IV.

DEPOSIT AND CASH BALANCES IN JOINT STOCK BANKS.

<table>
<thead>
<tr>
<th>Date</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>31st December, 1854</td>
<td>11,666,000</td>
</tr>
<tr>
<td>31st December, 1893</td>
<td>35,852,000</td>
</tr>
<tr>
<td>30th June, 1894</td>
<td>35,430,000</td>
</tr>
</tbody>
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II.—Land Transfer and Local Registration of Title. By Joseph Maguire, Esq., B.L.

[Read Tuesday, 26th February, 1895.]

The Local Registration of Title (Ireland) Act, 1891, to which, at the request of the President and Council, I have the honour to invite the society’s attention, is an important measure affecting the transfer of land in Ireland. Four years ago it was my privilege to lay before the society an analysis of a cognate measure, the Registration of Assurances Bill, by the same author, then Attorney-General, now Mr. Justice Madden. That bill did not become law, but it is necessary to refer to it in connection with this Act, as they are complementary of each other, and though mutually exclusive in their operation, combined they represent the policy of their author on the subject of land transfer. That policy aimed at the conservation and improvement of two systems of land transfer. One which includes the Registration of Deeds was then, as it is now, in active and general operation, but admittedly capable of considerable improvement. The other, which consisted of a Record of Title, had a bare legal existence, and was not adopted to any considerable extent by the legal profession or the public. It was thought, however, that its main principle, if made compulsory, would render it useful for the large class of occupying owners which special legislation had established, while as a voluntary system the provisions for the registration of limited owners with powers of sale might make it available for the purposes of another class of owners, namely, those who might voluntarily prefer to have their titles registered instead of their deeds only. How far these purposes have been realised, and the causes and consequences of the success or failure of the Act, are the considerations which naturally fall within the scope of this paper. A short summary of its leading provisions is, however, necessary at the outset. The Local Registration of Title (Ireland) Act, 1891, comprises:

(a) A system of registered ownership intended for freeholds, leaseholds, and statutory tenancies; with a subsidiary register of rights which fall short of ownership.

(b) Local registers, one in each county, with a central register in Dublin, the relations between the central and local offices being regulated by rules judicially framed.

(c) Assimilation of realty to personalty in the mode of devolution on intestacy of compulsorily registered land.

PART II.
Registration under the Act is either voluntary or compulsory—compulsory in the case of all land purchased under any of the Land Purchase Acts, where money is owing to the State in respect of the purchase money; voluntary in all other cases. The expression, "Land Purchase Act," includes the Irish Church Act, 1869; the Irish Land Act, 1870; the Land Law Act, 1881; the Ashbourne Acts, the Balfour Act, and, generally speaking, all Acts by which the public money was advanced for the purchase of Irish land by occupying tenants. It is clear, therefore, that the compulsory sections have a very wide purview. They operate in three ways, namely, by

1. The intervention of the Land Commission under section 23.
2. The intervention of the Commissioners of Inland Revenue under section 25.
3. A general provision in the last-named section attaching invalidity to all conveyances to which the compulsory sections apply until such conveyances are registered under the Act.

When so registered, however, the title relates back to the date of the conveyance.

Though wide in their purview, the compulsory sections are by no means immediate in their operation. The provision for the intervention of the Land Commission is not mandatory in terms as regards land purchased before the commencement of the Act—that is to say, the 1st January, 1892. The intervention of the Inland Revenue Commissioners does not arise until the death of an owner; while the section attaching invalidity to unregistered conveyances is modified by an important and far-reaching exception in favour of mortgages, transfers of mortgages, and conveyances of estates expectant upon an estate of freehold. Judicial decision has added another exception, the Court having decided, in *Torish v. Smith*, that a devise of land not being a conveyance within the meaning of the Act, does not require registration to give it validity. (1894) (2). I. R. 381.

The rigour of compulsory registration is, therefore, in some degree mitigated by these exceptions, which, though they may be said to mar the symmetry of the enactment, are useful and desirable in the interests of those purchasers whose titles are not of recent creation, and who have already borne the burden and expense of registering their purchases and mortgages in the Registry of Deeds. Of this class are the glebe purchasers, who have been under the law of deeds' registration for nearly a quarter of a century, and some of whom have borne not only the registration expenses of their original purchase deeds and mortgages to the Church Temporalities Commissioners, but of more recent mortgages to the Land Commission when the period for the payment of their annuities was extended. These exceptions, however, are at best only a postponement. They do not interfere with the powers conferred on the Land Commission and the Commissioners of Inland Revenue in relation to compulsory registration. They do not, therefore, ade-
quately protect that class of small owners who have already borne the burden of one system of transfer and registration from the superadded expenses which a compliance with this Act entails.

Though statutory tenancies and short leases are largely the subject of registration and search in the Registry of Deeds, they are held to be outside the strict operation of the law of deeds' registration. Having regard to this circumstance and to the law of intestate inheritance, the transition from the position of a statutory tenant or short leaseholder to that of an owner in fee brought with it two important results which the Act is intended to neutralize. Firstly, by virtue of his ownership in fee, the new proprietor was brought within the full operation of the law for the registration of deeds involving searches precedent to and registration subsequent to a sale, mortgage, or other disposition. Secondly, in case of intestacy, his holding, instead of devolving to his personal representative for the benefit of his next-of-kin, went to his heir-at-law, contrary, in all likelihood, to the intention of the intestate, who was presumably ignorant of this incident of his new tenure.

As regards registration, the 19th section enacts that all land registered under this Act is *de facto* removed from the operation of the Acts relating to the registration of deeds. Except, then, in the case of titles registered subject to a "General Note," as hereafter referred to, searches in the Registry of Deeds or Registry of Judgments in proof of title or for incumbrances are entirely unnecessary as regards ownerships registered under the Local Registration of Title Act. The folio of the register on which the ownership is recorded discloses—

(a) The name of the owner whose title is conclusive.
(b) The nature and amount of the incumbrances, if any, and the order of their priority.
(c) A reference to the Ordnance Map on which the holding is delineated or distinguished.

In the ordinary working of the Act, then, no question arises as to the title of a vendor, the amount of the incumbrances, their priority *inter se*, or the identity of the premises; while, under the ordinary system of conveyancing, satisfactory proof of all these matters of law and fact must be given before a sale, mortgage, or transaction of such like character can be concluded. It is right, however, to point out that section 47 enumerates certain charges of which the register may give no information, and the particulars of which may have to be sought elsewhere. They are, however, of a public and general nature, and it is assumed that reliable information concerning them can be obtained from other official sources. Where, moreover, proof is given to the Registrar that all or any of these public and general charges have been paid off or remitted, he will indicate the fact on the register.

Perhaps the most important and valuable feature in the Act is that relating to intestate inheritance, and embodied in Part IV. Though *in form* it revolutionizes their law of intestate inheritance, yet *in fact* it simply restores to these small properties the heritable
quality which belonged to them when held as chattel interests, and with which their occupiers, now owners, were familiar. This part of the measure encountered some hostile criticism in the newspaper press at the hands of The O'Conor Don and Mr. Hugh de F. Montgomery, but it is worthy of note that it was so acceptable to the Irish representation in Parliament that the then Attorney-General, the author of the Act, was invited to expedite the passage of Part IV. into law, irrespective of the other parts of his scheme. The English Small Holdings Bill contained a similar provision by which holdings under sixty acres, though held in fee simple, were to descend as personalty. This clause failed to meet the approval of the House of Lords, and was therefore lost, not, however, without a protest and an intimation from the friends of the proposal that legislation in accordance with it would again be attempted. It is a remarkable fact, then, that this Irish measure embodies a principle of advanced reform earnestly desired and unsuccessfully striven for in English legislation. While contributing largely to make this Act workable, it is an evidence of a desire on the part of its framers to confer upon the occupying proprietors the advantages of fee-simple ownership without any of its drawbacks. No good reason that I am aware of can, however, be assigned for restricting the operation of this rule to land actually registered. The Act, I think, ought to be amended so as to extend this rule to all land the registration of which is declared compulsory, that is to say, to all land purchased under any of the Land Purchase Acts, whether actually registered or not.

A conveniently working provision is contained in the 29th section. It relates exclusively to land the registration of which is declared compulsory. By virtue of it the Registrar is empowered to dispense in some cases with the ascertainment of burdens affecting the original tenancy, and which affect the present ownership by reason of its being considered as a graft on the original tenancy, or on any other grounds. In such cases as the Registrar may deem proper, and the applicant may not otherwise desire, these unascertained burthens may be represented on the register by a "General Note" to the effect that the title is subject to all equities that may affect the original interest. The raison d'être of this provision is that many titles to which the compulsory sections apply are burthened with equitable claims of an indeterminate character, the investigation and ascertainment of which would involve expenses out of proportion to their value and the value of the estates they affect. This arrangement, moreover, is highly elastic, and though the Registrar may, in the first instance, have exercised this dispensing power, the applicant may at any time apply to have these equities investigated and entered on the register as specific burdens.

This feature has been adversely, and, as I consider, unreasonably criticized. I venture to think that a comprehensive study of the Act and its environment will show that, while protecting existing interests, it facilitates registration, saves trouble and expense, and helps to lighten the burthen, for it is in many cases a serious burthen, of compulsory registration. Nor need it impede transfer.
In the case of land subject to a "General Note," it will be for the purchaser's solicitor to satisfy himself as to the value of the equities represented by such general note. It may be fairly assumed that a professional man accustomed to the give-and-take methods of conveyancing practice will be easier to deal with than a public officer administering a system of procedure more or less inflexible. This provision, moreover, illustrates the true basis of compulsory registration. The title acquired by purchase following upon an official investigation of the vendor's title is easily made subject to a compulsory law of registration. The title to the original tenancy not having been so investigated, is, so to speak, on a different basis, and therefore desiderates a different mode of treatment. This distinction is observable in the procedure under the Act. By Rule 33, an applicant for registration who wishes to have his title to his tenancy investigated is required to send, along with his application, an abstract of the title to his tenancy, supported by such evidence as the Registrar may require. It is only right that an Act avowedly passed mainly in the interest of small owners should give him a loophole to escape expenditure which might prove most burthensome to a person of slender resources. Registration with a general note is at best, however, only a makeshift, though, under the circumstances, the best makeshift that could be devised. The necessity for it will largely disappear if the State will undertake to defray the expense, as many contend it should, of clearing the titles of the tenant purchasers.

The equities in favour of a liberal expenditure of the public money under this Act are very strong, more especially in the case of those owners who purchased under the earlier Land Purchase Acts. The explanatory preface to this Act pointed out that, by acquiring the fee-simple of their holdings, the new owners were brought within the practically compulsory law for registering deeds, involving expenses unsuited to their position. Now land purchase legislation has been of a remedial and quasi-paternal character, and consistently with this character the State, if registration of these titles was a necessity at all, ought to have provided for the immediate registration of every title created under these Acts. This was the simple and easy method of relieving the tenant purchasers of expenses unsuited to their position. The Legislature seems to have been aware of this, but clearly failed to act up to its knowledge. For, while copies of Vesting and Charging Orders were transmitted to the Clerks of the Crown and Peace, obviously with a view to the establishment of local registers, the originals of these documents were being registered in the Registry of Deeds Office at the expense of the purchasers, and the titles allowed to deteriorate or become clouded. Had the present Act, or, better still, one of simpler character, been passed as an accompaniment to the first Land Purchase Act, much expense would have been saved, not only to the State, but to the parties directly concerned. The result of the postponement of this measure is that all titles acquired before 1892 have already been brought within the law of deeds registration and search, and must be freshly investigated before they can be regis
Land Transfer and Local Registration of Title. [Part 2,

tered under this Act, while the owners, instead of being relieved of
the expenses of one system of registration, will have been burthened
with the expenses of two—a result in direct opposition to the main
purpose of the enactment. The provision in section 22, whereby
persons applying for registration during the year 1892 were registered
without fee, was altogether inadequate to meet the justice of the
cases referred to. Many were undoubtedly attracted by it, sup-
posing, not unnaturally, that registration without fee meant that
it was to be wholly gratuitous. In so far the Act was illusory,
however unintentionally so. Only the official fee for registration,
which is generally a very small part of the expense, was remitted,
and the poor people were undeceived when called on to defray ex-
penses which, it is submitted, ought to have been borne by the
State in the case at least of all those titles acquired in the earlier
stages of Land Purchase.

The facilities afforded for charging land may next be considered.
The Land Certificate which every registered owner is entitled to
receive may be deposited by way of equitable mortgage in the same
manner, and with the same effect, as title deeds (ss. 31, 81). Notwith-
standing the anomalous character of this class of security when viewed
from a juristic standpoint, it holds an unassailable position in our
commercial system, and one which the mercantile community in this,
as in other countries, have shown their determination to maintain.
While abstract principles of jurisprudence are entirely opposed to
the existing law of equitable mortgage by deposit of deeds, com-
mercial convenience and the requirements of trade absolutely de-
mand its continuance. Had the Registration of Assurances Bill by
the same eminent author been modified in this respect in accord-
ance with the strongly-expressed views of the commercial com-
munity, it would probably now be on the Statute Book instead of
in the region of legislative failure. It is a good feature in this Act,
then, that in this important particular it harmonizes with the re-
quirements of trade and the existing law. The Land Certificate
may be expected to fulfil important and useful functions in any
system of Agricultural Banks that may be developed in the inte-
rests of those for whom this Act was mainly intended.

The advantages of the Land Certificate for the purpose of an
equitable mortgage by deposit are, firstly, that it discloses a perfect
title requiring no investigation; secondly, it discloses all existing
charges noted on the register; thirdly, the property it represents,
if subject to a State charge, is getting gradually free of such charge,
and is, therefore, a security of yearly increasing value. The first
of these advantages, of course, is not perfectly realized when the
title is registered subject to a "General Note," but it is the
evident intention of the Act that such registration shall be only in
exceptional cases. While the Land Certificate is so facile and
useful for the creation of an equitable mortgage, an effective legal
mortgage can be created by registering an instrument of charge,
and the mortgage so created will confer on the mortgagee all the
advantages and powers given by the Conveyancing Acts, 1881 and
1882, to a mortgagee by deed.
Farmers will require money for improving and stocking their lands, and cannot afford heavy interest; while it is a truism that the necessities of the country and of the time demand that agriculture should be carried on under the most favourable circumstances attainable. Therefore some means of borrowing cheaply and advantageously is a necessary corollary to the legislation of which the Land Purchase Acts and the Local Registration of Title Act are parts. It will be peculiarly necessary under the new rule of succession, if we may call that a new rule which regulated succession to these farms, not only in recent times, but in remote history, and which is more in the nature of a restoration than a revolution. By Part IV., holdings acquired by State purchase and registered are divisible on intestacy. By another Act such holdings are indivisible. (Land Law Act, 1881, sec. 30.) The rule resultant from these apparently opposing statutory forces is that the value of such holdings becomes divisible on intestacy. If the holding is not sold to a stranger, one of the next-of-kin may take it, purchasing up the shares of the others or allowing his ownership to be charged with them. Where there are many next-of-kin these charges will be multiplied accordingly, while the owner’s share will be proportionately diminished. Having regard, then, to the operation of Part IV., the general requirements of small proprietors, the necessity of guarding them against the rapacity of unscrupulous money lenders, the interests of agriculture and the cheapness of money at the present time, the establishment of a Land Bank is desirable, necessary, and opportune. If the operative provisions of this Act can be made to work harmoniously with such an institution, perhaps their highest measure of utility will have been attained.

The simplicity of the Act with reference to the right of a registered owner to have delivered to him a Land Certificate is considerably complicated by the Rules. By section 31 an absolute right to a Land Certificate in the prescribed form is conferred on him, irrespective of any condition. Rule 36 prescribes a form which may be varied by the substitution of a conveyance by the Land Judge, or a Vesting Order of the Land Commission. Rule 38 goes farther, and prescribes conditions to be fulfilled by “any person desirous of obtaining a Land Certificate.” These are the lodgment of a requisition specifying the folio of the register, and (if the registering authority shall require it) a draft of the document with a deposit of a sum of money to cover the expense of preparing it. These rules are framed by eminent judicial authority, and have been of course, duly considered; having been laid before parliament, they are deemed to be within the Act. Moreover, they may, in intention at least, have been framed with a real regard to the best interests of registered owners. It seems hard, however, to tell a struggling farmer, who has gone to considerable expense to comply with the law, and delivered up his title deeds as required by the Rules, that though the Act entitles him to a Land Certificate, he shall not get it unless he formally applies for it, sends forward a draft of it, and defrays the expense of its preparation; that unless he does these things...
he must rest satisfied to remain without that conclusive evidence of his title which the Act intends to give him, and be debarred, no matter what his necessity, from raising money for legitimate purposes by means of an equitable mortgage by deposit. Many of the small farmers are dealers in cattle, and the absence of a deed or certificate of their ownership would undoubtedly be a serious loss to them. In cases of trespass or disputed rights of way the absence of any ready method of proving title may involve a litigant in serious expense, which might easily be avoided by the production of a land certificate. But the worst consequence of depriving the farmers of their just rights under the Act is that many of them may be driven to have recourse to bill transactions and contracts of mutual suretyship, by which solvent men become insolvent by rendering themselves liable for the debts of others. The history of rural life in Ireland presents but too many sad examples of the ruin that results from the system of mutual accommodation by bill transactions. In many cases copies of vesting orders are given to registered owners, while the originals are retained by the Land Commission. Neither the Act nor the Rules of December, 1891, afford any ground for this proceeding. It is authorized, however, by an Order framed in 1892, that is if it be not, as it seems to be, entirely ultra vires. The copy vesting order is defective in the essential quality of a land certificate as a perfect evidence of title, and in its most valuable incidental quality as a means of creating an equitable mortgage. The annuity payable to the Land Commission in respect of purchase money advanced by them is of such a public and general nature that the Act regards it as one of those burdens which affect lands without being entered on the register at all. The priority of these burdens is preserved by section 49. The only grounds on which the Land Commission can claim to hold the original vesting order is as a certificate of charge. But it is hardly reasonable to suppose that the Act intended that a charge whose inherent priority was protected by the Act, that did not even require to be entered on the register, should require to be evidenced by a certificate signed and sealed by the registering authority. A fortiori it could not have intended the vesting order to be held as a certificate of charge to the exclusion of the registered owner's right to a land certificate.

It is a pity that the framers of this Act did not pay more regard to the fact that many tenant purchasers are wholly incapable of paying for the necessary professional assistance in complying with it, and did not temper the rigour of compulsion with adequate financial provisions. The tenant purchasers would never have adopted this Act if it had been left to their choice. Like the large landowners, they would have refused to incur serious outlay certain and immediate for advantages of a doubtful character, and wholly prospective and remote. Unlike the large landowners, they did not call for registration of title, either compulsory or voluntary, and should not be unduly burthened. A point in relation to the stamp duty on conveyance might fairly be relaxed in their favour. The annuity payable to the Land Com-
mission ought not to be regarded as a part of the consideration money on which the *ad valorem* duty is reckoned. Apart from their case at all, it is not an equitable arrangement to treat a mortgage debt as money that has passed from purchaser to vendor, nor is it consistent with the distinction the Stamp Acts make between conveyances and mortgages, or dealings with mortgages. In the case of these small owners, however, the matter presses with special severity. They look on the annuity as a rent, and it seems very hard to them to be taxed in relation to a rent they have to pay.

As already pointed out, all land registered under the Act is, as regards the estate so registered, exempt from the law relating to the registry of deeds, and it is provided that, when land is registered under the Act, a memorial of registration shall be given to the Registrar of Deeds, who shall register it without fee. (S. 19.) When the converse operation is performed, and land is removed from the register, a memorial of the closing of the register is to be given to the Registrar of Deeds, in which case an indefeasible title is conferred upon the person described as owner, and the land is no longer exempt from the law relating to the registry of deeds. (S. 20.) The latter provision applies only to voluntarily registered land, and has, therefore, only a limited operation. It would have been well if the former provision had been so limited or modified in some way. Its general application to every registered title has thrown a great deal of unremunerated, and perhaps useless, labour on the Registry of Deeds Office. A memorial of the fact of recording may have been in some degree necessary under the Record of Title Act, from which both these provisions are taken. But there registration was voluntary, and little inconvenience was caused in the Deeds Office, owing to the small number of recorded titles. But in the case of the thousands of compulsorily registered titles, all of one class and coming under one rule, there was no practical necessity for a memorial of registration, while the lodgment of these documents in the Deeds Office and their registration has the effect of encumbering the indexes and books of the office, to which they are entirely unsuited. These books are framed with reference to facts of transfer charge, settlement, or other transvestitive disposition, and are mostly in statutory form appropriate to such transactions. The main result of registering these memorials in the Deeds Office will be that the names' indexes, books of the highest importance in the working of the office, and which are indexes of grantors, will be crowded with names of persons who are not grantors at all, and who perform no act which in the ordinary law would be capable of registration. Each of these names of persons will be entered on two current indexes, the sectional and the draft consolidated, and finally on the quinquennial consolidated index. The denomination of land will also be entered on the lands index under its proper barony, and the memorial itself entered in the Abstract Book. All this elaborate procedure is thrown upon the Deeds Office for the purpose of showing that the land to which the memorial of registration relates is no longer subject to the law for which that office was established.
There is, however, one useful purpose that the memorial of registration might have been made to fulfil, but this seems not to have been thought of by the framers of the Act. If the memorial of registration had been made to show when the title was registered subject to a "General Note," it would in these cases, at all events, have justified its existence. It is a fair presumption that those equities and interests that are not specifically entered on the register of title are still liable to the law of deeds registration. It would be a manifest advantage to be able to differentiate in the Deeds Office between those titles which are wholly removed from the operation of the law of deeds registration and those which are burdened with claims of which the register of title gives no information, but of which the Registry of Deeds may. On the subject of the Registry of Deeds, it is right to add that that department has made searches in the case of from three to four thousand titles of tenant purchasers without any fee being charged therefor.

Under the voluntary part of the measure an owner may be registered as owner in fee-simple or as a limited owner, the effect of registration in the latter case being to vest an estate in fee-simple in the limited owner, and the persons entitled in reversion or remainder collectively. In the case of settled land, the names of the trustees may be entered in a separate column of the register. The powers conferred by modern legislation on limited owners of dealing with the fee-simple render this arrangement practicable. How far the Act will be availed of by the owners of settled estates, or by the owners of landed property in general, remains as yet to be seen. As far as the large landowners are concerned, it has hitherto encountered a degree of shyness hardly to be expected, having regard to the speeches delivered at the Landowners' Convention a few years ago on the subject of land transfer, and the book published by their Executive Committee in 1891 on "Registration of Title v. Registration of Assurances." The views of the Irish Landowners' Convention of 1889 are to be found at page 67 of that work. They are in favour of—

"(a) Compulsory registration of title in every case, either of sale or mortgage.

"(b) The establishment of local registries in counties or smaller areas in which all dealings and transactions affecting land could be conveniently registered or cancelled.

"(c) The completion with all possible despatch of the 25-inch Survey of Ireland."

In the same work it is further advocated that, failing the establishment of compulsion, "the utmost facilities should be given to landowners who may wish to register their titles, and that in particular those who prove their titles in the Court of the Land Commission should be permitted to register them forthwith, without repeating the process of proof before the Registrar of Titles." This last recommendation, as far as it is practicable, is carried out in the Act. The Land Commission are empowered to give to a landlord
who has sold part of his estate a certificate of title to the remainder, provided it is held under a title common to the part sold. (S. 24.) This certificate the registering authority may accept as evidence of title as of the date it bears. The rules of the Land Commission, so far from restricting this provision, appear to extend the benefit of it to all lands held under a "partly common" title to those sold. It is an interesting question, then, how many of these certificates of title have been given, and how many of them have been registered. It will probably be found that very few have been registered. The individual landowner will, in the ordinary course, consider what is best for himself, his family, and his estate, without regard to general resolutions passed in public convention on the subject of land transfer. The much abused "family solicitor," even were he a Westbury or a Cairns in theory, must face the facts of the situation and advise in the interests of his client, irrespective of new schemes of land transfer of tentative character or doubtful expediency. If it be desirable to settle the family property, or if it is already settled, it may be fairly thought that, though provision is made for the registration of limited owners and for the entry of the names of trustees, a register which neither discloses nor gives notice of trusts is hardly suitable for settled land. And though the tenant for life might have no objection to appearing as a limited owner, the other parties to the settlement might not be willing to suffer that total effacement from the record which the Act requires. The system of registering deeds presents a contrast to the system embodied in the Act in this respect. Among the advantages of the Irish Registry of Deeds is the protection given to interests other than the fee-simple in possession. This is precisely where this Act fails in limine. The Registry of Deeds, on the other hand, gives them publicity and saleability even in the absence of title deeds, which the owners of these interests may not have any right to possess. The system of cautions and inhibitions in sections 69 and 70 of the Act, however well conceived, are no compensation for the loss of the advantages above stated.

Considerations of this character may go far to explain the attitude of extreme reserve adopted by the large landowners to a measure to which their representative body have given special attention, the details of which they have thoroughly mastered, and on which, even before it passed into law, they had to a large extent impressed their views. It seems unreasonable, however, to demand universal compulsion as regards a measure which one is not prepared to adopt voluntarily. In the earlier drafts of the measure a provision was inserted providing for the voluntary withdrawal from the register of any holding on which the debt to the State had been discharged. But on page 117 of the work already referred to as published by the Executive Committee of the Landowners' Convention, the proposal is formulated that "there should be no possibility of withdrawing from such an Act any land the title to which may have once been registered." The proposal for withdrawal from the registry of any compulsorily registered land on which the debt to the State had been discharged was accordingly expunged. The incident speaks
volumes for the influential interest taken by the large landowners in this measure, and argues no small degree of special responsibility in connection with it on the part of that body. The insertion of the provision for the certificate of title to be given to landlords who have sold portion of their estates arose in the same way. It did not appear in the earliest print of the Bill, but was adopted in deference to views expressed in the same book and emanating from the same body.

The administrative form in which the measure was cast is fairly open to objection. In the first place, though local registers look like a concession to the popular demand for local institutions, their establishment was premature and confers no advantage on the public. If anything, they are rather an inconvenience to the legal profession. Every country solicitor has already an agent in Dublin, who would naturally do all his business in connection with this Act if the system were altogether centralized. As it is he will require to have another agent in his county town. After a centralized system had been found to work well for ten or twenty years, and it had been discovered that its localization would be a further benefit to the community, then a system of local registers might fairly be adopted. On the other hand, to begin with local registers for a system so highly tentative as this was a mistake, and I am corroborated in this opinion by the fact that, while the Act leaves the degree of control to be exercised by the central over the local authorities an open question, the rules have made this control absolute, with the result that the local registers have no autonomy, and the system, though highly localized in form, is thoroughly centralized in fact. As it is, the local registrars, men of experience and mostly men of eminence in their profession, are the mere automatons of the central registering authority. Another objection to the administrative form of the Act is that the system has been made a sub-department of the Land Judge. Clearly the Land Commission was the department through which, from its very nature and origin, the qualifications and experience of its officers, and their established official relations with the tenant purchasers, this Act should have been administered. It was clearly intended as part and parcel of the remedial legislation to which the Land Commission owes its existence, and from which it derives its functions. The Court of the Land Judge has, on the other hand, been more closely concerned with the interests of the large landowners, and its old procedure was naturally more suited to dealings with large properties. It would, moreover, have been sounder policy to have kept clear of the associations of failure which surround the Record of Title Act by choosing another centre of administration.

For the purpose of giving vitality to the wholly inoperative provisions for the registration of statutory tenancies, the Land Commission, as an administrative centre, would have been invaluable. The entry of the tenancy in their books would easily and naturally take the place of the entry in the estate book. Statutory forms of transfer, to be used only by solicitors, and to be authenticated by
them, could be transmitted directly to the Land Commission through their town agents. Local offices would only complicate the inherent simplicity of the transaction. In stating, however, what I conceive to be the position the Land Commission ought to occupy in this matter, I am not an advocate for the wholesale absorption into it or any government department of the conveyancing business of the country. The public would not be the gainers, nor would it be fair towards the legal profession, whose legitimate rights it is the duty and the interest of the public to maintain.

The rules and forms do not, speaking generally, make for simplicity of procedure, or brevity and clearness. The rules authorising copies of conveyances and vesting orders to be given in lieu of land certificates, certificates of charge and memorials of registration, is likely to lead to a good deal of confusion. The distinctive legal effect of these documents is not to be gathered from their tenour but from the various rubber stamp impressions affixed to them. A person would require to be fairly familiar with the system in order to be able to distinguish between them. One copy of the conveyance or vesting order is retained by the registering authority as part evidence of the registered title; another copy is given to the Land Commission as a certificate; a third may be given to the registered owner as a land certificate; while a fourth and fifth copy are given to the Registrar of Deeds as a memorial of registration. One of these to be filed as a memorial, the other to be bound along with the transcripts. Thus, four copies or parts of the same deed or vesting order are used for four distinct purposes. When memorials of registration in this form were first lodged in the Registry of Deeds, trained officials in that department were considerably perplexed as to their nature and how they should be dealt with. The affidavit to register judgment as a mortgage might fairly have been shortened in case of an Act of this kind, but form No. 28 for this purpose abounds in repetition, and consists of nine paragraphs of averment. No doubt this form was thought necessary forty years ago, when judicial decisions on the Judgment Mortgage Act were highly technical, but something shorter might fairly be expected from draughtsmen at the end of the century, when the current of judicial decision on this subject flows more sweetly and reasonably. Procedure under the Act comprises registration of the matter as a *lis pendens* in the registry of judgments, the examination of the title, a search in the registry of deeds for incumbrances, a search in the registry of judgments for judgments, *lis pendens*, Crown bonds, recognizances, and acceptances of office, and the lodgment in the Registry of Deeds of a memorial of registration; added to these a formal application for registration supported by an affidavit in the initial stage; and in the final an equally formal application for a land certificate, which as we have seen is to be accompanied by a draft of the certificate and a deposit of money. Then there is the correspondence which must necessarily arise in relation to some of these matters between the central and local offices, and, lastly, the delineation of holdings on the ordnance maps. Four public departments, and if we include the Inland Revenue, five,
are to be dealt with in the registration of a title under the above complicated procedure. Yet, practically speaking, the whole business of registering these titles might have been conducted by means of two departments, the Irish Land Commission and the Registry of Deeds. Both departments have rendered special services in relation to the Act; the former by calling the attention of the parties concerned to their duties under the Act, the latter by making between three and four thousand searches gratuitously in addition to the other extra duties cast upon it. As already pointed out registration was to be without fee where application was made during the first year of operation, that is to say, 1882. But some months of that year had passed, and but for the action of the Land Commission the whole of it might have passed without the persons whom the Act directly affected being made aware of its provisions. The Land Commission having established official relations with the tenant purchasers it was the simplest thing in the world to issue, as they did, a circular calling attention to the existence of the Act, the duty it imposed, and the advantage, such as it was, of making early application for registration. Up to that the mass of tenant purchasers were wholly oblivious of the measure; it was steadily ignored, and then, as well as subsequently, conveyances of holdings to which the compulsory sections apply, were being registered in the Registry of Deeds.

If the Registration of Assurances Bill had been amended in the one particular in which it was objectionable to the mercantile community and passed into law, the process of registering titles under the present Act or any other Act would have been simplified and facilitated. The effects of that Bill in this respect were stated to the Society four years ago in the paper already referred to. By the system of registering wills and intestacies which it proposed, the intervention of the Inland Revenue Commissioners, required by the present Act, would have been obviated, the lacuna in our present system of deeds registry would have been supplied, and a registry search would, if properly directed, have disclosed a perfect abstract of title. A further effect would have been the centralization of the process of searching, as the aim of that measure was to bring into one office, that is, the Registry of Deeds, the official record of every Act that could affect land, including judgments, dis pense, recognizances, acceptances of office, private acts of parliament, with the further beneficial consequences that a search in the Deeds Office would practically disclose not only a perfect abstract of title but a perfect schedule of incumbrances, both actual and possible. The realization of these proposals embodied in the Registration of Assurances Bill would have exercised a most important influence upon procedure under this Act, and would have gone far to obviate the serious delays in registration, which have in some cases deprived owners of their freehold franchise (Torish r. Orr (1894) 2 I.R. 381), and in others operated as a bar to land transfer. In Furlong and Bogan's contract on account of the great delay in registration the vendor contracted herself out of the Act, and the purchaser having repented his bargain claimed that the
condition was repugnant. The Vice-Chancellor, however, held that the contract was binding, and said:

"It appears from the great amount of work thrown upon the registering authority beyond what they have been able to get through, the process of registration is getting in arrear, and considerable delay has been occasioned." 31 Ch. Div. L. R. I. 191.

This delay has been further productive of litigation, and has tended directly to obscure title, owing to the questions that necessarily arise between the heir-at-law and the personal representative when the title devolves in the interval between the application for, and the completion of registration—a period which in the earlier stages of the administration of the Act, extended from eighteen to twenty months—in some cases longer.

The points in which as I consider the Act might with advantage be amended are—firstly, the rule of intestate inheritance, which ought to be extended to all land purchased holdings, whether registered or not; secondly, its financial basis, which should include provisions for defraying the expenses of first registration, especially as regards the earlier purchasers; thirdly, the memorial of registration to be given to the Registrar of Deeds, which feature taken from the Record of Title Act is not in its present form adapted to the requirements of this Act. As regards the rules, the procedure in relation to land certificates ought, it is submitted, be more liberal and in fuller accord with the spirit and letter of the enactment, while uniformity and appropriateness as regards the forms might with advantage be adopted.

Though I consider that the Land Commission would have been a better centre of administration, under all the circumstances, than a department of the Land Judge, and though I believe the establishment of local registers to have been at least premature, I cordially appreciate the merits of the general scheme of land transfer which the author of this legislation endeavoured to give effect to, and of which this Act was only a part. That scheme was at once conservative and progressive in the best sense of these terms. It aimed at reform and not revolution; the codification and simplification of the law of deeds’ registration; the centralization of registration and search so as to improve the general practice in relation to the established system of land transfer; the creation of a more modern system of transfer, compulsory in its adoption as regards one class on which the State had special claim, but as regards the remainder free and voluntary in accordance with the genius of the people of these islands. These were the main features of a general scheme, the result of life-long experience, special learning, and an honest desire on the part of its author to leave the institutions of his country in relation to land transfer better than he found them.

Whatever be the faults of matter, manner, or arrangement in the present paper, the writer claims to be actuated by a desire to review the Act and its administration impartially and with due regard to the interests of those on whose behalf it was mainly passed, and in conclusion, ventures to hope that a discussion in the Society may be the prelude to improvement in legislation and administration in a matter that touches deeply the springs of national prosperity.
## Return of Proceedings in the Local Registration of Title Office for the Years 1892, 1893, and 1894.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Applications filed.</th>
<th>No. of Titles read.</th>
<th>No. of Searches issued.</th>
<th>No. of Cases registered.</th>
<th>No. of dealings with Regd. Land.</th>
<th>No. of cases of transmission.</th>
<th>Amount of Insurance Fees collected.</th>
<th>Amount of Office Fees collected.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>By Purchasers</td>
<td>By Land Commission</td>
<td>Voluntary</td>
<td>Total</td>
<td>Arrear Cases</td>
<td>Current Cases</td>
<td>Total</td>
<td>Total</td>
</tr>
<tr>
<td>1892</td>
<td>--</td>
<td>5,245</td>
<td>--</td>
<td>4</td>
<td>5,249</td>
<td>1,391</td>
<td>626</td>
<td>163</td>
</tr>
<tr>
<td>1893</td>
<td>--</td>
<td>2,465</td>
<td>788</td>
<td>6</td>
<td>3,259</td>
<td>5,059</td>
<td>3,415</td>
<td>8,464</td>
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<tr>
<td>1894</td>
<td>--</td>
<td>103</td>
<td>1,135</td>
<td>12</td>
<td>1,250</td>
<td>2,969</td>
<td>3,320</td>
<td>5,882</td>
</tr>
<tr>
<td>Total</td>
<td>--</td>
<td>7,813</td>
<td>1,923</td>
<td>22</td>
<td>9,758</td>
<td>9,419</td>
<td>7,361</td>
<td>14,509</td>
</tr>
<tr>
<td>January, 1895</td>
<td>17</td>
<td>120</td>
<td>--</td>
<td>137</td>
<td>150</td>
<td>100</td>
<td>218</td>
<td>213</td>
</tr>
<tr>
<td>February 23, '95</td>
<td>7</td>
<td>103</td>
<td>--</td>
<td>110</td>
<td>268</td>
<td>397</td>
<td>146</td>
<td>90</td>
</tr>
</tbody>
</table>

Number of Cases Registered, -- -- 14,509
Number of Application Cases not yet Registered, -- -- 8,258
Number of Record of Title Cases not yet Transferred, -- -- 768
Total Number of Cases pending, -- -- 23,535
The following letters were addressed to the daily press in 1892 when the Act was only a few months in operation. They were mainly written in reply to the criticisms of The O'Conor Don and Mr. Hugh de F. Montgomery, referred to in the foregoing paper, and may still prove interesting to the critic or student of the Act and its administration:

THE LOCAL REGISTRATION OF TITLE (IRELAND) ACT, 1891.

TO THE EDITOR FREEMAN AND NATIONAL PRESS.

DEAR SIR,—No fair-minded person will suppose The O'Conor Don to be influenced by any other than the highest motives in drawing attention to what he conceives to be the defects of the above enactment. I do not, however, agree with him in thinking that the mode prescribed by the Act for dealing with equities affecting the tenant's original interest is likely to prove any bar to its proper working. In the first place, as the O'Conor Don himself recognises, it is optional with the applicant for registration whether these claims shall be represented by a general note on the register, or whether they shall be investigated and registered as specific charges or burdens. If he applies within the current year they will be registered free of charge. The expense to him in that case will be the furnishing to the Registrar of the necessary evidence. I have no doubt it would be an improvement if the period of a year in such cases were extended indefinitely. But I cannot conceive that the presence of the general note on the register that the title is subject to such claims as affected the original tenancy, would really interfere with a sale. The purchaser or his solicitor would naturally inquire the nature and extent of these claims, and the vendor would then have an opportunity of furnishing the same evidence respecting them that he would have to furnish to the Registrar if he wished to have them entered as burdens, with this difference, that the purchaser or his solicitor would be far more easy to satisfy and to deal with than a responsible official like the Registrar, who will be fettered by a system of procedure more or less inflexible. And as the trouble and expense of investigating matters of title is in no way modified by the limited extent of the property, it may easily be believed that the cost to the State or to the individual of examining these claims affecting these small properties would far exceed the profit. I do not say that this matter is not a difficulty, but it is a difficulty that, in my opinion, the provisions of the Act deal with in a most practical manner. If The O'Conor Don objects so strongly to the registering of titles "qualified" to this limited extent, what would he say to an elaborate system of "qualified" and "possessory" titles such as is embodied in Lord Cairns' Act, which is wisely omitted from this Act, though it is modelled on that of Lord Cairns, and which would be a necessity in Ireland if the compulsory provisions of this Act were made general. With regard to the change in the law of descent as regards the properties of tenant purchasers, I think it is an admirable arrangement for the parties concerned directly, inasmuch as it restores to their properties the mode of descent which formerly attached to them, and with which the occupiers are familiar; while to the general public it is of great interest, inasmuch as it strikes a blow at the custom of primogeniture, which is feudal in its origin, and which cannot be defended on any principle of justice in the present condition of society. It insures in the majority of cases of intestacy a more equitable distribution of the intestate's property than does the archaic custom of primogeniture. The O'Conor Don suggests another system of devolution, but it is obvious that the framers of the Act must have felt his choice restricted to the only two at present known to the general law. The Act in its passage through Parliament appears to have encountered little criticism, which makes one regret the absence from the Legislature of such a competent and so searching a critic as The O'Conor Don. However, there was one part with reference to which a good deal of friendly interest was manifested in the House of Commons, and that is Part IV., the portion now under consideration, and which a member of the Irish Party pressed the Attorney-General to have passed into law as expeditiously as possible.

PART II.
No doubt the division of the value of the holding must tend to impoverish the occupying owner, but I cannot see that in reference to this matter he is any worse off as an owner than as a statutory tenant, except that perhaps he falls a more ready prey to the usurer. The proper remedy for this is the establishment of Land Banks similar to what exist in many parts of the Continent; and, if necessary, the power of charging should be restricted to dealings with these institutions, and in amount to a certain proportion of the value of the property.

It is to be observed, however, that as regards purchases prior to the commencement of the act the directions to the Land Commission to use its compulsory powers are not mandatory. This, coupled with the fact that the indirect compulsion will only arise when a sale is contemplated, tends to show that it will be a long time until the act comes into full operation even among the class from whom it is principally intended. Delays are dangerous, but doubly so in the registration of state created titles, which, unlike wines, do not improve by age. It seems to me that the greatest obstacle the Local Registration of Title Act will encounter in its operation will be ignorance on the part of those for whom its benefits are intended, while I cannot but think that an enormous amount of labour will have to be gone through, owing to the fact that such lengthened periods have been allowed to elapse, and will yet be allowed to elapse between the creation and the registration of so many titles.

I do not claim for the Local Registration of Title Act that it is a perfect measure. If it were, it might not have passed into law. The Registration of Assurances Bill was a perfect measure, but it would appear that it was its theoretic perfection that led to its being opposed and withdrawn.

I am, dear sir,

Yours very truly,

J. MAGUIRE, B.L.

TO THE EDITOR FREEMAN AND NATIONAL PRESS.

Dear Sir,—In his letter which appeared in a recent issue of your paper, The O'Conor Don utterly misrepresented some of my opinions on the above subject. The first of these misrepresentations consists in his statement that I do not see any difference between ancient titles and those recently created. If that were so, I would be ignorant of the very elements of the subject, and wholly unfit to discuss it with any one so well-informed on the question as The O'Conor Don is. Let me assure him I am fully alive to the difference as to registration between ancient titles and those recently created, nor have I, as he alleges, applied to old titles words which he wrote with reference to new ones. The point under discussion had sole reference to ancient titles, namely, the antecedent titles of the tenants before they had acquired the fee-simple; the question being whether all those back titles should be investigated, or whether the claims affecting them would be sufficiently indicated by a general note on the register in the case of those who did not wish to have their old titles examined. My argument had nothing to say to the newly created titles of the tenants, and, therefore, The O'Conor Don's statement that I applied to new titles words which he had used with regard to old ones, is entirely inaccurate. So far from my confounding ancient titles with new ones, it is The O'Conor Don who does so by failing to mark the distinction between these ancient titles of the tenant purchasers, and the new ones, which are merely grafts upon the old.

I know from experience that many of the tenant farmers of Ireland have from time to time settled and charged their properties and complicated their titles, much after the manner of the large landowners. I am aware that many farms have been sold by vendors who have not been the legal personal representatives of the deceased intestate owners of the tenancies. Similarly, conveyances have been executed without the concurrence of all necessary parties, owing to the fact that some of them had emigrated. These are
matters that will stand in the way of primary registration if these titles are to be investigated according to the existing law, and will make the words of The O'Conor Don which I quoted in my last letter entirely applicable to them.

The O'Conor Don further misrepresents me, not wilfully I am sure, in either case by attributing to me an opinion which I do not hold—namely, that "the registration of assurances is a perfect system." I do hold that the Registration of Assurances Bill, lately withdrawn, was a perfect measure of its kind; that without such a measure the registration of deeds system now existing in Ireland must remain an imperfect system; that by means of it, on the other hand, the existing system may be so far improved as to form a powerful aid in the development of a registry of title. As an illustration of this, Mr. Montgomery may permit me to remind him that the Prussian record of title he so much admires owes its success largely to the fact that it was preceded by a really good system of registering deeds. And in referring to Mr. Montgomery I trust I am not too exacting in requiring that when he does me the honour to refer to my arguments in this controversy he will do me the justice to state them correctly. In former letters I pointed out that in my opinion the establishment of land banks, combined with restrictions on borrowing and an accurate system of valuation was the best palliative for the indebtedness of peasant proprietors. Mr. Montgomery briefly but most inaccurately sums up and misrepresents my opinion thus—"Mr. Maguire considers the establishment of land banks a sufficient remedy for this." Having thus attributed to me an argument which a child might refute, he proceeds to demolish it. Mr. Montgomery HEADS one of his letters, "The Revolution in the Law of Succession to Land." This is hardly applicable to an enactment that places the tenant purchaser in the same position as regards succession which he held as a statutory tenant or leaseholder, which embodies the same principle of distribution or plural inheritance which prevailed in this country when the ancestors of The O'Conor Don held royal state in Connaught, and before Mr. Montgomery's forefathers had ever seen Lough Erne. A principle, if not favourable to the growth of influential families, therefore unfavourable to class ascendency and oligarchical forms of government—a principle embodied in the custom of Kent, of Norway, the Channel Islands, and in that masterpiece of legislation, the Code Napoleon. I cannot agree with Mr. Montgomery in thinking that the adoption of a great principle of justice and equality is ever likely to injure society, nor do I believe that "abstract justice" as a basis of the law of inheritance or of any other law is "out of date," as he alleges. If the claims of "abstract justice" are disregarded in the council chamber of the legislator the chances are that they will be heard and felt elsewhere, even though the cry be "insincere" in the mouths of some who utter it. It is Mr. Montgomery's statesmanship that is out of date—as much out of date as the outrageous system of succession controlled by the landlord which he and The O'Conor Don are not ashamed to refer to, by way of answer to my assertion that the Act gives the occupying owners the form of succession they are accustomed to.

The law or custom of primogeniture, if not feudal in its origin, comes to us through feudalism, and represents the barbaric element of that composite system. A learned authority, Dr. Sigerson traces it to the laws of Menu who based it upon a superstitious principle. The O'Conor Don endeavours to mend the matter by advocating "single succession." I answer that single succession, unless associated with a trust is a fraud. Moreover, wherever single succession is found in other systems of law and in other forms of society than our own it is almost always coupled with a trust in favour of others. For example, under the Brehon Laws the form of succession among the class corresponding to those affected by the present Act was similar to that prescribed by the Act, so "revolutionary" is it. Succession to the headship of the sept and to the tribal lands was, on the other hand, a single succession and, as such, burdened with a trust in favour of the whole sept, for whose benefit they were held.

Primogeniture itself, viewed as a custom rather than a law illustrates this principle, though in a minor degree. At the present day, when an estate is settled according to the prevalent custom in favour of a single succession it is
invariably charged with portions for younger children and with some provision in lieu of dower. It will, I believe, be frequently the case that when such charges are paid off the owner has little left to himself. Here then you have under a system of single succession an owner of land in very much the same position relatively as the O’Conor Don anticipates for the owner under Part IV of the Act. For a like case I would prescribe a like remedy, or rather palliative, namely, Land Banks, an accurate system of valuation, and such restriction on borrowing as may be found practicable. And here I may be allowed to say there is a strong analogy between the cases of large and small owners of land, and though I may have overstated the case inadvertently in saying that The O’Conor Don’s proposal for clearing the titles of the tenants would confer no earthly benefit upon them, yet it is not deducible from anything I wrote, that a clear title would not be better than a doubtful one, if it could be had. But my point was that the Registrar would in many cases be unable to give it, just as in the case of many of the large landowners.

The O’Conor Don would deal very heroically with legal difficulties in the way of giving clear titles. He would shorten the period of prescription to five or six years, and bar all unregistered claims created by predecessors in title. Now, I know the O’Conor Don would like to see a general system of Registration of Title in successful operation in Ireland. If then he is prepared to apply these rules of limitation to the case of all classes of owners he can have that desideratum in a comparatively short time. The objection to a general and compulsory Registration of Title founded on the difficulty of primary registration would soon disappear under the system he proposes. But I know he has no idea of applying this method of procedure to owners of his own class. It might prove most unfair to many possible claimants. But what about the claimants in the case of the tenant’s interest, many of whom may be absent beyond seas, as in very common in their class, and in favour of whom The O’Conor Don proposes no extension of his period of limitation?

As I have elsewhere pointed out, the law of real property and of registration are independent. I have viewed the question of examining titles with reference to the existing law of property, with reference to which this Act has been framed.

In his last letter the O’Conor Don credits me with having given the question of registration a good deal of consideration. It is my duty to know something about it. But I would say that nothing but a practical and patriotic interest in the welfare of his countrymen could have induced The O’Conor Don to devote so much attention to so dry and uninviting a subject. If I have not deferred to his matured and authoritative opinions, I trust he will remember that at an earlier stage of this question he himself differed from such men as the Chief Baron, the Attorney-General, and other eminent authorities. That being so, I confidently claim his indulgence; and yours, sir, for the length of this letter, for which I trust you will find space.

I am, dear sir,
Yours very truly,

J. MAGUIRE, B.L.

TO THE EDITOR FREEMAN AND NATIONAL PRESS.

DEAR SIR,—A point in issue between The O’Conor Don and myself in discussing the above Act is whether the titles of the tenant purchasers before they acquired the fee simple are properly described as “recently created titles.” In my reading of that expression I understood it as applying only to titles acquired under the recent Purchase Acts. To call the titles of the tenants before they purchased the fee-simple “recently created titles” is to my mind a misdescription, and to attempt to treat them as such, a mistake. To show the inapplicability of the term it is only necessary to refer to the Ulster Custom and customs analogous to it which existed from time immemorial in various parts of Ireland, and all of which obtained statutory recog-
tion in 1870. Thus far the Land Act of 1870 was merely declaratory of what has been properly described as the Old Equity of the Kingdom. These titles of the tenants are at least as old as those of the landlords, as clearly and exhaustively shown in a most instructive book on Irish Land Tenures by Dr. Sigerson. By virtue of them, wherever this Old Equity of the Kingdom was unimpaired, the tenant enjoyed a right of property analogous to that which he enjoys at present under the Act of 1881. And it is to be said to the credit of that great measure, whatever may be said of its administration, that its policy is to place the relations of landlord and tenant on that footing which immemorial usage has sanctioned and public opinion approved.

I freely admit that in the greater part of Ireland the ancient custom of Tenant-right had been greatly obscured or wholly lost, and that, therefore, before 1870 great numbers of the tenants had, in the eye of the law, but little disposable interest in their holdings. But leaving the more ancient titles out of the question, it is twenty-two years since 1870, a period quite long enough to complicate a title. The O'Conor Don proposes five or six years for acquiring one by possession. I must confess that if I could take the same view of the tenants' original interest as The O'Conor Don does, I should be inclined to apply the maxim de minimis non curat lex to the equities affecting it. If the tenants' original interest be insignificant, a fortiori equitable claims attaching to it are insignificant, and, therefore, not worth investigating and recording specifically. But I hold that these claims are entitled to the fullest consideration, and should be adequately protected; that their investigation is desirable; but that such investigation should not be at the same time official and compulsory. I would, however, strongly object to the shortening of the period of prescription or limitation of actions, or any such rough and ready method of disposing of just claims. The rights of equitable claimants to these small properties are quite as well entitled to protection as those of persons similarly situated as regards the large estates. To make special provisions for barring the former is to make one law for the rich and another for the poor.

Differing as I do with The O'Conor Don with respect to two important features of the Act, I would like to emphasize one point at least in which I entirely agree with him, and that is that all the expense of preliminary investigations of title should be borne by the State. A good system of Land Transfer is worth a good deal to the community as a whole, while for the individual owner registration of his title implies an immediate outlay for a benefit prospective and perhaps remote. Under the present conditions of agriculture, most owners will be inclined to forego the latter in order to escape the former. Without some such expedient as that recommended by the O'Conor Don it is difficult to imagine how the voluntary part of the Act is ever to come into active operation.

I am, dear sir,
Yours faithfully,

J. MAGUIRE, B.L.

TO THE EDITOR FREEMAN AND NATIONAL PRESS.

DEAR SIR—I have read with much interest your recent articles on the Local Registration of Title Act. I agree with your view of the retrograde character of Rule 36, which enacts that the Land Certificate may be in the form of a conveyance by the Land Judge, or a vesting order by the Land Commission; and that a certificate of charge may be in the form of the instrument creating it. You very properly point out that by this means the deed is contrived a triple debt to pay, one part being retained in the register of title, another sent to the Land Commission, and a third given to the registered owner. So far from exaggerating on this point, you have really understated the matter. The deed is contrived not only a triple but a quintuple debt to pay, as an additional part and copy are sent to the Registry of Deeds Office. Section 19 directs that when land is registered under this Act a memorial of the registration shall be given to the Registrar of Deeds,
Land Transfer and Local Registration of Title. [Part 2,

who shall register it without fee. A form for this memorial is prescribed by Rule 21, which states that it also may consist of a conveyance by the Land Judge or a vesting order of the Land Commission. Though the Act and rules authorise only one part of the deed or vesting order to be sent to the Registry of Deeds, an additional copy is sent to save transcription in that office. It is right, however, to add that the form of memorial prescribed for this purpose by Rule 21, and numbered as form 4, is so short that the expense of its transcription would hardly be worth considering. Its purpose is simply to give notice that a certain title to certain lands is removed from the operation of the law relating to the registration of deeds. This could be expressed in one sentence, so as to fulfil all the requirements of the Act.

The want of simplicity and uniformity that characterises the present arrangement is utterly out of keeping with the progressive spirit of the Act itself. I think you are quite right in your contention that the nature and purposes of the various forms used under the Act should appear on the faces of the forms themselves, and not from the place or office in which they may be found, and that, therefore, the Land Certificate, the Certificate of Charge, and the Memorial of Registration should each have its stereotyped form briefly and intelligibly worded, and not to be departed from unnecessarily. The multiplication of Deeds authorised by Rule 36 tends to perpetuate and to add to "the mausoleum of parchment" which is one of the reproaches of our system of land transfer. It reproduces in an aggravated degree the very features which left the old Record of title Act open to the charge of being a "hybrid measure consisting partly of deed and partly of record." Nor is it unreasonable to suppose that the general public will be mystified and misled by forms but poorly adapted to their special purposes.

I have taken some interest in the success of the Local Registration of Title Act, and have endeavoured to defend its principle on two important points, in which it was assailed by so capable a critic as The O'Conor Don. I may be permitted to say that, in my opinion, the administration of the act has been rendered doubly and trebly difficult by the tardiness of its birth. It was recognised as a necessary part of the programme in the establishment of a peasant proprietary, and therefore its passing into law should have been contemporary with the first Land Purchase Act. The registration of a title immediately on its acquisition through a Land Judge or Land Commission is a comparatively simple proceeding. It is the lapse of time between the creation of a title and its registration that calls for investigation and gives trouble. It is this deterioration by time that obliges the Land Commission to differentiate in their mode of treatment between titles created in 1892 and those acquired at an earlier period. The fact then, that in the majority of cases, titles have been allowed to become clouded in this way not by any fault of the tenant purchaser, but by the tardiness of legislation, makes clearly in favour of your contention and that of The O'Conor Don, that these titles should be investigated free of any expense whatever. I must say that a glance at the Schedule of Costs and Fees is somewhat disappointing in an act that must have contemplated. For many of the occupying owners registration will mean a certain, considerable, and immediate outlay in view of advantages not unreal, but prospective and remote. A generous policy such as that indicated above will be necessary to make the act work successfully and satisfactorily. And to guard against the possible failure of a measure that has within it the germ of so much good, the appointment of a Commission to superintend its working would be a very good thing. Such a Commission should be of an operative rather than a speculative character. Its functions should not terminate in the production of a Blue Book, and the terms of its reference should enable it to recommend or adopt means by which the financial difficulties of peasant owners might be mitigated, and as far as possible averted.

Very truly yours,

J. MAGUIRE, B.L.