

deposit by the landlords should be abolished, and a local guarantee established : (4) extended facilities should be provided for the sale of settled lands, and an increased range of investments legalized for the purchase monies arising from same while in settlement : (5) power should be given (at first perhaps only in certain districts) to either a landlord or a tenant to compel a sale, and provision made for fixing the price, and compensating all persons having interests in the land : (6) a land registry should be established of the new owners, and all dealings with the properties which did not appear on the registry rendered null and void.

A scheme on these lines would, I am convinced, be successful in restoring stability to landed property in Ireland, and would thus be an inestimable benefit to the country. The money advanced would be a profitable investment, if it succeeded in creating contentment and peace in Ireland. The danger, moreover, of ultimate loss would be extremely small.

III.—*The Purchase of Land (Ireland) Act, 1885, generally known as Lord Ashbourne's Act.* By J. H. Edge, Barrister-at-Law.

[Read, Tuesday, 7th December, 1886.]

NOTWITHSTANDING that a Royal Commission is now sitting to examine into the working of this measure, it may be useful for the purpose of drawing forth public opinion, that our society should discuss some of the questions which its operations have raised. The acquisition of the land by the occupier has now been removed out of party debate, as all sides desire its accomplishment. The fundamental idea in Lord Ashbourne's Act appears to be voluntary sale and voluntary purchase. A landlord under it is not to be compelled to sell unless he likes, and at whatever price he likes; and similarly, a tenant cannot be compelled to purchase, unless he thinks it is his interest to do so. The Act is at present the best available machinery for carrying out sales to tenants by loans from the government; and I propose to touch upon some points in which the Act might possibly be usefully amended, without changing its essential principle of voluntary sale, unless my proposal for the compulsory sale of head-rents and incumbrances may be regarded as a departure from it.

The Act was passed on the 14th August, 1885, and up to and including the 12th October, 1886, 3,681 loans were applied for; 3,005 were sanctioned; 1,479 were issued; and about 550 loans were refused: the total amount in value of loans applied for, was £1,835,220; sanctioned, was £1,335,286; issued, was £596,102; and refused, was about £200,000; and the average rate of purchase on loans sanctioned was eighteen years' purchase of the rent. And as the total advances to purchasing tenants under the Land Act of 1870, in eleven years, was £416,802, to 710 tenant purchasers, and of the Land Act of 1881, in four years, was £240,554, to 731 tenant purchasers, the Land Act of 1885, which has issued 1,479 loans to

that number of tenants, has effected twice as much in fourteen months as the other two did together in fifteen years. Lord Ashbourne's Act, incorporating the previous Land Acts of 1870 and 1881, enables sales of their holdings to tenants to be effected either by purchases of estates by the Land Commission for re-sale to tenants, or by sales direct from landlords to tenants; and the sales by landlords to tenants can be carried out either by the advance of a sum not exceeding three-fourths of the purchase-money by the Land Commission—the tenant supplying the remainder in cash, or, if the landlord consented, securing it on a mortgage of the holding paise to the loan by the Land Commission, or by the Land Commission advancing the whole purchase-money—the landlord or tenant providing a guarantee deposit of one-fifth of the purchase-money.

The Land Commission also are empowered, if required, on payment of a certain stipulated amount, to negotiate the sale from the landlord of an estate to the tenants; and finally the sale from the landlord to the tenant may be carried out either by what is termed in the Act "vesting order," or "by conveyance." In the first year of the Act only two estates in all Ireland were purchased by the Land Commission for re-sale to the tenants; in only thirty-three cases in which three-fourths or less of the purchase-money was advanced by the Land Commission did the tenants pay the balance in cash; and in only sixteen cases did the tenants provide the guarantee deposit; and, without wearying you with statistics, practically the Act was worked on the principle of the whole of the purchase-money being advanced to the tenant by the state, and of the landlord leaving in at £3 per cent. per annum one-fifth of the purchase-money with the government by way of guarantee deposit, until an equal amount of it has been paid off by the annual instalments. Then, again, the sales have been effected with only a couple of exceptions by "conveyance," and not by "vesting order."

Sales by Vesting Orders.

The sale by "vesting order" is conducted somewhat in the same manner as a sale in the Landed Estates Court, and therefore necessarily involves delay and expense. Under the 8th section of Lord Ashbourne's Act, an order of the Land Commission vesting a holding in a tenant confers an indefeasible title; under the 10th section many of the powers of the Landed Estates Court are conferred on the Court of the Land Commission, and the Land Commission, similarly to the Landed Estates Court, now a branch of the Chancery Division, distribute the purchase-money to the parties found to be entitled to it.

Sales by Conveyances.

On a sale by a landlord to a tenant by conveyance, the Land Commission examines the title, free of charge, for the tenant, and advances the purchase money; but in other respects the sale resembles an ordinary private sale.

Although the Land Commission Court examines the title in case of a sale by conveyance, the title is not guaranteed as indefeasible,

and none of the statutory powers vested in the Land Commission for the purpose of a sale by vesting order apply to a sale by conveyance. The result, then, of the working of the Act up to the present, is that the Land Commission Court have not on any extensive scale purchased estates for re-sale; landlords and tenants either prefer conducting their own bargains, or employing private persons to do so, and not the Land Commission. The quick and cheap process of sale by conveyance is preferred to a sale by vesting order, an advance of the whole of the purchase-money by the Land Commission is sought for, and the landlord gives the guarantee deposit. It is then desirable to try and facilitate the working of the Act, on the lines which the public appear to like the best. Apart from the all-important difficulty of agreeing on the price, the Act seems to have been impeded chiefly:—by (1) the existence of head rents, lay tithes, annuities and other irredeemable outgoings on the landlord's estate; (2) redeemable charges and outgoings, such as mortgages, family charges, quit rents, tithe-rent charges, and drainage charges; (3) the guarantee deposit of one-fifth of the purchase-money.

(1) *Irredeemable Outgoings.*

It frequently happens in Ireland that a landlord has to pay a head rent or annuity which is larger than the rent payable to him by any one of his tenants, though it may be very small compared with his aggregate rental. This was intended to be met by the 72nd section of the Landed Estates Court Act, which enabled that court to apportion head rents; and the powers conferred by that section on the judges of the Landed Estates Court are by the 10th section of Lord Ashbourne's Act conferred on the Land Commission Court, with the addition that the word "rent" shall be deemed to include "fee-farm rent"; but no power under either Act is given to apportion an ordinary perpetual annuity or lay-tithe, or any outgoing which does not strictly come within the meaning of an ordinary rent or fee-farm rent, and no power of apportioning even these is given where the sale is by ordinary conveyance and not by vesting order. And consequently a landlord is practically debarred from selling the whole of his estate to his tenants by ordinary conveyance, when the estate is subject to a perpetual outgoing larger than the rent of any individual tenant, or from so doing when the outgoing is a substantial one, as in that case no tenant will agree to subject his holding to it, and indemnify the rest of the estate from its payment, unless on such unfavourable terms as will prevent a landlord from selling.

Under the 24th section of the Land Act of 1881, which is incorporated with Lord Ashbourne's Act, power is given to the Land Commission Court of accepting an indemnity from a landlord against incumbrances and prior estates and interests, and in such case of indemnifying the tenant purchaser against them; but where a landlord is selling his entire estate, it would be highly improbable that he would be in a position to give any adequate indemnity against a perpetual outgoing. It is evident then that any amendment which would enable the landlord to sell the fee-simple, either free from all outgoings of every description, or with the outgoings apportioned

amongst the tenants, would remove a great obstacle to the working of the Purchase Act. Probably most head landlords or owners of perpetual outgoing would prefer to sell at a reasonable price, to having to collect their money from a numerous tenantry, or even from two or three hands. I would propose then to extend the power of apportionment conferred on the Land Commission, to all outgoing, and to every description of sale conducted through the medium of their court, and also to give them the power of forcing the owner to sell to them. The power of apportionment might be the best and fairest remedy in the case of a terminable or life annuity, and the power of sale where the outgoing was perpetual. As the sale would be compulsory, the head landlord or owner of the outgoing ought to be secured by Act of Parliament, that the lowest price payable should not in any case be less than, say, eighteen years' purchase, with a percentage on the purchase money for costs of the sale. In the case, then, of a sale by a landlord, of an estate subject to a perpetual rent or outgoing to a tenant, where the sale was to be effected either by conveyance or vesting order, the Land Commission might, on notice to the person to whom the rent or outgoing had been paid, by order, either apportion it, or declare it to be vested in them by compulsory sale at a sum to be fixed by the Land Commission; and the sale by the landlord to the tenant might be completed as if the estate was free from the head rent or outgoing, and the amount so fixed at its value, deducted from the purchase-money payable to the landlord. The Land Commission might then either pay out the sum retained as the value of the head rent or outgoing to any person showing title to it, or pay it into the Chancery Division of the High Court in manner provided by the Lands Clauses and Railway Acts. The sale, then, of the holding would not be impeded by the concurrent sale of the head rent or outgoing. The value of a fixed head rent, perpetual annuity, or lay tithe, has undoubtedly been lowered by the general depreciation of landed property, and in many cases its security so seriously imperilled, that eighteen years' purchase, exclusive of the costs of sale, would be more than the value of it.

(2)—*Redeemable Charges, etc.*

Another cause which I have mentioned as having impeded sales was the existence of redeemable charges and outgoing, such as mortgages, family charges, quit rents, tithe-rent charges, and drainage charges. Many persons consider that the whole loss entailed by the reduction of a landlord's income ought not to be borne by him, but apportioned amongst the various persons who share with him the rent payable by the tenants, and have often a far greater interest in it than he has himself. I have already treated the owner of a perpetual rent or outgoing as an incumbrancer, merely altering an irredeemable incumbrance into a redeemable one, and I cannot see on what principle the value of either irredeemable or redeemable incumbrances can be abated. The owner of them could not have demanded more if the landlord's rental had increased, and as a rule when the incumbrance was originally created a margin was left for such a depreciation of the landlord's income as has actually occurred.

It might, I think, be as well contended that the dividends on debenture or preference stock should abate with the fall in the income of the ordinary shareholders.

In one way, I think, without any great hardship, a mortgagee might be asked to diminish his demand, namely, where there is an accumulation of arrears of interest at a high rate. On many estates, mortgagees have been unable to recover either principal or interest for some years, and as mortgages are usually drawn reserving a high rate, such as £6 or £7 per cent., reducible to a lower rate when the gales are punctually paid, these estates are swamped by accumulations of interest at the higher rate, and all inducements to the landlords to sell removed—they plainly seeing that the prospect of retaining nothing for themselves out of the purchase-money would only become a certainty if they sold to their tenants, and consequently they would become in such cases obstructions rather than assistants to sales. I think, then, that if mortgagees in this position got paid their principal debt in full, with their arrears of interest at the lower rate, or at £4 per cent., the court rate, they would have little to complain of.

The rate of interest on tail mortgages is generally higher than that in the earlier mortgages, as an insurance against risk, and if power was given to the Land Commission Court or any Division of the High Court of Justice, before whom a sale of an incumbered estate was brought, to reduce the amount of the arrears of interest, some relief might be brought to the owner of the estate, and the operation of the Purchase Act facilitated. Family charges are in their commencement different from mortgages, and probably many which were created ten or twenty years ago for younger children, would now absorb the entire purchase money of the estate, leaving nothing for the owner, and thus defeating the intentions of the settlers who had intended the heir to have the greatest interest in the property; but these charges are often assigned to strangers for money, and consequently it would be difficult to distinguish them from ordinary mortgages or charges created as securities for loans. Quit-rents are redeemable at twenty-five years' purchase, which is now far beyond their market value, and tithe-rent charges at twenty two and a half years' purchase, which is now also more than would be probably given for them if sold in open market. I would propose that twenty years' purchase be fixed as the redemption value of quit rents, crown rents, tithe-rent charges, and other government charges, as nearer the present real value of them, and thus removing another deterrent to the landlord selling, of having so large a portion of the purchase-money consumed in discharging incumbrances at a high rate.

(3)—*Guarantee Deposits.*

The guarantee deposit of one-fifth of the purchase-money is undoubtedly, after the difficulty in getting the landlord and tenant to agree on the price, the great obstruction to the working of the Act. A landlord who is selling his estate at what he believes to be a sacrifice, may not wish to jeopardize one fifth of the purchase-money, as he may not unnaturally be apprehensive that so long as the government have the one-fifth to fall back upon, they will not be in-

clined to make themselves unpopular in too strictly enforcing the payment of the instalments. But apart from this, a landlord, however disposed to sell, may be totally unable to tie up his money until one-fifth of the whole purchase money is paid back to the government. This can only be got rid of by securing the government in some other way, unless the instalments are reduced to such a rate as will warrant the government in running the risk of getting repaid the whole by the tenant.

The substitution of baronial or other local guarantees for the deposit of one-fifth of the purchase, might render landlords and tenants who did not want to change their positions, or occupying proprietors who had paid in hard cash for the fee-simple of their farms, or persons who have no pecuniary interest in the land question either as landlords or tenants, subject to the payment of what might be a ruinous tax, to discharge the debts of neighbouring occupiers with whom they had no connection. A failure to pay the instalments would probably arise from a general depression of trade or other cause, which would affect the whole community; and it certainly would be regarded as a great hardship on shopkeepers or others, who had derived no direct benefit from the Purchase Act, that in addition to bearing their own share in any general depression, they had to reimburse the exchequer in the losses arising from the inability of the tenant proprietors to meet their engagements. At present there is no inducement held out to a landlord to accept a lower price from his tenant, on condition of the whole or the part of the guarantee deposit being dispensed with. If, for example, two neighbouring estates had the rents fixed by the same sub-commission at the same period, the probability would be that they would be uniform; if, however, the landlord of one estate sold to his tenants at, say, only fifteen years' purchase, he would have to leave one-fifth of the purchase-money as a guarantee deposit, as well as his neighbour who sold at twenty years' purchase; though possibly if the Land Commission were justified in sanctioning the loan at twenty years' purchase with the guarantee deposit, they might safely dispense with it when the rate of purchase was five years less. I would suggest, then, that the Land Commission should be empowered to dispense with the guarantee deposit either in whole or part, in such cases as they think they are not required in. No hard and fast rule could of course be laid down upon such a matter. If, then, the acceptance of a lower rate of purchase freed a landlord from the necessity of lodging the guarantee deposit, in many cases it might be his interest to take the lower rate, and so the purchasing tenants would gain the difference.

The obvious method of lessening the amount of the guarantee deposit, or dispensing with it altogether, without altering the purchase-money, is to extend the payment of the instalments over a larger number of years than forty-nine, the period now fixed. The only difficulty would be for the legislature to determine on the longest period which it would be prudent to sanction. Take for example a rent of £100 a year at twenty years' purchase; under the present system, when the whole purchase-money is advanced, the principal and interest are repayable by annual instalments of £80 for forty-

nine years, and the one-fifth of the purchase-money is paid out to the landlord at the end of seventeen and a-half years. To a tenant, forty-nine years is practically an indefinite period, the end of which neither he nor his heir is likely to see. To extend it to seventy-five years would enable the government to advance the purchase-money at the same rate of interest, repayable by annual instalments of £80, as at present, for the first five years; of £75 for the second period of five years—that is, from the beginning of the sixth to the end of the tenth year; of £70 for the third period of five years—that is, from the beginning of the eleventh to the end of the fifteenth year; and of £65 for the remaining sixty years. So that after the first five years of the term the amount of the annual instalments would fall to £75, and at the end of the first fifteen years it would have fallen by quinquennial drops to £65, or less than two-thirds of the original rent of £100, which must be considered as a fair moderate rent, or otherwise the tenant would not have been likely to agree to give twenty years' purchase for it. By this means the government would have through nearly the whole term a much smaller sum to be collected, and they might fairly be called on to retain a smaller guarantee. This system would also hold out greater inducements to the tenant to buy: he would no doubt exchange the sentimental advantage of getting his farm rent free at the end of forty-nine years, for the longer, but to him practically equal period of seventy-five years, with a prospect of successive drops in the near future every five years, until at the end of fifteen years, the instalment, or rent as he would still regard it, would be reduced by a full one-third. Any change in the system of repaying the purchase-money to the government ought, as far as possible, to be offered to tenants who purchased under the previous Land Acts of 1870 and 1881, and also to those who have already come in under Lord Ashbourne's Act; if this is not done, discontent will arise, and the working of the Act be brought to a deadlock, for everyone will wait for future legislation, and consider there is "luck in leisure."

Subdivision, Subletting, Entail, etc.

I have now noticed some of the details, in which it occurs to me that the working of Lord Ashbourne's Act may be improved; but whilst trying to facilitate its working, care must be taken that the very evils which it was intended to remove may not spring up beside it as plentifully as heretofore, and that in addition others may not be added which were previously unknown. The Purchase Act was chiefly intended to abolish the dual ownership of land, and so remove all opportunity for the conflict of interests between landlord and tenant, and give the occupier, as absolute owner, a greater motive for improving the land and so adding to the general wealth of the country. Complaint was also frequently made that a landlord, even when disposed to expend capital in improving his estate, was hampered with settlements; and having merely a limited interest, as a tenant for life, could not, in justice to his younger children, lay out on property, which after his death would belong exclusively to his eldest son, money which was required for the other members of his family. It

was also a complaint that many of the holdings in Ireland were too small to support the families occupying them, and that the landlords had too frequently permitted and encouraged holdings barely sufficient to support one family to be divided between two or more; and it was also complained that the tenure of land in Ireland was so complicated between different descriptions of tenure, diversity of ownership, settlements, and incumbrances, that it was impossible to render the transfer of land cheap and easy, or to allow its transfer by record of title to be readily available. Will, then, the transformation of the tenants into fee-simple proprietors permanently abolish the dual ownership of land, cause more capital to be expended in improving it, check sub-division and simplify tenure, and enable land to be more easily bought and sold? I certainly would fear not, unless additional safeguards were added to those contained in the Purchase Acts, and extensive alterations made in the system of land tenure.

The 30th section of the Land Act of 1881, which is incorporated with Lord Ashbourne's Act, declares in effect that, until the whole charge due to the Land Commission has been repaid, the holding shall not be subdivided or let without the consent of the Land Commission; and in the event of such subdivision or letting taking place without such consent, or on the title to the holding being divested by bankruptcy, or the holding becoming subdivided by reason of any devise, bequest, intestacy, or other cause, the Land Commission may cause the holding to be sold. The Land Act of 1870 was still more stringent in its provisions, as under the 44th and 45th sections of that statute, any alienation, assignment, subdivision, or subletting, whilst any portion of the government loan remained outstanding, was punishable by forfeiture. The Land Act of 1870 thereby prohibiting a sale by the tenant of the whole holding which is not forbidden by the existing enactments, and giving the severer penalty of forfeiture upon the violation of its terms. The provisions against subdivision and letting or subletting in either Act, are only to continue whilst the instalments of the principal and interest of the state advances are payable to the Land Commission, and therefore can only be regarded as intended to protect the public purse, and not as declarations of public policy. It may be urged that, as whatever the motive may be, subdivision or letting are prohibited for a period little short of half a century, it will be time enough to try and guard against them when the government loans are running out. The provisions as they now stand do not, however, appear stringent enough to prevent subdivision or letting.

Without entering into the legal question, whether the mere prohibition of the subdivision and letting of land is sufficient to render any attempt to do so null and void as between the parties to it, it is I think manifest, that so long as there are no other deterrents to subdivision or subletting than the Land Commission in the first instance discovering the offence, and in the next instance punishing it, that subdivision and subletting or letting land will take place whenever there is any inducement to do so, without any anxiety as to whether the transaction is strictly legal or liable to be set aside.

Assuming, as is earnestly hoped, that the existing depression may pass away, and that we shall have more prosperous times than we now enjoy, may it not also follow that a tenant who has purchased his holding on what at present are reasonable terms, will hereafter be able to let it to others, at a rent which will enable him to live without work? What reason then have we to expect that he will be able to resist the temptation better than his predecessors; and we may therefore, unless effectual remedies can be discovered to stop it, soon be face to face with the old middleman system again, in a more aggravated form, and with the Land Commission taking the place of head landlord. Again, it will be as easy for the new class of proprietors to subdivide their holdings in the future, as it was for their forefathers in the past. Ought we not to anticipate that they will do so? Again, although there may be some insufficient attempts made to prevent the purchasers subdividing or letting their holdings, there is no check whatever on entailing them in strict settlement. It was the common practice for leaseholders, holding under perpetuity leases at very substantial rents, to settle them like a large proprietor; and it was by no means unusual for persons holding at terminable leases to follow their example. It is then extremely probable that if matters are allowed to take their course, the newly made occupying proprietors will imitate the old middleman, and the country will be soon covered by a pauper and unemployed proprietary, having only limited estates in their holdings, and onerous charges on them for members of their families. The only effectual way in which it appears to me that the recurrence of the grievances mentioned can be avoided, is by giving the district in each case an interest in protecting itself from being pauperized or having its lands neglected, and thus creating a public opinion against it, and entrusting these knotty questions to communal jurisdictions, similar to those prevailing in Switzerland and other parts of the Continent.

The closing paragraph of the 14th section of Lord Ashbourne's Act seems to contemplate the creating of some description of local registry, possibly with the object of creating some peculiar jurisdiction with reference to them, as it directs the Land Commission not only to register vesting orders and conveyances in the Registry of Deeds Office, but also to "transmit copies thereof [*i.e.*, of vesting orders and conveyances] to the Clerk of the Peace of the county in which the holding is situated for the purpose of local registration." There is no machinery, however, either in the Act or rules for carrying out this clause of the statute. The legislature have already, in the Acts enabling labourers cottages to be built by the Poor-law boards, recognized the interference of local bodies in what were previously regarded as private rights, and since, in the event of the landlords being bought out in a district, the whole of the rates and taxes would devolve on the occupiers, there would seem to be good reason for handing over to the Poor-law unions or county boards any discretionary powers which are now vested in the Land Commission, for preventing sub-division or letting the holding; and extending those powers so as to make them really effectual if put in force. I would suggest, then, a local registration of the tenant

purchasers where alone transfers and mortgages of the holding could be effected, with rules analogous to the present Record of Title office, the rendering any dealings with the holding absolutely void unless conducted through its instrumentality, with the exception of such temporary lettings as are excluded from the operations of the Land Act, and the authorizing subdivision or letting of the land only with the consent of some appointed local tribunal. I would at the same time allow perfect freedom through the local registry, in selling or leaving the holding to one person, or incumbering it with redeemable charges; but I think any attempt to tie it up or create life estates or other limited interests, or irredeemable annuities, except a jointure to a widow, ought not to be permitted. I would, in fact, recognize the wisdom of the Middle Ages in not allowing a man by a will on his death-bed, in a mere whim, or by a settlement on the marriage of a son, to tie up property for perhaps more than half a century after his death.

The Settled Land Act of 1882 has to some extent relieved the country from the thralldom of settlements; but only in a very partial degree,—particularly as it removes the great incentive to selling land in not giving the limited owner the spending of the purchase-money. It may be contended that a local elective tribunal would not be a fitting depository of the power of consenting to the subdivision or letting of land, or enforcing the penalty of a sale in case it was done without consent. Such systems have been found, however, to work in other countries, and if the people of the district, when they had to pay the whole of the poor-rates and county cess, once fully realized that the permission of any subdivision or letting, which would tend to pauperism or the creation of a class too poor to contribute to the rates, would increase the burthen on the rest of the community, they might be ready enough to prevent any act which would be contrary to the common good, or punish it by a sale of the holding to some solvent person less likely to be a charge on his neighbours. A public body like this would also be most suitable to take charge of any plantations or rights of turbary and mountain grazing, now in the hands of or managed by landlords, and which otherwise would in many cases be derelict and useless.

Assimilation of Tenures.

There is another topic on which, though not strictly relevant to the question under discussion, I would like to say a word, and that is—the assimilation of the law of succession in freehold and chattel real property, and so prevent the tenant from year to year who becomes a fee-simple proprietor, having his wishes frustrated, by the change of tenure which to him must be, as a rule, unintelligible, and in the rare instances when he does understand it, must appear absurd and unmeaning. There have been many instances where one half of a house, held under a freehold lease, went to the heir-at-law, and the other half, held under a lease for a term of years, went to the next of kin; but perhaps the greatest injury is caused in the case of tenancies from year to year, and for terms of years, by the sort of hiatus in the tenure of the property until administration or probate is taken

out. I know of deplorable consequences resulting on one occasion from this last cause: a yearly tenant died intestate, and his widow and some of his family, who happened to be living with him at the time of his death, remained on, as is usual in such cases, without troubling themselves to take out administration to him. On the death of the widow, a son who had gone to America before his father's death, returned and claimed the farm or a share in it, and on being refused by his brothers, took out administration to his father, the last legal owner, and evicted them, but was not long left in possession, as one of his brothers murdered him. In the case of the intestacy of a yearly tenant, or one holding for a term of years, on administration being taken out, after the payment of debts and other expenses, the farm becomes divisible, when the deceased tenant leaves a widow and children, amongst them—the widow taking one-third and the children the remaining two-thirds. On the other hand, in case the deceased tenant had become a fee-simple proprietor under the Land Purchase Act, on his death, his eldest son at once becomes the owner, subject to his mother's right of dower to one-third during her life, and the younger children get nothing. The popular view is to assimilate freeholds to chattels real, or terms of years, and necessitate administration or probate in all cases of the division of the estate. There are two objections I think to this: first, it is undesirable, as I have already tried to explain, that the land should be left for one moment without what may be called a legal owner; the second disadvantage is the too great subdivision of the land; the most violent advocate of the morcellement system would hesitate to divide a five-acre farm between, say, a widow and four children. On the other hand, the fee-simple tenure gives nothing to the younger children. I propose an assimilation of the two tenures, taking what appears useful from each. Stating my proposition generally, I would, in case of intestacy, give the whole farm to the heir, charged with portions for those persons who would have shared it with him had it been a chattel. For example, in the event of a farmer dying intestate leaving a widow, an eldest son, and younger children, I would give the whole farm to the eldest son, allotting one-third of the net annual profits to the widow during her widowhood, and another third to the younger children during their minorities. By this arrangement the eldest son would get the entire management of the farm, and one-third of the profits from his father's death, and he would be entitled to the whole on his mother's second marriage or death, and on his sisters and younger brothers attaining full age.
