

FORM IV.—CERTIFICATE OF TITLE.

Extract from Land Register.

Stamp, 3d.

District of Aigle.

Parish of Aigle.

Folio of J. P.

No. of parcel.	Map.		Name of lands.	Description.	Area.			Assessed Value
	Folio.	No.			A.	R.	P.	
2,736	29	34	Amandoleys,	Vineyard, --	2		36	720
2,737	29	35		Meadow and pasture --	6	1	8	268
2,738	29	36		Buildings, barn, stable, shed, --			10	240
2,739	29	37		Buildings, dwelling-house, --			11	700
2,740	29	38		Pasture and wood --	2	3	21	46
Total, --								1,974

(Signed by the Comptroller.)

Endorsement by Registrar of Charges.

The Registrar for the district of Aigle certifies that the parcels named in this extract are charged as follows :—With a sum of £1,400, bearing interest at 5 per cent. per annum from 30th June, 1884, which sum is to be repaid at the end of five years from that date.

Fec, 1/-

(Signed by the Registrar of Charges.)

III.—*Local Registration of Title.* By William Lawson, LL.D.

[Read Tuesday, 28th January, 1890.]

THE object of this paper is to call attention to the leading provisions of the Local Registration of Title (Ireland) Bill, which was introduced in the House of Commons late last session by Mr. Madden, M.P., the present Attorney-General for Ireland, and will be reintroduced by him in the ensuing session of parliament.

The main intention of the bill, as indicated in the useful memorandum which accompanies it, is to provide a simple, inexpensive, and easily accessible land registry for the occupiers of land in Ire-

land, and in particular for those who, on purchasing their holdings, are compulsorily brought within the provisions of the Registry of Deeds Acts ; but it also substitutes 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.

Occupiers (continues the memorandum), so long as they remain yearly tenants, statutory tenants, or short leaseholders, are not within the scope of the General Registry of Deeds. On purchasing their holdings, however, they come within the Registry Acts, and under the existing law protection for dealings with the property so acquired can only be obtained by adopting a system of deed registry and searches, which is but ill-suited to the case of small occupying proprietors. Unless these tenant-purchasers are provided with a suitable system of land registry, their titles will, in a short time, become involved in inextricable confusion, entailing on the owners great expense, from which a trifling expenditure on the occasion of each devolution of title would have insured them under a suitable system of registration of title.

The bill proposes to establish a local register in each county in Ireland, with a central register in Dublin, in which the existing Record of Title is merged, the whole system being under the control of the Land Judge of the Chancery Division of the High Court of Justice. It adopts the system of registration of ownership, as distinguished from that of registration of deeds, but it does not interfere in any way with the Registry of Deeds, which is dealt with by a bill brought in at the same time, the examination of the details of which would require a separate paper.

Registration is compulsory in the case of tenant-purchasers owing money to the state. Other owners of land *may* avail themselves of the provisions of the bill, instead of the Registry of Deeds.

The register is made final and conclusive (except in case of actual fraud), and an insurance fund is created to indemnify persons who may have suffered loss by reason of erroneous entries. Turning from the memorandum to the bill itself, Part I. deals with the establishment of central and local registers of owners. Clause 4 establishes a register of owners of freehold land, with a central office in Dublin, and a local office in each county. The central office is to be managed by an officer called the "Registrar of Titles," and the local office by the Clerk of the Peace, if a solicitor, or, if not, by an officer appointed for the purpose. Clause 5 secures for the central office the services of the existing officer of the Record of Title Office. Clause 10 gives the officers before mentioned, called "the Registering Authority," powers of requiring the attendance of persons, and the production of documents. By clause 14 the Registering Authority can refer any question of law or fact to the Court, County or High ; and by clause 15 an appeal lies by special leave to the Court of Appeal.

Land registered under the act is to be exempt from the Registry of Deeds, but a memorial of its registration is to be registered in the Registry of Deeds. Provision is next made for closing the register,

and remitting land to the law of Registry of Deeds ; but this cannot be done as long as the land is charged with repayment of advances made under the Land Purchase Acts. Clause 22 enables judgment mortgages to be registered in the central office.

Part II. is conversant with the mode and effect of registration of title, whether of the title of the owner in the first instance, or of transfers or charges made by him. Clause 24 makes it incumbent on the Land Commission to see that all tenant-purchasers, whether the sales to them were before or after the commencement of the act, are registered as owners. If a purchaser has ceased to be the owner, by death or otherwise, his successor is to be ascertained, and duly registered as owner. Clause 25 provides, in cases of compulsory registration, that no estate in the land is acquired until registration, when the title of the purchaser relates back to the date of the execution of the conveyance ; and if an owner dies and succession duty is paid in respect of the land, the Inland Revenue authorities are to require payment of the necessary registration fee from the successor, and pay it to the central registering authority, who is then to give notice to the person on whose behalf the payment was made, that, on production of the proper evidence, he may be registered as owner without further payment.

A person may be registered either (1) as full owner of land, *i.e.*, as tenant in fee-simple, or (2) in the case of settled land, as limited owner of the land, *i.e.*, as tenant for life thereof, or as having under the Settled Land Acts, the powers of a tenant for life (clause 27). Provision is made for the ascertainment, if necessary, of the equities or burdens attaching to the land, of which the purchaser was the tenant (clause 25). Certain burdens are to affect registered land without being registered, *viz.*, crown duties, tithe and drainage charges, easements, tenancies, etc. (clause 45), and these and other burdens or incumbrances may be registered (clause 44). Clauses 34-42 deal with transfers, transmissions, and charges ; on the death of a full owner his personal representative is alone to be recognised by the registering authority. This is on account of the subsequent provisions in Part IV. of the bill, assimilating the devolution of freehold registered land to that of chattels real, whether the owner dies testate or intestate (clauses 82-88). A separate register of leaseholders is to be kept, which statutory tenants under the Land Act may avail themselves of if they please, as well as leaseholders proper (clause 51). Ordnance maps are to be kept in the offices, and registered land is to be described by the names of the denominations on the maps ; but boundaries are not to be conclusive, unless they have been defined by the Land Judges or Land Commission, and are entered on the register as conclusive.

Part III. contains provisions for the lodgment of cautions of persons having an interest in the registered land, and with regard to limited owners. Trusts are not to be entered on the register ; but where a person is registered as limited owner under a settlement, the names of the trustees of the settlement, if any, are to be entered in a separate column of the register. If land is settled by will, and there are no trustees of the settlement, the executors are to be deemed

trustees of the settlement until trustees are appointed. Trustees are empowered to apply to the court for directions, when in doubt as to any matter with respect to which they are required or authorised to act under the act. Clauses 72-75 provide for cases of bankrupts and persons under disability.

Part V. contains penalties for fraud, and provisions as to an insurance fund, to be raised out of fees supplemented, if necessary, by the Treasury. This fund is to be applied to indemnify a person for his loss arising from erroneous, forged, or fraudulent entries.

Finally, clause 94 provides for the making by the Land Judge of general rules for carrying out the act.

It may be asked, however, especially by those who are unacquainted with the mode in which titles are recorded, How is a man to be registered as owner, or what is to be the form of the register, and what evidence is he to have to show that his land is registered? Clause 30 provides that where a man is registered as owner, he is to get a certificate in the prescribed form (called a "land certificate"); but the form in which entries in the register are to be made is left to be prescribed by the general rules. Possibly illustrations might have been given in a schedule to the bill, but the forms under the Record of Title (Ireland) Act, 1865, and under the acts in force in the Australian Colonies, enable one to form a pretty good opinion as to what form of register and of land certificate will be prescribed by these rules when made. In the case of tenant purchasers, the conveyance or vesting order will be recorded on a page of the register, as is done under the Record of Title Act and in Australia, and the owner so registered will receive a land certificate very much in the form prescribed under the Record of Title Act, which will be found at p. 160 of Mr. Dix Hutton's valuable book on that act. If the tenant-purchaser wishes to borrow money on the security of his land, he will execute a charge in a form prescribed, somewhat like that given at page 132 of Mr. Hutton's book, in the schedule to the Act of 1865. The charge will be recorded and the lender will receive a certificate of charge, which may resemble the form at p. 162 of Mr. Hutton's book.

The appendix to Sir Robert Torrens' *Essay on the Transfer of Land by Registration in British Colonies*, contains many illustrations how the original conveyance and the various subsequent devolutions of title are entered on the register in our Australian Colonies. If the owner dies, the name of his personal representative (executor or administrator) will be substituted; if his land is sold under a judgment or order of the court, the name of the purchaser will be substituted in like manner. If he puts the land in settlement, the names of the tenant for life and of the trustees will appear on the record in due course.

When the transactions on the register as to a particular parcel of land become too numerous, the registrar will have power to issue a new certificate, and transactions that are cancelled will be marked as such (see illustrations of this in Sir Robert Torrens' Appendix).

I have now stated the provisions of the bill, and endeavoured to show how the register will be worked; but this paper would be

incomplete if I did not say something as to the principle of the bill and as to the criticisms that may be made upon its chief details. The merits and demerits of a system of Record of Title have been discussed so often in and out of this society, that it is not necessary to advert to them at length. I may, however, refer those who are interested, to the Report on the *Foreign Systems of Registering Dealings with Land*, prepared by Mr. E. G. Mayne, in 1852 for the Social Inquiry Society of Ireland, a paper by Mr. Conway Dobbs, read before this society, 23rd February, 1858 (*Transactions*, vol. iii.) a paper by our ex-president, Mr. McDonnell, read in 1858, on the Report of Registration of Title Commission of 1857 (*Journal* II., p. 191), a paper read in 1863 by Mr., afterwards Sir Robert Torrens, on the Australian System of Registry, and an interesting discussion thereon (*Journal* III., p. 468), Mr. Dix Hutton's work on Land Transfer under the Record of Title Act, 1865, already mentioned, the Report of the Royal Commission on Registration in 1878 (printed as a parliamentary paper), the papers read by Mr. Hutton, Mr. Umlin, the draftsman of the Act of 1865, and others, at the Social Science Congress in Dublin in 1881 (reported in the *Transactions* for that year), the Essay of Sir Robert Torrens, above mentioned, published by the Cobden Club shortly afterwards, and lastly, Mr. Commissioner Lynch's "Suggestions for the Simplification of the Procedure in relation to the Sale of Land in Ireland," read before this society on 28th April, 1885.

The Report of the Royal Commission of 1878 condemned the system introduced by the act of 1865, and recommended that the Record of Title should be closed, and preferred the system of Registry of Assurances on account of the complicated system of limitations and trusts permitted by law, and the general character of dealings with land. It pointed out that no system which was not compulsory would be used in Ireland. The commissioners were of opinion that the Record of Title did not possess the merits declared for it, viz. :—(1) information as to ownership, (2) security of title, (3) dispensing with investigation of title, (4) simplification of conveyancing, and (5) cheapness. The report of the only dissentient (the O'Conor Don) will reward perusal. He says that solicitors were opposed to the act, and clients invariably directed that the estates purchased by them in the Landed Estates Court should not be recorded, that the errors proved to have arisen were few and trifling, and no loss was shown to have resulted.

Even if the views of the majority of the Commissioners were correct, many changes have taken place since then. The Conveyancing and Settled Land Acts have effected what some persons have called a revolution in the law of real property, and the rapid growth of a peasant proprietary under the operations of Lord Ashbourne's Act, only, so to speak, in its infancy, under the Bright Clauses of the Act of 1870, at the time of the Commissioners' report, has made the reconsideration of the question inevitable.

According to the recent report of the Land Purchase Commissioners there are over 11,000 tenant-purchasers. The title of Mr. Hutton's paper, at the Social Science meeting in 1881, was "Regis-

tration of Title Indispensable to Peasant Proprietors," and Mr. Umlin on the same occasion, used these words :—"A defect in the new Land Act is, that no provision is made for registering the titles of farms expected to be sold to their occupying tenants. There were similar omissions in the Land Act of 1870 and Church Act of 1869. The Registration of *title* has been shown to be superior in every way to the mere Registration of *deeds* under the Acts of Queen Anne. It prevails in our Colonies ; but here it has only been attempted in a lame and imperfect manner, and certain amendments ought to be made in the direction of simplicity and efficiency."

Mr. Commissioner Lynch put the matter in a practical shape in the draft bill which he appended to his paper. He proposed, (*a*) by application of the system of Record of Title to all cases of sales to tenants, to provide a cheap and simple mode of conveyancing by land certificates, making the ordnance names of the lands the basis for registration, and while keeping the titles so conferred free from complication, to render subsequent dealings with land simple and economical; (*b*) by enabling the Treasury in future to create local registries in connection with the Record of Title Office, to establish a land registry applicable to a new system of land tenure. He thus anticipated many of the provisions of the present measure, and the last, but not the least, provision of Part IV. of his bill was that the Land Judges should have power to make a new schedule of fees in the Record of Title Office.

It remains to say a few words on some of the chief points of the measure. There may be a difference of opinion as to the advisability of having a local as well as a central register. The latter exists in Australia, and is favoured by Sir Robert Torrens in the essay to which I have already referred. Parliament has, however, given a kind of approval to local registry by the provision in section 14 of the Land Purchase Act of 1885—that the Land Commission is to "transmit copies of a vesting order or conveyance to the Clerk of the Peace of the county in which the holding is situated, for the purpose of local registration"; but, as pointed out by the memorandum to the bill, no means have been provided to carry this direction into effect. Dr. Hancock was of opinion that registration should be local as well as central (*Impediments to Prosperity of Ireland*, p. 189), and Mr. Mayne, in the paper already referred to, says that the wisest course would be to adopt Dr. Hancock's suggestion, and make the register local as well as central. The obvious objections to local registration are the expense to the state, and the possibility that it may not be as competently worked as the central office. On the other hand, the local office has the advantage that the parties can generally attend in person before the officer, and sign any documents in his presence, whereas under the central system documents will have to be verified before some local authority, and transmitted to Dublin by post, and this might possibly open a door to fraud.

Another point is the partly compulsory, partly voluntary, character of the measure. If, notwithstanding the Conveyancing and Settled Land Acts, the system of registration of title does not prove suit-

able to owners of land, it will not be taken advantage of by them ; but it seems reasonable to give the voluntary registration of title a further trial under new auspices. If the system is a good one in principle, there is much to be said for carrying out Sir Robert Torrens' suggestion, that the seventh section of the Act of 1865 should be repealed, and that conveyances made by the Land Judge should invariably be recorded, at the same time reserving liberty, as is done by the Act and the present measure, to withdraw the land from the record, if, for instance, the parties interested wish to make complicated dispositions of it.

As regards tenant-purchasers, the measure would be of no use if not compulsory. The assimilation of the law as to the devolution on death of freehold registered land to that of personalty is necessary to simplify the recording of successive owners on the register ; but an anomaly will exist unless this change in the law is made to apply to unregistered land also.

I have not adverted to the systems of registry in force in other European countries, inasmuch as I understand that they are discussed by Mr. Murrough O'Brien in his paper on this subject, to be read before the society, nor to the course of legislation on the subject in England. Many of the clauses in the present bill are taken from the Land Transfer Act of 1875, which itself will be improved and amended if the Land Transfer Bill, introduced for England last session, is reintroduced and becomes law.

I may, however, refer to the opinion of Messrs. Wolstenholme and Turner on the question of Land Registry (which will be found in the preface to the fifth edition of their work on the Conveyancing and Settled Land Acts). Lord Cairns' Act of 1875, they say, failed because it did not answer the general requirements of land-owners. In the recent bills it was sought to avoid failure by resorting to compulsion, and the result is that the bill of 1889 failed to pass the House of Lords mainly on account of the compulsory clauses. But compulsion in their opinion would only render failure more certain ; every hindrance, mistake, or delay would be magnified by discontented persons compelled to adopt a new system against their will.

If a Land Register is to be established, the true course is, they add, to make its use voluntary, and to follow the example afforded by the Stock Register of the Bank of England. The Register should be kept by a public company, who should deposit with the government a large portion of their capital as a guarantee fund, and be allowed to make a small profit on transactions, they would insure to each registered owner the value of his land in case he is dispossessed, and also insure him against incumbrances. The writers conclude by saying that the present law gives many facilities for dealings with land which could not be obtained in a Register Office, and that there is no reason why each system, old and new, should not be capable of application to the cases in which it is most suitable.

The success of this bill depends on the reception it will receive from the legislature and from the public. It is in good hands, and it is a striking fact that its author was himself a member of

the Royal Commission of 1878 that condemned the Record of Title. My object will have been served if this society, which has done so much for the reform of our land laws in the past, gives its sanction to the principle of the bill, and arouses the attention and guides the opinion of the public in its favour, and so contributes not only to the passing of the measure, but, what is equally important, to a favourable reception of it by the legal profession as well as by the owners of land. If under its working land, whether it be large estates or small holdings, will be readily transferred from man to man, we may perhaps at no distant date congratulate its author at having removed what he,* whom Dr. Ingram has well called the founder of this society, many years ago declared to be one of the impediments to the prosperity of Ireland.

IV.—*The Woods, Forests, Turf-bogs, and Foreshores of Ireland. Opportunity for, and advisability of, establishing Government management and protection.* By William F. Bailey Barrister-at-Law, Legal Assistant Land Commissioner.

[Read Monday, 24th February, 1890.]

THE Land Purchase measure which the government intends to pass this session into law, affords an opportunity that should not be missed of protecting, preserving, and promoting forestry in Ireland, and also the use and benefit to a large section of the population of turbary and foreshore rights, which, unless now guarded and controlled, will lead to endless trouble and litigation in the future.

As I pointed out in a paper read before the Statistical and Social Inquiry Society last July, the Land Purchase Acts are already exhibiting disastrous tendencies so far as regards the growth of woods and forests in Ireland. No sooner does a farmer, in many instances, become the purchaser of his holding than he desires to exercise the rights of ownership, and assure himself of his emancipation by cutting down all the trees on the farm. In some cases also in which entire estates are sold on which there happen to be considerable plantations, these plantations not being attached to the holdings of any particular tenants, the owner, having no further interest in the place, proceeds to sell the timber to the highest bidder regardless of the consequences to the neighbourhood. In this way one of the prettiest wooded glens in Meath has lately been denuded of its trees, and now presents a barren and forlorn aspect. The *Times* Special Commissioner writing of the London Companies' estates in Derry has a like story to tell. Writing of the Fishmongers' estate, he says:—

* See Memoir of W. N. Hancock, LL.D. Q.C. By J. K. Ingram, LL.D. S.F.T.C.D.—*Statistical Society Journal*, August, 1889.