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AN
E S S A Y
ON A
REGISTRY,
FOR
TITLES *of* LANDS.

(Price One Shilling.)

A N
E S S A Y
O N A
R E G I S T R Y,
F O R
T I T L E S *of* L A N D S.

By Mr *A S G I L L*.

The *F O U R T H* E D I T I O N.



L O N D O N:

Printed for J. WILKIE, behind the *Chapter-House*
in *St Paul's Church-Yard*. 1758.

THE
 NAME
 OF
 THE
 AUTHOR
 OF
 THE
 WORK
 HEREIN
 CONTAINED
 IS
 JOHN
 BROWN
 JUNIOR
 OF
 THE
 CITY
 OF
 BOSTON
 IN
 THE
 STATE
 OF
 MASSACHUSETTS
 WHO
 HAS
 CAUSED
 THIS
 WORK
 TO
 BE
 PRINTED
 BY
 JOHN
 BROWN
 JUNIOR
 AT
 HIS
 PRESS
 IN
 THE
 CITY
 OF
 BOSTON
 IN
 THE
 YEAR
 1791

THE

P R E F A C E.

M*Y Name stands already printed to a late Essay, entitled, Several Assertions proved, in order to create another Species of Money than Gold and Silver, of which I am not ashamed; and I have added my Name to this, that (whatever Usage it meets with) I may stand bound to recognize it.*

I hope I have such a Warrant to search for Truth, that will justify me in breaking through all Crafts and Sciences to find it; as Hunger justified David and his Men, for entering

P R E F A C E.

entring the Priest's House, and eating the Shew-bread.

And because I find that I shall scarce be able to begin, much less to get through, my Argument, without unfolding some Mysteries of Iniquity between Priests and Lawyers, relating to the Titles and Settlements of Lands, I hope, that the Modern Professors of either of these Sciences will not be offended with me for speaking the whole Truth; but if they should, They will thereby be Witnesses against themselves, that they justify the Deeds of their Fathers.

And if I should be charg'd with Prophaneness, for mingling sacred Things with secular; I will shelter myself

P R E F A C E.

myself under the Lord of the Sabbath, who was accused for doing Business on that Day; and

Haud timeo si jam nequeam defendere
crimen,
Cum tanto commune—

SEVERAL

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SEVERAL
A S S E R T I O N S
 P R O V E D,
 In order to introduce a BILL,
 F O R
 Establishing a REGISTRY.
 F O R
T I T L E S of LAND.

FIRST ASSERTION.

*That as the Law now stands, the
Freehold Lands in England may
be incumbered in divers Manners,
and at divers Places.*

P R O V E D.

FREE-HOLD Lands may be in-
cumbered these several Ways:

1. By Feoffment, which must be exe-
cuted in the Place where the Lands lie.

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2. By Grant with Attornment, of which the Tenants must have Notice.
3. By Fine and Recovery (with a Deed leading the Use) which are Matters of Record.
4. By Bargain and Sale, inrolled in either of the Four Courts at *Westminster*, or with the *Custos Rotulorum* of the County where the Lands lie.
5. By Judgments in Three Courts at *Westminster*.
6. By Recognizances entered in the Courts where they are acknowledged.
7. By Statute-Merchant and Staple transmitted into *Chancery*.
8. By Lease and Release, which may be executed any where.
9. By Leases granted out of the Lands, which may be executed any where.
10. By Rent-charges granted out of the same, which may be executed any where.
11. By Will in Writing.
12. By Bonds to the King, which are in the Nature Statutes-staple.

All

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All these are Incumbrances made by the Act of the Party. Besides which there are others that happen by Default, as Acts of Bankruptcy, Escheats, and Attainders.

Now I am not going to calumniate the Law, for allowing of so many sorts of Incumbrances on Lands, but for permitting them to be done in divers Places, *Which doth render the Titles to Lands uncertain, and therefore is a Deficiency in the Law:* And tho' the Law hath directed several of them to be recorded, yet this doth not remedy the Incertainty.

First, Because these Records do lie in several Places, which makes the Search thereof chargeable, and the finding difficult.

Secondly, Because those that are upon Record, have no Preference above those that be not; so that should a Purchaser discover all that are recorded, he may be defeated by those that are not; which can never be discovered, but by the Confes-

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tion of them that made them, because they may be executed any where.

Therefore the Drift of this Essay, is to give a Sanction to one Place above all the rest, by annexing a Privilege to it, and leaving it to every Man's Pleasure whether he will purchase that Privilege or not.

To shew the Necessities and Conveniencies whereof, I offer the following Arguments.

SECOND

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SECOND ASSERTION.

That the Advantage taken (by the Conveyances in the Law) of the Statute of Uses, 27 H. VIII. in making clandestine Conveyances, contrary to the true Intent and Meaning of that Parliament, and all the avowed Laws and Customs of England, doth occasion a Necessity of a Registry to prevent them.

P R O V E D.

IN tracing out the Occasions of making this Statute, I was drawn through all the Statutes against Mortmain, as far back as *Magna Charta*, which doth prohibit the giving Lands to Religious Houses, by which it did seem to me, that Lands had been so given before that time, or else it had

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had not been prohibited: For human Prohibitions generally come after the Fact committed, whereas the Laws Divine prohibit by way of Prevention. *Adam* was forbidden the Tree, before ever he had tasted of it.

The first Statute against Mortmain was made by God himself, before the Fact committed; for by the *Mosaical* Law, which instituted the first Society of Priesthood, the *Levites* are forbidden to have any Inheritance but the Tithes, that they might not dote upon their Possessions; but Avarice increasing upon them by an Acquisition of Wealth, which they did not know how to dispose of, they agreed to set up a Public Treasury, by way of a Joint Stock, for the Use of the Church, which was not within the Words of the Prohibition; and out of this Joint Stock they paid *Judas* the *thirty Pieces of Silver*, which being returned by him, they were loth to part with it, and yet puzzled what to do with it, because being the Price of
Blood

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Blood, it was against their own Canons, to put it again into their Treasury; *Therefore they took Counsel, and bought the Potter's Field to bury Strangers in.* As my Lord *Coke* commends the Wisdom of our ancient Clergy, for always choosing the most learned in the Law to be of their Counsel; so it seems these Priests of old were endued with the like Wisdom: *For the Children of this World are wiser in their Generation, than the Children of the Light.*

Now these Lawyers advised their Clients, that notwithstanding this Canon, they might purchase Lands with this Money, and annex them to their Church: But this being against the Law Divine, prohibiting their purchasing of Lands, the Lawyers found this Stratagem, *To purchase these Lands for a Burying-place only, in the Nature of a Church-yard;* which being a thing of Necessity, and made sacred, would exempt, or at least excuse, it from this Statute against Mortmain; and
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the Priests computing that this might turn to as much Profit as any thing else, (having double Duties for Lodging of Men, and Meat for Horses) they consented to lay out their Money in it. (Any thing to get a Penny in an honest way.)

And this *Field of Blood* was the *first Spot of Glebe in the World*, to which the Priests will be intitled (in right of the Church) if ever they gain the Possession of the Holy Land.

But having laid their Nest-Egg, they went on to join Field to Field, and had they been let alone, had converted whole Kingdoms into Holy Ground before now.

And why Houses of Religion are said to be more haunted with Ghosts than Lay-Tenements, I cannot tell, unless some of their subsequent Augmentations were the Price of Blood, as well as their original Purchase.

But now to begin at our Laws: It is strange to observe, how the Parliaments of *England* did hunt the Priests and Lawyers with

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with Statutes against Mortmain, from the making of *Magna Charta*, 9 H. III. to this Statute in 27 H. VIII. and yet could never catch them.

The Statute of *Magna Charta* (as has been observed) *prohibited the giving of Lands to any Religious House:* To evade this, the Lawyers advised the Clergy two Things: *First*, That whereas several great Estates were held of them, under small Rents, that they might purchase in these Estates to their Church, because they were before held of them. *Secondly*, The Prohibition of the Statute being to *Religious Persons only*, that the Secular Clergy were exempted.

To hunt them out of these Holds, the Statute of 7 E. I. called *Statutum de Religiosis*, doth prohibit any *religious Persons, or others* (which includes the Secular Clergy) by any manner of *Craft or Engine to take Lands in Mortmain*, and so they could not purchase in the Estates held of them.

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To evade this Statute, the Lawyers advised the Clergy, That if they had any silly Confessants who had a Mind to be cheated of their Estates, they might suffer a feigned Action to be brought against them, and therein lose their Lands by Default, which Recoveries were adjudged by the Justices not to be within any of the Words of this Statute, and therefore they were allow'd; *For that Recoveries being prosecuted in course of Law, were by Law presumed to be just and lawful, though they were done in Fraudem Legis.*

To drive them out of this Hold, the Statute of *Westminster 2.* makes all Lands so recover'd to be forfeited to the Lords of the Fee, and for want of their Entry to the King.

To evade this Statute, the Lawyers advised the Clergy two Things: *First*, That for all Lands lying round the Church, they might enter into them by Assent of the Tenants, and make them Churchyard by Bulls of the Pope (*whether they had*
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this by Precedent from the original Purchase, or according the Proverb, *That good Wits jump*, is not material. *Secondly*, They advised them that they might purchase Lands in the Names of other Persons to their Use.

To hunt them out of these Holds, the Statute of 15 R. II. prohibits both these.

To evade this, the Lawyers advised the Clergy, that they might purchase in the Names of other Persons *in Trust* for themselves; which Trust was not within the the precise Words of Use.

And thus the Priests continued to cheat the People of their Estates, and the Lawyers the King of his Escheats, for above three hundred Years together, in Spight of all Laws made to the contrary.

In which time they had taught the Laity this Craft, to convey away their legal Estates to Persons in Trust, whereby to prevent the Descent to the Heir, and consequently the Wardship to the King and other Lords, and yet to keep the Use and

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Pernancy of the Profits to themselves and Families: Of which *H. VIII.* complaining to his Judges, they advised an Act for Transferring all Uses and Trusts into Possessions, for which Purpose a Bill was drawn by the King's Counsel, and presented to the House of *Commons* in the 24th Year of his Reign, when it was rejected, but pass'd in the 27th, which is this Statute of Uses.

And four Years after a Statute pass'd (worth all the former) for Dissolution of Monasteries; by which the Priests lost their Lands, and the Lawyers their Clients (though not their Cunning) as will appear by the Sequel.

Now this Statute of Uses 27 *H. VIII.* hath introduced a new Conveyance in the Law, (which was not before) by way of *Bargain and Sale*, for though a Bargain and Sale did raise a Use at the Common Law, yet it was not a complete Conveyance to transfer the Possession, without an actual Delivery of it in the Country; but now
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this Statute doing that Office by transferring the Use into a Possession, a Bargain and Sale became a complete Conveyance without any other Ceremony, and the same Parliament foreseeing that this Bargain and Sale so perfected, might become a clandestine Conveyance to be executed any where, did intend to provide against it by making a short Statute the same Sessions for that Purpose, called *The Statute for Enrollments*, by which all Conveyances of Inheritance of the Freehold, which pass by Bargain and Sale only, are to be enroll'd within six Months after the Date, that Purchasers may have Notice thereof from the Record.

But of late Years the Lawyers have topt their Inventions upon these two Statutes. For, *First*, They make a *Bargain and Sale* for a Term only (now generally call'd a *Lease for a Year*) and which is not within the Statute of Enrollments, and by this the Lessee gains a Use at *Common Law*, and a Possession by the *Statute of Uses*;

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Uses; which makes him capable of taking a Release of the Reversion at *Common-Law*, and then they make a *Release* to him and his Heirs accordingly. Which two Deeds make him one perfect Conveyance, and so by putting the *Common Law* at both Ends, and the Statute of *Uses* in the Middle, the Statute for Enrollments is bilk'd, and these Conveyances by *Lease and Release*, which are clandestine Conveyances, and invented by the Abuse of one Statute, and the Illusion of the other, are become the common Conveyances of the Kingdom.

I challenge the Inns of Court to shew that either the *Common Law* or any Parliaments of *England*, ever directed any Incumbrances to affect Lands, but by Solemn Livery and Seisin, or Matter of Record; and therefore these clandestine Conveyances are crept in, contrary to the Intent and Meanings of Parliaments, and all the avowed Laws and Customs of the Kingdom.

There

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There are two common Titles to Lands in *England*: The one by Descent, which is prov'd by Marriages, Baptisms, and Burials; and the other by Purchase, which is prov'd by Deeds; and where there is one Dispute of Title by Descent, there are ten by Purchase; because the Titles which shew the Descent are register'd, and those by Purchase are not; for were these Marriages, Baptisms, and Burials, left at large without notifying of them as Purchasers are, it would soon breed Confusion in all the Descents of the Kingdom. And is it not a Reproach to the Law, that that part of the Titles of Lands, which is the Province of poor Parish Clerks, should have more Certainty in it, than that which belongs to the Professors of the Law?

THIRD

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THIRD ASSERTION.

That all Objections made against a Registry, upon Account of Mischiefs which may arise by Discovery of Titles, are not only contrary to all the avowed Laws and Customs of England, but to the very Essence of the Title, and the History of Conveyances.

P R O V E D.

SOME Notice is essentially necessary to the Title of every thing that is vendible: *To make a Title, is to take the Property of a thing from one Man, and put it into another*; of which it is necessary that other Persons should have Notice as well as the Parties, or else the Purchaser can have no Title, because there is no Witness to give Evidence of it, in case the Seller should deny it. And as some
Notice

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Notice is absolutely necessary to all Title; so the more Notice is, the better is the Title; it were better for every Man who is Owner of an Estate, that all Men knew his Title, and then whenever he had occasion to dispose of his Estate, there would be no further Enquiry into the Title of his Lands, than to the Title of Money in his Possession.

And as Notice is thus necessary and advantageous to Title, so in the History of Conveyancing, the most perfect Titles are most notorious, or rather the most notorious are most perfect.

And because Antiquity of Precedents is the greatest Argument in the Law: I'll quote one out of that Authority, which treats of Things done before the Foundations of the World, and foretells us of several Things that will come to pass after the Dissolution of it. The History of the World is but a Modern Treatise of Things of a late Date, which were done in Pursuance of Councils and Decrees made
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before: *Matters of Fact* set forth, without the Original Design and Institution of them seem irrational, and to have no Meaning in them: Would any Thing seem more ridiculous, than that the taking off a Seal and Delivery of a Piece of Parchment by one Man should give another Title to an Estate, if the Law were not known, which gives the Sanction to this Ceremony?

The Precedent I am going to quote is, *That great Settlement of Eternal Life, made by God upon Jesus Christ, for the Considerations therein mentioned*: The Epitome or Contents whereof, and the Manner of the Execution I find in that History which we call the Gospel; but because the Contents thereof is not a Subject within this Essay, I will not dare to touch upon it here: But the manner of the Execution being directly within my Argument, (or rather my Argument within that) I dare relate it as I find it. This Settlement was first enrolled in Heaven (*in the Volume of the Book*

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it is written of me) afterwards was sealed and executed in the Blood of Christ (*the Seal of the Covenant*) in the Presence of all the World (*the Sound thereof is gone thro' the whole Earth*); and since that hath or shall be written and preached, printed and published in all Nations, Kingdoms, Tongues, and Countries. (*This Gospel must first be preached in all the World as a Witness to all Nations, and then shall the End be.*) By all which God himself is bound up, from disposing Eternal Life in any other manner than pursuant to this Settlement, without giving himself the Lye, which he cannot do; and Man hath such Notice of this Title, that he cannot accept any other without becoming an Impostor upon himself.

And this is the highest Precedent for Man to form his Titles by, as far as it is imitable by him; *The things on Earth are but the Patterns of things in the Heavens, where the Originals are kept, to try the Truth of all things by.* God delivered out

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the first Forms of all things in the World, of Ships, of regular Buildings, or Letters written with his own Hand, of Marches and Encampments, taught the first Workers in Brass and Bugle-work, Linnen and Silks, Plowing and Harrowing, Sowing and Reaping, Threshing and Winnowing; all which he owns to come originally from himself. *A Jove Principium.*

And now to begin with the Business of Man: The first Purchase I find, since the Beginning of the World, was made by *Abraham of Ephron, the Hittite*, in these Words. *And the Field of Ephron which was in Mackpelah, which was before Mamre, the Field and the Cave which was therein, and all the Trees that were in the Field, that were in all the Borders round about, were made sure to Abraham for a Possession in the Presence of the Children of Heth, before all that went in at the Gate of the City.*

Another was made by *Boaz of Naomi* in these Words, *And Boaz said unto the Elders*

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Elders and unto all the People, ye are Witnesses this Day, that I have bought all that was Elimelecks, and all that was Chilion and Mahlons of the Hand of Naomi: Moreover Ruth the Moabites, the Wife of Mahlon, have I purchased to be my Wife, ye are Witnesses this Day. And all the People that were in the Gate and the Elders said, We are Witnesses. (O Tempora! O Mores!) Purchases and Marriages made without Lawyers and Priests: However I have mentioned these Conveyances more particularly, because I fancy our modern Conveyancers with all their Trumpery of Stationary Ware, can't make better either for Form or Substance. And these were made by Parol, being before the Delivery of the Form of Letters to Man.

The first that I have observed in Writing was the Purchase of Redemption made by *Jeremy of Hananael* in these Words, *And I subscribed the Evidence and sealed it, and weighed him the Money in the Ballances, so I took the Evidence of the*

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the Purchase, both that which was sealed according to the Law and Custom, and that which was open, and gave them to Baruch in the Sight of Hananael, and in the Presence of the Witnesses, who subscribed the Book of the Purchase before all the Jews that sate in the Court of the Prison; and charged Baruch, saying, Take the Evidence, as well that which is sealed as that which is open, and put them in an earthen Vessel, that they may continue many Days.

By this it doth appear, that the Registering of Deeds is as ancient as the Deeds themselves. Here is the Original sealed, and then register'd in a Book, to which the Witnesses subscribe their Names. Now *Baruch* had the Custody of the Registry, in the Nature of a Public Notary for that Purpose, being elsewhere called *Baruch the Scribe*: But that the Original was deliver'd him, was an extraordinary Thing, for that belongs to the Purchaser: But it being just before the carrying

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carrying away Captive into *Babylon*, (of which *Jeremiah* had notice) he delivered them both to *Baruch*, to hide them 'till the return of the Captivity.

That which I cite these Precedents for, is the Notoriety of them, by calling all the People together to bear Witness, and an Inrollment beside to that which was in writing.

And methinks all the old Forms in the Beginning of Deeds, shew the Intention of making them as public as they could be; *Know all Men by these Presents*; and, *To all People to whom these Presents come, &c.*

And as the Law intends Notice of all things done by Deed, so it hath provided Publications for things done without Deed, as Fairs and Markets for felling of Cattle, that the Purchasers may not be cheated: Publications in the Churches before Matrimony, and Registering after it, to prevent *Bigamy*: So the Law marks Felons

ions in the Hand that none might trust them.

And yet after all this, there is a Provision intended in the Bill for this Registry, whereby any one may conceal the Uses declared of his Estate, yet so that there shall be some Notice taken of the Deed by which the Uses are declared, that the Owner of the Land shall be incapable of selling or mortgaging his Estate, 'till he doth produce that Deed, whereby a Purchaser or Lender cannot be defeated.

FOURTH

FOURTH ASSERTION.

That all Objections made against this Registry, upon Account of reducing the Practice of the Law, are one good Reason for it.

P R O V E D.

THE Practice of the Law in civil Causes is divided into three Sorts: First, *The transferring of Title*, which is called *Conveyancing*. Secondly, *The shewing forth and defending these Titles in Forms of Law*, and this is called *Pleading*. Thirdly, *The arguing upon these Conveyances and Pleadings (when they come in Contest) before the Judges*, and this is called *Practice at the Bar*. So that the Practice of the two latter doth arise from the Errors or Incertainties of the former. Were the Titles of Lands once made certain (which they may be by a Registry and no otherwise), I know what I think
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of the future Gains of the Law: The Profit of the Law arises from the Uncertainty of Property, and therefore as Property is more reduced to a Certainty, the Profit of the Law must be reduced with it, the Fall of the one must be the Rising of the other. Actions of Slander and Battery, and Causes on the Crown side, would scarce find some of the Circuiteers Perriwigs, and yet (if we observe Evidence) they stand obliged to dispute in Titles for many of these. Thief and Whore, Kick and Cuff, are very often the Effect of forcible Entries, Trespasses, and serving of Process, in which the Title comes frequently in Question. But the reducing this Part of the Practice of the Law, are things not seen as yet. The *Proximus ardet* will fall upon the Conveyancers, and that not by altering the Forms of legal Conveyances, or taking them out of their Hands, or putting any Stop to the dealing in Lands, (for that will be increased) but by exposing their manner of Practice

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Practice in this conveyancing Part of the Law.

For as it was number'd among the Sins of one of the Kings of *Israel*, that he made Priests of the meanest of the People; so it is the Misfortune of the People of *England*, that Conveyancers are frequently made out of *old Attornies* or *Noblemens Lease-makers*, frumpt up in *Bar-Gowns*. Two Qualifications are necessary to a compleat Conveyancer. First, *That he be incapable of dispatching Business so fast as he should*. Secondly, *That he doth not dispatch it so fast as he can*. Not to speak of bantering their Clients with their seeming Care and Caution in delaying their Business, shewing great Trunks of old Writings in their Chamber, calling to their Clerks (before them) for one Lord's Settlements and another Lady's Jointure, to tell what great Clients they have; and when they come to be paid, they reckon their Fees by Longitude and Latitude. I have seen an original Mortgage of one Skin, bred up

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by a Scrivener (in six Years) to one and twenty, by affigning it every Year, and adding one Skin to every Assignment by Ricitals and Covenants; as Cows after three Years old, have one Wrinkle added to each Horn for every Year after, which shews their Age: And I am informed that one Deed of sixty Skins was heaved out of a Conveyancery Office the other Day.

At this Rate, in a little Time, the Clients must drive their Deeds out of the Lawyers Chambers in Wheel-barrows. These Assignments and Re-assignments of Securities, have been a pretty sort of Perquisites, especially if they have but an old Judgment or Statute kept on Foot, these are certain annual Incomes. I knew two Serjeants at Law (Usurers) made it their common Practice every long Vacation to swap Securities with one another, to make their Mortgages pay for the Assignment; and (doing this without Advice of Counsel) they once merged an old Term, and thereby spoil'd their Title to secure their

Fees;

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Fees; which (as to them) answers the Character given of these Graduates by a foreign Historian, *Est in regno Angliæ genus hominum doctorum indoctissimum communiter vocat. The learned Serjeants at Law*: Now I cannot think but these Conveyancers and Assigners would be ashamed to produce such things to a Registry; and that therefore they must either abbreviate their Conveyances, or lose their Practice.

But whether this Registry will make these Reductions: 1. Of the Length of Conveyances. 2. The Incertainties of Titles: And, 3. By Consequence, the other Practice in the Law, I cannot tell: However I hope it, and believe some of them fear it.

But if the Cries of Monks and Friars had been regarded, we had never heard of the Dissolution of Monasteries; and if the Clamours of Masters of Request, Clerks, and Escheators had prevailed, the Court of Wards and Liveries had been standing at this Day, and yet perhaps most of these

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had either purchased their Places, or were bred up to that Part of the Law only.

FIFTH ASSERTION.

That the Assurance of the Title, and Dispatch of Business by this Registry, will be more than equivalent to all the Charge in Registering the Incumbrances.

P R O V E D.

THE Certainty of Titles being the main Drift of this Essay, it would be too mean an Argument to use for it, to say, That the Charge of Registering of Deeds will be saved by reducing the Charges in making them, (altho' this be true) yet granting it should not, and that this Registry should be an additional Charge to all others, yet the Privilege of it will be worth the Price.

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It is said, that whenever the Ld. Ch. J. *Hales* had made Purchase, he would say, *Now I would give a Year's Purchase more to be sure of my Title:* And if we should ask those who have lost their Estates for want of a Discovery of Deeds, they would set a higher Price upon it.

Men generally make their Purchases (with the Acquisitions of all their former Life) to settle them on their Posterity, for whom they are more solicitous than for themselves; and therefore they are always more jealous of the Title than the Value, because a Deficiency in Title goes to the whole, but a Deficiency in Value goes but to part only; and for that Reason they would almost think nothing too much to assure them of their Title.

If a Man one hundred and fifty Miles from *London*, is to sue his Neighbour but for 10 *l.* he must employ an Attorney in the Country, who must send to another in *London* to make out a Writ, and this must be entered in one Office and sealed in ano-

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another, and then sent to the Sheriff, who must make out a Warrant, and deliver it to his Under-Officers, who must arrest the Defendant, take a Bail-Bond to the Sheriff, and after Bail given to the Action, the Plaintiff must declare, to which the Defendant may plead almost what he pleases for Delay; and if he pleads to Issue (which is the fairest can be expected) there must be Issue joined, a Record sealed and sent down to the Assizes, a *Ven.* and *Distringas* to return the Jury, Notice of Trial to the Defendant, a Trial had, the Verdict return'd upon the *Possea*, Judgment enter'd, Execution sued out and delivered to the Sheriff, and a Warrant from him to his Under-Officer to levy it.

Now I don't calumniate this Process for Recovery of Debts, nor did I ever hear the Lawyers complain of this as a Burthen to the People. But why of all Troubles the Trouble of a Registry should be only grievous, I can't tell, unless because it
puts

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puts an End to Strife: Is it such a mighty Trouble for an Attorney's Clerk when he is to enter upon a Judgment, to step into the Registry and leave an Entry made of it? And is it such a great Trouble for a Man when he has sealed a Deed, to go to the Registry to acknowledge it?

There's more Trouble than all this in transferring Copyhold Estates, and yet we don't hear much Complaint about them: Men are seldom in such haste about laying out their Money, or at least their Lawyers are not so violent in Dispatch of their Business, but they may dispense with the Ceremony of a Registry, to prevent the Loss of their Estates.

Festina Lente is the Conveyancers Motto, and therefore they advise their Clients not to hurry them, nor put them out of their own Pace; they must think nothing troublesome but the entering the Deed in a Registry. To come to a Lawyer's Chamber twice a Week, to know when they shall come again; then to have a Bill
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of Directions to send for some Deed which the Lawyer wants, and which perhaps is a hundred Miles distant, in they know not whose Hands, to employ an Attorney to search for Judgments, Statutes, Recognizances, Deeds inrolled in four Courts, to send for a Copy of a Will prov'd in a remote Diocese, and bring an Account of all this to the Lawyer, and give a new Fee, and then begin again; and may be two or three such *Recipes* before the Title be finish'd; and the Clients must not think much of all this, but take it as the Nature of Business.

And yet I can't say but all this may be necessary, as the Case now stands, which must still grow worse, if let alone: For the Troubles and Hazards of Titles must continually increase, until they are reduced to a greater Certainty by a Registry.

But then as a Registry would reduce the Incertainty of Titles, it must thereby take away the Delays in Conveyancing, and consequently abridge the Charges:

For

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For as the *Pharisees* made long Prayers, as a Pretence or equivalent for devouring Widows Houses: So Practisers in the Law must make out long Bills, on Pretence for demanding large Fees: Like some Tooth-drawers, who drag their Patients by the Jaws about the Room, to shew them how hardly they earn their Money. To cure a Deficiency in Titles, would be as fatal to Conveyancers, as the Cure of a lame Leg to a Beggar.

It is pleasant enough to any one (but those who are to pay for it) to read a Conveyancer's Bill of Fees, made out for Clients who don't pay well by the Great.

To Counsel for perusing several long Deeds of the Title, which from Beginning to the End was near six Months, and drawing several long Conveyances, in all thirty Skins of Parchments, a hundred Guineas.

To his Clerk for ingrossing the same, and Expedition, 30 Pounds.

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So here the Counsel is paid for Delay, and the Clerk for Expedition, which puts me in mind of three *Items* set down in a Country-Scrivener's Bill, *Pro speciali labore*, 6s. 8d. *Pro expeditione*, 6s. 8d. *Pro dispatch*, 6s. 8d. The first was for keeping the Business a great while, and the other two for doing it presently.

SIXTH

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SIXTH ASSERTION.

That in case this Registry be admitted, it seems more practicable and less troublesome, to settle it in the Metropolis, than to dispose it into the several Counties.

TH O' the Soil of Lands lies in several Counties, yet Concourse of Business to the Metropolis, doth generally occasion the transferring of Titles there (especially of all that are considerable) scarce a Purchase or Mortgage of 500*l.* but is transacted in *London*; and by Posts and other Correspondences, it is less trouble to transmit any thing thither, than few Miles in the Country.

'Tis observable, that the Statute for In-rollment giving Liberty to enter Deeds in either of the four Courts at *Westminster*, or in the County where the Lands lie. The latter is seldom used,

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And many Deeds containing Lands in several Counties, it would be inconvenient to enter them all.

But should it afterwards be found necessary to extend this elsewhere, it will be better done from this as a Precedent, than to settle it altogether.

The Judges of the Kingdom were at first resident in the Kings Courts only, and from thence were made Itinerant as the Occasions of the Country called for them.

There can be no Streams without a Fountain, but when that is finish'd, the Water may be directed to any Place.

Nothing can be perfected without a Beginning, and therefore to resolve to do nothing 'till we can do every thing, is an absolute Resolution to do nothing, and puts us in the case of the impotent Man at the Pool of *Bethesda*, who (by Conclusion) was under an Impossibility of being healed; for he could not be healed 'till he stept in, and he could not step in because he was lame.

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And having thus argued for Publication of Titles, as a Notice against Frauds, I hope Envy cannot say, but I have fairly published my Thoughts about it; and were all Propositions for new Laws made as public as this before they passed, perhaps it might save the Labour of subsequent Acts to repeal or explain them.

As to what I have said in the Law, I appeal to them that know it, whether I have misrecited or misinterpreted it.

And notwithstanding all that I have said of some of the Lawyers, I am so well satisfied in my Relation to that Science, that I would not exchange it, to be a higher Graduate in any other. And it is more owing to the Candour of the Chiefs of the Law (who sit in the Seats of Judgment) in discouraging all fraudulent Practices, and to the Care and Fidelity of the Practisers of the Law, than to the Law itself, that there are no more Frauds committed in the Titles of Lands, under the present Uncertainty of them: For we see, if but One

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or Two in an Age of that Profession (and none of the most Learned neither) do apply themselves to drawing Deeds and forging Evidences, what Work they make in Westminster-Hall.

And as my Lord Coke, speaking of the third Court of Wards, said, That though the Parliament had rejected several Proposals for taking away those Tenures, yet he did not doubt but God had that Kindness for the People of England, that an Act would once pass for that Purpose, by giving the Crown an Equivalent: All which was fulfilled since his Death: So I have that Foresight of the growing Mischiefs for want of a Registry, that I am confident the Necessity of it will force its own Way: And therefore were I now a dying, I would send this out into the World to take its Fate, with this Motto only,

— Sine me, Liber, ibis in Orbem.

A BILL.

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A
B I L L
F O R
Establishing a R E G I S T R Y.
F O R
T I T L E S o f L A N D S.

WHEREAS by the Common-Law of this Realm, Lands, Tenements, and Hereditaments, were not to be transferred from one to another, but by solemn Livery and Seisin, or matter of Record.

And whereas by the Statute made in the 27th Year of the Reign of King Henry the Eighth, intituled, *An Act concerning Uses and Wills*, a Bargain and Sale did be-

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come a compleat Conveyance in the Law, whereby Lands and Tenements might be transferred from one to another in a clandestine Manner, without Livery and Seisin, or Matter of Record. For Prevention whereof, by another Statute made in the the 27th Year of the late King Henry the Eighth, For Inrollment of Bargains and Sales; It was enacted, that from and after the last Day of July, which should be and since was in the Year of our Lord, Manors, Lands, Tenements, or other Hereditaments, should pass, alter, or change from one to another, whereby any Estate of Inheritance of Freehold, should 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 were made by Writing, indented, sealed, and inrolled in one of the King's Courts of Record at *Westminster*, or else within the same County or Counties, where the same Manors, Lands, or Tenements so bargained

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bargained or sold, lie or be, before the *Custos Rotulorum*, and two Justices of the Peace, and the Clerk of the Peace of the same County or Counties; or two of them at the least, whereof the Clerk of the Peace to be one, and the same Inrollment to be had or made, within six Months after the Date of the same Writing indented.

And whereas since the making the said Statutes, of late Years, there have been several Inventions for conveying of Estates of Inheritance of Freehold, by way of Lease and Release, and also for making of Bargains and Sales thereof for long Terms of Years without Inrollment of such Conveyances; both which are a manifest Abuse of the said Statute concerning Uses and Wills, and an Evasion of the said Statute for Inrollments.

And whereas the said Conveyances by Lease and Release, and Bargains and Sales for long Terms of Years, being clandestine Conveyances to be executed any where, and invented contrary to the In-

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tent and Meaning of the said Statutes, and all the ancient and avowed Laws and Customs of this Realm, are now of late Years become the most usual and common Conveyances, for conveying of Freehold Lands, whereby several Frauds and Abuses have been committed, and several Suits and Contentions have risen thereupon, to the manifest hazarding the Titles of the Freehold Lands of this Kingdom, and the Dishonour of the Laws thereof.

For Remedy of the Mischiefs aforesaid, by providing one certain Place, where all the Conveyances and Incumbrances herein after-mentioned, relating to Freehold Lands may be entered, in order to the more easy and ready searching and finding out the same.

Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same.

This

This Blank is for the Constitution and Qualifications of the Register.

And be it Enacted, that the said Register so to be appointed as aforesaid, on or before the Day of and all other succeeding Registers for ever then

then after, shall provide and keep within one of the Inns of Court, or some other Place, in or near the Cities of *London* or *Westminster*, an Office of Registry for the Purposes herein after-mentioned. And shall provide and keep in the said Office, several Register-Books for Registering of Deeds and Writings in manner herein after-mentioned, the counterfeiting of which said Stamps shall be and is hereby made

And be it Enacted, that all Conveyances, Grants, or Assignments of any Manors, Lands, Tenements, or Hereditaments of Inheritance of Freehold, within the Kingdom of *England*, or of any Rents issuing out of the same, or of any Leases or Terms for Lives or Years to be made thereof, which at any time after the Day of shall be duly sealed and executed for good and lawful Consideration, and shall after such sealing

sealing and executing thereof be Registered in one of the said Register-Books, shall in respect thereof have and be esteemed and taken to have the Privileges and Preferences herein after-mentioned, that is to say, that such Conveyances, Grants, or Assignments, from and after such Registering thereof, shall be good and effectual, according to the Purport and Contents thereof, against all other Conveyances, Grants, or Assignments whatsoever, which after the said Day of shall be made of the same Manors, Lands, Tenements, or Hereditaments, and not Registered as aforesaid, notwithstanding that such Conveyances, Grants, or Assignments so omitted to be Registered shall be prior in Date or Execution to the said Conveyances, Grants, or Assignments, which shall be so Registered.

Provided nevertheless that all such Conveyances, Grants, or Assignments so omitted to be Registered as aforesaid, shall, notwithstanding such Omission, be good and effectual

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effectual against the Grantors, or the Persons making the same, and all other Persons claiming under the said Conveyances, Grants, or Assignments, which shall be so Registered as aforesaid, as fully and effectually, to all Intents and Purposes, as if this Act had never been made.

And for preventing a double Charge in enrolling of Bargains and Sales of Inheritance of Freehold, before the Entry thereof in the said Register-Books, Be it Enacted, That such an Entry made as aforesaid, of any Bargain and Sale of Inheritance of Freehold, at any time within six Months after the Date thereof shall be deemed and taken to have, and is hereby made to have, the Force and Effect of an Enrollment within the said Statute for Enrollment of Bargains and Sales, as fully and effectually to all Intents and Purposes as if the same were inrolled in either of the said Courts of Record at *Westminster*, or with the *Custos Rotulorum* of the same County.

And

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And whereas several Conveyances or Assignments may be made by Endorsements upon former Deeds, Be it Enacted, that when any Conveyance, Grant, or Assignment, shall be duly Registered as aforesaid, and after such Registering thereof, there shall be any Grant, Conveyance, or Assignment, Declaration of Trust, or other Deed made by Endorsement thereon, that the Registering such Endorsement is in one of the said Register-Books, and making a Reference therein to the said former Deed on which the same was indorsed, shall be as good and effectual to all Intents and Purposes, as if the said former Deed were again Registered with the said Endorsement.

And whereas it may be conceived to be sometimes prejudicial or inconvenient, to publish the Uses and Trusts to be declared of Lands, Be it Enacted, that where any Grants, Conveyances, or Assignments, shall be made of any such Manors, Lands, Tenements, or Hereditaments, as aforesaid, to

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any Uses, Intents or Purposes, to be expressed in the same Deed, or any other Deed to which the same Deed shall refer, that the Registering of so much of such Conveyances, Grants, or Assignments, by which the legal Estate of the same Manors, Lands, Tenements, or Hereditaments, contained in the said Deed shall stand transferred, and certifying such Registering upon the same Deed so in part registered, and also upon the other Deed to which the same so in part registered shall be made to refer, shall be esteemed a Registering of the said Uses or Trusts within this Act, whereby to entitle the same Uses and Trusts to such Preference as aforesaid, as fully and effectually to all Intents and Purposes; as if the same Uses or Trusts were registered at large, any thing herein contained to the contrary notwithstanding.

And whereas Freehold Lands in *England*, are by several Acts of Parliament made liable to Executions on *Judgments*, *Recognizances*, and *Statutes*, which being
entered

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entered in several places, the Searches for the same are chargeable, and the finding of them difficult, to the further hazarding of the Titles of Lands: For Remedy thereof, Be it enacted, that no Judgment, Recognizance, or Statute, to be had or acknowledged at any time after the said

Day of shall bind

or charge any Lands, Tenements, or Hereditaments, within the Kingdom of *England*, against any Purchasers or Mortgagees thereof, except such Lands, Tenements, or Hereditaments, as the *Defendants* in such Judgments, or the *Cognizors* in such Recognizances and Statutes shall have on the Day of the Registering thereof, with the said Register in manner herein after-mentioned, That is to say, that for all Judgments, the Names of *Plaintiffs* and *Defendants* therein, *the Sums* recovered thereby, and *the Day of the Signing* thereof by the Judge, or other Officer signing the same, shall be *Registered*; and for all Recognizances and Statutes, the Names of the *Cognizors* and

H 2 *Cognizees*

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Cognizees therein, *the Sums* thereby acknowledged to be due, and the Day of the Acknowledgment thereof *shall be Registered.*

And be it Enacted, that no Devise by Will of any Lands or Tenements within the Kingdom of *England*, shall be allowed as good against any Purchasers or Mortgagees of the same Lands or Tenements, unless such Will, or so much thereof, whereby such Devise shall appear, shall be registred in one of the said Register-Books, within six Months next after the Death of the Testator, provided that after such Registering of such Will or Devise, the same shall take the Effect from the Death of the Testator.

And be it Enacted, That the said Register for the time being, or his sufficient Deputy in that Behalf, shall, from time to time, certify the Days of all and every the respective Registries therein before directed, upon some Part of the Deeds or Writings so to be Registred as aforesaid,

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by affixing the Stamp of the said Office thereunto, and signing the same. Which said Certificate shall be taken as Evidence of such Registries in all Courts of Record and elsewhere.

JOHN BENTLEY AND JOHN BENTLEY

I cannot be so arrogant, to dictate this Bill to the Legislative Power; but if what I have asserted be true, I hope the more learned Gentlemen of the Law, who shall oppose this Remedy, will either provide a better, or agree to *this Motto* (for proclaiming the Laws of *England*) upon every House in the Kingdom, **NO ONE KNOWS THE OWNER**: In which they will

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will not be more ingenuous to their
Profession, than the *Athenians* were
to their Religion, by that Inscription
on the Altar,

TO THE UNKNOWN GOD.

F I N I S.

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