LAND TRANSFER, REGISTRATION OF DEEDS AND TITLE.

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Systems of registration in relation to land titles and transfer are divisible into two classes. In one, the ownership of the land is entered on the register; in the other various transactions which affect ownership are recorded separately, and from these and other facts the ownership may be deduced. A registry of the former class is called a Registry of Title, and one of the latter a Registry of Deeds, sometimes called a Registry of Assurances. Both systems are founded on Statute, and neither is essential to the ownership or transfer of land, except in so far as it may be prescribed by Statute. This is well illustrated by the fact that in by far the greater part of England and in all Wales neither system is operative to any material extent, and neither ownership nor facts affecting ownership are recorded. In Ireland, on the other hand, both systems are in active operation, and are mutually exclusive as regards any particular estate in land. In Scotland there is only one system, but a sound one, and that is a Registry of Deeds, which, in Scottish terminology, is called the Register of Saisines. In England the Registry of Deeds exists only for Yorkshire, Middlesex and the Bedford Level; while the Registry of Title or, as it is called, the Land Registry, though potentially applicable to England and Wales at large, is in fact generally operative in the County of London only. All systems of registering deeds have much in common as regards their main features, but in detail they differ widely. The same may be said of systems of registry of title. In Ireland and Great Britain no two of either class are exactly alike in plan and working. It follows then that in discussing the relative merits of the two forms of registration care should be taken that the faults of a particular system should not be ascribed to all of its class. There may be defects in the Irish system of deeds' registry that are absent from the Scottish, and there may be defects in the English system of registration of title that are not found in the Irish.

The subject of Land Transfer and Registration is one that in the earlier history of this Society received a great deal of

attention from men like Dr. Neilson Hancock and Mr. Dix Hutton, whose labours contributed largely to the passing of the Record of Title Act and, of what was more important in its aim, the Land Debentures Act. Those gentlemen regarded the difficulties attendant upon the transfer of land as forming a chief obstacle to the progress of this country. Since their time, however, the situation has been improved. Deeds have been shortened by the Conveyancing Acts, powers of transfer and disposition have been increased by the Settled Land Acts, and expenses are now regulated by an *ad valorem* scale of fees. Above all, in Ireland by a slow but effective process the bulk of the land of the country is passing into the hands of occupying owners. When this process is completed it is estimated that the number of these new owners will amount to 550,000. It is and will be an economic national necessity to make due provision so that Irish farmers may be enabled to borrow money on favourable terms so as to carry on their industry under favourable conditions.

The aim of this paper is to outline the history and characteristics of the two systems, showing the advantages as well as the drawbacks of each with the view to the improvement of both, that ultimately titles may be simplified and secured, their transfer cheapened and expedited as far as may be possible, so that land may become more marketable than it is at present and better appreciated as a security for money.

It is an unfavourable fact, from an economic standpoint, that land, the main source of the nation's wealth, should, as a security, be below par in the money market; that, notwithstanding its natural characteristics of fruitfulness, permanence and indestructibility, it should rank in secondary grade as a money security, and that in our Irish banks, where £200,000,000 of Irish money are deposited—money mostly derived from the land—an advance upon landed security is not regarded as legitimate banking business.

The founders and fosterers of the British land system did not regard land so much as a commercial asset as a means of maintaining the influence of the aristocracy. They were therefore actuated by desires more or less against public policy, namely, to deal secretly with the land and to preserve it in particular families by entail and settlement. Against the first of these the early statutes of enrolment were ineffectively directed, but the Registry Laws of Ireland and Scotland as well as of York and Middlesex made for the principle of publicity of transfer, while in more recent times the Settled Land Acts enable land the subject of entail and settlement to be dealt with in various ways, which may be regarded as wholly inconsistent

with the policy of the older law. The principle of releasing the land from the trusts in case of sale and transferring them to the purchase money is a valuable one which facilitates land purchase and the registration of title to settled lands.

At this stage in Irish national development it is desirable and even necessary to consider land not only in reference to its agricultural and pastoral uses, but as a commercial asset. It is in this aspect that the advantages of a good system of registration will appear if it tends to simplify proof of title to land and facilitate its transfer on sale or mortgage.

What happened in Yorkshire in the beginning of the eighteenth century is an early case in point. The woollen trade was then in its infancy and needed encouragement. To that end a Registry of Deeds was established by Act of Parliament for the express purpose of facilitating owners of land in borrowing money on their estates for the requirements of trade. This purpose of the Act (2 and 3 Anne, c. 4) is well disclosed in its preamble: "Whereas the West Riding of the County of York is the principal place in the North for the Cloth Manufacture, and most of the traders are freeholders and have frequent occasion to borrow money upon their estates for managing their said trade, but for want of a Register find it difficult to give security to the satisfaction of the money lenders (although the security they offer be really good), by means whereof the said trade is very much obstructed and families ruined."

The measure then proceeded to enact that an office should be established locally for the registration of deeds and wills affecting land.

Seven years later a similar Act was passed for Middlesex, the great trade centre of the South. Twenty-seven years later still the Yorkshire Registry Act was extended and progressive provisions were added. Many other English counties from time to time petitioned for a Registry of Deeds, but the benefit was restricted to the two great centres of trade.

These Acts and the system embodied in them are long considered out of date in England. The Yorkshire system was consolidated and amended in 1885 by the Yorkshire Registries Acts, which, however, preserved the main principle of the earlier enactments. The system is, as it should be, self-supporting, and shows an annual profit, which is applied by the County Council in relief of the rates. The Middlesex Registry was regulated by an Act of 1891. It is now merged in the Land Registry, and its annual profits go in relief of the heavy expenditure of that rival institution. This arrangement is, on the face of it, a matter of preferential treatment of the system of

Registration of Title, and, viewed in connection with other arrangements, looks like part of a deliberate policy.

Registration is either of the ownership or of the deeds and documents affecting the ownership. The first is, theoretically, the higher form of registration, and therefore the form on which efforts towards improvement would be naturally concentrated. The French have a proverb that *le meilleur* is the enemy of *le bon*. This fairly illustrates the attitude of mind of the advocates of registration of title towards the system of registering deeds. Where this attitude was not actually hostile it was indifferent to the claims of the older system, and wholly ignored its possibilities of improvement. Least of all it admitted that out of a perfected system of Registration of Deeds a Registration of Title might be evolved.

The operation of the Deeds Registry law protects purchasers from secret deeds and undisclosed incumbrances, it affords facilities for completing title in many cases where deeds are lost, and is a protection against certain forms of fraud. It tends to simplify title by establishing a statutory rule of priority of instruments, modified, however, by the wise suzerainty of a restraining equity. It places legal and equitable interests to some extent on a par, regulating their priority *inter se* according to time of registry. Furthermore, in Ireland it enables a judgment creditor to convert his judgment into a mortgage of specified lands of his debtor for the amount of the judgment debt and costs, thus converting a general into a specific charge and so far facilitating transfer.

Wherever Deeds Registries exist, as in Ireland, Scotland and Yorkshire, they give general satisfaction. Some years ago complaints were made of the Middlesex Registry, but these were owing to the enormous number of transactions and to defects in the official machinery, which, under the stress of abnormal work, required adjustment and reform. In point of fact, it appears to have suffered from legislative atrophy until the passing of the Act of 1891. The Scottish Registry, the oldest and most perfect of all, has been developed by legislation and its efficiency maintained. A recent attempt to bring it under the English Land Transfer Acts failed conspicuously.

Referring to the Irish Registry of Deeds in 1863, the Incorporated Law Society said: "It has been conducted so as to secure public confidence, and any instances of errors or omissions in the certificates on the searches issued from that office whereby any individual purchaser or creditor has sustained loss or injury are unknown to us either personally or as matters of repute." Speaking in the House of Commons as a Law Officer, Lord Chief Justice Whiteside said: "During the

fifteen years that the Incumbered Estates Court and Landed Estates Court were in existence the Registry Office of Deeds succeeded in accomplishing the duty imposed on it, though the labour cast upon it was enormous. Its business was conducted with the greatest care and precision, the work was performed with a degree of mathematical accuracy which I never saw rivalled." In more recent years the same office, as far as its own functions are concerned, has borne the brunt of all the labour involved in the remedial legislation of the past forty or fifty years, of purchases and mortgages under the Irish Church Act, of Vesting Orders under the Land Commission, of Searches under the Land and Labourers' Acts, of Charging Orders by the Commissioners of Public Works, and of Memorials of Registration under the Local Registration of Title Act. The number of these registered since the Act came into operation is 319,128. All the above matters of registration and search are above and beyond the ordinary transactions between man and man for which the office was established, and they represent a volume of business that might have seriously affected the working of an office less efficiently staffed than the Irish Registry of Deeds.

What is of vital importance in this connection is that nine-tenths of this huge volume of work involving serious responsibility is done without fee and brings no revenue to the office. It is to be hoped, however, that in the Irish Free State there will be some clarity of finance, and that institutions which are rightly required to be self-supporting will be allowed to levy reasonable fees for their maintenance so as not to become a burthen to the community.

It is worthy of note that under the one head of unremunerated labour, namely, the Memorial of Registration of Title given to the Registrar of Deeds to be registered by him without fee, the Registry of Deeds has lost in fees a sum of £127,651, which would have been payable under the Record of Title Act and for which that Act specifically provided.

This represents an average annual loss to the office of £4,255, which amounts to about a fourth of its annual expenses in normal times.

But for special legislation these documents are such as the Registrar of Deeds would be quite justified in refusing to accept. They are neither deeds nor assurances in any possible acceptation of these terms and only encumber the office books. These books are framed with reference to facts of transfer, charge, settlement or other transvestitive disposition, and are mostly in statutory form appropriate to such transactions. The main result of registering these memorials in the Deeds Office

is that the names' indexes books of the highest importance in the working of the office and which are indexes of grantors are crowded with the names of persons who are not grantors at all, and who perform no act which in the ordinary law would be capable of registration in the Deeds Office.

In a paper which I read before this Society in 1895 I dwelt at much greater length on the inconvenience caused by this useless procedure. Many years after when in charge of the Names Index in the Registry of Deeds I was obliged to have supplemental volumes (very undesirable things when searching is carried on) prepared to meet the increased number of entries resulting from the reception of these memorials.

Another head of unremunerated work already referred to comprises Searches for the Irish Land Commission, the Congested Districts Board, and under the Labourers' Acts. During a period of seventeen years ending December, 1921, if fees had been chargeable they would have amounted to a total of £36,148, which implies an annual loss to the Department of £2,126. This sum added to the £4,255 above referred to would defray one-third of the annual departmental charge in normal times. This must be regarded as an underestimate. It does not include Charging Orders under the Glebe Loan (Ireland) Acts nor certificates of discharge under same, nor Orders for Loan under National School Teachers' Residences Act, Dispensaries Act, and Reformatories Act, all of which were registered without fee. Truly this department has not been the spoiled child of the Legislature.

As there may possibly be some claim by way of set off I have not brought into the above account a sum of £40,000 of accumulated fees over expenditure which were referred to in the Report of the Royal Commission of 1878 as due to the office. Without this the account shows a credit balance of £163,799 in respect of unremunerated work, independent of the Public Works Loans, which go back to 1870.

In view of its efficiency, authoritatively admitted and publicly acknowledged, a striking characteristic of the system of Registering Deeds now in operation in Ireland is its antiquity. Registration here is by Memorial, and the contents and the mode of authenticating the Memorial are regulated by an Act of Queen Anne (6 Anne, c. 2), while the office books and the various forms of search are prescribed by an Act of William the Fourth (2 and 3 William IV., c. 87). The Act of Anne was ancillary to the penal laws against Catholics, and was designed to prevent secret conveyances which were commonly made by Catholics to Protestant trustees, who held the lands as owners in the eye of the law, while they allowed the beneficial

ownership to be enjoyed by their Catholic *cestuis que trustent.* Almost cotemporaneously with the Irish Registry Act, similar Acts but for far different purposes were passed for the Counties of York and Middlesex, but these English Acts have long since been swept into the limbo of effete legislation. The Irish Act, notwithstanding the *nota infamiæ* which characterised its origin, has lasted for over 200 years, and still remains a valuable relic of a bad past to regulate the course of registration in the twentieth century. They say that the English language spoken in the South of Ireland is Elizabethan English, that the conservative character of the Irish people has preserved the language in that state in which it was introduced centuries ago. Whatever be the cause, some such parallel seems to present itself in the case of the survival of this ancient piece of legislation, which follows clause by clause and largely word for word some of those English Acts which have been long since repealed. The English Acts were local, applying only to particular counties; the Irish Act is general and applies to the entire country. The English Acts had clearly fallen behind local requirements. Is it not more probable, even certain, that the Irish Act has long since fallen behind national requirements?

Turning to the Act of William the Fourth, which prescribes the contents of the office books and indexes and which regulates the forms of search, it was clearly drafted by an expert lawyer and official well acquainted with the details of the system. Yet it has encountered some hostile criticism, as regulating with too much detail the various official processes, and being therefore wanting in elasticity. The more modern principle of legislating on general lines, leaving the details and particulars to be dealt with by rules authoritatively framed in accordance with the legislative principles laid down, was not followed in this instance. Fortunately a subsequent Act (11 and 12 Vic., c. 120) gave power to the Treasury to alter the forms of the indexes of persons and land, which power was exercised by Treasury Order dated 21st July, 1904, in accordance with the recommendation of the Royal Commission of 1878. This order abolishes a form of index, commonly called the Sectional Index, which was formed into quinquennial periods, also a Consolidated Index formed into decennial periods. The objection to the Sectional Index was to its plan of arrangement, which was inconvenient and rendered searching slow. It was a source of special inconvenience to the public, who frequently complained of it. This useful working provision was inserted in an Act which was directed towards a reform of another character—that is to say, the Recording

of Negative Searches. It had been complained that when property was dealt with several times in succession the earlier searches were never utilised in the later transactions, though it was thought they well might be with an economy both of time and money. It was thought then that if searches were officially recorded it would be sufficient, in case of later transactions, to give copies of the recorded searches and institute fresh searches for subsequent periods. Though the purpose and aim of the Act was admirable it failed in practice. The professional men employed in the later transactions might not have been quite satisfied that the earlier searches were rightly directed. They may have thought that by accepting copies of the recorded searches they would be making themselves responsible for other people's work. There was a further and probably unforeseen obstacle to the working of these provisions for utilising old searches, and that lay in the fact that Judgment Mortgages and Building Societies' Mortgages are satisfied and discharged by means of entries subscribed to the entries in the office books of the original transaction. If these were undischarged at the time of the original search they will so appear on the attested copy of the recorded search, even though they be subsequently discharged. Nor will the subsequent discharge be disclosed on the later search, for these memoranda of discharge do not appear on the indexes. It follows then that the use of the recorded negative search book might result in the misrepresentation of title. In this way has the Act failed in its general purpose, but as it has not been repealed the requisition and result of every negative search are preserved, and copies given if required at the very modest cost of sixpence per folio of seventy-two words. Having regard to the maintenance of the office as a self-supporting institution and to the value of the information furnished in these copies of negative searches this fee is, to my mind, insufficient. Prior to 1861 a duty was charged on every Act appearing on a copy negative search, but this impost was found to be illegal, and accordingly discontinued. The modern method now adopted in the office is a marked improvement on that prescribed by the Act, and avoids the danger above referred to.

In 1850 an Act was passed which would have brought about important and far-reaching changes in the law and practice of registration of land dealings in Ireland. This was called Romilly's Act, 13 and 14 Vic., c. 72, but its operation depended on a condition precedent which was never fulfilled. Maps and indexes were to be prepared and a notice to be published by the Treasury prior to the commencement of the Act. The 49th Section proposed the abolition of Stamp Duty on all

memorials, copies, extracts and certificates of search in relation to the office. This section has no charm for the Chancellor of the Exchequer, and the Act remains a dead letter.

Forty years later Mr. Justice Madden, who was then Attorney-General for Ireland, attempted to pass a large and quasi-codifying measure of Deeds Registration for Ireland. The measure was sweeping and comprehensive to the last degree. It was not popular with the legal profession, was disliked officially and wholly unappreciated by the general public, who did not know what it meant. As the bill provided for the registration of all documents and facts of transfer and devolution that could affect title to land the learned author called it the Registration of Assurances (Ireland) Bill. To the unlearned this was very suggestive of life insurance, and in no way gave a clue to the nature of the measure, a fact which was unduly, not to say unjustly, emphasised by certain critics of the bill. The present writer had the honour to explain the provisions of this bill to the members of the Statistical Society, who gave their assent to it as a whole. Sir William Findlater, D.L., President of the Incorporated Law Society, was in the chair, and drew attention to what proved to be a crucial feature in the measure. The bill contained a clause which would have materially affected the law and practice of bankers in relation to equitable mortgages by deposit of title deeds without writing. It was this clause that aroused opposition and finally led to its withdrawal. While the clause was deemed essential to the symmetrical perfection of the measure, it would have militated against trade in preventing many important transactions that might otherwise take place between banker and customer. Sir William Findlater gave us a case in point which came within his own professional experience, where a sum of £10,000 was advanced by way of mortgage on the security of title deeds unaccompanied by writing. The circumstances both of borrower and lender were such as to exclude the possibility of the transaction being carried out by any form of mortgage requiring registration.

Apart from the merits of the measure and from the point of view of this paper, it would have been a misfortune if this clause had passed the legislature. The exceptional and anomalous priority which the law has given to the mortgage by deposit of deeds without writing and which this bill would have destroyed is deeply embedded in our mercantile system and jealously guarded by the mercantile community. The registration of this form of mortgage is a question on which the law reformer and the merchant will always be at issue. Hence in India, where the registration of land dealings is compulsory,

there is a special exemption of this class of mortgage in the trading cities of Calcutta, Madras, Bombay and Kurrachi.

The failure of the Registration of Assurances Bill and the passing of the Local Registration of Title Act created a situation unfavourable to the future prospects of the Registry of Deeds. Every title registered under the new Act in so far diminished the area under the operation of the older law. Men in high official position declared that the Deeds Office should be regarded as a moribund department. Happily, however, these gloomy forebodings have been falsified by results. In 1892, the first year in which the Local Registration of Title Act operated, 16,309 deeds or assurances were registered in the Registry of Deeds; in 1920 there were 26,377. In 1893 and in three years of the war period there was a drop in the number of deeds registered. In every other year there has been an increase, which in 1919, 1920 and 1921 amounted to an average yearly increase of 42 per cent. over the number of deeds registered in 1892.

Registration of Title as compared with Registration of Deeds is modern in its origin. It was introduced in England in 1862 by Lord Westbury's Act; in Ireland in 1865 by the Record of Title Act. Its advocates, including the then Council of this Society, were encouraged by the success that had attended its working in the Australian Colonies under Sir Robert Torrens, who introduced it there in 1858. It could not be regarded as a popular measure—popular opinion could not, or at least was not, so educated as to judge of its merits or demerits; but there was then current to a large extent a popular fallacy that land could be as easily transferred as stocks or shares or ships.

In furtherance of the principle a Registration of Title Association was formed in Ireland under the presidency of the Duke of Leinster, embracing a large and influential representation of the landed and mercantile interests of the country. Nothing that legal learning, speculative talent and the influence of high office could supply was wanting to promote the success of this movement. An ancillary measure, called the Land Debentures Act (1865), was passed to facilitate borrowing on the security of land, the title to which had been recorded under the Record of Title Act. But as the principal Act failed so also did the ancillary one. It is highly probable that many of the zealous advocates of registration in those days did not fully appreciate the difficulties attending the application in an old country like this of a system that had given marked satisfaction in the colonies, where the difficulties of first registration did not exist. It must,

however, be admitted that in the indefeasible titles granted by the Landed Estates Court the difficulties of first registration did not exist any more than in the case of the Crown Grants in Australia.

The Act had been thirteen years in existence when the Royal Commission in 1878 recommended that the Record should be closed and the titles remitted to the operation of the law for the registration of deeds. This was not done, and the Act continued a bare legal existence until 1892, when it was merged in the Local Registration of Title Act.

The Local Registration of Title (Ireland) Act, 1891, is *in pari materia* with the Record of Title Act, which it has now superseded. Both Acts provide for the public registration of the ownership of land in Ireland, and while they have many features in common, the latter enactment has important features peculiar to itself. The chief of these is the principle of compulsory registration, which was wholly wanting in the earlier Act, and the absence of which is commonly regarded as the cause of its absolute failure. Nor is it too much to say that the vitality of the Act of 1891 is mainly if not wholly due to its compulsory clauses. This is evidenced by the small number of owners who have voluntarily registered titles since the Act came into operation, although a short time before its passing into law there was an organised demand on the part of the landed gentry of Ireland for compulsory registration. The compulsory clauses, however, were framed so as not to affect them, and were confined to purchasing tenants under the Land Purchase Acts owing money to the State in respect of the purchase money, while purchasers under the Small Dwellings Acquisition Act were subsequently included.

On the other hand, vendors under the Land Purchase Acts were authorised to receive from the Irish Land Commission certificates of title to the unsold portions of estates held under a common title to those sold. These certificates, though eminently suitable for, were quite exempt from compulsory registration. It is an anomaly of the Act that those who in public convention had called for compulsory registration in every case, whether of sale or mortgage, were exempt, while those who were quite passive and indifferent in the matter were put to trouble and expense they had not anticipated.

If the principle of compulsion had been equally applied, these certificates of title granted to landlords after official investigation ought certainly to have been brought under the rule of compulsory registration. In the first place, the landlords had asked for it, and in the second place the whole vendors' title, having been officially investigated and found to be good,

was peculiarly fitted for compulsory registration as an absolute title, unqualified by any general note such as that which has marred the efficacy of registration in the case of the purchaser's title. In registration of title it is *le premier pas qui coute,* but in the case of the landlord's title, officially investigated, the initial difficulty had been surmounted. In the face of this discrimination between landlord, vendor and tenant purchaser it is difficult to hold that the Act was passed in the interest of the tenant purchasers, but rather as has been suggested in the interests of the Irish Land Commission as the collectors of the land purchase annuities. It is clear, however, that the author of the Act considered that the tenant purchasers would not be able to afford the expenses attendant on registration and search in the Registry of Deeds, and had suggested a lower scale of charges in their case.

Arising out of the conclusive character of the register and the indefeasibility of the title, and having regard to the fallibility of human institutions, the Insurance Fund embodied in the Act is a necessity. Two long and complicated sections regulate the conditions on which indemnity against loss can be secured. The fund was placed under Treasury control, and any deficiency in it was to be supplied out of the Consolidated Fund. It would be a matter of surprise if these provisions worked smoothly or satisfactorily; it would be very much better if persons using the register were allowed to make their contracts of indemnity free from official control and with such insurance companies as might take such risks.

The most radical change, however, introduced by the Act of 1891 is the abolition of the principle of single heirship as regards compulsorily registered land which, being up to 1896 regarded as freehold for all purposes, would in the ordinary course of law descend in case of intestacy to a single heir or to co-parceners, but which under the Act goes to the representatives of a deceased owner and becomes distributable among the next-of-kin—that is to say, the value of the land becomes distributable; the farm itself cannot be divided (Land Law Act, 1881, Sec. 30). This feature claims no special comment; it simply restores to these small holdings the heritable quality that attached to them as tenants. It was, however, severely criticised by the O'Conor Don and Mr. Hugh de Fellenberg Montgomery in the Dublin press. The Irish Parliamentary Party of that time were much interested in that part of the measure and wished to have it passed into law independently of its other provisions. Another characteristic of the latter Act is the local administrative principle that gives it its name. The Record of Title Act established a system wholly centralised.

The later Act established county registers, which in practice were largely controlled by the central office, but which it was hoped would enjoy a fuller degree of autonomy as the system developed. That this hope has been realised is by no means clear, but the centralised administration has been broken by the Partition Act, 1920, while under the same Act the unity of the system of registering deeds was preserved intact. The relations between the central and local offices in the transaction of business have been recently considered by a Viceregal Commission, while for the registration of deeds a separate office has been opened in Belfast for six of the Ulster counties.

The simplicity of the Act with reference to the right of a registered owner to have delivered to him a land certificate is considerably complicated by the rules. By Section 31 an absolute right to a land certificate in the prescribed form is conferred on him, irrespective of any condition. Rule 36 prescribed a form which might be varied by the substitution of a conveyance by the Land Judge or a Vesting Order of the Land Commission. Rule 38 goes farther and prescribes conditions to be fulfilled by "any person desirous of obtaining a land certificate." These are the lodgment of a requisition specifying the folio of the register and (if the registering authority shall require it) a draft of the document with a deposit of a sum of money to cover the expense of preparing it. These rules are framed by eminent judicial authority, and have been of course duly considered; having been laid before Parliament they are deemed to be within the Act. Moreover, they may, in intention at least, have been framed with a real regard to the best interests of registered owners. It seems hard, however, to tell a struggling farmer who has gone to considerable expense to comply with the law and delivered up his title deeds as required by the rules, that though the Act entitles him to a land certificate, he shall not get it unless he formally applies for it, sends forward a draft of it and defrays the expense of preparation; that unless he does these things he must rest satisfied to remain without that conclusive evidence of his title which the Act intends to give him, and be debarred, no matter what his necessity, from raising money for legitimate purposes by means of an equitable mortgage by deposit. Many farmers are dealers in cattle, and the absence of a deed or certificate of their ownership would undoubtedly be a serious loss to them. In cases of trespass or disputed rights of way the absence of any ready method of proving title may involve a litigant in serious expense, which might easily be avoided by the production of a land certificate. But the worst consequence of depriving the farmers of their just rights under the Act is

that many of them may be driven to have recourse to bill transactions and contracts of mutual suretyship by which solvent men become insolvent by rendering themselves liable for the debts of others. The history of rural life in Ireland presents but too many sad examples of the ruin that results from the system of mutual accommodation by bill transactions. In many cases copies of vesting orders are given to registered owners while the originals are retained by the Land Commission. Neither the Act nor the Rules of December, 1891, afford any ground for this proceeding. It is authorised, however, by an order framed in 1892. The copy vesting order is defective in the essential quality of a land certificate as a perfect evidence of title, and in its most valuable incidental quality as a means of creating an equitable mortgage. The annuity payable to the Land Commission in respect of purchase money advanced by them is of such a public and general nature that the Act regards it as one of those burdens which affects lands without being entered on the registry at all. The priority of these burdens is preserved by Section 49. The only grounds on which the Land Commission can claim to hold the original vesting order is as a certificate of charge.

No doubt there is something to be said for limiting the power of a tenant purchaser to borrow on the security of his farm, and the legislature has taken this view, but the withholding from him of his land certificate may prevent him borrowing at all for the necessary purposes of stocking or improving his holding. Nothing could be more opposed to public interest and national development than this. In the hands of the original proprietors large sums were borrowed from banks, insurance companies and private lenders on the security of these lands, but now that the occupiers are the owners their holdings are comparatively valueless as securities for money.

From the point of view of this paper the administration of the Act would therefore seem to be at fault. As to the Act itself, it is difficult and unwise to dogmatise in the absence of any expression of opinion from those who have used it, either voluntarily or compulsorily. Two facts, however, stand out rather prominently, namely, that those who called for the Act have not used it to any considerable extent, and that it has given rise to such an abundant crop of litigation as to seem almost to defeat its own purpose. It has, however, given vitality to a system that was practically dead. In reference to this, as to the older system, I trust my criticisms will be regarded as purely constructive, as my desire is that by improvement in administration and by up-to-date legislation both departments

of the State may be enabled to fulfil adequately and successfully their functions in relation to Land Titles and Transfer in Ireland.

Since the above was written the Parliament of the Irish Free State has passed a Land Purchase Act, Part IV. of which deals with Local Registration of Title. Provision is therein made for registration of "qualified" and "possessory" titles. These forms of registered title are taken from the English Acts. They are embodied somewhat inconsistently in the Small Dwellings Acquisition Act, 1899, where the title must be such as an ordinary mortgagee would accept. They embody no new principle but one, whose genesis, development and administrative value may be considered in relation to Land Titles and Transfer in England.—J. M.