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LAND TRANSFER REFORM.

ARGUMENT OF THE MAJORITY OF THE COMMISSIONERS OF LAND TRANSFER IN RELATION TO THE BILLS INTRODUCED BY THEM, AND THE OBJECTIONS INTERPOSED BY THE MINORITY MEMBER OF THE COMMISSION.

There can be no difference of opinion as to the character or extent of the evils of the present system of real estate transfer in the city of New York, and the necessity for a speedy and effectual remedy.

Until such a remedy is applied we cannot too often reiterate the facts which demonstrate its necessity.

The number of volumes in the Register's office containing the records of conveyances and mortgages has nearly reached four thousand, and of these seven-eighths have been added during the last fifty years. The only method of ascertaining the title of any particular lot is by searching for every instrument executed by the successive owners of such lot in written indices containing thousands of names, arranged on various plans without due order of time, often misspelt or misplaced; while under the law the record of an instrument is constructive notice of its contents, even though erroneously indexed, or never indexed at all.

Such an examination requires a length of time, which prevents any ready transfer of land and which is increasing with every year, and involves an expense which is becoming an intolerable burden. It would be almost impracticable to-day to make the requisite searches in the Register's office without the aid of private classified indices and abstracts made by the official searchers for their own use, and claimed by them as their private property.

This was equally true of the County Clerk's office until recently, when such indices were bought by the city, after they had been removed from the office at the imminent risk of putting an end to, for the time, or suspending almost indefinitely, the making of transfers.

Nor are the dangers and difficulties to be overcome confined to those which exist in the Register's office, although the long-discussed question of the lot and block systems and the action of the minority member of the commission in framing a bill having almost exclusive reference to that office have tended to keep all other questions in the background.

The labor and expense of searching for and examining the various liens against real estate which are filed in the County Clerk's office, with the uncertainties attending such search, the exorbitant fees exacted and paid for tax and assessment searches, and the tribute levied on every examination of title for a search among the handful of mortgages which are contained in the safe of the Loan Commissioners, unrecorded and inaccessible, are quite as substantial grievances, and no system of reform can be regarded as complete that does not contemplate their removal.

They all bear directly upon the question of a safe, speedy and economical transfer of land; and the best results can only be secured by making their reform parts of one general system, governed by one general principle. It surely needs no argument to show that bills so drawn will have a consistency that they are not at all likely to possess if drawn at different times and by different hands, and that any proposed system of indexing must be examined with reference to its use, both for transfers and liens. The majority of the Commissioners of Land Transfer felt themselves charged with the duty of framing; and, in the bills presented, they have endeavored to frame such a system.

In the opinion that all instruments affecting real estate should be indexed not merely against the name but against the property conveyed or charged, and that all liens on real estate should be specific, affecting only the property described in the notices thereof and so indexed, the members of the commission were unanimous; but upon the question of the form and effect of such local indices they were irreconcilably divided, four favoring a lot and one a block system. We purpose to show, as briefly as may be, the reasons which governed the majority in selecting the lot index, and to explain as briefly the provisions of the bills by which they have sought to introduce it. As the evils of the present system are due to the nominal indices, that form being necessarily liable to many errors in itself, and to many more in the searching which it renders necessary, this searching involving a large expenditure of time and money, we were satisfied that the proper remedy must be an index as nearly free as possible from the inherent defects of the present system, and which would render "searching" unnecessary.

These requirements, we were satisfied, after careful consideration could not be answered by the "block system," because under it, in looking for all the instruments relating to a particular lot in the block, we must in order to find them, make a "search" among the entries relating to all the lots on the block.

The long blocks between the more distant avenues, which are say from eight hundred to nine hundred feet apart, would contain from sixty-four to seventy-two lots each, if the lots were all of the full width of twenty-five feet, but as very many of the lots, under the present usages of building, are of very much less width, some of them less than fifteen feet, it is believed that in respect of these long blocks, from eighty to ninety lots may be assumed as a fair average, and that in some instances the number of lots would be from ninety to a hundred, or even more.

Under the block system, all the instruments within the scope of the particular index (whether of transfers or liens), which relate to any of these eighty or ninety or a hundred lots embraced in a block, are to be thrown together *en masse* in the block index. And in this connection it must be recollected that as well in the block as in the lot system it is contemplated that all the liens on land in the city of New York are to be made *specific* and not general, and to be indexed against the property affected, so that the index of liens will embrace judgments and notices of *lis pendens* as well as the numerous other kinds of liens, and that under the block system, this large mass of liens of diverse character, affecting any one of the numerous lots in a block, is to be thrown together on the block index.

It is further to be borne in mind that whichever system be adopted, it is designed to be a permanent system of land records for the great metropolis, and to be suitable for proper working as well in the long future as in the time of the present generation.

Under the block system, the inconveniences and difficulties consequent upon massing together the instruments relating to eighty or ninety or a hundred lots, instead of keeping separate those relating to each lot, would, of course, steadily increase with the efflux of time. We should, under such a system, have an ever-lengthening chain of evil results.

In respect of the conveyances and mortgages it would be bad enough. In respect of the mass of "liens" of the numerous different kinds it would be still worse.

It appears to us quite plain that after the lapse of not very many years, with the necessarily consequent swelling of the block indices, that method of indexing, if undertaken to be used and relied upon by itself without alphabetical indices, would prove to be more burthensome and inconvenient than the present system, and that in the end, if the block system were adopted, the alphabetical indices, with their inconveniences and liability to error, would come to be practically the chief, if not sole, reliance of parties having occasion in examining titles to ascertain what are the recorded conveyances, mortgages or liens affecting a particular piece of property.

One thing is certainly too plain for dispute, viz.: that if the "block" system be adopted, the necessity of making "searches" will be continued, and that if the "lot" system be adopted, searches will wholly be dispensed with.

In speaking of this, we, of course, refer to searches for conveyances, mortgages or liens, recorded or filed after the system is put in operation.

Neither system can dispense with searches for the time past as the vested rights acquired under the old or present system, which requires no locality index, cannot be taken away; although it is possible, by proper classification of instruments already recorded or filed, and suitable lexicographical or locality indices of them, prepared under public authority, to lessen the burthen of making such searches for the past, and to this end one of the bills reported by the majority of the commissioners is particularly directed.

In order to give the block system advocated by the minority commissioner any advantage whatever over the present system, which all sides unite in condemning, it would (it seems to us) be necessary to accompany it by a provision which apparently he has not thought of, or which certainly he has not chosen to introduce in the bill prepared and recommanded by him, viz.: an alphabetical index for each block, wholly separate from any general alphabetical index.

With such a provision the block plan (not as prescribed by the very ill-drawn bill prepared by the minority commissioner, but as might be prescribed by a competent, careful and judicious person) might be an improvement upon the present system.

But as any system which compels reliance upon alphabetical indices is open to serious objections on the score of liability to error, which chance of error would still remain under the plan of separate alphabetical indices of the blocks respectively, and as the block plan, under the best auspices possible, would be infinitely less beneficial and desirable than the lot system, and as all the objections which are made to the lot system will appear, upon careful examination and reflection by persons competent to judge, to be really without foundation, and as most of them are absolutely frivolous or absurd upon their face, we do not deem it needful to enter upon an examination of the question, what provisions in detail woud be necessary to make at all tolerable a bill prescribing the block system.

When we come to consider the lot system we find that by applying the simple principle that every instrument affecting a lot or any part of it must be indexed on a page assigned to that lot, we should attain the following results:

1st. Names would cease to be in any respect an element of doubt or mistake, and if in the entry of an instrument on a lot page, the names of grantor and grantee were both incorrect, the liber and page of record would still be sufficient to completely answer the object of the index by giving notice of the instrument and showing where it could be found.

2d. Searching would cease, because a certified copy of the page of any lot, obtained for a trifling sum, and in a very short time, would give all the information we can now derive from a search, and the correctness of the information would be a mere question of the correctness of the copy. Moreover, such certified copy would be an original in any hands.

Then arises the question, what is to be the basis of such a lot index? How is such a system to be put into operation?

The lot is the ordinary unit of ownership and forms the simplest basis for an index.

The tax office in the city of New York contains maps showing every block and every lot laid out on every block in the city. On these lots, for years, taxes have been laid and collected with ease and certainty, and while the lots, as here shown, vary to some extent in many cases from the lots as in possession, yet these variations must be comparatively slight, or otherwise owners would be paying taxes on the property of other people, which, it is well known, is not the habit of real estate owners. We very seldom, if ever, hear of any practical difficulty arising to anyone in consequence of any such inaccuracy. The inaccuracies in the tax maps have been greatly exaggerated. Admitting that they are, in a considerable number of instances, inaccurate, what is this inaccuracy? Usually it is to the extent of not more than a few inches, and is the discrepancy between the lot as shown on the diagram and the lot in possession or as conveyed, not a discrepancy between the claims of adjoining owners in relation to boundary, which is a fact of extremely rare occurrence.

It requires but a moment's reflection to perceive that where an inaccuracy exists in the tax map, that circumstance neither prevents, nor throws any substantial obstacle in the way of, correctly indexing the instrument, so as to make it constructive notice in respect of whatever property it really covers, and thus protect all rights and interests, as well of the party causing the instrument to be recorded as of all others whom it may concern as subsequent purchasers or otherwise.

In those cases (comparatively rare) in which there is found to be a substantial variation between the actual boundaries or dimensions of the lot covered or affected by the instrument, and the boundaries or dimensions, as laid down on the tax map, of the lot which is there designed to represent the actual lot, but fails to do so correctly because of the inaccuracy on the tax map, if the "lot" system prescribed by this bill, required the deed to be indexed only against the lot thus erroneously laid down on the tax map, so as to leave the deed in legal effect, unrecorded in respect of some portion of the actual lot erroneously left out of the diagram on the tax map, such a system would certainly be properly subject to condemnation and deserve to be rejected.

But no such rule or requirement is contained in the bill for carrying out the lot system, as reported by the majority of the commissioners, or was ever for a moment contemplated to be recommended by them.

The bill leaves it to the party bringing the instrument to the Register for record, to designate the lot or lots affected or which he deems to be affected by it, and to direct its indexing against such lot or lots, and requires the Register to index it accordingly; and there is no difficulty in the way of such party's knowing or determining against what lot or lots he ought, for his own safety, to direct the indexing.

Whatever errors there may be in the tax map, in respect of the diagram of a particular lot or lots, there is *no uncertainty* as to the *purport of such diagrams* in respect of the *precise location and dimensions of each and every lot laid down.* The lots, as laid down on the tax map diagrams, of course adjoin each other without purporting to *lap*, and the diagrams of the lots in a block, when *taken together*, *represent all the land in the block.* The diagram of each lot purports to show, not only its dimensions on each of its sides, but likewise its *precise location, i. e.*, the distance of its external street boundaries respectively from the corner of the next street.

If a party about to direct the indexing of the deed of a particular lot finds that, because of some error in the tax map diagrams, no lot diagram there laid down corresponds with the actual lot covered by his deed, he can tell at once, by reference to the tax map, *within the lines of which of the lot diagrams there laid down*, his actual lot is comprised. To this end, nothing more is required than making a diagram on paper (or in some cases in his head merely) of his actual lot, and comparing it with the tax map diagrams, a work which ordinarily need not require more than five or ten minutes' time, if so much. This being done, and the instrument being directed to be indexed against the lot or lots shown on the tax map diagrams, within the lines of which the actual lot falls, the inaccuracy of the tax map diagrams, in respect of non-conformity with the actual lot, is, for the purpose in question, entirely harmless and quite immaterial.

Moreover, the changes which are continually going on in the area of lots, especially in the upper unbuilt portion of the city, are found to produce no confusion or difficulty relative to the assessment and collection of taxes upon the newly-formed lots, since by a very simple, inexpensive process the maps are changed to correspond to the actual change in area and ownership. But it will be said, even the slight variations in the tax maps which are admitted to exist in numerous instances, and which in the matter of payment of taxes, involving as they usually do only a few inches, are disregarded, would make a great difference in the matter of a conveyance or mortgage of the lot, and constitute a serious objection in the use of these maps for the purpose of indexing such instruments.

This objection proceeds upon the wholly erroneous idea that the index represents ownership. It is not at all so, but, on the contrary, the lot system contemplates nothing more than an index—an easy and accurate method of finding the papers relating to any particular piece of real estate. It asserts nothing as to ownership, but simply shows what transfers have been made or what liens have been created affecting, or which may affect, a certain lot, as shown on a map, or any part of such lot. And we have also shown that inaccuracy in the tax map, where it exists, creates no difficulty in the way of indexing the instrument so as to make it constructive notice in respect of whatever property it actually covers.

And so the majority of the commission determined, that the tax maps should properly form the basis of the land register index, and that the system should be put in operation by causing a copy to be made from the tax maps, of the map of each block there appearing, with the respective lots as thereon shown, on such a scale as to admit of alterations being readily made—such map to be entered on a page of a volume followed by as many blank pages as would give one for each lot in the block, reserving as many more blank pages as would be necessary for carrying over full pages or entering newly formed lots, and so for each block in the city, numbering the blocks continuously from one up, and the lots in each block continuously from one up. The copying of these maps in the proper volumes of the index is an operation which will not consume much time nor cost much money. We are informed by experts that the probable cost of books and stationery and of the transfers of maps necessary to fully enable the system to go into operation in all the offices would probably not exceed thirty thousand dollars, so that the initial steps necessary to introduce the lot system will be not only simple, but inexpensive. But whatever the legitimate cost may prove to be, it will certainly be a very trifling sum in comparison with the magnitude of the beneficial results to be attained.

The next question that arises is, how instruments that are left for record shall be got upon this index—how shall a deed or mortgage which contains a description in writing be indexed against a lot shown on a map?

It was never contemplated for one moment that it should be left to the Register to determine where any instruments should be indexed, since a Register is and must be a purely ministerial officer, and this would confer upon him *quasi*-judicial powers. Aside from this, the exercise of such a power would require an amount of time and involve risk of error which would render it exceedingly objectionable.

In order that the Register shall exercise no discretion in this behalf, an instrument, when presented to him, must contain or be accompanied by something in the nature of a mere direction as to the particular lot or lots to be indexed against, and should not be received for record without such direction any more than it would be received without an acknowledgment or proof of execution. The one person who can and should furnish such direction is he who presents the instrument for record.

In the city of New York he should know the location and dimensions of any piece of property that he buys or upon the security of which he lends. If the mere description inserted or proposed to be inserted in the deed leave this at all in doubt, the doubt is readily resolved by means of a survey, involving a very trifling expense, and this is the course customarily pursued.

The party thus knowing the exact location and dimensions of the lot he deals with, he can readily tell what lot or lots on a map of a block contain the area of his property and can as readily direct that his deed be indexed against such lot or lots.

As the instrument is recorded for his benefit, as he possesses all the information necessary to secure an accurate indexing of the instrument, there is no reason why it should not rest with him to see that proper direction for such indexing is given to the Register, and there is no hardship in providing that the instrument shall not be received for record unless this simple duty is performed, any more than there is in requiring that an instrument be duly proved or acknowledged.

Nor is it any hardship further to provide that the record of the instrument shall be constructive notice only as to so much of the property therein described as shall be represented by the lot or lots against which *it is directed to be indexed*, since only gross carelessness will prevent a proper designation, and no system should be rendered inefficacious and fruitless because it fails to secure those who claim to exercise the right of being as careless as they please.

The majority bill, therefore, provides that no instrument shall be received for record unless the lot or lots against which it is to be indexed is or are designated in writing by the party presenting the instrument, and that the record of the instrument shall not be effectual by way of constructive notice to subsequent *bona-fide* purchasers in respect of any other real estate than that embraced in the lot or lots designated for the indexing. And as checks to errors in indexing, whether by the party presenting an instrument or the Register, the bill provides for a certificate by the Superintendent of the Land Register, to be endorsed on the deed, that it has been duly indexed, and stating the lot or lots against which it has been so indexed, and gives to the party interested, in case he subsequently discovers that he has made a mistake in his directions for indexing, the right to correct the mistake by making and filing a proper instrument to that end.

These mere designations, which are merely a part of the necessary machinery of a local index, as proposed by the majority, have been persistently misunderstood, and by calling them notices of claim, a term which has no place in the majority bill, an attempt has been made to create the impression that they are intended to limit or increase what a purchaser takes by his deed instead of being, as they are, mere designations of lots against which a deed is to be indexed, limiting nothing except the effect of the record by way of constructive notice.

Now, except in so far as any system of local indexing is itself and of necessity a change in the law, the majority of the commission propose no such change, except in the matter of the designation of the lot or lots against which the instrument should be indexed, and of limiting the notice of the record to such lots as have been so designated.

They have aimed at securing a more perfect machinery for indexing transfers, and making as little change as possible in the law governing them.

There remains to be considered the working of the system when once introduced.

One simple principle is the key to the use of the lot index, viz.: that every conveyance of or lien on any lot, as shown on the index map, or any part of such lot, must be indexed on the page of that lot. Its application will be found to fully meet every case.

If the lot on the map does not precisely correspond with the property to be dealt with, it is only necessary that the instrument should be indexed against each lot that contains any portion of such property.

If no change were *ever* to be made in the index maps, there would not be

the slightest difficulty in the use of the index. It would merely involve the entry of the same instrument on the page of each lot that it affects.

But the lot system provides for changes to be made on the tax maps whenever desirable, and to that end for the report by the Tax Commissioners to the superintendent once a year of all such changes made down to a certain date in each year, and the making of corresponding changes on the index maps on and as of a certain date, thus avoiding all confusion by notifying any one dealing with property, precisely when and only when there are any changes in the maps. Moreover, the lot number on the index maps never represents more than one lot. If changes are made, the new lot appears with a new number, and as the old map is retained, the identity of the old number is always patent.

As the boundaries of lots become permanently fixed by being built upon even the slight inconvenience which may attend the changes in lines of lots will cease, and thus the system will grow simpler as time passes. The addition of any amount of territory to the city will add pages to the index but will require no change in the system nor increase the labor or expense of finding the papers affecting any lot.

Finally, the system which we propose is to be inaugurated, and its working supervised by a competent superintendent and deputy, appointed for a term of five years, whose duty and interest it will be to see that the system is faithfully carried out. Without such provision the most perfect system might fail of success.

The minority member of the commission has admitted in his report that the lot plan would do as an abstract of title, and this is enough. An abstract of title of, and a statement of all the liens on, a piece of property fully answers the requirements of an index. The lot system furnishes an abstract of title and a statement of all liens ready to the hand of the examiner, whose proper work then begins—the determination from the examination of instruments or liens of the fact and conditions of ownership.

We now propose to present in outline the principal features of the bills whose passage we recommend, with references to the sections of those bills, so that every statement may be readily verified.

By Bill No. 1, entitled "An Act in Relation to the Recording, Filing and Indexing of Instruments affecting Real Estate in the City of New York,"—the system of lot indexing will be put in operation by the preparation of a series of books in triplicate, two for the Register's office and one for the County Clerk's office.

Sec. 1. Sec. 7. Sec. 10.

Of the two placed in the Register's office one is intended for the indexing of such instruments as are now recorded in the books of Conveyances, and one for the indexing of such instruments as are now recorded in the books of Mortgages.

The arrangement of these books is to be briefly as follows: A map of each block or plot of land in the city of New York, commencing in the lower part of the city, and numbering from one upward, shall appear thereon, followed, in the case of blocks or plots which are laid out in lots, by as many pages as there shall be lots in the block, and additional blank pages sufficient for carrying over full pages or entering newly-formed lots, and in the case of blocks or plots not as yet laid out in lots, followed by as many blank pages as may be deemed convenient for lots which may be thereafter laid out.

These maps shall correspond with the tax maps as existing at the time when the indices are made, excepting that the lots in each block on the indices shall be numbered from one upwards. To meet the few cases as of a wharf, pier, bulkhead, wharfage right or other real property not embraced within the bounds of any lot or block, an alphabetical volume is provided for the Register and County Clerk's office, in which transfers of or liens upon such property may be indexed.

Sec. 14.

(It is not proposed to direct the discontinuance of the present nominal indices. They may be useful for some purposes though not required for reliance for making searches at present, and in the judgment of the majority of the commission it is more prudent to retain them, at least for the present.)

There is also to be prepared and deposited in the Register's office, at the same time with the indices, a printed pamphlet made up so as to show what pages in what volumes are appropriated to each block or plot in the city. Ten copies of this pamphlet are always to be kept in the Register's office, and the other copies are to be sold for the sum of fifty cents a copy.

Sec. 15.

It is intended that the act shall go into effect at a fixed period not less than one year after its passage, and that the indices and pamphlets shall be deposited in the respective offices at least sixty days before the act does go into effect.

(These provisions are intended to familiarize the public with the indices and their arrangement.) The preparation of the indices and general supervision of the working of the system is given to a superintendent of the Land Register, who is to be appointed by the Mayor and chief Judges respectively of the Superior Court and Court of Common Pleas, to hold office for five years, and to be a counsellor-at-law. His salary to be fixed at not less than seven nor more than ten thousand dollars a year.

Sec. 5.

He is to appoint a deputy, who shall be one of the City Surveyors, and whose salary shall not be less than five nor more than seven dollars a year.

Every person desiring to record an instrument is required, in order to entitle it to be recorded, to designate to the Register, both in figures and words, the block and lot numbers on the index, of the premises claimed to be affected by the instrument, and the record of the instrument shall not be effectual by way of notice in respect of any other real estate than that embraced in the lots against which the indexing is directed.

Sec. 6.

Such designation must be either in the body of the instrument or in a separate instrument. The latter course would, of course, be absolutely necessary in the case of a deed executed before the act goes into effect, but not recorded, which would contain no direction for indexing.

And in a case where a deed shall be recorded containing an erroneous direction, either by the insertion of wrong numbers of block or lot, or by the omission of a lot or lots, provision is made for the correction of the error by the subsequent making and recording of a separate instrument.

Upon receiving an instrument for record, the Register is required forthwith to enter a memorandum of the instrument, and the block or plot and lot number on the tickler, and within thirty days to cause the entry to be made in the index, and the superintendent is charged with the duty of seeing that such entry is made on the index within that time.

Sec. 8.

In addition to the Register's certificate of record every instrument, when returned to its owner from the Register's office, shall bear the certificate of the superintendent, that it has been duly entered in the index with the particulars of such entry.

Sec. 9.

(These provisions are a check to erroneous indexing and afford the means of prompt discovery and correction of an error when made.)

The indexing of an instrument is by an entry on one line on the page of a lot, of the name of grantor and grantee, or of one of the grantors or grantees, where there is more than one, the nature of the instrument, its date, the date of its record and its liber and page where recorded.

Sec. 6.

The act provides in detail, and very simply, for changes on the tax maps and corresponding changes on the index maps and pages by requring, in case of the formation of new lots out of old ones, the closing of the old lot pages, with entries referring to the new page or pages where the area represented by the old lot may be found, and by opening a new page for the new lot under a new number next in order to the then highest number of lots in the block, with a reference at its head to the page or pages where the area represented by such new lot previously appeared.

Sec. 2.

The changes on the index maps, however, are to be made but once a year, on and as of a certain date, and after report of such changes by the Tax Commissioners to the superintendent.

Sec. 4.

In case the alterations to be made become so great as to render it unsuitable to continue in use the map of a particular block, a new index map of such block, as altered, shall be made instead of the old one, the old one always being kept in its place for reference.

Sec. 2.

Once a year, when the changes are made on the index maps, the superintendent is to issue a printed pamphlet, showing in what blocks or plots in the city any alteration has been made.

Sec. 15.

Bill No. 2, entitled "An Act in Relation to the Lien of Judgments and Decrees and Forfeited Recognizances upon Real Estate and Chattels Real in the City and County of New York," provides that no judgment recovered after the act goes into effect, and no judgment recovered before the act goes into effect, but not docketed until afterwards, shall be a lien upon real estate in New York city until noted on the Land Register Index of Liens in the County Clerk's office, by entering upon the page of the lot upon which lien is claimed, a note of the date and amount of the judgment, the parties thereto, the court in which recovered and time of docketing or of filing transcript, and the day, hour and minute at or as of which such entry is made.

Sec. 1.

The lien thus created is to commence from the time of such entry, and to expire at the end of ten years from the entry of the judgment.

So far as respects real estate in the city of New York, the lien of a judgment shall extend only to the property against which the judgment shall be indexed, but after it is indexed against a particular piece of property it may from time to time be indexed against other property as desired.

In order so to index a judgment, a claim of judgment lien is to be filed with the County Clerk, containing such particulars in respect to the judgment as are required to be entered in the index, stating that a lien is claimed against designated lots on the index of liens, and requesting the indexing against those lots.

Sec. 2.

Immediately upon the filing of any such claim the clerk is to make a note thereof on a tickler, stating the lots, etc., against which indexing is directed, the date of filing, and the name of the judgment creditor.

The bill further provides that every judgment which shall be a lien upon real estate when the act shall go into operation, shall cease to be such lien, unless before the expiration of six months from that time, it is indexed against the property upon which lien is claimed.

Sec. 3.

When the property upon which lien is claimed shall be real property, such as a wharf, pier, etc., which is not included in any lot or block or plot in the index of liens, the indexing of a judgment claimed to affect the same shall be in the alphabetical index provided for in Bill No. 1.

Sec. 4.

Executions issued after the act goes into operation shall direct the judgment to be satisfied out of the real property of the judgment debtor, subject to the lien of the judgment; and if any sale of any real property under the execution is desired, there shall be furnished to the Sheriff at least ten days before the return day of the execution a specification of the lot and block or plot number on the index of the property claimed to be subject to the lien of the judgment.

Sec. 6.

Bill No. 3, entitled "An Act in Relation to Mortgages to the Commissioners for loaning certain Moneys of the United States of the County of New York," provides that there shall be deposited in the Register's office and made a record an attested copy of the minute book and its index, which, under the law creating the loan

Sec. 3

commissioners, is required to be kept by them, and which contains a complete memorandum of the mortgage, full description, names, dates, amounts, etc., and that within sixty days after such deposit pamphlet copies of such index shall be printed for use in the
Sec. 1. Register's office and for sale. The act further provides that here-
Sec. 2. after all such mortgages shall be acknowledged, recorded and satisfied in the same manner as other mortgages.

Bill No. 4, entitled "An Act in Relation to the Indexing of and Searches for Unpaid Taxes, Assessments and Water Rents, and Unredeemed and Uncancelled Sales made for Non-payment of Taxes, Assessments and Water Rates in the City of New York,"
Sec. 1. provides that the Comptroller, with the aid and supervision of the Clerk of Arrears, shall cause to be prepared a set of books, to be known as the index of taxes and assessments, on which shall be shown all unpaid taxes, assessments and water rates, and all unredeemed and uncancelled sales therefor, as against each separate lot shown on the tax maps, such lots being arranged on such index with reference to the streets whereon they front, with alphabetical index of the streets and references to the pages of the index relating thereto.

All assessments imposed after six months from the time when the
Sec. 2. act shall take effect, shall, within thirty days after they are imposed, and before the commencement of the collection thereof, be entered on this index and no assessment shall be a lien on a lot until it is so entered.

All arrears of taxes and water rents returned to the clerk of arrears for collection shall, within twenty days after they shall
Sec. 3. come to such clerk, be also entered on such index against the lots which they affect.

When, after the expiration of six months from the time when the
Sec. 4. act shall take effect, a sale of any real estate shall be made because of the non-payment of any tax, assessment or water rate, a note of such sale with the necessary particulars shall be entered by the clerk of arrears on such index against the lot so sold, and no conveyance or lease for carrying into effect such sale shall be valid, unless the note and entry of such sale shall have been so made.

When any tax, assessment or water rent entered on the index
Sec. 5. shall be paid or otherwise legally discharged or cancelled, or when any sale entered in the index shall be redeemed or cancelled, a note of such payment, redemption or cancellation shall be entered in the proper place on the index.

If such payment or discharge shall be to or by the clerk of arrears, or through a transaction with him, he shall within fifteen days from such payment or discharge make an entry thereof.

All assessments paid to the collector of assessments in any month shall on the first day of the following month be by him reported in writing to the clerk of arrears, who shall, within ten days from the receipt of such report, enter such payments in their proper places on the index.

Sec. 7. The index is to be kept in the office of the clerk of arrears as a public record open to public inspection, under proper regulations, but without fee or charge during office hours.

After the expiration of six months from the time when this act
Sec. 8. shall take effect, the clerk of arrears shall make and certify, when so requested, a search for unpaid taxes, assessments, water rents and unredeemed or uncancelled sales for a fee of fifty cents for each lot required to be searched against; such search shall be made and returned within ten days after the requisition shall be made, and the corporation of the city of New York shall be responsible for the completion and accuracy of the return to such search.

Bill No. 5, entitled "An Act to Provide for the Re-indexing of certain Records affecting Real Estate in the State of New York and for
Sec. 1. printing such indices," provides for the appointment of two com-
Sec. 8. missioners, who shall cause all notices of *lis pendens*, certificates
Sec. 7. of sheriffs' and marshals' sales, and foreclosures by advertisement filed in the office of the County Clerk, and all deeds, unsatisfied mortgages, or other instruments of record in the office of the Register since the existing printed indices, down to the time when Act No. 1 shall go into effect, to be re-indexed, and upon a plan which shall
Sec. 7. show, as far as may be found practicable, on what blocks the pro-
Sec. 8. perty affected by such notices is situated, with a separate lexico-
Sec. 10. graphical index of such of said notices or instruments as cannot be indexed against a block or plot. And such commissioners shall cause as many copies of said indices to be printed as they shall deem expedient.

If the commissioners shall deem it expedient so to do, they may in
Sec. 11. aid of such re-indexing and subject to the approval of the board of estimate and apportionment acquire and purchase any records, searches, minutes, maps and indices claimed to be private, made by any person in course of or connected with his employment in any public office in said city or otherwise.

Bill No. 6, entitled "An Act to Provide for Short Forms of Deeds and Mortgages," is the same as the bill proposed for this purpose by the minority member of the commission, with the exception of a short form of lease added to his bill. The majority of the commission omitted this, because, in view of the many forms of lease in use and the constant variation in these to meet particular cases, they considered that a prescribed short form would be of little practical value.

This is a statement of the principal features of the system proposed by the majority of the commission, "to facilitate and lessen the expense of transferring the title to land and dealing therewith," and in brief the reasons of such majority, for the faith that is in them, that such a system will simply, fully and effectually meet the evils to be remedied.

It is a system which, so far as respects instruments recorded or filed after the system goes into operation, does away with the expense, the dangers and difficulties attending official searches now made on an examination of title (excepting judgments in the United States Courts, as to which the remedy must be sought elsewhere) by absolutely doing away with the necessity of any such searches; and it is a system which for the past and down to the time when it shall go into operation reduces, as far as appears to be practicable, the expense, danger and difficulties of searches for past dealings and transactions.

When the majority of the commissioners made their report to the Legislature of 1885, with the accompanying drafts of bills recommended by them, Mr. Olmstead, the minority commissioner, sent in, as was doubtless his right, a minority report, with an elaborate statement of reasons for his dissent, based mainly upon his emphatic condemnation of the lot system and his insistence upon the superiority of his block system.

A controversy being thus raised, it was manifest, that at that late stage of the session of the Legislature, no practical action upon the subject could reasonably be expected, and therefore no effort to that end was made.

When the session of the present Legislature was approaching, the Real Estate Exchange of New York, being the only organized company or association of that city which undertakes to look after the "real estate interest" so-called, took up the general subject, with a view to determine what was best to be done in regard to it, and examined the recommendations which had been made by the majority and the minority of the land transfer commission, to the end of urging upon the Legislature the adoption, at the present session, of such of the proposed measures as should be deemed to be the most proper and expedient, and thus obtaining for the suffering real estate interest, relief from the evils of the existing system, which are felt to be so grievous.

The minority commissioner, who is himself an active member of the Real Estate Exchange, and has been supposed to have no little influence in it, strenuously renewed his opposition to the lot system, as reported by the majority of the commissioners. The committee on legislation of the Exchange, having before them (so far at least as respects the majority of the commissioners) only the printed copies of the documents which had been sent to the Legislature without the benefit of explanations or arguments from the majority commissioners in answer to the objections which were urged by the minority commissioner with great persistency, and we may say violence, decided, in making their report to the body of the Exchange, to leave undecided the contested question as between the lot and block systems, and while recommending, absolutely, that the Exchange should approve and urge the adoption by the Legislature of all the bills recommended by the majority of the commissioners, excepting the one involving that disputed question, recommended that a special committee should be appointed to take into consideration and report upon that disputed question as between the lot and block systems before the Exchange should take decisive action upon it either way, although their own report, so far as it went, appeared rather to favor the lot system.

This recommendation was adopted and the special committee appointed. At two long sessions of that committee, all the commissioners of the majority and the minority attended, and full arguments were heard from both sides. The minority commissioner presented to that committee substantially the like arguments and statements upon this particular point as are contained in his recent communication to the Legislature, dated February 4th, 1886, a copy of which he has caused to be published in the New York newspaper devoted to real estate interests, entitled THE REAL ESTATE RECORD AND BUILDERS' GUIDE, and he was heard before the committee as fully as he desired, without limitation or restriction of time.

Some of the members of that committee, as we are reliably informed, entered upon the discharge of their duties with the *impression* that there were intrinsic difficulties in the way of the lot system, reported by the majority of the commissioners, which would make its adoption inexpedient, and that the block system would be preferable.

The result of the full discussion of the subject before that committee by both sides was, that the minority commissioner did not succeed in impressing his views upon any member of the committee. He was left, not merely in a minority, but without a single supporter. The attending and acting members of the committee were ten in number, of whom seven were lawyers and three laymen, and they made a unanimous report in favor of the lot system, as against the block system.

In conformity with such report, the Real Estate Exchange has presented its petition to the Legislature praying for the passage of all the bills as recommended by the majority of the commissioners, and we find stated in that petition the somewhat striking and important fact that the "Real Estate Exchange represents through its membership the owners of one-third in value of the landed property of the city of New York."

We have heard of several instances, besides that above stated, in reference to some of the members of the special committee of the Real Estate Exchange, in which members of the bar, upon their first information of and first impressions respecting the lot system of indexing as recommended by the majority of the commissioners, were inclined to regard it as objectionable or inexpedient, and to prefer the block system instead, but upon receiving the proper explanations, and considering the matter sufficiently to understand the actual plan and necessary working of the lot system, have changed their view and become advocates or favorers of the lot system instead of opposing it, and we think this must almost or quite necessarily be the result with all persons free from prejudice or special adverse interests, who are qualified really to understand the question and the points involved in it, and who will examine the matter with sufficient care and attention to pass a fair and intelligent judgment upon it.

So far as we know or understand, the entire active opposition to the bills reported by the majority of the commission, including the feature of the "lot system," is concentred in Mr. Dwight H. Olmstead.

And yet, notwithstanding the unanimity against him of four out of the five commissioners, and the entire unanimity in the like direction of the Real Estate Exchange after the fullest discussion, and the fact that he himself stands alone and unsupported in the position he assumes, we find Mr. Olmstead, in his recent communication to the Legislature, dated on the 4th of February, saying that "not a single argument of any sort worthy of

consideration can be or has been adduced in favor of the plan of single lot indexing in this State. It is, intrinsically, wholly and irremediably bad."

We now propose to notice, in so far as it seems to us worth while to do so, in addition to what we have before said, the various "objections to the proposed plan of lot indexing," set forth by Mr. Olmstead in his recent communication to the Legislature, dated February 4th, 1886, and in so doing, to take up his objections *seriatim*.

ANSWER TO MR. OLMSTEAD'S OBJECTIONS TO THE LOT SYSTEM.

First Objection.

He says it is *wrong in principle* to permit a grantee, by means of indexing his deed in the wrong place, or failing to index it in the right place, to fail to make the recording effectual by way of constructive notice in respect of the portion of the property actually conveyed by the deed against which he fails to index it, because he says, the recording is intended for the benefit and protection of all subsequent purchasers from or under him, as well as himself, and he should not be permitted to do anything which will prejudice them; and then follow certain irrelevant statements and inconsequent arguments, the fallacy of which is obvious, and in the details of which we could not follow him without an unjustifiable waste of time.

The objection itself appears to us to be so obviously fallacious that we cannot but doubt whether we ought to take up time for refuting it, but upon the whole we conclude to do so.

The answer to this objection which naturally first presents itself is—Why is it any more wrong in principle, to provide by law, under a system of local indexing, such as this, that a grantee shall take the proper steps for having his deed entered on the local index in the proper place, on pain of losing the benefit of the record by way of constructive notice, as to the property, or so much of it as he fails to direct the indexing against, and that in respect of such property it shall be deemed an unrecorded deed, than it is to provide, as certainly is done under the present law, that if the grantee fails to record his deed at all, there shall be no constructive notice, and it as an unrecorded deed *in toto?* In each case, the effect of the grantee's omission, upon a subsequent purchase from him is alike.

Then Mr. Olmstead says, it is not to be tolerated, that merely by reason of the grantee's omission to index the deed against all the property, when it is indexed against part, the deed should be trated as a recorded deed in respect of part of the property, and as an unrecorded deed in respect of the other part. For this proposition we can discover no ground or reason whatsoever. It rests purely upon the *ipse dixit* of Mr. Dwight H. Olmstead, unsupported by any principle, either legal or equitable.

What would he say to the case, under the present law, of a deed, conveying land in two counties, recorded in one and not recorded in the other. No one would doubt the legal effect of such circumstances in this respect nor the entire propriety of such being the effect, and we submit that the analogy of that case to the supposed case of a partial indexing under the proposed system is complete.

The suggestion of supposed infringement upon the rights of subsequent purchasers from the grantee, by reason of the consequences of his neglect while he is owner, seems to us *peurile*. The grantee has every motive of self interest to take the steps necessary to secure to himself the benefit of the record, and the reasonable presumption is that he will do so. If he chooses to neglect it, he must and ought to bear the consequences, and subsequent purchasers from him can not acquire what he has not because of having lost it by his own fault. And his neglect is *patent*, as are its inevitable consequences.

The subsequent purchaser knows of it, if he examines the records, as he is bound to do if he desires to be protected, and if he chooses to take the risk of purchasing without examining the record, he must in this, as in other cases under the recording act, accept the necessary consequences.

It is very certain that if we are to establish by law *any* system of locality indices, and to refer parties proposing to deal with real estate to the index of the locality embracing the property, as the reliable test for ascertaining whether there is any instrument of which he is to be chargeable with constructive notice, other than such as he is acquainted with and as are consistent with the scheme of his purchase, we *must make it absolutely obligatory* upon the parties bringing for record the instruments which are to be entered upon the index to take such steps as are necessary in order to have the instrument indexed in the right place, *under penalty of losing the benefit of their record.*

If the principle of this first objection of Mr. Olmstead were to be accepted as sound, we might as well abandon at once the idea of having a locality index upon which dealers in real estate can place reliance.

And, *finally*, if the *principle* of this first objection of Mr. Olmstead be sound, it would be equally fatal to the admissibility or the efficacy and reliableness of his block system. That system, as well as the lot system, establishes a locality index (the only difference being in the extent of the area), and equally requires, as a necessary condition of its being operated with any success, that the steps necessary for getting the instrument on the index to which it belongs shall be absolutely compulsory on pain of losing the benefit of the record.

Second Objection.

This is, that if the lot system be now adopted, it will prevent the adoption hereafter of the system of *registration of titles* so-called.

We cannot but be surprised that Mr. Olmstead should have the hardihood to make such a statement as this, which is without a *particle of foundation.*

If the lot system, with its accompanying regulations, be now adopted, it will be applicable and operative *while it lasts*, and no longer.

If the system of *registration of titles so-called* should ever be adopted in this State, it would be accompanied *by its own regulations*, whatever they might be, which would be *operative under that system so long as it should last.* If such system of registration of titles should be adopted it would *for the then future* be a *substituie for and utterly sweep away* the system of recording and indexing now proposed to be adopted, whether the lot system or the block system.

Doubtless, the regulations of such system of registration of titles would be inconsistent with *the continuance while that system should be in operation*, of the present regulations of either the lot system or the block system. Whichever of those systems might then be in operation would, as we have before said, be necessarily swept away for the future. But to assert that the inconsistency of the old regulations, while they lasted, with the new regulations established after their discontinuance, would prevent the establishment of the new regulations, is merely absurd.

We would not have it supposed, that in thus taking the trouble to show the entire lack of foundation for this objection we have done so under any idea that the system of so-called "registration of titles" is one that is at all likely to be, or ought to be, or justly or properly can be, established in this State.

Third Objection.

This objection is, that the lot system requires a change in the *fundamental law of the State* in the city (or cities) where the lot indices are to be used, and *that nothing of the kind would occur under this block plan.*

Of course under *either* plan there is and necessarily must be a change in the mere *methods of recording and indexing*, in the city or cities where the plan of local indexing, whether by lots or blocks, is adopted, from that prevailing in other parts of the State where no such system prevails; but when we come to consider whether there is anything which can properly be called a change of what he calls the fundamental law of the State, a term not strictly applicable at all in this connection, but by which he doubtless means the general rules or principles of law applicable to the subject, a careful examination will show that in the statute establishing the lot system as proposed by us there is no such change in the fundamental law, or general rules or principles, and that in the statute establishing the block plan as proposed by Mr. Olmstead there are such changes.

For verification of this, let us refer separately to the statutes proposed for establishing the two systems respectively.

First. As to the lot system as proposed by us.

Our bill contains no provision which either expressly or by implication deprives a party of the benefit of the record of his instrument, in case of *failure of the Register to perform his duty* of indexing it against the proper lot or lots *in accordance with the direction given to him.*

Under our present recording system applicable throughout the State, the law clearly is, that when a party has left his deed with the proper officer for record, he has performed his whole duty in respect to it. The deed is in legal effect recorded at the precise minute when it is left for record, and if the recording officer is guilty of neglect of duty in not properly indexing it, or not indexing it at all, or even in not copying the deed into the book of records, and because of such official neglect a subsequent purchaser suffers loss from failure to be informed of the deed notwithstanding proper search, our law does not allow him to throw the loss upon the person whose duty it was to have the deed recorded.

An application of the same general principle of law to the system of local indexing established by the bill in question, necessarily leads to the results in this respect which are embodied in the bill we have presented. Under such a system it is the obvious duty of the party seeking the benefit of the recording, to point out to the Register the proper place on the locality index for entering the instrument. Having done that he has done what properly belongs to him to do, and if the public officer thereafter neglects to perform his duty of entering the deed on the index according to the direction given, the application of the general principle above referred to would no more cast the loss arising to a subsequent purchaser in consequence of such official neglect, upon the party who had given the proper directions for indexing, than it would cast the loss from neglect of indexing at all, upon the party who had left his deed for record under the present system.

It is true, that our bill makes it mandatory upon the party bringing an instrument for record to point out to the Register the proper place on the local index for entering a note of the record of the instrument, on pain of losing the benefit of the record by way of constructive notice in so far as he fails to do so; but this, as we have before shown, is a necessary condition of the establishment for proper working purposes of *any* and every locality index, whether on the lot or block plan. This can not properly be called a change in the fundamental or general law of the State. The statute of 1884, under which the Commissioners of Land Transfer were appointsd, expressly contemplated the establishment of a local system applicable only to New York city, and as it is agreed on all hands that necessity requires in New York city the substitution of locality indices for the present alphabetical indices, no fault can properly be found with a local regulation which is an absolutely necessary incident of such substituted system.

The commissioners have not lost sight of the question, whether or not it would be just and expedient to alter by statute the general principle of law which is above referred to. Much may be said on both sides of that question. It is certainly a hardship upon a *bona-fide* purchaser, to be charged with constructive notice of an instrument as recorded, when, because of failure to index it, he had practically no means of discovering its existence. On the other hand, it is a hardship upon a party whose duty it is to have an instrument recorded, who has properly done his part to that end, to deprive him of the benefit of the record because of the neglect of the recording officer. And if there were by statute, superadded to the duty of the party leaving the deed for record (and under the proposed new system leaving it also for indexing on the land register), the obligation of subsequently examining the work done by the recording officer, and ascertaining that such officer had properly performed his duty, it is manifest that a new and quite burthensome task would be imposed upon the whole body of dealers in real estate, to provide for the rare exceptional case of neglect of official duty in this respect, and that such burthen would excite very general complaint.

On the other hand, the remark is quite obvious, that where there is such a practical question presented as arises in this case, which of two innocent persons shall suffer from a fault of this character committed by a public officer, there appears to be a better equitable ground (theoretically, at all

events) for casting the loss upon the party upon whom it rests to have the deed properly recorded (and properly indexed where such indexing is requisite), than upon the subsequent *bona-fide* purchaser; because it is possible for the first-named party to prevent any loss by supervising the performance of the officer's duty, at the cost of some labor and trouble to himself (though not a heavy task in any one case), while, on the other hand, it is utterly impracticable for the subsequent purchaser, by the utmost possible care and diligence, to prevent or avert the loss.

It seemed to the majority of the commissioners that it was not properly within their province, to pass upon the question, whether or not it would be just and expedient to alter by statute the general principle of law which is above referred to, nor for them to make any recommendations upon that subject, and it likewise seemed to them, that the general legal principle being such as it is, their duty required them to conform the provisions of their bill to such general principle; and that it would not have been proper, in this *measure of merely local application* to the city of New York, to attempt an alteration, so far as respects that city, of this *general principle of law*, whatever might be thought of the intrinsic propriety of such alteration of the law, as one of general application, and that *if any such change of the law was deemed desirable it ought to be by a general and not by a local statute.* The difference between such an alteration as this, of a general principle of law, and a mere local change of *methods* of recording and indexing, is very obvious, and the propriety of changes of the latter kind being local merely, is recognized by the statute under which the commissioners were appointed. The commissioners have given this full explanation of the grounds and causes of their action in this respect, in order that it may be seen that they have by no means overlooked this important question, but have carefully considered it in all its bearings, and have made such disposition of it as they deemed suitable, in so far as its consideration was involved in the proper performance of their duties.

Second. Let us now examine Mr. Olmstead's bill for the establishment of the block plan, in order to see whether it contains any change of the fundamental law of the State, or of the general rules or principles of law.

Upon reference to the copy of that bill, as published by Mr. Olmstead in THE REAL ESTATE RECORD, which appears to have been "introduced in the Assembly by Mr. Van Allen, reported from the Committee on the Judiciary, and after being printed, recommitted to that Committee," we find it provided in Section 29, that all instruments when presented for record shall bear an indorsement containing certain particulars, among which is "the number of the land section and of the block in which the land affected by the instrument is situated, and the index in which the same is to be entered, whether of transfers or caveats," and the same section contains the following provision: "And provided also that *such indorsement and entry in any index*, or under any block, pursuant to such indorsement, *shall be at the risk of the person offering such instrument for record or filing*;" and the thirty-first section, after providing that the indices, and the entries made therein, shall be deemed and taken to be a part of the record for the purpose of constructive notice, contains the following: "provided, however, that *the recording or filing of any instrument*, under this act, *shall not be deemed to constitute notice of any kind, unless and until such record and filing shall be entered in the Register's journal and in the proper local index under the block in which the land affected by such instrument is situated*, in accordance with the provisions of this act."

What can be plainer than that these provisions of Mr. Olmstead's bill are in direct variation of the general rule of law applicable throughout the State, under which, when a party has left his deed for record, it is in legal effect recorded, and operates as constructive notice accordingly, whether the recording officer does or does not properly perform his duty in respect of recording and indexing it?

And in view of the foregoing careful examination of the provisions of the two bills bearing upon the question, what is properly to be said of Mr. Olmstead's statement in his third objection, that our bill does and his bill does not, depart from the fundamental or general law of the State?

It is true that a *preceding* section of his proposed statute, the twenty-eighth, contains the following provision: "All instruments shall be deemed to be registered when left with said Register for recording or filing." We leave it to him to reconcile, as best he can, this provision with those we have just quoted from the twenty-ninth and thirty-first sections.

Fourth Objection.

This is *first*, that from the nature of the case it is impossible to introduce lot indexing in this State, because (as Mr. Olmstead in substance says) it is *never certain and never can be certain except by a judicial decree*, what land precisely a deed conveys, so as to ascertain whether it conforms to a given diagram or not—that even a survey will not determine it—and *second*, that our bill does not, in fact, provide for lot indexing, for that under it, as he says, every deed will be indexed not only against its own lots, but likewise against the adjoining lots, and this, he says, will make "substantially a block index without the obvious and safe form for such index."

The first of these assertions of Mr. Olmstead, that a party to a deed never knows and never can ascertain with certainty, short of a judicial decree, not even by means of a survey, what land precisely his deed conveys, and therefore he cannot make a correct diagram of it, or ascertain by comparison whether or not its lines coincide with a diagram existing upon a public land record, is extravagant and reckless to a remarkable degree and entirely without foundation.

In the great majority of New York city conveyances, and, especially so in relation to property situate in that part of the city which was laid out by the Commissioners under the Act of 1807, say, nearly all the property situated north of a line running across the city from river to river, near the line of Third or Fourth streets, the descriptions in the conveyances are usually drawn upon the plan of commencing on the line of the street or avenue at a specified distance from a named corner, and running thence in a specified direction and for a specified distance along the street or avenue bounding the lot in front, with rectangular sides of specified length parallel to a designated street or avenue, and a straight rear line parallel with the front and of the like length. Under such a description, the deed itself fixes with absolute certainty the precise location and dimensions of the lot conveyed. A survey is in nowise requisite to that end, nor could it either enlarge or diminish the effect of such a description.

Almost the only exception to this, in deeds with descriptions conforming generally to this plan, is in the case of those deeds having reference to party walls or other monuments, by way of boundary, in such manner as, under the settled rule in that respect, would control the statement of distances in the deed, in case of variation between the two. Wherever, because of this circumstance, of monuments being referred to in the deed, or from any other reason growing out of the method of description or otherwise, a doubt exists as to the exact dimensions and location of the lot as in possession and designed to be conveyed, a survey furnishes the ready and inexpensive means of resolving the doubt, and is customarily resorted to as a matter of course. Mr. Olmstead's statement that a survey can not accurately locate an ordinary lot, so as to enable it to be correctly and certainly laid down upon, or compared with, a map or diagram, is simply absurd. He says the locations and dimensions can only be ascertained by judicial decree. If the deed does not show, and a survey will not ascertain, upon what basis, or by what method is the Court to determine?

It is true, that where upon the face of the deed there is apparently no room for doubt as to the location or dimensions of the land conveyed, it has become a very general practice with prudent conveyancers, and wisely so, upon examining titles to lots having valuable buildings upon them, to have a survey made, unless a reliable map of a previous survey is accessible; but this is done before the deed is accepted or the title passed, and the object of the survey is usually rather to ascertain *whether the walls have been placed on the true lines as shown by the paper title* of the lot, than for any other purpose.

In case of a new survey being obtaindd, or an old one referred to, by the conveyancer examining the title, of course the description in the deed is made to conform to the survey if the grantor has such title as to permit it.

However that may be in the conveyance actually executed in particular cases, it is plain enough, as has been shown, that where the description in the deed is drawn with any decent conformity to the proper rules of conveyancing, and with the aid of a survey where the circumstances call for it, the party presenting a deed for recording and indexing can have no practical difficulty in knowing or ascertaining the precise location and dimensions of the property covered by the deed, and then, by comparison with the tax map diagrams, ascertaining with readiness and certainty against what particular lot or lots on the tax map (or for strict accuracy we should say—on the Land Register map taken from the tax maps) the deed should properly be directed to be indexed.

But the bill in question does not compel the party to this accurate ascertainment.

If, where there is any real room for doubt, from the mere description in the deed, as to the actual location or boundaries, the party receiving the deed, or his conveyancer for him, is so far regardless of his true interest and the fitness of things under a decent regard for the just rights of his neighbors and of the public, as to be unwilling to incur the trifling expense of a survey in order to resolve the doubt (a case which we think, and for the credit of human nature it is to be hoped, will be comparatively rare), such party can still, under the provisions of the bill in question, protect himself by "giving himself the benefit of the doubt" and directing the indexing of the deed, against *such adjoining lot or lots as shown on the tax map or Land Register diagrams*, as he thinks or suspects may embrace in their lines any part of the lot actually covered by his deed. Such cases of doubt, resolvable only by a survey which the party presenting the deed for record was too parsimonious to make, would usually be confined to a doubt as to the actual situs (in respect to distance from some particular corner) of the centre or other line of some wall, and the area of ground in respect of which such uncertainty would exist, would usually be confined to a strip of only a few inches in width, and the cases would be rare indeed in which the possible doubts as to actual locality in comparison with the tax maps could call for indexing the deed, even by way of extreme precaution, against more than the adjoining lot on one side, or perhaps in some few cases such adjoining lots on two sides, in addition to the principal lot. There would be very few cases in which there could be any doubt as to the rear line. There is usually no wall or other monument on that line, and on the rectangular blocks between the avenues, lying to the northward of Fourth street, that is to say, in very much the larger portion of the city's area, the street lots, so-called (that is to say, the long ranges of lots fronting on the streets, in distinction from the short blocks fronting on the avenues), almost always have for their rear boundary "the centre line of the block," to which fixed line the diagrams on the tax map will almost certainly be found to conform.

And in connection with Mr. Olmstead's assertion of the impossibility or great difficulty in the way of the grantee's knowing the actual situs or boundaries of the lot conveyed by the deed he receives, and the asserted hardship, therefore, of obliging him so to point out the locality of the property to the recording officer as to furnish the requisite guide for properly indexing the deed, this further remark appears to us to be quite pertinent.

If it be really true, as Mr. Olmstead asserts, that there is this impossibility or immense difficulty in the way of the grantee's knowing or finding out what property the deed actually covers, and the demand is made on his behalf, that for this cause he must (notwithstanding the establishment for the general convenience of a locality index) be allowed to throw the deed upon the record without designating to the recording officer what or where the property actually is, and, therefore, without affording to that officer any means of indexing the deed in the proper place on the locality index, *how are the other people*, whom from time to time it may legitimately concern, *to know or ascertain* what property the deed covers, so as to enable them to determine whether or not it stands in the way of such dealing in respect of particular real estate, as they may be proposing to enter into?

It is clear enough that if a deed possessing such uncertainty in respect of what property it covers as Mr. Olmstead asserts, is allowed (as he insists

that because of such uncertainty it must be) to be thrown upon a general block index without any designation of what property it covers, it will be constructive notice in respect of the property actually covered by it, *whatever that may ultimately prove to be*, to all subsequent purchasers of or incumbrancers of property situated in that block; and it is equally clear that all persons proposing to become subsequent purchasers or incumbrancers of any property situate in that block, which that deed with its very troublesome uncertainty could by possibility affect, will thereby have thrown upon them the burthen of ascertaining at their peril what property that uncertain deed actually covers, or taking the risk of its covering the property with which they propose to deal. And with reference to such supposed case, we repeat the question, and invite from Mr. Olmstead an answer to it: If the man who buys the property covered by the deed with the supposed uncertainty and takes the conveyance of it, does not know and cannot find out what property the deed really covers, how is the subsequent purchaser to know or find out?

And if in answer to this, Mr. Olmstead says that he does not *really* mean that it is *impossible* to ascertain what property the deed covers, but merely that it is very troublesome, difficult and expensive to make the ascertainment, we would then put the question: Assuming the task of such ascertainment of the actual effect of the uncertain deed to be thus troublesome, difficult and expensive, which is the more fair, just and expedient legal provision in relation to it—that the burthen shall be borne and the ascertainment made by the party making the purchase and taking the uncertain deed, and that then the deed shall be entered in its proper place on the index, and the uncertainty in respect of the property covered by it, be cleared up, once for all, or that, on the other hand, such party taking the deed, and whose business it naturally and properly is to determine what it covers, shall be relieved from that task, and the burthen of clearing up the uncertainty be left as an *ever-recurring* task, to be borne, not merely by the first succeeding purchaser of any property in the block which the uncertain deed may by possibility cover, but by any and every such purchaser, and so on, indefinitely; for such an ascertainment by one purchaser for his individual use and protection would in the nature of things leave no trace upon the record, for the guidance or relief from this burthen, of purchasers of other property in the block, which could be possibly affected by the uncertainty?

Certainly there could be but one answer to these questions consistent with good sense or sound reason.

But we will not pursue this topic further, for we are quite sensible that the case of necessary uncertainty in a deed, and substantial difficulty or expense in clearing it up, although boldly asserted by Mr. Olmstead as being the common or customary case, has in practice and substantial reality in ordinary cases no existence, save in his imagination, and that cases of such character, if ever occurring, would be so extremely rare, as not properly to bear upon the proper establishment of a general rule. Yet we have thought it proper to show, as we think we have above succeeded in doing, that even in such rare and exceptional cases, if they should occur, the application of the regulations of our bill would involve no hardship or injustice, and would not leave any practical point of administration unprovided for or open to embarrassment or difficulty.

We now pass to the *second branch* of Mr. Olmstead's fourth objection, viz.: that the grantee in a deed having the liberty of indexing, not only against the lot really covered by his deed but likewise against the adjoining lots, will *always, or almost always, and as a matter of course*, index against all the adjoining lots, and this he will do, Mr. Olmstead says, "for his protection."

This proposition of Mr. Olmstead appears to us to rest upon the idea entertained by him, that the parties bringing deeds for record will be actuated by the like bitter *animus* against the lot system as he has, and will be disposed to do what they can to clog so far as may be its practical working; even at an unnecessary expense to themselves, and without the possibility of deriving any benefit from their acts which produce the unnecessary clogging.

We do not think that this is, in the least, a fair or reasonable or probable assumption. On the contrary, we think it must in fairness be assumed, that the great body of persons bringing deeds for recording or indexing (or in almost all cases their conveyancers, who will do that business for them) will have no disposition to clog the indices by indexing against adjoining lots *where nothing is to be gained by so doing*. There are three reasons which will operate to prevent such unnecessary indexing, viz.: the official charge provided by our bill of two dollars for each additional lot against which indexing is directed—the disposition which, it must fairly be assumed, will be general among conveyancers, *in the mutual interest of all of them*, to avoid action of this nature, which, if made a practice, would give unnecessary trouble to all, including themselves, engaged in the business of examining titles—and the absence of any real motive for indexing against adjoining lots which clearly the deed does not affect.

We freely concede that where, *at the time when the deed is presented* for recording and indexing, the party presenting it or his conveyances *supposes* that the deed *does or may* affect an adjoining lot or lots, although *not sure* that it does so, he will naturally give himself the benefit of the doubt and index against such adjoining lot or lots in respect of which the doubt exists, so as to be *on the safe side*.

The practical question then is, to what extent will this uncertainty exist, so as naturally to produce indexing against an adjoining lot or lots.

We have before shown that the cases will be quite rare in which any such uncertainty will exist *at the time when the deed is presented for record*.

Wherever the uncertainty exists it can only arise from uncertainty *as to what the deed really covers*. If that point be *ascertained*, we have already shown that there *can be* no uncertainty as to whether or not the ascertained boundaries trench upon the boundary lines laid down on the tax map diagrams for representation of the adjoining lots, because those tax map diagrams, *whether erroneous or not*, are *certain as to what they purport*—and the only thing needful to determine as to the necessary indexing is to compare the *ascertained lines of the actual lot* with the *lines of certain purport* on the land register taken from the tax maps. If such comparison shows that the lines of the actual lot *coincide with* the lines of the lot laid down on the land register for representing such lot (as they will with the exception of a comparatively small number of cases, making but a very small percentage of the whole number of transactions), it has been thus clearly ascertained that *there is nothing whatever to be gained* by indexing the deed against any of the adjoining lots, and, as we have before shown, there is no reasonable ground for supposing that such useless and objectless indexing will take place.

If the comparison shows that the lines *do not* coincide, that will generally be owing to an error in the tax maps, which, as we have before said, will usually be found not to extend beyond a strip of a few inches width. In such case it may be assumed that the deed will be directed to be indexed against the adjoining lot laid down on the tax map upon the lines of which it will have been found to trench, and unquestionably a careful conveyancer ought to take that course; although really there would be, in the case of improved property, but a very slight chance of actual harm coming to the grantee in the deed, even if the indexing against the adjoining lot were omitted. By reason of such omission the record would fail to be *constructive* notice in respect of the small strip as to which the error existed; but the sixth section of our bill expressly provides that this circumstance shall not, in respect of such omitted portion, "impair or alter" (as respects subsequent purchasers) "the *legal effect* of actual notice or *of circumstances having the like legal effect as actual notice.*"

In the case supposed there would be the constructive notice as to the body of the lot derived from the record; as to the small strip omitted, there would (ordinarily) be the circumstance of the actual possession held of it in connection with the body of the lot, which would, in most instances, operate as "a circumstance having the like legal effect as actual notice," and there would be but an exceedingly slight practical chance of any transaction taking place in respect of the small strip apart from the body of the lot which could prejudice the true owner. Of course there would be no danger whatever of any harm coming to the true owner of the strip from any action of the owner of the adjoining lot within the *apparent lines* of which, as laid down on the tax map, that map represented the strip to fall, although in fact the strip formed no part of the adjoining lot, either as held in possession or as really owned. Such adjoining owner having *no paper title whatever, nor apparent paper title* to the strip, nor even the possession of it, any deed from him purporting to convey it would be mere waste paper, and it could not be given life to or helped in the smallest degree by any neglect of the true owner of the strip to record the deed under which he held it.

We have said that nevertheless, in the case supposed, it may be assumed that the grantee or his conveyancer would direct the indexing of the deed against the adjoining lot on the tax map, within the lines of which that map erroneously represented the omitted strip to fall. The attention of the party in interest would thus naturally be drawn to this particular error found on the tax map and land register, and he would naturally be disposed to have it corrected, so as to avoid further trouble by reason of it, and the latter clause of the fourth section of our bill contains a provision for having such correction made upon application of the party in interest, which involves very little trouble and no substantial expense. Thus, in the natural working of the system, such errors as really exist in the tax map would gradually be removed.

From what has been before said, it will be perceived that as a practical matter, there is no fair reason to apprehend any considerable incumbering of the land register index by entries of deeds against adjoining lots, in cases in which the grantee has ascertained by the time when he presents his deed for record what property such deed actually covers.

It remains to consider in this connection, to what extent the incumbering of the land register index by entries against adjoining lots may fairly be apprehended, by reason of cases in which the grantee does not know and has failed to ascertain, at or before the time when he brings his deed for record, precisely what land the deed actually covers.

As we have before said, the customary practice in respect of descriptions of lots in that part of the city lying above the line of Fourth street (and which we may here say is likewise applicable in large measure to a very large part of the property below Fourth street which is contained in rectangular blocks laid out by their former owners into regular lots) has been and is such as in the great majority of instances to make the *mere description* in the deed *absolutely conclusive* as to what property is covered, and that in such cases, almost the only exception to the conclusiveness is caused by the circumstance (which we admit is not uncommon) of the deed containing such reference to a party wall or other monument as would control its statement of distances, in case of variation between the two.

Let us now take the case of a deed containing the description, which is by far the most customary.

"That certain lot of land situate in the city of New York, beginning at a point on the northerly side of Twentieth street, distant one hundred feet westwardly from the westerly line of Sixth avenue, and running thence northwardly parallel with Sixth avenue ninety two feet to the centre line of the block; thence westwardly along such centre line and parallel with Twentieth street twenty feet; thence southwardly parallel with Sixth avenue ninety-two feet to the northerly line of Twentieth street, and thence eastwardly along said line of Twentieth street twenty feet to the place of beginning."

It will readily be seen that under such a description there is *no possible room for doubt or uncertainty as to what precisely the deed covers.*

Let us suppose the deed in this customary form to be received, and the description to be compared with the tax map, and the result to be a showing that the lines of the corresponding lot on the tax map precisely coincide with the lines of the deed; as will be found to be the case with comparatively rare exceptions.

Under such circumstances, why should it be imagined that the grantee or his conveyancer will direct the deed to be indexed against any adjoining lot? He has nothing to be *protected, and no possible object of any sort to b*

gained, by so doing. Manifestly, there would be no more sense or reason in his indexing such a deed against an adjoining lot than in his indexing it against a lot in some other block, and there is no better reason for his supposing that he would do the one, than that he would do the other. Mr. Olmstead's assumption to the contrary is entirely baseless.

In the case of a deed containing a reference to a party wall or other monument, which would control the statement of distance, we admit that there is a possibility of uncertainty in the distances given in the deed, which makes it proper to resort to a survey to ascertain the area of the lot with absolute certainty, and in the case of conveyances of lots in the lower part of the city, having irregular boundaries, there is the like occasion for a survey to ascertain the exact description.

In all the cases above referred to, where a survey is really requisite in order to arrive at certainty in respect of the actual location and dimensions, it is most usual *now* (and, of course, apart from any necessity consequent upon the lot system of indexing), in the practice of prudent conveyances, to procure such survey, and of course a surveyor's map of the premises, unless a former reliable and sufficiently recent survey is furnished by the seller to the satisfaction of the buyer.

It will be readily seen that in such cases as are above referred to, there are usually sufficient motiv s of self-interest to induce the party to obtain a survey. Usually, a purchaser, if his deed does not tell him just what land he is getting, is quite anxious to find out. And generally the conveyancer finds great if not insurmountable difficulty, in making any examination of the paper title satisfactory to himself, without knowing the precise location and boundaries of the lot is respect of which he makes the examination.

Wherever a proper survey is had, the precise location and dimensions of the lot are, of course, ascertained, and all our former remarks, as to the *absolute freedom from difficulty* in the directions for indexing, *in cases where the location and dimensions of the lot are known*, become applicable.

If, in cases where any real uncertainty exists, because of which a survey ought properly to be made, such survey is omitted, we admit that there is reason to suppose that direction may be given for indexing the deed against one or more of the adjoining lots, but we think it will be found that in practice the cases of this kind will be but a very small percentage of the whole number of transactions, and that the practical effect of them in incumbering the indices by entries against adjoining lots will be but trifling.

And now, *finally*, let us suppose for the moment that Mr. Olmstead's assumptions in respect of indexing instruments against adjoining lots are correct, as he states them, that is to say, that the indices of one particular lot practically contain the instruments relating to three or four lots, although it is plain enough that his assumptions are absurdly extravagant and many times the true or reasonable amount.

Yet let us suppose that in looking for the instruments relating to one lot, we have to pick them out of those relating to three or four lots. This, he says, will be the result under the lot system.

But what is the inevitable result under his block system? Unquestionably, that in looking for the instruments relating to one lot you have to pick them out of those relating to eighty or ninety lots.

Thus, if you give him the benefit of all his extravagant and unreal assumptions of fact in relation to the extent to which the practice of unneccessarily indexing against adjoining lots will be carried, you will find that about *nineteen-twentieths of the trouble* of weeding out non-affecting instruments, which will be encountered in examinations of title under the block system, *will be saved under the lot system.*

In conclusion, upon this point, we think we ought to say that the extra charge for indexing against additional lots was fixed by us in our bill at a sum somewhat exceeding the necessary and reasonable compensation for that service, and that it was so done with the idea of affording some check against the possible practice of unnecessary indexing against adjoining lots, by reason of mere carelessness and indisposition to take the trouble of finding out the proper lots for indexing, and that we did so because suggestions were made that such a practice may grow up.

If such a practice should, notwithstanding the small extra charge contained in our bill, grow up and become an abuse, it seems plain enough that it ought to be and readily can be checked hereafter, by an alteration making the additional charge high enough to deter the practice.

Fifth Objection.

This is—"That the bill for lot indexing is inequitable and is *probably unconstitutional*, in that it permits an owner to be *deprived of his property without compensation.*"

This remarkable legal proposition is asserted, because a bill for registration of deeds on a locality index contains the simple and plainly necessary requirement, that a party desiring the benefit of having his deed recorded shall designate to the recording officer to what portion of the locality index the property affected by the deed relates, to the end that it may be properly there indexed, under penalty of losing the advantage of the record in so far as he fails to comply with such requirement.

It seems to us that for us to enter upon a discussion of this proposition before the Judiciary Committee would be an insult to their intelligence, and we think we are not wanting in any proper requirement of courtesy to the gentleman who advances the proposition, when we say it is preposterous; though we are aware that it must be an extreme case to justify the use of such a term.

Sixth Objection.

This is—that the filing of the prescribed notices of claim against lots not owned by the persons filing them would *create clouds upon the titles* to the lots, which would be removable by a court of equity.

The thing which Mr. Olmstead here refers to as "notices of claim against lots" manifestly is the written designation of lots against which the instrument is directed to be indexed.

In the bill itself we find nothing which is either called "a notice of claim," or is, in fact, such a notice in any just sense.

The instrument which Mr. Olmstead refers to, is not a notice of *any claim whatever*, independent of *or apart from the deed*, but is merely a statement to accompany the deed, with like effect as if contained in the deed itself, *that the deed is claimed to affect* the designated lots and that the *indexing of the deed is to be against* those lots. Simply this and nothing more.

The *sole purpose* and the *sole effect* of this instrument is *to fix and limit the lots in respect of which the deed* shall upon its record *be constructive notice.*

The deed, in connection with which this instrument is recorded, shows for itself upon examination *whether it does or does not affect* the particular lot in respect of which Mr. Olmstead says it may operate as a cloud upon the title. The notice contains *nothing which extends or purports to extend* the scope or purport of the deed *beyond the deed itself.* The entry of the deed, in pursuance of the direction of the notice, upon the index of the specified lot, operates merely as a notification, in the nature of a *caveat*, to subsequent dealers with that lot, *to look at that deed and take notice of its contents so far as may concern them.* It extends not one whit beyond that, and the *intended* and the *actual* effect of that notification upon the index, is *merely* to charge the subsequent dealer with the lot, with the like constructive notice of the contents of the deed, as under the present recording act he would be chargeable with by force of the mere recording of the deed.

For Mr. Olmstead's notion, that if the deed does not in truth affect a given lot, upon the index of which notice of its existence is thus given, a cloud is thus created upon the title of such lot, there is not a particle of foundation.

Under Mr. Olmstead's block plan, the deed is to be entered upon the index of the block, and thereupon it becomes constructive notice of all that it contains to every person subsequently dealing with any of the lots on that block. There would be as much reason for our saying that this created a cloud upon the title to the lots in the block not really affected by the deed, as there is for Mr. Olmstead's saying, that entering upon the index of a given lot, notice of a deed not really affecting it, creates a cloud upon the title to that lot.

It will be more convenient to notice here than elsewhere Mr. Olmstead's *twentieth* objection (which is akin to this sixth objection), namely, that *the presumption would arise that even precautionary notices affected the titles* of the lots against which they were indexed, and that this *if not a legal would be a moral presumption*, which would interfere seriously with the value of the property.

All this proceeds upon the like mistaken views in regard to the nature and effect of the indexing and the written direction for it, which are above adverted to and corrected in answering the sixth objection, and the assertion in relation to "a moral presumption" in the absence of a legal one can only rest upon the assumed basis of the *lack of any clear idea upon the subject* upon the part of the persons supposed to entertain such "moral presumption."

If the practice of indexing against adjoinng lots not really affected should become at all common, because of carelessness or unwillingness to take the necessary trouble to find out what property the deed really affected, the fact of its being common would be generally understood, and no false presumptions would be entertained in relation to such action or the reason for it; but whether such actions were frequent or infrequent, no difficulty, either legal or moral, or of any kind, would arise from such an entry as is above adverted to being made upon the index of a particular lot, when examination of the deed to which attention was thus called showed that it did not really affect the lot in question. Such a case would be quite analogous to the one so very common under the present system, and with which every conveyancer is familiar—where the Register, when making a search under a requisition, upon finding some instrument on record as to which, upon examination, he is uncertain whether it comes within the requisition or not, instead of making the usual return as to the nature of and parties to the instrument, merely notes on the return, "See Lib. 500, Conveyances, page 200," whereupon the conveyancer examines the instrument to which he is thus referred, and determines whether it affects his property or not. As to Mr. Olmstead's assertion in this twentieth objection, following his allegation in relation to "moral presumptions," that "probably in many cases judicial determinations would be required to remove such presumptions, and titles could not be passed until such determinations were had," and that a law producing such alleged results would be detrimental to the value of real estate in New York, we will simply say that they appear to us to be mere nonsense.

Seventh Objection.

This is—"That it is a serious objection that under the plan of lot indexing, dealers must protect themselves by surveys at great expense and risk." We have before said most of what requires to be said in regard to surveys. We have shown that there is nothing in the bill which absolutely requires them, but have also stated that in cases where the precise location and dimensions of the property are in doubt, so as to make a survey needful to arrive at certainty, such survey is now usually made, and is dictated by the interest of the party.

But we may further now say that the cost of a survey is quite small, and that they are very useful things in the examination of titles. The usual charge by a first-class surveyor in New York for the survey and map of a single lot is not more than ten dollars, or in some cases, or by some of the old-time surveyors, fifteen dollars. If the bill absolutely required, as certainly it does *not*, the making of a survey in all those cases in which the location and dimensions of the property would be otherwise left uncertain, for the mere purpose of the proper working of the lot system, such requirement would not be unreasonable on the score of the expense thus caused to the party, inasmuch as his gain by the saving in cost of searches under and by reason of the lot system would be very much more, even in respect of the single transaction, than the cost of the survey; in many cases, more than ten times as much, or perhaps more than twenty times.

Moreover, if the case were such as that the question what property the deed actually covered, would have to be left uncertain unless a survey were made, it would, as we have before shown in discussing a kindred question under Mr. Olmstead's fourth objection, be much more equitable to require the survey to be made and the uncertainty cleared up by the party taking the uncertain deed, than to leave the question open, to stand in the way of subsequent purchasers of neighboring property which might possibly be affected by such uncertainty, with the possible effect of throwing the burthen and cost of making the survey upon those subsequent purchasers.

As to Mr. Olmstead's suggestion, that in the provisions of our bill in this respect we have made a bid for the support and approval of the lot system by the surveyors of the city, we treat it with the contempt it deserves.

In fixing the plan of our bill we steadfastly set our faces against recommending new surveys for the purposes of the land register index, being satisfied that the existing tax maps would answer all the practical purposes necessary, as the basis for the land register index, which could be made up from them by mere copying, and we know that new surveys and maps for the new system would involve great and unnecessary expense and great delay.

Upon looking, however, at Mr. Olmstead's bill, we find a quite different view taken by him.

The eighth section of his bill provides for a map or plan of the entire city, to be prepared under the direction of the commissioners to be appointed under that bill, "by competent surveyors and draughtsmen," and we think we scent in this provision a huge "job."

Eighth Objection.

This is—"That the lot plan *requires experts to understand and keep the indices* in order, and such indices *cannot be made use of by the public*, but only by conveyancers, official searchers and persons familiar with them."

Akin to this, and most conveniently considered with it, is the thirteenth objection, which is as follows:

"The lot system is unsafe for notifying dealers. *The necessity of experts to manage the indices is sufficient evidence of this.* If the indices *cannot be taken care of* and the entries made therein *by the Registers and County Clerks who may be elected* for the respective counties throughout the State, it is *pretty certain that such indices are not convenient, safe or reliable for use by the general public.* The style of index which the public want and can make use of without the intervention of conveyancers and experts is the one which should be given to them by the Legislature."

These objections of Mr. Olmstead may, we think, be without impropriety, characterized as of the clap-trap order. He knows as well we do, that whether under the lot system, the block system, or any other system, the business of examining titles and inspecting records and indices for that purpose cannot practically be conducted by what he calls the general public, but must be done by experts or persons possessing certain legal knowledge and skill; but he probably thinks that this style of talk sounds well, and may perhaps in some direction or in some way help the cause he advocates with so much zeal. We do not propose to follow him on that tack.

But it seems to be well enough for us to remark, that if under either of the two systems, the examination of titles or of the indices to that end could be safely and properly accomplished by unskilled persons, or what he calls the general public, it could be better and more easily accomplished, and with much greater certainty, under the "lot" system than under the "block" system. The question, as between the two systems, of comparative facility in the use of the indices, produced as the results of the two systems respectively, is to be judged *not* by reference to the *skill and care and labor required to produce* respectively the instruments which are to be made use of, but upon the *nature and character of those instruments* respectively *when they have been produced.*

Mr. Olmstead's proposition, that because experts are provided to produce and keep in order and to guard carefully from error, the lot indices, therefore, the lot indices must necessarily be a complicated thing which no one but an expert can properly handle or make use of, proceeds upon a curious confusion of ideas. It is, decidedly, a *non sequitur.*

In point of fact, the thing produced, the "lot index," is *the simplest index possible* in the nature of things. It contains merely the things relating or supposed to relate to the particular lot, and is free from any necessity for searching or picking out from a general mass the particular thing needed to be referred to and examined. Its superiority in all these respects to the block index is immense and unquestionable.

The *experts are required* simply to *produce this very simple and perfect thing*, and to afford the *most careful guards against any possible creeping in of errors.*

The propositions in this regard which Mr. Olmstead advances are about as sensible as if he were to say, that because it required a high degree of skill to produce a very perfect map, *ergo*, none but a skilled expert could advantageously make use of the map, or that because a work published upon a particular subject involved or had the advantage of, peculiar lucidity of style in the author, no one of merely common attainments could advantageously use the work.

Ninth Objection.

This is the many entries and cross entries, which (as Mr. Olmstead says) will have to be made in the indices under the lot plan. Here we have a mere repetition of his assertion that every deed will practically be entered against three or four lots instead of one. We have already, under head of the fourth objection, answered this objection, and shown its fallacy, and that even if true in fact, the result would be of little consequence, and still leave to the lot system an immense superiority over the block system.

Tenth Objection.

Here we have a rambling, disjointed and pointless statement of wholly imaginary difficulties and complications. We do not answer them because there is nothing specific to answer.

Eleventh Objection.

This is the alleged "impossibility in examining titles, of comparing the notices to be filed with the constantly changing numbers of the lots on the tax map."

Following this heading are certain loose and rambling statements. If Mr. Olmstead really had any distinct idea of any specific points of objection designed to be here presented, we fail to discern what it is.

If there is anything at all worth answering, it must be, we think, what is subsequently stated as the nineteenth objection, and we leave it to be answered under that head.

Twelfth Objection.

This is, that entries of notices are allowed to be made on the local indices against lots not affected by such notices.

Whatever there is of substance in this objection has been already substantially answered under head of the sixth objection.

Under this objection Mr. Olmstead goes on to argue that it is a fatal violation of principle to allow anything to be entered on the index of a lot, which does not really appertain to that lot, and that if it is permitted, it is vain to suppose that any one other than a lawyer or other skilled person could make any use of the index containing such extraneous matter.

In answer to this, if any answer could be supposed to be needful, we would ask—why is not the same practical objection applicable, and with more than ten-fold force (or we should rather say more than twenty-fold), to the block index, and to the attempt to use it by an unskilled person who is concerned with only one particular lot in the block?

If the lot index would be useless to such a person, because it was incumbered with entries relating to two or three other lots, *how much worse than useless* would be the block index, incumbered by entries relating to eighty or ninety other lots?

Thirteenth Objection.

Already answered in connection with the eighth.

Fourteenth Objection.

This is, the alleged "unavoidable accumulation of instruments and notices in the Register's office under the lot plan."

Most of the rambling statements under the head of this objection appear to be mere "words signifying nothing." If any real thing is pointed at, as being a multiplication of papers under the lot plan, it must be, we think, the mere designation of the lot or lots against which the indexing is directed, which is allowed to accompany the deed and to be recorded with it.

This is a paper about two lines long, and in the simplest form possible. Such a paper is essential to the proper working of the lot system, with its immense advantages, and to make objections to it on the score of undue multiplication of papers is frivolous.

Moreover, this paper is not longer, and we think it will usually be shorter, than the paper which the twenty-ninth section of Mr. Olmstead's bill requires to be endorsed on the deed when presented for record.

Fifteenth Objection.

This is, "That the lot plan takes the arbitrary and variable areas of city lots for the indices, instead of the block, which is a well-known unit," followed by some rambling and inconsequent statements, embracing no point requiring an answer.

Sixteenth Objection.

This is, the alleged *great number of volumes* of indices required for lot indexing.

This is hardly worth taking the trouble to answer.

The record volumes now in use in the Register's office contain, we believe, some 600 to 700 pages. If like volumes were to be used, and there are 160,000 lots, each set of the indices would require 220 volumes, if we allow 500 pages for present use and the remainder for the blank pages. Probably it may be requisite to make a larger provision of blank pages, and it may be more convenient and judicious to have the volumes of less thickness.

However that may be, the lot system calls for *only one page for each lot;* and whatever excess there may be over the requirements of the block system is merely in the provision of *blank space*, which can produce harm or inconvenience to no one. It is a mere question *of an extra bill of stationery*, and the cost may be, we suppose, about a cent or so for a city lot, which is certainly not a very grievous burthen.

The urging of an objection of this character as a counter-balance of the great advantages obtained by the lot system is merely ridiculous. Moreover, the entry of a deed on the lot index is not merely *no longer* than an entry on a block index, but is *much shorter*, inasmuch as it contains no entry as to where the property is, because that is fixed by the mere circumstance of its being on the "lot page;" and where there are many grantors in a deed all useful purposes under the lot system are answered by entering on the index the name of one of them with the addition of the words "and others," while under the block system of massing the entries relating to eighty or ninety lots, it will be necessary to enter with care and accuracy upon the index the names of all the grantors.

Seventeenth Objection.

The heading of this objection is: "An erroneous notice of claim cannot be rectified."

It would hardly do for Mr. Olmstead to say this in the face of the simple and easy method of rectifying such an error which the sixth section of our bill very clearly provides; and accordingly we find, on reading through this objection, the complaint is that the correction is only operative from the time it is made, and not retroactively. To make it thus retroactive would be manifest injustice to intervening purchasers in good faith who had been misled by the mistake, and the impropriety of doing so is too obvious to require argument.

Eighteenth Objection.

This is, "that under the lot plan *all searches*, whether for transfers or liens, must be made both with reference to the notices of claim as filed and to the deeds as recorded," and then follow some rambling statements, the practical point of which, if there be any, does not seem to us to be apparent. At all events, there is nothing worth the trouble of an answer. As to the supposed difficulty in *searches* we have already shown that under the lot plan "searches," usually so-called, will not be required at all.

Nineteenth Objection.

This is, "that the land map to be kept in the Register's office cannot show all the changes on the tax map as required by the bill for lot indexing."

The objection then refers to the provision of the bill, which clearly requires that such changes shall be made in each year on the land register, *as of* the first day of September; and that they are to be *physically made before* that day, but *take effect on* that day, and that such change on the land register is to *embrace all the changes on the tax maps* made *during the twelve months ending on the first day of June next preceding* such first day of September.

This, he says, is mechanically impossible.

As to this we answer that the assertion is entirely unfounded. The three months' interval affords ample time for the purpose, and it was arranged and provided by us to that end.

And then he says, "and at any rate it is of no value unless the date of every change also appears."

Here, again, we find the like confusion of ideas and like want of accurate comprehension on the part of Mr. Olmstead, which is elsewhere apparent.

A careful examination of our bill will show that, in this respect as in others it is carefully drawn, and leaves no loop-hole or room for difficulty.

The indexing is always to be, not against the lot as laid down in the tax map, *per se*, but *against the lot as existing on the land register at the time being.* The *land register* is to be *made up* originally *from* the tax map. And *once a year, and at that time only*, viz., on or as of the first of September, the land register is to be altered so as to show the like changes as have been made on the tax maps during the year ending on the preceding first of June. Such changes made in the land register are all to take effect on one specified day, the first of September. Until they are actually made on the land register, and go into effect on such first of September, the changes from time to time made on the maps kept in the tax office are to have *no effect whatever* on the indexing on the land register, and the dates at which such changes in detail occur in the tax office are quite immaterial for the purposes of this system of land records and registration.

This explanation, in connection with reference to the circumstance that our bill carefully provides, that whenever a change is actually made in respect of the index of a lot, cross references showing the date of the change shall be made in each page on which the index of the lot is contained, in respect as well of the old lot account which is closed as the new lot account which is opened, gives all the answer that is required to so much of the eleventh objection as was left to be answered under the head of this objection.

Twentieth Objection.

Already answered in connection with the *sixth.*

Twenty-first Objection.

That the "area of city lots are too small for a local index." This presents no point requiring a separate answer in addition to what is said elsewhere.

Twenty-second Objection.

This is—that "for the proper working of the lot plan as proposed the Register must be a judicial officer."

In Mr. Olmstead's recent communication to the Legislature this bare statement is made without the citation of any fact for its support. But we must consider it in connection with his report made to the Legislature last winter, in which he makes a statement which we must assume to be the basis on which he founds his allegation that our bill makes the Register a judicial officer, viz.: "Under the plan of lot indexing, the Register would be *required to read the description of the property in every instrument* presented to him for record or filing, with great particularity;" and he has repeatedly claimed in his oral discussions that the Register, after reading the descriptions, would be obliged to pass judgment upon the question, what property the deed actually covered, in order that he might index it in the right place.

These allegations of Mr. Olmstead, that it is necessary for the Register to read the description, or that he is required or allowed to pass a judgment upon the question, what property the description covers, are entirely unfounded. Under our bill, the Register is required to index the deed *against the property designated for the purpose by the party* who brings the deed for record, and *he has not the duty or a right to index it otherwise.* This duty is purely ministerial, and for Mr. Olmstead's assertion that our bill makes the Register a judicial officer, there is not the slightest color of foundation.

Twenty-third Objection.

This commences with the extraordinary statement that "before a system of lot indexing could be introduced into the city of New York, at least 160,000 titles of lots would require to be examined by a court to be constituted for the purpose."

If this statement was really intended to refer to the system of lot indexing which our bill introduces, we should have to characterize it as a mere falsehood, as silly as inexcusable, and having not even the slightest possible basis.

But by reading further the objection, we find that what he really means is, that this enormous task of a judicial ascertainment of 160,000 titles would be one of the necessary pre-requisites of a system of government guaranty of land titles.

This being so, we see no reason why he should introduce this irrelevant assertion into the present discussion, unless his object is to produce confusion and mislead careless and unthinking persons by producing a hasty first impression against our system.

SOME CRITICISMS UPON AND OBJECTIONS TO MR. OLMSTEAD'S BILL.

Turning now to the consideration of the remedy proposed by the minority member for existing evils, and the bill by which he seeks to apply the remedy, we would be led to expect from the intimate knowledge possessed exclusively by himself, as implied by his arguments, that the remedy would be one which would be admitted to be perfect as soon as made known, and the bill without fault.

Yet, we venture to assert not only that the plan proposed has many and serious defects, and is in every way inferior to the lot system, but that even if the Legislature should favor block rather than lot indices they could not properly pass the bill proposed by Mr. Olmstead.

The general features of the block plan have been incidentally considered in the earlier part of this argument in examination of the lot system. The first of our objections to the plan is that it necessitates the continuance of searching, the errors in and expense of which have made a change of system necessary.

To attempt somewhat to relieve the measure of the objection in regard to errors in names by closing up the hiatus which occurs under the present system when the chain of title is broken by foreclosure or partition or death, the bill contains a section to which we can do justice only by quoting it entire.

"SECTION 41. Whenever an instrument transferring land or any interest in land has been entered on the local index of transfer, and the next succeeding instrument, transferring the same land or any part thereof, is executed by a person other than the last preceding registered owner, said Register shall not place such last instrument on the local index of transfer unless such instrument shall contain or be indorsed with a statement of the name of the last preceding registered owner of said land as indexed, *signed* by the grantee named in such last-mentioned instrument, or by his attorney, and such instrument shall thereupon be indexed *according to such statement;* but the omission of such statement shall not impair or render invalid the effect of indexing such instruments, if the same be indexed."

This means apparently, or may be construed to mean, that the Register shall have power to stop the indexing (and consequently the notice as we shall hereafter see) of a deed until he has made a search for the last preceding registered owner of the same land, and determined that he is such owner; he *must do* this under the section, in case the deed does not contain or is not indorsed with the name of such owner; and it may be argued that he must do it even if the name is so contained or indorsed, unless the name of the owner so indorsed is really that of the last preceding registered owner of the land.

We do not think any argument is needed beyond this mere statement to satisfy anyone that this is a fundamental change in the law which could not be entertained for a moment, not even for the purpose of curing the defects of a new system.

Nor is anything more than this section necessary to test the truth of the statement in the argument of the minority member that under his system the Register is a strictly ministerial officer.

This effort to avoid the force of the argument, that the proposed block plan only perpetuates, though in lesser degree, the defects of the present system, having failed, what else is there to overcome that argument?

Section 13 says: "Said indexes so to be prepared shall be both nominal and local, and in form substantially the same as the forms of the schedules hereto annexed, marked respectively Schedule A and Schedule B, which schedules are to be deemed and taken to be a part of this act." We look at these schedules and find in each a column headed "Ward or Lot No." and under it, opposite to every transfer and every lien, *a veritable lot number*, and if we have not looked into the matter we say here is the difference between the old and new systems, any error in the names will find a check in the lot number. No doubt, many people who have looked at these schedules have been so deceived.

We turn to Section 29, and find these words: "Such instrument *may* also be indorsed with the lot or ward number of a lot affected by an instrument, and *in such case* the Register shall enter such lot or ward number on the local index," and from one end of the bill to the other this is the only provision for the entry of such lot numbers in the index.

It is very evident that the minority member realized the necessity of the lot or ward numbers appearing in the index. But, if necessary, they should be compulsory, and if compulsory, then it is impossible to avoid the conclusion that simplicity and accuracy would require that all transfers and liens affecting the same lot number should be grouped together and not be mixed up with all the other lot numbers of a block, to be thence picked out, with the chance of some of them being overlooked in the process.

If unnecessary, then the index should not be incumbered with them. A mere permission to use them has no value whatever, and comparatively few persons will avail themselves of a privilege which secures no benefit and subjects them to the inconvenience of going to another office to find the numbers.

The provision seems to be practically an admission that a mere block system, such as Mr. Olmstead professes to recommend, is impracticable or inexpedient.

This objection has been made and urged repeatedly without ever eliciting one word in reply or explanation from the author of the bill.

These are the only provisions in the bill which even pretend to break the force of our argument that the block system only repeats on a smaller scale the defects of the present system.

But there is another provision which tends to increase those defects; it is Section 31, and reads as follows:

"The indexes hereinbefore by this act directed to be made and kept in the office of said Register, and the entries made in said indexes, shall, for the purpose of notice, be deemed and taken to be a part of the record of the instruments to which such entries respectively refer or relate, and such indexes and entries shall be deemed and held to be constructive notice to all subsequent purchasers, mortgagees, incumbrancers and dealers in the land affected by the instruments to which such entries respectively refer or relate and of the record of filing thereof, and of the execution and contents of such instruments, in the same manner and to the same extent as the recording or filing of such instruments now is or may be notice; provided, however, that the recording or filing of any instrument under this act shall not be deemed to constitute notice of any kind, unless and until such record or filing shall be entered in the Register's journal, and in the proper local index under the block in which the land affected by such instrument is situated, in accordance with the provisions of this act."

Under this provision, since the index is constructive notice of the deed or other instrument referred to, Mr. Olmstead's bill contains nothing to relieve a purchaser of any lot in a block from the burthen of examining each and every instrument noted in the mass of entries contained on the block index, and which can, by possibility, affect his particular lot, and from picking out, at his peril, from the general mass all the instruments which may so affect him, and thus there is no substantial gain over the present system.

And this is a bill intended "to simplify the method and lessen the expense of transferring title to real estate."

We may next refer to Section 29 of the minority bill which requires a certain indorsement of every instrument presented for record, and states "and the Register may, in his discretion, refuse to receive an instrument unless the same be so indorsed." Thus again, under this bill the Register is made, to a certain extent, a judicial officer, notwithstanding the assertion already quoted from the argument of the minority member that under *his* bill the Register was made a strictly ministerial officer.

The book provided for in the 11th subdivision of Section 17 for Register's certificates of search to be entered in full is one which it would be impossible to keep up without employing a large force for that express purpose, and one in which errors would inevitably be frequent. Such errors, when they did occur, would not be discovered by subsequent searches, but be perpetuated by the certified copies of the original provided for in Section 26.

The liability of the Register provided for in the last-mentioned section to any person who may rely upon an original search or a certified copy thereof, adds nothing practically to the security of titles. Such security can only be found in the simplicity of the system of indexing, and not in any financial responsibility of a Register, which is usually an unknown quantity, and would certainly be under this provision, since no responsible person would be willing to subject himself to such an indefinite liability.

An examination of this bill will disclose no less than eight sections in which discretion is given to somebody in matters which should be settled, after due consideration, by the bill itself.

Section 9 gives to the commissioners discretion to divide, number and designate the parcels of land in the Twenty-third and Twenty-fourth Wards in such way as they may think best.

Section 15 provides that the indexes provided for by the act shall be used "so far as practicable for indexing instruments."

Section 20 provides that separate journals "may be kept for the different land sections" (into which the city is to be divided), if thought desirable by the commissioners.

Section 29 gives to the Register discretion to refuse to receive an instrument unless properly indorsed.

Section 37 must be given entire, because, under it, it is possible that a Register may return to the old method of indexing. It reads:

"Whenever, *in the judgment of said commissioners*, and, after their their term of office, *in the judgment of said Register*, the hereinbefore mentioned form of local indexes authorized by this act *cannot in exceptional cases for any reason* be conveniently and safely used for indexing transfers of lands, caveats, liens and instruments, as provided by this act, and the use of such indexes is not, in fact, in any such case practicable, said commissioners may, during their term of office, and afterward said Register may, with the approval in writing of the corporation counsel of said city, in such cases *substitute such other modes of indexing or entering in said Register's office such transfers, caveats, liens and instruments as they shall deem advisable*, and may, in like manner, establish sub-indexes or sub-records in cases where the circumstances warrant, *and the methods as substituted and put into operation in the office of said Register shall be of the same force and effect as any other method authorized by this act.*"

Section 44 gives to the commissioners power to re-index past transfers upon some other plan than that prescribed by the act, if they shall think best.

Section 46 gives to the commissioners power to prepare lexicographical indexes, if they shall deem it expedient.

Section 49 gives to the commissioners power to vary the form of indexes for re-indexing *lis pendens*, etc., whenever in their judgment the prescribed form cannot conveniently or safely be used, and they may index such notices in one volume or separate volumes as they shall think proper.

After reading these sections the query appears naturally to arise why, if he deems such legislation as these sections would embody to be suitable, does he not present a bill providing for the appointment of commissioners, and leaving to their absolute discretion the whole subject of the form of the indices. Speculation is in order as to how many forms of indices there would be under such a bill or under the bill which he actually proposes. Any system of indexing, whatever it is, should be complete in itself, and nothing should be left to the discretion of anybody except the merest matter of detail.

We will not go further. There are many other parts of this bill which cannot stand fair and candid criticism, which show how loosely the bill is drawn, a sufficient objection to any proposed legislation, but fatal to legislation establishing a new system of indexing transfers of and liens on the real estate of a great city.

And now, with this presentation of the subject, with the consideration of which they have been charged, the majority of the commission feel that their duty ends.

Serving gratuitously, and at a serious sacrifice in time, without any personal ends to gain, they have simply endeavored to perform their duty in a manner worthy of the importance of the subject, and fitted to accomplish a permanent reform in the methods of transferring title to real estate.

It is matter of congratulation with them that in all the discussions since the presentation of their report not a single objection has been made to the system they propose other than those which were made, discussed, and, they believe, fairly answered during the sessions of the commission.

They leave the bills which they have framed, and the arguments they have advanced in their support, with the Legislature, invoking their careful examination of them, in full faith that such examination will lead to the same conclusions that have been reached by others competent to judge, to whom these measures have been submitted, and will result in the approval and passage of the majority bills.

All of which is respectfully submitted.

CHARLES F. SOUTHMAYD,
JOHN H. RIKER,
CHARLES E. STRONG.
EDWIN W. COGGESHALL,
Late Commissioners of Land Transfer.

Dated New York, February 25th, 1886.