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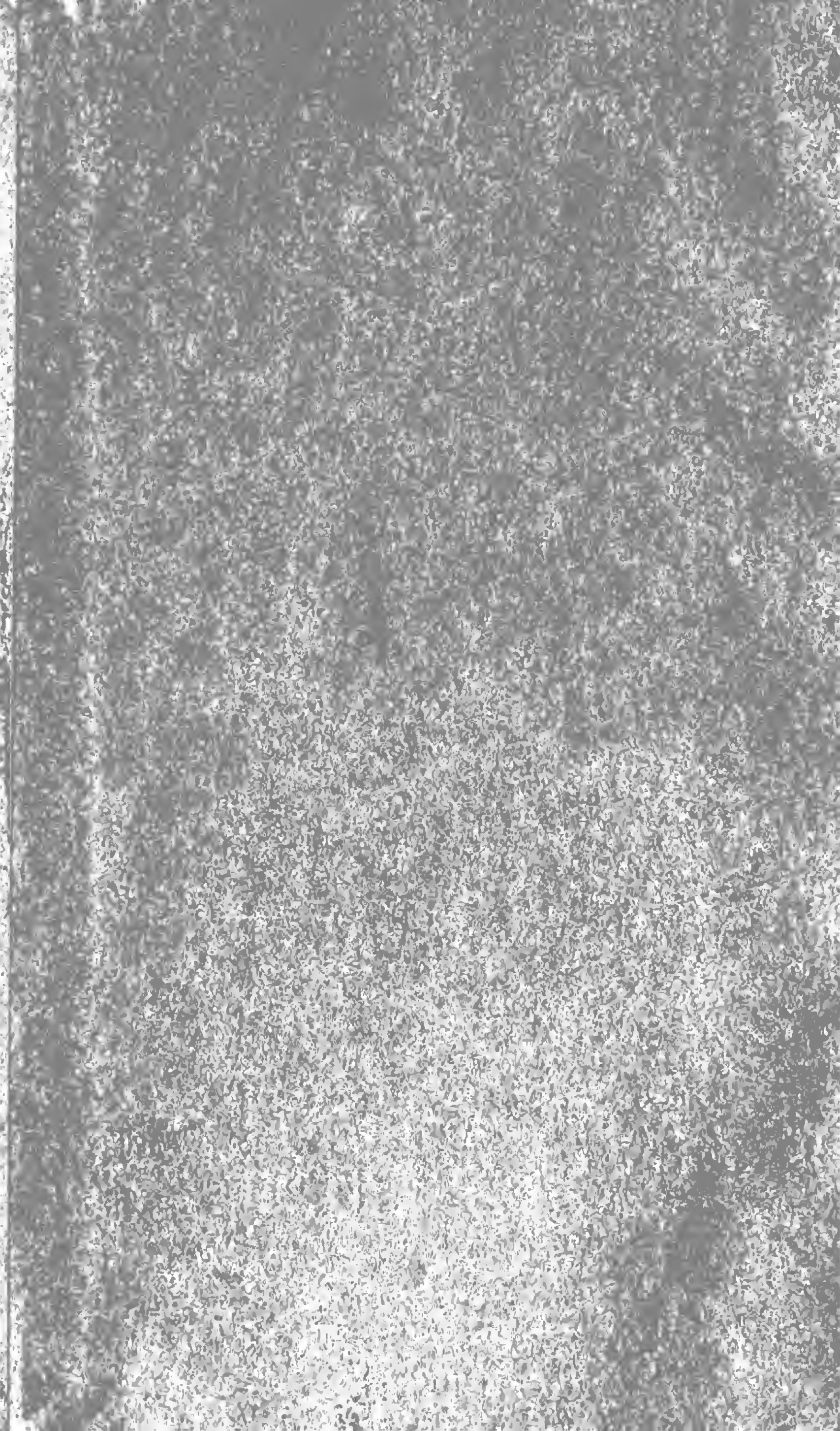

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A PRACTICAL TREATISE

ON THE

STATUTES

FOR

REGISTERING DEEDS

AND

OTHER INSTRUMENTS

IN THE COUNTIES OF

MIDDLESEX AND YORK;

WITH

Precedents of Memorials.

BY JOHN WILSON,

ATTORNEY AT LAW.

Vigilantibus non dormientibus servat lex.

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PREFACE.

THE labour of research is considerably diminished by a separate treatise on a single subject; this, it is hoped, will be admitted to justify the publication of the following pages, whatever apology may still be wanting for their execution.

Method was said, by Lord Bacon, to be "the firm handle of science;" the author, or rather compiler, has endeavoured, by a methodical and perspicuous distribution of the subject, and arrangement of the cases, to facilitate investigation of the proper measures for carrying the statutes into effect, and of their operation.

The observations are the result of due consideration of the acts of parliament and de-

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cisions, and of the opinions of those who have previously written upon them, and are made with a consciousness of the temerity of advancing such as have not received the sanction of better authority.

The merit of pointing out errors in practice is principally due to Mr. Sugden's valuable book on the law of Vendors and Purchasers, to which the liberty has been taken of occasionally referring.

The extracts are taken from the Middlesex Act, and any material variations in the others are explained as they occur.

7, Gray's Inn Square,
6th November, 1818.

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ON

REGISTERING DEEDS,

&c. &c.

THE acts of parliament relating to the registry of deeds and instruments affecting real property are,

For the county of Middlesex, 7th Ann, c. 20.

For the West Riding of the county of York, 2nd and 3rd Ann. c. 4. 5th Ann. c. 18. and in purchases or mortgages, exceeding £50, 6th Ann, c. 35.

For the East Riding of that county and for the town and county of Kingston-upon-Hull, 6 Ann. c. 35.

And, for the North Riding of the county, 8th Geo. 2. c. 6.

The object of the following pages is to endeavour to point out the necessary proceedings under these statutes, and to shew their operation when the requisitions and provisions of them are duly complied with; for which purposes, the deeds and instruments required to be registered, with the exceptions in the acts, are first taken into consideration; secondly, the manner of registering or the circumstances to be attended to in the memorials; and, lastly, the equitable decisions with regard to notice, upon which their operation depends.

The reason for these alterations of the rule of common law, by which every deed took place according to the priority of its date or delivery*, is declared in the statutes, the preamble of the Middlesex act, with which the others are reconcileable, reciting that, by the different and se-

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* Qui prior est tempore, potior est jure. 1 Bro. 63.

cret ways of conveying lands, tenements, and hereditaments, such as were ill disposed had it in their power to commit frauds, and frequently did so, by means whereof several persons were undone in their purchases and mortgages, by prior and secret conveyances and fraudulent incumbrances.

Preamble.

To remedy which inconveniences it is enacted, by 7th Ann. c. 20. that a memorial of all deeds and conveyances, and of all wills and devises in writing*, of or concerning and whereby any honours, manors, lands, tenements, or hereditaments, in the said county, may be any way affected in law or equity, may be registered as thereinafter directed.

A memorial of conveyances that affect any honours, &c. may be registered.

And that every such deed or con-

Every conveyance shall be void against a subsequent purchaser, unless a memorial thereof is registered before a memorial of the subsequent deed.

* And, in the North Riding act, of all judgments, statutes, and recognizances (other than such as shall be entered in the name and upon the proper account of his majesty, his heirs, and successors.)

veyance* shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless such memorial thereof be registered as by this act is directed, before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim.

Notwithstanding the comprehensive terms of the enactments, a doubt was entertained whether an appointment under a power must be registered, and it was determined, by the case of *Scrafton* v. *Quincey*†, that such a deed is clearly within the intent of the statutes.

It has been contended, that if the memorial of an assignment of a lease or mortgage contain a recital of the lease or mortgage, it will cure an omission to register those deeds ; but

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* And, in the North Riding act, judgment, statute, or recognizance.

† 2 Ves. 413.

such a construction would evidently cause the statutes to facilitate, rather than prevent, the commission of frauds by secret conveyances, and it was held, in the following case, of *Honeycomb* v. *Waldron** to be insufficient.

Lord Grandison made a lease in 1730; the lessee soon after mortgaged it, and in 1731 sold it to the defendant. The lease was not registered, but the mortgage of it and the assignment to the defendant were, ~~and the memorials of them contained a recital of the lease~~, and the question was, whether this was a registry within the meaning of the act: and it was determined not to be sufficient; for the act says, the deed under which the party claims, with the witnesses' names, shall be registered; and of this a subsequent purchaser can have no notice by the bare registry of the as-

* 2 Stra. 1064.

signment; and it is also required that the original be produced to the officer.

This point was also similarly decided in the case of *Williams* v. *Sorrell* *.

Certificates of the discharge of mortgages, whereof memorials have been entered, are authorised to be registered by all the acts, and of judgments, statutes, and recognizances by those relating to the three ridings of the county of York and Kingston-upon-Hull.

Devise by will void against subsequent purchasers, unless registered.

And it is enacted, that every such devise by will shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such will be registered, at such times and in such manner as thereinafter directed.

And it is provided, that all memorials of wills that shall be registered

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* 4 Ves. J. 389.

within the space of six months after the death of every respective devisor or testatrix dying within the kingdom of Great Britain, or within the space of three years after the death of every respective devisor or testatrix dying upon the sea, or in parts beyond the seas, shall be as valid and effectual against subsequent purchasers as if the same had been registered immediately after the death of such respective devisor or testatrix.

The foregoing provision is the same in all the acts, but different provisions are made in them, in cases of disability, to register wills within that period.

If the devisee, or person or persons interested in an estate, in the county of Middlesex, devised by any such will, by reason of the concealment or suppression or contesting such will, or other inevitable difficulty without his, her, or their wilful neglect and default, shall be disabled to exhibit a

memorial for registry thereof within the respective times before limited, and a memorial shall be entered in the said office of such contest or other impediment within two years after the death of the devisor or testatrix, who shall die within Great Britain, or within four years after the decease of such person who shall die upon the sea or beyond the seas; in such case, the registry of the memorial of such will, within six months after his, her, or their attainment of such will, or of a probate thereof, or removal of the impediment, whereby he, she, or they, are disabled or hindered to exhibit such memorial, is declared to be a sufficient registry within the meaning of the act.

But it is enacted, that in case of the concealment or suppression of any will or devise, any purchaser shall not be defeated or disturbed in his purchase, unless the will be actually registered within five years after the death of the devisor or testatrix.

As to the estates within any of the three ridings of the county of York, or the town of Kingston-upon-Hull, it is provided, that the registry of a memorial of the impediment, within six months after the death of such devisor or testatrix who shall die within Great Britain, or within three years after the decease of such who shall die upon the sea or beyond the seas, and the registry of a memorial of the will within six months after the removal of such impediment, shall protect the devisees against any purchaser subsequently to the will.

But as to estates in the North Riding of the county of York, it is enacted, that in case of the concealment or suppression of any will or devise, any purchaser for valuable consideration shall not be defeated or disturbed in his purchase, nor any plaintiff in any judgment, or cognisee in any statute or recognizance, defeated in his debt by any title made or devised by any such will, unless the

will be actually registered within three years after the death of the devisor or testatrix.

There is no such enactment as the last in the acts relating to the West and East Ridings and Kingston-upon-Hull.

The registry of wills within the periods mentioned in the statutes is rarely attended to; and a question arises, whether a registry, within those periods, is necessary to give effect to wills, which dispose of or charge estates within the limits of the acts, or not. On this point different opinions have been advanced, and it may be useful to enter, at some length, into the consideration of it.

It is stated in Mr. Rigge's treatise *, that memorials of wills are received at the office of the county of Middlesex, after the periods, which he states as directed by the statute for that county, and that it is pre-

* Rigge on Reg. p. 84 n.

sumed they would operate against persons purchasing subsequently to the registry, notwithstanding the non-existence of any decree or order to warrant the delay. This practice, there is no doubt, originated in counsel requiring wills to be registered, although the periods mentioned in the statute had elapsed. Mr. Sugden, on the contrary, in his valuable Treatise on Vendors and Purchasers*, states the acts as declaring, that all wills shall be adjudged fraudulent and void against subsequent purchasers or mortgagees, unless a memorial be registered within six months after the death of the devisor or testator, dying in Great Britain, or within three years after such death, dying upon or beyond the seas. He then mentions the provisions respecting contested or suppressed wills, and after referring to the practice of the office in re-

* Sug. V. and P. p. 575.

ceiving memorials of wills which have not been registered within the periods directed by the statute, he states that such practice is ineffectual to the parties.

The simple question is, whether a devisee claiming under a will, which was registered, but not within the periods mentioned by the statutes, would prevail against a person claiming under a conveyance from the heir, registered subsequently to the will. This point has never, it is believed, been brought before the courts: in *Blades* v. *Blades*, 1 Eq. Ca. Ab. 358. and *Jolland* v. *Stainbridge*, 3 Ves. J. 478. the wills had not been registered at all, and the decisions turned entirely on the fact of notice. And it is submitted, that if there be any doubt on the validity of a will, registered subsequently to the periods mentioned in the statutes, as against a conveyance from the heir, not registered previously to the will, the point at least still re-

mains open, and that the construction of such a registry being totally ineffectual, does not appear to be clear from the statutes alone.

The statutes for the North, East, and West Ridings of Yorkshire and Kingston-upon-Hull, by the 1st sect. enact, that deeds or conveyances shall be adjudged fraudulent and void against subsequent purchasers, &c. unless such memorial thereof be registered as by the acts is directed, before the registering of the memorial of the deed or conveyance under which such subsequent purchaser shall claim; and that devises by wills shall be fraudulent and void against subsequent purchasers, &c. unless a memorial of such will be registered *in such manner* as is thereinafter directed. The statute for Middlesex is the same as to deeds, but, with respect to wills, adds, unless a memorial of such will be registered *at such times and in such manner* as is thereinafter directed. It is after-

wards provided, in all the acts, that wills registered within six months after the death of the devisor, dying in Great Britain, or within three years after such death, dying upon or in parts beyond the seas, shall be as valid and effectual against subsequent purchasers, &c. as if the same had been registered immediately after the death of the devisor; and that in case of disability to register wills within the times before limited, by reason of their being contested or suppressed, or of any other inevitable impediment, then a registry of them within six months after the obtaining of the will, or a probate thereof, or removal of the impediment, shall be a sufficient registry within the meaning of the acts, if a memorial of the contest or other impediment has been entered in the office within certain periods. Then comes a provision in the Middlesex Act, that in the case of the concealment or suppression of a will, no purchaser

shall be disturbed or defeated, unless the will be actually registered within five years after the death of the devisor; and, in the North Riding act, in the like case, that a purchaser, &c. shall not be disturbed or defeated, unless the will be registered within three years after the death of the devisor.

These different enactments, it must be acknowledged, are not, when taken together, very definite, but still it is apprehended that a due consideration of them, with the purview and intention of the acts, will be sufficient to form a correct opinion of the point under discussion. It is evident that the object of the acts was, to prevent purchasers and mortgagees from being prejudiced by prior and secret conveyances and fraudulent incumbrances, and such object is expressed in the preamble to all of them, except that for the West Riding, which states the necessity of the act as arising from the dif-

ficulty of giving security to the satisfaction of money-lenders for want of a registry, but which clearly points to the same mischief as is expressly stated in the preamble to the other acts. Now this object would be effectually attained by requiring all conveyances and wills, affecting estates, to be registered, and giving them effect according to priority of registry; and, with respect to deeds and conveyances, such is the strict rule laid down and directed by all the acts. But, in regard to wills, it was evident that rule could not be enforced, without the danger of exposing devisees to serious injury, because, from the nature of them, it would be impossible, in many instances, for devisees to register them immediately on the testator's decease; and therefore, unless some relaxation of the rule was provided for in their favour, the heir, by making and registering a conveyance, before the registry of the will, would,

in most instances, have defeated the disposition made by it. The sections therefore, relating to wills, are, in all the acts, introduced by way of proviso, and were enacted to allow a greater effect to wills, when registered pursuant to these provisions, than is given to deeds and conveyances; as wills, in such cases, have by the acts a relation to a period antecedent to their registry, i. e. to the death of the testator, so as to prevail against intermediate dispositions which may have been made by the heir. It is clear that this advantage given to wills required some limitation in the cases of their concealment or suppression; this point was overlooked in the acts for the West and East Ridings of Yorkshire and the town of Kingston-upon-Hull, but in the two latest acts, for the county of Middlesex and the North Riding of Yorkshire, a definite period is fixed, after which the registry of wills concealed or suppressed shall not disturb

or defeat purchasers, &c. This provision however must, it is presumed, be construed to refer only to prior purchasers, &c. as all the provisions relating to wills must be read in context with one another, and the last is, in fact, merely a qualification of the preceding section, which provides that a registry of wills concealed or suppressed, within six months after the attainment of them, shall be a sufficient registry within the meaning of the acts. And, it is apprehended, that the sufficient registry there referred to, must mean a registry that shall be equally available with the registry within six months or three years after the death of the testator, according to the provisions of the preceding section, which gives the will a relation to the death of the testator.

Thus all the provisoes must be read with a reference to each other, to gather the proper construction of them; and they appear, all of them,

to be qualifications of the strict rule of registry as applied to conveyances, in order to give to wills the advantage of relation to the death of the testator. On the question as to the time, within which wills ought to be registered for their effect in other respects, it is to be observed, that all the acts, except the one for Middlesex, make them in the 1st sect. fraudulent and void against subsequent purchasers, &c. unless registered *in such manner* as is thereinafter directed, clearly referring only to the mode of registering, and contents of the memorial in the case where the particular provisoes, afterwards introduced, did not operate. The act for Middlesex says, unless registered *at such times and in such manner* as is thereinafter directed, but this reference to the times has been admitted inadvertently, or some clause was omitted, which was intended to have fixed the operation of wills, when registered, so as not to be entitled to

the benefit of the provisoes; for it is not stated in the provisoes that wills, which are not registered within the times there mentioned, shall be adjudged fraudulent and void, but that a registry within those times shall give the wills a relation to the death of the testator. It is therefore submitted, that the statement that all wills are to be adjudged fraudulent and void against subsequent purchasers, &c. unless registered within those periods, is not the language of the statutes, and that if there be any ambiguity in the statutes, that construction is not required to be put upon them, in order to guard against the mischief which they were intended to prevent. And it is conceived that the true construction of the statutes, with reference to wills, is, that the particular provisoes contained in the acts, respectin gtheir registry, must be complied with, in order to derive the advantage of relation, so as to prevail against interme-

diate dispositions of the estates by other persons; but that a compliance with such provisions is not at all necessary to give effect to dispositions by will beyond the attainment of such advantage; and that a registry of wills after the periods mentioned in the acts, for such periods are not absolutely directed in any of them, though ineffectual for the purpose of giving them relation to the death of the testator, will be effectual against conveyances operating adversely to the title of the devisees, which are not registered till after the registry of the wills *.

A devisee, being heir at law also, need not register the will; neither is registry essential to the validity of a bequest of leasehold property, for no title can be shewn to it without notice of the will.

And it is enacted, that no judg-

* This construction is acquiesced in by a counsel of distinguished ability.

No judgment, &c. (except in the name of the King) to bind heriditaments but from the time of registry.

ment, statute, or recognizance, (other than such as shall be entered into in the name and upon the proper account of her Majesty, her heirs, and successors,) shall affect or bind any such estates as aforesaid, but only from the time that a memorial of such judgment, statute, or recognizance, shall be entered at the register office.

The acts relating to the East and West Ridings of the county of York and Kingston-upon-Hull provide, that the registry of judgments, statutes, or recognizances, within thirty days, and the act to the North Riding within twenty days, after the acknowledgment or signing thereof, shall bind all the lands that the defendants or cognizors had at the time of such *acknowledgment or signing*; and it is added, in the North Riding act, that the registry of a memorial thereof, within the time aforesaid, shall be as available, to all intents and purposes, as if it had been entered on

the day of the signing or acknowledgment.

A purchaser of freehold property in Middlesex is relieved, therefore, from the necessity of searching for judgments in the books of the courts at Westminster, except to ascertain that any judgment he may find registered has been docketed, in conformity to the statutes of 4 and 5 W. and M. c. 20. s. 2. and 7 and 8 W. 3. c. 36. s. 3. which are not affected by the Middlesex act; but a purchaser of freehold property in the East and West Ridings of the county of York and Kingston-upon-Hull, should also be satisfied that no judgment has been acknowledged or signed within thirty days, and a purchaser in the North Riding within twenty days, preceding the time of completing his contract or paying his purchase money*.

* *Finch v. Earl of Winchelsea*, 1 P. Wms. 278.

Grants of annuities, being deeds required by these statutes to be registered, need not be searched for elsewhere.

A practice seems to have been introduced, under the Middlesex act*, of registering certificates of satisfaction of judgments; and there is certainly propriety in entering a discharge of an incumbrance, where the incumbrance itself appears; and it is analogous to the mortgage certificate; but there is no provision in that act authorising it, the registry is therefore inoperative, and the usual course of discharging such judgments must be pursued.

It is also the practice, in some cases, to register writs of execution; a question of great intricacy has† indeed been raised, whether a judgment is a lien upon leasehold property from the day it was given, under the sta-

* Rigge on Reg. p. 87.
† Ib. p. 90.

tute of Westm. 2. and now, from the time of its being docketed and registered, or, under the provisions of the statute of frauds, 29 Car. 2. c. 3. s. 16. from the time only of the delivery of such writ to the sheriff to be executed; it being acknowledged that a leasehold may be extended on an elegit* †, the terms of which writ are "to extend a moiety of all the lands of which the defendant was seized on the day the judgment was given;" and doubted whether such property is comprehended in the word *goods*, which the statute of frauds enacts shall not be bound by any writ of execution, but from the time such writ is delivered to the sheriff; this question has been investigated by Mr. Sugden ‡ with great attention, and appears to have been traced by him to its legitimate source;

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* 2 Inst. 396. l. 1. 2.

† Fleetwood's case, 8 Co. 171.

‡ Sug. V. and P. 563.

and a satisfactory conclusion may be drawn from his reasoning, that, although the word *goods* in the common law, contrary to the construction of the civil law, certainly has a more confined meaning than *chattels* and would not, in other cases, comprise leaseholds, yet such property was intended to be comprehended in that provision of the statute of frauds; and therefore, that a judgment does not bind it, till execution is delivered to the sheriff to be executed. And this construction seems to have been adopted by the Master of the Rolls, in *Shirley* v. *Watts**, who said, "till execution the plaintiff has no lien on the leasehold estate."

It is incumbent, therefore, on the purchaser of a leasehold estate to ascertain that no execution has been delivered to the sheriff, but as he very properly will not, in many instances, permit his office to be searched, the

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* 3 Atk. Rep. 200.

information can only conclusively result from the knowledge that no judgment against the vendor has been recovered, for which the proper courts must be searched; for, as the statutes do not require the writ of execution nor the judgment on which it issues to be registered, no satisfaction can be obtained from searching those registers; very little practical advantage, therefore, arises from the registry of writs of execution.

Exception of copyhold estates, leases, &c

And it is enacted, that the registry shall not extend to any copyhold estates, or to any leases at a rack rent, or to any lease not exceeding one and twenty years, where the actual possession and occupation go along with the lease, or* to any of the chambers in Serjeant's Inn, the Inns of Court, or Chancery.

The general exception of copyhold estates might, primâ facie, lead to the conclusion, that it is unnecessary

* In the Middlesex act.

to register any deed whatever relating to this description of property; it was no doubt inserted under the impression that instruments affecting such property would be entered on the court rolls of the manor, this however is not universally true, as, in some instances, the license of the lord of the manor is not necessary to authorise the copyholders to grant leases, and generally a licensed lessee may assign without license; and the better opinion seems to be, that it is advisable to register such leases of copyhold estates, as, if the estate were freehold, would require registry*.

Leases at rack rent need not be registered, but it has been said† that if, at any period within the term, improvements are made, so that the estate demised is rendered of greater yearly value than when originally let,

* Sug. V. and P. 579.

† Rigge on Reg. 88. n. (η.)

it is doubtful whether the lease could afterwards be deemed a lease at rack rent; Mr Sugden* inclines to the opinion, that such a lease, having been within the exception at the time it was granted, cannot be affected by any matter ex post facto.

Although a lease not exceeding twenty-one years, where the actual possession and occupation go along with the lease, afterwards becomes beneficial, and is sold for a valuable consideration †, it still continues strictly within the exception, and need not be registered.

But where the actual possession and occupation do not go along with the lease, as in the case of an assignment by way of mortgage, the exception ceases to be applicable and the lease must unquestionably be registered.

* p. 579.

† Rigge on Reg. 88.

The exception, in the Middlesex Act, of the chambers in Serjeant's Inn, which is within the city of London, seems to have excited some doubt, whether this statute was not intended by the legislature to embrace the whole metropolis, except the borough of Southwark, and consequently, it is said * that cautious individuals have registered many titles to property within the city and its liberties; but surely the caution might, with almost as much propriety, have been extended to registry in the York offices; for an erroneous exception, which it does not require much discernment to account for, cannot extend the operation of a local act over a district never otherwise mentioned in it; and the circumstance of its having passed "at the humble request of the justices of the

* Rigge, 88. n. (p.)

peace, gentlemen, and freeholders, of the county of Middlesex," must be conclusive.

Decrees or orders from the courts of equity, and rules of the courts of law, appear to be sometimes registered*; but it is a totally useless expense to the parties as far as regards the natural operation of these statutes.

The circumstances required in the several memorials are now to be taken into consideration, the enactments relating to which are,

Memorial to be on parchment, and of deeds how to be executed and attested.

That all and every memorial, so to be registered, shall be put into writing in vellum or parchment, and brought to the office appointed for registering; and in case of deeds and conveyances, shall be under the hand and seal of some or one of the grantors, or some or one of the grantees, his or their heirs, exe-

* Rigge, 83. n. (h.)

cutors or administrators, guardians or trustees, attested by two witnesses, one whereof to be one of the witnesses to the execution of such deed or conveyance; which witness shall, upon his oath, before one of the registrars or masters appointed by the act, or before a master in chancery, ordinary or extraordinary, prove the signing and sealing of such memorial and the execution of the deed or conveyance mentioned in such memorial.

Memorials of wills how to be executed and attested.

And in the case of wills, the memorial shall be under the hand and seal of some or one of the devisees, his or their heirs, executors or administrators, guardians, or trustees, attested by two witnesses, one whereof shall, upon his oath, before the said registrars or masters, or before such master in chancery as aforesaid, prove the signing and sealing of such memorial; which respective oaths the registrars or masters and masters in chancery are empowered to admi-

nister, and shall endorse a certificate thereof on every such memorial and sign the same.

In the three Ridings of the county of York and Kingston-upon-Hull, the signing and sealing of the memorials of such deeds, conveyances, and wills, as are made and executed in any place within forty miles of the register offices, must be proved before the register or his deputy, but such as are madeand executed at a greater distance may be proved by affidavit before a judge or master in chancery, ordinary, or extraordinary.

In the act for the North Riding, the memorial is required to be "attested by two witnesses to the execution of such deed," which witness is directed to prove the execution of the memorial and the deed, so that the intervening words in the other acts "one whereof to be one of the witnesses" are evidently omitted accidentally. By that act, the memorial may be proved by the solemn af-

firmation of a witness of the persuasion of the people called Quakers; or the person signing and sealing the memorial, or one of them, may acknowledge it and the execution of the deed or conveyance, or the memorial only, if of a will, before the register or his deputy, a memorandum of the time of taking the same being entered on the memorial and signed by the register or his deputy, and also by the party acknowledging it.

Contents of memorials of deeds and wills.

And it is enacted that every memorial of any deed, conveyance, or will, shall contain the day of the month and the year when such deed, conveyance, or will bears date, and the names and additions of all the parties to such deed or conveyance, and of the devisor or testatrix of such will, and of all the witnesses to such deed, conveyance, or will, and the places of their abode, and shall express or mention the honours, manors, lands, tenements,

and heriditaments, contained in such deed, conveyance, or will, and the names of all the parishes, townships, hamlets, precincts, or extra-parochial places within the said county, where any such honours, &c. are lying or being, that are given, granted, conveyed, devised, or any ways affected or charged by any such deed, conveyance, or will, in such manner as the same are expressed or mentioned in such deed, conveyance, or will, or to the same effect.

Deeds and wills to be produced to the registers.

And that every such deed, conveyance, and will, or probate of the same, of which such memorial is to be registered as aforesaid, shall be produced to the registers or masters at the time of entering such memorial, who shall endorse a certificate on every such deed, conveyance, and will, or probate thereof, and therein mention the certain day, hour, and time, on which such memorial is so entered or registered, expressing also

in what book, page, and number, the same is entered, and that the registers or masters shall sign the said certificate, when so endorsed, which certificates shall be taken and allowed as evidence of such respective registries in all courts of record whatsoever.

Who shall endorse a certificate.

The provision, that one of the witnesses to the memorial shall be one of the witnesses to the execution of the deed, appears to have been extended to a party who does not necessarily execute the deed*; and this interpretation may be strengthened by the act for the North Riding of the county of York making a distinction in registering deeds at length, which is thereby authorised, and expressly requiring execution in that case by the grantors, but preserving the obscurity in the other clause; this practice, however, obviates the only effect of the requisition, which was intended to prevent the register-

* Rigge on Reg. p. 77, and prec. 143.

ing of forged deeds; this is apparent from the nature of the provision, and also from the circumstance of the same witness being required to make oath of the execution; the memorial therefore of a deed or conveyance, in order to a legal registry, must be attested by a witness to the execution of the deed by one of the grantors.

When the heir, executor, administrator, guardian, or trustee of a grantor or grantee executes a memorial, it is not necessary for him to seal and deliver the deed, as if he was a party in his own right*; but the execution of the memorial by him is to be attested by two witnesses, one whereof must be a witness to the execution of the deed.

Affixing the seal of a corporation to any deed, without a signature, is tantamount to a signing and sealing in other cases†; so that there is no ne-

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* Rigge on Reg. p. 74.

† *Doe v. Hogg*, 1 New Rep.

cessity for execution by the lessee for convenience of registry*, and which, it has been shewn, would not qualify the witness, in compliance with the obvious meaning of the acts of parliament.

Neither of the witnesses to the execution of a memorial of a will need be a witness to the execution of the will.

The practice of accepting for registry office copies of wills† is inadmissible; for the acts peremptorily require the will, or probate of the same, to be produced to the registers or masters‡, who are to endorse a certificate thereon, of the time of entering the memorial; the purpose of endorsing that certificate could not be answered by affixing it to an office copy, of which any number may be obtained: and it is considered

* Rigge on Reg. p. 106. 107.

† Ib. 84. and 96.

‡ *Honeycomb* v. *Waldron*, ante p. 5.

that such registry would be wholly nugatory*.

It appears to be the established practice in Middlesex, to insert in memorials a much more general description of the nature and effect of deeds and wills than the statute requires, or than the framers of it seem to have intended should be divulged.

Great anxiety and tenderness are evinced by the legislature, on all occasions, to guard against unnecessary exposure of the affairs and arrangements of the property of individuals, and to this caution is commonly attributed the rejection of several applications for extending the register acts to different counties, and of one recently for making those acts general; and the same feeling appears, by the limited disclosure required, to have influenced the legislature when the statutes under consideration were passed.

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* Sug. V. and P. 575.

It is stated however*, that hardly a purchase is entered in the books of the Middlesex office without the memorial so expressing it, though *frequently* the consideration or sum paid is omitted; and that mortgages are very rarely registered, where the true description of the nature of the deed and its value are not introduced.

No satisfactory reason has hitherto been given for a practice, which may be considered a violation of the manifest caution of the legislature, without any adequate benefit; a more explanatory statement would doubtless facilitate the tracing of titles, but that is straining the act to a purpose not contemplated by it, and to which the provisions are therefore not adapted; the intention of the act is clearly to require no greater exposure of a title than will have the effect of guarding a pur-

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* Rigge on Reg. p. 57.

chaser against secret conveyances, or will, as it is correctly observed, act as a beacon* to warn against fraud, *ad ea quæ frequentibus accidunt jura adaptantur*, that object is amply attained by such a disclosure as will necessarily lead to a minute investigation, and when a purchaser discovers that any deed has been executed, affecting property in question, of which he is not apprised, if he does not require a satisfactory explanation, or the production of that deed, he is guilty of a degree of negligence and folly which legislation cannot provide against.

Motives of fairness and candour are said to have given rise to the practice, but if so, surely those laudable incentives have lead to very injudicious measures; its origin may, perhaps, with more correctness, be attributed to excessive caution, or an attempt to pervert the provisions of

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* Rigge on Reg. p. 68.

the act to an extraneous operation, and to embrace two objects which are incompatible; for if the chain of title is retained, by the diffuse information requisite for that purpose, the privacy, which the statute unites with the intended security, must necessarily be rejected; and there is reason to apprehend that the substance is sacrificed to the shadow, for there is no enactment in the Middlesex act that the books of registry shall be admitted as evidence, in case of the deeds being destroyed*, and they would not have the effect of a record of the courts at Westminster, where deeds are acknowledged and transcribed, or of the books of registry in the North Riding of the county of York, where express provisions are made for that purpose; purchasers may, where deeds were lost, have been satisfied with the disclosure of the nature thereof in the register, but there

* Rigge on Reg. p. 144.

is no legal security in that information.

Great repugnance is generally felt to exposing the incumbrance of an estate by mortgage, and a solicitor who unnecessarily divulges such a transaction, is justly considered guilty of a dereliction from his duty; assuming then, that introducing the nature of a mortgage upon the registry can give no greater efficacy to the deed than recording it in the precise and contracted terms which the law imposes* it follows, that the publicity which is given to it by the mode of registry in practice, is neither incumbent nor justifiable; and that odium and suspicion, and an accusation of disingenuous conduct, which it seems attach to a deviation from the prevailing practice, are very little merited by a person who, influenced by that opinion, conforms only to the enactments of the legisla-

* Rigge on Reg. p. 57.

ture: and in a case mentioned*, where the solicitor of a mortgagee is employed to prepare the security and the memorial of it, which is very usual, there seems to be no good reason why he should commit an act of indelicacy, if not of impropriety, towards the mortgagor, which will in no respect tend to encrease the security of his own client.

In the act relating to the North Riding of York, it will be seen that permission is given to register deeds at length, and, in that case, provision is made for admitting the registry as evidence in the event of the deeds being destroyed; from which it might be inferred, if the reasoning wanted that support, that the ordinary mode of registry would not be so admitted; except under those provisions in the North Riding, it is not the general practice in the county of York to insert in

* Rigge on Reg. p. 57.

memorials a more copious description than the acts require.

Where more writings than one, relating to the same conveyance, &c. what memorial to contain.

And it is enacted, that where there are more writings than one for making and perfecting any conveyance or security, which do name, mention, or any ways affect or concern the same honours, manors, lands, tenements, or heriditaments, it shall be a sufficient memorial and register thereof, if all the said honours, &c. and the parishes, townships, hamlets, or extra-parochial places wherein the same lie, be only once named or mentioned in the memorial or register of any one of the deeds or writings, made for the perfecting of such conveyance or security; and that the dates of the rest of the said deeds or writings relating to the said conveyance or security, with the names and additions of the parties and witnesses, and the places of their abodes, be only set down in the memorials and registers of the same, with a reference to the

deed or writing, whereof the memorial is so registered, that contains or expresses the parcels mentioned in all the said deeds, and directions how to find the registering the same.

This clause appears* to have been applied, in practice, to cases which the terms of it certainly do not warrant; in the memorial of an assignment of a mortgage to a third person, the registry of the mortgage should not be referred to for a description of the parcels, nor of an assignment of a lease, the registry of the lease; except in cases of registering more writings than one for perfecting a separate conveyance or security, and all relating to the same transaction, such a reference is not authorized by the statutes, and such a registry would be defective and void against a subsequent purchaser without notice.

* Rigge on Reg. p. 110. 113. 117. 118.

And in case of mortgages, whereof memorials shall be registered, it is enacted, that if, at any time afterwards, a certificate shall be brought to the said registrars or masters, signed by the mortgagee or mortgagees in such mortgage, his, her, or their executors, administrators, or assigns, and attested by two witnesses, whereby it shall appear that all monies due upon such mortgage have been paid or satisfied, in discharge thereof, which witnesses shall, upon their oaths, before the said registrars or masters, or before a master in chancery, ordinary or extraordinary, prove such monies to be satisfied or paid accordingly, and that they saw such certificate signed by the said mortgagee or mortgagees, his, her, or their executors, administrators, or assigns, then, and in every such case, the said registers or masters shall make an entry in the margents of the said register-book, against the registry of the memorial of such mortgage, that such

Certificate of the discharge of mortgages.

mortgage was satisfied and discharged according to such certificate, to which the same entry shall refer; and shall after file such certificate, to remain upon record in the said register office.

And in Yorkshire of judgments, &c.

In the three Ridings of the county of York and Kingston-upon-Hull, similar certificates of the discharge of judgments, statutes, and recognizances are authorised to be registered; and, in the North Riding, the signature of the certificate by the mortgagee, plaintiff, or cognizee, their executors, administrators, or assigns, and payment of the money may be proved before any one of the judges or of the masters of the court of chancery, or before the register or his deputy. In the West and East Ridings and Kingston-upon-Hull, the certificates are required to be signed by the mortgagors and mortgagees, plaintiffs and defendants, cognizors and cognizees, their respective executors, administrators, or

assigns, and the signature of the certificates and payment of the money must be proved before the register or his deputy.

The first registry acts having passed little more than twenty years after the statute of frauds, whereby it is enacted, "that no lease, estate, or interest of freehold, or term of years, or any uncertain interest, not being copyhold, shall be surrendered, unless by deed or note, in writing, signed by the parties surrendering the same;" there can be little doubt that the mortgage certificate, when signed by the parties acknowledging payment and satisfaction in discharge of the mortgage, was intended to operate as a surrender, which "does not require any technical words, but such only as express the intention*," and is defined to be "a yielding up of an estate for life or years to him that hath an immediate estate in reversion

* 2 Rol. Ab. 497.

or remainder, wherein the estate for life or years may drown*;" but it is, notwithstanding, the general opinion that this certificate would not divest the mortgagee of the legal estate, and that a purchaser cannot be compelled to accept it; and it is never relied upon now, as a note in writing to operate as a surrender must have the appropriate stamp.

Contents of memorials of judgments, &c.

And in cases of judgments, the memorial is to express and contain the names of the plaintiffs, and the names, additions, and places of abode, (if any such be in such judgment,) of the defendants, the sums thereby recovered, and the time of the signing thereof. And of statutes and recognizances, the date of such statute or recognizance, the names, additions, and places of abode of the cognizors and cognizees therein, and for what sums and before whom the same were acknowledged; and that, in or-

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* 1 Inst. 337 b.

der to the making an entry of such memorials of judgments, statutes, and recognizances, as aforesaid, the party and parties desiring the same shall produce to and leave with the said registers or masters, to be filed in the said public or register office, a memorial of such judgment, statute, or recognizance, signed by the proper officer or his deputy, who shall sign such judgment in the same office, or by the proper officer in whose office such statute or recognizance shall be inroled, together with an affidavit, sworn before one of the judges at Westminster or a master in chancery, that such memorial was duly signed by the officer whose name shall appear to be thereunto set, which memorial such respective officer is required to give such plaintiff or plaintiffs, cognizee or cognizees, or his, her, or their executors or administrators or attorney, or any of them, he, she, or they paying for the same the sum of one shilling; and that the

said register or master shall make an entry, and likewise (if required) shall give a certificate in writing, under his hand, testified by two credible witnesses, of every such memorial of any judgment, statute, or recognizance, brought to him to be registered as aforesaid, and therein mention the certain day on which such memorial is registered or entered, expressing also in what book, page, and number, the same is entered.

In the North Riding of the county of York, the solemn affirmation of a witness to the signature by the officer being a Quaker is admitted.

The following provisions being rather in the nature of privileges permitted, are separated from the mandatory enactments.

In Yorkshire bargains and sales of lands inroled by the register as effectual as if inroled

In the three Ridings of the county of York and the town and county of Kingston-upon-Hull, it is enacted that bargains and sales of any manors, lands, &c. within those districts which shall be inroled by the regis-

ters or their deputies, shall be as effectual and available, to all intents and purposes, as if the same had been inroled in one of the courts of record at Westminster, or before the *custos rotulorum* and two justices of the peace and the clerk of the peace, according to the act of 27th Henry 8th c. 16. "for inrolments of bargains and sales;" and that one or more justice or justices of the peace of the said respective Ridings shall have power to take and enter the acknowledgment of the bargainer, if but one, or of one of the bargainers, if more than one; and that the said register or his deputy should inrol, by engrossing in parchment-books, all such bargains and sales, and endorse a certificate thereon of the times of inroling, and sign the same; and that all deeds of bargain and sale so inroled, which shall appear to be so inroled, by such endorsement or certificate thereon, and all copies of the inrolments thereof, remaining on record

according to 27 H. 8. c. 16.

The copies of deeds so inroled, good evidence.

in the said register offices, shall be allowed in all courts where such bargains and sales or copies shall be produced, to be as good and sufficient evidence as any bargains and sales inroled in any of the courts at Westminster, and the copies of the inrolments thereof. And that every such inrolment, of every such deed, shall be deemed and have the same effect as entering a memorial in the register office pursuant to the acts.

Deeds of bargain and sale of estates of fee simple so inroled shall imply covenants.

And that in all deeds of bargain and sale so inroled, whereby any estate of inheritance in fee simple is limited to the bargainee and his heirs, the words *grant, bargain, and sell*, shall amount to and be construed and adjudged, in all courts of judicature, to be express covenants to the bargainee, his heirs, and assigns, from the bargainor, for himself, his heirs, executors, and administrators, that the bargainor, notwithstanding any act done by him, was at the time of

the execution of such deed seized of the hereditaments and premises thereby granted, bargained, and sold of an indefeazible estate in fee simple from all incumbrances, (rents, and services due to the lord of the fee only excepted) and for quiet enjoyment thereof against the bargainor, his heirs, and assigns, and all claiming under him, and also for further assurance thereof to be made by the bargainor, his heirs, and assigns, and all claiming under him; unless the same shall be restrained and limited by express particular words contained in such deed; and that the bargainee, his heirs, executors, administrators, and assigns, respectively, shall and may, in any action to be brought, assign a breach or breaches thereupon, as they might do in case such covenants were expressly inserted in such bargain and sale.

In the North Riding of Yorkshire registering writings at full length.

And in the act relating to the North Riding of the county of York, after reciting that deeds have been of-

ten destroyed by fire and other accidents, it is enacted, that any person or persons having or claiming title to any honours, manors, lands, &c. in that Riding, may register, at full length, in the said register office, all and every or any, the deeds, writings, wills, or conveyances, by or under which such title shall be claimed; and the said register or his deputy is thereby authorised to enter and inrol all such deeds, writings, wills, and conveyances, as shall be brought to be registered at full length, by engrossing them in parchment-books; and that the said register or his deputy shall mention in the margin the time of every such entry or inrolment and shall endorse and sign a certificate on such deed, conveyance, or will, in manner as is directed where a memorial is entered, and shall safely keep all and every the books wherein such entries and inrolments shall be made, and that all copies of such entries, and inrol-

ments of such deeds, writings, wills, and conveyances so registered, at full length, and which copies shall be signed by the said register or his deputy, and attested by two or more witnesses, shall be allowed in all courts of record to be good and sufficient evidence of such deeds, writings, wills, or conveyances, so registered and destroyed by fire or other accident.

What testimony necessary before registering at full length.

And it is enacted, that at the time any deed, conveyance, or will, shall be brought to the said register's office to be registered or inroled at full length, one of the witnesses to the execution of such deed or conveyance, or to the signing and publishing such will, shall make oath, or, being one of the people called Quakers, take his solemn affirmation, before the said register or his deputy, that such deed or conveyance was duly executed by the grantor or grantors, or that such will was signed and published by the devisor or tes-

tatrix: and, when such deeds, conveyances, and wills, are made and executed in any place not within forty miles of the said office, that a similar affidavit or affirmation may be made in writing, before one of the judges or a master in chancery, ordinary or extraordinary.

Registry at full length to be deemed entering a memorial.

And that such inrolment or registry, at full length, shall be deemed and have the same effect as entering a memorial pursuant to the act, and the certificate be allowed as evidence of such inrolment or registry in all courts of record whatsoever.

It now remains to consider the operation or effect of these statutes, which depends upon the construction with regard to notice.

It is observed by Lord Redesdale, in his treatise*, that "principles of decision adopted by courts of equity, when fully established, and made the grounds of successive decisions, are

* P. 4.

considered by those courts as rules to be observed with as much strictness as positive law;" and Sir Joseph Jekyll* said, "though proceedings in equity are said to be secundum discretionem boni viri; yet when it is asked, vir bonus quis est? the answer is, qui consulta patrum, qui leges juraque servat;" and these opinions are acquiesced in, by the highest authorities, as strictly constitutional; the equitable construction of these statutes may, therefore, be considered as settled by the decisions hereafter cited, on the points to which they refer; the first of which is, whether registering a memorial of a deed, pursuant to these acts, will operate as notice of such deed to all persons, as a judgment at law or a decree in equity would; and it was determined, by the following cases, that it will not.

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* *Cowper* v. *Cowper*, 2 P. Wms. 753.

Bedford v. *Backhouse*, 2 Eq. Ca. Abrid. 615. pl. 12.

A. lent money on a mortgage in Middlesex, which was duly registered; afterwards B. lent money on mortgage of the same lands, and his mortgage was also registered; and then A. advanced a further sum on the same lands, without notice of the second mortgage. It was held, by Lord Chancellor King, that the registering of the second mortgage was not constructive notice to the first mortgagee before he advanced the latter sum; for though the statute avoids deeds not registered, as against purchasers, yet it gives no greater efficacy to deeds that are registered than they had before; and the constant rule of equity is, that if a first mortgagee lend a further sum of money, without notice of a second mortgage, his whole money shall be paid in the first place.

Wrightson v. *Hudson*, 2 Eq. Ca. Abrid. 696. pl. 7.

Wrightson advanced £800 on a mortgage in Yorkshire, which was registered; afterwards, Hudson lent a

sum of money and took a judgment for it, which was registered, and then Wrightson advanced £270 more, without express notice of Hudson's judgment; though it was urged, on a bill brought by Wrightson to foreclose, that Hudson ought to redeem upon paying the first mortgage, for that, where such registers prevail, every incumbrance should be satisfied, according to the priority of its registry, and that the registering Hudson's judgment was constructive notice to Wrightson, sufficient to deprive him of the common benefit of a court of equity, whereby a first mortgagee, without notice, is to hold till all subsequent incumbrances are discharged; yet it was resolved by Sir Joseph Jekyll, master of the rolls, that these statutes avoid only prior charges not registered, but do not give subsequent conveyances any further force against prior ones registered than they had before: That to

have affected Mr. Wrightson, Hudson ought to have given him notice when he advanced his money, and that though Wrightson might have searched the register, he was not bound to do it; and therefore it was decreed, that Hudson and the mortgagor should be foreclosed, unless they paid off both plaintiff's securities.

So in *Williams* v. *Sorrell.* 4 Ves. Jun. 389.

In opposition to the foregoing decisions, Lord Hardwicke, in a case* which came before him four years only after the determination of *Wrightson* v. *Hudson*, is represented to have said, that "the register act was notice to the parties and notice to every body; and that the meaning of this statute was, to prevent parol proofs of notice or not notice;"

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* *Hine* v. *Dodd*, p.

but the case did not at all turn upon that point, and therefore there was no such *decision* *; and that construction has never since been recognized, nor was it ever before adopted.

It may then be considered as settled, that the statutes do not operate as notice, and therefore, that a person having the legal estate is not bound to search the registry for incumbrances subsequent to the time of his becoming seized thereof, as in case of a mortgagee advancing more money †.

And it is remarked, by Mr. Sugden, that the rule would apply to a mortgagee lending a further sum of money to the mortgagor, without notice of the sale of the equity of

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* Rigge on Reg. p. 39.

† Lord Hale held it right that a third mortgagee should, as he said, seize the tabula in naufragio, by purchasing the first mortgage to the exclusion of the second.

redemption, and that therefore, a purchaser of an equity of redemption of an estate should, immediately after the sale, give notice of it to the mortgagee, although the estate is in a register county and his conveyance is duly registered.

By the following decision of Lord Camden, in 1768, it will appear that the construction in *Bedford* v. *Backhouse* was considered by him a settled principle, and also, as far as this case can be considered authority, that a person obtaining the legal estate shall not be prejudiced by a prior equitable incumbrance, which was duly registered, but of which he had not notice.

Morecock v. *Dickins*, Amb. 678.

George Wilson being indebted to Morecock in £2065 5*s*. and having a lease of ground and buildings, in Middlesex, it was agreed, by deed, which was registered a few days afterwards, that the lease should stand as a security for £800 and interest; and Wilson gave a bond and judg-

ment for the remainder of the balance to be paid by instalments; but, in case Wilson should neglect to make good any of the payments, it was agreed that Wilson should give Morecock a security for the same upon the premises comprized in the lease.

Shortly afterwards, Wilson mortgaged the same premises to defendant Dickins for £800 and interest, and delivered to him the lease.

Wilson became a bankrupt, and Morecock filed his bill to be paid the £800, agreed to be secured on the premises, prior to Dickins's mortgage. Dickins filed a bill to be paid his mortgage money or to foreclose.

It was admitted, by the counsel for Morecock, that Dickins, having got the legal interest, would be entitled to priority, unless he could be affected by notice. That there was no evidence of actual notice, but it was insisted that the registration was notice of itself. That to give the re-

gister act its proper and intended effect, the act of registration ought to operate as notice, and it was compared to the case of judgments, of which that first docketed shall have the priority.

On the other side, it was argued for the defendant Dickins, that the registry act was made for one single purpose, to give preference to a purchase deed registered, before a prior deed not registered; but the act gives no greater efficacy to deeds which are registered than they had before; and the case of *Bedford* v. *Backhouse* was cited for that purpose. That, in the present case, Dickins having got the legal interest, was entitled to be paid before a prior equitable incumbrancer, unless he was affected by notice. That here was no actual notice, and the registration was not constructive notice, according to the above determination.

Lord Camden, chancellor.—"The question is, whether registration is

presumptive evidence to all mankind. If this was a new point, it might admit of difficulty; but the determination in *Bedford* v. *Backhouse* seems to have settled it, and it would be mischievous to disturb it. The act provides for one single case only, that is, to make unregistered deeds void against registered deeds; but there is no provision by the act, in a case where all the deeds are registered. And yet it becomes a serious question, whether a court of equity should not say that, in all cases of registry, which is a public depository for deeds, and to which any person may resort, a subsequent purchaser ought not to search, or be bound by notice of the registry, as he would of a decree in equity or a judgment at law. It is a point in which a great deal of property is concerned, and is a matter of consequence. Much property has been settled, and conveyances have proceeded upon the

ground of that determination. In the case of Vandebendy, in the House of Lords, the doctrine about dower prevailed, because it had been practised in a course of conveyance; a thousand neglects to search have been occasioned by that determination, and therefore I cannot take upon me to alter it; if it was a new case, I should have my doubts; but the point is closed by that determination, which has been acquiesced in ever since."

The equity of this construction of the statutes has been questioned, and not without reason, for, in this case, Morecock had no means whatever of giving notice of his equitable incumbrance to Dickins, who afterwards acquired the legal interest; Dickins, on the other hand, might have searched the registry, and thereby have been apprised of the prior equitable charge; in the case of *Bedford* v. *Backhouse*, which seems

to have guided this decision, the second mortgagee neglected to take that precaution which the established rule of equity required, by giving notice of his security to the first mortgagee, whose incumbrance he would have been made acquainted with, on searching the registry; these cases were, therefore, clearly dissimilar, and it is consequently doubted whether Lord Camden's decision would be considered authority; but it may be observed that, although the case on which the decree appears to have been grounded, was not precisely in point, and the construction was evidently a reluctant one, yet the quantity of property which had been settled, seems to have been considered, by his lordship, a sufficient reason for not disturbing the practice which had prevailed, as it was in the doctrine of dower, in the case of Vandebendy*.

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* Lord Macclesfield was of opinion, that the

Lord Redesdale* expressed opinions in conformity to the foregoing decision, viz. that the registry of an equitable incumbrance is not notice to any subsequent purchaser; and although they were extrajudicial, yet the authority of a judge, whose attention was peculiarly given to assimilating the system of equity in Ireland to that in England, may be of some weight in confirmation of the propriety of that construction.

Doubtful, however, as this authority may be considered, it is the only case in which the question has been decided, and an equitable incum-

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inconvenience of shaking settled determinations is much greater to the kingdom in general, than the impropriety of any former original determination can be to the parties; and termed it removing land-marks. 1 P. Wms. 399.

Of the same opinion were Lord Cowper and Lord King. 1 Stra. 36. and 2 P. Wms. 613.

* *Bushell* v. *Bushell,* 1 Scho. and Lef. vol. 1. p. 103. *Underwood* v. *Lord Courtown,* ib. vol. 2. p. 64.

brance cannot, therefore, with prudence, be relied upon on the ground of prior registry.

The clauses in these statutes enacting, that every deed, &c. shall be void against a subsequent purchaser, &c. unless a memorial thereof be registered as thereby directed, have, in conformity to the maxim of equity*, been controlled in construction by the spirit of the acts, and the intention of the legislature as declared in the preambles, which shew that the final end to be obtained is, the protection of purchasers or mortgagees against prior secret conveyances and fraudulent incumbrances; the propriety of this mode of interpretation has been exemplified on many occasions †: it has therefore been deter-

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* That where the intention is clear, too minute a stress be not laid on the strict and precise signification of words; nam qui hæret in litera, hæret in cortice. Hob. 27.

† As by Puffendorf. The law says, that they who, in a storm, forsake the ship, shall lose

mined, by the following cases, that a purchaser, whose deed is registered, having had notice, at the time of his purchase, of a prior incumbrance not registered, shall be bound in equity by such incumbrance, notwithstanding the legal estate is vested in him by the effect of the statutes; for it is not a secret incumbrance by which he can be prejudiced, and, although it is not registered, he has that notice which the acts were intended to supply*; and it is evident, that, if a

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their right in the ship and lading, which shall be the property of those who stay in it. A ship is quitted in a storm by all who were in it, except one sick man, who was not able to get out; and the ship, by accident, comes safe into port. The reason of the law was the encouragement which the legislature designed to give those who would expose their lives to save the ship; and the sense of the words being too general is to be restrained by the end. Ruth. Inst. 2. 345.

* Equitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat, nullâ scripturâ comprehensa, sed solum in verâ ratione consistens. Co. Lit. 24. b.

different construction prevailed, it would afford facility to the commission of frauds by collusion, for it is fraudulent in a man, having notice, to take a conveyance to defeat the charge of another.

Lord Forbes v. *Deniston*, 4 Bro. Parl. Ca. 189. 1 Ves. 67. S. C.

This case arose on the Irish register act, which is general. Lord Granard being tenant for life, remainder to his first and other sons in tail, with power of leasing for lives, granted a lease for three lives, which was not registered. He afterwards agreed with Lord Forbes, his eldest son, by the agency of Mr. Stewart, to sell him his life estate, upon Lord Forbes paying his father's debts and securing other payments; and the estate was accordingly conveyed to trustees for Lord Forbes, and the conveyance was registered. The trustees having brought an ejectment against the lessee, he applied to the court of chancery; and, upon proving that Mr. Stewart, Lord Forbes's agent, had notice of the lease during

the treaty for the purchase, Lord Middleton, the chancellor of Ireland, awarded a perpetual injunction against Lord Forbes and his trustees. From this decree there was an appeal to the House of Lords, where it was reversed as to part, the injunction being restrained to the life of Lord Granard, because the lease was not good under the power; but, as to the principal point, the decree was affirmed.

Blades v. *Blades*, 1 Eq. Ca. Abr. 358.

William Blades devised lands to his wife for life, and, after her death, to his nine children. The wife entered, but did not register the will. The heir at law mortgaged the estate, and the mortgagee got the deed registered, and, upon a bill brought against him, denied notice of the will; but it was proved that he had notice; and Lord Chancellor King decreed, that having notice of the will, though it was not registered, bound him; and that his getting his own purchase deed first registered was a fraud; the

design of those acts being only to give parties notice who might otherwise, without such registry, be in danger of being imposed on by a prior purchase or mortgage, which they are in no danger of when they have any notice thereof, in any manner, though not by registry. And that they would never suffer an act of parliament made to prevent fraud, to be a protection to fraud.

Chevall v. *Nicholls,* Stra. 664.

In this case, in conformity to the foregoing, Lord Chief Baron Gilbert held, that the statute only intended to give such notice of former incumbrances to purchasers, that they might not thereby be defrauded. But if a man knows, of his own knowledge, that there is a prior incumbrance, and, notwithstanding that knowledge, becomes a purchaser, the statute was never intended to relieve such a person, though the first incumbrance was not registered; for, where a man purchases with notice of a prior incumbrance, he pur-

chases with an ill conscience; and, in a court of equity, his purchase will never be established.

Le Neve v. *Le Neve*, 3 Atk. 646.

This bill was filed by the plaintiffs, as the only surviving children of the defendant, Edward Le Neve, by Henrietta, his late wife, deceased.

The agent of the defendant, having full notice of the first articles, made on her husband's first marriage, this is notice likewise to her, and is also a sufficient equity in the plaintiff to postpone the second articles and settlement, notwithstanding these only have been registered.

The facts were, that in 1718, the defendant, Edward Le Neve, intermarried with his first wife Henrietta, who had a considerable fortune, and articles were executed previous to the marriage, dated July 1st, 1718, whereby the father of Edward, in consideration of Henrietta's fortune, &c. covenanted with trustees to convey to them several estates, and some leasehold amongst the rest, near Soho Square, in the county of Middlesex, to permit Edward Le Neve, the younger, to receive the rents and profits, during his own life, and after his death, to pay Henrietta £250 a-year in case she survived Edward; and, after the decease of Edward and Henrietta, that the said estates should

remain to their issue, in such manner as Edward, the younger, should, by will or otherwise, appoint; and, for want of such issue, to the use of Edward Le Neve, the father, and his heirs.

The marriage took effect, and, on the 16th of June, 1719, a settlement was made in pursuance of the articles, and Edward and Henrietta had issue the plaintiffs; and Henrietta died in July, 1740, leaving no other children.

Edward Le Neve afterwards entered into a treaty of marriage with the defendant Mary, and, by articles dated November 16th, 1743, previous to the marriage, Edward, in consideration of such marriage, covenanted with the trustees, the defendants Dandrige and Norton, to convey these very leasehold estates, near Soho Square, to them, their executors, &c. within three months after the marriage, in trust to pay the defendant Mary, out of the rents of

these messuages, in case she survived him, a clear annuity of £150 for her life, for her jointure, &c.

This marriage took effect, and, three months after, on the 20th of January, 1743, a settlement was made pursuant to the articles.

The second articles and settlement were registered, but not the first.

Edward Le Neve mortgaged the houses likewise.

The bill was brought in order to set the second articles and settlement out of the way, and that they might be postponed to the first articles and settlement, upon this equity, that the defendant, Mary Le Neve, had notice of them.

The counsel for the plaintiffs admitted that the registering the second articles and settlement had, in point of law, affected the leasehold estates, as the statute of the 7th of Queen Ann gives the legal estate where the effect of the registering has placed it.

Then the question was, whether equity would enable the children of the first marriage to get the better of the defendant's legal right; and that depended upon the question of notice.

First. Whether it appeared sufficiently Joseph Norton was attorney for the defendant Mary, in the transaction of her marriage.

Secondly. Whether Norton himself had sufficient notice of the first articles and settlement.

Thirdly. Whether that would affect Mary, as a purchaser, and postpone her articles and settlement notwithstanding the register act.

Lord Chancellor Hardwicke, on investigating the defendant Mary's answer, on the authority of the cases of *Brotherton* v. *Hatt*, 2 Vern. 574, and *Jennings* v. *Blincorn* and others, 2 Vern. 609, determined that enough was admitted to make Norton attorney or agent for her, and that there was sufficient evidence of no-

tice to him ; for although the defendant Mary denied notice to herself, whether there was notice to another person, her agent, she passed by without giving any answer, which is what is called at law, a negative pregnant that there was notice to her agent, and the evidence of notice to Norton was extremely strong ; so that the rule that oath against oath shall not prevail did not apply ; and there are many cases where the court, upon the testimony of one witness whose credit is unimpeached, and what he swears uncontradicted by the answer, have decreed upon this single evidence.

Denying notice as to herself only, is a negative pregnant there was no notice to her agent.

The third and last general question, whether the notice to Norton will affect the defendant Mary, as a purchaser, and postpone her articles and settlement, notwithstanding the register act, his lordship observed, depends upon two thing:—

First, whether any notice whatsoever would be be sufficient to take

from the defendant, Mary Le Neve, the benefit of the register act.

Secondly, whether personal notice to the defendant Mary is requisite to postpone her, or whether notice to her agent is sufficient to do it likewise.

As to the first, it is a question of great extent and consequence.

The preamble to the statute of 7 Ann. c. 20. is in substance, "Whereas by the different and several ways of conveying lands, &c. such as are ill disposed, have it in their power to commit frauds, and frequently do so, by means whereof several persons have been undone in their purchases and mortgages, by prior and secret conveyances and fraudulent incumbrances."

Then comes the enacting clause, "That a memorial of all deeds and conveyances, which, after the 29th of September, 1709, shall be made and executed, and of all wills and devises in writing, whereby any honours, ma-

nors, lands, &c. in the county of Middlesex, may be any way affected, in law or equity, may be registered in such manner as is after directed; and that every such deed or conveyance, that shall at any time after, &c. be made and executed, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for a valuable consideration, unless such memorial thereof be registered, as by this act is directed, before the registering of the memorial of the deed or conveyance, under which such subsequent purchaser or mortgagee shall claim, &c."

The intent of the register act to secure subsequent purchasers against prior secret conveyances.

If a subsequent purchaser had notice of a prior conveyance, then that was not a secret conveyance by

What appears by the preamble to be the intention of the act? plainly to secure subsequent purchasers, and mortgagees against prior secret conveyances and fraudulent incumbrances; where a person had no notice of a prior conveyance, there the registering his subsequent conveyance shall prevail against the prior, but if he had notice of a prior con-

veyance, then that was not a secret conveyance by which he could be prejudiced.

which he could be prejudiced.

The enacting clause says, that every such deed shall be void against any subsequent purchaser or mortgagee, unless the memorial thereof be registered, &c. that is, it gives them the legal estate; but it does not say, that such subsequent purchaser is not left open to any equity which a prior purchaser or incumbrancer may have, for he can be in no danger where he knows of another incumbrance, because he might then have stopped his hand from proceeding.

The enacting clause gives a subsequent purchaser the legal estate, but it does not say he is not left open to any equity which a prior purchaser or incumbrancer may have.

This case has been very properly compared to cases on the 27 H. 8. for the inrolment of bargains and sales; that act was formed pretty much in the same manner with this.

The words of the enacting clause are, "That from, &c. no manors, lands, tenements, &c. shall pass, alter, or change, from one to another, whereby any estate of inheritance or

freehold shall be made or take effect in any person or persons, or any use thereof, to be made by reason only of any bargain and sale thereof, except the same bargain and sale be made by writing indented, sealed, and inroled in one of the King's courts of record at Westminster, or else within the same county, &c. where the same manors, &c. so bargained and sold, lie, &c. and the same inrolment to be had and made within six months next after the date of the same writings, indented, &c.

Nor any use thereof shall pass from one to the other; what is the meaning of this?

Before the making of the act, any paper writing passed the use, from the bargainor to the bargainee, whereby great mischiefs arose; for it entangled purchasers, affected and injured the crown, and was contrary to the rule of law, which required notoriety in purchases, by feoffment and livery, &c.

But what has been the construction of this statute ever since? Why, if a subsequent bargainee has notice of a prior, he is equally affected with that notice, as if the prior purchase had been a conveyance by livery, &c.

Under the statute for inrolment of deeds, if a subsequent bargainee has notice of a prior, he is equally affected with that notice, as if the prior purchase had been a conveyance by feoffment and livery.

The operation of both acts of parliament and construction of them are the same, and it would be a most mischievous thing, if a person, taking advantage of the legal form appointed by an act of parliament, might, under that, protect himself against a person who had a prior equity, of which he had notice.

To let a person take advantage of the legal form appointed by an act of parliament, and protect himself against another who had a prior equity, of which he had notice, would be of mischievous consequence.

The cases put by the attorney general are very material.

Suppose (said he) the defendant Mary had, by letter of attorney, empowered Norton to transact the affair with her husband, and he, by means of this agency, comes to the knowledge of the prior articles and settlement, would not this affect the principal.

Or suppose a purchaser of lands in a register county, orders his attorney to register it, and he neglects to do it, and then buys the estate himself and registers his own conveyance, shall this be allowed to prevail?

It certainly shall not; for such a person is out of the consequences which the register act guards against, of imposition from a prior secret conveyance, as he had personal knowledge of the first.

His lordship then cited the cases of *Lord Forbes* v. *Deniston* and *Blades* v. *Blades*, and continued, I mention this (*Blades* v. *Blades*) not only as a material authority, but as determined by Lord Chancellor King, whom we all know was as willing to adhere to the common law as any judge that ever sat here.

Lord King as inclinable to adhere to the common law as any judge that ever sat in chancery.

The case of *Chevall* v. *Nicholls* was in the court of exchequer, the 10th of December, 1725, before Lord Chief Baron Gilbert, and is a clear authority for giving relief against the

registry act, upon an equity of notice; but then there were charges of fraudulent circumstances besides, and therefore is not so similar to the present.

The ground of the determination in these cases is, that the taking of a legal estate, after notice of a prior right, makes a person a malâ fide purchaser and is a species of fraud, and agrees with the definition of dolus malus in the civil law.

Consider therefore what is the ground of all this, and particularly of those cases which went on the equity of notice only; for Lord Forbes was on notice only, and notice too to the agent; the ground of it plainly is this, that the taking of a legal estate after notice of a prior right, makes a person a malâ fide purchaser, (and not, that he is not a purchaser for a valuable consideration in every other respect;) this is a species of fraud, and dolus malus itself; for he knew the first purchaser had the clear right of the estate, and after knowing that, he takes away the right of another person by getting the legal estate.

And this exactly agrees with the definition of the civil law of dolus malus, Dig. lib. 4 tit. 3 Lex. 2. do-

lum malum Servius ita definit, machinationem quandam alterius decipiendi causa, cum aliud simulatur, et aliud agitur; Libeo autem, posse et sine simulatione id agi, ut quis circumveniatur: posse et sine dolo malo aliud agi, aliud simulari; sicuti faciunt, qui per ejusmodi dissimulationem deserviant, et tuentur vel sua vel aliena. Itaque ipse sic definivit, dolum malum esse omnem calliditatem, fallaciam, machinationem, ad circumveniendum fallendum decipiendum alterum adhibitam. Libeonis definitio vera est.

A maxim in our law, that fraus et dolus nemini patrocinari debent.

Now if a person does not stop his hand, but gets the legal estate when he knew the right in equity was in another, machinatur ad circumveniendum; and it is a maxim too, in our law, that fraus et dolus nemini patrocinari debent. Co. 3. Rep. 78. b.

If the ground is the fraud or mala fides of the party, it is all one

Fraud or mala fides, therefore, is the true ground on which the court is governed in the cases of notice,

and it is a consequence of the decision of the former question, that notice to the agent is sufficient; for if the ground is the fraud or mala fides of the party, then it is all one whether by the party himself or his agent, still it is machinatio ad circumveniendum and the putting a copy of the first articles and settlement into Norton's hands, to take the opinion of counsel in what manner they could be set aside, is a contrivance to circumvent.

whether by the party himself or his agent, still it is machinatio ad circumveniendum.

It has been said, if this woman has been imposed on by her husband, she, instead of cheating, has been cheated.

But then who ought to suffer, the person intrusting an agent, or a stranger who did not employ him? He certainly who trusts most ought to suffer most.

He certainly who trusts most ought to suffer most.

Mr. Hatt, the third mortgagee in the case in 2 Vern. mentioned before, was imposed on, and so was Moore, in the other case reported

If the principal's being imposed on by his agent was admitted as an excuse, it would

make all the cases of notice very precarious, for it seldom happens but the agent has imposed on his principal.

there, clearly imposed on; and yet if this was to be any excuse, it would make all the cases of notice very precarious; for it seldom happens but the agent has imposed on his principal; and, notwithstanding that, the person trusting ought to suffer for his ill-placed confidence.

Therefore in both respects, as agent and trustee, notice to Joseph Norton is notice to the defendant Mary likewise; and also, as to the registry act, here is a sufficient equity in the plaintiff to postpone the second articles and settlement, notwithstanding these only have been registered; and his lordship decreed accordingly.

But, from the following decisions, it will be seen that the court will not give any relief, except in cases of apparent fraud or clear and undoubted notice to the subsequent purchaser of the prior deed or incumbrance; suspicion of such notice is not sufficient.

Hine v. *Dodd* 2 Atk. 275.

A bill was brought by a judgment

creditor to be let in upon an estate of one Proof and his wife, in Middlesex, preferably to the defendant, who was a mortgagee of the same estate, upon a suggestion that the defendant had notice of the judgment before the mortgage was executed, and likewise to enquire into the consideration of the mortgage.

The judgment was entered up on the 12th of March, 1733, but not registered till the 12th of June, 1735.

The mortgage was made the 24th May, 1735, and registered June the 2d, 1735.

Lord Hardwicke—"This case depends upon the notice the defendant had of the judgment before his mortgage was registered. The register act, the 7th of Ann. c. 20. is notice to the parties and a notice to every body; and the meaning of this statute was to prevent parol proofs of notice or not notice. But, notwithstanding, there are cases where this court have broke in upon this,

though one incumbrance was registered before another, but it was in cases of fraud: the first was an Irish case in the House of Lords*, the next was a Yorkshire case before Lord Chancellor King†. There may, possibly, have been cases upon notice divested of fraud, but then the proof must be extremely clear.

"But though, in the present case, there are strong circumstances of notice before the execution of the mortgage, yet, upon mere suspicion only, I will not overturn a positive law."

His lordship having commented on the evidence, observed that there was barely the evidence of a defendant's confession in contradiction to his answer, and, contrary to a positive act of parliament, made to prevent any temptation to perjury from contrariety of evidence.

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* *Lord Forbes* v. *Deniston*, ante p. 73.

† *Blades* v. *Blades*, ante p. 74.

But what weighed principally with his lordship was, the great danger of overturning an act of parliament, and making it mere waste paper.

To be sure, apparent fraud or clear and undoubted notice would be a proper ground of relief, but suspicion of notice, though a strong suspicion, not sufficient to justify the court in breaking in upon an act of parliament.

His lordship therefore decreed, so far as the plaintiff's bill sought relief by postponing the defendant's mortgage to the plaintiff's judgment, that it should be dismissed without costs.

Jolland v. *Stainbridge*, 3 Ves. Jun. 478.

Edward Jolland being tenant in tail of an estate in Middlesex, under the will of Robert Long, granted a lease of part of the premises to Daniel Hands, for 61 years, which was ultimately assigned to the defendant by indenture, dated the 9th February, 1790, and this deed and the lease and

intermediate assignments were registered.

After the death of Edward Jolland, the plaintiff, his only child, brought an ejectment claiming as issue in tail under Long's will; but the will not having been registered, she was nonsuited.

She then filed this bill, charging notice to Hands, previous to the lease, and also to the defendant previous to his becoming entitled.

The master of the rolls decreed that the bill must be dismissed, the plaintiff not having made out a case to entitle her to the relief prayed for. He observed that there were a great many suspicious circumstances in this case, but, after commenting upon the evidence, that whatever the rule might be as to the registration of deeds, it was impossible to let such evidence as that be brought to prove notice upon a purchaser for valuable consideration. He must admit then that the registry is not

conclusive evidence; but it was equally clear that it must be satisfactorily proved, that the person who registers the subsequent deed must have known exactly the situation of the persons having the prior deed; and, knowing that, registered, in order to defraud them of that title he knew at the time was in them.

The grounds on which he dismissed the bill were, first, that there was not sufficient proof of notice to Hands, nor secondly, to Stainbridge.

The master of the Rolls regretted that the statute had been broken in upon by parol evidence, but was very glad to find Lord Hardwicke, in *Hine* and *Dodd*, said, that nothing short of actual fraud would do.

It appears, however, that Lord Hardwicke said, apparent fraud or clear and undoubted notice would be a proper ground of relief.

It has been observed, that the decisions on these statutes have served, instead of repressing doubts, to dis-

tract the mind with uncertainty and confusion, by the contrariety of their doctrines*; but it is presumed that due attention to the foregoing cases will shew that there is nothing irreconcilable or discordant in the decisions of the courts; Lord Hardwicke's dictum indeed, is in opposition to them; but so long as it remains the province of courts, conformably to the established principles of equity, *jus dicere non jus dare*, the point may be considered determined against him, consistently with a due respect for that learned judge, of whom Lord Mansfield used to say†, "when he pronounced his decrees, Wisdom herself might be said to speak."

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* Rigge 44 and 39.
† Butler's Horæ Jur.

APPENDIX.

MEMORIALS must be written upon vellum or parchment, and the deed or will, or probate thereof, must be produced to the register or master at the time of entering the memorial, who must indorse a certificate on the deed, will, or probate, of the day, hour, and time of registering, and in what book, page, and number.

Memorial of Indentures of Lease and Release.

A memorial to be registered of indentures of lease and release, bearing date respectively the and days of 1818, the lease made between A. B. of in the county of Esquire, of the one part, and C. D. of, &c. of the other part, and the release made between the said A. B. and R. his wife, of the first part, [*insert a full descrip-*

tion of all the parties, as in the deeds] they comprise all [*insert the description of parcels from the deeds, including the names of the parishes, hamlets, &c. where situated, but instead of the general words*] with their rights, members, and appurtenances; and the said indentures of lease and release, as to the execution thereof by the said A. B. are witnessed by T. P. of, &c. and W. B. of, &c. [*the residence and occupation of all witnesses must be added to their names in the attestations and memorials*] and the said indenture of release, as to the execution thereof by the said C. D., is witnessed by, &c. [*and so of all the parties who execute*] and the said indentures of lease and release are hereby required by the said L. M*. to be registered, pursuant to Act of Parliament. As witness his hand and seal this day of 1818.

L. M. (L. S.)

Signed and sealed in the presence of

T. P†.
R. S.

* *Any one of the grantors or grantees, his or their heirs, executors or administrators, guardians, or trustees, as in precedent, p.* 103.

† *One of the witnesses to the signing of the memorial must be one of the witnesses to the execution of the deed by a grantor, who must make oath of both, either at the register office, or by affidavit, as in precedent, p.* 110.

Memorial of an Indenture of Mortgage, or any other single Indenture.

A memorial to be registered of
An indenture bearing date the day of 1818, made between A. B. of, &c. of the first part, [*describe all the parties as in the deed*] it comprises all* [*insert the description of parcels from the deed, with names of parishes, hamlets, &c. omitting the general words*] with their rights, members, and appurtenances; and the said indenture, as to the execution thereof by the said A. B. is witnessed by T. L. of, &c. and R. S. of, &c., and as to the execution thereof by the said E. F. by J. K. of, &c. and P. R. of, &c. [*describing the attesting witnesses to all the parties who execute*] and the said indenture is hereby required by the said E. F. [*vide note**, *p.* 98] to be registered pursuant to

* *Where a schedule is referred to, take the words referring to it, and add,* which are therein described as follows, *inserting the description verbatim from the schedule.*

Where there is only a general description in the deed to be registered, as in assignments under a commission of bankrupt, or an insolvency act, insert in the memorial the general description in the deed verbatim.

the Act of Parliament. As witness his hand and seal this day of 1818.

E. F. (L. S.)

Signed and sealed in the presence of

R. S. [*vide note* †, *p.* 98.]
Y. Z.

Memorial of a Deed Poll.

A memorial to be registered of

A Deed Poll, bearing date the day of 1818, to which A. B. of, &c. and C. D. of, &c. are the parties; it comprises all, &c. with their rights, members, and appurtenances; and the said deed poll, as to the execution thereof by the said A. B. is witnessed by E. F. of &c. and as to the execution thereof by the said C. D. by G. H. of, &c. And the said deed poll is hereby required by the said C. D. [*vide note* †, *p.* 98] to be registered pursuant to the Act of Parliament. As witness his hand and seal this day of 1818.

C. D. (L. S.)

Signed and sealed in the presence of

E. F. [*vide note* †, *p.* 98.]
J. R.

Memorial of a Deed Poll indorsed upon any other Deed.

A memorial to be registered of
A Deed Poll, bearing date, &c. to which A. B. of, &c. and C. D. of, &c. are the parties; it comprises all and singular the messuages, lands, tenements, and hereditaments, mentioned and comprised [*taking these words from the deed poll*] in a certain indenture upon which the said deed poll is indorsed, and which are therein described as follows; all, &c. [*take the description from the indenture*] with their rights, members, and appurtenances; and the said deed poll, as to the execution, &c. [*as in the last precedent.*]

Memorial of Articles of Agreement.

A memorial to be registered of
Articles of Agreement, bearing date the
day of 1818, made between A. B. of &c. on the one part, and C. D. of, &c. on the other part; they comprise or relate to all, &c. [*taking the description verbatim*] and the said articles, as to the execution thereof by the said A. B. are witnessed by E. F. of, &c. and as to the execution thereof by the said C. D. by G. H.

of, &c. and the said articles are hereby required by the said A. B. to be registered pursuant to the Act of Parliament. As witness his hand and seal this day of 1818.

A. B. (L. S.)

Signed and sealed in the presence of

E. F.
J. R.

Memorial, where there are more Writings than one, for perfecting the same Conveyance or Security.

A memorial to be registered of An Indenture bearing date the day of 1818, made between A. B. of, &c. of the one part, and C. D. of, &c. of the other part; [*the parties must be fully described, though immediately following the deed referred to*] it comprises the same messuages, lands, tenements, and hereditaments, as are described or mentioned in the indentures of lease and release, a memorial whereof is registered immediately preceding this (or was registered on the day of last past, in B. No.) and is for making and perfecting the same conveyance (or security) as the said indentures of lease and release relate to, and the now memorializing in-

denture, as to the execution thereof by the said A. B. is witnessed by E. F. of, &c. and G. H. of, &c. [*if there are more attestations they must all be inserted*] and the said indenture is hereby required by the said C. D. [*vide note* *, *p.* 98] to be registered pursuant to the Act of Parliament. As witness his hand and seal this day of 1818.

C. D. (L. S.)

Signed and sealed in the presence of

G. H. [*vide note* †, *p.* 98]
P. R.

Memorial of an Indenture required to be registered by the Heir, Executor or Administrator, Guardian or Trustee, of any Grantor or Grantee.

A memorial to be registered of
An Indenture bearing date, &c. made between A. B. of, &c. of the first part, C. D. of, &c. of the second part, and E. F. of, &c. of the third part; it comprises all, &c. with their rights, members, and appurtenances; which said indenture, as to the execution thereof by the said A. B. is witnessed by G. H. of, &c. and J. K. of, &c. and as to the execution thereof by the said C. D. and E. F. by L. M. of, &c. and N. O. of, &c.

and the same is hereby required by P. Q. executor, (or heir at law, &c.) of the last will and testament of the said E. F. [*or either of the other parties*] to be registered. As witness his hand and seal this day of 1818.

P. Q. (L. S.)

Signed and sealed in the presence of

G. H. [*vide note* †, *p.* 98.]
R. S.

Memorial of a Will or Probate.

A memorial to be registered of
The (Probate of the) last Will and Testament of A. B. late of in the county of Esquire, which bears date, &c. the execution whereof by the testator is witnessed by [*state the names, places of abode, and occupations, of all the witnesses*] and by the said will all [*insert a description of all the honors, manors, lands, tenements, and hereditaments, devised, charged, or affected, by the will, with the parishes, &c. in such manner as they are therein expressed*] are devised (charged or affected) as therein mentioned; and the said (probate of the said) will is hereby required by C. D. (or by E. F. the heir, executor, administrator, guardian, or trustee of C. D.) one of the devisees therein named to be registered pursuant to Act of Parliament. As witness his

hand and seal this day of
1818.

C. D. (or E. F.) (L. S.)

Signed and sealed in the presence of

G. H*.
J. R.

A Certificate to discharge a Mortgage.

I, A. B. of, &c. *(the mortgagee or mortgagees, his, her, or their executors, administrators, or assigns,) (or in the East and West Ridings of Yorkshire, and Kingston upon Hull,* we, A. B. of, &c. and C. D. of, &c. *the mortgagor, his executors, administrators, or assigns)* do hereby certify that C. D. of, &c. (*or* the said C. D.) hath paid and satisfied all monies due and owing upon an indenture of mortgage bearing date the day of 1818, made between (me) the said C. D. of the one part, and me the said A. B. of the other part, a memorial whereof was registered on the day of the same month of 1818, B . No. , in discharge of the said mortgage: and I (or we)

* *Neither of these witnesses need have attested the execution of the will; the signing of the memorial may be proved by one of them at the register office, or by affidavit, as in precedent, p.* 111.

do hereby require an entry of such satisfaction and discharge to be made in the book wherein the same is registered pursuant to Act of Parliament. As witness my (or our) hand*s* this day of 1818.

A. B.
(C. D.)

Signed and satisfaction acknowledged in the presence of

E. F. of, &c.
G. H. of, &c.

Memorial of a Judgment, with the Affidavit.

A memorial to be registered of
A Judgment in His Majesty's Court of King's Bench, *(or other court)* wherein A. B. is plaintiff, and C. D. of, &c. [*insert the addition and place of abode of the defendant, if any in the judgment*] is the defendant, for the sum of pounds and costs, shillings, which judgment was signed on the day of last past. Dated the day of 1818.

E. F*. [*the officer who signs the judgment, or his deputy.*]

* *Under which add the following affidavit, which must be*

J. K. of, &c. maketh oath that he was present and did see E. F. Esquire, Secondary of the Court of King's Bench [*or other officer*] sign the above memorial, and that the name "E. F." thereto subscribed is his hand-writing.

J. K.

Sworn, &c.

Memorial of a Statute, with the Affidavit.

A memorial to be registered of
A Statute Staple, (or Merchant) bearing date the day of 1818, whereby A. B. of, &c. [*additions and places of abode of all the cognizors*] acknowledged before the Right Honourable Edward Lord Ellenborough, Chief Justice of His Majesty's Court of King's Bench, that he was indebted to C. D. of, &c. [*additions and places of abode of all the cognizees*] in the sum of pounds.

E. F. [*the officer in whose office the statute is inroled.*]

[*Vide note *, preceding page.*]

stamped and sworn before any judge, or a master in chancery, at the public office.

G. H. of, &c. maketh oath that he was present, and did see E. F. Esquire, Clerk of the Recognizances of the nature of Statute Staple, sign the above memorial, and that the name "E. F." thereto subscribed, is his hand-writing.

G. H.

Sworn, &c.

Memorial of a Recognizance, with the Affidavit.

A memorial to be registered of

A Recognizance, bearing date the day of 1818, and acknowledged in His Majesty's High Court of Chancery, before A. B. Esquire, one of the Masters of the said court, whereby C. D. of in the county of gentleman, acknowledged himself indebted to Sir Thomas Plumer, Knight, Master of the Rolls, and E. F. Esquire, one of the Masters of the said court, in the sum of pounds.

G. H. [*the officer in whose office the recognizance is inroled.*]

[*Vide note* *, *p.* 106.]

J. K. of, &c. maketh oath that he was present, and did see G. H. Esquire, Clerk of the Inrol-

ments in the High Court of Chancery for the County of Middlesex, sign the above memorial, and that the name "G. H." thereto subscribed is his hand-writing.

J. K.

Sworn, &c.

Certificate to discharge a Judgment.

I, A. B. of, &c. *(the plaintiff or plaintiffs, his, her, or their executors, administrators, or assigns,) (or in the East and West Ridings of the county of York, and Kingston upon Hull,* we, A. B. of, &c. and C. D. of, &c. *the defendant, his executors, administrators, or assigns,)* do hereby certify, that C. D. of, &c. (*or* the said C. D.) hath paid and satisfied all monies due and owing upon, and in discharge of, a judgment in His Majesty's Court of King's Bench, *(or other court)* signed on the day of 1818, for the sum of pounds, and costs, shillings, a memorial whereof was registered on the day f 1818, in B. No. , and I (*or* we) do hereby require an entry of such payment and satisfaction to be made in the book wherein the same is registered, pursuant to Act

of Parliament. As witness my (or our) hands this day of 1818.

A. B.
(C. D.)

Signed and satisfaction acknowledged in the presence of

E. F. of, &c.
G. H. of, &c.

The above may be applied to statutes and recognizances.

AFFIDAVITS.

Of Execution of the Memorial of a Deed when the Witness to the Memorial, who attested the Execution of the Deed by a Grantor, cannot attend at the Office.

A. B*. of, &c. maketh oath that he was present, and did see C. D. of, &c. sign and seal the memorial hereunto annexed, and that the name "C. D." thereto subscribed is his hand-writing:

* *To be engrossed on parchment, with a proper stamp, and sworn before a Master in Chancery, ordinary or extraordinary, who must endorse and sign a certificate thereof on the memorial.*

and this deponent further saith, that he was also present, and did see the deed referred to in such memorial duly signed, sealed, and delivered by E. F. [*one of the grantors*] therein described.

A. B.

Sworn, &c.

Of the Execution of the Memorial of a Will, when neither of the Witnesses to the Memorial can attend at the Office.

A. B. of, &c. maketh oath that he was present, and did see L. M. of, &c. sign and seal the memorial hereunto annexed, and that the name " L. M." thereto subscribed is his handwriting.

A. B.

Sworn, &c.

[*Vide preceding note.*]

Of the Signature of a Certificate to discharge a Mortgage Judgment Statute, or Recognizance, and Acknowledgment of Satisfaction, when the Witnesses cannot both attend.

E. F. of, &c. and G. H. of, &c. severally make oath that they were present, and did see

A. B. of, &c. (and C. D. of, &c.) in the annexed certificate named, (severally) sign the same certificate, and that the names " A. B." (and " C. D.") thereto subscribed is (are) his (their) hand-writing; and further that the said A. B. at the time of signing the same, did, in the hearing of these deponents, acknowledge that all monies due upon the indenture of mortgage (judgment, statute, or recognizance,) mentioned in the said certificate, were fully satisfied and paid.

E. F.
G. H.

Sworn, &c.

[*Vide preceding note.*]

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ERRATA.

p. 5, l. 14, dele *and the memorials of them contained a recital of the lease.*
p. 24, l. 12, for *analagous* read *analogous*
p. 72, l 4 from the bottom, for *quâ* read *quæ*.

THE END.

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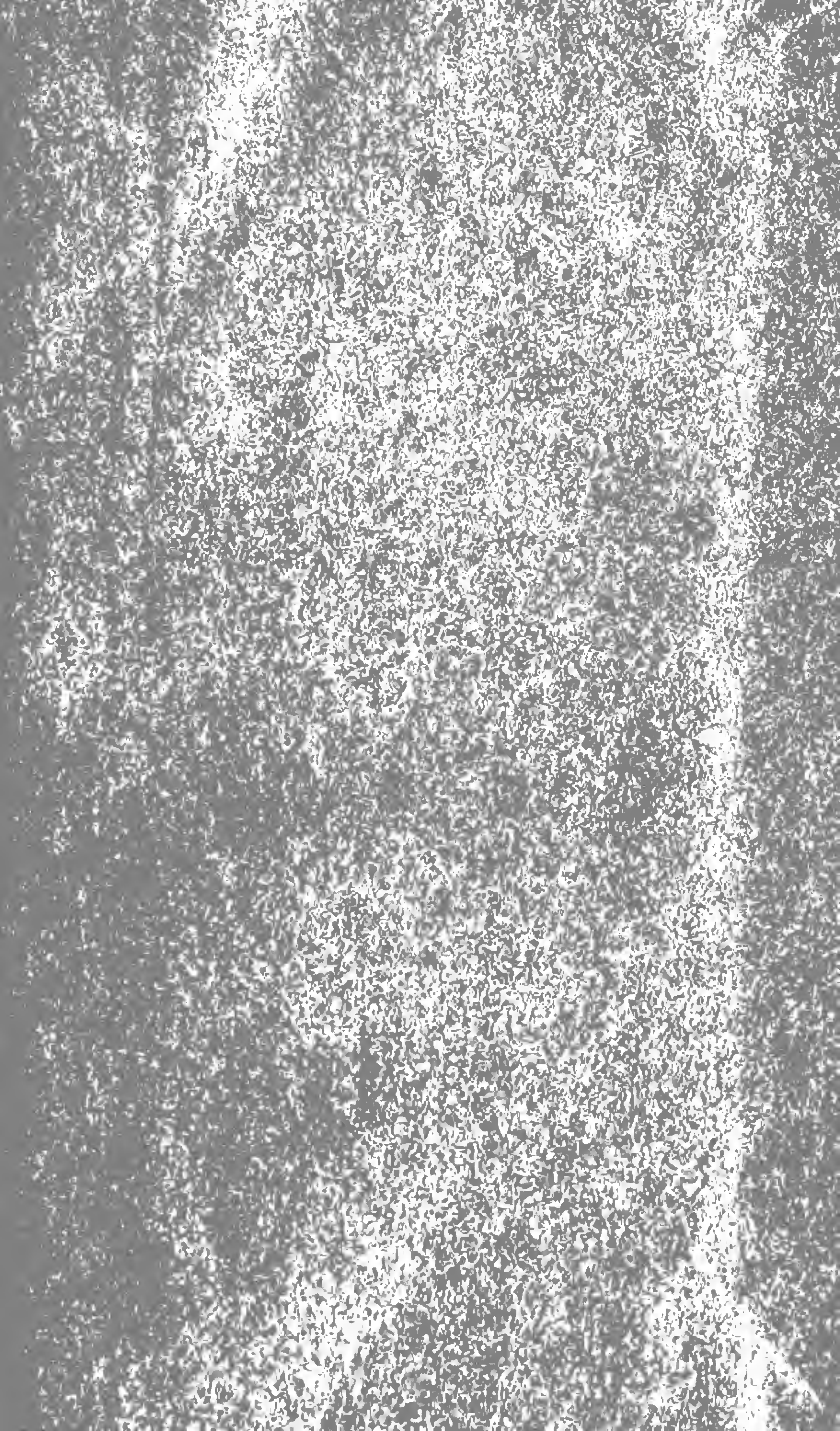

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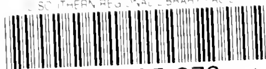
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