

Court, is assumed to have the effect of a record, and is consequently received as conclusive evidence of title. Whether or not there is sufficient ground for that assumption is not material to the present question. (See however "The Queen against Hughes and Another," Privy Council Report, 1866.) The Colonial Legislature could, if necessary, make provision putting that question beyond a doubt. Assuming however that a colonial grant from the Crown has, in the absence of express provision to the contrary, the effect of a Crown Grant under the Great Seal as conclusive evidence of title, yet in the cases of grants from the Crown of lands to which New Zealand Company's land orders relate, it is clear that such grants have not the conclusive effect of grants under the Great Seal; and so long as they remain subject to the provision contained in the fifty-first section of 9th and 10th Vict., c. 82, they cannot be received as conclusive or satisfactory evidence of a good title. This defect in the Crown Grant of lands as to which land orders relate has to a very great extent had the effect of depriving the Colony of those benefits which it was anticipated would flow from the passing and bringing into operation of the Land Registry Acts.

The 24th Vict., No. 27 (Land Registry Act, 1860), makes provision whereby any person entitled absolutely for his own benefit to an estate in fee-simple at law and in equity, free from trusts and encumbrances, may be registered as proprietor. Provision is also made for registration in cases where trusts and encumbrances are admitted to exist.

Registration, by the thirty-third section of this Act, confers an indefeasible title on the person registered as proprietor, subject to the encumbrances and other matters entered on the register, but free from all other estates, encumbrances, and interests whatsoever.

An objection which appears insuperable until Imperial legislation has been obtained, has been made to permitting persons to register who claim under grants from the Crown of lands to which New Zealand Company's land orders relate.

It would appear that "The Land Registry Act, 1860," if it extend and apply to such lands, is repugnant to the Imperial Acts above referred to, for the Land Registry Act assumes to give an indefeasible title, and to free the lands as to which a person has been registered as proprietor from all estates, encumbrances, and interests whatsoever not registered, while the Imperial Acts provide that notwithstanding any rule of law or equity to the contrary, such lands shall continue and be subject to such equitable estates, charges and liens as subsisted at date of grant, or were then or should thereafter be capable of taking effect.

Interpreting the Land Registry Act as not applying to such lands, or as repugnant to the Imperial Acts, and consequently not capable of affecting them, titles to such lands have not been permitted to be registered, as it was considered an indefeasible title could not be given by reason of the Imperial Acts, notwithstanding the provisions of the Land Registry Act. This seems to have been the proper course.

It has been suggested that such titles might be received, and that the inquiries as to title in such cases should be pursued back to the issue of the land order; that is, that the Crown Grant is not to be received as the source of title, but that the land order must. Assuming, however, that such investigations could be satisfactorily made, the registered proprietor would have a title not indefeasible by reason of registry under the Act, but a title proved to be perfectly good to the satisfaction of the Registrar or such other person or tribunal as by the Act is appointed. Such a title would not be indisputable or indefeasible, but open to dispute and capable of being defeated, though the inquiries may have been so satisfactory as to reduce the chances of such defeasance to a minimum.

It has also been suggested that to such cases the sixty-sixth section of the Land Registry Act would apply. That section provides that where the land appears to be subject to uncertain or doubtful claims or encumbrances, the proprietor may be registered notwithstanding on paying such sum or giving such security as an indemnity as the Registrar may determine. The effect, however, of this provision is still the same; it assumes to give an indefeasible title to the registered proprietor in cases where such title cannot be given by reason of provisions in Imperial Acts. If persons having equitable interests in or claims or liens on such lands, decline to take compensation from the Indemnity Fund, and insist upon such interests, claims, or liens, it seems clear that the Land Registry Act cannot prevent them from establishing such claims or liens.

Thus it is that lands to which New Zealand Company's land orders relate cannot be brought under the operation of the Land Registry Act, because the Act cannot as to such lands give an indefeasible title.

The fifty-first section of the 9th and 10th Vict., c. 82, provides that the equitable estates charges and liens affecting such lands are to continue, notwithstanding any rule of law or equity to the contrary prevailing in New Zealand or elsewhere, and it has been remarked that there is nothing in the Act to show what rules of law or equity are referred to, or whether rules of statute law, as well as common law are referred to. It is necessary therefore to draw attention to two Ordinances then and still in force in New Zealand relating to land and the transfer of it. These Ordinances are the Deeds Registration Ordinance and the Conveyancing Ordinance.

The first passed in December, 1841, the other in January, 1842.

The Deeds Registration Ordinance provides for registration of Crown Grants of land, and deeds or contracts affecting such lands subsequently to the Crown Grant, and for registration of judgments, *lis pendens* and other matters, and gives priority to deeds or contracts, &c., first registered. It may be that this Ordinance and the rule of law which it creates was referred to. Certainly, whether the Imperial Legislature had this Ordinance in view or not, the Imperial Act, so far as it affects lands granted to the New Zealand Company, and by them sold and contracted to be conveyed, does prevent the operation of the Deeds Registration Ordinances on contracts or deeds affecting such lands.

The Conveyancing Ordinance introduces several new rules of law relating to land and transfers of land.

Amongst others, it provides that no land shall be charged or affected by way of equitable mortgage. (See section forty-two.) It also provides that no vendor of land shall have any equitable lien thereon by reason of non-payment of purchase money, or any part of the purchase money. (See section forty-three.)