The Encumbered Estates Court, Ireland, 1848–1849*

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THIS study presents an account of the background of conditions in Ireland's thought, and legislative measures, to the establishment of an encumbered estates court in 1849. Shelgrim, in Frank Norris's novel *The Octopus*, explained the destruction of the ranchers of the San Joaquin valley by the Pacific and South-Western Railroad Company on the grounds that economic forces, rather than men, were to blame; and in similar vein the tractor driver, in John Steinbeck's *The Grapes of Wrath*, engaged in ploughing-under the crops of small share-cropper cotton growers, underscored the futility of their attempting to track down and to shoot the faceless uprooter in the East. An analogous matrix of nemesis-like economic forces and traumatic communal change was brought about by the Encumbered Estates Court of 1849. It has been termed, for instance, the "quarter-acre clause" which decimated the planter aristocracy[1] of Ireland; and it is also said to have produced "a social revolution in the Irish village."[2] The nature of the social cataclysm which coursed through rural Ireland in the decade following the Famine, and the nature and origins of the catalyst which produced this cataclysm, are the subject matter of this paper. It is hoped that such a study will contribute to an understanding of the agrarian patterns which manifested themselves in that decade, and which have been deemed worthy of further study.[3] An intensive study on a regional basis is felt to be warranted by the fact that the counties on the western seaboard continued to present problems to the English Administration long after the phenomenon of the Famine, as also to succeeding Irish Governments. Such a regional study should not prevent consideration in a nation-wide context of agrarian patterns made evident in Galway and Mayo.

A recent study by David Large[4] raised the issue of the period of time during which Irish landowners became encumbered. It seems indisputable that en-

*This paper is derived from the writer's thesis, *The social impact of the Encumbered Estates Court on the counties of Galway and Mayo, 1849–1858*, presented for the M.A. degree of the National University of Ireland (1969) and now in the library of University College, Dublin. In what follows, reference is made to it as *Thesis*.

1. F. H. O'Donnell, *History of the Irish Parliamentary Party*, i, 37.
2. E. M. Strauss, *Irish Nationalism and British Democracy*, p. 140.
3. R. D. Edwards and T. D. Williams (ed.). *The Great Famine*, Foreword, p. xv.
4. D. Large, "The wealth of the greater Irish landowners, 1750–1815", in *Irish Historical Studies* 57, 1966–67. pp. 21–45.

cumbrances were already a feature of Irish properties before the end of the Napoleonic wars. Lord Arran's advertising of a property "for the discharge of encumbrances"[5] was probably symptomatic of widespread insolvency among the landed gentry. The great facility with which money might be borrowed contributed to a general readiness to charge estates beyond their value. Such a pattern could not continue; and we hope to show that the phenomenon of the Famine was all that was required to topple a shaky financial edifice. In 1845 the Devon Commission had already alerted Sir Robert Peel to the social and economic consequences of encumbrances on Irish properties, and had drawn his attention to the legal difficulties preventing the sale of such encumbered properties. We describe in these pages the extent to which a well-formulated policy for Ireland, beaten out under the pressures of famine exigencies, came to pivot, for both Peel and his successor, Lord John Russell, on the implementation of free trade in land, as initially proposed by the same Commission. Long-term remedial action for Ireland, in the form of a re-orientation of social patterns and agricultural practices, appeared to depend on the direction of private capital into agriculture. It was envisaged that such capital would develop Mansholt-type farms, properly equipped and leased on contractual terms, which would bring to an end the ever-present redundancy of the Irish agricultural labour force, render discussion of the tenant-right issue no longer necessary, and yet preserve inviolate the doctrine of *laissez-faire*.

The creation of a high farming system in Ireland was also expected to end agrarian and political unrest, and check the continued demands on the English Treasury. Central to such a concept, it will be seen, was the implementation of an encumbered estates measure which, by making land a more mobile commodity, would attract men with capital to invest, either as purchasers or as mortgagees.

Peel's preoccupation with repealing the corn laws, with the objective of creating a fund of commercial capital for agricultural development, is believed to have diverted his attention from Irish issues.[6] This paper shows that his preoccupation can be understood as a central factor in long-term remedial action for Ireland. Russell's duty, in fact, as Peel's political legatee, was to tap the fund of commercial capital created by the repeal of the corn laws; and his consistent efforts to implement an encumbered estates measure credits him, therefore, with a more positive approach to Ireland's social and economic needs than is normally ascribed to him. A final judgement on the credit due to both Peel and Russell must be reserved until we have seen the extent to which the high farming system became operative, and pacificatory in its effects.

Contemporary[7] and later[8] opinion has been fairly unanimous in holding that

5. M. R. O'Connell, *Irish Politics and Social Conflict in the Age of the American Revolution*, p. 267.
6. E. M. Strauss, *op. cit.*, p. 114.
7. Earl Russell, *Recollections and Suggestions*, p. 196.
8. R. D. C. Black, *Economic Thought and the Irish Question*. E. M. Strauss, *op. cit.*, p. 137. J. E. Pomfret, *The Struggle for Land in Ireland*, 1800–1923, pp. 44–45. K. H. Connell, "The Social Consequences of Land Legislation," in *Economic History Review*, xi, No. 1, 1958, p. 4.

the encumbered Irish landowners lost heavily in terms of land and monetary wealth, and were considerably replaced by purchasers from the merchant and professional sectors of the community. A more detailed analysis of the socio-economic background of the purchasers in subsequent parts of our study will, it is hoped, test the validity of such opinions. An analysis of the market value of land during the period, together with an assessment of the nature and amount of re-sale of properties, also contribute to an assessment of opportunities, open to encumbered land-owners, of retaining or repurchasing properties.

Laissez-faire approaches to the Irish Land question are felt to have been legislatively discredited by Gladstone's Land Act of 1870.[9] That Act curbed the freedom of landowners to use property in whatever manner they pleased, a freedom inherent in the capitalistic agriculture expected to ensue from the *Act further to facilitate the Sale and Transfer of Encumbered Estates in Ireland*,[10] as the Encumbered Estates Act was more fully termed. If Deasy's Act of 1860 gave legislative standing to such commercial tenets,[11] it is pertinent to ask whether it was in fact legislating for a *fait accompli*, in that the Encumbered Estates Court may have already created the milieu in which such tenets might be applied.

The development of the Tenant League at the beginning of the 'fifties, and the continued presence of a land policy in the programme of constitutional movements at the beginning of the 'sixties[12] argue, indeed, for an undertow of discontent with the insecurity of tenants during the period under discussion. The support found among agricultural labourers for the Fenian Movement[13] argues also for discontent in that stratum of the rural community. It will be interesting, therefore, to ascertain the nature of the leasing arrangements, size of farm units, variability of rents, and general attitudes to tenant-right among purchasers in the court. An assessment of the degree of absenteeism and middle-man continuance contributes also to an understanding of the degree of accord between landowners and tenants in the period under discussion. An analysis of labour relations, rates of wages, and the extent of employment given are also necessary if we are to form a judgement as to the validity of claims[14] that purchasers of land engaged in extortion, were concerned only with the profit obtainable from land, and were no improvement (in terms of labour-employment and tenant relations) on the encumbered landowners whom they replaced. The extent to which the new owners were influenced in their approach to estate management by encumbrances as extensive as before must also be taken into consideration.

9. R. D. C. Black, *op. cit.*, pp. 69. J. E. Pomfret, *op. cit.*, p. 96.

10. 12 and 13 Vict. c. 77.

11. R. B. O'Brien, *The Irish Land Question*, p. 106. T. P. O'Neill, "From Famine to Near-Famine", in *Studia Hibernica*, i, 1961, p. 168.

12. E. R. Norman, *The Catholic Church and Ireland in the Age of Rebellion*, pp. 2–4.

13. E. M. Strauss, *op. cit.*, p. 146.

14. E. M. Strauss, *op. cit.*, p. 137. K. H. Connell, *loc. cit.* T. P. O'Neill, *loc. cit.* J. E. Pomfret, *op. cit.*, pp. 45–46. R. D. C. Black, *op. cit.*, p. 40.

The Context of the Devon Commission's Recommendation on the Subject of Encumbered Estates in Ireland.

"But as an encumbered estate must at all times be managed at great expense and at much disadvantage under the courts, we recommend that every facility consistent with safety should be given for bringing such estates to an early sale, rather than allowing them to remain for years the subject of expensive litigation," stated the report of the Devon Commission in 1845.[15] In this indirect manner the Commissioners directed Sir Robert Peel's attention to the number of encumbered estates in Ireland, and to the bad social and economic effects produced on such properties by lack of capital for productive agriculture and their management under the courts of equity. In a more direct manner the Commissioners were placing the onus on Peel of removing the legal difficulties preventing the quick sale of encumbered properties.

A delight in the *dolce vita* had primarily led Irish landowners to burden their estates with mortgages, settlements and judgements;[16] but the natural right of landowners to make provision for their children and close relatives by charging land with settlements had also contributed to the establishment of encumbrances.[17] Furthermore, the inheritor of an encumbered estate was often obliged, and was free, to add new encumbrances in order to keep the property solvent.[18] Whatever the motivation, there can be little doubt that a cavalier treatment of laxities in Irish laws governing the charging of properties contributed to the process. Irish landowners had been permitted to mortgage their properties beyond the redeemable value of the deeds of title,[19] and to use the security of judgements for settling, or deferring, the payment of debts, bills, services, annuities and trusts.[20]

Encumbrances invariably led to absenteeism, the middle-man system, high rents, and lack of improvements.[21] A more serious outcome of impecuniousness for the landowner in 1845 was a creditor's suit in the Court of Chancery or the Court of Equity Exchequer for recovery of debt: many Irish estates had been the

15. *Report from Her Majesty's Commissioners of Inquiry into the State of the Law and Practice in Respect to the Occupation of Land in Ireland*, Nos. 26–27, H.C. 1845 (605), xix.

16. Isaac Butt, in *Tenth Report from the Select Committee on Poor Laws (Ireland)*, p. 83/No. 1031–1033, H.C. 1849, (356), xv, Pt. 2.

17. *First Report from the Select Committee appointed to Inquire into the State of the Law as respects the Appointment of Receivers of the Courts of Chancery and Equity Exchequer in Ireland, and the Effects of the Present Laws and Regulations of the said Courts in the Management of Estates under their Control*, p. 48/No. 538, H. C. 1849, (438), viii. *Eighth Report from the Select Committee on Poor Laws (Ireland)*, p. 42/Nos. 6543–6546, H. C. 1849, (259), xv, Pt. 1, 559.

18. *First Report on Receivers*, cit., p. 42/No. 471.

19. John Kent, *The Encumbered Estates Acts*, (Unpublished Thesis, U.C.D. 1931), p. 21.

20. *Ibid.*, pp. 22–25. *First Report on Receivers*, cit., p. 53/No. 590, pp. 36–38/Nos. 426–437.

21. John Kent, *The Encumbered Estates Acts*, cit., pp. 29–30. *First Report on Receivers*, cit., p. 42/No. 470, p. 21/No. 257. *Tenth Report from the Select Committee on Poor Laws*, p. 9/No. 9345, H. C. 1849, (356), xv, Pt. 2. *Ninth Report from the Select Committee on Poor Laws*, p. 2/Nos. 7152–7165, H. C. 1849 (301), xv, Pt. 1, 647. On absenteeism see also: *Transactions of the Central Relief Committee of The Society of Friends during the Famine in Ireland in 1846 and 1847*, p. 12. W. N. Hancock, *On Irish Absenteeism*, p. 5.

subject of such suits for a considerable length of time.[22] Until 1835 or 1840 the number of estates so circumstanced had been kept within bounds because mortgage creditors alone could file a suit in the courts of equity.[23] In those years, however, two Acts were passed which enabled judgement creditors to establish their claims as direct charges upon the whole of freehold and leasehold estates and to obtain a receiver for recovery of their debts. Hitherto they had obtained redress by distraining the chattels or growing crops of the debtor. The result of the Acts was a great increase in the number of estates brought under the control of the courts of equity, since judgements were by far the most numerous form of charges on Irish properties. In many instances great estates were now brought into the courts on the strength of a grocer's bill.[24] The Court of Chancery had "its decaying houses and its blighted lands in every shire," said Dickens.[25] In Ireland the effects of its control, no less catastrophic, aggravated the evils produced by encumbrances in the first instance. The encumbered landowner lost interest in the property after extracting promissory notes for imminent rents from the tenants. Thereafter both the tenants and the agriculture of an estate suffered. The receivers, interested only in the welfare of the creditors, extorted, evicted and distrained the tenants for rents, and made them turbulent and deceitful. The judges of the courts of equity were not empowered to injure the interests of either the inheritor or the creditors by spending estate funds on improvements or the promotion of emigration. Further distress was caused by the ruling of the courts of equity that leases were to be auctioned at rack rents. Where this ruling was not adhered to the tenants were forced to rest content with yearly tenure.[26] The conditions were worst upon the numerous estates of very low valuation brought into the courts by trivial judgements.[27] In this respect the properties in Connaught were noteworthy.[28] The stark facts of their mismanagement stood out in the volume of evidence relating to Galway and Mayo presented by the Devon Commissioners.[29]

22. *Dublin University Magazine*, xxxvi, Sept. 1850, p. 312.

23. John Kent, *The Encumbered Estates Acts*, *loc. cit.*, pp. 25–26.

24. The two Acts were known respectively as Sir Michael O'Loghlen's Act, 5 & 6 Will. IV, cap. 55, and Baron Pigott's Act, 3 & 4 Vict. cap. 105. Full information on the nature and implications of the Acts were obtained for this study in the following sources: *First Report on Receivers*, cit., p. 18/Nos. 213–220, pp. 34–35/Nos. 418–423, pp. 78–80/Nos. 949–970. John Kent, *The Encumbered Estates Acts*, cit., pp. 26–28. *Dublin University Magazine*, xxxvi, Sept. 1850, p. 312.

25. Charles Dickens, *Bleak House*, Chap. 1.

26. This record of mismanagement has been obtained from: *First Report on Receivers*, cit., pp. 2–3/Nos. 17–19; pp. 4–5/Nos. 30–43; pp. 9–11, Nos. 101–117; pp. 23–25/Nos. 285–330; p. 28/Nos. 349–350; pp. 40–42/Nos. 457–474; p. 48/No. 541; p. 49/Nos. 546–547; pp. 51–52/Nos. 563–570; p. 56/Nos. 619–620; pp. 76–77/Nos. 924–940; p. 101/No. 1148; pp. 106–107/Nos. 1187–1189; pp. 126–132/Nos. 1382–1462. *Dublin University Magazine*, xxxvi; Sept. 1850, p. 316.

27. *First Report on Receivers*, cit., pp. 1–2/Nos. 7–9; p. 18/Nos. 212–221; p. 66/No. 768; p. 78/No. 946.

28. *Ibid.*, p. 32/No. 393.

29. *Evidence taken before Her Majesty's Commissioners of Inquiry into the State of the Law and Practice in respect to the Occupation of Land in Ireland; together with Appendix and Plans, Pt. 2*, p. 417/No. 67; p. 428/No. 36; p. 454/No. 30; p. 523/No. 38.

The evils of court management would probably have been greatly reduced if estates could have been sold readily; but legal and circumstantial difficulties proved a stumbling block. The fact that a charge extended itself to the whole of an estate prevented part of a property being sold to pay debts. The number of conflicting creditors' suits rendered difficult an equitable settlement of claims, and hindered a quick sale. The procedure of the courts of equity, trammelled as it was by red tape and by expense, also contributed to delay. Finally, the laws of entail curbed haste in the disposal of properties. The circumstantial difficulty in 1845, of course, was the inordinate number of properties brought into the courts of equity by the judgement acts, which overloaded the defective machinery of the courts.[30] It was the combination of the number of encumbered properties in the courts of equity, their bad management under the courts, and the difficulties which lay in the way of their sale, which urged the Devon Commission to draw Peel's attention to the problems. Their recommendation that an encumbered estates measure should be prepared to deal with such problems did not fall on barren ground, it will be seen, for Peel had already formulated such a measure in his own mind.

Sir Robert Peel's Thoughts on Agricultural Improvements and Free Trade in Land

Sir Robert Peel in 1845 was preoccupied with the problem of stabilising landowner incomes in the context of the imminent repeal of the corn laws. As a high farmer himself he was aware that a more intensive use of agricultural resources was necessary if the falling incomes of the previous years were to be counteracted, and that capital for drainage and improvement schemes was needed if agricultural resources were to be used to the full. He was certain that this capital should come from the commercial sector of the economy, whose prosperity therefore affected the welfare of the agricultural interests. "I believe the maintenance if possible of the steady increase of commercial prosperity is absolutely essential," he remarked in August, 1845, in reference to the fortunes of the agricultural interests in the aftermath of repeal of the corn laws.[31] Sir James Graham, also a progressive farmer,[32] was of similar mind: "Land can no longer prosper in this country if trade and commerce be stunted," he observed in a letter to Stanley in September,

30. This record of difficulties in the way of a quick sale was obtained from *First Report on Receivers*, cit., p. 19/Nos. 226–230; p. 48/Nos. 536–540; p. 45/No. 497; pp. 85–86/No. 1026; p. 93/No. 1081; p. 91/No. 1061; *Dublin University Magazine*, xxxvi, Sept. 1850, pp. 313–316. Isaac Butt in *Tenth Report from the Select Committee on Poor Laws (Ireland)*, p. 77/Nos. 10250–10251, H. C. 1849, (356), xv, Pt. 2. W. N. Hancock, *ibid.*, p. 49/No. 9959, p. 54/No. 10001.

31. Peel to Mr. Croker, August 31, 1845, in C. S. Parker, *Sir Robert Peel from his Private Papers*, iii, 194. D. C. Moore, "The Corn Laws and High Farming", in *Economic History Review*, second series, xviii, No. 3 (December 1965), pp. 544–561. G. K. Clark, "The Repeal of the Corn Laws and the politics of the forties", in *Economic History Review*, second series, iv, No. 1, pp. 1–13.

32. D. Spring, "A great agricultural estate: Netherby under Sir James Graham, 1820–1845", in *Agricultural History*, xxix, (1955), p. 76.

1843.[33] The repeal of the corn laws was therefore expected by Peel to increase the fund of commercial capital needed for the capitalisation of agriculture. Peel was conscious, however, that the laws of entail were proving, and would continue to be an obstacle to obtaining mortgage loans for agricultural improvements. If capital were to flow freely between the commercial sector and agricultural sector of the economy a free trade in land had to be established.[34] It was in the context of those convictions of Peel that the Devon Commission's recommendation for freeing the sale of encumbered properties came in conjunction with the Commission's pinpointing of the lack of capital available to Irish agriculture as a result of the encumbered condition of its proprietors. Peel's convictions and the Commission's focusing of attention on the problems presented by encumbered estates synchronised with his need to seek a remedy for the social discontent in rural Ireland that had formed the undertow to O'Connell's political agitation and had provided justification for the Devon Commission itself.[35] The Commission's recommendation took on the role of a *deus ex machina* for dealing with rural discontent in the context of this synchronisation of circumstances. "The real secret of the evils of Ireland is the bankrupt condition of the landlords", Sir James Graham commented in a letter to Peel in September, 1843.[36] His analysis of the Irish problem formed the basis for his contention that legislative measures on the subject of landlord-tenant relationships would be, at best, peripherally important as remedial action.[37] Lord Stanley underlined Graham's point in June, 1845, when he stated that the under-capitalised state of Irish agriculture was the root of Irish discontent.[38] He was speaking at the introduction of the Compensation for Tenants (Ireland) Bill, a measure based on another of the Devon Commission's recommendations and designed to mobilise tenant capital for agriculture.

The Commission's other recommendations fitted, indeed, very much as a coherent unit into the pattern of Peel's own thoughts on agriculture, and with its recommendation on encumbered estates. Other recommendations covered such subjects as the need for drainage and land improvement loans, consolidation of holdings, the promotion of emigration, agricultural education, and the mobilisation of tenant capital.[39] The primary position taken by loan-capital for agricultural improvement in Peel's thinking has already been alluded to. The consolidation of

33. Graham to Stanley, September 14, 1843, in C. S. Parker, *Life and Letters of Sir James Graham, Second Baronet of Netherby*, i, 332.

34. D. C. Moore, *loc. cit.*; G. K. Clark, *loc. cit.*

35. K. B. Nowlan, *The Politics of Repeal*, pp. 59–60, 64–65. L. J. McCaffrey, *Daniel O'Connell and The Repeal Year*, pp. 128–129; 153–157; 168–171.

36. Graham to Peel, September 6, 1843, in C. S. Parker, *Sir Robert Peel from his Private Papers*, iii, p. 63.

37. Graham to Peel, October 17, 1843, in C. S. Parker, *Sir Robert Peel from his Private Papers*, iii, p. 63. K. B. Nowlan, *op. cit.*, pp. 64–65.

38. K. B. Nowlan, *op. cit.*, p. 92.

39. *Report from Her Majesty's Commissioners of Inquiry into the State of the Law and Practice as Respects the Occupation of Land in Ireland*, Numbers 1–56, H. C. 1845 (605), xix.

holdings was integral to the promotion of high-farming; and the promotion of emigration was a necessary accompaniment to such consolidation.[40] The reference to the need for agricultural education was an admission that agricultural resources were not being used to the full.[41] The mobilisation of tenant capital, Peel envisaged, would be achieved by the higher rents chargeable for farms improved by commercial capital borrowed by the landowners.[42] The repeal of the corn laws it was held, would enable the farmers to pay the increased rents.[43] The recommendations of the Devon Commission, taken as a whole, must have turned in Peel's mind, as they did in Stanley's,[44] on the need to capitalise Irish agriculture in the interests of productive high-farming. The number of encumbered estates in the courts of equity advertised clearly the lack of capital among Irish landowners, and high-lighted the need to remove the difficulties which lay in the way of a free trade in land and the tapping of commercial capital.

Certain other considerations present in Peel's mind rendered the Commission's recommendation on encumbered estates a providential means of bringing to an end the perennial drama of agrarian unrest in Ireland. His consciousness that a Government's function was to remove obstacles to economic progress, rather than subvent private enterprise, had made him weary of the importunings of the Irish landlords for government aid, and desirous of seeing them in a position to effect their own improvements and to perform their social duties.[45] Peel, of course, had also endured cries of distress from English landowners, cries which had crystallised his determination to have agriculture capitalised.[46] It is clear, therefore, that Peel's rigid adherence to the code of *laissez-faire* rendered a resolution of the encumbered estates problems a necessity when it was clear that such problems lay behind the importunities of landowners and their inability to effect their own improvements.

Secondly, Peel's consciousness of landlord rights, a consciousness exemplified in his discountenancing of Pusey's Bill for effecting a modification of these rights in England,[47] and the touchiness of Irish landowners on the subject, a touchiness exemplified in their reaction to Stanley's Compensation Bill in June, 1845,[48] further rendered an encumbered estates measure desirable; and certainly more so than those Ulster Custom tenets that lay beneath the surface of the Devon Commission's recommendations for mobilising tenant capital by changes in

40. E. R. R. Green, "Agriculture", in *The Great Famine*, Edward & Williams (eds.), p. 117.
41. *Ibid.*, pp. 118, 120–121.
42. D. C. Moore, *op. cit.*, pp. 550–552.
43. G. K. Clark, *op. cit.*, p. 4.
44. Stanley's speech, as quoted in R. B. O'Brien, *The Irish Land Question*, Appendix B, pp. 206–208.
45. R. B. McDowell, *Public Opinion and Government Policy in Ireland, 1801–1846*, pp. 210–211.
46. D. C. Moore, *loc. cit.*
47. *Ibid.*, pp. 558–559.
48. K. B. Nowlan, *The Politics of Repeal*, p. 92.

landlord-tenant relationships.[49] An encumbered estates measure was desirable in the context of the inviolability of landlord rights because the structure of, capitalistic agriculture, which Peel envisaged as an outcome of free trade in land seemed to make unnecessary any interference with these rights, while bringing greater benefits to tenants than the demands of those who favoured the Ulster Custom. Since a capitalistic landowner made his own improvements, the need for compensation for tenant's improvements did not arise. Furthermore, the contractual relationship of tenant and landowner in a high-farming system rendered such issues as fair rent and fixity of tenure superfluous. Peel's awareness of the contractual tenets of capitalistic agriculture most probably determined his view that such issues as the Ulster Custom raised were irrelevant when the question arose of passing on mortgage-interest in the shape of higher rents. Clearly, a one-sided interpretation of the commercialisation of landlord-tenant relationships enabled him to reject the terms of Pusey's Bill. It was this faith in the merits of a one-sided commercialisation of agriculture that would enable a statesman "to turn aside from other and more contentious remedies with an easy conscience," and trust in an encumbered estates measure that would, by freeing the trade in land, bring about the introduction of high-farming.[50]

One further consideration made an encumbered estates measure a feasible proposition for Peel. The Devon Commissioners had exposed the plight of the cottier class in Ireland, and to all intents and purposes presented that plight as an apparently insuperable obstacle to social and economic progress.[51] The consideration that must have arisen in Peel's mind at that juncture was the favour shown by contemporary political economists to the introduction of capitalistic agriculture as a panacea for remedying the problems presented by the cottier class.[52] The economists believed that a re-orientation of the cottiers to a wage-paid labouring class would provide *lebensraum* for progressive farmers in a high-farming system and thus end the unemployment that had bedevilled both the cottiers and the authorities.[53] Peel believed that a repeal of the corn laws would favour the wage-paid labourers of a high-farming system by bringing the cost of bread within reach of their wages and so keep them from drifting away from agricultural work.[54] Sir James Graham believed that there would either be a fall or end to

49. Capt. J. P. Kennedy's introduction to *Digest of Devon Commission*, Pt. 1, pp. 1–4, as quoted, in R. B. O'Brien, *The Land Question in Ireland*, pp. 178–179; Pt. 2, as quoted, *ibid.*, pp. 68–70. K. B. Nowlan, *op. cit.*, pp. 90–91.

50. The views in this paragraph are based on these sources: W. F. Burn, "Free Trade in Land" in *Transactions of the Royal Historical Society*, fourth series, xxxi No. 3 (December 1965), pp. 61–74. D. C. Moore, *op. cit.*, 551–561. Information on the nature of capitalistic farming was obtained from: J. E. Pomfret, *The Struggle for Land in Ireland*, pp. 46–49. *Devon Commission Digest*, ii, pp. 1122–1123, as quoted in R. B. O'Brien, *op. cit.*, pp. 73–74.

51. *Devon Commission Digest*, ii, p. 1116, as quoted in R. B. O'Brien, *op. cit.*, pp. 68–69. K. B. Nowlan, *op. cit.* p. 54.

52. R. D. C. Black *Economic Thought and The Irish Question*, p. 18.

53. *Ibid.*, pp. 22, 32.

54. G. K. Clarke, *loc. cit.*

wages for agricultural labourers if the corn laws were not repealed.[55] He was careful to observe that a loss of tillage might also mean displacement of agricultural labourers. If economists so favoured capitalistic agriculture, they admitted that the insolvent landowners of Ireland were in no position to effect its introduction.[56] Accordingly they arrived at the conclusion that, if a re-orientation of the cottier class were to take place through the medium of high-farming, a free trade in land had to be established in order to deal with the insolvent condition of the Irish landowners.[57]

If the several circumstances enumerated rendered an encumbered estates measure a feasible proposition for Peel, the Devon Commissioners adduced others in the course of delineating for the Prime Minister the lines on which such a measure should be drafted. They urged in particular that any measure should arrange for the sale of properties in lots of a moderate or small size.[58] They were thus, in a sense, taking cognisance of contemporary agricultural thought which discountenanced the spreading of agricultural capital on too thin a base over extensive estates.[59] They adduced further reasons: "We believe that there is a large number of persons in Ireland possessing a small amount of capital which they would gladly employ in the purchase and cultivation of land and a still larger number, now resident in different parts of the country and holding land for uncertain or limited terms at a rent, who would most cheerfully embrace the opportunity of becoming proprietors."[60] They were undoubtedly reflecting the contemporary view (and Peel's also, as we have seen) that middle-class wealth in the towns should be tapped for agricultural capital by enabling the possessors of it to buy landed property.[61] The Commissioners' reference to tenant purchase here can be construed as more a recognition of the number of progressive yeomen in England than an obeisance to the advocates of a tenant proprietary. In England such yeomen owned properties of "a moderate extent",[62] and Peel appears, later at any rate, to have favoured their introduction as a class into Ireland.[63]

In reference to middle-class and tenant investors, the Commissioners thought that "the gradual introduction of such a class of men would be a great improvement in the social condition of Ireland. A much larger proportion than at present would become personally interested in the preservation of peace and good order and the prospect of gaining admission into this class of small landowners would

55. G. S. Parker, *Life and Letters of Sir James Graham, second baronet of Netherby*, i, 313.

56. R. D. C. Black, *op. cit.*, p. 32.

57. J. E. Pomfret, *op. cit.*, pp. 43–44.

58. *Report from Her Majesty's Commissioners of Inquiry into the State of the Law and Practice in Respects to the Occupation of Land in Ireland*, No. 27, H. C. 1845 (605), xix.

59. D. C. Moore, *op. cit.*, p. 550.

60. *Report . . .*, No. 27, H. C. 1845 (605), xix.

61. D. C. Moore, *op. cit.*, p. 551. W. P. Burn, *op. cit.*, p. 62.

62. Extract from Lord Stanley's speech on Compensation Bill, 1845, as quoted in R. B. O'Brien, *op. cit.*, p. 206.

63. R. D. C. Black, *op. cit.*, p. 39.

often stimulate the renting farmer to increased exertion and persevering industry".[64] The Commissioners were thus underlining both the reasons for their own appointment, and the prospect of a more aggressive approach to the utilisation of agricultural resources. Peel was conscious of both points.

Lord Devon included an encumbered estates measure in a programme of amelioration for Ireland which he drafted in the autumn of 1845.[65] In December, 1845, Peel was anxious that this programme be well prepared in readiness for the coming session of parliament.[66] An encumbered estates bill was introduced into the Commons in 1846 but lapsed with the change of ministry in July of that year.[67] By that date, however, Peel by repealing the corn laws had ensured the prosperity of the commercial sector of the economy. Lord John Russell's duty as Peel's political legatee was to tap this commercial prosperity for agricultural purposes by establishing a free trade in land. Peel was ready on two occasions to remind Russell that land improvement and economic regeneration in Ireland depended on the implementation of an encumbered estates measure.

An Encumbered Estates Measure in 1846–1847: Its Feasibility

In July and the early autumn of 1846 Lord John Russell made it clear that the onus of financing the relief of distress in Ireland would fall on the Irish landowners.[68] The Poor Employment (Ireland) Act was the basis of this policy. On 25 January, 1847, Russell reiterated his policy;[69] and in the following summer he underlined it by passing the Irish Poor Law Extension Bill.[70]

An increasing anger at the manner in which the Irish landowners neglected their imposed duty manifested itself. "We cannot allow proprietors to neglect the community to which they belong," commented Lord Bessborough on January 3, 1847, at a time when the Cabinet was perturbed at the breakdown in relief operations.[71] In April, 1847, Charles Wood gave expression to the Treasury's reluctance to countenance further aid to Irish property while landlords continued to extract rent.[72] By December, 1847, Clarendon, who had been prepared to see "germs of progress" in September,[73] was laying the blame squarely upon the indolence and absenteeism of the Irish landowners for the plight of the country.[74] By December also, Trevelyan, not yet over the anxiety caused by the London

64. *Report . . .*, H. C. 1845 (605), xix, 27.
65. R. D. C. Black, *op. cit.*, p. 35.
66. Peel to Graham, December 28th, 1845, in Peel Papers, Add. MSS. 40, 452 (N.L.I. microfilm, n. 1068/p. 1271).
67. R. D. C. Black, *loc. cit.*
68. K. B. Nowlan, "The Political Background", in *The Great Famine*, pp. 148–149.
69. *Annual Register*, 1847, pp. 23–24.
70. Cecil Woodham-Smith, *The Great Hunger*, pp. 296–298.
71. Bessborough to Russell, January 3, 1847, Russell Papers, P.R.O. 30/22/6A.
72. Charles Wood to Russell, April 11th, 1847, *ibid.*, P.R.O., 30/22/60.
73. Clarendon to Henry Reeve, September 18, 1847, in H. Maxwell, *Life and Letters of George, fourth Earl of Clarendon*, i, 292.
74. Clarendon to Russell, December 30, 1847, Clarendon Papers, Letterbook, Vol. 2.

financial crisis,[75] was suggesting that the landowners should improve their estates under the Land Improvement Act and at the same time pay the increasing burden of rates, "or dispose of their estates to those who can perform this indispensable duty".[76]

The Whig Cabinet had other than economic grounds for disenchantment with the landowners. Apart from their failure to relieve distress, they were being reprimanded for their extraction of rents and for their indiscriminate clearances. Russell believed that rents should give way to sustenance of the people, and that indiscriminate clearances invited retribution.[77] The social unrest to which evictions and the continued extraction of rents gave rise (an unrest giving rise in its turn to political agitation) perturbed Russell's Cabinet.[78] Mitchell the Hotspur of the Young Ireland Movement's crystallising socio-political revolution, was prepared to achieve Lalor's radical change in the Irish agrarian structure by force of arms and with foreign aid.[79] The situation was at hand that Peel had warned of: namely, Ireland's becoming the enemy within.[80]

The Irish landowners tried to stave off both responsibility for relief and the criticism that followed their failure to do so, by underlining their lack of capital and the encumbered state of their properties. In the autumn of 1846 Lord Monteagle and Bessborough tried vainly to bring this point home to Russell.[81] The landowners themselves reiterated the point at their convention in January.[82] Their plight was demonstrated forcefully to Russell in May, 1847, when he learned that Mr. Blake of Renvyle, Co. Galway, was existing on "an estate of nearly 3,000 acres, looking forward to starvation".[83] Lord Mountcashel was in a position to point out to the House of Lords that landlords paid out nearly ten and a half million pounds annually to mortgagees, and were left with something less than three million pounds to effect the payment of approximately fourteen million pounds of poor rates.[84] The difficulties of the times were increasing the number of estates being brought into the courts of equity.[85] The estates brought into the courts increased those same difficulties in turn because the incidence of pauperism was greatest on such properties and evictions and mismanagement

75. C. Woodham-Smith, *op. cit.*, pp. 304–306.

76. Trevelyan to Twistelton, December 14, 1847, PLB. Vol. XVIII, as quoted in C. Woodham-Smith, *op. cit.*, pp. 318–319.

77. Memorandum by Lord John Russell, Russell Papers, P.R.O. 30/22/6, as quoted in K. B. Nowlan, *The Politics of Repeal*, p. 162. Lord John Russell to Clarendon, November 15, 1847, as quoted by C. Woodham-Smith, *op. cit.*, p. 39.

78. K. B. Nowlan, *op. cit.*, pp. 160–161. C. Woodham-Smith, *op. cit.*, pp. 324–328.

79. K. B. Nowlan, *op. cit.*, pp. 139–140; 148–158; 171–173. C. Woodham-Smith, *op. cit.*, pp. 331–334.

80. L. J. McCaffrey, *Daniel O'Connell and the Repeal Year*, pp. 215–216.

81. R. D. C. Black, *op. cit.*, pp. 115–116.

82. *Nation*, January 16, 1847.

83. Bishop of London to Russell, May 2nd, 1847, Russell Papers, P.R.O. 33/22/6C.

84. C. Woodham-Smith, *op. cit.*, p. 297.

85. *First Report on Receivers*, cit., p. 49/No. 542, p. 81/Nos. 986–987.

affected the neighbouring solvent properties.[86] It was estimated that there was a rental of £1,059,285 (or £1,300,000, as it was otherwise estimated) under the control of the courts in 1847 out of a total rental for the country of £13,000,000.[87] In Swinford, Co. Mayo, for instance, there were no fewer than nine properties being administered by the Court of Chancery, and from fifty to sixty absentees.[88]

It is clear that the problems presented by encumbered estates became associated with the failure of the relief schemes. In January, 1847, Bessborough pointed out to Russell that a great deal of the blame for this breakdown lay with the estates which were in Chancery, or whose owners were absentees.[89] Clarendon pointed out to Charles Wood in the following September the fallacy of expecting rates to be paid by non-existent landlords in Mayo and other parts. The owner "is absent or in Chancery and the estate sub-divided into infinitesimally small lots", he remarked.[90]

Long-term remedial action for Ireland was first mooted by Russell in July, 1846.[91] Having taken cognisance of the reputed lack of capital among the landowners, and of the undeveloped nature of agricultural resources,[92] Russell described a prospective programme of long-term remedial action on 25 January, 1847.[93] It called for the advancement of government capital for drainage and waste land improvement, the sale or lease of reclaimed waste land to small farmers, the conversion of leasehold to freehold interests, and compensation to tenants for improvements. Such measures were expected to effect a greater use of agricultural resources and to tap farmers' capital, all sound Peelite objectives, it will be remembered. Despite the Cabinet's failure to implement these schemes,[94] Russell held on to the basic principle. The only money, it was stated in July, that would be made available to Ireland would be for works of permanent improvement.[95] The landlords themselves would have to finance their own improvements, however, with borrowed money, under the Land Improvement Act.

If the principle behind such long-term remedial action was in accordance with Peel's views, Whig policy had not yet synchronised with Peel's. Peel had pointed out to Russell earlier in the year the illogicality of spending one million of Treasury funds on the reclamation of waste land when private capital, if freed by an encumbered estates measure, would effect all of the reclamation needed.[96]

86. *Ibid.*, p. 76/No. 924; p. 126/No. 1384; p. 129/Nos. 1420–1427.
87. *Ibid.*, pp. 135–136/No. 1534.
88. C. Woodham-Smith, *op. cit.*, p. 316.
89. Bessborough to Russell, January 14, 1847, Russell Papers, P.R.O. 30/22/6A.
90. Clarendon to Wood, September 20, 1847, Clarendon Papers, Letterbook, Vol. 1, as quoted by C. W. Smith, *op. cit.*, p. 314.
91. K. B. Nowlan, "The Political Background", in *The Great Famine*, pp. 148–149.
92. R. D. C. Black, *op. cit.*, pp. 115–116; K. B. Nowlan, *op. cit.*, pp. 151–152; Report of Landlord Convention, in *Nation*, January 16, 1847.
93. *Annual Register*, 1847, pp. 23–24; K. B. Nowlan, *op. cit.*, p. 158.
94. K. B. Nowlan, *op. cit.*, p. 159.
95. C. Woodham-Smith, *op. cit.*, pp. 304–306.
96. *Hansard*, 3rd series, H. C. 1847, lxxxix, 699–764.

In the context of the landowners' statement in the autumn of 1846 that borrowing from the state only added to their encumbrances,[97] Peel's view had some degree of validity and did not portend success for the Land Improvement Act later in the year.

If disenchantment with the Irish landowners became associated with the problem of encumbered estates, and if the concept of a long-term improvement of agricultural resources was to the fore in Whig policy, it is only fair to say, in view of Peel's stricture, that the Whigs themselves had been conversant with the subject of encumbered estates before coming into office, and in principle had accepted the merits of an encumbered estates measure, as had indeed Repealers and landlords.[98] Lord Normanby had at some stage in his period as Lord Lieutenant raised with Russell the desirability of a closer link between "the money-savings of the middle-classes and the interests involved in the actual possession of land".[99] When the landlords at their January convention called for an encumbered estates measure, therefore,[100] the Whigs were already preparing one. Convinced that Irish property needed improvement, Lord Bessborough welcomed the prescience of the Cabinet in attending to such a measure.[101]

Russell included this measure in his programme of prospective legislation on January 25th in the context of his other long-term remedial action.[102] Like the other planks in his programme, it was to "enable a better use to be made of property". It would "increase the amount of Irish capital invested in land so as to allow landholders to improve their estates", Russell observed. A "good security for the investment of money in land" was needed, he emphasised, to attract this fund of capital. Creditors had to be assured that they could obtain quick and cheap redress against defaulting debtors among the landowners. He was careful to point out that the landowners would be freed from the burden of their present encumbrances. He felt sure that the benefits accruing from such a measure would benefit the country greatly. Moreover, it would enable the landowners to pay for relief schemes more readily, and so ease the drain on the Treasury. This latter point did not escape Trevelyan, one surmises. On April 4th he considered the measure to be a "cheap way of encouraging and securing the Irish gentry".[103]

On March 22nd the measure was introduced into the House of Lords by Lord Cottenham, the Lord Chancellor.[104] While it had a comparatively untroubled

97. R. D. C. Black, *op. cit.*, p. 116.

98. *Ibid.*, p. 35; R. B. McDowell, *Public Opinion and Government Policy in Ireland, 1801–1846*, p. 254; L. J. McCaffrey, *Daniel O'Connell and the Repeal Year*, p. 207.

99. Lord Normanby to Russell, July 20, 1848, Russell Papers, P.R.O. 30/22/6D; also in G. P. Gooch, *The Later Correspondence of Lord John Russell*, ii, 228.

100. *Nation*, January 16, 1847.

101. Bessborough to Russell, January 18th, January 19th, 1847, Russell Papers, P.R.O. 30/22/6A.

102. *Hansard*, 3rd series, H. C. 1847, lxxxix, 445–449.

103. Trevelyan to Russell, April 4, 1847, Russell Papers, P.R.O. 30/22/6C.

104. *Hansard*, 3rd series, H. L. 1847, xci, 262.

passage through that House,[105] the measure ran into serious difficulties at the Committee stage in the House of Commons.[106] The grounds for the difficulty lay in alarm in financial circles at the measure's implications.[107]

George Glyn, the London banker and director of the Globe Assurance Company, had told Sir James Graham in December, 1846, that because of conditions in Ireland "mortgagees were beginning from alarm to contemplate immediate foreclosure" on mortgages given on the security of Irish estates.[108] Lord Cottenham's encumbered estates measure, threatening those mortgages from another direction, also caused alarm. The Law Life Assurance Company, having had its attention drawn to the measure in April, lobbied in the intervening months to have the measure withdrawn; and with some relief its Board of Directors noted the abandonment of the Bill in July.[109] The proposed measure, it was feared, would precipitate sales through the action of small creditors, under pressure from attornies, and jeopardise large creditor's charges by glutting the market.[110] The insurance companies refused, therefore, to complete any pending loans to Irish landowners, and threatened to call in money they had already given out if the measure were not withdrawn that session.[111]

Alarm in financial circles predictably extended to the Irish landowners. Pitt, in 1798, had been under pressure, it seems, from the Irish landowners to crush the uprising, and so allay the fears in financial circles of those who were seeking a measure to facilitate foreclosure.[112] The landowners in 1847 were equally successful in obtaining repressive measures in the shape of a crime and outrage bill;[113] but it is also true to say that the landlords were as reluctant as their mortgagees to see land thrown on a fallen market. This fear was given succinct expression by Mr. French who, in a speech on the encumbered estates measure, said that "the effect of the Bill, at least in the province with which he was connected, (Connaught), would be to turn out every proprietor in it; and in many cases, from the present deteriorated value of property in that country, the encumbrances on the property could not be paid".[114] It was not surprising, then, that the Cabinet

105. *Ibid.*, xcii, 3.

106. *Ibid.*, xciii, 809.

107. R. D. C. Black, *op. cit.*, p. 36.

108. Graham to Peel, December 15, December 17, 1847, Peel Papers, Add. MSS. 40 452 (N.L. I. Microfilm—n. 1068/p. 1271).

109. Law Life Financial Minute Books, April 9, April 23, June 11, June 18, July 9, 1847.

110. Clarendon to Russell, October 23, 1847, Russell Papers, P.R.O. 30/02/62. Clarendon to Russell, December 15, 1847, Clarendon Papers, Letterbook, Vol. 2.

111., *Hansard*, 3rd series, H. C. 1847, xciii, 809. Lord Clarendon to Lord Shannon, October 12, 1847, as quoted in D. Large, "The wealth of the greater Irish landowners, 1750–1815", in *Irish Historical Studies*, x, 57, 1966–67, p. 33. R. D. C. Black, *op. cit.*, p. 36.

112. Graham to Peel, December 15, 1847, Peel Papers, Add. MSS. 40, 452 (N.L.I. Micro-film—n. 1068/p. 1271).

113. K. B. Nowlan, "The Political Background", in *The Great Famine*, p. 180.

114. *Hansard*, 3rd series, H. C. 1847, xciii, 810.

gave way, and dropped the measure temporarily.[115] It promised, however, to redraft it.

In September, Clarendon professed to notice that "landlords are beginning to bestir themselves, and to understand why hunting, drinking, and mortgaging bring their estates to auction and themselves to jail".[116] If the landlords were thus coming to a better understanding of their own interests,[117] due to adverse public opinion, it is possible that Clarendon looking back to the objectives mooted for the first measure on January 25, conceived that an encumbered estates measure would help forward that "spirit of exertion and self reliance, altogether new in Ireland".[118] It is possible that disenchantment with the landlords, of which we spoke earlier (a disenchantment which prompted Trevelyan to conceive of their removal), prompted Clarendon to re-open the issue on October, 10th.[119] Certainly, having had Russell's reply that the Cabinet considered "the Sale of Estates Bill of more importance than a Landlord and Tenant Bill",[120] Clarendon considered that such a measure could advance the social improvement of the country.[121] Its object should be, he thought, "to render landed property more marketable";[122] and it would allow nominal owners of large estates to become the real owners of portions of them. Harking back, as he was, to Russell's speech of January 25, his arguments in favour of the measure bore witness to the conception that smaller estates were a more productive field for agricultural capital, to the advisability of making land a unit of value that would be attractive to investors because of its mobility, and to the need for stabilising the base of the landlord interest thereby: all sound Peelite principles, it may be remembered. Clarendon expressed the opinion that the Government had not fully realised, when bringing forward the measure of the previous session, "the extent of the encumbrances on landed property in Ireland, or the infinity of small charges".[123] If it had, it would have foreseen the panic that arose among the financial groups and among the landowners. Having urged, therefore, that the measure be included in the legislative programme for the Queen's speech,[124] he was prepared to allow Moore, the Irish Attorney-General, to draft the measure in such a way as would allay the fears in financial circles.[125]

115. *Ibid.*, 1192, July 5.

116. Clarendon to Henry Reeve, September 18th, 1847: Maxwell, *Life and Letters of George, fourth Earl of Clarendon*, i, 292.

117. Clarendon to Russell, November 17, 1847, Russell Papers, P.R.O. 30/22/6G.

118. Clarendon to Reeve, *loc. cit.*, in Maxwell.

119. Clarendon to Russell, October 10, 1847, Clarendon Papers, Letterbook, Vol. 1.

120. Russell to Clarendon, October 21, 1847, Clarendon Papers, Irish, Box 43, Bundle 55.

121. Clarendon to Russell, November 15, 1847, Russell Papers, P.R.O. 30/22/6G.

122. *Ibid.*, December 15, 1847.

123. *Ibid.*, December 15, 1847.

124. *Ibid.*, November 15, 1847.

125. *Ibid.*, December 15, 1847.

The Feasibility of an Encumbered Estates Measure in 1848

Government policy was unchanged in 1848. The determination remained to make the landlords pay for the relief of distress, even though the potato crop failed once again that autumn.[126] In May, Charles Wood was anxious that the Cabinet should realise the danger of becoming the creditor of all Ireland. "We are called upon to support a thoroughly rotten state of things by a system of protecting aid and I believe that we shall thereby prevent the only thing that will in truth make Ireland a flourishing country", he observed on the need for self-sufficiency.[127] It is not surprising, therefore, to find that by December Russell was again disenchanted with the landlords.[128] The critical political situation, brought about by the Young Irelanders and the agrarian disturbances, was another factor prompting Russell to seek the underlying causes.[129]

The greater prominence given to the problem of encumbered estates in these circumstances of 1848 is, therefore, to be noted. The Lord Chancellor, when introducing the new measure in February, observed that "it was impossible for a landlord, whose income arising from his landed estate was intercepted by mortgages and other charges, to perform those duties which a landlord should perform". He also visualised better relations all around between landlord, tenant and the community, arising from the measure's success in introducing capital and improvements.[130] Clarendon also believed that an encumbered estates measure should be the primary legislation contributing to the reduction of social unrest and political agitation;[131] and Russell was "bent on seeing the Irish Encumbered Estates and Landlord and Tenant Bills safe before I agree to any Bill for the suppression of associations dangerous to public peace".[132] Russell was also made aware by Clarendon in July that the landlord's inability to pay rates rested ultimately on the reality of his encumbrances. There was not a solvent estate in the diocese of Tuam to pay rates, Clarendon had informed him: the only solvent one was in Chancery.[133] It had been Clarendon, too, who drew attention to another aspect of the proposed encumbered estates measure. The Treasury, still conscious of the previous autumn's strain on the national economy, could not have been but impressed, one surmises, by Clarendon's observation that income tax was not charged on the amount of English[134] capital that (according to the Lord Chancellor in his introductory speech in February to the encumbered estates measure) was locked up in Irish estates. Primarily, however, the feasibility of the encumbered estates measure in 1848 depended on the extent

126. C. Woodham-Smith, *op. cit.*, pp. 367–368.
127. Wood to Russell, May 20, 1848, Russell Papers, P.R.O. 30/22/7B.
128. Russell to Clarendon, December 20, 1848, Clarendon Papers, Irish, Box 43/Bundle 55.
129. K. B. Nowlan, *The Politics of Repeal*, pp. 182–207; 218–219.
130. *Hansard*, 3rd ser., H. L. 1848, xcvi, 1249–1251.
131. Clarendon to Grey, April 9, 1848, Clarendon Papers, Letterbook, Vol. 2.
132. Russell to Clarendon, May 23, 1848, Clarendon Papers, Irish, Box 43, Bundle 55.
133. Clarendon to Russell, July 11, 1848, Clarendon Papers, Irish, Letterbook, Vol. 3.
134. Clarendon to Wood, February 3, 1848, *Ibid.*, Vol. 2.

to which it would bring about an improvement in Irish agriculture and relieve the Treasury of the burden of Irish relief. Indeed, the social objectives of the measure, as they were stressed by the Lord Chancellor in his introductory speech, reflected Russell's determination in January, 1847, to place Irish property owners in a position that would enable them to implement the provisions of the Land Improvement Act, thereby contributing to the immediate relief of distress, and eventually obviating distress altogether. The great evil of the heavy encumbrances on Irish property, stressed the Lord Chancellor,[135] was that "the ostensible owners in some cases could hardly be said to have any estate in land at all", and consequently were not in a position to improve the estate and at the same time find employment for the population. The commercial capital needed to prime agriculture could only be obtained by establishing free trade in land, since it could not tolerate a situation in which there was no return on investments locked up by the prevailing difficulties of sale. Abstract rights to property therefore had to be superseded, in the interests of the body-politic.

Enumerating[136] the benefits that would arise from free trade in land, the Lord Chancellor stated that the "real master of the soil would then become the ostensible owner"; such persons "would not think of purchasing land without possessing capital sufficient for its improvement". In the course of the following months the tenets adumbrated in the Lord Chancellor's speech were spelt out in greater or lesser detail from several angles and by several people. Charles Wood, in particular, gave the Treasury view. In April, Wood was prepared to say to Russell that little real benefit could emerge for Ireland from Government expenditure, even if this extended itself to paying off the debts of every landlord in the country.[137] It was a view which did not portend acceptance of Clanrickarde's opinion that, with the worst of the Famine likely to be over within a year, the Government should tide the landowners over the intervening difficult months, so that they might eventually set the economy of the country on its feet again, instead of redistributing Irish property with an encumbered estates measure.[138] Clarendon expressed the view to Russell that the measure in question should not set out to exterminate the existing Irish landowners,[139] but Charles Wood had no such tender feelings. At a time when Clarendon and Russell, respectively, were suggesting that debentures be paid to the landowners for the value of their land,[140] and that guaranteed loans be secured for improvement purposes,[141] Wood was not at all averse to seeing the landowners fend for themselves on an open market. He made this clear to Russell in May:[142] "We have all made up

135. *Hansard*, 3rd ser., H. L. 1848, xcvi, 1249–1251.
136. *Ibid.*
137. Wood to Russell, April 9, 1848, Russell Papers, P.R.O. 30/22/7B.
138. Clanrickarde Memo., H. D. April, 1848, Russell Papers, P.R.O. 30/22/7B.
139. Clarendon to Russell, June, 1848, Clarendon Papers, Letterbook, Vol. 2.
140. *Ibid.*, April 30, May 18, 1848.
141. Russell to Clarendon May 23. 1848, Clarendon Papers, Irish Box 43, Bundle 55.
142. Wood to Russell, May 20, 1848, Russell Papers, P.R.O. 30/22/7B.

our minds, as I believe, that portions of encumbered estates ought to be sold and that there is no real prospect of regeneration and substantial amendment in Ireland until substantial proprietors possessed of capital and willing to improve their estates are introduced into that country". Besides indicating how far an encumbered estates measure had become central to the Whig's policy for Ireland, this statement was an interesting foretaste of Peel's plantation policy in the following year.[143] Wood could not countenance either Clarendon's or Russell's concept of leaving the estates in the hands of the existing proprietors while finding them public money for improvements. As it was, thought Wood, the Government had the choice of becoming the creditor for all the country, or of making the country stand on its feet and insisting on the repayment of advances, even at the risk of driving the landlords into the Repealite camp. The encumbered estates measure was an indispensable condition, in Wood's mind, for the channelling of the fund of Irish capital that existed into agricultural improvement.

At the end of 1848, when Clarendon was comparing Ireland to an estate badly managed by the Government,[144] the Treasury view had, if anything, hardened. Russell, conscious that the "crack of the gentry is going on right and left",[145] was of the opinion that "we should do all that is possible to save the present Irish proprietors in spite of their past and present faults and shortcomings. The new proprietors will probably be more absentee than the old and the hard lessons of adversity may make even the lords of Castle Rackrent prudent and patriotic".[146] This was a view that neither Wood nor Trevelyan countenanced. Having no faith in anything but "private capital employed under individual charge" for improvement, Wood could look with calm at the unencouraging prospect that an encumbered estates measure would mean for existing Irish proprietors: "great ruin, great change of property, and great suffering for the people in the meantime".[147] Trevelyan's view, though not as harsh, was substantially the same.[148] They were definitely in agreement with those political economists who so ardently desired to remove the Irish landlords and to replace them with capitalist agriculturalists.[149]

In Ireland, the chief advocates for free trade in land were Jonathan Pim and Joseph Bewley, the Quaker merchants. During an expected resistance[150] to the encumbered estates measure of 1848 Lord Glengall charged them with conspiracy

143. See below, p. 433.

144. Clarendon to Russell, December 17, 1848.

145. Lord Monteagle to Russell, November 3, 1848, Monteagle Papers, as quoted by C. W. Smith, *op. cit.*, p. 373.

146. Russell to Clarendon, December 24, 1848, Clarendon Papers, Irish, Box 43, Bundle 55.

147. Wood to Monteagle, November 22, 1848, Monteagle Papers, as quoted by R. D. C, Black, *op. cit.*, p. 39.

148. Trevelyan to Twistleton, September 14, 1848, T.64/370B., as quoted by C. W. Smith. *op. cit.*, p. 371.

149. R. D. C. Black, *op. cit.*, p. 33. E. Strauss, *Irish Nationalism and British Democracy*, pp. 135–137. J. B. Pomfret, *The Struggle for the Land in Ireland*, pp. 43–44.

150. Clarendon to Lansdowne, July 16, 1848, Clarendon Papers, Letterbook, Vol. 3.

to ruin the Irish landlords by forcing the sale of land at a time when the value of land was low.[151] Lord Glengall's voice was not representative of the landowning interest on the subject, and indeed was possibly motivated by a desire to hit the Government for its efforts to limit the landlords' powers of eviction.[152] Clarendon's opinion, indeed, was that the landlords in general, conscious of their tribulations, were anxious to see an encumbered estates measure implemented,[153] on the proviso that any such measure did not endanger their interests.[154] Clanrickarde, despite his misgivings about the introduction of a clause providing for tenant purchase, had earlier agreed with the principle of free trade in land,[155] and was among those in the Lords who voted for the final acceptance of the measure in 1848.[156] Consciousness among the landlords that improvement of agriculture and an encumbered estates measure were inextricably connected was most succintly put by the encumbered[157] landowner Robert Dillon Browne of Mayo. "The Bill was absolutely necessary in justice to Irish landlords, the owners of encumbered estates" he commented,[158] "The want of means for improvement affected injuriously not only the property but the estate".

The Feasibility of an Encumbered Estates Measure in 1849

The introduction[159] of the rate-in-aid in 1849 testified to the Whig Cabinet's determination to continue the principle of making Ireland pay for its relief. By 1849, however, it had become clear that the problem presented by encumbered estates clearly needed to be tackled if Ireland was indeed to be in a position to pay for distress, and, probably more important, to improve its agricultural economy to such an extent as would prevent a recurrence of the years of depression.

The £1,300,000 of rental, estimated to have been under the control of the courts of equity in 1847, had increased, it was estimated, to £2,000,000, in 1849.[160] This increase testified in itself to the effect of the years of depression on the solvency of the Irish landowners. It sufficed to explain John Pitt Kennedy's statement that there had been a great rise in the number of estates ready for sale.[161] It was little wonder, therefore, that the hitherto sympathetic Lord Clarendon should come close to Wood's outlook in seeing encumbered Irish landowners as the stumbling block hampering recovery of the economy. "The real evils are

151. *Hansard*, 3rd series, H. L. 1848, c. 1028–1029.
152. Clarendon to Lansdowne, July 16, 1848, *loc. cit.*
153. Clarendon to Grey, July 13, 1848, *loc. cit.*
154. Clarendon to Russell, December 18, 1847, February 12, 1848, *ibid.*, Vol. 2.
155. Clanrickarde Memo., H. D. April, 1848, Russell Papers, P.R.O. 30/22/7B.
156. *Hansard*, 3rd series, H. L. 1848, c. 1040.
157. *Thesis*, Chap. 3, p. 137.
158. *Hansard*, 3rd series, H. C. 1848, c. 394.
159. C. Woodham-Smith, *op. cit.*, pp. 379–380.
160. *First Report on Receivers, cit.*, p. 136/No. 1534.
161. *First Report from the Lord's Committee on Poor Laws (Ireland)*, 1849, (192), xvi, p. 221/No. 3293.

social," he said to Sir James Graham in January,[162] and, in a comment that must have stirred Graham's memory, expressed the view that legislation could not be relied on to eradicate those evils since legislation could not inspire the gentry to "live within their means; or spend their money to the best advantage for themselves and those dependent on them". In February, Clarendon was forced to draw Russell's attention once again to the negligence and absenteeism of the landowners.[163] In September, he observed that the gentry were "beggared beyond redemption. Rates and encumbrances eat up the scraps of rent that are collected, and employment of labour in the South and West has become an impossibility".[164] The replacement of insolvent Irish landowners through an encumbered estates measure was essential for Ireland's improvement, Clarendon believed.[165]

Others besides Clarendon saw the connection between an encumbered estates measure and an improvement of conditions in Ireland. Lord Westmeath in a letter[166] to Peel after the latter had renewed his call in March for such a measure, stated that Peel was entitled to the country's gratitude "for the notice you have taken of the monstrous abuse which the Court of Chancery is, wherever its fangs can fasten. Mend it you never can. The only hope is to supersede it altogether; and the blessings of a suffering community would attend you, if you sweep away such a den of thieves". Thomas Reddington, the Under-Secretary, and a Galway landowner, considered it a great evil that the duties of a landlord should be suspended to the detriment of the tenantry and loss of value to the estate because of the delays in selling encumbered properties caused by conflicting creditors' claims.[167] The public and private encumbrances on properties not only limited the owner's personal allowance, but unquestionably prevented his making that "large outlay" of capital necessary to farm those holdings handed up by the decamping tenantry.

Undoubtedly, however, the most forceful exposition of the need for an encumbered estates measure was made by Peel in March, 1849.[168] Peel, having advised Clarendon on the 1848 Bill,[169] made it clear during a debate on the Government's Rate-in-Aid Bill that relief of distress by public works, land improvement schemes, and emigration, would be of no avail without changes in the state of landed property and ownership: "Almost the only measure from

162. Clarendon to Graham, January 20, 1849, in C. S. Parker, *Life and Letters of Sir James Graham*, ii, 78–79.

163. Clarendon to Russell, February 17, 1849, Clarendon Papers, Letterbook, Vol. 3.

164. Clarendon to George Cornewall Lewis, October 10, 1849, in Maxwell, *Life and Letters of George, fourth Earl of Clarendon*, i, 294. Clarendon to Graham, January 20, 1849, in C. S. Parker, *loc. cit.*

165. Clarendon to Peel, September 2, 1849, in C. S. Parker, *Sir Robert Peel from his Private Papers*, iii, 517.

166. Lord Westmeath to Peel, April 3, 1849, *ibid.*, iii, 510.

167. Reddington to Clarendon, April 1, 1849, Russell Papers, P.R.O. 30/22/7F.

168. *Hansard*, 3rd series, H. C. 1849, ciii, 179–193. R. D. C. Black, *op. cit.*, p. 38.

169. Maxwell, *The Life and Letters of George, fourth Earl of Clarendon*, i, 300.

which I derive a hope of safety is the introduction of new proprietors who shall take possession of land in Ireland, freed from its present incumbrances, and enter upon its cultivation with adequate capital, with new feelings, and inspired by new hopes. The conditions prevailing in the west of Ireland prompted him to this further development of his thoughts on the subject: "I look to the West of Ireland with perfect despair, if the present state of things is to continue", he commented. Yet he was aware that the same region had immense potential for improvement if only English commercial capital could be attracted to it for high-farming by free trade in land. Connemara, he thought, was like the Scottish Highlands in 1732, a territory ready to be opened up and improved in the interest of sheep-farming.[170]

The Whig Cabinet acted on Peel's urging a further effort to facilitate the sale of encumbered estates. Conscious that the measure of the previous year was proving largely inoperative, it pressed ahead with an amendment of it, and saw this successfully through the several stages in parliament. We now turn to a fuller examination of the technical aspects of this and the several abortive bills that had gone before it. It only remains to be noted how the legacy bequeathed to Russell by Peel had been successfully executed. Inheriting from Peel the duty of effecting a measure to tap commercial prosperity for the purposes of agricultural improvement, the Whigs, bedevilled by the social, economic, and political exigencies of the Irish agrarian scene during the years of depression, had come to a conviction that an encumbered estates measure was the panacea for their administrative problems.

II

Initial Measures

While we are primarily concerned here with the encumbered estates measures reaching the statute book in 1848 and 1849, we must look first at two measures which preceeded them. The first of these, introduced privately into the House of Commons on 17 August, 1846, by Morgan John O'Connell and Benjamin Chapman[1], (O'Connell's interest in the subject reflecting both a general interest by the Repeal party and a personal concern),[2] proposed that the owner of a freehold estate subject to redeemable encumbrances should have the power to petition the Court of Chancery for a sale of the estate in order to pay off the encumbrances in whole or in part. If the owner was tardy in bringing about a sale, conduct of

170. John Prebble, *The Highland Clearances*, pp. 28–36, 247–313, 127–180.

1. *Bill for facilitating the sale of Encumbered Estates in Ireland*, 1846, (634), iv. *Hansard*, 3rd series, H. C. 1846, lxxxviii, 750. August 17. The writer has relied, however, on John Kent's account of the measure in his thesis, *The Encumbered Estates Acts*.

2. *Freeman's Journal*, July 25, 1853.

the proceedings might be given to others with an interest in the estate and the sale. Perhaps the most striking clause in the measure called for the effecting of leases, while a sale was pending, which would be binding later on the parties to the sale. It was a clause which bore testimony to the bad leasing arrangements under Chancery management. It was also a clause that seemed to provide more protection of tenant's interests than were to be provided in the later measures.[3] O'Connell's Bill was not pressed forward, however, possibly because of the interest of the Whig Cabinet itself in introducing a similar measure.

The Whig measure of 1847,[4] as introduced into the House of Lords on March 22,[5] is of interest primarily in the context of the anxiety it caused in both financial and landlord circles. It proposed that the owner of prior encumbrances of an estate which was charged with any amount of encumbrances should be allowed to sell the property, with or without a prior contract for sale, on application to the Court of Chancery.[6] While there were stipulations[7] which ensured that a sale could not take place until the price exceeded the charges, that the Court of Chancery would assess the saleable value of the estates as well as review the encumbrances charged upon the properties, and that encumbrancers should be given six months notice of a sale and power to prevent its taking place, the measure, as we have seen, aroused alarm among large creditors, and was dropped for revision. It provides an interesting precedent for the amendments introduced by Sir John Romilly to the 1848 measure.

The Encumbered Estates Act of 1848

This was given its first reading in the Lords on February 15,[8] where on February 24 it received its second reading.[9] It had been drafted in January by Lord Campbell,[10] a director of the Law Life Assurance Company, which had moved to forestall the previous year's measure. When forwarded to Ireland for scrutiny, the incipient measure was thought impractical (where it was not mischievous) by Thomas Berry Cusack Smith, the Master of the Rolls,[11] who had also pointed out to Clarendon the weaknesses in the previous year's measure.[12]

The Encumbered Estates Bill of 1848 provided for a quicker sale of encumbered properties within the Court of Chancery. It authorised the owner of encumbered

3. See below, pp. 447–448.
4. *A Bill Intitled an Act for facilitating the Sale of Encumbered Estates in Ireland*, 1847–48, (319), (373), (495), iii.
5. *Hansard*, 3rd ser., H. L. 1847, xci, 262.
6. *Bill*, cit., 1847–48, (319), iii, Clauses 1–3, 18, 28.
7. *Ibid.*, Clauses 2, 6, 9, 17, 35.
8. *Hansard*, 3rd ser., H. L. 1848, xcvi, 632.
9. *Ibid.*, 1249.
10. Lord Clarendon to Russell, January 12, 1848, Clarendon Papers, Letterbook, Vol. 2.
11. Lord Clarendon to Russell, January 14, January 25, 1848, Clarendon Papers, Letterbook, Vol. 2.
12. *First Report on Receivers*, p. 87, Nos. 1034–1038, H. C. 1849, (438), viii.

land or a leasehold interest to contract for a sale of the property and then to obtain sanction of the contract and an account of the encumbrances from the Court of Chancery. The first encumbrancer or the encumbrancer in possession of the title deeds could also act in this manner. A property was deemed to be eligible for sale if there were any encumbrances charged upon it.[13] Alternatively an owner could obtain an account of the encumbrances and permission for a summary sale without the existence of a prior contract.[14] Under the latter clause an owner was obliged to give notice to the encumbrancers and was not permitted to sell without the latter's consent.[15] An encumbrancer, in fact, was permitted to obtain a caveat to withdraw the property from the provisions of the intended act.[16] Furthermore, an estate was not to be within the ambit of the bill's provisions if the encumbrancer was in possession of the property or if a suit was already pending in the courts of equity.[17] The encumbrancer was further protected by the clause which directed that his rights to a full discharge of a debt were not annulled if a part discharge was made from the sale of a property.[18] Finally, the measure provided for the grant of a parliamentary title to the purchaser of a property.[19]

The measure, as introduced, undoubtedly reflected the care taken to allay the fears of the London financial houses that had been aroused in 1847.[20] It was designed also to set at rest similar fears among landowners by allowing them greater initiative and control over the sale of their own properties.[21] Weaknesses in the measure were readily apparent, however. Clarendon, indeed, reiterated the objections of the Master of the Rolls to the Cabinet in February,[22] and mentioned the probability of opposition to the provisions of the measure by lawyers in Ireland.[23] The Master of the Rolls thought the measure would be ineffective in a number of ways.[24] First, except for those with a large surplus of rent after the interest on charges was paid, landowners would not be inclined to place their estates in Chancery. Second, first encumbrancers, assured under the existing system of obtaining satisfaction, were also not inclined to force a sale under the new measure. Third, the number of encumbrancers in possession of title deeds was minimal. Finally, it had to be borne in mind that the machinery of the existing

13. *Bill for facilitating the Sale of Encumbered Estates in Ireland*, 1847–48, (319), iii, Clauses 2, 3, 4 and 5.

14. *Ibid.*, Clause 2.

15. *Ibid.*, Clauses 15 and 20.

16. *Ibid.*, Clause 16.

17. *Ibid.*, Clause 48.

18. *Ibid.*, Clause 37.

19. *Ibid.*, Clause 27.

20. Clarendon to Russell, December 15, 1847, Clarendon Papers, Letterbook Vol. 2.

21. Clarendon to Russell, December 18, 1847, *ibid.*, Clarendon to Grey, February 12, 1848, *ibid.*

22. Clarendon to Grey, February 29, 1848, *ibid.*

23. Clarendon to Grey, February 12, 1848, *ibid.*

24. *First Report on Receivers*, pp. 88–89/No. 1045; *Annual Register*, 1848, pp. 116–117; *Hansard*, 3rd ser. H. C. 1848, c. 474–475.

Court of Chancery was to be retained, thus ensuring that even when petitions were lodged there under the new scheme the aggravating delay ensued as before.[25]

In the interim before the measure came under closer scrutiny in Parliament, in June, Clarendon circulated the idea of a land bank on Prussian lines, from which debentures would be paid to landowners for the value of their estates and would allow them to become solvent, while the estate itself was being sold on behalf of the encumbrancers.[26] This conception, which he had introduced first at the end of 1847,[27] was obviously mooted with the intention of permitting the social and economic attributes of an estate to be attended to, while allowing the legal question of encumbrances to be removed from day to day exigencies.[28] Russell's preparedness to induce investors to supply private capital for improvement purposes at this juncture, by guaranteeing a rate of interest, underlines the above supposition. The idea of paying debentures to the landowners and settling disputes over encumbrances, while setting the land itself free for productive agriculture, was resurrected in the following year. At this juncture it is proper to resume study of the 1848 encumbered estates measure, by observing that Charles Wood had reservations about its effectiveness to sell encumbered properties and allow productive farming to be resumed.[29]

Lord John Russell has succintly recorded the measure's progress in Parliament.[30] After a reference to its initial introduction, Russell noted that "Sir John Romilly, who had been recently appointed Solicitor General, framed, in conjunction with Mr William Coulson, a series of clauses which completely altered the character of the Bill and tended to make it more effective. But when the Bill went back to the House of Lords, Lord Cottenham so modified the clauses as to preserve to the first encumbrancer a power to nullify the whole Bill. This Act passed in August 1848; it is the 11th and 12th of Victoria, c.48".

The measure had in fact come down from the Lords on May 11,[31] had received its first reading in the Commons on the same day,[32] had received its second reading there on May 18,[33] had amendments to it reported[34] by Romilly on June 1 and went into Committee on July 4.[35] The second and third readings on the

25. *Bill*, Clauses 8 and 10. John Kent, *The Encumbered Estates Acts*, p. 70.

26. Clarendon to Russell, April 30, 1848; May 18, 1848, Clarendon Papers, Letterbook, Vol. 2.

27. Clarendon to Chevalier Bunsen, December 28, 1847, *ibid.*

28. Lord Cottenham, *Hansard*, 3rd ser., H.L. 1848, xcvi, 1249–1251.

29. Russell to Clarendon, May 23, 1848, Clarendon Papers, Irish, Box 43/Bundle 55. Charles Wood to Russell, May 20, 1848, Russell Papers, P.R.O. 30/22/7B.

30. Earl Russell, *Recollections and Suggestions*, pp. 194–195. *Public General Statutes*, 1847–1848, pp. 457–486.

31. *Hansard*, 3rd ser., H.L. 1848, xcviii, 832.

32. *Hansard*, 3rd ser., H.C. 1848, xcviii, 834.

33. *Ibid.*, 1196.

34. *Hansard*, 3rd ser., H.C. 1848, xcix, 170.

35. *Hansard*, 3rd ser., H.C. 1848, c. 87.

amended Bill were got through on July 11[36] and July 24,[37] respectively. The Bill then, as Russell stated, returned to the Lords for further scrutiny.[38]

Sir John Romilly's principal amendment was the inclusion of a clause giving authority to an owner to sell summarily a property without the prior agreement of the Court of Chancery.[39] This effectively was designed to escape the legal trammels of that tribunal. The first encumbrancer, if the owner proved negligent in pressing forward with a sale, could act similarly.[40] Such a summary process was hedged by precautionary provisions. The owner or encumbrancer had to give effective notice to all interests in the property; fraudulent sales were provided against; there was to be no sale of an estate in which a reversion existed unless the encumbrances affected the whole estate; and there was to be a five-year time limit within which neglected interests could act to find redress for peremptory sale.[41] To objectors to his amendments Romilly pointed out that a mortgagee already had power of sale in Chancery to sell without notice or application to the Court of Chancery.[42] He imputed that opposition to the amendments came from the vested interest of lawyers in the status quo, since they conceivably might lose business by a change.[43] His charge recalled Clarendon's earlier premonition on this score. Clarendon also isolated the lawyers in July as the principal group lobbying against the measure.[44]

Sir James Graham supported the amendments and appreciated the guarantees that protected the owner of the reversionary interest and the creditor.[45] Sir Bernal Osborne also welcomed the amendments, and pointed out that vested interests had checked the 1847 measure and that these same interests, namely the insurance companies, had caused the initial draft of the 1848 measure to be innocuously and ineffectively drawn.[46] Primarily objection came on the score of the danger to the reversioner's interests, a point that was most forcibly made by Sir Lucius O'Brien.[47] Anxieties were allayed somewhat by further amendments, which included one that provided for the ascertainment of the selling value of an estate by a Government surveyor and the consequent provision that the estate was not to be sold for less than this.[48] A further clause authorised the encumbrancer to demand notice of the proposed selling price, and permitted him to use a caveat to withdraw the sale.[49]

36. *Ibid.*, 385.
37. *Ibid.*, 767.
38. *Hansard*, 3rd ser., H.L. 1848, c. 1019.
39. *Bill*, 1847–48, (373), iii, Clause 30.
40. *Ibid.*, Clause 31.
41. *Ibid.*, Clauses 30, 34, 35, 36, 41, 51, 54.
42. *Hansard*, 3rd ser., H.C. 1848, c. 98–99.
43. *Ibid.*, 102.
44. Clarendon to Grey, July 13, 1848, Clarendon Papers, Letterbook, Vol. 3.
45. *Hansard*, 3rd ser., H.C. 1848, c. 390–392.
46. *Ibid.*, 396–397.
47. *Ibid.*, 87–93.
48. *Bill*, 1847–48, (495), iii, Clause 36.
49. *Ibid.*, Clause 37.

Romilly's amendments were tacking to the winds of sectional feelings. Russell, concerned with seeing the measure's being effective, also feared restrictive moves from the Irish landowners, who resented the effort to restrict their eviction powers.[50] With the approach of the third reading of the measure in the Commons it was feared that they might find means of relieving their resentment on the encumbered estates measure,[51] although Clarendon was of the opinion that they understood[52] their interests too well to wreck it. In the event, the stonewalling of the landowners emerged most forcefully in the Lords upon the return of the amended bill. Strong objections were voiced that the measure had been pushed through its earlier stages in that house while the Irish peers were missing.[53] If they had been present, it was held, the measure would have been vetted at a more opportune time. But if Lord Clengall termed the measure a Quaker conspiracy against the landowners,[54] not all the landowners were ready to undermine it, and Lord Clanrickarde, true to an earlier declaration of agreement with the principle of the measure,[55] voted for its acceptance.[56]

There were certain limitations to the value of the new statute, however.[57] There was no way of setting off an encumbrance against the purchase money. There was no method of selling estates discharged from jointures fixed by settlements. Furthermore, the Act was not applicable to existing suits for sale of encumbered estates. These could only be brought within the ambit of the statute by a complicated legal process that involved a decree in the Court of Chancery, the consent of all the defendants or the assent of the plaintiffs. The ineffectiveness of the statute was borne out, indeed, by the fact that, in all, only eight petitions were lodged for a sale under the statute.[58]

The Cabinet was aware at an early stage of the statute's ineffectiveness. "When the session was over, being very anxious on this subject, I went over to Ireland chiefly for the purpose of inquiring into the probable operation of this Act", Russell has stated.[59] The Lord Chancellor of Ireland "told me that, in his opinion, it would be a dead letter", Russell continued. "When I returned to England I sent for Sir John Romilly and instructed him to prepare a new Encumbered Estates Bill for Ireland", he concluded. He had expressed the wish to see the sale of estates confided to a new court.

50. Russell to Clarendon, July 4, July 5, 1848, Clarendon Papers, Irish, Box 43/Bundle 55.
51. Clarendon to Lansdowne, July 16, 1848, Clarendon Papers, Letterbook, Vol. 3.
52. Clarendon to Grey, July 13, 1848, *ibid.*
53. *Hansard*, 3rd ser., H.L. 1848, c. 1021.
54. *Ibid.*, 1028–1029.
55. Clanrickarde Memo, ud. April, 1848, Russell Papers, P.R.O. 30/22/7B.
56. *Hansard*, 3rd ser., H.L. 1848, c. 1040.
57. John Kent, *The Encumbered Estates Acts*, pp. 71–72.
58. S.P.O.I./C.S.O., Unregistered miscellaneous papers, 102/1849.
59. Earl Russell, *Recollections and Suggestions*, p. 195.

The Encumbered Estates Act of 1849

While it has been shown that the Russell Cabinet was not inactive on the subject of drafting a new measure, it was Peel who gave their efforts impetus. Peel proposed a commission which would act as an arbitration court between the landowners and the encumbrancers on the appropriation of the proceeds of a sale of their estates, allowing the land to pass immediately into the hands of purchasers with capital. He advised Clarendon that, if the landowners did not agree to such a commission, he should "indulge them in the luxury of a Chancery suit, to determine appropriation, if they prefer that to arbitration".[60] Peel must have been convinced by the resistance shown in parliamentary discussion to the previous year's measure that sales could be effected only by compulsion. "I doubt whether there is any estate on sale which in the present state of the law an English purchaser would buy. With the estate he would probably buy a Chancery suit, and a duel besides", he added, in obvious reference to Russell's opinion that they could be effected without compulsion. Indeed Peel was prepared to allow his commission to take over "the *temporary* management of a large estate with a good title, with the view of exhibiting an example of good management on a large scale".[61]

Although Lord Clarendon thought Peel's idea of a Government-sponsored commission, acting as an intermediary,[62] unrealistic, it did draw favourable comment from Thomas Reddington, the Under-Secretary and a Galway landowner. "It appears that Peel really contemplates Kennedy's scheme, which of course involves a public guarantee, for the interest of creditors must be guaranteed", began Reddington in a letter to Clarendon. He conceived that the difficulty had been "to ascertain who all the creditors are, and I think that a limited time only should be allowed within which these proofs should be offered".[63] In the context of the continued injury to property in Chancery, therefore, he held that Peel's scheme should "be considered". The estate ought to be sold and the sale funds put in a bank, Reddington thought. "Let them fight for the money in the bank and not for an estate in Chancery which is being ruined *lite pendente*".[64] Estates, however, he stressed, would have to be sold subject to rent charges and annuities, a stipulation which, though conscientiously aimed at protecting those widows and children dependent on such an income, would have made sales unlikely. Reddington finally believed that Peel's proposed commission could set the pauperised Poor Law Unions in Connaught on their feet by paying the Guardians the arrears of rates on an encumbered property in the form of a debenture and reimburse itself from the proceeds of the sale of the property. Reddington's reference here to the payment of debentures was a resurrection, of course, of

60. Peel to Clarendon, April 2, 1849, in C. S. Parker, *Sir Robert Peel from his Private Papers*, iii, 512–515.

61. *Ibid.*

62. Clarendon to Grey, March 7, 1849, Clarendon Papers, Letterbook, Vol. 3.

63. Reddington to Clarendon, April 1, 1849, Russell Papers, 30/22/7F.

64. *Ibid.*

Clarendon's land bank idea of the previous year. It was an idea mooted twice by private individuals in the same year,[65] but, while anticipating by over thirty years the form of payment under the Land Purchase Acts, it never got off the ground in 1849.

The Government acted on Peel's proposal. Sir John Romilly, the Solicitor-General, was to some extent fearful "that Kennedy's plan would involve too great a violation of property rights". If this were not so, thought Romilly, "and a parliamentary title were given to the purchaser of the land sold, it would be a useful means of freeing a considerable portion of landowners from their present unmanageable titles".[66] Romilly's reservations on the score of property rights should have been obviated, one might think, by Lord Chancellor Cottenham's statement in the previous year that all property rights were in the last resort vested in the Crown.[67]

Certainly Kennedy's scheme as adopted by Peel was a more viable one than the continued use of the Court of Chancery. While the Lord Chancellor continued to place trust in the machinery of that court, although prepared to amend the previous year's measure, Romilly had little hope in the effectiveness of that machinery until a change was made in its speed and fees.[68] A reform of the court was indeed urged upon Russell[69] and a committee of inquiry was set up.[70] Of greater significance was the fact that Lord Cottenham, the Lord Chancellor, was persuaded to waive his scruples about abandoning the machinery of the court and handing over power to a new court.[71]

On April 26 the new measure appeared.[72] Three commissioners were appointed to set up a new court which would have the standing of a court of equity.[73] An owner or an encumbrancer was to be allowed petition the commissioners for a sale of an encumbered property.[74] All estates already pending suit in the Court of Chancery or the Court of Exchequer were liable to be brought into the new court,[75] a departure from the previous year's measure. A clear parliamentary title was to be given to a purchaser, who in addition was authorised to obtain all leases from the tenants.[76] All the tenancies were, in fact, to be ascertained before a sale

65. Joseph Wood to William Somerville, April 16, 1849, in S.P.O.I./C.S.O., Unregistered Miscellaneous Papers, 102/1849. James Dillon Meldon to Lord John Russell, *Tuam Herald*, April 21, 1849.

66. Romilly to Russell, April 7, 1849, *loc. cit.*

67. *Annual Register*, 1848, pp. 114–116. *Hansard*, 3rd ser., H.L. 1848, xcvi, 1249.

68. Romilly to Russell, April 1, 1849, *loc. cit.*

69. Ellice to Russell, April 9, 1849, Russell Papers, P.R.O. 30/22/7F.

70. Ellice to Russell, April 11, 1849, *ibid.* *First Report on Receivers*: H.C. 1849 (438), viii.

71. Earl Russell, *op. cit.*, p. 196.

72. *Annual Register*, 1849, p. 87.

73. *Bill*, 1849 (235), iii, Clauses 1–15.

74. *Ibid.*, Clause 16.

75. *Ibid.*, Clauses 37–38.

76. *Ibid.*, Clause 25. *Annual Register, 1849*, p. 87.

took place,[77] a proviso included perhaps as a result of Sir James Graham's anxiety in the previous year that tenant's interests might be sacrificed should there be a panic sale of property by mortgagees in that year.[78] Finally the new measure improved on the provisions of the previous year's measure by allowing an encumbrancer to be credited with his charges when paying the purchase price.[79]

The measure got Peel's full support and there was scarcely any delay in the measure's progress through the Commons. In the Lords there were amendments made. Most prominent of these was that proposed by Lord Brougham, which demanded that encumbrances on a property should extend over half the estate's income in interest before any sale could take place.[80] The measure, as finally enacted,[81] remained substantially as when introduced.

The Encumbered Estates Act of 1849 was renewed and amended on a number of occasions in the 'fifties.[82] It was finally established as a permanent institution in 1858 with extended powers and became known as the Landed Estates Court.[83] That date represents also the limit of the present study.

The Tenant's Interest in the Context of an Encumbered Estates Measure.

In the course of delineating Peel's thoughts on agricultural improvement and free trade in land it emerged that the tenant's interest pivoted on the introduction of a high-farming system which, implying as it did a contractual relationship between landlord and tenant, obviated discussion of the issue of tenant rights, and necessitated the consolidation of holdings and the removal of re-orientation of the small occupiers. The Devon Commission's report expressed another aspect of the tenant's interest when the issue of a tenant proprietary was raised in the context of an encumbered estates measure. The Devon Commissioners, it will be remembered, stressed the pacific and incentive effect that such a proprietary would have on the agrarian community. These attitudes, when taken in conjunction with Sir James Graham's opinion that remedial legislation on the subject of landlord and tenant relations would at best be peripheral outside the context of an encumbered estates measure's implementation, also governed thought on the tenant's interest during the Whig period in power.

In the circumstances of the years of depression it was forseeable that the problem presented by the surplus tenantry would present itself and lead to a discussion of the merit of a consolidation policy. As early as January 1847 Lord Clanrickarde

77. *Bill*, Clause 20.

78. *Hansard*, 3rd ser., H.C. 1848, c. 120.

79. *Bill*, Clause 23.

80. Earl Russell, *Recollections and Suggestions*, pp. 195–196. Clarendon to Russell, April 28, 1849, Clarendon Papers, Letterbook, Vol. 4. *Annual Register, 1849*, pp. 88–90.

81. 13 & 14 Vict. c. 7, in *Public General Statutes, 1849*, 473–496.

82. 15 & 16 Vict. c. 67; 16 & 17 Vict. c. 64; 18 & 19 Vict. c. 73; 19 & 20 Vict. c. 67: see R. C. McNevin, *The Practice of the Landed Estates Court*, p. 1.

83. 21 & 22 Vict. c. 72: see R. C. McNevin, *op. cit.*, pp. 308–362.

was proposing to Russell the expediency of a Government-sponsored emigration programme.[84] He was adamant that, while the landlords would not willingly encumber their properties with a surplus tenantry, they were at that juncture too financially insolvent to effect such a remedial programme themselves. In January also Sir Randolph Routh, the Government relief official, urged upon Trevelyan the beneficial effects of a consolidation programme.[85] Tenants, he advised, should be allowed to give up their holdings upon getting the value of them. Holdings should not be less than thirty acres, he conceived, in order to be viable units. If such tenets were entirely in accordance with the principles of the economists and with the expressed views of the Peelite,[86] Lord Stanley, the indiscriminate clearances in the autumn bore no resemblance to the economists' phased co-ordination of clearance and the provision of alternative outlets.[87] The pressure from Poor Law Guardians and the convenience of the Gregory quarter-acre clause, were forcing the landowners to clearances, whose long term effect would be the provision of *lebensraum* for labour-employing farmers, but at that moment neither farmers nor landowners were solvent enough to provide employment.[88] The Government discountenanced such clearances. It could not have looked with favour, therefore, on the systematic programme of ejectments proposed by Palmerston in 1848,[89] in view of Lord Cottenham's statement, when introducing the encumbered estates measure of that year, that encumbrances prevented the employment of the people.[90] Conceivably, then, it could not condone either the clearances being effected on encumbered properties at the behest of encumbrancers.[91]

At the latter end of 1848, however, there appeared a certain consent to the depopulation of the country, whether that was effected by the voluntary emigration of the occupiers or by evictions. Trevelyan's envisaged improvement of Ireland hinged as much on small farmers going as on the removal of incompetent landlords.[92] "I am not at all appalled by your tenantry going", replied Charles Wood to Monteagle.[93] That seemed to him to be "a necessary part of the process"

84. Clanrickarde to Russell, January 8, 1847, Russell Papers, P.R.O. 30/22/6A.

85. Routh to Trevelyan, ud. Trevelyan Papers, T. 64/368A (On the subject of the relief measures of January, 1847).

86. Lord Stanley's speech on Compensation to Tenants (Ireland) Bill, 1845, as quoted in R. B. O'Brien, *op. cit.*, Appendix B, pp. 206–208.

87. C. Woodham-Smith, *The Great Hunger*, pp. 319–320. K. N. Nowlan, *The Politics of Repeal*, pp. 137, 146.

88. C. Woodham-Smith, *op. cit.*, p. 313.

89. Palmerston to Russell, March 31, 1848, Russell Papers, P.R.O. 30/22/7B.

90. *Hansard*, 3rd ser., H.L. 1848, xcvi, 1249–1251.

91. Sir Lucius O'Brien, in *Hansard*, 3rd ser., H.C. 1848, c. 91–93.

92. Trevelyan to Twistleton, September 14, 1848, T. 64/370B, as quoted by C. Woodham-Smith, *op. cit.*, p. 371.

93. Wood to Monteagle, November 22, 1848, Monteagle Papers, as quoted by C. Woodham-Smith, *op. cit.*, p. 371.

of restructuring and improving the Irish agrarian scene. He was obviously referring to that emigration of the tenantry from the countryside to which Reddington drew Clarendon's attention[94] and which was leaving the rural areas bereft of tillers of the soil and payers of rent. Certainly such a voluntary departure of the occupiers was more to be welcomed in Treasury circles and among landowners than the idea of a land-tax fund for effecting emigration, which was at this juncture dropped by the Cabinet.[95] Clarendon also perceived that the heavy emigration was perceptibly easing the burden of poor rates and therefore making Ireland more attractive to English investors in land.[96]

In March 1849 Peel reiterated his long held view that capitalistic farming, based on a wage-paid labouring class, required to be effected by an encumbered estates measure and stated that the clearance of the occupiers by emigration would be only peripherally important, if changes were not made by private capital in the state of landed property.[97] John Wynne, who had been a member of the Devon Commission, when writing to Peel afterwards, agreed substantially with his views.[98] He opposed, however, the total clearance of the occupiers from the land, as he thought Russell envisaged, holding that, "the introduction of capitalists as proprietors" could effectively employ them. Wynne admitted that "in certain districts they are undoubtedly too many, but there let emigration be promoted". Wynne's conviction was, however, that there was then "an opportunity of establishing what has been so long the real desideratum, a class of labourers depending on wages instead of conacre potatoes". If the Gregory clause had indeed created such a labouring class, it needed, according to Wynne, to be consolidated by an "employment such as that given by arterial drainage which, being executed by taskwork, teaches the ignorant people how to work", and by the employment "which would naturally flow from the introduction of capitalists as proprietors".

There was certainly need for such employment. The evidence presented in the several reports to the Lords and Commons committees on the operation of the Poor Law testified to the inability of the landlords to pay money wages and to the need for capital-backed proprietors and farmers who would give such employment.[99] In the context of this knowledge and in order to show the comparative unity of thought between Whig and Peelite at this juncture, it is pertinent to point

94. Clarendon to Russell, January 9, 1849, Clarendon Papers, Letterbook, Vol. 3.

95. K. B. Nowlan, *op. cit.*, p. 220.

96. Clarendon to Russell, January 29, 1849, *loc. cit.*

97. *Hansard*, 3rd ser., H.C. 1849, ciii, 179–193.

98. John Wynne to Peel, April 4, 1849, in C. S. Parker, *Sir Robert Peel from his Private Papers*, iii, 510–511.

99. *Sixth Report from the Select Committee on Poor Laws* (Ireland), p. 58/No. 4985; H.C. 1849, (194), xv, Pt. 1. *Ninth Report:* 28/No. 7577, p. 29/Nos. 7595, 7603–7604. *Second Report:* p. 404/No. 4169, p. 504/No. 5149, H.L. 1849, (228), xvi.

out that Thomas Reddington, the Under-Secretary and a Galway landowner,[100] as well as Clarendon,[101] substantially agreed with Wynne's tenets.

The creation of a wage-paid labouring class was not, of course, the only objective put forward by Peel in March 1849. He also envisaged the creation of a yeoman proprietary through the operations of an Encumbered Estates Court.[102] It is opportune, therefore, to trace the progress of thought on this issue during the Whig tenure of power and to ascertain the provisions made for its creation in the several encumbered estates measures drafted.

The notion of selling estates in small lots with a view to creating an opening for tenants was mooted by the Devon Commission. It was not altogether a novel proposition. The creation of a peasant proprietary was looked on with favour by a number of economists.[103] It was also a plank in the social programme of Repealers and Young Irelanders. Daniel O'Connell indeed had suggested in the *Nation* of 31 October 1843, that the mortgaged estates of absentees be bought up and then sold to Irish tenant farmers.[104] William Smith O'Brien, in his series of *Letters to the Landed Proprietors of Ireland,* also brought up the possibility of the "occupying tenantry" being among the purchasers of portions of encumbered estates sold.[105] The idea first appears obliquely in Russell's policy on 25 January 1847, when he broached the expediency of selling reclaimed waste lands to small farmers.[106] In December 1847 and again in April 1848, Clarendon resurrected the Devon Commission's suggestion about the sale of estates in small lots.[107]

It was in 1848 indeed that the idea took firm root in discussion on the social objectives of an encumbered estates measure. In March, Jonathan Pim, who favoured a scheme in which a society, with government backing, would purchase estates with a view to reselling them to small farmers,[108] censured the Cabinet for its dilatoriness in acting on the implementation of an encumbered estates measure.[109] Russell took cognisance of Pim's views. "The sale of estates should

100. Reddington to Clarendon, April 1, 1849, Russell Papers, P.R.O. 30/22/7F.

101. Clarendon to G. C. Lewis, October 10, 1849, in H. E. Maxwell, *Life and Letters of George William, fourth Earl of Clarendon,* i. 294. Clarendon to Graham, January 20, 1849, in C. S. Parker, *Life and Letters of Sir James Graham, etc.,* ii, 78–79. Clarendon to Lord Mayor of London, June 26, 1849, Clarendon Papers, Letterbook, Vol. 4.

102. R. D. C. Black, *op. cit.,* p. 39.

103. *Ibid.,* p. 30.

104. L. J. McCaffrey, *Daniel O'Connell and the Repeal Year,* p. 207. See also, K. B. Nowlan, "The Political Background", in *The Great Famine,* p. 170.

105. William S. O'Brien, *op. cit.,* Letter 3, p. 17.

106. *Annual Register,* pp. 23–24.

107. Clarendon to Russell, December 15, 1847; April 30, 1848, Clarendon Papers, Letterbook, Vol. 2.

108. *Transactions of the central relief committee of the Society of Friends* etc., pp. 92–93. R. D. C. Black, *op. cit.,* p. 34.

109. J. Pim to Russell, March 31, 1848, Russell Papers, P.R.O. 30/22/7B.

tend that way", he wrote to Clarendon in June.[110] He believed that, "if a class of small proprietors could be made out of the present farmers, it would be a very good thing".

Lord Clanrickarde disapproved of any such conception.[111] The notion of tenants gradually buying up their holdings was "inadmissable" on the grounds of its principle of interference between landlord and tenant. He adduced more cogent reasons. He considered that the "worst estates in every sense of the term and those upon which the least labour and capital are employed and upon which the most intense wretchedness and hopelessly complicated tenures, embarrassments, and involvements of every kind are to be found, are the small estates". He disagreed with the view that a sub-division or redistribution of the land of Ireland would increase the wealth of the country. Property was only successfully divided in a wealthy country, he observed, in what may be construed as a reference to the number of yeomen in England. The division of property among farmers, he held, therefore, did not *per se* increase their wealth.

The issue of tenant purchase got a further airing during debates on Lord Cottenham's encumbered estates measure. Sir James Graham urged forcefully the expediency of sub-dividing estates in the interest of creating a resident yeomanry.[112] He urged that the stamp duty on conveyances should be modified to facilitate the small purchaser. Sir Bernal Osborne submitted similar views and supported them by a reference to the Devon Commission's views on the subject.[113] John Sadleir and Colonel Dunne, however, opposed the creation of a small proprietary.[114] Sir John Romilly, voicing one suspects the Government viewpoint, expressed the opinion that the Bill would, in fact, effect the creation of a middle-class proprietary, who would hold properties of a hundred acres or so and constitute a politically conservative leaven in the landed class.[115] Charles Wood refused, however, to countenance a reduction in the stamp duty, considering that it would in no way interfere with the creation of a middle-class proprietary.[116] There was no actual provision made in the 1848 measure itself, however, for the creation of a tenant-proprietary, its materialisation being left entirely to the market.

Despite Peel's suggestion that a yeoman proprietary be created and despite Clarendon's wish that an impetus be given to its creation with the help of the Farmers Estate Society[117] and his opinion that such a proprietary would be attached to the interests and institutions of the political *status quo*, there was no provision made in the 1849 measure for the creation of a tenant proprietary. Such

110. Russell to Clarendon June 8, 1848, Clarendon Papers, Irish, Box 43/Bundle 55.
111. Clanrickarde Memo, ud. April, 1848, Russell Papers, P.R.O. 30/22/7B.
112. *Hansard*, 3rd ser., H.C. 1848, c. 393, 476.
113. *Ibid.*, 398, 401.
114. *Ibid.*, 386, 403.
115. *Ibid.*, 587–588.
116. *Ibid.*, 773.
117. Clarendon to Russell, May 15, 1849, Clarendon Papers, Letterbook, Vol. 4.

men as John Bright still had not impressed their views sufficiently on the legislators.[118]

In the absence of any special provision for the creation of a tenant proprietary, it is apposite to ascertain the views expressed on and the provisions made for the subject of tenant's security in the aftermath of the sale of encumbered estates. Such views and provisions must necessarily be set in the context of the Whig Cabinet's overall opinion on the subject of landlord-tenant remedial legislation. Certainly Russell introduced a possibility of a tenant's compensation for improvements measure in the Queen's speech in January 1847,[119] but this fell by the wayside with the rest of the promised measures of that date. By October 1847 he was prepared to see the encumbered estates measure as a greater priority "than a Landlord and Tenant Bill".[120] In February 1848, when the encumbered estates measure of that year was being introduced, it is interesting to note that the issue of the landowner's abstract rights to property was called into question.[121] James Fintan Lalor also called these rights into question, but in his opinion those rights originated with the people rather than with the Crown.[122] In both Lord Cottenham's and James Fintan Lalor's view, these rights were set in the context of the common weal. It might be expected, therefore, despite the landlords' sensibility about their rights, that some remedial action would be taken on the subject of landlord-tenant relationships, especially in the context of the Cabinet's disenchantment with the landlords' abuse of their rights. However, while Russell was prepared to state to Clarendon in May that he was "bent on seeing the Irish Encumbered Estates and Landlord and Tenant Bills safe" before he introduced any coercion measure,[123] Sir John Romilly admitted later that the Government did not think it desirable to include a provision for landlord-tenant relationships in the encumbered estates measure of that session.[124] This could be construed as a move to avoid landlord rejection of the essentially beneficial encumbered estates measure, especially when one takes into account their expected stonewalling against it, out of peevishness at restrictions on their eviction rights. It could also be construed, of course, as a Government acknowledgement of the desirability of establishing commercial relationships between landlord and tenants, obviating, thereby, provision for consideration of customary tenant rights.[125] Certainly when Russell again brought a Landlord and Tenant Bill before the Cabinet later in the year, he was forced to set it aside.[126]

In 1849 also the abstract rights of property were raised in discussion on the

118. R. D. C. Black, *op. cit.*, p. 39.
119. *Annual Register*, 1847, pp. 23–24.
120. Russell to Clarendon, October 21, 1847, Clarendon Papers, Irish, Box 43/Bundle 55.
121. *Annual Register*, 1848, pp. 114–116.
122. T. P. O'Neill, *Fiontan Ó Leathlobhair*, pp. 43–44.
123. Russell to Clarendon, July 9, 1848, *loc. cit.*
124. *Hansard*, 3rd ser., H.C. 1848, c. 93.
125. R. D. C. Black, *op. cit.*, pp. 40–41.
126. K. B. Nowlan, *The Politics of Repeal*, p. 220.

drafting of the encumbered estates measure of that year,[127] but it did not extend itself to a consideration of landlord-tenant relationships. Although compensation to tenants for improvements was consistent with a capitalistic farming structure, it had failed to win approval when incorporated into Sir William Somerville's Bill in 1848.[128] It would appear, therefore, from the absence of any provision for it in the 1849 encumbered estates measure, that Peel's view that capitalistic landowners would make their own improvements had taken strong root among the Whigs. However, perhaps out of consideration of Sir James Graham's plea in the previous year that tenant's interests should not be sacrificed in a panic sale of estates,[129] there was a stipulation made in 1849 that all tenancies were to be ascertained before a sale was effected and that all such leases were to be given to the incoming owner.[130] As will be seen, however, this provided little protection to a tenantry that was virtually bereft of anything but yearly tenure.[131]

Analysis of the socio-economic background of the expected purchasers, and political and religious considerations arising from such purchases.

Purchase by the occupying tenantry was not the only expected or wished-for materialisation. In the creation of a middle-class proprietary, in fact, with the end in view of tapping middle-class wealth in the towns for agricultural improvement,[132] the farming community in Ireland appears to have taken a secondary position.

If Peel had been conscious of middle-class wealth in the towns and if the Devon Commissioners reminded him, the Whigs were also conscious of it. Lord Normanby, besides desiring a closer link between the middle-classes and the landed sector of the economy, was also as conscious of the political value of such a liaison, as were the Devon Commissioners.[133] He was even more perceptive than the Devon Commissioners in that he foresaw that the small capitalists in the Irish towns would be mainly Catholics, a point that gave piquancy to their potential political conservatism.

In January 1847 it was Lord Clanrickarde's opinion that, while the landlords and the smaller tenants were poverty stricken, "traders and small farmers have money enough".[134] If this once again pointed to the sources from which agricultural capital might be obtained, it was Clarendon who broke down the

127. Sir John Romilly to Russell, April 7, 1849, Russell Papers, P.R.O. 30/22/7F.

128. R. D. C. Black, *op. cit.*, pp. 26, 38.

129. *Hansard*, 3rd ser., H.C. 1848, c. 120.

130. *Bill*, 1849, (235), iii, Clauses 20, 25.

131. *Thesis*, Chapter 5, pp. 237–247.

132. D. C. Moore, "The Corn Laws and High Farming", in *Economic History Review*, Second Series, xviii, No. 3, pp. 544–561. W. F. Burn, "Free Trade in Land", in *Transactions of the Royal Historical Society*, Fourth Series, xxxi, pp. 61–74.

133. Lord Normanby to Russell, July 20, 1848, Russell Papers, P.R.O. 30/22/60. Also in G. P. Gooch, *Later Correspondence of Lord John Russell*, ii, 228.

134. Clanrickarde to Russell, January 8, 1847, Russell Papers, P.R.O. 30/22/6A.

occupational nature of that middle-class. While encouraging the creation of a middle-class proprietary, he warned that it would include "merchants, lawyers, or retired tradesmen" and that there were no worse landlords than these.[135] They bought estates solely as an investment, he thought, were prone to become absentees and for the sake of every farthing of rent they could obtain were willing to perpetuate all the evils of the existing land system. If Clarendon, like Clanrickarde, was aware of the possible socially-disruptive tendency of small landowners, he was not at all as confident as Lord Normanby or the Devon Commissioners that such purchasers would prove politically amenable. Since they would most probably be Catholics, he ventured, and very likely not friendly to the British connection, they would be "far more restive and ungovernable" than the existing Protestant Ascendancy. The Protestant landowners, interestingly, were conscious themselves of the danger in which their ascendancy stood from an improperly drafted encumbered estates measure and they made their anxiety known to the Cabinet.[136] It may be true to say also that Clarendon's concern for the garrison attributes of the Protestant Ascendancy was mirroring Conservative anxiety that this same garrison was being undermined by the burden of relief impositions.[137] Certainly Wood in the following year feared that an attempt to enforce repayment of public advances would drive the landowners into the Repeal camp.[138] There had been, after all, some suggestion of this in the landlord convention in January 1847.[139]

It is interesting to note, before passing on to 1848, that William Smith O'Brien provided a breakdown in greater detail than Clarendon of the possible purchasers of land. Besides the tenantry already alluded to, O'Brien listed those with a moderate amount of capital, presumably the middle-classes in the towns, as well as listing mortgages, the younger children of encumbered landowners in lieu of their charges, and wealthy landowners who were not encumbered themselves.[140]

Certainly such a broad spectrum of purchasers was wider in its occupational range than the narrow range of shopkeeper and "low attorney", which Clarendon and Russell conceived it advisable to guard against, by not forcing land on to a debased land market in the summer of 1848.[141] It is interesting to note, however, that they and Charles Wood,[142] and indeed all of the commentators we have referred to, conceived that the money for agriculture would come primarily from

135 Clarendon to Russell, December 15, 1847, Clarendon Papers, Letterbook, Vol. 2.

136. Clarendon to Russell, December 18, 1847, *ibid.*

137. Graham to Peel, December 15, 1846, December 17, 1846, Peel, Add. MSS. 40, 452, (N.L.I. Micro-film, n. 1068/p. 1271). Graham to Peel, November 20, 1846, in C. S. Parker, *Sir Robert Peel from his Private Papers*, iii, 467.

138. Wood to Russell, May 20, 1848, Russell Papers, P.R.O. 30/22/7B.

139. K. B. Nowlan, *The Politics of Repeal*, pp. 125–127.

140. W. S. O'Brien, *Reproductive Employment*, Letter 3, p. 17.

141. Clarendon to Russell, June 5, 1848, Clarendon Papers, Letterbook, Vol. 2. Russell to Clarendon, June 8, 1848, Clarendon Papers, Irish, Box 43/Bundle 55.

142. Wood to Russell, May 20, 1848, Russell Papers, P.R.O. 30/22/7B.

Irish sources, rather than from the cross-channel buyers whom Peel envisaged in the following March.[143] By 1849, however, Clarendon's vision extended itself also to take cognisance of English and Scottish capitalists' interest in Ireland, as a field for investment.[144]

The Market for Land during the Course of Encumbered Estates Legislation

Besides the legal difficulties in the way of the sale of encumbered properties, which was initially the *raison d'être* for the conception of an encumbered estates measure, the years of depression presented a further difficulty in the low market value for land in Ireland. This factor had to be taken into account in discussion on the expediency of an encumbered estates measure. The extent to which it was taken into account provided a weather-vane of the determination of the Cabinet to re-structure the Irish agricultural system, and also explained reactions to the several measures brought forward. It also provided the impetus for the inclusion of several clauses, more often than not by way of amendment, safeguarding against the sale of estates at ridiculously low prices. In a sense indeed the market value of land was the pivot on which swung the alternating opinions that the landlords should be secured on smaller but solvent domains and that they should be removed altogether and be replaced by a *nouveau riche* gentry.

The view, even with Trevelyan, in the early part of 1847, was certainly that of securing the existing gentry and making them better able to develop that portion of their estates, remaining to them after a sale for encumbrances of the remnant, rather than removing them in the interests of a *tabula rasa*.[145] It was easy to understand, therefore, why the Cabinet dropped the badly drafted measure in 1847, when it threatened both landlord and creditor interests with a panic throwing of land on a debased land market.[146] It was questionable, indeed, whether land could be made more marketable at that juncture, even by a free trade in land.

The 1848 measure included, as we have seen, a provision for the exclusion of those lands in the possession of an encumbrancer and also a provision for the non-annulment of his debt by its part discharge from the proceeds of a sale. An encumbrancer was also permitted to remove a property from the terms of the measure by obtaining a caveat. Such precautionary clauses were obviously designed to allay fears in financial circles about precipitate sales at low prices.

In so far as the landlords were concerned, Clarendon was anxious that the measure of that year should not set out to exterminate the landowners by throwing them on a declining land market.[147] No sales of property should be effected, he held, until tranquillity was restored to the country and a milieu created that would

143. R. D. C. Black, *op. cit.*, p. 39.

144. Clarendon to Grey, February 25, 1849, Clarendon Papers, Letterbook, Vol. 3. Clarendon to Graham, January 20, 1849, in C. S. Parker, *Life and Letters of Sir James Graham*, ii, 78–79.

145. Trevelyan to Russell, April 4, 1847, Russell Papers, P.R.O. 30/22/6C.

146. Clarendon to Russell, December 15, 1847, Clarendon Papers, Letterbook, Vol. 2.

147. Clarendon to Russell, June 5, 1848, Clarendon Papers, Letterbook, Vol. 2.

attract English investors, who might otherwise shy away from the dangers attendant then on Irish properties. An unfavourable milieu only left the Irish shopkeeper to bid at his own price.

Charles Wood would have none of this.[148] He was prepared to leave the landowners to fend for themselves on the open market. Certainly he could not condone guaranteeing a minimum price for their land to landowners by way of debentures or directing the Irish capital available for purchase into interest-guaranteed loans.

In the event, the 1848 measure, while it provided by amendment for a peremptory sale, hedged against abuses by securing a minimum Government-ascertained sale-value, by requiring advance notice of the possible selling price, by providing against fraudulent sales and by securing the rights or reversion and creditor interests, by the inclusion of a five-year moratorium on the sale funds. In the light of such provisions, Lord Glengall's expostulation that the Manchester inspired scheme of the Quakers boded ruin for the landlords[149] was not altogether fair comment. It was true, however, that the market value of land was at rock-bottom, if obtainable at all. It had become impossible to find buyers for land. James Martin, a Galway landowner, with a debt for £11,000 of rates charged on his property, stated that purchasers would not buy such a property, since they would inherit the debt as well. The Ballydowlan estate in Galway failed to raise a realistic bid when put up for sale; and the real estate firm of Barringtons in Dublin were reported to have land to the value of £300,000 idle on their books.[150]

Captain James Pitt Kennedy and Clarendon agreed that the failure of the 1848 measure was attributable to the reluctance of English purchasers to buy a burden of poor rates along with a property.[151] In 1849 the Whig Cabinet as a whole seems to have come around to Wood's opinion that land should be allowed to find a level in accordance with the law of supply and demand. At that point only, thought Wood, was there a likelihood of buyers coming forward.[152] Clarendon, in a strange apostasy of his earlier beliefs, thought Peel's conception of a Government instituted commission for the sale of estates "absurd".[153] It would entail the Government becoming a land-jobber for the purchase and sale of estates and the distribution of funds among creditors. Furthermore, thought Clarendon, Peel's proposal had caught fire with the Irish landowners, because it portended high prices for their estates.[154] He thought it inconceivable that a Government commission should be subject to the dictates of "pauperised Irish landlords" in the determination of the saleable value of an estate. He believed that only when

148. Wood to Russell, May 20, 1848, Russell Papers, P.R.O. 30/22/7B.
149. *Hansard*, 3rd ser., H.L. 1848, c. 1028–1029.
150. Cecil Woodham-Smith, *op. cit.*, p. 372.
151. *First Report from the Select Committee on Poor Laws*, p. 221/No. 2335, H.L. 1849, (192), xvi, Clarendon to Russell, December 23, 1848, Clarendon Papers, Letterbook, Vol. 3.
152. Wood to Monteagle, November 22, 1848, Monteagle Papers, as quoted by R. D. C. Black, *op. cit.*, p. 39.
153. Clarendon to Grey, March 7, 1849, Clarendon Papers, Letterbook, Vol. 3.
154. Clarendon to Russell, March 8, 1849, *ibid.*

capitalists could buy cheaply would improvement be brought about, since then they would have a surplus for improvements and for the promotion of emigration.[155] Such purchasers would introduce agricultural skill and experience, because in order to obtain a return on their investments, they would appoint good agents.

Others were not as optimistic as Clarendon. Thomas Reddington for instance could not foresee purchasers presenting themselves to buy land in Belmullet and Connemara, "unless such as will enter on the speculation are prepared to incur a large outlay for improvements and that for years without a return."[156] In reference most probably to the Martin estate at Ballinahinch, he observed that, "as I before said the Company who would purchase the Clifden Estates must be content to consider 23/- in the £ as an annual charge upon the estate for the poor or so much of it as they do not take off by employment and considering the remoteness of that district, I have my doubts of many parties being found seriously to encounter all these adverse prospects". The depressed state of the cattle trade was also to be reckoned with, he held, as a factor that would prevent any of Peel's capitalists succeeding in Connemara.

Clarendon himself wavered between optimism and despondency about the 1849 measure's effectiveness. His great fear was that it too would fail for lack of purchasers.[157] The chief fear among purchasers, he believed, was the danger of being engulfed by the burden of rates on neighbouring properties.[158] Then again, while he was prepared to attribute tentative moves to invest capital in Ireland during June to the decline in the number of outrages and to the lessening in political agitation,[159] he was bemoaning in October the fact that "it would require more courage than capitalists ordinarily possess to buy land in a country where life and property are so insecure".[160] The prospect for purchasers of facing a countryside in which poor rates were uncollected and to which emigrant labourers were returning to over-supply the market, was too intimidating, Clarendon believed.[161] While in September, therefore, he was optimistic that the "best hope" for Ireland lay in the measure,[162] in October, at the commencement of the Encumbered Estates Commissioners sittings, he vouchsafed the opinion that "the present state of the country will keep off buyers".[163] Even the recommendations of the eminent agricultural expert, Mr. Caird, Clarendon believed, would

155. Clarendon to Grey, March 10, 1849, *ibid.*, Vol. 4.
156. Reddington to Clarendon, April 1, 1849, Russell Papers, P.R.O. 30/22/7F.
157. Clarendon to Russell, May 15, 1849, May 31, 1849, Clarendon Papers, Letterbook, Vol. 4.
158. Clarendon to Russell, June 19, 1849, *ibid.*
159. Clarendon to Lord Mayor of London, June 26, 1849, *ibid.*
160. Clarendon to Peel, October 24, 1849, in C. S. Parker, *Sir Robert Peel from his Private Papers*, iii, 517–518.
161. Clarendon to Peel, October 24, 1849, *loc. cit.* Mr. Arbuthnot to Peel, October 8, 1849, in C. S. Parker, *Sir Robert Peel from his Private Papers*, iii, 517.
162. Clarendon to Peel, September 2, 1849, *ibid.*
163. Clarendon to Peel, October 24, 1849, *ibid.*

scarcely offset those insuperable obstacles to English investment in Irish properties.[164] It remains to show in a subsequent paper how the value of land rose or fell with the law of supply and demand in the course of the following decade, and to determine how the market value of land determined the socio-economic background of the purchasers of land, preserved many estates almost in their entirety to some landowners, and determined the surplus of capital available for improvement purposes.

Cork.

164. *Ibid.*, James Caird, *Ireland and the Plantation Scheme; or, the West of Ireland as a Field for Investment.*