

If tenant farmers would try the process once, they would be sure to repeat it ; and I shall be fully rewarded if the reading of this paper will have the effect of inducing a few of those who hear me to turn their attention to the subject, and to induce those who have the means and the opportunity, to try a practice which has been so lucrative elsewhere, and which we have so long and so foolishly neglected.

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II.—*On the Effects of the Law of Distress and the Feudal Rule as regards Improvements in the relations between Landlord and Tenant.* By John Sproule, Esq.

[Read Tuesday, 18th February, 1868.]

THE laws affecting the relations between landlord and tenant have so frequently been discussed by the members of the Statistical Society, that some curiosity may naturally be excited by the subject being again brought forward, as to whether anything novel can now be advanced upon it. It is therefore not without some hesitation that I now venture to introduce it, more especially as much that I have to say has again and again been enunciated from this place with a degree of authority to which I cannot lay claim. The subject is, however, of so much importance, and so great have been the difficulties interposed in the way of properly dealing with it by extravagant and unreasonable demands, that any attempt at simplifying the matter is, at all events, deserving of consideration.

It is not my intention to discuss in detail the several apparently plausible demands now attracting public attention in connection with the subject—such as fixity of tenure, the compulsory sale of property with the view of creating a peasant proprietary, or schemes of compensation for improvements in consonance with the inflexible rules provided by an act of parliament. The first of these has been dealt with by one of our Vice-Presidents in an able and exhaustive address, which left nothing further to be said upon it. As regards the desirability of making provision for the creation of a peasant proprietary, the subject is deprived of much of the interest which it might otherwise possess, by the practice, so many years in operation in the Landed Estates Court, of selling property in small lots ; and if it had been found that further subdivision led to increased competition, there can be little doubt that the practice would have been still further extended, the object, of course, being to secure the largest amount possible by the sale of the property. And in reference to schemes of compensation for improvements, no one will be found to maintain that the improving tenant is not entitled to the fullest compensation for his outlay ; yet any attempt on the part of the legislature to provide the requisite machinery to secure this being done, must, from the very nature of the transaction, prove abortive ;

and those who propound such schemes do not exhibit any intimate acquaintance with farming operations.

One feature of the various projects brought before the public for the modification of the land laws, is the anxiety which they evince to obtain exceptional legislation for Ireland—of course under the apparently plausible pretext that exceptional circumstances require exceptional treatment. But this is to perpetuate that abnormal state of affairs which it is so desirable to remove. In all other departments of industry the advantages of freedom of action have been most unequivocally established. But, forsooth, there is something so *peculiar* about land, more especially in the present condition of Ireland, as to render inapplicable to it those principles which are otherwise of general application. And yet there are some plausible grounds for this view of the case in the existing state of the law affecting landed property. A legislature of landlords framed a code of laws of which a species of protection may be said to form the leading characteristic. While in process of time continuous facilities were afforded for charging landed property with pecuniary obligations and settlements of all kinds for the convenience of the proprietors, difficulties were interposed in the way of creditors realizing their demands, which became all but insuperable. And then, as to occupation, according to the feudal rule and the provisions of repeated acts of parliament, improvements of all kinds become a part of the freehold, altogether irrespective of how they have been effected. And when we consider in addition to all this, the power conferred by the law on the landlord to seize the property of the tenant and sell it in satisfaction of his demand for rent, without the intervention of any legal tribunal; and that, whatever may be the position of the tenant as regards solvency, the rent must be discharged in full before anything is available for other creditors—we shall find a goodly array of exceptional legislation already in existence. Until recent times, moreover, both landlords and tenants were protected at the expense of the other members of the community, by an artificial price being secured for the prime necessaries of life, which on several occasions added to the horrors of famine throughout the land. Under such circumstances, it can scarcely excite surprise that extravagant demands of a still more exceptional character should be made on behalf of those less competent to form an opinion as to the impolicy of exceptional legislation, whatever may be the interest invoking its agency.

The advantages of free trade have been so abundantly demonstrated in these countries during the past quarter of a century, that it appears to be an anomaly to find any class of intelligent men advocating a policy at variance with it. The proposal to abolish the corn laws was met by the most determined opposition on the part of the agricultural interest, on account of the apprehended ruin involved therein; but unrestricted competition has in this department proved a boon to all parties, showing that the attempt to regulate prices by legislative enactment was founded upon a delusion. In like manner, the restrictions upon the free transfer of land mainly

contributed to the great entanglement which led to the creation of a special tribunal with the most summary jurisdiction—a tribunal which may be said to have effected a social revolution, and whose early operation involved the landed proprietors of the country in misfortune and ruin, to an extent probably unparalleled in the history of society. Again, the protection which the law was designed to afford to proprietors as against the occupiers of the land, tended to foster and encourage undue subdivision and the creation of a pauper tenantry. The power which the law confers on the landlord over the entire assets found on the property, in satisfaction of his demand, holds out a premium to insolvent competition, and the consequent undue increase of rent. Under normal circumstances the subdivision of the land and the creation of a pauper tenantry could not have been carried to the extent which prevailed in Ireland before the famine, and the continuous progress of which must have involved the country in one common ruin. But like the fruits of all exceptional legislation, these powers confer *seeming*, not *real*, advantages, as their occasional abuse under a system of parole agreements has led to the present clamor for exceptional legislation in the opposite direction.

As regards the demand for tenant right, no one will gainsay the doctrine that those who sow are entitled to reap—that parties who make valuable improvements on the land should be entitled to reap the fruits of their outlay. And in the northern province, where substantial improvements have been effected by the tenantry, they have an interest in the land often as great as that of the proprietor; the inference from which might fairly be drawn that if similar improvements had been made elsewhere they would have been recognised in a similar manner. But whilst conceding everything that could reasonably be urged upon this point, and without recognising the justice of the clamor raised against the landlords of Ireland as a class, it is obviously an anomalous state of affairs that the *necessary* improvements which the tenant makes for the profitable cultivation of the land become at once the property of the landlord. This is of course in the absence of any specific agreement between the parties. But the existence of such agreements is the exception—the relationship being usually the occupation from year to year, at a rent which can be modified at any time on a six months' notice, or possession be resumed by the owner. There is at present no inducement on the part of the landlord to enter into any specific agreements with his tenants, inasmuch as the latter must submit to any conditions imposed upon them, in consequence of those exceptional powers vested in the landlord, to which reference has been already made. But to attempt to deal with the state of affairs here indicated, by creating an anomaly of another kind, exhibits a very imperfect appreciation of the subject. It is not the function of the legislature to make agreements between individuals or classes; but it is bound not to give *facilities* to one class to enable them to do injustice to another. The Cardwell Act initiated the mistaken policy of seeking *by legislation* to provide compensation for improvements;

an act which has been utterly abortive, and yet several fruitless attempts have since been made in the same direction. As regards improvements, the circumstances of no two farms are precisely identical, and what would be a judicious outlay in one case might be inexpedient and unproductive in another; and therefore the application, through the intervention of machinery created by the state, of any rigid rules in dealings between the parties, would either be inoperative, as the Cardwell Act has been, or prove disastrous in its results by leading to ruinous litigation. The feudal rule which makes improvements a part of the freehold, irrespective of how they have been effected, is the basis of the evil, and to its abolition we must look for the remedy.

In reference to the observations so frequently heard on the other side of the channel, as to how it is that landlords and tenants in Ireland cannot make their own agreements as they may think proper, without invoking the intervention of the legislature, it is to be observed that the conditions of the two countries differ in this respect: that whilst in Great Britain the parties are on terms of comparative independence of each other, in Ireland the position of numbers of the tenant class is but little removed from that of day labourers. In England and Scotland the landlord is as anxious to get a good tenant as the latter is to have a desirable farm. The outlay of the tenant is for the most part connected with matters simply affecting the current operations of husbandry; and in the event of any difference of opinion with the landlord, the tenant is at once prepared to look out for another farm. As a rule the English and Scotch farmers are capitalists, and between members of that class there is seldom undue competition. The rent there is usually determined either by tender or by mutual agreement. Here the landlord fixes the rent, and however exorbitant it may be with the undue competition existing, the proprietor need have little apprehension of a desirable farm remaining on his hands; and with the powers at his disposal over the property on the farm, he need care little as to the character of the tenant. It is not to be inferred, however, that the land of Ireland is over-rented—the leading proprietors acting with the most commendable liberality; but the present state of the law holds out inducements to grasping landlords to overtax their tenants, and the conduct of such parties under the exceptional powers which they possess, affords a plausible pretext for the revolutionary demands in the opposite direction. In the ordinary relations of creditor and debtor the former is interested in the prosperity of the latter, and is frequently restrained from taking any legal proceeding by prudential considerations. The landlord, however, is subjected to no such restraint, as the case must be a desperate one in which the entire assets on the farm will not discharge the demand for rent.

Under the existing state of the law the improving tenant is placed in this difficulty, that without effecting certain improvements he cannot occupy his holding with advantage; and he has only the character of the landlord to rely on that he may not be called on to pay an increased rent for his outlay. But abolish the feudal

rule, and the property in improvements will become a question for one of the tribunals of the country to decide, *should circumstances arise to render any such decision necessary*. In practice, however, questions of this kind would rarely arise, as one of the first results of the change in the law would be that the relationship between the parties would be accurately defined by *written agreements*, and in such agreements any necessary improvements would be specified, and the extent to which they could under any circumstance become a claim on the landlord be accurately defined. And as regards the law of distress, entire districts of country might be referred to in which a resort to it has been unknown for years; besides, no valid reason can be assigned why demands for rent should be recoverable by a process unknown to the law in all other transactions. Again, why should the landlord have his rent in full from a tenant unable to meet his other obligations? The sacrifice of a portion of the sum to be paid annually for the *use* of the land, is surely not a greater hardship to the landlord than it is to the seedsman to lose a corresponding portion of his claim for seed, without which no crop could have been obtained. Besides, the knowledge that the rent will only come in for dividend on the estate of an insolvent tenant will at once tend to the creation of a new relationship between the parties. Insolvent competition for land will be at an end when the landlord comes to be placed in the position of an ordinary creditor. The character and solvency of the tenant will receive more consideration than the amount of rent promised to be paid, and the credit of the tenantry will be improved with the local banks and the merchants with whom they deal, by the knowledge that in the event of failure the farmer's assets would be divided equally amongst his creditors, instead of, as at present, leaving the landlord in desperate cases to sweep away all in satisfaction of his demand.

In connection with the laws affecting the occupation of land, it may not be out of place to make a few observations on the evils resulting from the restrictions imposed by the laws affecting the inheritance, which so seriously embarrass the really enterprising proprietor in his efforts to deal liberally with the tenantry and improve the property. Of the evil influence of this class of legislation, landed proprietors have no less reason to complain than the community at large. It might be supposed that the tendency of the feeling which so generally prevails amongst the owners of real property to restrict the possession of territorial influence, would form a sufficient protection for the maintenance and perpetuation of a landed aristocracy, yet it is surprising to witness the jealousy with which the supposed rights of presumptive inheritors are guarded. In fact many of the enactments connected with the inheritance of landed property appear to have been framed upon the existence of strong grounds of suspicion, that unless restrictions were imposed on the freedom of action of proprietors, they would act improperly in the management of their estates. Even at the present time, when matters affecting landed property become the subject of discussion in Parliament, the supposed rights of remainder-men appear to form

the primary consideration. True policy, however, demands that the landlord should be made a perfectly free agent in the management of his property, and be enabled to enter into such arrangements with the tenants as may appear to be mutually advantageous. Indeed any injury that could thereby arise to the inheritance would be inconsiderable, as compared with what actually does occur through reckless improvidence under existing restrictions. Remove at the same time the special drawbacks attached to the occupation of the land, landlords and tenants will then be placed in a position of normal relationship to each other; and under these altered circumstances they will regulate their dealings by those specific contracts which prevail in any other branch of business; and the function of the legislature will be to provide the most simple means of compelling their fulfilment.

In dealing with an abnormal state of affairs it is short-sighted policy to adopt any course calculated to perpetuate the evil. Regarding the subject from the point of view here indicated, the legislation required is

1st. The abolition of the feudal rule that improvements at once become part of the freehold, irrespective of how they have been effected.

2nd. The abolition of the law of distress for rent, and placing the landlord in all respects in the position of an ordinary creditor.

3rd. Conferring enlarged powers on the owners of entailed estates, so that they may enter into any engagements with the tenants supposed to be mutually advantageous.

Beyond these provisions it may fairly be questioned whether any valid reason can be urged for the further interference of the legislature.

With reference to the proposals for the establishment of a peasant proprietary, under the existing circumstances of this country it might be politically advantageous to have some proportion of the present tenant-farmers owners of the soil. With a proper modification of the landlord and tenant laws, it is, however, doubtful how far it would be prudent for the occupying tenants to invest any portion of the capital required in farming in the land itself, even if the opportunity offered; for it must be remembered that no investment yields so small a return as that in landed property, and the idea of the State advancing funds for such a purpose is simply preposterous. It is also to be borne in mind that the best cultivated land in the United Kingdom is that in the occupation of tenant farmers, many of whom are men of intelligence with large capital, ready at any time to take advantage of any new invention or discovery for increasing the productiveness of the land. In a country of small farmers, whether proprietors or occupiers, improvements are slowly introduced, and as a farmer distinguishes himself for greater enterprise or better management than his neighbours, the tendency is either to augment his holding by the addition of some of the surrounding farms, or if this be not practicable to remove to some other locality. From a recent visit to several parts of the north of

Ireland, I can bear testimony to the great improvement that is steadily going forward in the system of farming, and in the circumstances of the people ; the only drawback complained of being the smallness of their farms and the consequent difficulty of providing for their rising families unless by emigration. In fact, on the whole, the position of the Irish farmers at the present time is one of progress, and they have little to do with the agitation that is kept up on their behalf by persons wholly unconnected with land, and having no interest whatever in the question, further than making it serve the purpose of a political cry for the attainment of their own private ends.

There is a vague notion in many quarters that the owners of land are simply trustees for the general community, and that the original grants of the land invariably imposed conditions as to its occupation. There are also some specialities brought forward to show that it should not be dealt with as any other commodity of value. The time has, however, passed by for the recognition of any such considerations. Whatever may have been the conditions attached to certain of the original grants, we must bear in mind that a very considerable portion of the owners of landed property in Ireland have acquired parliamentary titles without having any obligation whatever attached to them, beyond those specified in the documents under which they hold ; and that the legislature has made provision for all titles of a certain status being converted into parliamentary titles, without the recognition of any trusts whatever as regards the general community ; in fact under the Record of Title (Ireland) Act, real property with a parliamentary title can be transferred from one owner to another almost with as much facility as shares in a public company. What then becomes of this speciality ? It is, moreover, upon the existence of this feeling connected with land that the present exceptional legislation has been founded, which it is now so desirable to do away with.

Until recent times legislation has been chiefly based upon the maintenance of class interests, and concessions have been made to popular clamor without much reference to abstract principles of justice. And most unreasoning clamor is at the bottom of the demands now made for what is called Tenant Right—demands at once impracticable and unjust ; impracticable, because they would not realize the specious pretensions upon which they are founded, and unjust, as interfering with some of the most sacred rights of property without ultimately benefiting any class whatever. The true function of the legislature, as before observed, is to provide for the greatest freedom of action between classes in their dealings with each other. The principle once applied to landed property, there will be no more tenants-at-will under parole agreements ; and proprietors will at once be taught the necessity of letting their land by written contracts for definite periods, and these contracts the law must provide a simple and inexpensive means of enforcing.

The proposals here advocated, moderate as they are, will no doubt be regarded by a section of the landed proprietors as an unwarrant-

able invasion of their rights. On all well-managed estates, however, the rights here sought to be invaded have been long in abeyance, and public policy as well as justice demands that no enactment which no man of honour would enforce, should be permitted to remain the law of the land, to be used as an instrument of oppression by the unprincipled. What man of character in any community would venture to maintain the right to appropriate to himself the fruits of another's labour? Nay, the landlords as a body should come forward to concede a privilege at present attached to the ownership of real property, which they would scorn to avail themselves of, but through the intervention of which some grasping and unscrupulous proprietors bring odium on the whole class, and thereby afford a pretext for the advocacy of the schemes of confiscation, to which even men of some standing have lent the sanction of their names.

Nor is there much reason to suppose that the proposal here discussed will find favour with the ultra tenant right advocates. Those who seek to extend compensation for improvements by direct legislative enactment, over periods varying from twenty to sixty years; who would convert the landed proprietors into mere annuitants, with scarcely any interest in the general prosperity of the country; or who would forcibly take possession, on their own terms of compensation, with a view of creating a peasant proprietary, just as if such ownership was an unmixed good, even if it were practicable—I repeat that those who advocate such views, will place little value on any proposal designed simply to remove the present abnormal state of affairs, and to secure freedom of action alike to both parties. Nor is it likely that such parties would be induced to abate their pretensions, by the assurance that nothing can be more ruinous to any class in the community than persistent agitation for unattainable objects, the tendency of which is to divert attention from the paths of honourable industry, by perseverance in which true independence is to be attained. My object, however, is not to pander to clamor, nor to counsel concessions which do not appear to be founded in justice, but simply to endeavour to aid in the elucidation of a subject of paramount importance, which has been made needlessly complex by misplaced reliance on exceptional legislation, by making it the shibboleth of party, and regarding it through the medium of a spurious sentimentalism.

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