

SOCIAL INQUIRY SOCIETY OF IRELAND.

AN INQUIRY

INTO

THE FOREIGN SYSTEMS OF REGISTERING

DEALINGS WITH LAND

BY

MEANS OF MAPS AND INDEXES.

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The annual subscription to the society is one pound; but larger sums are contributed by some members, such as two, three, five, twenty, and twenty-five pounds. Subscriptions are received by the Treasurer; the Secretaries; Mr. M'GLASHAN, 50, Upper Sackville-street; and Messrs. WEBB AND CHAPMAN, 177, Great Brunswick-street.

AN INQUIRY,

&c.

GENTLEMEN,

In pursuance of your reference to me, to inquire into "The system of registration of dealings with land, adopted in the United States of America, and on the Continent of Europe, with a view to ascertain the most convenient plan for constructing a land index founded on a public map, as the basis of a General Register;" I beg to submit to you the following report.

The objects of registration are stated by Lord Langdale's Commission to be, "to provide for a purchaser a ready mode of assuring himself, that no document is in existence which can defeat or alter the title offered to him; and to afford him, when he accepts a conveyance, prompt and easy means of securing the title which he takes." The importance of these objects is manifest, when we remember the strictness with which our law requires the deduction of a documentary title to land; and it is equally clear that their attainment cannot be otherwise secured, than by a well devised public register of all the instruments affecting interests in real property. Yet our legislature has hitherto treated this subject with singular neglect. In England no such institution as a general register has ever existed; whilst the local registers of York and Middlesex, and the register of deeds in Ireland, are so ill adapted to their purposes, that their results are often cited as arguments against any system of registration whatever. The plan of all these offices was the same in its general outlines. A 'memorial,' or brief abstract of each deed was entered in the office-books, according to the order of its date of registry; and the medium of reference to these books was an alphabetical index of the names of the grantors and grantees, who were parties to the registered instruments.

It is plain that a register, constructed on this principle, of indexing by the names of persons, must fail altogether in the first property required in it; that, namely, of securing facility and certainty in making searches for registered instruments. The following remarks of the Real Property Commissioners are conclusive on this point: "The number of names which must appear in the index for an extensive and populous district, renders this mode of reference burdensome, and liable to failure. In order to secure safety, negative searches must be made, in the name of every person who may have had any alienable interest in the estate, through the

whole period of the ownership of such person. The difficulties attending a search in such an index are increased by the occurrence of common names; because, when there are two or more persons of the same name, the identity of the party cannot be ascertained without a reference to the document; and therefore it becomes necessary to inspect all the documents relating to any other person of the same name. A similar inconvenience arises, where the same person has been entitled to several different estates. In these cases it cannot be ascertained, without a reference to the document, whether it relate to the estate which is the object of the search; and consequently it becomes necessary to examine all the documents relating to every estate of the party. From these causes, where the title is extensive and complicated, the labour and expense of a search becomes enormous. In the index for Middlesex for one year, the names under one letter of the alphabet have filled nearly fifty pages, containing about thirty-nine names each. We have been told that a search is rarely made at the present offices, except from the time of the last purchase or mortgage; that such a limited and inadequate search for one title has occupied a solicitor and his clerk more than ten days; that one search has cost upwards of £200; and that in some cases, where the estate has belonged to persons of very common names, or to speculative builders, the search has been considered impracticable."

The cause of registration was not likely to be advanced in public esteem by the experience of institutions so radically defective: and for many years, every attempt to introduce a general registry proved abortive. At length, however, the statute of 13th and 14th Victoria, c. 72, was passed, entitled "An act to amend the laws for the registration of assurances of lands in Ireland." It is designed to combine the advantages of Mr Duval's well-known scheme for classifying registered deeds, according to the respective titles to which they belong, with those of an index referring to the land itself, through the medium of a public map. The principal enactments, by which this plan is to be carried out, are as follows:—The country is to be divided, for the purposes of indexes, into districts; each county, and county of a city, forming a separate district. For each district an index, termed a land index, is to be framed; shewing the divisions of land within its district, and having references from them, to copies of the ordnance maps prepared for the uses of the act. In addition to this, the land index is also to have annexed to every division of land affected by registered assurances, an entry referring to the appropriate head in another index, called the "Index of Titles." This last is an index for all Ireland, under which registered assurances, with certain exceptions, are to be classified on Mr. Duval's plan, under separate heads according to the titles to which they relate. Whenever a deed is brought for registration, the grantor in which does not derive title through any instrument already registered, it shall be entered as the first deed of a registered title, and be indexed as the head of its class; in

which same class, or title, shall be placed all subsequent instruments of persons claiming under the grantor in the head deed. Every deed shall be registered by depositing an original; and the index of titles shall contain the particulars of the deed, the date of registration, and a reference to the place of deposit of the original in the office.

From the foregoing outline of the act, it will be seen that its principles are entirely different from any hitherto adopted in this kingdom. The most striking change is, the introduction into the system, of the public map, and the index founded upon it. Thus, we have at last a legislative recognition of the fact, that the only medium of connection between the present ownership of the land, and the numerous rights affecting it, is to be found in the land itself, and consequently, that the only mode of connecting them on the register must be, some description of the land, prescribed by authority, as a common standard of reference. As soon as such a description shall be prepared, in the form of an accurate public map, parties concerned in the title to any particular estate will resort directly to the land itself, as delineated and identified in the map; and from thence they will be referred, through the land index, to all the registered documents affecting the property in question, presented in a single class, without risk of mistake or omission. By this expedient, not only will the essential object be attained, of facility and certainty of search, but the danger, so formidable in dealings with land, of mistake in the identification of parcels, will now for the first time be obviated.

The operation of the act is suspended, until the required maps and indexes are ready; and since the efficiency of its working depends mainly on the proper adaptation of these to the ends proposed, it becomes important to consider how this may be insured. I proceed, therefore, in the terms of the question referred to me, to investigate the leading foreign systems of registration: and I will then offer such suggestions as I have been able to draw from the materials within my reach.

Lord Langdale's Commission pronounces, as its conclusion from the evidence procured on registration abroad, "that, from the state of the law in foreign countries; from the nature of the regulations which each country has found it necessary to impose; and from a consideration of the purposes for which registration has been introduced in each of them, the registers in foreign countries do not afford satisfactory examples for imitation here." But though none of the foreign systems, as a whole, may be fit for our adoption; it will be found, that some of them embody elements, in which our institutions of this class have been confessedly deficient.

Since, however, we are here concerned only with so much of the new system as relates to the map index; I mean to confine my inquiries respecting the foreign registers, to that point of view which bears on this topic. A register may be viewed in several different aspects; as being, for instance, general or special; judicial,

or ministerial; conclusive, or presumptive evidence of title; specificative, or unspecificative of the subject matter. But none of these considerations falls within our present province, except the last mentioned; that, in other words, which regards the identification of the title registered, with the land which forms its subject matter: an identification which cannot be adequately effected by any means, but by a correct and sufficiently detailed survey and map.

We find two radically different systems of registration in force on the continent. The one prevailing in France, and in those other countries whose legal principles, like hers, are chiefly derived from the Roman code; the other in the Germanic countries, whose jurisprudence is based on the maxims of feudal tenure. The cardinal distinction between these systems has reference to the identification and relative importance of the *land*. The Roman law looks to the person, the feudal law to the land. The former acknowledges little distinction between landed and other property. Under it, all the possessions of an individual* "form one whole, subject (except as to adverse possession) to the same conditions of ownership, equally liable in general to contribute to the payment of debts; and passing in bulk, with all its charges, to one heir on the death of the owner. In the feudal law, on the contrary, the holding of land is widely separate from the possession of other species of property; its enjoyment is subject to peculiar conditions; it is sometimes inalienable, sometimes unattachable for debt, seldom chargeable except according to certain specified forms; and, for the most part, only capable of devolution to particular classes of heirs."* Hence arises a corresponding difference in the character of a debt which is a charge on property, in these different countries. Under the various Roman codes, it constitutes "a general charge, affecting all the property of a particular debtor, like our own judgment; and the question of registration is therefore entirely a personal one—what debts does A. B. owe?" Whereas, on the contrary, the importance attached by the feudal law to the idea of property in land tends, wherever it prevails, "to raise all charges on land from the rank of personal debts to that of qualified ownerships of real property; and the question is then mainly, how is the land affected?" "According to the very conception," says Gonner, "of the Teutonic hypothec, [incumbrance] the public register destined for it must be drawn up according to the estates, and not according to the accidental and changeable possessors." Thus it is found, that in the French and cognate codes, legal registration arises solely from the existing incumbrance-system, and extends merely to incumbrances. Whilst in the Germanic ones it applies generally to all rights connected with the land. In the former consequently, "the legal register and the land register have no essential connexion with each other:" in the latter, on the other hand, the two registers are often identical; and, where not identical are always closely connected.

* Mr Ludlow's communication to the Registration Commissioners.

The Germanic element, as just explained, predominates in Prussia, Austria, many of the lesser German States, part of Switzerland, Denmark, Sweden, and Norway. In all these countries we find a specificative land registry, as distinguished from the Romanic register of charges; with legal provisions for identifying the estate with the title. This is effected through the old German "land tables," or "ground books;" frequently, but not always, completed by general surveys or maps. These land books are a species of inventories of the properties in their respective districts, and have all the imperfections inevitable to a mere verbal description of land. But wherever they are combined with a good survey or map, they are found to add most materially to the safety and facility of registration. In Norway, for instance, the basis of the register is "a general survey, or description of the country, called '*matricula*' (*cadastre*, in French,) resembling the English Domesday Book, in which every property is named and numbered,"* and which has been from time to time augmented and revised; whilst the houses and grounds in towns are also numbered and registered. Moreover, in some of the larger towns no sale or exchange of ground can take place without a drawing, made and attested by a public officer. The result of this system is stated to be, that registration is extremely cheap, the expense amounting to no more than three or four shillings: while a search is even cheaper.† To obtain a search, it is only necessary to state the name and number of the property in the survey; although the name of the proprietor is generally added ‡

The Swedish registry is connected with the land, both by a general survey, reorganized by the ordinance of the 4th May, 1827, and also by an excellent public map, existing since the time of Charles XI. "Every person who sells or exchanges any part of his ground, must accompany the document to be registered, with a map made by a public officer; who is obliged to deliver one copy to the archives of the province, and another to the Board of Land Measurement in Stockholm; where all maps are classified and pre-

* Second Report of Real Property Commissioners, p. 464.

† Second Report of Real Property Commissioners, p. 465

‡ The registry is judicial, and composed of three parts. "First, The *justits protokol*, or Minute Book of the proceedings of the court, signed from day to day by the judge, and two witnesses who have been constantly present; and in which is entered a short statement of any document relating to land, after it has been read aloud in court. Second, The *Skjode or Pante Protocol*, being a Holographic Register, or transcript of all instruments relating to land and houses, which have been read in court. Third, The *Skjode or Pante Register*, being a Memorial Register of estates; in which every property is specified in a separate page, and in which the date, day of reading, and general contents of an instrument—after it has been read in court and copied in the Holographic Register—are noted in the ledger account of the estate. After comparison of the entry with the contents of the two former books, an attestation that all is correct is made by the judge on the original, which is delivered to the parties."—*Report of the Registration Commissioners*, p. 230.

served in such a manner that, when any dispute arises between neighbours or neighbouring parishes, an exact drawing of the lands can be procured immediately, for a very trifling fee.”*

These examples are sufficient to illustrate the characteristics of Germanic registration; and they appear, moreover, to exhibit the system in its simplest, and, at the same time, its most effective form. In Germany its regulations are, in general, more alien from our institutions, and more complicated: and the Prussian registry, in particular, is said to have completely broken down beneath its cumbrous and superfluous multiplication of forms and books. It would be useless, therefore, to trace the system through its various modifications, in the several countries in which it prevails. Its basis is everywhere a land registry of a judicial character; connected, on the one hand, with the district tribunals of competent jurisdiction; before which all conveyances of land must be executed, and authenticated, in a manner somewhat analogous to our own dealings with copyhold tenements; and frequently, on the other hand, with such public surveys, or maps, as give completeness to its specificative character.

The French, or Romanic field of registration extends, in a more or less modified form, over France, Belgium, Rhenish Prussia, Baden, Geneva, Sardinia, and the two Sicilies. Its basis is the Register of Incumbrances, [*hypothecs*],† not legally connected with the land, or with a land registry; the owner, and not the estate, forming the primary object of the law’s regard. This involves no regular provision for evidence of identity, as an element of registration; and the system differs further from the Germanic, in being purely ministerial, and not judicial. But these original characteristics of the system have been more or less infringed upon, in the several countries subject to its influence. And it is worthy of remark, that no modifications have been more generally introduced, nor apparently with more salutary results, than such as are designed to provide for the identification of the land. In some countries, we find the legislature introducing provisions for this purpose, and establishing public surveys in connection with the registries. Whilst, in cases in which no such legal connection exists, we find that wherever a tolerably correct survey‡ [*cadastre*] is at hand, it is employed by the public, as a matter of practical convenience, in dealings in land, and in aid of registration.

The Belgian registry deserves a somewhat detailed description; because the survey used in connection with it possesses a marked superiority, for legal purposes, over those of most other continental countries. This is owing to the circumstance, that the Dutch government, by which it was chiefly executed, and which had nearly completed it before the revolution, constructed it with a two-fold object in view; viz, the registration of incumbrances, as

* Second Report of Real Property Commissioners, p. 464.

† For the convenience of the general reader I use the word “Incumbance,” as a popular translation of the *Hypothec* of foreign laws

‡ In like manner I use the word “Survey,” as a popular translation of *Cadastre*.

well as the assessment of taxes; whereas most of the other surveys were designed solely for either fiscal or topographical purposes.

Registration in Belgium is conducted by means of two descriptions of offices, the one called The Registry Office [*Bureau des Enregistrements*], and the other The Office for Registering Incumbrances [*Bureau des Hypotheques*].*

The Registry Office was established in 1796 Attached to this department there are three divisional bureaux, in Brussels alone; besides 181 others scattered throughout the kingdom. In these offices, deeds of every description, whether affecting land or not, are registered by memorial; nor is any act [*acte*] valid against third parties, until registered here The duties, also, upon sales and other transactions are received at this office, and the legal dates of instruments are fixed by the day of their registration here. It is to be observed, that we must not confound this system of registration with any process of registration as understood by us The Registry Office corresponds with what our stamp office would be, if the legal date of the deed were determined by the stamp.

The department for the Registration of Incumbrances includes twenty-seven offices; one for Brussels, and one for each arrondissement throughout Belgium. All sales, exchanges, and long leases of land, must be registered here, within two or three months from the day of their registration in the Registry Office. They are transcribed at full length. The creation of Incumbrances affecting land is also registered here, but only by memorial. It is not indeed compulsory to register incumbrances at all; but if they are not entered within fifteen days, and if an office certificate is given to a party making a search, that an incumbrance is not inscribed on the register, it will not be valid as against a subsequent purchaser, nor even against a subsequent borrower.

The system owes much of its comparative completeness to the survey; by which the land itself is identified, and the value, contents, and ownership of every estate throughout the kingdom, are shewn at one view There is no metropolitan office of the survey for the whole kingdom. But for each of the provinces there is a chief office in the principal town of the province. Each province is divided into communes, which vary in number according to the size of the province. In Brabant, which contains about 820,000 acres, there are 338 communes.

“There is not one large cadastre [survey] for the whole kingdom; nor is there even one for each province † But each commune has a separate cadastre, executed in the following manner A small map of the commune was made on the scale of 1 to 10,000; divided into

* Most of my information as to Belgian registration is derived from Mr Sanders' communication to the Registration Commissioners.

† Paper by Mr. Sanders on Registration in Belgium

sections, arbitrary in number and size, and depending on a road, river, brook, or other natural or artificial boundary.

“ A separate map was then made of each *section* ; and this map is on a much larger scale, viz. 1 to 2,500. In the case of towns, the scale for the sections is much larger still ; for instance, in Brussels it is 1 to 500 ; and in other towns, 1 to 1,000, and 1 to 1200 ; and in these cases the first map is on a larger scale than 1 to 10,000 ; being, in the case of Brussels, 1 to 5,000.

“ The size of the geometrical squares into which the maps are divided, is 500 metres each way, where the map is on the scale of 1 to 2,500. But where the map is on the scale of 1 to 500, as in the case of Brussels, the square is 100 metres each way ; and so in proportion to the scale of the map. Whatever may be the scale on which the maps are drawn, the paper on which they are drawn is always of a uniform size.

“ When the maps were made for each commune, the originals were sent to the chief office of the province in which the communes are situated ; and copies were left in the bureau of each commune, for the local use of the commune.

“ On the map of every separate section of a commune, are shewn the parcels into which the ground is divided ; and these parcels are marked 1, 2, 3, 4, and so on, consecutively, for as many numbers as there are parcels. Generally speaking, no section contains more than 2,500 parcels, and the neighbouring section is made to begin again with No. 1. There is thus No. 1 in section A ; No. 1 in section B ; and so on, through the whole kingdom. The original number of each particular parcel is always retained ; and, in case of subdivision of the parcel, the number is marked with the addition of a letter, or other distinctive mark ; as No. 1 a, No. 1 aa, or No. 1 bis. The actual number of parcels on the cadastres for the whole kingdom is 5,561,160. In order to provide for the changes, which are constantly taking place in the properties marked in the cadastre, it is the duty of a certain number of Genneters (officers of government) to make two journeys in the course of the year, into the various communes, and to mark down all the alterations which have occurred since their last inspection. All obvious and visible changes, such as the building of new houses, or the pulling down of old ones, or the making of new roads, &c, are pointed out to them by the bourgmestre of the commune, whose duty it is to do so. And as to those changes which have arisen from sale, exchange, or succession, and consequent alteration or division of boundaries, they receive information thereof, four times a year, from the officers of registration. Having thus ascertained the changes that have taken place, and having remedied any previous errors, or miscalculations, or mismeasurements, that might have existed ; and having noted any accession of land, by the retirement of a river, or the sea ; they make the corresponding alterations on the copy of the *sectional* map, left for the use of the commune, by

scratching out with a penknife, and filling up again with pen and ink, or colours, as they think most advisable.

“ But it is necessary that these various alterations should also be recorded, in the cadastre [survey] kept in the chief office of the province. The *original* maps kept there are never altered, but remain for ever, as evidence of the original state of the properties. The subsequent alterations, therefore, are shewn by means of a *supplementary* map of the section in which the alterations have taken place. This supplementary map is not used merely to record the alterations of one year; but upon it are recorded the alterations of all subsequent years, as they occur; the alterations being made on the face of it, by scratching out and filling in, in the same way as has been before mentioned with respect to the copy of the sectional map kept in the commune.”

It is well to mention, that this plan of map for alterations was not approved of by M. Heuschling, the Inspector of the Survey. He would prefer to have two maps at the chief office; one of which should remain unaltered; whilst the other, for the delineation of changes, should be drawn out in pencil and uncolored; the changes themselves, when made, being drawn in ink, and colored.

Of the practical value of the survey, in affording ready and certain information to the public, respecting landed property; and thus facilitating, in an eminent degree, its transfer in the market; no more conclusive instance can be given, than the common advertisements for sale, placarded in the streets of Brussels, which almost invariably contain references to it. There are so many as twenty-eight different index-books employed in the Survey Office. The majority of them, however, relate exclusively to the revenue department; and many of the rest appear superfluous. A brief examination of the three following will be sufficient for our purpose. *First*,—The Original Index [*Tableau Indicatif Primitif*] of assessed properties and proprietors. There is one book for each commune, arranged in divisions, appropriated to the several sections of the commune, according to the order in which they stand on the map; section A being first, section B next, and so on. Each page is divided into columns, allotted respectively to the following heads. 1st. The names of the denominations of land. 2nd. The numbers of the parcels, as marked on the map, in numerical order. These two columns complete the reference to the map; each parcel being thus identified, in the section to which it belongs, by its number in the survey, as well as by the name of the denomination of which it forms a part. 3rd. References to the volume, and entry, of the registry of Incumbrances, in which the charges affecting the parcel are registered. 4th. The names of the proprietors, and also their professions and residences. 5th. References to the proper articles of the Register of Owners, afterwards described. 6th. Descriptions of the parcels. 7th. Their acreage. 8th. References,—where changes have occurred,—to the entries in the supplementary index, in which they are recorded.

Some other columns, which we need not notice, are devoted to financial estimates and returns

Second—The Supplementary Index [*Tableau Indicatif Supplémentaire*]; designed as a guide to the supplementary map. This book, like the former, has divisions for the several sections of the commune. Each page is divided into two tables, with columns for the entries nearly identical with those of the Original Index. These tables are numbered, for facility of reference; and each one is allotted to a record of the successive alterations of a single parcel. Whenever a parcel is brought for the first time into this book, by reason of a change of its boundaries, &c. its description and additions, as entered in the Original Index, are transcribed into the first vacant table. Then such heads of this entry as are affected by the alteration, are struck through with red ink, but so as still to remain legible; and beneath are set the requisite new entries; e.g. if parcel, No. 7 on the map, be sub-divided into three parts, the first line in the table will be occupied by its old description, and the three following lines by No. 7 a, No. 7 b, and No. 7 c, respectively, with their appropriate new entries. A description of the change itself is entered in one of the columns.

Third.—The Register of Owners [*Matrice Cadastre*], with schedules showing their respective estates. When first made, it is alphabetically arranged, by the names of the proprietors; each name forming a separate head, under which are entered, in their order on the survey, all the denominations and parcels of land belonging to the owner. Each head is constantly corrected, by erasure and re-inscription, in conformity with changes of parcels and owners. When an owner parts with the entire of the parcels entered under his name, and the whole passes to an owner not yet entered in the Register of Owners; the original head is preserved, with the sole alteration, of striking through the name and description of the former proprietor, with red ink, and substituting that of the new owner, in the line beneath. When the transfer comprises only a portion of the proprietor's lands; the number and description of each parcel to which it extends is struck through with red ink, and it is entered under the head appropriated to the new owner. Alterations of boundaries, and the like, occasion a similar process of erasure and re-inscription, whether the parcels affected pass to different owners or not.

It is obvious that these changes soon break up the original alphabetical arrangement of this book. To meet this difficulty, there is appended to it an alphabetical index of the names, with references to their respective heads in the body of the book.

It is to be observed, that the law of real property in Belgium is far more simple than with us. Settlements, in our sense of the word, with the endless complications to which they give rise, appear to be unknown; and the land itself is always alienable. And yet, notwithstanding this comparative absence of difficulties, the system of registration exhibits many defects. Amongst the most striking of these may

be mentioned, the division of the functions of registration into two distinct branches, each having numerous local offices; the want of one central office; and the registering of incumbrances by short memorials only, and not at length.

But with all its faults, it is said to work usefully in practice; and Mr Sanders reports, that "by means of it the transfer of land is effected with such facility, that landed property has become the favorite medium of investment, even for temporary purposes; the forms of sales and mortgages are reduced within a small compass; and the quiet enjoyment of property sold, or otherwise disposed of, is practically secured to the new taker; it being extremely rare for a purchaser to be evicted from his newly purchased lands, or to be involved in law-suits or discussions respecting them."[†]

It is needless to point out, how completely our own country has hitherto experienced the direct reverse, in every single particular, of these desirable results.

The French registry is substantially the same as that of Belgium; but it is inferior to it, in its virtual want of connection with land. It is true that there is a survey in existence, which was commenced in 1808, and completed several years since. But, owing to the imperfections of the original surveys, and still more, to the omission to revise the maps and the tables attached to them, in conformity with the changes of boundaries and proprietors, they have become so little in accordance with the state of the land, that they can no longer serve for the guidance of owners. To remedy this evil, a measure was brought forward by the government of Louis Philippe, for a new survey, which was to be completed in thirty years, at an expense of 200,000,000 francs, and when completed was to be corrected annually. This plan, however, was rejected by the Chambers; and I cannot learn that any steps have since been taken in the matter. Amongst other benefits anticipated from the proposed survey, the explanatory statement which accompanied the measure recounts the following:—"As regards public interests, the survey, when kept constantly revised, will facilitate appropriations of land to public purposes, which at present require plans prepared expressly for the occasion: it will furnish most interesting statistical documents for the study of questions of finance, and of political or social economy; it will be of assistance to courts of judicature in cases of obscurity of title and uncertainty of possession; it will dispense with many preliminary proofs in suits relating to real property; so that justice will be administered more speedily and with less expense.

"With respect to matters of private interest: as the survey books will show the succession of owners, as well as the acts and matters of fact which determine the proprietorship; purchasers and lenders will readily ascertain all circumstances calculated to affect the vendor's rights, or to impair the security offered for a debt. Since, moreover, these books will afford to every owner the means of verifying the situation, extent, and boundaries of his property, and

* Registration Report, 1850, Appendix, p 11.

consequently of learning distinctly his own rights, as well as those of his neighbours, there will be less litigation."

In Baden, and in Sardinia, the land registers are made legal use of, in conjunction with the registers of charges, and for the identification of property. The latter country moreover possesses a survey on a large scale, which is stated to have been of great service, both to the government in its fiscal operations, and to landowners in obviating litigation respecting boundaries.

The Rhenish provinces of Prussia enjoy the benefits of the General Prussian Survey; and the land registers, if not directly connected with the legal registers, constitute, in practice, very valuable auxiliaries.

In Italy, there is the land register [*Censo*], founded on a measurement and survey of the country." Signor Panizzi describes this, as being a judicial and conclusive register of titles, directly connected with the land, and forming an integral part of the system of registration affecting real property. Mr Ludlow, however, comes to the conclusion that this account applies solely to the Austrian provinces of Italy; and that "the true Italian *censo* is but a survey for fiscal purposes, corrected within the last century by a regular cadastre, and which is practically made use in dealings with land, but does not of itself afford conclusive evidence of title."

The Two Sicilies also possess a good survey.

Besides the two groups of countries hitherto examined, we find a third and distinct class, comprising Bavaria, Holland, Wurtemburgh, and Greece. These countries may be said to hold an intermediate position in legislation, between the French and Germanic systems; their codes being composed of an intermixture of both elements.

The Bavarian registry, which has been stated to be the most perfect on the continent, was established by a law of the 1st June, 1822. It is Germanic in most of its essential principles, and in the strictness of its registration; whilst it is French in much of its phraseology, "and in the prominence given to the hypothecary system." "In name, it is a register of hypothecs [incumbrances] only; but the unqualified preference given to these, of course compels the registration of sales, exchanges, and most transactions connected with title to real estates; as the former owners would otherwise have it in their power to create incumbrances that would, when entered in the register, enjoy the right of priority against the purchasers, and other interested parties. As long, however, as an estate is unaffected by charges, it is not the subject of entry; and the appearance of a title in the public books is an incidental result of legislation, and not its primary object."* The entries are by memorial; whose form, however, is carefully regulated, so as to disclose all matters which can affect the creditor's security. And the registration itself is strictly judicial, and is conclusive evidence of title, within the limits of its operation.

"The register is one of estates, not of persons. Every immovable held under a separate title, when registered, is distinguished

* Report of Registration Commissioners, p. 218.

by a separate number and folio; and new numbers are to be used, in case of subdivisions. The books of hypothecs [incumbrances] for each district and division are furnished with a double alphabetical index; the one containing the names of the immoveables, or their descriptions, with the registered number or symbol, and the number of the volume and page of entry; the other containing the Christian and surnames of every owner, with a reference to the page of the register, where his property is entered. The index of names is constantly corrected by radiation [striking out]; the name of any one who ceases to be a proprietor being struck through, but so as to continue legible; and the number attached to a parcel of land being similarly struck through, on its alienation, and added in its appropriate place, where it forms a new acquisition."

"The register itself contains three chief divisions, or rubrics; the first relates to the subject matter of hypothecation, and comprises the name, description, and other distinctive indications, the component parts of the property, and its tenure and quality: the description of parcels may be made by reference to tax-rolls, or land-books. The second rubric contains all that relates to the grantor of the hypothec [incumbrance]; his name, rank, employment, and residence; the date and nature of his proprietary title, and all limitations thereof. The third rubric regards the hypothec itself; and contains the demand, the title under which it is put forth, the rate of interest agreed upon, the name, &c. of the creditor, and all sums paid from time to time, towards satisfaction of the debt, until its extinction. In every rubric are entered, from time to time, all changes which occur under the respective heads."*

The foregoing, together with some minor books, constitute the regular registers of incumbrances. But though these are the only legal registers, they are not the only records which are practically used in connection with the system. The identification of parcels of property is effected, not only by the old Land Registers, and the references to them, which have been mentioned, from the legal register; but further, by an excellent survey executed in the present century.

The Bavarian map was made both for topography and taxation. It is laid down on a scale of twelve inches to the mile, or one five-thousandth part of the real size, pointing out boundaries down to the fields; and exhibiting, in the plans of towns, the houses so minute, that their numbers are written in their proper situations.† It is stated to have come into general use, in transfers of land, and to facilitate them materially.

It is unnecessary to discuss the systems of the remaining countries of this class. The codes of Holland, and Wurtemberg also, connect the title directly with the land. Thus, in Holland, the deed of incumbrance must contain a special designation of the incumbered land, "according to the cadastral plan, or rather tierner,

* Second Real Property Report, p 463, &c

† Evidence of Mr. Edgeworth, Report on Survey of Ireland, appendix, p 103.

[*matrice*]; and the register is required to follow the division of the cadastre.”

In the United States, the basis of the law is English; except in Louisiana, and some others of the Southern States, in which the French Code was established. The entire territory enjoys the benefit of the United States surveys. Their primary object was the preparation of the public lands for sale; and with this view a plan was laid down by act of congress in 1785, which has since been adhered to without much alteration. Before being offered for sale, all unsettled lands are surveyed in ranges of townships, each six miles square. The township is divided, by lines crossing each other from east to west, and from north to south, into thirty-six sections, each one mile square, and containing about 640 acres. The sections are numbered from 1 to 36; the numbering commencing at the north-east corner, and running west; the next row being counted from west to east, and so on alternately. The sections are further subdivided into quarters of 160 acres, eighths of 80, and sixteenths of 40.

These surveys are revised; and it is said that, besides serving their original purpose, they afford valuable assistance, in general dealings with land, throughout the country. I have not, however, succeeded in obtaining sufficient information, respecting the mode of their revision, or their other regulations, to enable me to give any detailed account of them.

Having now given such a sketch of the foreign registers, as the subject demands, I proceed to offer some suggestions on the following points:—

1. The adaptation of the Ordnance Maps to the purposes of Sir John Romilly's Registration Act, the 13 and 14 of Victoria, c. 72.

The first requisite in maps designed for purposes of registration, is, that they should be constructed on a scale sufficiently large to ensure the identification of property, by presenting a distinct delineation of each plot, however small. But the attainment of this object is not without difficulties; since towns, and other minutely subdivided localities, require a magnitude of scale, which would be unnecessarily bulky and expensive for rural districts: whilst, on the other hand, a scale no larger than is necessary for the latter, would be wholly useless for the former. Of the various plans by which this difficulty may be surmounted, the best appears to be that recommended by Captain Yolland, R.E.; namely, to employ one uniform scale for the kingdom at large, with the addition of exceptional maps, on enlarged scales, for such localities as require them. This is, in effect, the system now proposed to be carried out, by the adoption of the Ordnance Maps. The Ordnance Survey is laid down, for the entire country, on the scale of six inches to the mile;

and, in addition to this general survey, there are separate maps of towns, on the scale of sixty inches to the mile. The evidence given before Lord Langdale's Commission establishes, that maps of this class will prove adequate to the objects in view; although it is stated, that if the matter were to begin again, a twelve inch scale would be preferable for purposes of registration. These maps are framed with extreme accuracy and minuteness, and are already very generally resorted to, for the determination of boundary questions, both public and private. Amongst other matters marked upon them, we have the boundary lines and names of every county, barony, parish, and townland; together with the boundaries of every separate field or lot. The tenement-boundaries, too, are now completed for all Ireland, or very nearly so. It is plain that such maps require no very extensive changes, to render them available for purposes of reference, and identification. Two different modes of effecting this have been proposed: one is, to distinguish the several *tenements* or *properties* by numbers, and make these numbers the basis of reference to the registry. Thus, lands would be described, and referred to, by the number of the Ordnance sheet, the name of the townland, and the number of the tenement. The other plan is, to apply the distinguishing numbers not to the tenements, but to separate *closes* or *parcels*. In Belgium, it will be remembered, the reference map is divided into arbitrary sections; and all the parcels in each section are numbered, commencing with No. 1 in each section. The construction of the English title maps is on the same principle; all the parcels being marked 1, 2, 3, and so on, in each parish.

Of these two plans, the former unquestionably supplies the simpler means for the description of property in the register, and in conveyances, besides being of easier execution in its details. These, however, are but secondary considerations; whilst the system of identifying each separate parcel possesses the really important advantage of providing much greater facilities for description and reference, in the case of such charges and transfers as affect only portions of an estate; besides being in *all* instances more specific and determinable. The latter, therefore, appears to me the preferable plan. So that I would suggest the following, as the only addenda required to fit the Ordnance Maps for the uses of the registry. 1st Let enlarged maps be constructed for towns, and similar "exceptional" localities, wherever they are not already provided. 2nd. Let each county be partitioned into districts, corresponding with topographical divisions already existing; and let the several parcels and buildings in every such district, be marked on the registry copies of the Ordnance Map, with the numbers 1, 2, 3, &c, consecutively; the numbering in each district commencing with No. 1. The existing parishes will form convenient districts for the purpose just explained; and their names and boundaries are already given on the maps.

On this system, when the above alterations are completed, the

only data required for identifying any particular lands, in a county, will be,—the name of the parish, and the distinguishing numbers of the parcel; to which may be added the number of the Ordnance sheet.

II. The Construction of Land Indexes.

The second section of the new registration act directs, that there shall be a separate land index for each county. The form of these indexes must depend, to a great extent, on the principle adopted in marking the maps for reference. Supposing that, which I have suggested, to be carried out; they may be framed as follows:—

Let the county index book be arranged with a separate division for each parish,* the parishes following each other in the alphabetical order of their names. Let each page be divided into columns, appropriated respectively to the following heads:—

1. The numbers of the parcels on the map.
2. Their description; viz. whether field, house, &c.
3. Their acreage.
4. The number of the ordnance sheet.
5. Names of the owners.
6. Names of the occupiers.
7. Reference to the "Supplementary Land Index," in which alterations are recorded.
8. Reference to the "Index to Titles"
9. Reference to the register of proprietors' names, on the principle of the Belgian *Matrice Cadastrale*; in case such a register be employed.

In addition to these entries, some may deem it desirable to insert the names of the denominations, and sub-denominations, and those of the townlands. But I think the addition of the latter would be superfluous; whilst the former are so uncertain and changeable, that their introduction would only perplex and mislead. The entries enumerated are amply sufficient to effect our two-fold object, of identifying the land, on the one hand; and connecting it, on the other, with the deeds affecting it, through the medium of the index of titles.

There is a class of property which cannot conveniently be indexed by reference to maps; viz. incorporeal hereditaments, such as manors, advowsons, and the like, which are incapable of linear representation. It will be necessary to have an appendix in each county index, under which all properties of this species, within the county, may be entered; either originally, or according as they become the subject of transfer. Their names, with the addition of a brief description, must be substituted for the map-references used in other instances; and opposite to these may be annexed the neces-

* If any other divisions than parishes be chosen, to fill the place of the Belgian "Sections," corresponding changes must be made in this plan.

sary references to the Index of Titles, and other matters, just as in the case of lands

In order to provide for the subdivisions, and other physical changes, which will continually occur, there must be a supplementary Land Index, for the entry of new parcels, with their respective references I would frame this very much on the principle of the Supplementary Index used in Belgium; arranging each supplemental book in divisions for the several parishes of the county; and dividing the pages into tables, for the entry of parcels. These tables should be numbered table 1, table 2, table 3, &c. throughout each parish division; and reference to this index could then be made, by giving the name of the parish, and the number of the table under which any particular parcel was entered. The process of making entries in this index, has been described under the Belgian Registry, and need not be repeated.

This topic leads us to consider

III. The Provisions necessary for correcting the Public Map, in conformity with alterations in the properties marked upon it.

This point is one of the first importance; for it is manifest, that a map index depends, for its efficient working, on the truthfulness with which the map represents the properties which are identified and referred to through its medium; and we have seen that the French survey of 1808 became useless in a few years, from the omission to revise it, as changes occurred in the surface of the country. The most obvious, and, at the same time, the best mode of maintaining the surveys in a state of efficiency is, to commit the task entirely to the agency of government. On this system, there should be a periodical re-survey, by government officers, of the entire country; and all alterations of the surface should be marked by them on the public maps.* The original maps should never be altered; but should remain in the office as records of the original condition of the properties. In all subsequent years, therefore, the existing aspect of the country should be exhibited by duplicate, or supplementary maps; on the face of which every physical change, as it occurred, should be marked; by scratching out with a penknife, and filling up again, with pen and ink, or colours, as may be thought most advisable. In general, it will be found that supplementary maps, on the same scale as the originals, will be sufficient for the delineation of subdivisions, and other variations of boundaries. But where subdivisions have occurred, so minute as not conveniently to admit of references to a copy on the original scale, an enlarged copy of the part dealt with will be required.

Instead of providing for the ascertainment of changes, by the inspection of government officers, it has been proposed that "when-

* Evidence of Captain Yolland. Report of Registration Commissioners, p. 564.

ever a proprietor made changes of boundaries, fences, &c he should be required, by a legislative enactment, to notify them to a central topographical department, by whom the necessary data in each district might be annually ascertained, to enable the proper corrections to be made on the general map.^{78*}

But it is very unlikely that this plan could be regularly and systematically carried out ; and even if it could, the value of the maps, as a standard of reference in boundary disputes, would be much diminished, by the ex-parte character of such notifications. Nor is it recommended by any peculiar advantage, except that of relieving the government from expense—a gain which would be more than counterbalanced by the evils just mentioned ; as well as by the annoyance which would be occasioned to individual owners, and the consequent unpopularity to which the entire system would be exposed.

There is a plan, by which the object in question may be attained, essentially different from both the preceding. Instead of recording all physical changes on the map as they occur, so that the map may at all times present a true delineation of the face of the country ; it has been proposed, not to correct the survey of an estate, until it comes to be the subject of sale, or of some other dealing which brings it on the register. It cannot be denied, that for all purposes of mere registration, such occasional revisions would be sufficient. For, in order to index a deeds-registry by reference to a map, nothing more is requisite, than that means should be furnished, at each period of registering a deed, of precisely identifying the land as it then stands, with that which forms the subject of the title under which the document is entered. And this is accomplished, if such a copy of the map be kept, as can be rectified in conformity with the existing outlines of the land, on each occasion of entering an assurance against it : for then, so long as the base lines of the survey are preserved, there will be no difficulty in tracing altered parcels through these copies, to the lots, in the original map, out of which they have been derived ; and all intervening changes will be wholly immaterial.

This is, in the main, the principle adopted by the Registration Commissioners. They recommend that on each occasion of a sale, lease, &c. of landed property, adequate maps should be framed by the parties interested in the transaction ; that these maps should be examined and verified ; and that, when thus authenticated, they should be received in the Register Office, under proper regulations, and referred to in the supplementary index.

This plan is the same as that pursued under the Tithe Commission, in cases of altered apportionments ; and it undoubtedly possesses the advantage of imposing very little expense on Government ; whilst, at the same time, it exacts from private parties little more than is, at present, the uniform practice in dealings with landed

* Evidence of Captain Yolland. Report of Registration Commissioners, p. 564.

property. Nevertheless, I think that, even for the uses of the registry, a periodical revision of the government maps, by government officers, would be decidedly preferable; whilst it would meet many other requirements of the country, which the second system leaves totally without provision.

If, however, the duty of providing supplementary maps be devolved on private parties, it appears to me that their maps should not be themselves made the records of the office; but should only be made use of, for correcting government copies of the Ordnance Survey. Thus uniformity of scale would be ensured, in all instances where the altered circumstances of the property did not require an enlarged copy of particular portions.

IV. The comparative advantages of a Central Registry Office, and of District Offices.

The Real Property Commissioners stated the reasons, in favour of one general register office in the metropolis, on the one hand; and, on the other, of separate offices for separate districts, in the following terms:—"In the distant counties, distant offices would often afford greater facility, and occasion less delay and expense in registering deeds, and making searches, and in the production of registered instruments at trials. On the other hand, the objections to district registers are, that deeds, comprising property in two or more districts, must be registered in each district; that expense would be materially increased by separate establishments; not only in respect of the necessary buildings, but because a greater number of officers would be required, particularly of superintending officers, who must possess a considerable legal knowledge; and that disagreement in practice must be expected. These objections appear to us to be conclusive against small districts; and if the districts were large, communication from the distant parts of them with the local office, would, in most cases, be attended with more difficulty, than communication with London. The advantages of a general office are, that the establishment would be attended with the smallest expense; that, under a single management and on a large scale, there would be a greater probability of obtaining a perfect system of practice, and the evils of variety of practice would be avoided; and that greater facility would be afforded for improvement, both as to the principle and the details of the system. It is obvious that great benefit would be afforded, if all inquiries relating to the documentary title of real property, wherever situated, might be made at one place. . . . The objection, which has been urged against a register, on the ground of disclosure, would have less force, if the establishment were confined to one office in the metropolis. The principal objection to one general office is, the risk, delay, and expense of communication from distant parts of the country. At the time of the Commonwealth, and at subsequent periods, when general registration has been proposed, this objection would have been insurmountable, but there is now such facility and certainty,

of communication between London, and all parts of the country, that transmission to London would be attended with very little risk or delay; as to expense, it may be objected that the charges to be incurred for registration, by persons at different distances from the office, would be unequal. We think that provision might be made for equalizing these charges. The Post Office might be made the medium of transmission, directly to, and from the register office. The expense of an agent, for making searches, will scarcely ever be necessary.”*

For all these reasons, the Real Property Commissioners recommend the establishment of one General Register Office, in the metropolis; and their recommendation has been adopted by Lord Langdale’s commission, and carried out in the new Registration Act.

If either of the two systems here compared is to be established, to the exclusion of the other, I think the centralization plan decidedly to be preferred. Still, it is avowedly attended with material inconveniences; and it must be remembered, that small properties, to which the additional trouble and expense imposed by it would be most burdensome, would seldom derive any advantage from that centralised information respecting several different countries, which would be so important in transactions affecting large estates.

The wisest course would be, to adopt Professor Hancock’s suggestion,† and make the register local as well as central; a combination which may be so effected, as to secure the advantages of both systems, with few, if any, of the disadvantages of either. This double establishment involves, of course, a large increase of expenditure, on buildings and officers. But when we reflect, that the object is one of lasting national importance; and that its usefulness is measured by the cheapness and facility with which the public are enabled to avail themselves of its arrangements, we shall deem it a false economy that would hesitate to effect so substantial an improvement. The only serious disadvantage, amongst those enumerated by the Commissioners, which would not be removed by this combination, is, that deeds, comprising property in more than one district, would require to be registered in each of them. But, as is stated in a subsequent part of the same report, “the cases of lands comprised in different counties being comprised in the same deed, are comparatively unfrequent:” and, even were they less so than they are, this inconvenience would be far outweighed by the benefits which would result along with it. It may be thought that a double registry would double the expense and trouble, to parties availing themselves of it. But this may be obviated, by simply requiring every original, brought for registration, to be accompanied by an accurate copy. This duplicate should be compared and certified by the registrar; after which, it could be transmitted from the district office to the metropolitan, or *vice versa*, as the case

* 2nd Report of Commissioners on the Law of Real Property, p. 27.

† “Impediments to the prosperity of Ireland,” by Professor Hancock, p. 189.

might be. In this manner, the double registration might be effected without any delay, and with no additional expense to the parties, except the cost of the prescribed copy. Another very strong argument for the twofold registration here advocated, is to be found in the means which it would furnish for supplying losses by fire, by revolutionary or mob violence, or by the carelessness of officers.

From the outline here given of the proposed registry, it will be seen that, although it is a measure of substantial reform, it is still susceptible of much improvement. The system to be aimed at, should be one, under which all the documents affecting landed property should be comprised in a single register, to which no guide should be required but the land index. Instead of this, we find certain classes of acts, such as bankruptcies and insolvencies, as well as wills, excluded from the Index of Titles ; so that their operation on any given title must be traced, not through the regular land index, but through separate indexes of names of persons. It may be impracticable to dispense with these complications, in the present state of the law of real property ; but impediments from this source may easily be cleared away ; and since an effective registry is the foundation of all facility in dealing with land ; no exertions should be spared, to give it that simplicity and unity to which it is capable of being brought.

An important step in this direction is, the provision in section 9 of the statute 13 and 14 Vict. c. 72, for registering affidavits of ownership by judgment creditors, as assurances affecting the lands mentioned in such affidavits. In furtherance of this enactment, the present Judgment Office should be consolidated with the Registry of Deeds, as proposed by section 63 of the same act. It will then be easy to transfer the entries of judgments, from the separate books of the Judgment Office, to the general register ; according as they are made, either for the first time, or under the late enactment for their re-registry every five years. By carrying out this principle, we shall be enabled to place all judgments on the same register, and on the same footing, with other incumbrances on real property ; confining their lien to those lands against which they shall be specifically registered ; and so getting rid of those negative searches, which have hitherto constituted one of the chief embarrassments attending the transfer of estates.

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