

From the Scotsman.

PROCURING A TITLE TO LAND IN SCOTLAND.

There is a certain degree of melancholy truth in the witty remark of Sheridan, "none but lawyers can reform the law—but lawyers will not reform it—therefore, the law will never be reformed." The people feel the pressure of the feudal impediments to the commerce in land, as S. had felt the weight of the old man of the sea upon his shoulders, and they move about hither and thither attempting to shake it off; but trying in vain, from their ignorance of the secret source which gives it so powerful a grasp of their faculties, they sink into lethargic despair. Occasionally an active man such as Mr Wallace rouses them to make an energetic struggle, they get immediately bewildered with the subject. Grave lawyers, conscious of their ignorance, stare them complacently in the face and say, "None can be more anxious for reform than we are; only show us the way in which it can be done, and we shall readily assist you. For our part, our limited abilities point out no practical method to us, but we will be most ready to hear any suggestions." Such an answer generally damps the enthusiasm of the unlearned; for they can only say that they suffer, and can only know, as the vague result of the general experience of mankind, that those who are acquainted with the source of their suffering, could give them relief if they would.

To call on the people, after all they have done and are doing in their own good cause, to add the study of law to the other important knowledge they are actively acquiring, would be unreasonable, but we do earnestly request of them to set their eyes on the evils of our system, and, by acquiring as good a practical acquaintance with them as they can, to arm themselves against their opponents. With a view of giving our unprofessional readers a familiar view of a small portion of the evils of the feudal system, we beg to detail to them the leading features of the form by which a small piece of landed property—value, say £300—is conveyed from hand to hand. In order to be clear and comprehensible, we presume the circumstances to be such as admit the application of the cheapest and simplest forms.

We have first found an agreement as to the sale, which will properly be reduced to writing. This, in the case of moveables to any amount, would constitute a completed contract as to the subject, and the purchaser would be entitled to pay and take possession. In the case of land, however, he only has a right to a title, or more properly speaking, he has a right to demand from the purchaser a commission, empowering him to make a title to himself. Suppose one having contracted to buy a bale of cotton. "Now," says the purchaser, "here is your money, and the cotton is mine." The seller would willingly say "Yes," but the law intervenes and says "No. Mr A. has sold you the cotton it is true, but the title is still in his own person; he cannot give you that if he would, except by a long process. You are only entitled to demand from him a deed, by which he empowers you to get the title, which is in his name transferred to your own." Such is the case with land.

The title of the seller is very often doubtful, the subject of their long written debate between the agents, and finally of appeal to counsel. We shall suppose it unquestionable. The first thing to be procured is a search for incumbrances, necessary to show that the land has not been previously disposed of or burdened. This document generally costs from £10 to £12. The seller then grants a "Disposition"—a very long deed containing all man-

ner of clauses, and giving all manner of rights. "Surely this," says the reader, "will render the matter perfect?" By no means. The purchaser has only got a commission authorising him to get a title made up. There are two ways of accomplishing this—we adopt the more simple and intelligible. We suppose the land not to be a freehold, or holding directly of the King, but to be held of a subject superior. No man can be proprietor of it without the permission of this superior. Among the clauses of the disposition, there is one commissioning a procurator to resign the land into the hands of the superior. Away goes the procurator accompanied by a notary and witnesses, and, in pursuance of a form as old as the days of Malcolm Canmore, he delivers a staff, or, as modern convenience has suggested a pen, into the hands of the superior, in token that the lands are re-delivered into his hands. The superior is for the moment proprietor of the land which some ancestor may have sold a hundred years ago, but he must not keep it. Turning to a person who appears as procurator for the purchaser, he redelivers the pen to him in token that he delivers the land, and the procurator protests as to the fact by slipping a shilling into the hand of the notary. An instrument used to be drawn up by that official, certifying the ceremony, but by some oversight among law agents, this has fallen out of use. "Now what is the use of all this absurdity?" the reader will say, "and why should a superior not let the purchaser enjoy the land without it?" For very excellent reasons. Formerly a superior could not be compelled to sanction a transference. By an old Act of Parliament, when the vassal's estate was attached for debt, the superior was compelled to invest the creditor on receiving a year's rent. Taking advantage of this, conveyancers, by sundry devices, made a formal creditor of the purchaser; and the practice became general for the superior to get a year's rent on investing a purchaser, which he was latterly, by act of Parliament compelled to do. It need not be said that this payment (which is generally restricted by compact to that of a double feu-duty) is a serious tax on the commerce in land.

Now, then, the purchaser has got a present, as it were, of the property from the superior. But then he must be infeft in it or go through the process of being actually but in possession; for while the purchaser is still, in as far as Record tells, the possessor, none but the superior, or one authorized by him, can put him in possession. The superior grants a charter—a very long deed—containing a clause which authorizes an individual, called for the occasion his Bailie, to go to the ground, and give session. When this ceremony takes place, the curiosity of the simple neighbours is raised by beholding a few grave-looking gentlemen poking about the premises as if they were looking for a gold-mine. One takes from his pocket a formidable looking paper, (viz. the charter,) hands it to another, who hands it to a third, who forthwith reads the mandate or commission contained in it. Then one of these serious-looking gentlemen, (viz. the Bailie appointed by the superior,) with all due gravity lifts a piece of stone and a handful of earth, and hands them to another, (the attorney of the purchaser,) who receives the precious symbols with becoming courtesy, and in his turn hands a shilling to the notary-public who reads the mandate. Now, the origin of all this is in the days when writing was an uncommon accomplishment; and when the superior, to publish to all the world that he had given such a piece of land to such a one, called a meeting of his vassals, and symbolically delivered the land in their presence to their new companion. The practice is now kept up, because

the notary-public draws up a long account of it in an expensive deed, called "an instrument of sasine." This sasine has to be recorded, and then the purchaser's "title" is complete. In conclusion let us observe, that the utmost evil is frequently done by economically attempting to dispense with these forms. They must be gone through at one time or other, and if delayed, will only be enforced afterwards, with doubts, increased expense, and penalties in their train.

A lady who for some time had been annoyed by a shallow-pated exquisite, treated him rather cavalierly, which he perceiving, said, "Miss, you do not appear to like my manners;" to which he received for an answer, "I never knew you had any."

"I give way to no puppy, sir," said a fellow, interrupting Mr Wesley, as he passed the street "I give way to no puppy!" "I do sir," said Mr Wesley, as he stepped round and passed on.

CARD.

Mr JAMES FOGO, Attorney at Law, has opened office in Mr Robert Dawson's new stone building, opposite the establishment of Messrs Ross & Primrose, where he will be prepared to transact business in the various branches of his profession.

Entrance to the office, by the Western end of the Building.

May 31st

if

THE NEW-BRUNSWICK SENTINEL.

THE above Paper will be commenced at Fredericton early in November; and will contain, in addition to a variety of Literary, Commercial, and Political Information, Reports of the debates in the Assembly of New Brunswick, and also selections of the most interesting of those which may take place in the Imperial Parliament, as they shall appear in the London weekly papers.

The facility with which intelligence is conveyed to New Brunswick from the United States, requiring only three days for its transmission to Fredericton from Boston; together with the interest which accounts from that quarter usually possess, will recommend *The Sentinel* to the people of this Province.

Agricultural Intelligence shall find a place in the columns of the proposed publication; and although an undue portion of it, will not be devoted to the temperance cause, yet such information connected with the subject will appear from time to time as can conveniently be inserted, consistent with the varied and peculiar arrangement of a Newspaper, and without being offensive to the general reader.

The terms of *The Sentinel* will be 15s per annum, half in advance, exclusive of postage, while it shall be executed. Those of our friends in this Province, who may desire to obtain the paper, can do so by notifying the nearest Agent, or the neighbouring Postmaster; and as it will be conducted on liberal, constitutional, and strictly temperance principles, we trust it will meet with extensive support throughout the Colonies.

EDMUND WARD.

Halifax, October 12, 1837.

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[October 14.]