

must in the long run draw more heavily on the resources of the reserve fund. My opinion is that it would take, one year with another, about 20 per cent. on the capital invested in stock, for renewing and keeping it up to the mark, in efficiency, in productiveness, and in value.

My reason for giving in detail the expenses and losses of dairy farming is with a view of answering by anticipation, and accounting for, the very large receipts of this most important rural industry, which, without being explained and accounted for, might appear almost incredible.

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VI.—*On the Importance and Feasibility of making special Local Arrangements for facilitating Peasant Proprietors and other small holders in dealing with their Interests in Land.* By W. Neilson Hancock, LL.D.

[Read 26th February, 1878.]

(1)—*Analogy between Post Office reforms and law reforms for facilitating transfer of land.*

PROBABLY the greatest practical reform which the present generation has witnessed was Sir Rowland Hill's Penny Postage reform. The accommodation which the public, especially the poor and those residing in backward districts, have gained from it, is wonderful. Let us take the figures. In 1839, before the reduction in the postage took place, the number of letters delivered in the United Kingdom was 82 millions. In 1875 the number reached 1,008 millions. Making allowance for growth of population, this represents an increase from three letters per head to thirty-one, or more than tenfold.

This average increase for the whole United Kingdom was brought about by an increase in Great Britain of less than nine times; but in Ireland of more than thirteen times; so that the most backward part of the United Kingdom gained most by the reform. Now let us for a moment reflect in what this great reform consisted; it was extending to the whole United Kingdom the Dublin local penny post for letters not exceeding four ounces, with a slight modification of weight. The reduction of postage to anyone looking into a table of law taxes, would appear very inconsiderable. From Dublin to any part of Ireland the postage did not exceed fourteen pence, to any part of England, seventeen pence, and to the most distant part of Scotland (Wick), twenty pence.

What apparently insignificant matter for a man to trouble his mind about. Yet what wonderful results have arisen from Sir Rowland Hill considering how to reduce a tax of twenty pence to one penny.

Don't imagine this reform, which is self-evident to us, was easily carried. All the officials acquainted with the previous system condemned it. An association had to be formed to carry it. It became

the subject of party division in Lord Melbourne's time, and Sir Rowland Hill was brought into the Post Office to organise the arrangements for working his own reform.

So much of a party question was it considered, however, that he was turned out on the political reaction in 1841, and only restored when the advantage of the reform triumphed over party considerations.

Two collateral advantages of the reform are no less remarkable—first, the great development given to money orders, and, secondly, the development of Post Office Savings Banks.

The amount of money sent by money orders in the whole United Kingdom was before 1839 only £313,000. In 1875 it reached the sum of £26,497,000, which, making allowance for the increase of population, was an increase of upwards of seventy fold (from 0.7 to 50.3).

Then, since 1862, the local organisation of the money order offices has been successfully turned to account to the great object of protecting the savings of the poor. This additional function has allowed these offices to be increased in number, so that they are now 600, giving that number of savings banks, with £1,000,000 of deposits, the previous system of trustee savings banks being represented now by only thirty-six trustee banks in Ireland.

In connexion with these banks, facilities are afforded for distributing the money on death, free from the ordinary taxes or legal expenses.

Here we have a guide and a type of all law reforms. The first object is accommodation to the public. The Post Office now produces little more net revenue than it did in 1839, only £200,000 increase (from £1,676,000, to £1,894,000), while the gross receipts have risen from £2,466,000, to £5,815,000. The greatest reduction was made in favour of the distant and backward districts.

Then local official machinery is turned to the greatest account in favour of the poor, and to accommodate them, taxation and legal technicalities are dispensed with.

(2)—*How local registries on the title principle would effect similar reforms for small proprietors.*

Now, the cost of selling land is exactly like the high postage. I mentioned a case in the evidence I gave last year, where, for £560, the costs of vendor were £38. I have since ascertained that the costs of the purchaser were £24. Here is £62, a heavy charge, which does not necessarily diminish with the smallness of the purchase money. Now, on the plan of local register, like government stock or a ship's register, this might be reduced to one per cent. or £5.

A broker's transfer of shares is paid for by a per-centage. The stamp on the transfer of shares, is on a scale, amounting to a per-centage. The stamp on such transfer is sometimes as low as six-pence.

Here we have another analogy from which the poor might benefit. Again, the law as to government stock shows that it is possible to have £800,000,000 of property satisfactorily held and managed

on the plan of cheap transfer. It may be said, however, that that is a centralised system, and applied to public debt only. But we have, since 1854, had the system applied to property in ships, and a ship may be held in sixty-four shares. Then, for the convenience of the ship-owners the registering of the ownership and charges on ships is local at the port to which the vessel belongs.

It may be said, however, what might do for ships would not do for land. But railway companies hold all the land which the lines and stations occupy. This land is all, for the purposes of property, divided, not into sixty-four shares like a ship, but into an infinite number of shares, for the conversion of the shares into stock enables you to buy a pound's worth, if not a shilling's worth, of the landed property of any railway.

These transfers are all managed locally by officers of a public company, exactly like bank managers, and the railway company is responsible for the accuracy of the entries.

Most of the recent commissions, for inquiring into land transfer, like those of 1857 and 1869, have gone in the direction of extending the plan successfully used for ships to land, that is substituting the registering of title for that of deeds, and this principle has been accepted by Parliament for land in the English and Irish Record of Titles Acts of 1862 and 1865, and in the English Land Transfer Act, 1875. It may be said, however, that Ireland was not represented on the last of these commissions, that of 1868-'9, appointed during Lord Derby's administration, so that there is no evidence that the Land Transfer Act of 1875, founded on the recommendations of that commission, would be suitable to be extended to Ireland.

(3)—*Irish authorities in favour of registration by title instead of by deeds.*

But there are Irish authorities on the subject. In a debate in 1876, Mr. Hugh Law, M.P., said :—

“I would again ask the Government, as I did in 1874, to give us a similar measure for Ireland; let us, too, have an Act for the registration of titles and facilitation of the transfer of land.

“Every condition exists in Ireland to invite such a measure. We have a cadastral survey to form its basis; and we have, as I have just said, abundance of money to be thus invested, and to gratify that longing which, I rejoice to say, the Irishman has, to be absolute owner of his bit of land—a sentiment which I own appears me to be as natural and healthy as it is conservative in the best sense of that word.

“It is a pity to let more time pass without doing this easy and needful work.

“We have within the last twenty-five years passed some £50,000,000 worth of Irish land through the crucible of the Landed Estates Court. The titles thus cleared are gradually, by the mere lapse of time, becoming clouded again, and finally, under the provisions of the Irish Church Act and Irish Land Act, we have created some 6,000 or 7,000 small fee-simple proprietors, to whom, with the present state of the law of real property, this ownership is a very doubtful boon.

“I would therefore earnestly ask the Government to give us at least such a measure as has been passed for England, or, if practicable, a still bolder measure—an Act to facilitate the transfer of land in Ireland from those who may be willing to sell to those who wish to buy, and, as far as may be, to free the land from all artificial fetters of every kind.”

The present Lord Chancellor of Ireland, then Attorney-General, took part in the debate in 1874 to which Mr. Law refers, and he supported the compulsory clause which the Bill then contained, involving a substitution of the registration by title for the memorial system in the Counties of York and Middlesex, from which the Irish memorial system was copied. Here we have very strong and very recent Irish authority of the highest character.

Again, Irish opinion was very fully elicited by the twenty-eight Irish witnesses examined before the Registration of Title Commission of 1854-'7.

At a still earlier period (1853) the question was very clearly put in a paper read before this Society by Mr. Conway E. Dobbs.

He commenced by contrasting the price of funds as compared with land in Ireland—thirty-four years' for government stock, and only twenty-five years' purchase for land—while in Belgium and France funds were less valuable than in England, while land brought fifty and forty-five years' purchase.

He accounts for this difference by the expense of investigation of title in Ireland, and adds that "it is manifest that, *as a security for small sums of money, land is nearly valueless.*

Then, as to sales, he says :—

"Practically speaking, small properties cannot be dealt with except as articles of luxury ; the large proprietor is deterred from selling, and the poor man from buying, by the expenses of the transfer."

He then discusses the question whether any improvement in the register of deeds would reduce the expense, and says :—

"I believe expectations have been raised as to what a register of deeds can effect, which must inevitably be disappointed. A register of deeds can and will protect against fraudulent suppression of deeds. It can and will provide for the more easy identification of parcels ; it may disclose in consecutive order all the dealings with the estate ; it may secure the formation of a perfect and complete abstract, *but it can have no effect in dispensing with the retrospective deduction of title, or with the complicated system of conveyancing, which is the necessary result of the retrospective title. These things will still continue, and in the future, as heretofore, render the transfer of property a work of time and expense.*

He then proceeds to sketch out a system of record of title as a substitute for a register of deeds, and winds up that branch of his subject with these words :—

"Such appear to me to be the advantages which would follow from the adoption of a plan that *would ascertain conclusively for the purposes of transfer, without long deductions of title, the present ownership of land.*

"I cannot part with the subject without adverting in a few words to the great social consequences involved in this question.

"Among the many practical evils involved in this question, none has been more dwelt upon than its tendency to prevent the alienation of land in small parcels.

"To the mass of the community the possession of land as property is impossible, and their exclusion not only depreciates the marketable value of land, by excluding what would otherwise be the largest class of customers, but also imperils the stability of society itself, and the preservation of property, by arraying against it the sympathy and feeling of the masses."

I have yet one other authority to refer to. Four years before Mr.

Dobbs's paper was read, Mr. Justice Lawson, in evidence before a Select Committee of the House of Commons in 1849, recommended a system of map registration and a record of title to land, as a means of carrying out the very object Mr. Dobbs so clearly states.

Now I think when I can bring four authorities such as Mr. Justice Lawson, Mr. Conway Dobbs, the present Lord Chancellor of Ireland, and Mr. Hugh Law, M.P., as agreeing on a question of practical legislation like the substitution of the record of title for deeds, I have made out a strong case for permissive legislation in favour of that "mass of the community" which Mr. Dobbs admits are excluded from the possession of land as property by the present system, and would be excluded by the system of registration of deeds, however improved by any change short of substituting a record of title for a registration of deeds.

I can corroborate Mr. Dobbs's view, that improvements in the registration of deeds, short of record of title, will not meet the case of the small owner.

In 1850 I had an opportunity of examining the Scotch land laws with great care; and in a paper I read in the Belfast Social Inquiry Society, in 1852, I said:—

"All the impediments to the cheap sale of land which exist in this country, exist in Scotland, only on each point in a less degree. The result is, that the cost of making out perfect title to land is less in Scotland than here, but is still so great as to operate as an effectual barrier to the sale of land in small enough parcels to admit of the creation of peasant properties."

(4)—*Importance of not postponing the arrangements for small proprietors, till those for large proprietors can be settled.*

It appears from all this that the question of small and large properties is quite distinct, the cost of transfer, which is only a burden on the large holdings, operating as an exclusion from ownership or power of dealing with land, in the case of the small holdings. As Parliament, by the Church and Land Acts, and, as the Treasury have put on the purchase clauses of the Land Act the construction that they are intended for small holders, why should not the two cases be dealt with separately?

In England there are special districts, like the Bedford Level and town of Kingston-upon-Hull, with district registers.

Why not allow the system of local registers and title transfer to be tried on all the properties which have been bought on the state policy of creating small owners.

The plan I have suggested, of employing the banks as registrars, paying them by a per-centage for work done, would allow the experiment to be tried without an expensive staff or patronage.

Here, then, is a means of meeting the immediate case of the peasant proprietors who have bought and the holders of land who wish to buy, without waiting for legislation on the whole subject of the registration of deeds, the law of judgments, and the consolidation of offices, which has been referred to a very influential commission.

When a grievance gets to the position of an exclusion from a natural right—when its existence is admitted by the highest authori-

ties as a question of jurisprudence and social science apart from party politics, it is of great importance, for the sake of having the remedy promptly adopted, that it should be separated from the larger and more complicated questions which, before the recent reforms, have been the subject of inquiry by so many commissions and committees, since the first commission on the Register of Deeds Office sixty years ago.

(5)—*Reasons for not testing the principles of an Act of Parliament by the extent it is brought into operation.*

There is one line of argument on this question that requires to be noticed. In a recent official report, the fact that the Map Registration Act of Earl Russell's government, introduced by Lord Romilly in the Commons, and Lord Redesdale in the Lords, has never been brought into operation since 1850, is used as an argument against the practicability of carrying out what Parliament so long since directed to be done—the making use of the Ordnance Survey in registration. This is relied on, although the report itself discloses the opposition to this and other changes in the principal executive officer connected with registration of deeds, just as a return to Parliament in 1854 showed the very strong opposition of the then Registrar of Deeds to the carrying out of what Parliament had ordered four years before.

In the same way I have heard inquiries as to the number of cases under the Land Transfer Act of 1875 proposed as a test whether the principle of the Act was right or wrong, without any inquiry as to the nature of the opposition the Act was likely to meet with, and whether any steps had been taken to counteract the opposition.

The answer to all such reasoning is to be found in the history of the two Incumbered Estates Acts, passed in 1848 and 1849, to carry out the policy of court sale giving absolute or parliamentary title.

When the Act of 1848 was passed, great doubts were entertained as to whether it would be successful or not, some indications of opposition to it having been given.

Earl Russell, in some volumes he has recently published, gives an account of the steps he took to ascertain how matters stood as to the first Act. He says :—

“When the session was over, being very anxious on the subject, I went over to Ireland, chiefly for the purpose of inquiring into the probable operations of this Act. Lord Clarendon, who was then Lord Lieutenant, requested the Lord Chancellor of Ireland to come to the Viceregal Lodge to confer with me.

“He told me that the Act would probably be evaded, and I gathered from him that in his opinion it would be a dead letter. When I returned to England I sent for Sir John Romilly, and instructed him to prepare a new Incumbered Estates Bill for Ireland. I gave him full liberty to prepare it as he thought desirable, both as to the scheme to be adopted, and as to the provisions to be introduced for working it, permitting, at his request, that the working of the Act should be confided to a new court, to be constituted for that purpose.

“When Sir John Romilly introduced the Bill in the House of Commons, he was complimented very highly by Sir Robert Peel, who said he

was not one of those lawyers who took away the key of knowledge and prevented others from entering in. Lord Cottenham waived his scruples. The Act framed by Sir John Romilly and Mr. Coulson was confided to a court of very able men, and proved by the consent of all parties eminently beneficial.

“The authorship of so large and useful a measure has been attributed by many to Sir Robert Peel, and by Lord St. Leonards to himself. But to the decision of the Government overruling technical views of their own Lord Chancellor, and to the constructive skill of Lord Romilly and Mr. Coulson, this enactment must finally be attributed.”

Now, if Earl Russell had not intervened and secured the passing of the second Incumbered Estates Act, the first Act would most likely have shared the fate of the Map Registration Act of 1850, and if so, its failure would have been confidently appealed to, to prove that the principle of sale with parliamentary title was a mistake.

Earl Russell's firmness secured the principle of parliamentary title a fair trial, in the manner he describes. £50,000,000 of property has consequently been sold with such title, and no one now doubts the wisdom of the principle.

In the face of Earl Russell's story, it is impossible to refer to the fact of an Act not having been brought into operation as an argument against its principle, unless it can be shown that the officials charged with the administration of the Act have done their best to bring it into operation, and carry out the policy of Parliament.

(6)—*Illustration of the absence of systematic effort to reduce the act of transfer of land.*

Under the Record of Title Act it is provided that unless a purchaser in the Landed Estates Court, or person obtaining a certificate of absolute title, makes a requisition against its being recorded, the Registrar of the Landed Estates Court, on the eighth day after the execution of every conveyance or declaration, transmits it to the Record of Title Office to be registered.

It is then recorded without any affidavit of the judge's signature, and no office fee is charged for recording a conveyance or declaration immediately after the execution thereof. Then, again, as the deed is transmitted by the paid court officer, there is no duty to be performed by the solicitor, and consequently no costs payable to him for recording the deed.

Here is a very wise and simple principle laid down by Parliament in 1865.

But the very opposite of all this is the practice adopted as the registry of the same conveyances in the Office of the Registry of Deeds.

For the purpose of registering, the deed has, by the addition of a few words, to be turned into a memorial; the memorial, although all except a few words in print, is copied out in writing in the books of the Registry of Deeds Office. In consideration of this useless work, the office fee of a few shillings is retained on registration in Office of Registry of Deeds, though abolished in the Record of Title Office. Then, the judge's signature has to be proved by an affidavit. The deed, instead of being transmitted by the Registrar of the

Landed Estates Court to Registry of Deeds, has to be taken by a solicitor.

For his services in adding a few words to the printed deed to make it a memorial, making the affidavit, and taking the deed and memorial to the Registry of Deeds Office, and paying the office fee, he is entitled to costs of £1, if property not exceeding £1,000 in value, and £2, if exceeding £1,000 in value.

The directions on the subject state that these costs are

“For adapting printed copy of deed on parchment as a memorial, and registering same, including affidavit and attendance.”

The majority of the committee appointed to inquire into the Registry of Deeds Office in this respect, say :—

“Since March, 1862, the number of Landed Estates Court deeds may be stated at 7,300; supposing the average length of each deed to have been thirty folios, it gives a total of about 220,000 folios which have been unnecessarily transcribed, at a cost of some £1,375 for writing, and about £400 for parchment. Duplicates of the printed memorials, costing a few pence each, could have been procured and deposited for registry, by which means accuracy, facility of reference, economy of money and space could have been secured.

“The Landed Estates Court is only referred to, to illustrate this particular defect; there are others of the public departments, as, for example, the Board of Public Works, besides the cases of private individuals, in which deeds are printed, and where a similar practice of recording a printed memorial and its transcription prevails.”

The Registrar of Deeds questions the accuracy of the estimate, but admits that printed deeds might have been used, if the shape had been suited to his books.

While the Committee notice the transcription of the memorial, neither they nor the Registrar take any notice of 7,300 affidavits to prove the signature of the judges of the Landed Estates Court to the Registrar of Deeds, which would be wholly unnecessary if the simple plan directed by Parliament to be adopted in 1865 as to the record of deeds had been adopted for their registration, viz., of the Landed Estates Court Registrar transmitting the deed to the Registrar of Deeds: while they recommend the cost of copying to be given up, they do not recommend the fee charged to cover the copying to be abandoned, as in the case of the record of title. These fees on the 7,300 cases would amount to about £3,650. Then they take no notice of the costs to the solicitor, which are dispensed with in the record of title plan. These costs for the 7,300 deeds would be about £10,650.

The effect is that the spending in the Registry of Deeds Office £1,375 on clerk work no longer required since printed deeds have come into use, involves a cost to the purchasers of £14,700.

These facts show that one of the expenses which Mr. Murrough O'Brien brought before our Society in December as a burden to small tenants, ought long since to have been got rid of, if the latest decision of Parliament in 1865, as to recording conveyances of the Landed Estates Court, had been applied to their registration.

Then again these costs have undergone no revision since the

Land Act of 1870 passed, the scale is for purchase-money under £1,000, and for purchase-money above £1,000.

There is a fee for the conveyance of £5 in the one case, and £7 in the other.

But no step has been taken to reduce for purchasers for less than £1,000 the fee of £5, to which Mr. Murrugh O'Brien directed so much attention in his paper.

The total absence of care or thought about reducing these fees and costs presents a singular contrast to Sir Rowland Hill's reduction of the postage from twenty pence to one penny, and Mr. Robert Graves's achievement in halfpenny cards—and reducing the postage of letters of twelve ounces, from two shillings to four pence.

#### (7)—*Example of Prussia.*

Since I wrote my last paper, in which I referred to the Belgian system of land transfer, I find Mr. Morier, who wrote on Prussian land legislation, with a view to its applicability as a precedent to Ireland, in his Cobden Club Essay, in 1870, makes a special recommendation as to :

“Every rood of Irish land . . . being transferable by a cheap and simple system of registration.”

Then, speaking of a township, meaning a town, including rural district around it, corresponding very closely, if not smaller than our Poor Law Union, he says :—

“A land and mortgage register deposited in each [such district], with its accurate map of the district, could play an important part of the system.”

It appears from this that the Prussian precedent coincides with the Belgian in being as strongly in favour of local registries, as a simple plan to suit small proprietors.

#### (8)—*Summary of Conclusions.*

In conclusion, the suggestions I have to submit are :

1. That the case of small owners is quite distinct from that of large owners in respect of transfer of land.
2. That the present system, while burdensome to large owners, is practically prohibitory of satisfactorily dealing with land by small owners.
3. That it appears on high authority that no improvement of the system of registering of deeds is likely to make it suitable for small owners.
4. That the system of transfer by title instead of deeds, sanctioned in England in 1875, is shown by high authority to be suitable to small owners in Ireland.
5. That the plan of register of title at the local bank which is treasurer of each union, would allow the arrangement suited for small owners to be fairly tried for their benefit, without involving expense beyond what could be covered by fees on the business: the

banks being paid by a per-centage, no expensive staff or patronage would be involved.

6. That this plan of local and cheap transfer is in accordance with Prussian and Belgian precedents for dealing with small owners.

7. That, as the adoption or trial of the plan could not interfere in any way with the arrangements for registration by large owners, there is no reason for postponing its consideration, adoption, and trial, until the proceedings of the Registry of Deeds Commission have resulted in legislation suited for large owners.

VII.—*Whether the Union or the County should be taken as the District for Local Registers of Land.* By *W. Neilson Hancock, LL.D.*

[Read 21st May, 1878.]

IN the discussions which have arisen from the suggestions I have made as to local registers for small holders of land, one of the questions raised is the suggestion of making the county the district for local registration, instead of the union, as I had ventured to suggest.

*Is the Union too small a District?*

The discussions with respect to the amalgamation of unions have raised a doubt in some minds as to whether unions were not too small, and as to whether they were likely to be permanent boundaries.

A commission has for some time been inquiring into the subject, and the result has been that very many of the Boards of Guardians which had passed resolutions in favour of amalgamation, have, on inquiry, reversed those resolutions; and this change has taken place mainly on account of the convenience of the poor on the one hand, and the Guardians on the other.

It was found that the unions had been conveniently arranged so that the centre was within driving distance from the extremity to the centre and back again in a day, but that if the amalgamation was made this obvious convenience would be lost, and the journey to be made by the poor and the guardians would be burdensome and inconvenient. If this principle is good for one set of local arrangements it is good for another, and for facile transfer of land and securities by one small holder to another a market town within driving distance, in very many cases the market town to which people ordinarily resort, would present many advantages. Mr. William P. O'Brien, in his very able Report on Local Government, points out how the union has been adopted more and more from year to year as the basis of local arrangements.

The preparation of electoral lists and jurors' lists have been transferred from the county officers to the union officers, and in the County Boards Bill introduced by the Government in the present