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ENGLISH SYSTEM OF REGISTRATION.*

It has often been said that the whole of English law is anomaly, and if I dare utter such an opinion, it is because Englishmen themselves agree to it. English legislation is made out of local customs and, particular statutes which have never been codified, so that there is no lack of confusion about them. On the same subject there may be two principal laws to rely upon, and one of them may be of the twelfth century, whereas the other is of last year. Scarcely different is the case of land transfer,—and we must be prepared for this surprise before we attempt to study its rules. It is a familiar thing to you that landed property has kept, up to this century, certain of the feudal features of the past. Besides the *freehold* estates, requiring no kind of seizin when acquired by sale or inheritance, there still remain *copyhold* tenures which can only be transferred with the agreement of the lord of the manor, and these two kinds of property remain on a different line as regards registration. We may be very brief in what concerns copyholds, for they are actually dying away. Since the middle of this closing century copyhold enfranchisement has been an article on the programme of liberal politicians, and it is easy to understand. The lord of the manor having right to personal duties at each transfer, the owner never knew whether he would not be ruined out of the estate by a mere spirit of vexation on the part of the lord. If this lord was an old man, who made up his mind to troublesome settlements, and would contract with another old man as tenant for life, and with a third old man as

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tenant in tail, it might occur that the owner of the copyhold would be obliged to pay several times the private duties of succession. Besides this pecuniary inconvenience, copyholds had many others. The copyhold confers a durable right, but as this right is subject to the payment of a rent, this rent is no less durable than the right itself, and weighs as a perpetual charge on the property. Moreover, the copyholder is limited in his possession by various other incumbrances, such as prohibition from digging wells or mines, or subjection to all kinds of servitudes. The object of liberals has therefore been to enfranchise all those copyholds, in allowing the copyholder to redeem all these incumbrances by the payment of a definite sum to the lord of the manor. Statutes with that object have been passed in the years 1841, 1852 (15 and 16 Vict. Ch. 91) and 1887 (50 and 51 Vict. ch. 73). Official commissioners, forming the *Board of Copyhold and Tithe Commissioners*, have been appointed by those acts in order to estimate the amount of money which could represent the capital value of the rent and other incumbrances weighing on each copyhold whose redemption was pursued. These statutory measures have led to the enfranchisement of as many as 300 copyholds *per annum*. There still remain many. New ones are even now and then created. But it is true to say that copyholds are gradually moving back before the salutary invasion of freehold property. If this reform is of a serious economical and social interest, inasmuch as it realizes freedom of land, it has, and especially has had, some inconvenience as to methods of conveyancing. Copyholds were, up to these last years, the only properties escaping from the unfavorable mode of secrecy which was the rule in British transfers of land. This was the beneficial effect of the feudal survival. A copyhold requiring, to be acquired, a regular investiture from the lord of the manor, could not be secretly bought and sold as a simple freehold. The lord of the manor wishing to preserve his right, invested the copyholder by putting his name down in his books, and a formality known under the name of *surrender and admittance* took place at that moment. The vendor being deemed to surrender from the copyhold to which the purchaser was admitted, had to symbolize his resignation, by giving up to the lord, or more commonly to the lord's steward, some branch or leaf out of the estate, and this same object was at once presented to the purchaser as a proof of his election. It is said that, fiction being reduced to its most simple form, the copyholder is never presented with anything more than a pencil taken up from the steward's desk. But the important thing to notice is the fact of the purchaser's name being immediately

recorded. Here is the true and efficacious formality. It suffices to prevent the vendor from selling the same property several times consecutively to different persons, who all, except one, are necessarily to be ejected. And this guarantee is the main object of registration. So one would have truly regretted its disappearance, if fortunately, the freeholds themselves were not gradually submitting to the rule of publicity, which formerly had only been a fact of copyholds.

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It must be explained how, for such a long time, such practical people as the Englishmen could bear with a complete secrecy of all transactions relating to freeholds. One must not judge too severely the land laws which seem the most strange, before perfectly understanding the reason of their insufficiency. I have tried to find out those reasons, and this is the result of my investigation:

First—In the first place, one excellent reason for secrecy of transfers being of small avail, was the fact of the very few sales of land which occurred in England. This was partly due to the small number of freeholds existing in a country where land has been monopolized by the aristocracy. In France it is believed that there are nearly 800,000 sales of land per annum. But in England the landed proprietors are no more than 200,000, according to the estimation made in 1871 by the New Domesday book. So that it would have been necessary that each English proprietor should sell his estate four times in a year, for the inconvenience of secrecy of sale to be felt in England as strongly as in France. And not only such was not the case, but it is a fact that these few English proprietors contracted about land, much less than continental proprietors. There was the best reason for this, in the fact that most of the English freeholds are inalienable by virtue of remote agreements. No custom is more persistng than that of tying up land by settlements. In some cases the owner cannot sell the land at all. This occurs when he has only an *estate for life*. In other cases the owner has an *estate tail*, and then he may confer some of his rights, or all of them, to the heirs of his body, but he cannot contract with any one else. All these intricacies served not only to make registration nearly useless because of the few contracts relating to land; they also made it useless as being, in any case, a slighter guarantee than inalienability.

Second—A second reason for registration being superfluous in England proceeded from the absence of a regular system of real securities founded on land. I will explain in my fourth lecture the legal features of *hypotheques* as they are practiced in France. Such a kind of security does not exist in England, and, as its existence would have made registration indispensable, one cannot say whether the absence of registration has been the cause of absence of hypotheques, or whether the absence of hypotheques has been the cause of the absence of registration. One thing is sure, that now registration is established, as we will soon see, there is no more any good reason for hypotheques not to be practiced in England. When a debtor has been obliged to confer a real security to his creditor, his only resource has been, till now, to consent to a mortgage. By this covenant the creditor becomes proprietor of such extent of land as is agreed upon, and that land becomes for him, a true estate in fee simple, at least *at law* if not *in equity*. The debtor has only a right of redemption when he offers the money guaranteed by the granted property. Well, it is easy to understand that with such a system, hardly, if at all, better than that of Ancient Rome, the services of registration should not be appreciated. As *one* creditor only can be guaranteed, he cares very little about a system intended to preserve right of rank and priority between several creditors; and as that single creditor is in possession, or can at least, by any action of ejectment, get himself put into possession as soon as needed, he has no fear of the debtor mortgaging a property already mortgaged to some one else.

Third—To these reasons, so very unfavorable to registration, I must add a last one, not the least perhaps, that is to be found in the way all men connected with legal profession have been opposed to English law making any progress in the matter of registration. People whose only work and living was afforded by conveyancing, and who already found alienable estates to be very few, dreaded exceedingly the very idea of a reform which might make transfer of land a rapid, easy and not expensive thing. Their obstruction must be held responsible for all the arrears of legislation on our special subject.

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In spite of all these difficulties, there had to come a time when registration would win its victory. New events prepared its way. First, it must be noticed that a gradual work has been going on in order to convert the old inalienable tenures into estates in fee simple,

free from all incumbrances. We have already mentioned the redemption of copyholds. We must also mention a series of settled land acts, whose aim was to render alienable, under certain conditions, many of the tied up estates. Moreover, it must be said that small estates, which are those which change hands the most often, have got more and more numerous in late times. The allotment acts have caused the establishment of lots of small holdings, cut out from the commons by the County Councils, or by the sanitary authorities; and some important landlords, urged by the agricultural crisis, have cut up their large domains into smaller pieces which they could sell at a better price.

All this made the advantage of registration most desirable. The tenants of small holdings could not afford to pay the bills of conveyancing solicitors, and, as to the owners of large estates, they began to appreciate registration from the time that the falling down of prices, caused by the agricultural crisis, made money matters touch them closely. At the same time English legislators, who would have never been convinced by the examination of continental systems, proved to be impressed by the example of English colonies, and the success attained in Australia, and other British possessions by the Robert Torrens' act, made the people believe that one could, without any lack of patriotism, adopt and acclimate on the English soil, those same principles.

Three different laws have striven to get such a result; the Westbury act, in 1862 (25 and 26 Vict. ch. 53); Lord Cairn's act in 1875 (38 and 39 Vict. ch. 87), and the Land Transfer act of 1897, which has come into operation on the 1st of January, 1898 (60 and 61 Vict. ch. 65). This last act, alone, has truly worked its way to a full success.

For the first time, in 1830, the real property commissioners concluded that a general system of registration would be a desirable thing, but this motion had no effect, and all the bills proposed with the same were rejected. This was the fate of Sir John Campbell's bill in 1835, and of a government bill in 1853. When the Westbury act was at last passed in 1862, it hardly met its purpose, since its only principle was to *allow—note this word allow, which includes no kind of obligation, moral or legal*—proprietors to have their title registered. The application was to mention if an *indefeasible* or a not *indefeasible* title was begged for. In the first case, great complication of time and inquiry took place, and, in both cases, the expense and procedure were out of proportion with the benefit obtained. It must be noticed that all the ex-

pense and trouble undergone were unavoidable for those who applied for registration, whereas the benefit derived from the easiness with which the owner could sell over the registered property to another purchaser remained merely eventual. The result was that no more than thirty-two applications per annum were received at the land registry. After a few years of this discouraging practice a new effort was made, and it led to Lord Cairn's transfer act, in 1873. This time the procedure and expense were considerably simplified. It was no longer necessary in order to obtain a *possessory*—that is to say, not indefeasible title—to produce a title drawn up by a solicitor, whose wages had previously to be added to those of the registry. It was declared to be sufficient that the owner should state the simple fact that he was in possession, without any attempt of proving his right of property. He was recorded, on his declaration alone, as the registered possessor, and this registration gave him a right of priority he could oppose to any one who would claim rights derived from a title more recent than the registration. Moreover, the legal aid of limitation transformed, after the required lapse of time, that possessory title, into a qualified one. So that no one had any more a very serious interest to apply for an indefeasible title. Those who knew their right were beyond discussion, and who cared to enjoy the benefit of the law—asked only to be registered with a possessory title, and they were then able to profit by the reduced rates of the registry for any future transactions about their property. In the meanwhile, even before they could avail themselves of the effect of limitation, they were admitted, whenever they chose, to beg their possessory title to be changed to an absolute one, on the simple proof of their right, and such a change got all the more easier and less expensive, as the possessory title had been registered for a longer time. The economy of cost for contract, passed under Lord Cairn's act, is sufficiently shown by the following figures:

Value of the transaction.	Cost of the operation made by a solicitor.	Cost under Lord W. act.	Cost under Lord Cairn's act.
50 £	3 £	6 s. 6 d.	5 s.
100 £	3 £	12 s.	10 s.
200 £	5 £.	19 s.	15 s.
400 £	6 £	1 £ 5 s.	1 £
1000 £	19 £	3 £ 15 s.	3 £

And it must be noticed that the expense mentioned for the operation conducted by a conveyancing solicitor, is mentioned according

to the rates of the solicitors' remuneration act of 1881. It was much greater still before that time. And I must add, also, that the same costs applied only to transfers by sale. For transfers by donation the costs, under Lord Cairn's act, could be reduced by three-quarters.

As to the expenses of the first registration, I mean of the entry of the title on the books, there was and could be no scale of prices under Lord Cairn's act. The cost depended on the length and difficulty of the inquiry pursued to ascertain the merits of the applicants declaration. But it may be said that, for a possessory title, the costs were only half of those of an ordinary transfer, whereas, for an absolute title, they could reach a much higher sum. Nevertheless, it was quoted that, for a property worth 40,000£, the cost of an absolute title had only been of 53 £, and for a property worth 700 £, it had only been of 5 £ 13 s. In spite of all these advantages, registration did not yet spread in the United Kingdom with a satisfactory speed. More than one deficiency still remained to be changed. For instance, it was a fault to allow possessory titles to be registered without the exact description of the estate. I do not speak of the *legal* description consisting in the proof of the ownership. This would have been superfluous for a possessory title. But I speak of the physical and geometrical description involving the exact and precise statement of the situation of the land and its boundaries. Without believing, though the fact seems to be true, that it often occurred that a purchaser could not succeed in finding the ground he had bought, we may say that many owners could not say where their estate exactly began and finished. The boundaries were only described by the indication of the neighbor's name, but this could not suffice, and caused a necessary amount of litigation, without speaking of the risks of *inclosure* practiced by one of the neighbors towards the other. But the registration acts were constrained by the absence of any accurate map of the land. English people do not have a title map of the kind of the French Cadester. Their best is the ordnance map kept in Southampton, and gradually brought up to date by the *ordnance survey*. One copy of that map is of one inch in the mile, another of five inches, and the better and last one of twenty-five inches in the mile. But the marks of these maps can never be claimed as authentic boundaries of any property.

But, besides this grievous and still persisting stain, the system of registration, as it was understood by the Westbury and Lord Cairn's acts, had two other inconveniences with which the last act we now have to speak of, has fortunately been able to deal. One of

these inconveniences was the absence of any compensation in case of eviction or error, and the other inconvenience was to be found in the optional character of registration. Registration can only be popular if it is admitted that the errors committed confer some right to compensation. But this principle, even when admitted, can undergo two different applications. It may be decided that any one who will have been clever enough to get himself registered of property belonging to another person, shall—unless he be convinced of forgery—be deemed the real owner of the registered estate. Under such a system the compensation funds are given to the man who has been deprived of his land by an error he could not prevent. We already know this system is the Australian one, and it is true to say the title registered with so complete an effect, is an *indefeasible* one. But it may also be decided that registration will not, when the true owner gets to be known, be any hindrance to a sincere claiming, and that the man who will have been obliged to surrender from a registered land, will only receive pecuniary compensation. In this case registration is said to confer not an *indefeasible* title, but a *guaranteed* one, the guarantee being in the fact, that by registration one is sure to keep, in the worst case, if not the land itself, at least its equal value in money.

This is the system enacted by the law of 1897, and we may consider it as providing a sufficient security for all landowners to find a serious benefit in registration. The 7th section of the act runs as follows: "When any error or omission is made in the register or " when any entry in the register is made or procured by or in pur- " suance of fraud or mistake, and the error, omission or entry is not " capable of rectification under the principal act, any person suffer- " ing loss thereby shall be entitled to be indemnified in the manner " in this act provided. *Provided that* where a registered disposition " would, if unregistered, be absolutely void, or where the effect of " such error, omission or entry would be to deprive a person of land " of which he is in possession, * * * *the Register shall be recti-* " *fied*, and the person suffering loss by the rectification shall be " entitled to the indemnity."

For the purpose of providing the indemnity which may in such cases be payable, section 21 of the act provides that an insurance fund will be raised in setting apart, every year, a variable portion of the receipts from fees taken in the land registry.

It is the Lord Chancellor and the treasury who determine the portion to be raised. If ever the insurance fund was not sufficient, the State would meet the deficiency.

It is to be added that these provisions for compensation have the merit of conciliating in some way the sympathy of solicitors, for the legal profession may still help those who have their titles registered to draw them up in such a perfect or skillful way that the owner will be sure to remain in possession instead of being entitled to a mere indemnity.

Thus has been very cleverly blown away one of the principal deficiencies of Lord Cairn's act. I hasten to say that the Land Transfer Act of 1897 has equally turned out the inconvenience arising from the optional character of registration. To be quite true, it must be said rather that the new act has substituted for the option of individuals, the option of counties. Registration has not been made compulsory throughout the whole Kingdom. It is only enacted that, by order in Council, the Queen may declare, "as "respects any county or part of a county mentioned or defined in "the order that * * * registration of title is to be compulsory "*on sale.*" This last word requires notice. It shows that there always remains a new stage of progress to reach, even after an order in Council registration only gets compulsory for *sale*, and all the other kinds of transfer may remain unregistered.

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Such being, after forty years strain, the principles of registration in England, we can give a glance at the technical management of the matter.

There is only one registry for all England, and it is to the chief of that office, the *Registrar* by name, that all those who want their titles to be registered must apply. The Registrar examines the titles produced before him, and may, if not satisfied, require before entering them on his books, such further proofs as he may deem useful. He may even require evidence from third persons, and ask the applicant to declare by an *affidavit* that he conceals no other important writing. The only case when the Registrar may neglect such kind of information, is when the applicant's possession is confirmed by limitation. As other warranties, it is enacted that any fraud would expose its author to two years imprisonment and a fine of 500 £, and it is moreover allowed for any person having some interest to do so, to enter in the registry a caution against any kind of registration concerning a defined property.

Subject to these provisions, an application may be made for the registration of a leasehold as well as of a freehold. But the copyholds remain under the special system we have already described. Once he is registered, the applicant may receive, on

simple demand, a copy of his registered rights. This copy receives the name, according to cases, of land certificate, office copy of a registered lease, or certificate of charge. As these copies are issued by the Registry, and are no less authentic than the Registers themselves, it is easy for the owner to prove his rights to those with whom he may desire to contract, without sending them for information to the Land Registry. It is enacted that the certificate must be presented "on every " entry in the register of a disposition by the registered proprietor " of the land, or charge to which it relates, and on every registered " transmission or rectification of the register, and a note of every " such entry, transmission or rectification shall be officially endorsed " on the certificate."

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And now, to have a full view of the system's mechanism, we need only inquire about the way the different rights of property are entered on the Registrar's books.

1st. Transfers by Sale.—"The transfer is completed by the " registrar entering on the register the transferee as proprietor of "the land transferred—and until such entry is made the transferor" shall be deemed to remain proprietor of the land. (Act of 1875, sec. 29.) The same method is applied to *freehold* or *leasehold* land (same Act, sec. 34). From that moment the transferee is entitled, if an eviction took place, to the indemnity provided by the insurance fund. He therefore requires no other proof of the transferor's right, than the fact that he himself was registered. The land certificate given by the transferor to the transferee mentions all the charges which weigh on the land, so that the transferee is aware of the right that may be opposed to his. As, besides legal charges, landed properties are usually subject to traditional intricacies and other easements, it would be a complication for these intricacies to be mentioned on every land certificate, specially owing to the fact of the considerable amount of litigation which could arise from any omission or misunderstanding about the least of those charges. The law has therefore wisely provided that, unless the contrary be expressed on the register, all registered land shall "be deemed to be " subject to certain liabilities," of which the Act of 1875 contains in its 18th section a complete list. Such are rights to *mines and minerals*, rights of *fishing and sporting*, rights of *common*, of *sheepwalk*, of *way and water*, as well as obligation to pay land tax, rent charge, etc. I must say that, in this list, certain charges, such as the right

of way and water, ought not to find their place. Those easements are too important a burden, and their indefinite character is too much variable, with one property and another. They ought to be mentioned and defined on the register. French and Prussian legislations have deemed so, and after some time the English law will get to understand the same.

2d. Transfer by Inheritance.—There is an important difference between the case of a transfer by sale and that of a transfer by inheritance. It may be enacted that so long as a sale is not registered, the purchaser acquires no right, but it would be hard to decide that a son will not inherit his father's property, so long as it is not registered in his name. To whom would the property belong in the meanwhile? It would be barbarous to have it confiscated by the State, and hardly less to allow some successible parent of lower rank to outstrip the very child of a deceased man in getting registered in his place. So the registration of titles acquired by inheritance, remains optional, and may be postponed till the heir requires to sell or dismember by quarter his author's estate. It is only decided that those who are entitled to any special charge on the inherited land may apply to the Register for it to be booked.

3d. Mortgages.—The *mortgagee* gets his title registered just as if he acquired the land by sale, but we already know that he receives, in place of the *land certificate*, which remains in the hands of the *mortgagor*, another kind of copy called *certificate of charge*. As the *mortgagee* has the right to sell the land, the purchaser with whom he contracts, requires to have a copy of his own. The registrar may deliver to him a new land certificate, notwithstanding the other copies which remain in the hands of both the mortgagee and the mortgagor. There is no inconvenience in the thing, as the mortgagor has only a certificate of charge, and as the mortgagee's land certificate bears the mention of the mortgage. It must be added that mortgages may be established as well without as with a power of sale (Act of 1875, sec. 22.)

4th. Liability to Succession Duty.—It is enacted by the Act of 1875 (sec. 13) that "on every application to register land the regis-" trar shall inquire as to succession duty and estate duty," and "if " it appears that the purchaser should be liable to the duty, notice of " such liability shall be entered on the register." It is even enacted that a *bona fide* registered purchaser, for full consideration in money or money's worth, shall not be effected by the duty, unless so noted on the register. We must add that a tenant

for life may have his title registered, even if the reversioner or remainder man is not registered himself (Act of 1897, sec. 6). The last information received shows that forty to fifty properties are being placed on the register every day, and that the financial conclusions have been very fairly verified, so that the registry pays its way easily, whilst no misfortunes whatever have occurred. This makes us believe that the time of expansion into the provinces will soon come. But, up to now, the London County Council has been alone in begging for an order of the crown making registration compulsory in its area. Out of that county, registration depends on the land owners option, and this option does not yet prove favorable. It must be added that the rule of secrecy still receives exception in the three ridings of the County of York, where a system of registration established by Queen Anne has been renewed by two acts in 1884 and 1885, and two other exceptions are to be mentioned in Kingston upon Hull and in Bedford Level. These exceptions deserve notice inasmuch as they prove that the benefits of registration will burst out by themselves, even in the midst of the most contrary circumstances, and one may truly say that for England, as for so many other countries, the dawn of progress is nigh.

JACQUES DUMAS.