882) every tenant for life has power to sell or otherwise deal with settled land almost as extensive as if he were owner in fee, but the moneys arising from such sales or dealings have to be paid to the trustees of the settlement or into Court, and remain part of the trust. It is possible for a tenant for life exercising this power to dispose of *land* the reversion to which has already been disposed of by a remainder-man, the purchaser from whom would, of course, get the reversion to the cash value, but that might not be what he wanted.

ALIENATIONS.

Voluntary alienations of land are, by a statute of Elizabeth, made void as against purchasers for value. As recently as 1853,

an aunt who had given a nephew a reversionary interest in her lands quarrelled with him, and tried to defeat the settlement by a sale, but fortunately for the nephew he had *covenanted* to pay certain interest on mortgages, and had been at some expense removing to the house he had been promised—his aunt's house—and the Court held these to be valuable considerations, and consequently that it was not a voluntary settlement within the meaning of the Act.

MORTMAIN.

The Statutes of Mortmain, which prevent assurance and other corporations from dealing freely in English land and in ground rents which carry a reversion to land and the buildings thereon, are said to have originated in the very natural objection feudal lords had to tenants with "perpetual succession" whose entry deprived them of the rights of superiors, incidental to the tenancy of individuals. That may be so, but there was also the objection that ancient corporations, including seats of learning, were all, or nearly all, ecclesiastical, and their united holdings assumed proportions that threatened danger to the State. As already mentioned, Magna Charta contains a clause against the granting of land to religious houses, and full twenty Acts have been passed since. The latest of these, passed in 1888, repealed its predecessors, re-enacting their more important provisions.

Corporations, including such as those in which we are interested, cannot hold land except by leave of the Crown, now given in an Act of parliament, and difficult to get, even for the purchase of ground rents such as above described; while such corporations are required to sell, within a limited time, land acquired by foreclosure.

MORTGAGE.

The English mortgage differs materially from the "bond and assignation in security" of Scotland.

When an advance is made upon security of land, or of other real property, in England, the property is conveyed to the lender, the Mortgagee, in such absolute terms that at Common Law he would become the owner should the advance not be repaid at the time appointed in the proviso for redemption, and he actually did so up to the time of Littleton, the first great English writer on the law of property, in whose day Courts of Equity gave the mortgager a right to redeem, known as his "equity of redemption" which comes into force when the time appointed for repayment has passed. This right of redemption is held to be an estate in land descending to the mortgager's heirs. On the other hand,

the interest of the mortgagee is regarded as personal estate descending to his executors.

The mortgagee aims at acquiring this "equity of redemption" and becoming absolute owner when he takes action to foreclose, in which he requires the assistance of the Courts. He can, on default, enter into possession without such assistance, and sell or manage the property for all concerned, but not with so free a hand as if it were his own, as every act is open to question by subsequent mortgagees, and by the owner of the "equity of redemption." By this course, entering into possession, however, the mortgagee preserves the right to sue the mortgager for any deficiency that may appear on realisation, and, if a corporation, avoids the necessity of having to sell within a limited time, whatever the state of the market.

Equity has conferred two rights on the holders of first mortgages which make the position of the holder of a second mortgage very insecure. They are known as "Tacking" and "Consolidation." If a third mortgagee has no knowledge of the existence of a second mortgagee when he makes his advance, and can get an assignment to the first mortgage, he can "tack" his third mortgage to it, and so postpone the second mortgage. So much for "tacking." The doctrine of Consolidation now only affects mortgages created before 1882, unless stipulated for in the mortgage of later date. It acts thus: two separate estates, mortgaged by the same mortgager to the same mortgagee, are regarded as consolidated, so that the securities become one, and, if the mortgagee so desires, must be redeemed together. If, then, the holder of a mortgage over property of insufficient value can acquire a well secured first mortgage of other property of the same borrower, it is held that the securities would be consolidated to the prejudice of the holder of any mortgage postponed to the well secured first mortgage, which was acquired to strengthen the insufficient security. When realising consolidated mortgages the strongest should be sold first.

When the owner of land has registered his *title* under the Land Transfer Act, 1875 (to be presently referred to), and desires to mortgage it, he must follow the procedure and use the forms prescribed in that Act.

EQUITABLE MORTGAGE.

The Equitable Mortgage, a form of security much used in England and Ireland in connection with temporary advances by bankers and others, is created by the deposit of title-deeds, or of a material portion of the title-deeds of freehold property, or the deposit of a land certificate under the registration

system of the Land Transfer Act, in security of an advance or advances. In like manner, the deposit of a lease, or of the office copy of a lease registered under the Land Transfer Act, creates an equitable mortgage of leasehold property, while a deposit of copies of the Court rolls has the same effect in the case of copyholds. Equitable mortgages are usually, but not necessarily, accompanied by a memorandum of deposit. Such equitable mortgages, though of great convenience in connection with temporary advances, should never be taken for a permanency, as the rights of holders are more open to question than those of the holder of a formal mortgage, and are not so easily enforced.

Decisions on questions raised under the Registration Acts for Middlesex and York require that equitable mortgages by agreement in writing must be registered, while where there is no writing this need not be done.

REGISTRATION OF DEEDS.

There is now no universal system of registration in England.

In Saxon times "the limits of land were defined with scrupulous accuracy, and a register of deeds and decisions, including mortgages, was kept in the superior court," while grants were made in a manner to ensure publicity, and were enrolled in the Shire-book, something very like registration of title.

If evidence is desired in proof of this statement, we have it in Domesday Book, that marvellous record of matters relating to land at the time of the Norman Conquest still treasured in our Public Record Office. Is it possible that an accurate description of the land in two-thirds or so of the present England, of its holders, transfers, resources, produce, and of its deprived and present possessors, with accounts of the stock of the tenants and the number of cottars, slaves, and cattle employed upon it, could have been got together in a few months, had there been no such records as the Saxons are understood to have kept? Even with such records to found upon, it was a wonderful undertaking, and must have been of great service to the King at the time, and to generations of landowners after him: "so accurate has Domesday Book been considered, that its authority was never permitted to be called in question, and when it has been necessary to distinguish whether lands were held in ancient demesne, or in any other manner, recourse was always had to Domesday, and to it only, in order to determine the doubt. From this definitive authority, from which, as from the sentence pronounced at Domesday, or the day of judgment, there could be no appeal, the name of the book is said to have been derived."

Deeds of *Bargain and Sale* (referred to under legal fictions) were enrolled in the "close" rolls of the Court of Chancery; *Fines and Recoveries*, in the rolls of the Court of Common Pleas. As the close rolls were literally rolls, each containing from 40 to 50 skins of parchment, in which many other matters were enrolled, and as the indexes contained merely the names of the grantors or grantees without any description of the property conveyed, enrolment certainly does not meet a Scotchman's views of registration, nevertheless it to some extent anticipated his ancestor's "invention."¹

Enrolment was intended to give a measure of publicity to dealings with land, and took the place of the feudal livery of seisin, a public ceremony, of which, however, no written record was preserved; but even such measure of publicity soon came to be evaded, and that by aid of the very means taken to enforce it. The Statute of Uses was passed to put a stop to secret dealings for "use" by giving the beneficiary a legal estate; but astute lawyers took advantage of that provision, and, as has been already noticed, by the fiction of "lease and release," in connection with which enrolment was not necessary, the Statute that was intended to secure publicity was made to secure a privacy which we are told is dear to the English landowners, and, being so, is one reason why recent attempts to introduce a system of voluntary registration of title have signally failed.

PUBLIC RECORDS.

Though somewhat foreign to our subject, the history of the English Records is too interesting to be passed without notice. They include the Rolls of the Courts of Chancery, Queen's Bench, Common Pleas and Exchequer, and the archives of the Star Chamber and of other Courts long since suppressed; and contain, particularly in the Rolls of the Court of Chancery and Exchequer

¹ I am indebted to Mr. S. R. Scargill-Bird, F.S.A., who placed at my disposal some proof-sheets of a "guide to the public records" he has in the press, for the following with other interesting information. The "close" rolls are, and ever have been, as open to the public as the "patent" rolls. They took their name from the circumstance that they contained the enrolments, or copies, of such mandates, letters, and writs as were addressed in the King's name to individuals, and were folded or *closed up* and sealed on the outside with the Great Seal. "Under the general title of *Indentures*, a great variety of documents are enrolled on the close rolls from the reign of Henry VIII. to the present time. These include deeds of bargain and sale: deeds of lease and release: disentailing deeds . . . memorials of the names of trustees and of assurance companies . . . and other documents of a similar nature." The Close Rolls, at first made up at the Rolls Chapel Office, were from 1573 made up at the Enrolment Office, and transmitted year by year to the Rolls Chapel Office for safe custody. An Index, under the names of the first *grantors* mentioned was made and retained at the Enrolment Office, known as the *Index to Indentures*, 47 vols. MS., 1573 to 1883. As the rolls arrived at the Rolls Chapel they were indexed under the name of the *grantees* in the *Index to the Close Rolls*, 72 vols. MS. Edward V. to William IV. Both Indexes are now in the Public Record Office.

information of a varied and most interesting character. "It would be difficult to state what is and what is not entered on their membranes." It is gratifying to know that, notwithstanding the risks of loss and destruction many of the Rolls have been exposed to when kept in the private houses of the Masters of the Rolls, corners of palaces, the Chapter House, Westminster, the Tower, the Rolls Chapel (originally intended for the accommodation of converted Jews and infidels), rooms in empty houses, cellars, and even stables, few of real importance are missing, and now, as recently arranged in the Record Office, they, with the State Papers, under the same roof, form the longest and most complete history of a country known in modern times. The earliest rolls extant are of the time of Henry I., about (1131), but in Domesday Book and some other writings the record goes back to the Conquest.

Wm. Prynne, keeper of the Chancery Records at the Tower in the time of Charles II., found many of them "buried together in one confused chaos, dust, and filth, in the dark corners of Cæsar's Chapel in the White Tower"; and after an attempt to have them removed and cleaned, first by soldiers and women, who "soon grew weary of the noisome work," followed by an appeal to his clerks, whom he found "fearful of fouling their fingers, spoiling their cloathes, and endangering their eyesight and healths," he abandoned the matter in despair. What must have been the task of the gentlemen who nearly 200 years afterwards arranged these and similar documents "for public inspection," making "full and clear indices (that) rendered research a matter of little difficulty"!

D'Israeli tells us,¹ that "among other extravagant motions made in the Parliament was one to destroy all the records kept in the Tower, and to settle the nation on a new foundation. . . . Sir Matthew Hale showed the weakness of the proposal and, while he drew on his side all sober persons, stopped even the mouths of the frantic people themselves."

Probably no one ever valued these records more highly than Sir Matthew, who, as a student of law, "examined and carefully studied them from the foundation of the English monarchy down to his own time"—the time of the Commonwealth—and whose *Commonplace Book*, resulting from this study and research, "may, according to Lord Campbell, be considered a *corpus juris* embracing and methodising all that an English lawyer on any emergency could desire to know."

Many valuable public records were lost to Scotland about this time. The following history of one of them affords a striking example of the risks to which such documents are exposed.

During the long interval in which Episcopacy was in the

¹ *Curiosities of Literature*, vol. i. pp. 76, 77.

ascendant, the records of the Church of Scotland, from the time of the Reformation until 1590, were missing, and were generally supposed to have been destroyed by the enemies of the Church. When the General Assembly resumed its meetings in 1638, the newly-appointed Clerk—to the agreeable surprise of all present—laid the missing volumes on the table, vouchsafing no further explanation than that they had come into his possession “by the good providence of God.”

Shortly afterwards, when the civil war broke out, the fathers, possibly thinking it would be presumption to again trust entirely to Providence, had the records duplicated, depositing one copy in the fortress then on the Bass Rock, and the other in Dumbarton Castle.

The Bass Rock copy was, with other valuable Scotch records, removed by Cromwell to London, and with them was lost by the shipwreck of the vessel in which, on the Restoration, they were being returned to Scotland. The Dumbarton copy was treated by the custodian, or his representative, as his private property, and passed into the hands of a Non-juring Scotch Episcopal clergyman, with antiquarian tastes, who presented it to the President and Fellows of Sion College, apparently under conditions that made it difficult of access to the clergy of the Church of Scotland. At the instance of the late Principal Lee, the volumes were, in the winter of 1834, produced before a Committee of the House of Commons, and retained for reference. Before the Committee had done with them, the House and its contents were destroyed by fire.

But Providence is kind : much of the missing history has been recovered from contemporaneous German writings, and it is not unlikely that more may follow from the same or a similar source.

Our neighbours of France lost their Public Rolls with their Rolls Office in 1618, by a fire supposed to have been caused by an incendiary intent on the destruction of evidence of complicity in a regicide.

REGISTERS.

A register was established in Middlesex in the reign of Queen Anne (7, c. 20), in which memorials of all deeds, conveyances, and wills affecting real property *may* be registered, and if such memorial be not registered, the deed, etc., shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration who registers. Property in the city of London, chambers in Serjeants' Inn and the Inns of Court and Chancery, are excluded from the operations of this Act, which does not extend to copyholds or to leases not exceeding twenty-one years where actual possession and occupation go along with the lease.

A register for Yorkshire was established still earlier in Queen Anne's reign (2-3, c. 4), and was dealt with by an Act of George II. (8, c. 6), which Acts were repealed as recently as 1884, another Act taking their place as from 1st January 1885.

Registration is permissive, but every assurance has priority according to date of registration and every will according to its date if registered within six months, according to the date of registration if registered later. As in the case of the Middlesex Register, copyholds and short leases do not come under the Act. Provision is made in it for official searches, but, as in Scotland, any one is at liberty to make his own searches.

Registers of Judgments, Crown Debts, Executions, Annuities, etc. affecting land, are kept at the Central Office of the Supreme Court, and Register of Writs, Orders, Deeds of Arrangement and Land-charges are kept at the Office of the Land Registry. If it be thought desirable to search these registers, it can be done officially. We are told, "The certificate obtained on an official search is conclusive, and therefore a complete protection to the purchaser." It is not clear where the loss falls if the official searcher makes a mistake. There is no such Assurance Fund as we shall see exists in the Colonies, and is proposed for Ireland.

An equitable mortgage, or mortgage created by the deposit of title-deeds, need not be registered *if* such deposit is unaccompanied by any writing. In such circumstances it would be effectual as against any mortgage subsequently registered.

REGISTRATION OF TITLE.

An Act passed at the instance of Lord Westbury (1862) was intended to encourage registration of title when lands were next transmitted, but it did not provide for an indefeasible title being given to present holders. It required that the title shown by the applicant for registration should be such "as a Court of Equity would hold to be a valid marketable title," that partial interests should be registered, and that the boundaries of the estate should be settled irrevocably by a judicial decision, the notices in connection with which were regarded as so many invitations to neighbours to raise difficulties; and in common with a later Act introduced by Lord Cairns, it left it in the option of such owners as got on the register to remain there or not as they (or their solicitor for the time being, or the solicitor for some one from whom they sought an advance) might at any time determine.

Lord Cairns' Act, the Land Transfer Act, 1875, leaves first registration of title altogether voluntary, but recognises three forms of title, *indefeasible*, *qualified*—that is to say, a title certified to be

good from a particular date but not beyond it, or to be good with some exception mentioned on the register—and *possessory*, or “not certified,” but “the simple title of proprietors in possession” alleging ownership, each dating from the time of registration. These limited and possessory titles are undoubtedly of great value, the lapse of time making them perfect, and that, in the case of possessory, without the expense attending the investigation necessary before an immediately indefeasible or qualified title can be given. The effect of registration without investigation of title is thus explained by the Commissioners appointed to inquire into the operation of Lord Westbury’s Act, in their report of 1870 :—

“Suppose, for instance, a man purchases land (in fee-simple) in December 1868, we see no reason why he should not register his purchase in January 1869. The effect would be this : he would appear as owner of the fee. If he wanted to sell in February 1869, his registration would avail him nothing in his dealings with the purchaser. It would only be of use as enabling the purchaser, when satisfied, to become registered owner without further official investigation ; but the purchaser would of course require the same proof of title as though no registration had taken place. But suppose five years elapse before the owner wants to sell, the purchaser would still probably require proof of prior title ; but at least for the last five years the owner may point to the register, and, if clear of notices, escape showing title for that time. If thirty years elapse few purchasers would, according to the evidence before us, require any other title. If sixty (now forty) years elapse none could require any other. This lapse of time will confer a title increasing in validity till it becomes marketable, in the technical sense, and practically indefeasible. It is as if a filter were placed athwart a muddy stream ; the water above remains muddy, but below it is clear, and when you get so far down the stream as never to have occasion to ascend above the filter, it is the same thing as if the stream was clear from its source.”

Lord Halsbury has recently been trying to make registration of title more popular, or at least more general, and in the summer of 1889 succeeded in getting through the House of Lords, but no further, a Land Transfer Bill, intended to make registration compulsory on the first occasion on which land changes hands (after the passing of the Act), and to create a fund for the insurance of title by a premium not exceeding one farthing in the pound on the capital value of the land transferred.

Among the reasons assigned for the unpopularity in England of registration of title is the dread that the official investigator, who undoubtedly has much in his power, might take unreasonable objections to some link and decline to grant a certificate of indefeasible title. This risk is small if the appointments to the office of examiner are carefully made, and the gentlemen appointed are given to understand that they are not required to be more particular than if they were investigating title on behalf of a present purchaser or lender. At the same time power should be reserved

to remove such officials should they be found obstructive, as was once the case in New South Wales. A much more likely reason why so little is known about the Act is, that it is the interest of the legal profession that things should remain as they are. They fail to see that a cheapening of the transfer of land would be accompanied by a compensating increase in the volume of it. A leading London solicitor told the Commission of 1868-70:—

“A curious effect of registration as affecting the owner was mentioned to me. The owner, having registered his title, required a loan; his solicitor found it exceedingly difficult to get a loan, because there was no title to investigate, and therefore little or no cost to the solicitor of the person making the loan.”

IRELAND.

We now approach another difficult subject—the Land Law of Ireland—which resembles nothing so much as the coat of the typical Irish beggar, a cast-off military vestment, much patched. It is the English feudal law, forced on the Irish in the time of Elizabeth and James I., when in England it had lost much of its original significance, patched with amendments principally having reference to the relative position of landlord and tenant, which was never the same as in other countries having a feudal tenure, where the tenant originally fought with and for his lord, not against him. It differs from English general practice in having had a system of registration from the time of Queen Anne (1708), the Queen who introduced registration into Middlesex and Yorkshire.

Until the time of Queen Elizabeth the tenure of land in Ireland was communal, but while the chiefs had possessions other members of the tribes were at best “free tenants” or “base tenants” with a tenure for life, while many were yearly tenants, free labourers, or slaves. As a result of Elizabeth’s wars, the lands in Connaught were “alienated from the clan to the chief, and the free tenants became virtually proprietors of their farms,” “freeholders”; while a great part of Munster was “planted” or parcelled out and peopled on a plan founded wholly on English customs. In planting Ulster James and Charles endeavoured to secure a fair proportion of freeholders of sixty-acre lots, but with indifferent success, if we may judge by the revelations in a pamphlet entitled “London and Londonderry” recently published.

From whatever cause, the number of owners of agricultural land in Ireland is small as compared with the number in Great Britain. In 1870 Scotland had twice and England fourteen times as many. Yet the number of freeholders has at times been very large; for as in England the holder of a lease for a life or lives was a freeholder with political privileges, and consequently that form of lease was popular with landlords as long as they could command their

tenants' votes, and the tenants could pay rents fixed in a time of war and protection. With peace and a vastly increased agricultural population came bad times leading to wholesale evictions and the almost total extinction of the smaller classes of freeholds.

There can be no doubt that for long the laws were framed in the interest of the landlord; that of distress was increased in severity, and eviction made easier; but of late it has been the other way, and nearly all legislation has been in the interest of tenants.

Since the time of the war above alluded to, when middlemen who held and sub-leased the lands of Ireland were all ruined, the majority of Irishmen who farm the land hold from year to year, as in former times, at the will of their landlord, who himself may hold under the original Crown grant, or under a lease from the holder of the grant, and who, if he pays a fee-farm rent, or perpetual rent, which admits of his letting the land at a profit, is practically in the position of the holder of a sub-feu. He acts exceptionally, however, be he freeholder or leaseholder, if he does more for the tenant than let him the land; and as the tenant in greater part of the country lives (or rather till recently lived) in fear of his landlord, or more probably of his landlord's creditors, making him pay rent on his own improvements, he did as little as he could help for the land, taking, however, all he could out of it.

In one province, Ulster, where leases are uncommon, most land being held from year to year, things were different, a tenant-right came to be recognised, and though the landlord could raise his rent, he was expected to do so with discretion and to act liberally, recognising the right, which had a normal value peculiar to each district. Transfers of farms to which this right attached were like English copyhold merely vouched by entries in the landlord's books, if vouched at all, for while it was well the landlord or his agent should be a consenting party to the arrangement, and get any arrears due him out of the purchase-money, lest the purchaser should have to pay them afterwards, sales required no more formality than the sale of a horse or cow.

MODERN LAND TENURE LEGISLATION.

In 1848, the year of the potato famine, tenant right was valueless; it was the interest first to go, going in support of the landlord's rent, then and until long after regarded as a sort of head rent, with something behind it that would secure its steady payment in full.

Encumbered Estates Acts.

The potato famine brought ruin on so many landlords as well as tenants in Ireland that land became, as it now is, a drug in the market. It was thought, and with truth, that men of means dis-

posed to purchase as an investment were deterred by the great difficulty, if not impossibility, and the expense, of making up a satisfactory title to an encumbered estate, and an Act was passed establishing a court which was to clear the Augean stable in three years, granting *titles* under which the land was to be held free from all encumbrances save rights and leases disclosed to the Court. This was in 1849, between which date and 1858 it was four times renewed, and was then superseded by the Landed Estates Court, a Court with even more extensive powers, which still exists, and through which practically all sales of property in Ireland are passed to secure the purchaser an indisputable title, the Court having power to deal with land whether encumbered or not. When land is encumbered either the owner or the encumbrancer can apply for a sale; and should a sale be made out of Court, either vendor or vendee may apply for an investigation of title and for a statutable conveyance with indefeasible title. Further, any owner of an estate in fee-simple can have his title investigated by the Court, and if such title shall appear satisfactory to the Court the judge can give a written declaration to that effect sealed with the seal of the Court. This declaration he can have registered and filed in the Office for the Registry of Deeds in Ireland, and his title is conclusive and indefeasible as from the date of signing by the judge. Exchanges of land may be made through the Court and intermixed land re-divided, the costs being a duty on every estate sold or otherwise dealt with, the maximum rates being ten shillings per cent. gross value of estate less than £10,000, and of £1 if £10,000 or more.

These may be considered landlord's or encumbrancer's Acts which in no way prejudiced the tenant. We now come to what has been done for tenants in the way of making them owners, or recognising the interests they claim in land.

The Renewable Leasehold Conversion Act, 1849.

Not to go back further than the time of the famine: In 1849, an Act was passed "converting the renewable household tenure of lands into a tenure in fee," the reversioners being required to execute grants in fee-farm to the holders of perpetual leases or under-leases when desired, on payment of a fee-farm rent, equivalent to the rent payable under the lease or sub-lease, plus the estimated value of the fine or fee payable on renewal, all future leases in perpetuity to operate as grants in fee-farm. This important measure was probably of most value to a class somewhat above the average tenant farmer.

The Irish Church Act, 1869.

In 1869, when the Irish Church was disestablished, the Commissioners were empowered to sell the lands and to allow three-fourths of the price to remain as a debt, repayable with interest at 4 per cent. by instalments over thirty-two years. Tenants and others who took advantage of this provision had the interest they contracted to pay reduced to $3\frac{1}{8}$ per cent. by Acts subsequently passed.

The Landlord and Tenant Act, 1870

legalised "Ulster Tenant Right," and practically extended it to the whole kingdom by giving the tenant a right to compensation for disturbance and improvements, and providing for advances to tenants purchasing their holdings of two-thirds of purchase-money, repayable by annuity for thirty-five years at $3\frac{1}{2}$ per cent.

Next we come to a series of Statutes which quite upset preconceived ideas of the rights of a landlord, destroying almost all trace of feudalism in the land law, and which will end no one knows how—let us trust, in the regeneration of Ireland.

The Land Law (Ireland) Act, 1881,

conferred on the Irish tenant the right to sell his tenancy for the best price that could be got—the landlord to have a right of pre-emption, and if necessary the Court to fix price.

The tenant, however, was prohibited selling "improvements" that could be shown to have been made by his landlord, or to subdivide his holding without the landlord's consent. Under this Act when a landlord raises rent, and the tenant declines to pay it and sells his tenancy, he has a claim against the landlord for what the Court may consider the selling value of his tenancy, to have been depreciated below what would have been the selling value had the rent been a fair rent, with such further sum as the Court may award in respect of the tenant's costs and expenses in effecting the sale.

But by far the most important provision was that (in clause 8), enabling tenants and also landlords to apply to the Court to fix fair rents, on the understanding that when the rent was so fixed the tenant *could not be disturbed* for fifteen years, except by the Court, and only then under special circumstance, and that no alteration of a judicial rent should take place at less interval than fifteen years.

The Act was not to apply to existing leases till they terminate, but the then tenant might claim to continue at a fair rent fixed by

the Court, unless the landlord could show that he had granted a reversionary lease before the passing of the Act, or required the place for a residence, or for a home farm, or as a provision for some member of his family.

The Land Commissioners appointed to carry out the provisions of this Act were authorised to advance to purchasing tenants three-fourth of the price of a holding, or half of a fine paid with a fee-farm rent, provided the fee-farm rent did not exceed 75 per cent. of the fair rent, and to indemnify them (at the risk of the Consolidated Fund) against loss through any flaw in their landlord's title.

Advances were to be repaid by annuities of £5 per cent., extending over thirty-five years, which included interest at three and a half per cent., and were limited to £3000.

Purchase of Land (Ireland) Act, 1885.

The poor class of tenants which the Act of 1881 was intended to benefit could not pay the proportion of purchase-money required of them, for which among other reasons an Act was passed in 1885, which authorised an advance to the purchasing tenant of the whole purchase-money, if secured by a deposit of not less than one-fifth of the advance; the landlord to make this deposit if no one else would; the whole deposit to be retained until the purchaser's repayment of capital equals it in amount, which, as the advances are to be repaid by annuity for forty-nine years of £4 per £100 advanced—interest being taken at three and an eighth per cent.,—would take about twenty-one years.

This Act empowered the Land Commission to give a "vesting order" which would vest the holding in the purchaser as effectually as a conveyance, and required the selling landlord to furnish an abstract of his title and verify the same—no charge to be made in respect of investigation by Land Commission.

Land Law (Ireland) Act, 1887.

Great complaints continued to be made as to the position of leaseholders, and in 1887 an Act was passed by which leaseholders under leases existing at the passing of the Land Law Act, 1881 (with few exceptions), were put on the same footing as year to year tenants were by that Act; and should a lessee exercise his rights and become a present tenant, even the Court could not disturb him (could not authorise resumption by landlord) for fifteen years.

The reductions of rent made by the Commission were so great that many middlemen found their rents receivable reduced below

their rent payable. Such were allowed to surrender their estates in the unprofitable holdings, without prejudice, however, to liability incurred before the date of surrender.

The limit of advance to any one purchaser of land was increased to £5000, and it was enacted that every advance should be secured by a “vesting order” which is probably less expensive than the deed first required.

The interest payable on advances under the Irish Church Act had been reduced to three and one-eighth per cent. by the Act of 1885. The interest payable on advances under the Landlord and Tenant Acts of 1870 and 1872 was now reduced in like manner.

The “equitable provisions” of this Act (1887) would hardly be so characterised by landlords, who understood that their reduced rents were secured from further interference for fifteen years, as they consisted of an order to the Land Commissioners to make temporary adjustments of judicial rents by determining for each county, poor-law union, or other area as they see fit, by how much the prices of 1887-8-9 differ from the prices of the years in which the rents were *fixed*—the judicial rents payable in respect of each of the three years to be varied to the extent determined by the Land Court.

The Purchase of Land (Ireland) Amendment Act, 1888.

In the following year (1888) an Act was passed placing other £5,000,000 at the disposal of the Land Commission, restricting the sum to be advanced to any one purchaser to £3000 (except when in the opinion of the Commission it is expedient to advance up to £5000 to carry out sales on the estate of one landlord), and determining the relation between landlord and tenant on the day on which the Commissioners consent to a sale; the vendor to be thereafter entitled to interest on the price to the date of completion (at what rate not stated) in lieu of rent.

The Purchase of Land (Ireland) Amendment Act, 1889.

In 1889 the Purchase of Land Act was further amended to allow of tenants purchasing their holdings acquiring additional land on the same terms, when their landlords are willing to sell and the Commission approve.

Bills now before Parliament.

This year (1890) a bill has been introduced to still further facilitate sales to the tenants, and to relieve congested districts, the necessary funds to be found by the issue of a guaranteed land stock bearing interest at two and three-quarters per cent. which

landlords will have to accept at par, allowing the Land Department to retain one-fifth, as it presently does of the cash price. We need not discuss this bill, many of the provisions in which are likely to be amended before it becomes law, but two other bills introduced in connection with it, and less likely to attract public attention, are well deserving of a passing notice.

The Government, foreseeing the confusion likely to arise from any great extension of the number of small holdings of land registered in Ireland under existing regulations, have introduced a bill, entitled the "Local Registration of Title (Ireland) Bill," which, in the words of an explanatory memorandum prefixed to it, is designed "(1) to provide a simple, inexpensive, and easily accessible land registry for the occupiers of land in Ireland, and in particular for those who on purchasing their holdings are compulsorily brought within the provisions of the Registry of Deeds Acts; (2) to substitute for the record of title established in Ireland in 1865 an improved system of registration, which may be made use of by any owner of land in Ireland who prefers the system of registration of title to that of registration of assurances."

For those who prefer registration of deeds, and in order "to place the entire system of land registry in Ireland on a satisfactory basis," they have also introduced a "Registration of Assurances (Ireland) Bill,"—(1) to consolidate previous statutes, (2) to simplify and cheapen registration; (3) to afford "complete safety" to purchasers by bringing within the range of the registry dealings hitherto beyond it; (4) to consolidate the registers of deeds and judgments; and (5) to provide that a registrar's certificate shall be conclusive evidence of registration.

The Local Registration of Titles Bill

proposes a central register in Dublin, in which the existing record of title, established in 1865, is to be merged, and local registries in each county, in which last all tenant purchasers owing money to the State *must* register, provision being made to register past purchases free of charge. Such statutory tenancies as are registered must also appear on these local registers, but in their case registration is optional.

Tenant purchasers will in all cases start with a clear root of title, and the devolution of their estates is assimilated to that of chattel interests. If they die intestate the land will not follow the laws of primogeniture, but will "be divisible among the same persons as if it were personal estate."

The landowner who, though not required to register titles, elects to do so, may register in either the county or the Dublin register—a choice abolished in Scotland after experience gained—and

registration will not involve any alteration of tenure or devolution of his estate.

Ordnance maps are to be kept in the registry offices, and "provision may be made by general rules for marking or defining on such maps in the prescribed manner the lands the title to which has been registered."

As "some system of assurance seems to be a proper adjunct to a final and conclusive register of title," the bill proposes to establish one "for the purpose of indemnifying persons in certain cases who may have suffered loss by reason of erroneous entries." The amount of premium to be charged is not indicated.

The Registration of Assurances (Ireland) Bill

proposes the repeal of the whole of eleven existing statutes with parts of nine others. It requires the registration of vestings under Acts of Parliament, equitable mortgages by deposit of deeds and vendors' liens for purchase-money; gives protection against claims made under unregistered wills, and adopts the Ordnance maps as the basis of registration; improvements on the registration system recommended by a Real Property Commission as far back as 1832, and actually embodied in "an Act to amend the Laws for the Registration of Assurances of Land in Ireland," passed in 1850, to commence on the issue of a Treasury minute, which was never issued, apparently because a system of indices provided for was deemed unworkable.

THE AUSTRALASIAN COLONIES.

Land in these colonies was originally held by Crown grant, and transferred in much the same manner as in England; and many English laws, bearing on the sale and transfer of real property, were adopted by the colonies as they obtained liberty to legislate for themselves. From an early date they all adopted systems of registration, probably at the instance of Scotch settlers, but apparently more on the lines of the Middlesex and York registers than on those of Scotland.

Titles are, in some instances, still deduced from the original grant and deeds of conveyance following on it, but the practice is gradually disappearing in favour of registration under the new or "Torrens system," which gives a *title*, and renders unnecessary the searching of registers and examination of deeds, from the original grant downwards, usually made in connection with dealings in land still held under the "old system."

The new system was adapted from the Merchant Shipping Act

by Mr. (afterwards Sir R. R.) Torrens,¹ and by him introduced into South Australia in the year 1854. It was adopted by New South Wales, Victoria, Queensland, and Tasmania in 1862, and by New Zealand in 1870. It has not yet been adopted by Western Australia.

As the framers of the New Zealand Acts had the advantage of seeing the system in operation for some time before they adopted it, and as their present Act was passed so recently as 1885, their regulations, as explained in a Handbook on the Act published in 1886, from which most of the following observations are extracted or derived, probably give as good an idea of the provisions of the Australasian Acts as can readily be obtained.

“Land bought from the Crown since the adoption of the Land Transfer Act is under the Act ipso facto. ‘Certificates of Title’ are now issued in lieu of Crown grants, and all dealing with such land must be conducted on the system of registration of title.

“Other land may be brought under the Act on the application of the persons interested. The application, with the deeds, is left at the District Land Registry Office, and the title is there investigated by officers appointed for the purpose. If it be found that the title, although, perhaps, not technically perfect, is yet secure against ejectment and against the claims of any other person, the land will be brought under the Act, and the proprietor or his nominee will receive a certificate of title.

“Certificates of Title are issued to every person entitled to any estate of freehold in possession in land under the Act. Every certificate is in duplicate. One copy is given to the proprietor, the other is retained in the Land Registry Office. The certificates in the office constitute the Register Book, which is the pivot on which the whole mechanism turns. Through however many hands a property may pass, the last owner has but this one document to show his title, and such document vests in him an absolutely indefeasible title to the land it describes.

“If a proprietor desires to Mortgage or Lease his land, or to charge it with the payment of a sum of money, he executes in duplicate memoranda of mortgage, lease, or encumbrance, in the form provided in the Act. These are presented at the Register Office, with the certificate of title; a memorial of the transaction is entered by the Registrar on the certificate of title and on the duplicate certificate forming the Register Book. The entry of this memorial constitutes registration of the instrument, and a note, under the hand and seal of the District Land Registrar, of the fact of such registration

¹ Mr. Consul Griffin, in his report to the Government of the United States, mentions that Sir R. R. Torrens, K.C.M.G., “was born in Cork in 1814, and was educated at Trinity College, Dublin. He emigrated to Adelaide, South Australia, and at the age of twenty-seven was made collector of customs there, with a seat in the Legislative Council. A few years later he became Colonial Treasurer. At the first election under the constitution giving the colony representative government, he was chosen a member of Parliament, and at once applied his energies to frame an improved system for the transfer of land.” Mr. Griffin gives an account of the difficulties and opposition Sir Robert, then Mr. Torrens, encountered, but by his “force and eloquence in Parliament” eventually overcame. His object was “not only to simplify the transfer of land, but to establish an indefeasible title.” Sir Robert returned to England in 1863, and a few years later was elected member of Parliament for the borough of Cambridge. He died at Falmouth in 1884.

is made on both duplicates of the instrument, one of which is filed in the office and the other is handed to the mortgagee or lessee.

"*A Mortgage under the Act* has effect as security, but does not operate as a transfer of the estate or interest charged.

"*When a Mortgage is paid off* a simple receipt is endorsed on the duplicate mortgage held by the mortgagee. This is brought to the Registry Office, and the fact that the mortgage has been paid off is noted on the certificate of title. As a mortgage under the Act does not involve a transfer of the 'legal estate,' there is no necessity for a deed of reconveyance.

"*Priority.*—Instruments are entitled to priority according to the date of registration, and not according to the date of the instrument itself.

"*Loss of Certificate of Title.*—Whenever a grant or certificate of title is lost or destroyed a fresh certificate of title can be obtained with all particulars affecting the title recorded as upon the original; and each fresh certificate will be available for all purposes for which the lost or destroyed grant or certificate was available; but before issuing such fresh certificate the district land registrar will require the fact of the loss or destruction with attendant circumstances to be authenticated to him by a declaration subscribed before a J.P., and such other evidence as the proprietor may be able to produce. The district land registrar will also give notice of his intention to issue such fresh certificate by advertisement in the *Gazette* and in the local papers.

"*Loss of Mortgage.*—Upon the loss of a lease, mortgage, or other registered instrument the duplicate of the same retained in the Land Registry Office will be available for all purposes of dealing by the parties interested, and a certified copy available as evidence in all courts of law or equity can be had on application at the cost of a few shillings.

"*Insurance of Title.*—The Government assumes the responsibility for errors of Registrars granting certificates of title to lands brought under the Act, and to form a fund out of which to meet claims charge a fee of $\frac{1}{2}$ d. in the pound on the value of all land when first brought under the Act, and also upon the registration of the title to an estate of freehold in possession in land derived through the will or intestacy of a previous proprietor or under any settlement."

In New Zealand, Victoria, New South Wales, and Queensland the Acts provide that any deficiency in the Assurance Fund is to be made good "out of the Consolidated Revenue Fund," the amount so advanced to be repaid as assurance funds accrue.

The funds formed for the insurance of title have all up to this been more than sufficient to meet any claims against them. They are most valuable, giving to the purchaser a security of title not to be obtained, with justice, in any other way. If some one has sold property to which he had acquired title, but which was afterwards found to belong to another, the purchaser in *bona fides* would be left in possession *with his improvements*, and the newly discovered rightful owner would be compensated by a money payment, if need be, out of the insurance fund.

In England or Scotland¹ he would claim and get possession with the unfortunate purchaser's improvements thrown in. In Ireland,

¹ In Scotland, however, the presumption would be in favour of compensating the purchaser for improvements during his *bona fide* occupation of the property.

if, as is highly probable, his estate had been sold by the Landed Estate Court, he would have no remedy outside the purse of the man who sold it.

Examination of Old Titles.—The manner in which titles to land granted prior to the introduction of the Torrens Act into any colony are determined for the purpose of being brought under the Act, is very similar to that in which titles to incumbered and other estates passing through the Irish Land Court are dealt with.

Such titles are examined by official examiners of titles, who, if they are satisfied (1) that the lands are correctly described, (2) that the applicant is in undisputed possession, (3) that he appears in equity and justice entitled thereto, and (4) that no one else is in a position to eject him—allow registration. If they find the title very unsatisfactory, they at once reject it, but if merely “blistered,” they would probably sanction steps being taken by advertisement, or more direct notice, to call the attention of any one interested to the application for registration, and, were no caveat lodged within a prescribed term, proceed to register. Once an estate is brought under the Act, it must remain there.

Renewal of Certificates of Title.—These are renewed on payment a small fee, and in this way can be freed from the record of released mortgages and other “defunct memorials.” Indeed the registrar can require them to be renewed when inconveniently encumbered with such records.

Equitable Mortgages are created by a deposit of the certificate of title, usually along with a contract of charge, which is not registered, until the holder, in consequence of a caveat he has lodged with the registrar, gets notice of another charge about to be registered, when he claims and obtains priority for his contract. As no charge can be registered without producing the certificate of title to the registrar, or satisfying him that it has been destroyed or lost, the security seems a fairly good one, even without the contract of charge and caveat.

Such are the leading features of the Torrens system, which you will find fully explained, and contrasted with other systems, in an essay by Sir Robert Torrens, published by Cassell and Co. for the Cobden Club.

In it Sir Robert answers objections to the system, shows how it can be worked with the settlements and entails of which land is so much the subject in Great Britain, and points out how the attempts of Lords Westbury and Cairns to introduce optional registration of title into England have signally failed. In an appendix he gives a model Register Book, with the forms for transfers, mortgages, etc., used in connection with it.

THE DOMINION OF CANADA.

Of our principal colonial possession in North America, the Dominion of Canada, the provinces of Quebec and Ontario, then one, were originally colonised by the French, who had taken with them the feudal system of land tenure that prevailed in their mother-country. When (in 1763) the French colony was ceded to Britain, the inhabitants were guaranteed the free exercise of the Roman Catholic religion, and equal civil and commercial privileges with British subjects, which was more than their co-religionists in Britain enjoyed then, or for years afterwards. Not long after (1774), by an Act known as the "Quebec Act," their old French laws were declared binding in relation to all property and civil rights. "The seigniories with their feudal rights and immunities were also perpetuated, and thus under the fostering protection of England the colonial life of the France of Louis xv. and the regency survived in the 'New France' of Canada, unaffected by the revolution of 1792."

The rights of feudal superiority survived in the province of Quebec, with some slight modifications, until 1854, when they were compensated and discharged, and the old, like the new, lands came to be held in free or common soccage. In the province of Ontario, which never had a large French population, but was principally peopled by royalist refugees from the revolted "States," and soon became thoroughly English, the change was earlier made.

In these provinces the Church could at one time levy tithes or taxes on all lands, and in the greater part of Quebec it can still make such levies on the lands of its adherents—a circumstance to be borne in mind by any one disposed to make advances on real estate in that province.

QUEBEC.¹

In this province, once known as Lower Canada, the greater portion of the population is French-speaking, the descendants of

¹ Little is known in this country of the land laws of Quebec. For such information as I possess I am mainly indebted to the Agent-General for Canada and the Librarian at the Colonial Office, who kindly placed the statutes and codes in their possession at my service. When I wrote what appears in the text I had before me the revised statutes of Lower Canada, 1860. I now learn that the laws were at that very time being codified, a task which was completed in 1865-6, and that such sections of the statutes to which I refer as have not been repealed are now spread over a civil code, a code of civil procedure, a municipal code, and the revised statutes of Quebec 1888. I have reason to believe that while, in the course of codification and since, many changes of minor importance were made on the law regulating dealings with immovable property, the procedure and requirements indicated in the text remain practically unaltered.

the original colonists. They are Roman Catholics, and under the influence of their priests have few but business relations with their fellow-subjects ; nevertheless, being the majority, they exercise considerable influence on public affairs. English land laws have never governed procedure in this province, and what alterations have been made on the original French laws have been the work of the colonists themselves. The principal of these are contained in three Acts, and amendments thereon, viz.:—

I. An Act of 1831, respecting Confirmation of Titles.

II. An Act of 1841 respecting the Registration of Titles to, or charges upon, real estates, the Law of Hypothecs, etc.

III. An Act of 1854 abolishing Feudal rights and duties.

It would appear that numerous rights of hypothec were recognised by the original French laws, and that the fear of disturbances and evictions from secret encumbrances, which might be unknown to the purchasers of property, had a serious effect upon its value in days anterior to the passing of a Registration Act. To enable purchasers to deal with confidence, and obtain a valid discharge for their payments, and at the same time to enable the vendors, within a reasonable time, to receive the purchase-money without danger to the purchaser, the first of these Acts was passed, and still stands on the Statute Book amended by Acts of the present reign.

Under the provisions of this Statute any proprietor of real estate, desirous of discharging it from any hypothecs with which it was encumbered previous to the date at which he acquired it, can obtain a judgment of confirmation from the Superior Court in the district wherein the estate lies, while, if at the time of purchase “he has cause to fear that he will be troubled by any hypothecary or revendicatory action, he shall be entitled to delay the payment of the purchase-money until the vendor has removed such trouble” or gives security.

Ten years later we have the Registration Act, which requires that all deeds executed after the 31st December 1841 must be registered in order to secure priority, and in the interest of married women, minors, and “interdicted persons,” goes so far as to declare the married man, tutor, or curator, who by neglect of registration allows the hypothec of a wife, minor, or “interdicted person” to become postponed to a subsequent hypothec, guilty of a misdemeanour, liable for damages, and subject to imprisonment until the damages and costs adjudged against him are paid.

Five charges of “privileged creditors” are mentioned, the dread of whose hypothecs doubtless caused the want of confidence in

land purchase which the Act of 1831 was intended to counteract. These are :—(1) The vendor for the recovery of the price ; (2) the person by whom any money for the purchase has been advanced ; (3) co-heirs and co-partitioners ; (4) architects, builders, and other workmen, and (5) the lenders of money applied to the payment of such architects, builders, and workmen. The claims of these “privileged creditors” must now be registered in order to preserve their priority of hypothec.

For carrying out the provisions of this Statute Registry Offices are established in the chief place of the County or Registration Division ; each is furnished with “a correct plan showing distinctly all the lots of land of each city, town, village, parish, and township or part thereof, comprised within such registry division, accompanied by a copy of a book of reference, in which are set forth a general description of each lot shown upon the plan, the name of the owner of each lot so far as can be ascertained, with all remarks necessary to the right understanding of the plan ; and each lot of land shown upon the plan is designated by a number, which is one of a single series for each city, town, etc., and is entered in the Book of Reference to designate the same lot. All conveyances and claims are made with reference to the numbers so prepared, so that titles are easily traced and their condition readily shown.

Registration may be in full or by Memorial.

The Act for the general abolition of Feudal rights and duties was preceded by Acts of 8 and 12 Vic. for optional commutations which it repealed.

ONTARIO.

By the first Act of the Parliament of Upper Canada, passed in 15th October 1792, it was, among other things, enacted “that in all matters of controversy relative to property and civil rights, the laws of England should be the rule for the decision of the same,” in so far as such laws were conformable to the laws of Canada under the imperial statute of 1774, known as the “Quebec Act,” and did not vary or interfere with any of the subsisting provisions respecting ecclesiastical rights or dues, etc.

By the revised statute of Ontario 1887, cap. 93, it is enacted that in all such matters “resort shall continue to be had to the laws of England as they stood on the said 15th day of October 1792,” except in so far as the said laws have been since repealed or altered “by any Act of the Imperial Parliament still having the force of law in Ontario, or by any Act of the late province of Upper Canada, or of the province of Canada, or of the province of Ontario still having the force of law in Ontario, or by these revised statutes.”

The Registry and Custody of Title-Deeds Acts.

The intricate character of English land laws has been alluded to in a previous part of this paper. It is questionable if these were simplified by the provisions of the Quebec Act, or by those of the Acts of the various provinces just mentioned, other than an Act of Upper Canada passed as early as 1795, establishing a system of registration of deeds on the lines of the York and Middlesex Statutes.

The original law has been several times amended. In 1865, all then existing enactments were repealed, and a new Act passed (29 Vic. cap. 24), under which registration was required in full, as appears to be the general custom in the provinces of the Dominion, except Quebec, instead of by abstract or memorial as formerly. This statute has been twice revised, last in 1887.

The County Councils of Ontario are required to provide fire-proof offices and vaults, upon a plan and on a site to be approved by the Lieutenant-Governor in Council, for the safe-keeping of the documents belonging to the office of registrar, or intrusted to him under The Custody of Title-Deeds Act, an Act under which registrars are bound to accept custody of title-deeds relating to lands in their respective districts, keeping careful record of them. Such deposit is not registration, but it satisfies any covenant to produce or allow the inspection of the document, or to make a copy or extract, deeds deposited being open to inspection.

The Quieting Titles Act.

In 1865 an Act was passed entitled, "The Quieting Titles Act," which in its operation has much the same effect as the Sale and Transfer of Land (Ireland) Act, 1858, giving through a Court—in this case the High Court of Justice—a title clear at the time, but liable to subsequent entanglement. Under it, as it now stands in the revised Statutes of Ontario 1887, "any owner of an estate in fee-simple in land, or any trustee for the sale of the fee-simple, shall be entitled to have his title judicially investigated and the validity thereof ascertained and declared; and he shall be so entitled whether he has the legal estate or not, and whether his title is subject or not to any charges or encumbrances," and the judge has a discretionary power to investigate the title of other persons to any estate or interest in land in Ontario, and, when satisfied, to grant a declaration of validity.

The Land Titles Act.

Apparently The Quieting Titles Act does not now apply to the county of York, including the city of Toronto, or to certain other districts mentioned in the revised statutes of Ontario 1887, c. 116.

In 1885 provision was made by a Land Titles Act for the registration of titles in county York and Toronto, on what is very generally supposed to be the Torrens system, from which, however, it differs materially, being founded on the English Act of 1875, of which Sir R. R. Torrens never entirely approved. The Torrens system, as known to the inventor, and practised in the Australasian Colonies, gives but one form of title, an absolute one, while the English Act of 1875 (Lord Cairns' Act), and the Canadian Act amended and extended in the revised statute above referred to, give three, known as indefeasible or absolute, qualified, and possessory.

The principal differences between the Act of 1885 and Lord Cairns' Act were the provisions which prevented land once on the register being removed from it, and the establishment of an insurance fund. The first, which was considered an advance on English practice, and more in keeping with the Torrens system, was in a measure repealed by the introduction of a clause (109) in the revised statutes, permitting withdrawal from the register, on the Master of Titles being satisfied that special circumstances exist which render such withdrawal expedient.

The Act provides an assurance fund. This is an invariable accompaniment of the Torrens system in Australasia, and is ungrudgingly contributed to there—the contributors all having indefeasible titles partly through its agency. The position of a contributor with a mere possessory title, such as is given under the English and Ontario Acts, and who in Ontario has to pay to the fund one-fourth of one per cent. of the value of the land when brought under the Act, is different. In what way can insurance benefit him?

MANITOBA.

The land laws of this comparatively newly-settled province are understood to have been the same as those of the province of Ontario until the year 1885, when an Act was passed "to give certainty to the title to estates in land in the province," "to facilitate the proof thereof, and also to render dealings with land more simple and less expensive." This Act, entitled "The Real Property Act of 1885," more closely follows the Torrens system than The Land Titles Act of Ontario, requiring all new grants from the Crown to be brought under the provisions of the Act, and giving but the one title—an indefeasible or absolute one. The Act, however, contains some very important clauses relative to the law of real property generally, whether such property be brought under the registration provisions of the Act or not, viz.: (1) All lands, which by the common law are regarded as real estate, are

“held to be chattels real, and shall go to the executor or administrator of any person or persons dying seised or possessed thereof, as other personal estate now passes to the personal representatives;” (2) “the introduction of any words of limitation into any conveyance or devise of land shall have the like force and meaning as the same words of limitation would have if used by way of limitation of any personal estate, and no other;” (3) devises take from personal representatives; (4) dower is abolished, the widow in place thereof taking the same right in the real property as if it were personal; (5) tenancy in courtesy also is abolished, the widower in place thereof taking the same right as the widow takes in place of dower, viz. one-half if the spouse dies intestate without a living child, one-third if there be a child; (6) a wife may convey real estate to a husband, and a husband to a wife, the married woman, in respect of land, having all the rights, and being subject to all the liabilities of a *femme sole*; and (7) estate tails are abolished. In commenting on the last-mentioned provision in his treatise on the Act, Mr. H. C. Jones remarks:—

“It is to be noticed that this section applies retrospectively. Estates tail in Canada have been usually created unintentionally by a person using technical words in a will (such as dying without issue, etc.), which have been seized upon by courts of law, and made to mean something which it is quite apparent the testator never intended. * * It will, of course, be impossible hereafter to create an estate tail in a chattel real, therefore this clause must apply to estates tail already created, which are probably not very numerous in Manitoba.”

BRITISH COLUMBIA.

Since 1871 a province of the Dominion of Canada, from the older provinces of which it was not long before separated by a trackless wilderness and a ridge of high mountains, adopted “the Civil Law of England as the same existed on 19th November 1858,” save as modified and altered by local legislation. An early alteration was the introduction of a system of registration of titles to land, first for Vancouver’s Island in 1860 (commencing January 1861), and afterwards for the whole colony in 1870.

There is not much in common between this system of registration of title and the Torrens system. The registers kept throughout the colony are “for the record of instruments and the registration of titles affecting real estate” in the district in which the office is situated, and while the Registrars, after examination of a land-owner’s title-deeds, may register him as entitled to the “absolute fee” or other “estate or interest,” and grant him a certificate, they cannot grant an indefeasible title until the lapse of seven years from the date of registration. As no steps are taken to perpetuate an indefeasible title, the position of

a land-holder who obtains one seems to be analogous to that of a purchaser of real estate in the Irish Land Court—his title is declared indefeasible at the time, but *subsequent* dealings with the land have to be as carefully looked into by purchaser or mortgagee as when there is no register of title.

It is said of the system that

“it has secured the chief advantages of the old system of registration of deeds (of which notice is the most important principle), and has operated so as to *almost* entirely dispense with the investigation of prior title. Loans on mortgage are effected, and transfers of the fee are made with as much ease as the transfer of bank stock is made in England. A search of from five to ten minutes being all that is necessary to disclose the state of any registered title; retrospective investigation of title is seldom made, the registrar’s certificate of title (though it does not preclude retrospective investigation), being generally adopted as sufficient evidence of a good marketable title.”

This may be so in a country where no title goes beyond living memory, and there has been barely time for the complications inseparable from the creation of interests other than those of an absolute owner, or a mortgagee, but as time goes on a change to some system more nearly resembling that of Torrens will doubtless be found advisable.

As in Ontario, deeds may be deposited at the Registry Offices for safe keeping.

In this Colony, at least since the passing of the “Inheritance Act, 1872,” the law of primogeniture has been abrogated, the lands of intestates descending apparently in much the same manner as personal estate; and notwithstanding the Statute 27 Elizabeth, c. 4, voluntary conveyances of lands made in good faith, and duly registered, are not voidable by a purchaser “merely by the reason of the absence of a valuable consideration.”

NEWFOUNDLAND.

“The most ancient of Great Britain’s vast colonial possessions” would appear to have long had a land system of its own, which, shortly after representative government and a constitution were granted to it (1832), lost almost all trace of the system of the mother-country. Chief-Justice Sir Hugh Hoyles, writing in 1883, gave a gentleman concerned in the framing of the “Real Property Act” of Ontario particulars of early practice in Newfoundland, and of the working of the “Real Chattels Act, 1834” of that colony, from a copy of which, to be found in Jones on the Torrens system, the following interesting information is derived:—

"Prior to the passing of the Real Chattels Act the law of Newfoundland regarding real property was in a very indefinite and unsettled state.

"The law of England was regarded as wholly unsuitable to a country where, for a long period under the operation of the Imperial Fishery Acts, the first occupant in the spring was entitled to hold for the season that part of the shore, the only part of the soil considered of value, of which he could take possession; where, until a comparatively recent period, Crown grants of land, other than mere licences of occupation, could not be made; where, for several years after the commencement of the present century, no one could build or substantially repair a permanent dwelling *without the express permission of the governor.*"

Sir Hugh gives particulars of differences in the opinions entertained of the law by his predecessors, one or two holding that lands and plantations in Newfoundland were nothing more than chattel interests, and should, in cases of intestacy, be distributed as such; while others, in more recent times, backed by the majority of the profession, held that the land laws of England were in force prior to the Real Chattels Act, which was intended to remedy this state of confusion, and, according to Sir Hugh, did so.

"By one stroke it swept away primogeniture, entails, courtesy, dower, and numerous other incidents of land in England, reduced to the condition of a literary curiosity a large body of real property law, and by the substitution of a single and simple tenure for the complex titles by which land is held in the mother-country, it lessened litigation, and rendered simple and easy the proof of title and the construction of deeds and wills. The transfer of land *inter vivos* is effected by any writing sufficient under the Statute of Frauds, accompanied by registration as against subsequent purchasers and encumbrancers."

Sir Hugh's favourable opinion of the provisions of this Act, concurred in by his brother judge Hayward, seems to have had not a little to do with the introduction of similar provisions into the Manitoba Real Property Act of 1885, already mentioned.

SOUTH AFRICAN COLONIES.

Dealings with land in such of these colonies as were formerly Dutch are regulated by Roman Dutch Law, which requires registration of deeds relating to allodial¹ lands. Evidence exists that as far back as 1529 the vendor of real property of this class in Holland had to execute the transfer in the presence of an official of the Supreme Court of the State in which the estate was situated, and that the transaction was thereupon registered in the records of the court.

This, as will be seen by the following extracts from an article

¹ Lands not held from a superior—not feudal.

on the subject, in the *Law Quarterly Review* for July 1886, by Mr. E. J. Taylor of the Natal Bar, is essentially the practice in the South African Colonies at the present day:—

“Under this system, as at present in force in the Colonies, the Registry of Deeds is a central office at the seat of Government, and forms a branch of, or offshoot from, the Supreme Court, the Registrar of Deeds being the executive representative or deputy of the judges.

“The manner in which the Registry is worked shall now be briefly described, though it is needful, for the sake of clearness, to enter somewhat into details. All land is held either under original grants from the Crown or under earlier titles subsequently confirmed or recognised by the Crown. These grants are, generally speaking, issued from the office of the Surveyor General, together with an annexed diagram of the property granted. Duplicates or office copies of these original grants and diagrams are filed by the Surveyor-General. Before issue to grantees, every grant passes through the Registry of Deeds for registration, as follows:—The grantee’s full name is entered in an alphabetical index of owners, and the property itself is entered in another index of properties. A volume of the register is set aside for each county, division, or town, and a page of the register of the county, etc., in which the property lies is opened, the number of this page being entered in the two indices of owners and properties. At the top of the page is entered the grantee’s full name, the name or description of the property, the tenure (freehold or quit-rent) on which it is granted, date of the grant, extent, and other particulars. The rest of the page is ruled in columns headed ‘transferee,’ ‘date,’ and other details, ready for future entries. The grant is then given out, endorsed by the registrar as having been registered in (say) volume A, page 1.

“Upon any sale or alienation of the property declarations must be made by vendor and purchaser setting forth the price and date of sale. The duty must then be paid by the purchaser within a limited time from the date of sale, in default of which an additional fine, or interest upon the duty, begins to run; but the purchaser may please himself as to when he takes transfer.”

It is his interest to do so at once, as so far he has only acquired the *jus ad rem*, or personal right, which would be defeated were another purchaser in *bonâ fides* to take formal transfer. In order that the purchaser may obtain this,

“the vendor must appear before the Registrar and sign transfer personally, or by specially appointed attorney, the practice being for his own or the purchaser’s solicitor to receive a power of attorney from the vendor for this purpose, and in such case the power is recited in the body of the deed, and must be filed in the Registry, with the deed of transfer, which is prepared and executed in duplicate.”

When the vendor, or his attorney, has signed the duplicate deeds

“the Registrar subscribes ‘In my presence I. J., Registrar of Deeds.’ The stamps and fees of office are paid, and the transfer, together with the previous deeds of title, and, if the property be subject to a mortgage bond, the bond and a consent paper signed by the mortgagee agreeing to the transfer, subject to or free of (as the case may be) his bond, must also be lodged.

"It is then the Registrar's duty to satisfy himself that no encumbrances, attachments, or other judgments, interdicts or caveats are lodged in his office against the vendor or against the property. This he does by search in the volume where such notifications are registered. The duplicate deeds are then compared, after which the purchaser's name is entered in the index of owners, the endorsements upon the prior deeds indicating the volume and folio appropriated to the property. Upon this folio the name of the new owner, date of registration, and other particulars are entered, and the new deeds are then endorsed similarly to the prior deeds, as 'Registered in the Property Register, Volume A, folio 1.' under the signature and date-seal of the Registrar. The original grant and the last preceding deed are then endorsed 'The within property transferred on (date) to C. D.,' and the registration is completed. One of the duplicate deeds, with the power of attorney (if any) and relative papers, is then filed, and the other marked 'No. of 18 ' is given out with the prior deeds to the purchaser. Should the transfer have been made subject to a bond, the new deed is further endorsed 'The within described property is subject to a bond for £ in favour of K. L.,' and the bond itself is endorsed under the Registrar's signature and seal, 'Transposed to the debit of C. D.,' and is given out to the mortgagee.

"Should, however, the transfer be that of only a portion or sub-division of a registered property, a survey must be made, and the diagrams of the sub-division must be examined and laid off upon the original diagram at the Surveyor-General's office, before the transfer deeds can be received at the Registry. The diagrams, when thus passed by the Surveyor-General, must be annexed to the duplicate deeds of transfer, and in making the registration, the Registrar enters in the folio of the property, 'Sub-division No. of this property, in extent acres, transferred to C. D., leaving a remainder of acres,' and the title-deeds of the vendor are correspondingly endorsed. In such cases, a new page in the register or sub-register is opened for the sub-division, and subsequent transfers of this sub-division are not entered in the original folio of the property, but in the new folio of the sub-register, the original folio being thenceforward devoted only to entries concerning the remaining portion of the original property."

The Dutch States first took advantage of their system of registration to impose a tax on real property, by way of sale, exchange, or gift, and on mortgages in 1589—the rate being $2\frac{1}{2}$ per cent.—one-fortieth of the value, this, in the case of transfers, the Colonies have raised and lowered from time to time, but no duty is charged on mortgages.

That speculation has at least as much to do with the frequent transfers of land in the Colonies as expense has to do with the infrequency of transfers in the old country, is shown by the failure apparently of this heavy tax to act as a deterrent. Mr. Taylor tells us that he has "noticed instances in which the successive four per cents. paid to Government upon the various transfers of one property, within a period of forty years, have equalled its market-value at any time during that period." Of course 4 per cent. on price, which in this country would represent a year's value or more, would not represent half so much in a country in which land can be acquired at from eight to twelve years' purchase.

“Mortgages are passed before the Registrar in the same way as deeds of transfer.” They are executed in duplicate, and when lodged with the Registrar, must be accompanied by the title-deeds of the property in order that particulars of the transaction may be endorsed thereon, as well as entered in the “Public Debt Register.”

The South African mortgage does not convey the property to the mortgagee as in the case of the English mortgage. It merely gives a charge on the property, and in this respect more closely resembles the Scotch “bond and assignation in security.”

A vendor who sells on credit has not a lien on the subjects for unpaid purchase-money, if he passes transfer to the purchaser without taking a bond for the whole, or for any balance that may be unpaid of the purchase price.

Equitable mortgage by a deposit of deeds is unknown, the possession of deeds alone affording no security should the depositor become bankrupt. Such deposit would merely stand in the way of a legal transfer to another than the holder, until after title-deeds were obtained from the court, which a judge would grant if satisfactory grounds were stated on an application for certified copies thereof.

Perpetual leases are not unknown, nor are settlements and entails. These last are very rare. By No. 9 of the Cape Articles of Instructions to Notaries, based on the Law of Holland, which are understood to guide procedure in other South African Colonies, a notary is prohibited from passing wills or any other deeds of any person *not being a Christian*, in which the testator or grantor wishes to make a fidei-commissary disposition of real property, unless such disposition be *in favour of Christians*, and then that it should not extend beyond the immediate usufructuary. At his death such property must go to his descendants, and, failing them, then to the heirs of the testator or donor free from entail. Strange that this regulation, so evidently aimed at the Jews, should still be in force in British Colonies.

An estate cannot be burthened by a *tacit fidei-commissum* (which is created by a prohibition against alienating) further than the fourth degree, the person in the fifth generation receiving the property with an unrestrained power of disposition, unless the testator had expressly desired that the entail should extend to a more remote degree. A prohibition (general) to alienate would be void, but a prohibition to alienate out of the family would be valid, in which case the property would be held to devolve according to the order of succession *ab intestato*.

An *express fidei-commissum* may be created either by will or codicil, or by an act *inter vivos*.

An entail may be barred by an Act of the State, or by mutual

agreement amongst the heirs, if majors, who then divide the inheritance in equal shares amongst themselves.

CONCLUSION.

As the differences in the system of conveyancing we have had under review are in large measure due to the existence, or non-existence, of registration, and to the character of registration where it exists, I shall conclude my remarks with a short account of the practice in this respect in each community.

In England, except in the case of copyholds, which have given us something analogous to registration of title from the time of the Normans, registration is only known in Middlesex and Yorkshire, and is not there designed to afford information respecting the documents registered, but simply to put parties dealing with real property on inquiry; moreover, though "a purchaser who has searched the Register is not bound to inquire whether there are any unregistered deeds," it would appear that if any of those produced to him gave reasonable ground for suspicion that others existed, he would be held to have had constructive notice of them, as registration in these English registers does not bar the "doctrine of notice." It is probably on this account that English jurists hold registration to be of no use, commensurate with the additional expense it entails. Consequently the following description by Lord Cairns, when Attorney-General (1859), of the evils attending the English system of conveyancing, may be held to apply even in Middlesex and Yorkshire:—

"You buy an estate at auction, or you enter into a contract for the purchase of the estate. You are very anxious to get possession of the property you have bought, and the vendor is very anxious to get his money. But do you get possession of the property? On the contrary, you cannot get the estate, nor can the vendor get his money, until after a lapse—sometimes no inconsiderable portion of a man's lifetime—spent in the preparation of abstracts, in the comparison of deeds, in searches for encumbrances, in objections made to the title, in answers to those objections, in disputes which arise upon the answers, in endeavours to cure the defects—not only months, but years frequently pass in a history of that kind—and I should say it is an uncommon thing in this country for a purchase of any magnitude to be completed—completed by possession and payment of the price—in a period under, at all events, twelve months. Sir, the consequences of this were stated in the report of the Commission to which I have referred in words so apposite that, if the House will permit me, I should desire to read them. The Commissioners state in their report: 'When a contract is duly entered into, the investigation of the title often causes not only expense, but delay and disappointment, sickening both to the buyer and seller. The seller does not receive his money, nor the buyer his land, until the advantage or pleasure of the bargain is lost or has passed away.' Unquestionably, sir, that is one, and a very great, evil under which we labour. But that is not the greatest evil. I can well imagine that the purchaser of an estate

would be content to submit to delay, and even to some considerable expense, if he were assured that, when the delay and expense were over—upon that occasion, at all events—he would have a title, as to the dealings with which, for the future, there would be no difficulty; but, unfortunately, that is not the case. Suppose I buy an estate to-day, I spend a year, or two or three years, in ascertaining whether the title is a good one. I am at last satisfied. I pay the expense—the considerable expense—which is incurred, in addition to the price which I have paid for my estate, and I obtain a conveyance of my estate. About a year afterwards I desire to raise money upon mortgage of this estate. I find some one willing to lend me money, provided I have a good title to the land. The man says: ‘It is very true that you bought this estate, and that you investigated the title, but I cannot be bound by your investigation of the title, nor can I be satisfied by it.’ Perhaps he is a trustee who is lending money which he holds upon trust. He says: ‘My solicitor must examine the title, and my counsel must advise upon it.’ And then as between me, the owner of the estate, and the lender of the money, there is a repetition of the same process which took place upon my purchase of the estate, and, consequently, the same expense is incurred as when I bought it; and for the whole of that I, the owner of the estate and the borrower of the money, must pay.”

In Scotland the “doctrine of notice” is not recognised, and we have probably the most perfect register of deeds in existence. Still it is but a register of deeds, and as such is open to much of the objection Lord Cairns took (in the speech above referred to) to such registers being made general in England. Such registration, he remarked, “only puts on a formal record the whole of that multitude of deeds and conveyances of the extent and complexity of which we already have so much reason to complain. You have to investigate and search just as before: in addition to that you have to pay for searches in the Register, and also to pay, in some shape or other, the expense of placing the deeds upon it.”

That is true, but there can be no doubt that registration of deeds in Scotland facilitates business to an extent sufficient to fully compensate for the expense. Titles are investigated and loans carried through in Scotland in less than one-fourth of the time required in England.

In Ireland the “doctrine of notice” is barred, and registration of deeds is approved, but here, as in York and Middlesex, an equitable mortgage, that is, a deposit of title-deeds *if unaccompanied by any writing*, has always been held to override a subsequently registered mortgage. In registration of DEEDS, Ireland is behind Scotland, but, on the other hand, as must have been noticed, we have had in Ireland an imperfect register of TITLE since the passing of the first Incumbered Estates Act in 1849, power being given to the Court then formed, and to the Land Court which succeeded it, to grant indefeasible titles, the Land Court having power to do so not only to the purchasers of land sold by it, but to all landowners who desire indefeasible titles, and can satisfy

the requirements of the official examiners, and as land in Ireland is now rarely sold, except through the Court, nearly every purchaser *starts* with an indefeasible title.

An Act permitting registration of title, and which Torrens tells us he did his best to free from the objections to Lord Westbury's English Act, was passed in a shape to propitiate his Lordship, and secure his support in the Upper House, and proved unworkable.

The further advance about to be made by our present government in the direction of registration of titles in Ireland has been noticed in the remarks on their Bill.

In Australasia, British Columbia, Manitoba, and experimentally in one county at least in Ontario, Co. York, we have registration of title, in the eyes of the British layman, and of both layman and lawyer in the Colonies named, by far the most satisfactory form in which land can be dealt with, a form, doubtless better suited to a new than to an old country, but still one which, spite of prejudice and self-interest, is almost certain, in course of time, to find acceptance throughout the United Kingdom.

Throughout the *North American Colonies*, wherever registration of title has not been adopted, and sometimes side by side with it, there is registration of deeds. There is also an excellent system of survey, by which public lands are laid off in squares of a mile (640 acres), which are numbered on corresponding maps kept in the Register Offices; and greatly facilitate dealings with property, readily identified by its number.

As far as registration by numbers having reference to maps is concerned, it is by no means necessary that the portions of land should be rectangular. Holdings in Australasia are not so, nor is that of the Irish peasant proprietor, which it is proposed to identify and describe in this manner.

In South Africa the system is something more than what is generally known as registration of deeds. The Registrar has "to satisfy himself," by search "that no encumbrances, etc., are lodged in his office against the vendor or against the property." Transfers and mortgages have to be signed in his presence, and he will not record any transaction without production of the title-deeds, or certified copies thereof obtained under an order of Court. Simple set forms of transfer are used, and most South African colonists are satisfied with conveyances drawn out by themselves, or by any one who cares to set up as a conveyancer, and has sufficient funds to take out an inexpensive annual licence.