

Sale and Transfer of Land.

As to Registration generally—the Existing Systems—and the failure of previous attempts at a general Registration.

IV. We need not dwell on the advantages to be derived from registration of the ownership of land; they are and have been for a long time very generally admitted. Expediency of some registration.

In the earlier periods of our history, publicity was considered essential in almost all dealings with landed property. The transfer of the immediate freehold in possession was made notorious by livery of seisin; the transfer of the remainder or reversion was made equally notorious by the attornment of the tenant of the estate in possession, by which he recognised the new proprietor; the surrender of copyholds, followed by the admission of the copyholder, was an open avowal in the presence of the lord, and before the whole homage, that an old tenant had died or disposed of his interest, and that a new tenant had come into the manor and taken his place; fines with proclamations were public acknowledgments in the King's Courts, that an estate which was supposed to belong to one man was in truth the estate or property of another; while easements, such as rights of way and rights of water, were evidenced and kept in existence by the notoriety of continued user and actual enjoyment. The Statutes of Uses and Enrolments were passed with similar objects. By them the Legislature sought to abolish that secret transfer of land which had begun to prevail by means of private confidences, enforced by the jurisdiction of Courts of Equity. Accordingly the former of these Statutes transferred the use into possession; while the latter rendered void any bargain and sale limiting an estate of freehold which was not enrolled in the Court of Chancery. But the object of these provisions was soon evaded by a subtle construction and contrivance; and instead of giving publicity and notoriety to equitable transfers, the Statute of Uses was so interpreted as to make even legal conveyances, what they never were before, secret. So obvious were the evils resulting from this change, that from the time of James the First, to the present, repeated attempts have been made to remedy them by means of public registration, but made in vain. An historical account of these attempts was furnished by Mr. Sanders to the Registration and Conveyancing Commissioners, and it will be found at length in the 6th Appendix to their report. (a) It appears therefrom that the principle of registration has been constantly recommended by the ablest lawyers and statesmen; that this principle has been repeatedly recognised by both Houses of Parliament separately, though they have failed to agree in the details of a measure which might pass into law; that the difficulty and uncertainty of finding out such charges and incumbrances as affected the land, was early considered to be highly prejudicial to purchasers and creditors; that as early as the reign of Charles the Second (b) this uncertainty of titles to estates was deemed to be "one cause of the decay of rents and value of lands;" and that the same conviction, instead of being diminished, has been so much strengthened by subsequent experience, that upwards of twenty Bills have within the course of the last twenty years been brought into Parliament for the purpose of establishing systems of registration. It should also be remembered that the Select Committee of the House of Lords appointed to inquire into the Burdens upon Land, having attributed the diminution of the marketable value of real property to the tedious and expensive process attending its transfer, expressed themselves as anxious to impress on the House the necessity of a thorough revision of the whole subject of conveyancing, and the disuse of the present prolix and vexatious system. They also recommended the improvement of the Law of Real Property, the simplification of titles and of the forms of conveyance, and of the establishment of some effective system in the registration of deeds.

V. With such a remarkable concurrence of opinion, the failure of measures so often proposed and so generally desired can hardly be attributed to any other cause than the practical difficulties which, upon examination, are seen to be inherent in, or likely to result from a system of registration of assurances. The fear that such a system of registration would be found to be productive of evils as great, or nearly as great, as those against which it was intended to provide, was probably the main reason which induced the Select Committee of the House of Commons in 1853, to pause in adopting the Bill then before them, and to suggest, instead of passing a measure of that description, the appointment of a Commission for the purpose of considering the subject of registration of title, with a view to facilitate the sale and transfer of land. Bearing this in mind, we deemed it our duty in the first instance to address ourselves more particularly to a careful examination of the defects imputed, and the objections entertained to a system of registration of assurances, in order that we might judge how far they might be remedied and overcome by a system of registration of title. Failure of previous measures owing to the objections to a registration of assurances.

VI. In order to form a just opinion as to the suitableness or sufficiency of a Register of Assurances or of the species of registration which we are appointed to consider as a remedy for the objections it is intended to remove, it may be desirable that we should first advert to the examples already existing in our law of modes of registration; secondly, to the chief causes and grounds of complaint which are alleged against the existing system of transfer of land; and thirdly, to the peculiarities in the law of real property and the practice of conveyancing, which cast, as it is considered, unfair burdens on the owners of land, and injuriously interfere with the profitable use and enjoyment of land. Matters to be considered with reference to a system of registration.

VII. Various systems and methods of registration are found actually existing in practice, for the protection of the title to landed and other property. The peculiarities and incidents of these different systems we think it necessary to bear in mind in the investigation of the subject before us. The different kinds of registration existing.

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(a) See the Report of the Registration and Conveyancing Commissioners, p. 232.

(b) 1669, Lord's Journals, vol. xii., p. 273.