

SOCIAL INQUIRY SOCIETY OF IRELAND.

REPORT

ON THE

ALTERATIONS AND AMENDMENTS

NECESSARY IN THE

PRESENT SYSTEM

OF

SALE AND MORTGAGE OF LAND

IN

IRELAND.

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REPORT,

&c.

CHAPTER I.

OUTLINE OF THE PRESENT SYSTEM OF SALE AND MORTGAGE OF LAND IN IRELAND.

It will be found convenient in the following report, to adopt the division naturally suggested by the subject proposed for my examination; and accordingly I shall treat in their order, first, of the present system of selling and mortgaging land in Ireland; secondly, of the leading features of the modes of sale and mortgage in the United States; and thirdly, the various regulations for the same objects in the principal states of Europe. From a consideration of these I shall proceed to intimate the alterations necessary for the amendment of the prominent defects of our system, and making it more cheap, certain, and expeditious.

It may, perhaps, by some be deemed unnecessary to detail the causes, or mode of procedure, by which the powers of sale and mortgage are in Ireland so impeded; but without some attention to the details and technicalities of an old and artificial code of rules relating to our landed property, the differences of other systems would be imperfectly understood, and the alterations suggested as necessary might seem too vague and empirical.

DISTINCTION BETWEEN REAL AND PERSONAL PROPERTY.

The distinction between personal and real property is, in our law, very artificial. Moveable property, such as a table, a horse, a bank-note, may clearly be entitled to the term "personal;" such property can always be in the actual and visible, and sometimes in the manual possession of the owner; and his title is that all-sufficient one of possession, which the common adage states to be "nine points of the law." But title to immoveable property, land, is altogether different; and as property in land is not visible or manifest, the laws of this and of nearly all nations have required the title to the proprietorship of the soil to be indicated by formal deeds or writings. This property is generally termed "real" property, as if it had some peculiar title to this distinction; but if a house or farm is held for a term of years, however long, it then ceases to enjoy the title "real," and is in law termed "personal" property. It will not, however, be very important to mark with strict legal accuracy these distinc-

tions, and it may be more acceptable to my readers to popularise this report, by adopting an untechnical phraseology in stating the peculiarities of our system of sale and mortgage, as applicable to land generally.

SEVERAL CLASSES OF PROPRIETORS—INVESTIGATION OF TITLE.

The public are generally aware of the fact, that there may be in the same plot of land several kinds of proprietors. Thus, the occupier may be, for example, a lessee paying rent to a landlord; who may in his turn be himself a lessee to some third party; and this last may be a limited proprietor, entitled but for his own life; and so on. This is merely an illustration; but it at once shews that to a person willing to become the purchaser of the absolute interest in the soil, or, as it is termed commonly, the "fee simple," the mere possession of the land, the object of this intended purchase, does not give the least information as to the rights of the possessor to sell. It is true, indeed, that, theoretically speaking, possession of land is evidence of the occupier being seized in fee; but no purchaser would act on this rule of evidence, which is so notoriously falsified in the vast majority of cases. The title deeds are therefore called for; old possession, which ought to give some security, rather makes the title more suspicious, and requires the more rigid investigation. Every generation through which the property has descended to the seller adds to the difficulty and expense of deducing title. The title of the present possessor depending, perhaps, on a will or complicated settlement, is first scrutinised; the settlement itself may be but a new arrangement of the estate, on the first occasion on which it is possible to break through the fetters imposed by some older settlement or ancestral will; and thus the title is literally hunted down, until the scrutiny terminates in what is termed a "root of title;" and this, in Ireland, is generally a grant under the acts relating to the forfeited estates, either the "acts of settlement and explanation," or older grants in the reign of Elizabeth and James I.

TWO MODES OF SUCCESSION TO THE LANDED PROPERTY OF AN INTESTATE.

The law has provided two modes of devolution of landed property in this country, in case of the death of the proprietor without making any disposition of it by will. First, if the property be held in fee or for lives, it descends to one favoured individual (suppose, his eldest son,) to the exclusion of all his other children. If it is held for a term of years, it goes, or is distributed, among all his children equally. The favoured individual, in the first instance, is called the "heir at law;" in the second, those who are all equally esteemed are termed "next of kin."* Custom has, however, introduced two antagonist principles in the usual forms of settlement, and by them

* I do not think it important here to notice the anomalies in both cases. For instance, the descent to several daughters as coheirs, the father being sole next of kin of an unmarried child, &c. Strictly speaking, the term for years goes to the executor or administrator, who, after payment of debts, is trustee for the next of kin.

a provision is made out of "real estate" for younger children to whom the property would not descend; and if the subject of the settlement is a term of years, a privilege in the distribution which he would not otherwise obtain is given to the eldest son.

DIFFICULTIES ATTENDING SALE OF LANDED PROPERTY IN IRELAND.

The following combination very frequently occurs in titles, and is by no means an exaggerated statement of the difficulties attending sales of real property in Ireland. An owner in fee, whose title is assumed to be clear, devises his estates to trustees and their heirs, to the use of a named devisee for life; with remainder to trustees for one or more long terms of years, to secure an annuity by way of jointure for the wife of the devisee, and to secure portions for his younger children, and with remainder to the first and other sons in succession in tail-male. On the coming of age of the first son, a recovery is suffered of the estates, and a new settlement is executed, containing powers of mortgaging and raising portions for the younger children of the first tenant in tail, and so on. When such a title is investigated, there is really no mode of securing a purchaser but by a series of searches, involving vast expense and delay. Thus, registry searches must be made against the trustees, against their personal representatives, the younger children, and the successive owners; and searches for judgments, crown bonds, &c. against each owner of an estate of inheritance. Administrations must be produced to the parties entitled to the portions for younger children; judgments, &c. satisfied on record; releases executed of doubtful claims; and still embarrassments may arise from the wording of the various wills or deeds constituting steps in the title. Cases of sales of fee-simple property by private contract have, therefore, been very rare in Ireland. In England, owing to the greater care bestowed on conveyancing, and to the general introduction of powers of sale and exchange in wills and settlements, private sales are more numerous; but in Ireland sales were commonly effected through the Court of Chancery, and a suit for a sale in that court lasted usually for twenty years, at the lowest computation of the average of a large number.

COSTS OF CONVEYANCES AND STAMPS.

To all this preliminary expense of investigating title, which falls on the seller, are to be added the costs paid by the purchaser of the conveyances and stamps, which form a considerable addition to the total expenses of the sale. The costs of making out title, and of the purchase deeds, average nearly one-twelfth of the purchase money.

FURTHER DIFFICULTIES ATTENDING MORTGAGES.

Mortgages are subject to even greater expenses, delays, and difficulties. All expenses are, according to custom, paid by the borrower; and as the lender's solicitor has two duties to per-

form, one to his client, to see that the loan is effected on good security; the other to himself, to make as much costs as possible from the adversary; (the borrower being usually in such circumstances as to be obliged to submit to any terms or be disappointed in his loan) the title, generally speaking, is subject to a stricter investigation than on purchases. The mere seller has most frequently the option of not selling at a disadvantage of either price or terms: the reverse is the case with the borrower. But it has become notorious, that even in loan transactions there has hitherto been so great a difficulty in making out a certain and secure title, and such a desire to lend at a high interest, though at some risk, that mortgages are often accepted of most questionable validity, and on the scantiest information. Private purchases being almost unknown, and the interest in the funds low, a monied man submits to some risk in small loans, and some thousands have been lent from time to time on most infirm titles and most precarious security, the high rate of interest, five or six per cent. being deemed an equivalent insurance for the risk.

PRIORITY OF TITLE DETERMINED BY PRIORITY OF REGISTRATION.

By the several acts of the legislature, regulating the registration of deeds relating to real property, the priority in point of title is determined by the priority of registration. It however is only as to *bona fide* purchasers, without notice of an unregistered deed, that the priority intended by the legislature for registered deeds is secured; for actual notice of an unregistered deed, or the constructive notice which a court of equity implies against a purchaser, when his solicitor has notice of the unregistered instrument, equally defeats the provisions of the statute, and postpones the registered instrument to the prior one which is unregistered. This doctrine of courts of equity frequently occasions much injustice, and gives rise to more frauds than its introduction was designed to prevent.

DELAY OF MAKING SEARCHES IN THE REGISTRY OFFICE AS AT PRESENT CONSTITUTED.

A registry office is certainly intended in theory to be something more than a place where, after a long, diligent and laborious search, the existence of documents, without their contents, might be ascertained. The registry office in Ireland is ably officered, the clerks attentive, but one thing is certain, that the time required to obtain the only safe search, called a negative search, averages from four to six months; searches for judgments from two to three months. This source of delay requires no comment.

SALES OF LANDED PROPERTY UNDER THE ORDINARY COURTS OF JUSTICE SUBJECT TO GREAT DELAY, EXPENSE, AND DIFFICULTY. — HOW FAR TITLE CONFERRED BY SALES UNDER THE INCUMBERED ESTATES COURT.

Even when sales took place under the jurisdiction of the Court of Chancery, or the Bankruptcy Court, the evils before adverted to prevailed; and nearly similar expense, difficulty, and delay were inse-

parable from the purchase. The courts, by their orders for sale, conferred no title; this had to be investigated as rigidly as if the sale was a private one, and the purchaser had to see that every person who by possibility could be affected by the proceedings was properly made a party in the cause; that the decrees and orders were regular; and that the title itself, assuming the other preliminaries disposed of, was safe and unexceptionable.* Instances, too, have occurred, where the courts have pronounced the title in the proceedings before them good, and such as a purchaser was bound to accept; and yet, when the same title was afterwards attempted to be forced on some new purchaser, after perhaps the lapse of many years enjoyment under the first sale, the court has entertained questions as to the correctness of their original decision, or denied its propriety. Purchases made under the authority of courts of equity are liable to be impeached, even after many years quiet possession under them; and this is not merely an imaginary possibility, but is a circumstance of not unfrequent occurrence.† Mortgaging under the authority of decrees of court is not known; and, if attempted, the same infirmity would attend this mode of dealing with real property. Recently, however, a new principle has been introduced into the machinery of our courts, and the Incumbered Estates Commissioners are empowered to give what is usually termed a “parliamentary title” to a purchaser. Some doubts have indeed been entertained, by gentlemen of high legal attainments and acute minds, how far the statute has enabled the commissioners to confer an indefeasible title; but the public, at least, unhesitatingly purchase; and the vast majority of the profession think that no language could confer this power, if it has not been given by the clear, extensive and most positive words of the statute under which the commissioners exercise their jurisdiction.

SUMMARY OF DIFFICULTIES ATTENDING THE TRANSFER OF LANDED PROPERTY.

Such is a brief outline of our system of selling and mortgaging estates. It will be observed that the chief difficulties, the sources of expense, delay, and insecurity, arise from the following causes; first, the length of time during which a property may be, as it is termed, “tied up” by a settlement, *i e* for lives in being and twenty-one years after; secondly, the many modes by which an estate may be charged, viz. by deed, wills, or matters of record, judgments,‡ recognizances; thirdly, the very great difficulty in construing deeds and wills rightly, so as to be certain that the construction put on them by the ablest

* In *Johnson v. Reardon*, 3 I. E. R., 200, a sale in Chancery, the mere *investigation* of title lasted eight years after the sale, and the title was declared bad on a purely technical and frivolous objection.

† Many instances will be found cited in *Bowen v. Evans*, of sales under courts of equity being set aside.

‡ The recent alterations as to the effects of judgments have not, as yet, had any tendency to diminish the expenses of this source of difficulty.

lawyers will be that afterwards affirmed by the courts; fourthly, the want of a compulsory registry of titles or transactions relating to the transfer of land, by an application at the office of which, the power of sale or mortgage and the charges on any land could instantly be ascertained; fifthly, that courts which have authority to order sales of land have yet no power to give a judicial or parliamentary title of unquestionable validity to all purchasers. Some minor points there are, but the preceding are the chief leading defects of our system of real property, which prevent land from being readily marketable and transferable from one to another, to suit the relative wants of buyer and seller. The desirable remedies I shall consider, after having contrasted our landed system with that of our Transatlantic brethren of the great American confederation, and with those of the principal European states.

CHAPTER II.

AMERICAN SYSTEM OF SALE AND MORTGAGE.

We would naturally expect that the system adopted in the United States would present considerable features of improvement on that from which it sprung; that the rules and rights of real property would undergo nearly as great a revolution as that which separated the States from the mother country; and, with the mischiefs of the intricate British system and code of laws relating to land, fresh on the minds of those who effected the revolution, it might also reasonably be anticipated that a more simple code of laws would have been generally adopted. But the Americans were cautious and gradual reformers. They retained much of the old principles of the English common and statute law, which, at the period of the revolution, had been received in the various States; and the modifications were not uniform in the several States composing their vast Union. Indeed, so slight, apparently, have been these deviations from our present code of real property laws, that the surprise will be how these trivial alterations proved sufficient, and effected such great improvements in the facility of transferring property in land, suitable to the mercantile and enterprising character of the people. I shall briefly notice the principal features of difference in the system of real property prevailing generally throughout the Union, without entering minutely into the codes of the several States.

LAW OF DESCENT IN THE UNITED STATES DIFFERENT FROM THAT OF OUR COUNTRY — LANDED PROPERTY DISTRIBUTED AS CHATTELS REAL IN GREAT BRITAIN; ALL THE CHILDREN INHERIT EQUALLY.

The first and most prominent is the law of descent. In this country it has already been stated that real property, in cases of the intestacy of the owner, descends to one favoured individual,* called the heir

* Daughters constitute one heir.

at law, to the exclusion of all others, though equally near in point of blood or relationship to the deceased proprietor. Thus, the eldest brother of a numerous family takes all the landed estates, in case of the father's death intestate; and hence has originated the necessity of settlements. In some of the United States, this rule of descent was altered at an early period, even before the year 1700, and the rule, which is said to be one of general equity and sound policy, has since, at various periods, been admitted by the other States; and the law of descent throughout the Union may be now said to correspond with the distribution of the chattels real of intestates in this country; all the children, as next of kin, inherit equally.* In some of the States the eldest son is allowed, as under the Jewish law of descent, a double portion; but in the majority of the States he is not admitted to have any greater right than the other children. As in this country the law of descents is generally adopted in wills, so it is in America, and the power of devising estates is usually exercised in accordance with the rules which regulate the descent from intestates; and the eldest son, as such, is not in any case an object of preference. It will readily be seen how great an operation this rule has in creating a number of proprietors able to sell and mortgage their estates, without much trouble or expense in deducing title, and free from family charges or the intricacies of wills and settlements; and yet that there being no compulsory division of property among children, and the power of devising being free, the acknowledged tendency of property to accumulate takes its natural course.

FACILITIES FOR THE SALE AND TRANSFER OF LAND IN THE UNITED STATES.

But the facility of sale and transfer of land in the United States is secured by other rules, which it is right to notice. The estates called estates tail, and the complex and minute distinctions relating to such estates, are unknown in most parts of the United States. In Virginia, estates tail were abolished as early as 1776; and in New York, in the year 1782, all estates tail were turned into estates in fee simple absolute. The other States in the Union have adopted, with more or less uniformity, the example set to them by the former States. Some few of the modifications of the absolute conversion may be briefly noticed. Thus, in Vermont, Ohio, Illinois, and Missouri, if an estate tail be created, the first devisee takes a life estate, and a fee simple vests in the heirs or persons having the remainder after the life estate of the first grantee or first devisee. In Alabama and Mississippi, a person may convey or devise land to a succession of devisees then living, and to the heirs of the remainder man. In these States, therefore, there is really no estate equivalent to our estate tail, but the first devisee is tenant for life, and the remainder man is entitled in fee. In other States, the departure from our system of estates tail is less marked. Thus, in Indiana,

* It is not important to consider the deviations from this rule, the main feature is that brothers and sisters share equally in the property derived from intestates.

a person may be seized of an estate tail by devise or grant, but this is converted into an estate in fee after the second generation. In Connecticut, there may be a special tenancy in tail, as in the case of a devise to A and to his issue by a particular wife. This estate tail in the hands of the issue is enlarged into an estate in fee simple.

POINTS OF DIFFERENCE IN THE LAW FOR THE TRANSFER OF LAND IN THE UNITED STATES.

These are the leading peculiarities of the American system of descent and tenure of real property; but the far-sighted policy of their legislators, and their anxiety to diminish the expense and complexity connected with the evils prevailing in the English code, which, in its various features, has been adopted as the basis of theirs, have induced departures from our system in other more minute particulars, to which it will perhaps be sufficient barely to allude. The professional reader will readily recognize the importance from a passing allusion, and the non-professional would in vain try to comprehend them, even if detailed at length. Thus the New York statutes have reduced the power of restricting the alienation of estates, by limiting executory devises to the lives of two persons in being at the creation of the estates;* attendant terms are abolished; uses and trusts, except as considerably modified, are prohibited.

INCREASED FACILITY TO CREDITORS AGAINST THE LANDS OF DEBTORS IN THE UNITED STATES.

Another striking feature of difference between the American code of real property and our system, is the increased facility given by the former to creditors realising their demands against the lands of their debtors by execution. Here, it is well known that the difficulty of making the real property of the debtor available for payment was, until lately, such as to prove almost insuperable at law, and the remedy in equity was even more inefficient. The only legal remedies available to the judgment or mortgage creditor were by an *elegit* or entry after ejectionment, to recover the rents and profits, with a liability to a strict account in a court of equity. In the United States, lands may be dealt with in execution precisely as terms for years or chattels may in this country, and the sheriff may sell them on an execution delivered to him. Judicious checks are, of course, interposed to prevent this power of sale being made the medium of fraud or oppression; and there generally are required full and reasonable notice, and a limited right of redemption to the party himself and the creditors affected by the sale.†

Judgments bind real estate in a manner similar to judgments in

* In *Bengough v Edridge*, 1 Sim. 173, 267, an English case, a limitation was made to depend on an absolute term of twenty-one years, after the deaths of twenty-eight persons living at testator's death.

† Taken with a reference to any one of the States comprising the Union, this statement of the law may be criticised. I speak of the general provisions common to all or the majority of the States.

Ireland, prior to the recent statute, and are required to be docketed or registered to bind purchasers; and there is a special statute of limitations for the protection of purchasers, such as five or seven years. In some of the States, judgments only bind from the time of execution being levied.

EXECUTORS MAY SELL OR MORTGAGE REAL ESTATE FOR THE PAYMENT
OF DEBTS.

Executors may also, in case of deficiency of assets, sell or mortgage so much of the real estate of their testate as may be requisite to pay the debts; and this is done in the several States under the direction of the court of probates, or other courts having testamentary jurisdiction.

THE RULE "CAVEAT EMPTOR" APPLIES IN THE UNITED STATES AS IN
IRELAND, AND DEEDS MUST BE RECORDED THERE.

Having thus hastily glanced at some few of the chief peculiarities in the American system of real property law, it will readily occur to the reader, that the leading features of their modes of sale and mortgage of real property must bear much resemblance to our own. Indeed, the modes are so similar as to be nearly identical. Sales are made by deeds under seal, shorter rather than an English conveyance, but with similar covenants for title. There is no warranty, nor greater certainty in the title than what results from possession of the seller, which there too is required; and the greater simplicity and security are derived from the other provisions of the real property code before noticed. The title must there, too, be investigated; the rule, "Caveat emptor," applies; and the purchaser must equally guard against mortgages, charges, and judgments. All deeds and conveyances of land must be *recorded* in the public registry office of the district, after being duly proved; and if not recorded they are void as to the subsequent *bona fide* purchasers and mortgages whose deeds shall be first recorded. One of the most questionable rules of the English law prevails also in the States—that notice of an unrecorded deed, to a purchaser previous to his purchase, though duly recorded, will postpone his title to that of the unrecorded deed.

RULES FOR THE RECORDING OF DEEDS.

In many of the States a fixed time is specified, within which the deed of sale must be recorded; and the time varies from fifteen days in New Jersey, to a year in Delaware, Tennessee, Georgia, and Indiana; and in others, again, the law has fixed no definite limit of time, but that most uncertain of all periods, "a reasonable time," within which the deed must be recorded; but in all cases the deed, when duly recorded, has relation back to the time of its execution; and between two deeds, each duly recorded, the priority of execution, and not the priority of recording, determines the priority of

rights. The professional reader will at once recognize the resemblance of this rule to that requiring the enrolment of deeds of bargain and sale, and of deeds barring entails, under the act for the abolition of fines and recoveries. The mode of recording, the number of witnesses, and the officers vested with authority to take and certify the proof, all depend on the local laws of the several States, and few possess the same regulations on any of these points.

MARRIED WOMEN COMPETENT TO CONVEY REAL ESTATES AS IN
IRELAND AND ENGLAND.

Married women are, as in Ireland and England, competent to convey real estates vested in them, with the assent of their husbands, who must be parties to the conveyance; and there must be the same private examination, by the proper officer, of the lady as to her free and voluntary execution of the deed.

LAND BROUGHT IN THE UNITED STATES NEARLY TO THE LEVEL OF A
MARKETABLE COMMODITY.

Land has thus been brought, in the United States, nearly to the level of any marketable commodity; it may there be purchased, or loans advanced on it, with reasonable certainty of title, with expedition, and, comparatively with our titles, at but trifling cost; and all these advantages have been attained by slight modifications of the rules of inheritance, and those other deviations from the intricacies of our system which I have just noticed.

CHAPTER III.

BRIEF SKETCH OF SOME OF THE EUROPEAN SYSTEMS OF SALE AND MORTGAGE.

Having thus considered, though indeed briefly, the leading features of our own system of sale and mortgage, and contrasted with it that of the United States, which is derived from and founded on ours, I shall proceed to state with equal succinctness the modes of sale and mortgage prevailing in some of the principal states on the Continent of Europe; and, first, that of France.

GREATER SIMPLICITY OF THE FRENCH LAWS RELATING TO REAL
PROPERTY.

It is familiarly known that the laws of real property in France were, at the great revolution of 1789, subjected to the total reconstruction which was the prevailing philosophy of that æra; and the Civil Code, or the Code Napoleon, reduced those alterations to a regular and tolerably harmonious system. In the details of the rules which regulate the sale and transmission of land in France, there is not much resembling our system; and the superior facilities, and the

comparative certainty of title, are owing almost wholly to the greater simplicity of the laws relating to the enjoyment of real property. Entails are not permitted; the right to create life estates, suspending the power of sale or mortgage, is restricted. By the Code Napoleon all substitutions* were prohibited, with an exception in favour of parents, who are authorized to give life estates to their children, and to limit the property over absolutely to the children of those children; and persons who die without issue may give life estates to their brothers and sisters, or any of them, and may limit over the property absolutely to the children of such tenants for life.

POWER OF DEVISING IS GREATLY RESTRICTED.

The power of devising, though not of alienation or mortgaging, is greatly restricted. A parent cannot devise away from his children his entire landed property, but only a proportion ascertained by the number of his children; and the rule of inheritance in case of intestacy is similar to that before-mentioned as prevailing in America, the property of a deceased owner descending to his children in equal shares.† These rules have a manifest tendency to produce a very numerous class of small proprietors, and, almost as a consequence, rapid alienations and frequent mortgages.

FRENCH DEEDS OF SALE AND MORTGAGE MADE BY "AUTHENTICATED ACTS."—CAUSES OF THE PREVALENCE OF MORTGAGES IN FRANCE.

The chief feature of novelty in the French system is, that all deeds of sale or mortgages are required to be made by what are called "authenticated acts." The institution of the notarial mode of authenticating all solemn transactions has been extended most beneficially to sales and mortgages, and the notaries are at once the witnesses and registrars of the instruments affecting the title to real property. There is also an office solely for the registration of mortgages, which require a renewed inscription in this office every ten years; and thus it can be most readily ascertained what charges affect the property intended to be purchased and the party entitled to convey; or whose charges must be liquidated by the purchase money. It has indeed been often stated, that the vast extent to which mortgages prevail in France is a great evil, interfering with the proper cultivation and improvement of the soil; but the causes of the prevalence of mortgages must be sought in other springs than the mere facility of creating them—a compulsory subdivision of land among children, and the rural population not being as energetic and enterprising as the civic,‡ and the pursuit of agricul-

* For instance, successive life estates in devisees.

† This is the general rule, the exceptions as to the estates of the nobility are not of sufficient importance to deserve notice.

‡ Lang's Europe, 97.

ture, even under the most favourable auspices, being seldom a lucrative employment of time or capital. Few fortunes are made from it any where.

CONSIDERABLE UNIFORMITY OF SALE AND MORTGAGE IN ALL THE
EUROPEAN STATES.

It would be tedious and not instructive to review in detail the systems adopted by other European states, of selling and mortgaging land. In nearly all there is a considerable uniformity prevailing, though with minor differences. Registration, more or less perfect, more or less cumbrous, is adopted by all; but their registrations are little to be admired or adopted. As one instance among many of the intricate and cumbrous nature of the registries in which all transactions by sale or mortgage are to be recorded, it may be mentioned that for the district of Hamm, containing a population of 300,000 persons, the enormous number of 3,200 volumes of registration was required.* The Bavarian, Prussian, and Austrian systems agree in requiring the sale or mortgage to be duly registered in the proper office, and according to the minute and intricate directions by which these offices are regulated; and, as in our own system, the priority of registration confers priority of title. Throughout Italy, also, the same general features of sale and mortgage will be found to exist, the sales and mortgages being duly authenticated by public officers, and then inserted in registries.†

MODE OF PURCHASE BY "SUBHASTATION" IN GENEVA.

Such, too, are the systems prevailing in Norway and Sweden, and Denmark, and even in the little state of Geneva; sales and mortgages being made by duly authenticated acts, and the priority being determined by the priority of registration. In Geneva there prevails, indeed, one peculiar mode of sale, which, from its resemblance to what is now best known in Ireland as a "parliamentary title," deserves notice. One mode of purchase was by the method called "subhastation," and any one who purchased with the formalities proper for this species of sale, was warranted from all eviction by prior defects of title; hence the attachment manifested to them; it was such that though in the intention of the law subhastations were only to be used for compulsory alienations, they became, by a deviation from their primitive institution, the most frequent means of effecting sales purely voluntary.‡ The legal reader will readily recognise the resemblance of this method to that recently prevailing in the United Kingdom, of conveyance by recoveries, which, at first a formal judicial act, became in time a mere conveyance by the parties, but still attended with the high binding validity which they received when the recovery was a solemn act of court.

* Vid. Second Report on Real Property, page 460, 461.

† See Report to Social Inquiry Society on the Foreign Systems of Registering Dealings with Land, by E. G. Mayne, Esq.

‡ Second Report on Real Property, 521.

DISADVANTAGES ATTENDING THIS SYSTEM.

But this system of subhastation, or mode of giving a parliamentary title on a *private sale*, is attended with disadvantages; for if the principal object, the security of the purchasers, was attained, it was at a price which took away all the merit of it. For he who bought on such a sale, being able to include the lands of a neighbour among those of the ex-proprietor, might in his turn find the same power of furtive sale exercised towards him; and he might be as readily deprived of the property by fraud as he had by fraud obtained it. The purchaser was made confident but for one moment, and never could cease to feel that his proprietorship, however excellent his title, was always at the mercy of his neighbour.

CHAPTER IV.

EVILS OF OUR PRESENT SYSTEM OF REAL PROPERTY LAW, AND SUGGESTED AMENDMENTS.

Little could be gleaned from pursuing the enquiry more minutely into the continental system of sale and mortgage; and the explanation of their *vocabula artis* would alone consume more space than could be conveniently permitted in the papers submitted for your consideration. I shall return, therefore, after this brief view of the European systems, to the defects existing in our own, and the amendments which it is possible to adopt, and yet preserve at least some of the leading principles of our present system of Real Property law.

INFLUENCE OF THE LAW IN RETAINING POSSESSION OF LAND IN LARGE MASSES.

Were it desirable always to preserve property in apparently large masses; to have a landlord class far removed from the occupiers of the land in feelings and habits; to create and continue a race of impoverished owners; to retain in a position from which improvidence would otherwise detrude them, persons who were nominal owners, but really agents for creditors; no system could be devised more suitable to perpetuate such evils than the real property code now in existence. But the very choice of the subject of this essay by you, argues that the system is defective and productive of evil results, and some of these I would briefly advert to, with the view of pointing out their appropriate remedies. Indeed, however much any person may be inclined to dilate on the benefit conferred by a large proprietary, and to expatiate on the superior condition of the northern over the southern and western provinces of Ireland, and to insist that this superiority is derived from the difference in the size of the estates held by the landlord class, it will readily appear how vain are such speculations, when the condition of the estates of the chief grantees in the more desolate regions of Munster and Con-

naught is considered. Almost the entire of the west of the great county of Cork, from Bandon to Berehaven, was in the reign of James I. granted to the Earl of Cork. For two centuries following the region was desolate and unimproved, and it was only in recent times, nay, within the memory of many now living, that, by the splitting up of the district into small estates, by the addition of resident gentry, by opening roads at the expense of the county, and by the general spirit of industry and improved civilization thus introduced among the peasantry, from the increased facilities of communication, that the district has emerged from its former wretchedness. So of Connaught. The "houseless wilds of Connemara" were long possessed by one proprietor, the owner of 200,000 acres. He was "monarch of all he surveyed," but the reign was not distinguished by any very enlightened efforts for the welfare of his subjects. There may be said to be exceptional cases; but the truth, to an attentive observer, will seem to be between the two extremes; the proprietorship solely in large masses, and the minute compulsory subdivision, the golden mean between the creation of a few landlords from the indiscriminating bounty of the Crown of its forfeited estates, and the enforced distribution of the ownership of the soil among too great numbers. The wants of trade, the principle of demand and supply, and the application of commercial freedom of contract, should exist in this instance as in all others, to regulate the proprietorship of the kingdom. "Hitherto, investments in land have been almost entirely out of the reach of the humbler classes in this country. The enormous difficulty and expense thrown in the way of the acquirement of small properties, by the uncertainty of titles, the complexity of the law, and, till recently, by the heavy stamp duty, tended to counteract that desire for the possession of land so natural to all men, and so flattering both to pride and to gentler and worthier feelings, and so stimulated by the political privileges attached by our ancient constitution to freehold property. Still, the sentiment has to a great extent survived, notwithstanding the circumstances which long made the gratification of it almost an impossibility; and a conviction is gradually growing up among all classes, that this impossibility involves an injustice, and cannot much longer be either defended or retained."* It is true, indeed, that we have had in Ireland for the last three years a tribunal under whose operations every impediment to the acquisition of estates, of all sizes and of all capabilities, has been removed. This tribunal combines the three great desiderata, certainty of title, economy of cost, and facility of sale; and were such a tribunal always a part of our judicial system, it might be deemed superfluous to make other provision for facilitating the sale and transfer of land. But it is thought by many that this tribunal is more arbitrary and exceptional in its nature than is suited to the character of our other institutions, and it is not certain that the duration of the Commis-

* Edinburgh Review, Ap. p. 423, on Investments for the Working Classes.

sion will be prolonged, or that similar powers will be conferred on the Court of Chancery.

A SPECIAL TRIBUNAL TO ADJUDICATE ON TITLES WOULD PROBABLY PROVE A FAILURE.

It becomes necessary, then, to consider the improvements and the alterations necessary, to continue henceforth the facilities which all men deem desirable in selling and mortgaging land, and to provide for contracting parties every reasonable security that they shall enjoy the subject-matter of their contracts, unimpeded by excessive charges or doubts productive of delay or litigation. The most specious plan for securing all these important advantages, is that which so naturally suggests itself to most minds, the erection of a tribunal to adjudicate on titles; by a summary application to which, as to shopmen in a mercantile establishment, the purchaser can ascertain the validity of title and all other circumstances connected with the property of which he proposes to become the purchaser. Such a court, unless most strictly guarded and well constituted, would prove, in my humble judgment, a total failure. It could scarcely be applied to the present system of real property. The suggested amendments of the system of registration and judicial certificates would be nearly useless. The officers of no court with which I am acquainted would be fitted for the task of ex-parte investigation, or rather merely of the formal approval of titles, or of registration of "titles." The possibility of such a court working well, implies a simplicity in the laws of real property, greatly contrasted with the present most artificial and cumbrous system. The establishment of such a tribunal has, however, been recommended by respectable writers, but I cannot see that it has much captivated the public; or that professional opinion, not indeed always a safe criterion of utility, is in its favour. In truth, the proposed simplification would be attended with a complexity and uncertainty of its own, far greater than even the old but well-known grievances to be remedied. It would not be a total avoidance of the evils of the present system, and would at best transfer to an extraordinary and imperfect tribunal, acting ex-parte, the same expense and trouble of investigating titles which are now entailed on the parties themselves. Sales and mortgages would scarcely be either facilitated or cheapened. Those most enamoured of such a court, are misled by the analogies derived from somewhat similar public offices, or registers of titles in France, and other states of Europe. It is the system of real property prevailing in those places, which makes such public registries of sales and mortgages or titles practicable, and not the registries or courts which simplify the titles. When it is remembered that it is no unusual occurrence in Ireland to have the following state of title to any parcel of land: The land may be held in fee, settled on tenants for life by the last of a long series of family settlements, each of which had created charges for younger children, with terms for securing these charges, and frequently with additional terms for raising limited sums to

feed the extravagant tastes of the successive tenants for life: that the charges thus created are most commonly made the subjects of other settlements; and with such a complication of rights in adults, that the title may be further embarrassed by the interests of infants, married women, or lunatics, it is evident no court hearing and adjudging *ex-parte* would be competent to deal. The decisions might be correct, but only by chance; and the tribunal would be subject to all the objections now made to the court of the "Commissioners of Incumbered Estates," the principal of which is the dislike of conferring on any individuals the power of giving a Parliamentary Title, while there would be no corresponding checks in publicity or jealous watchfulness against abuses.

CONSIDERATION OF THE SUGGESTION THAT THE PROPRIETORSHIP OF LAND SHOULD NEVER BE IN ABEYANCE.

A more plausible suggestion has been recently made, that the proprietorship of an estate should never be in abeyance; and that by adopting a machinery partly derived from the railway acts and partly from the practice of conveyancing, there should be always persons, trustees or others, adult and competent to deal with the estate, empowered to sell, charge, or exchange it. Thus a learned gentleman, a member of the legislature, who has devoted much time to the consideration of this difficult subject,* recommends the adoption of a system of registration of owners under the description of "Registered Owner Absolute," "Registered Owner Fiduciary," &c. and providing that certain defined powers should be annexed to the "owner" thus registered. It seems to me, however, that in all the plans for thus simplifying the system of real property, there has been one material element omitted to be considered; and that is, the vastness of the property to be affected by the change, and the extensive machinery requisite for its working. In a small and petty kingdom, not as extensive as the private estate of an English nobleman, a system of registered owners or proprietors might not be difficult; but the moment such a system is to be applied to Ireland, the difference will immediately be perceived between theory and practice. I am far from underrating the value of such a system, as auxiliary to other amendments; but I do not think, unless other extensive changes in our laws of real property be first introduced, that any tribunal or staff of clerks, even though composed of experienced lawyers or solicitors, could ever establish such a system; or could continue it, if by chance it was found suddenly established, for a single year.

SUMMARY OF THE SOURCES OF DELAY AND EXPENSE IN THE INVESTIGATION OF TITLES—THERE SHOULD BE ONLY ONE MODE OF CHARGING LAND WITH INCUMBRANCES.

Dismissing those plans with the few preceding cursory remarks, it remains to be considered what amendments in the mode of sale

* Mr. V. Scully, *The Land Question*, p. 64.

and transfer of estates are really practicable as well as desirable. Sudden, total change is at once to be deprecated. A revolution in the entire system of real property is confessedly undesirable, and what is sought are such amendments as will gradually introduce a better, cheaper, and more expeditious mode of selling and transferring estates, than the old, cumbrous, dilatory and expensive mode now prevailing. If I have in the earlier chapters correctly explained the causes of the intricacy of the present system, in those causes we should seek for appropriate remedies. Now, the chief sources of delay and expense in the investigation of titles are, the numerous ways in which real property may be incumbered, and the difficulty in the means of ascertaining the existence of the incumbrances affecting it: second, the frequency and absurdity of the intricate limitations for successive life estates, contingent remainders, executory devises, &c., while these again are principally owing to the feudal rules of descent being retained at the present day, and the struggle prevailing between the rules of law and the desire to mould them according to the caprice of the proprietor. The very rules which cause the present unsatisfactory state of the law of real property, and interfere with the desired freedom of transfer, at once indicate the proper remedies. The first and chief remedial measure, then, which I would propose, not as a novel expedient, but one which has long before been suggested, and has met general approval, is, that there should be only one mode of charging land with incumbrances. This mode, it is obvious, should be by deeds in writing duly registered in the central registry office, describing shortly the lands and the interest in it to be charged with a specified sum. This deed might run somewhat in the following form:—

PROPOSED FORM OF DEED FOR THIS PURPOSE.

“This Indenture, made this day of , between A. B. and C. D. witnesseth that the said A. B. has, in consideration of the sum of £1,000 to him in hand paid by the said C. D. charged the Lands* of Killoden, in the barony of Kinalmeaky, and county of Cork, with the said sum of £1,000 to be paid to the said C. D. on the 1st November, 1853; with interest, until paid, at the rate of £5 per cent. per annum,” &c &c.

NO DEVISE, ETC. SHOULD BE DEEMED AN INCUMBRANCE UNTIL A MEMORIAL WERE REGISTERED.—FURTHER SUGGESTIONS.

No devise or charge by will should be deemed an incumbrance on land, until a memorial stating shortly the name of the testator, and the date of the will, the lands charged, name of the legatee, was placed on the registry. An affidavit of at least one witness, of the perfection of the deed or due execution of the will, should

* If held for lives or years, the description should be shortly varied.

be filed in the office, as at present there is one annexed to the memorial of a deed. The assignment, release, or payment of a charge, once placed on the registry, should be similarly evidenced; and every ten years a charge should be renewed, on an affidavit, stating the names of the party then entitled to the charge, the names of the lands, the last payment of interest; and notice, before placing the memorial of renewal on the registry, should be served on the owner or his agent, with a copy of the claim to the charge as stated in the affidavit, one month at the least before tendering the memorial of revival to the registrar. Proper machinery should be provided if the claim is contested, for deciding the rights of the parties on a summary petition to the Court of Chancery. Thus, the creation, existence, and present owner of a charge could be at once ascertained on a reference to the registrar; and by providing that the only estates which could be made the subject of charge should be fee simple, or interests deemed perpetual interests, as defined in the later rent-charge act, or certain long terms, the present incubus of charges—on, first, the fee of the land; next, the interest for lives renewable for ever in it; then, the leaseholds; and finally, the charges themselves—would be gradually abolished. Charges on the equity of redemption, or second charges, should not be permitted. Those for younger children, created by marriage settlement, or by will, to be exceptions, and deemed all of equal priority, or first charges; but a second set of family charges to be prohibited, while the first were existing.

PROBABLE BENEFICIAL RESULTS OF THESE PROPOSED ALTERATIONS.

So far at least as the expense and difficulty of sales, mortgages, and transfer of property, are caused by the present method of creating and perpetuating charges, the proposed alteration would effect considerable improvements. It would be analogous to the mortgage office in France; and although an interference with what is so universally deemed a "right of property," the power to *incumber* it as the proprietor wishes, it is an interference recommended by its simplicity and useful tendency. The word "incumbrance" carries with it a twofold meaning; the owner of the land and the land itself are burthened by it; and it is now a too-well-established fact, that neither the duties of proprietors nor the cultivation of the land are ever well performed when the soil is under the dominion of encumbered proprietors. "The land languishes." Universal experience in this country, and in Scotland, and, indeed, *a priori* reasoning would sufficiently testify to this fact. "Interest rei publicæ ut sit finis litium" is not a more wholesome maxim, than that the interest of the community imperatively demands that the proprietorship of the land should be speedily transferred, from insolvent or indebted nominal owners to solvent and real proprietors. I cannot, therefore, in the present case, regard this objection as entitled to any weight.

PROVISION FOR RIGHTS OF JUDGMENT CREDITORS.—FURTHER SUGGESTIONS.

Some provision should be made for the rights of judgment creditors. Judgments should no longer by any system of registration, much less by a code of legislation most complicated in its phraseology, be capable of being made charges on land. Indeed, this would be only reverting to the state of the law before the statute of West. t. 2, c. 18, enabling judgment creditors to take in execution half of the land of their debtors; and which, by construction, was held to make judgments permanent liens or incumbrances. But the creditor should have the power of seizing the land by execution at law, directed to the sheriff, as at present. Instead of the formal appraisal or value set on the property seized, which entails the further process of an account in Chancery, the sheriff should by a competent jury accurately find the rental of the lands, and the appraisal should be at the clear yearly value; which in any account afterwards to be taken, should be made binding on the creditor, with the usual power to charge him for casual profits, such as fines or new lettings. The verdict and return of the jury should be registered; this registration should be equivalent to a legal assignment of the debtor's interest. A summary mode of accounting before the sheriff and jury should be afforded to the debtor, and the finding of payment on the sum due and tendered should, when registered, be a legal release or satisfaction of the judgment and execution. All judgments in ejectment on mortgagees, creditors, or others going into possession on adverse titles, should also be registered in the same office, and at a uniform charge of not more than 5s.

SALES UNDER THE COURTS SHOULD CONFER AN INDEFEASIBLE TITLE.

Sales under the authority of any of the Courts of Chancery, Bankruptcy, or Insolvency, should confer an indefeasible title to the land sold; and this would, as in the case of a Crown Patent, be deemed a sufficient root of title in subsequent sales or mortgages.

POWER SHOULD BE CONFERRED ON THE SHERIFF TO SELL ABSOLUTELY.

A further power should be given to sell the land by a summary writ directed to the sheriff. The sheriff could formerly, in a common writ of fieri facias, sell a term of 10,000 years, however valuable. He could not sell a lease for the oldest life, though almost valueless. The sale should be by public auction, after a month's public notice by advertisement.

CHAPTER V.

SUGGESTED ALTERATIONS IN THE LAW OF WILLS,
SETTLEMENTS, &c.

It will readily be noticed, that in the amendments and alterations which I have thus ventured to suggest, the spirit of modern legislation has been adopted. All who have written on, or much considered the subject, with one illustrious exception, recommend universal registration of instruments affecting land; the recent statutes have in some measure corrected the evils of judgments, by making registration necessary. But comparatively little towards making the sale and transfer of estates cheap and expeditious, will have been effected, if only the preceding changes of the law are adopted. The great sources of delay and expense lie deeper, in the laws of settlement and devises, the permission to create several successive life estates, shifting uses, executory devises, &c. Any interference with the present rights of owners to create absurd settlements, capricious and unintelligible wills, fettering estates when they can no longer enjoy them, will of course be loudly deprecated. But this is no more than the outcry which has preceded all changes, the echo of "*Nolumus leges Angliæ mutari*," which has passed into a proverb of wisdom with those who will not take the trouble to reflect.*

I shall, therefore, with some hesitation recommend the restrictions of the power of settling real estate to two successive or substituted life estates, with an ultimate estate in fee absolute, either in the children of one of the tenants for life, if unborn, or to some third party in existence at the time of the will or settlement. No shifting uses, no capricious conditions, or absurd limitations, should be tolerated. A power to jointure or charge for younger children by a tenant for life might be permitted; but to be exercised only in the mode before indicated, as to the creation or transfer of charges, and only when the charge for younger children was the sole incumbrance on the estate.

ADDITIONAL AMENDMENTS SUGGESTED.

I believe that very much of the present most undesirable method of settlements, and the jealous and capricious custom of making absurd devises, is produced by the rules of descent of real property. Thus, I have endeavoured to show how the rule of descent, by which the entire of the freehold property, in case of intestacy, goes to the eldest son, to the exclusion of his brothers and sisters, produced the counteracting system of charges for portions, which too often converted the inheritor into a mere embarrassed agent for the junior members of his family † I would therefore recommend the

* Vid. Noodle's Argument, in Rev. Sidney Smith's Essay on "*Jeremy Bentham*."

† The longer an estate has been in any family in Ireland, the more heavily is it charged; each generation has placed on it charges for younger children, and once a charge is imposed, it is never liquidated. "*Etas parentum pejor avis tulit nos, &c.*"

following alterations:—In all cases of the intestacy of owners of freehold, who are not peers or baronets, the lands should be distributed as personal estate is at present. The partition of estates might be facilitated by the powers now vested in the Commissioners of Incumbered Estates being permanently vested in Chancery, and equally summary forms of proceeding given, with a total deviation from the system which made a partition suit in Chancery even a greater opprobrium than any of its other numerous defects. The Ordnance Survey, the poor law, and other valuations, would tend considerably to simplify and cheapen partitions between joint owners. The partition should also be registered as before provided, with regard to all sales and transfers of property. A priority of choice of lots might be conceded to the eldest son, or senior male inheritor on the partition; or the mansion house or domain lot might be given him as a privilege, in analogy to the common law partition between co-heiresses.

Such a measure would, I believe, more than any other tend to abolish the present most censurable state of the law of real property, and simplify titles, and cheapen and facilitate the sale and transfer of land. Objections will, of course, be made to such an amendment, as being too democratical, and suitable only to a republic, not to our mixed monarchy, in which the aristocratic element is so considerable a part. The objection is answered where its force would be greatest, by permitting the present rule of inheritance to prevail as to the peerage and even as to the ranks of the baronetage. But the landed interest would rather be strengthened than otherwise by the adoption of the proposed amendment. The number of proprietors would be increased, and assuredly numbers, within large limits, add considerably to territorial influence. Nor would the alteration have the result sometimes dreaded, of too minutely subdividing land, as in France. The distinction is clear and well-defined, between a compulsory distribution among children and a distribution only in case of intestacy. The power of alienation and of devising would prevent all the pernicious effects which flow from a too minute subdivision of land, while the injurious tendency of the present habit of settling and devising lands would be gradually but completely abolished.* Many persons are fond of attributing the present depressed state of agriculture and of the landed proprietors in France, to the rules of descent and partition of real property there. But the causes must be sought elsewhere, as the proprietors some centuries ago, and long before the establishment of the present laws of regulating the succession to real estates, were as impoverished, as deeply indebted, and as incapable of discharging the duties connected with their position, as the owners of the soil

* As an instance of the different results of the proposed amendments and the present law, may be assumed the case of a property of £1,000 per annum being charged with £10,000 for younger children of two or three generations. The difference in point of utility, of territorial influence, of conservative power, if I intended to rely on political grounds, is greatly in favour of the proposed amendment, which would perhaps give five properties of £200 per annum instead of one embarrassed property of £1,000.

are at present.* And in Scotland, where the law of entail was, until lately, very strict; and in Ireland, where settlements and strict devises prevailed, to an absurd extent, the very smallest interest in land being the subject of settlement and limitation; it is too well known that a happier state of things did not characterize the proprietary. A compulsory subdivision, as in France, is undoubtedly prejudicial; but facilitating a freedom of subdivision, which will accommodate the effect to the wants and capacities of the energetic classes, tending to the constant infusion of new vigour and the extinction of what is exhausted among the proprietary, is alike useful and conservative. But if France is selected as an argument against the adoption of this amendment, Holland may as properly be pointed out as a triumphant argument in its favour, sufficient surely to make one pause before admitting the example of France as conclusive against this alteration. The final reason, however, for such an alteration, is the utter hopelessness of materially simplifying the mode of sale and mortgage, while the present laws of descent, settlements, and devises prevail. The defects of the mere mechanical part of registration of deeds, searches, conveyances, may be partially remedied;† but there will be no real freedom of transfer of estates, by which those who from any cause are unfitted to continue proprietors, and those desirous of converting their fugitive money into land, can become owners, until those evils which I have indicated as resulting from the present feudal canons of inheritance are extirpated, and other rules are substituted more fitted to the present exigencies of society. The effects of such amendments would not be immediate, but they would be permanent; customs and habits would be slowly but certainly altered; the new and old systems would gradually become interwoven; and no violence would be done even to the prejudices of the present proprietary. It is, however, perhaps with many a choice of evils; but while the present rules of inheritance and the customs derived from it prevail, I do not hesitate to say that human ingenuity cannot devise a safe or sufficient practical simplification of the methods of selling and mortgaging land. There can be no registration of titles, when the titles continue to be such as to require the entire skill of the ablest lawyers and most sagacious judges to pronounce on, even with diffidence.

PROVISION FOR REGISTERING SUCCESSION TO ESTATES.

In order fully to carry out the system of registration, provision should be made for registering the succession to estates. Thus, every heir or devisee should be compelled to transmit to the registration office the date of his succession, the lands inherited, &c. and thus

* Vid Burton's Anatomy of Melancholy, page 64, extracted from Sesellius and La Nove. The latter writer stating that eight out of ten of the gentry of France were much impaired by sales, mortgages, or debts, as wholly sunk in their estates. Vid. also Arthur Young's Tour in France.

† As the Society has procured a Report on the amendment of the system of registration, I have merely incidentally touched on it.

will supply the defect complained of by Blackstone and others, which makes it so difficult to trace modern titles and pedigrees in comparison with ancient ones. The recent provisions for registration of births, deaths, and marriages would much facilitate the introduction of this improvement into the law of real property. The analogy between the amendment now recommended, and that of "serving an heir in Scotland", will at once be perceived; and its utility will, I presume, be generally admitted even by those who, for other reasons, might not approve of its introduction.

CONCLUSION.

I have thus, gentlemen, endeavoured to give in the preceding pages, in plain and untechnical language, a succinct account of the present defective state of the law of real property, which so much impedes the freedom of sale and mortgage. It has been my object to trace the origin of the defects to some general principles, by the remedy of which the evils flowing from them might be prevented, and more satisfactory improvements introduced than is usual in modern legislation. The American and Continental systems have been cursorily noticed. The limits properly assigned by you for this paper would not permit a detailed examination of them, and I have tried by contrasting their merits, where they exist, with the defects of our system, to clear the way for the alterations and amendments which I have ventured to suggest. It was my intention wholly to avoid any political or party discussion, and I am unconscious of having departed from that design in any of the remarks or suggestions which I thought prudent to make. This paper will, I trust, be read with a similar absence of political bias by those who think it worthy of their perusal; and while I shall receive with pleasure a coincidence with my views, a fair and strenuous opposition to them is not deprecated, but expected.

ROBERT LONGFIELD.

April 1st, 1853.