

ON
THE ECONOMIC CAUSES
OF THE
PRESENT STATE OF AGRICULTURE
IN IRELAND :

Part I.

A PAPER READ BEFORE

THE DUBLIN STATISTICAL SOCIETY:

BY

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On the Economic Causes of the Present State of Agriculture in Ireland.
Part I. By W. Neilson Hancock, LL.B., Archbishop Whately's
Professor of Political Economy in the University of Dublin.

GENTLEMEN—In a paper which I had the honor of reading before this Society last session, I showed that the condition of the Irish labourer depends chiefly on the state of agriculture in Ireland. By a train of reasoning similar to what is used in that paper, it could be shown that the condition both of the Irish capitalist and of the Irish landlord is equally dependent on the same cause. It is, however, unnecessary to go through the proof, for the conclusion can be derived from a general principle of economic science, to which I also referred in a former paper—namely, that the true interests of all classes are really identical. We may, therefore, infer that the condition of both landlords and capitalists in Ireland must also depend chiefly on the state of agriculture. As the state of agriculture thus forms such an important element in our social condition, I propose to occupy the time of this society, on this and some other evenings during the session, with a statement of the results of an inquiry into the economic causes of the present state of agriculture in Ireland. The first step in such an inquiry is to ascertain what the state of agriculture actually is.

On this point it would be easy to accumulate evidence ; but the most recent authority, based on any general observations of the subject, is the Digest of Evidence taken before the Land Occupation Commission, published by Lord Devon. Chapter I., entitled "Agriculture," commences thus :—"The general tenor of the evidence given before the Commissioners proves that with the exception of some districts in the north, and some particular localities and estates, or individual farms in other parts of the country, *the usual agricultural practice throughout Ireland is defective in the highest degree*, whether as regards the permanent preparation and improvement of the land essential to successful tillage, the limited succession of the crops cultivated, or the relative succession and tillage of those crops. But it likewise gives, at the same time, the encouraging proof that where these exceptions exist, where judicious exertions have been made to improve the state and texture of the soil, and to introduce a more desirable and extensive selection and rotation of crops, these exertions have been attended with the most striking success and profit."

The Digest then proceeds to give an account of the rotation of crops adopted on the largest farms, and proceeds:—"Upon the whole, this principle of farming consists, first, by the application of manure to bring up the land to a certain capability of production; and then, instead of seeking to keep it either in that condition, or in a progressively improving state, the effort is to take everything from it by a continued succession of the same class of exhausting crops, until it becomes incapable of returning the cost of seed and labour; after which it is left to the unaided and gradual operation of nature to recover it from the effects of this destructive treatment, that it may be again exhausted, and again left for years unproductive to recover. It has been stated almost universally throughout the evidence, that the lands in nearly every district in Ireland require drainage; that the drainage and deepening of the lands, or subsoiling, have proved most remunerative operations wherever they have been applied; that these operations have as yet been introduced to a very limited extent."

This description of the state of agriculture naturally suggests the inquiries: Why is the usual practice defective in the highest degree? Why are permanent improvements disregarded? Why is all the teaching of modern agriculture, as to the advantage of rotation of crops, thrown away? Why are these things the general rule, when the opposite course of conduct is stated to be attended with the most striking success and profit? Why do large farmers, whenever the land has been improved by manure, endeavour to take every thing from it by exhausting crops, so as to leave it almost barren for some years? Again: why are the most remunerative operations of thorough drainage and subsoiling introduced to such limited extent?

In looking for the answers to these queries, there is an important circumstance to be attended to, namely, that this state of agriculture is no novelty—no offspring of late years. Without noticing accounts of the intervening period, I will just quote one authority as to the state of agriculture during the period between 1782 and 1800, which is often referred to as an era of general prosperity.

Dr. Crump, in his "Prize Essay on the best Means of providing Employment for the People," which was published in 1793, says:—"The low and wretched state of agriculture in Ireland requires little proof; even those perfectly unacquainted with its practice, who have seen the rich and regularly cultivated fields of Flanders and England, must be convinced, from a glance, of its great inferiority. Mouldering fences, scanty crops, are universally prevalent, and a thousand other similar symptoms, evince it but too forcibly. Farmers by profession, who have made more particular inquiries, give decisive proofs that this inferiority is more than apparent. The annual products of a soil, fertile by nature, fall far short of those which the regular, opulent, and skilful husbandman extracts from the earth in countries naturally more barren

and unproductive." He then describes the distress which this state of agriculture produced then, in the same manner as at present:—"To offer any evidence of the poverty which prevails among the Irish commonalty would surely be superfluous; it is too obvious to escape the notice of the most inattentive, too considerable not to possess a powerful influence on their character, and so universally acknowledged as to render any proof of its existence unnecessary." If we go back half a century further, we find similar accounts of the state of agriculture and the condition of the population. Thus Bishop Berkeley, in his "Querist," published in 1737, calls on the state "with a high hand to introduce agriculture," and he asks, "whether there be upon earth any Christian or civilised people so beggarly, wretched, and destitute as the common Irish?" The economic causes which I am about to point out, account for the state of agriculture of these different periods; for they were in as full operation in 1793 and in 1737 as at present.

The simplest way of explaining these causes, is to notice the possible solutions of the queries I have suggested. These are: first, ignorance; secondly, the perverse character of the people; and, thirdly, the state of the law. According to the first theory, the farmers do not know the value of permanent improvements. They do not know that their cattle would sell better if well housed. They cannot see the folly of exhausting the land instead of always keeping it in good condition. They do not perceive that the prosperity of those who adopt a different practice arises from the striking success and profit which attends the change. The great gain of those who thorough-drain and subsoil escapes the farmer's notice. He cannot see when his neighbour has a crop better than before, or more luxuriant than his own. He wants some one to teach him all these things.

According to the second theory, the people know the advantages of improved agriculture right well, but from some perverse disposition they leave the improvements untried. Bishop Berkeley held this theory one hundred years ago; and attributed this perverse disposition to the Tartars and Spaniards, from whom he thought Irishmen were descended. Others attribute it to the Celtic race; and the writer of Lord Devon's Digest has been led, by a close analysis of the entire subject, to the conclusion that the main cause of the inertia of the population is—*the potato*.

The amount of perversity and inertia which this theory requires, however, is rather much. Thus, we are called on to believe that the 50,000 labourers who every year go to reap the English harvests, would not work as hard at home if they got the same wages; that the hundreds of thousands who cross the Atlantic and toil in Canada and the United States, would not work at home if they had the same security of ownership or tenure to reward their industry; that the Irish labourers who have made Irish railways, would not work at other permanent improvements if they were as well paid.

The third theory is, that the state of agriculture in Ireland is

mainly caused, neither by the ignorance nor by the perverse disposition of the people, but by the state of the law. This is the solution of the facts observed, which is suggested by the best established principles of economic science. The doctrine of *laissez faire* teaches us, that in all industrial undertakings we may rely on the best results being produced by private enterprise, if it be only emancipated from the restrictions which the ignorance and folly of past generations have allowed to become sanctioned by law. Private enterprise requires no artificial instruction. Nature herself is the best instructor in industrial occupations; she teaches by examples, exhibiting the result of wise conduct in the success and profit which the Almighty has annexed to human exertions when directed by ability and knowledge; and at the same time showing the disastrous consequences of ignorance and folly, in the failure and loss which, by the same all-wise providence of God, is made the inevitable consequence of human exertions misapplied or perverted. In the school of nature the prize is gain, the punishment is loss. Such a system acting on man's instinct of self-interest, leads to results alike beneficial to the individual and to the community. When, therefore, we find an industrial undertaking badly carried on, instead of attacking the character of the people, or recommending government instruction, we ought first to inquire whether there are any legal impediments to the free operations of private enterprise.

The opposite opinion, which sets out with distrusting private enterprise and demanding an extension of Government interference, when followed to its legitimate consequences, leads to those Communist doctrines respecting the organisation of labour which are alike destructive of wealth, morality, and social order. It would be foreign to the purpose of this paper to enter into an examination of the theory of organisation of labour; as, however, it is directly opposed to the principle of *laissez faire*, so that one or other must be false—and as I proved the latter principle in a former paper, I may, for the present, treat the organisation of labour as disproved, without pointing out the fallacies on which it rests.

When we are thus led to look to the state of the law for the cause of the present state of agriculture, we naturally inquire whether those conditions are fulfilled which have been observed to be necessary to the success of all manufactures and trades—namely, freedom to purchase the raw produce, security for the application of capital, and freedom to sell the manufactured article. It has been long ago demonstrated, and is admitted by every economist of any reputation, that every impediment to the freedom of purchase and of sale, and every circumstance creating insecurity for the employment of capital, to the extent of their operation impede the prosperity and improvement of the manufacture or trade to which they apply. I am not venturing on a very rash hypothesis, then, in stating that we may expect the same causes to

produce the same effects in agriculture, which we know they produce in every other trade and manufacture. The main causes, then, to which I ascribe the present state of agriculture in Ireland are, the legal impediments to the free transfer and sale of land, whether waste or improved; and the legal impediments to the application of capital to agricultural operations.

Of these legal impediments, I shall only notice one in this paper—namely, the rule that the vendor of land must produce sixty years' title to every acre that he sells. The other elements of the cost of transfer, the restraints on the power of sale, and the impediments to the application of capital, I must postpone to subsequent papers. Before, however, proceeding to notice the impediments to the transfer of land, I will refer to some authorities as to the impolicy of such impediments.

For this purpose, I shall quote from a very able work, recently published by an English lawyer, "Three Lectures on the Means of Facilitating the Transfer of Land," by James Stewart, Esq. He commences by showing "that by the theory of our law, no restriction whatever (except in the case of an entailed estate) is placed on the transfer of land. Indeed we know that, as a general rule, all fetters on the alienation of freehold land are broken by the law, all conditions having this operation being held to be positively null and void." He then quotes the opinion of the great commentator Blackstone, "who, when speaking of land, after stating that, under the feudal system, alienation was much restrained, uses the following remarkable expressions: 'But by degrees the feudal severity is worn off, and experience has shown that property best answers the purposes of social life, when its transfer and circulation are totally free and unrestrained.'" Mr. Stewart then cites various authorities, from which I may select the following. The Real Property Commissioners, appointed by Sir R. Peel in 1828, from amongst the most eminent conveyancers in England, reported that while they approved generally of the theory of the law of real property, the law respecting its transfer suggested remarks of a different nature: "It appears to us," they say, "that the modes by which estates and interests in real property are created, transferred, and secured, are exceedingly defective, and require many important alterations." But the most recent as well as the most important opinion on this subject, is that contained in "The Report of a Select Committee of the House of Lords on the Burdens of Land." This report was made in the year 1846. "The committee was composed of the most eminent men of all parties in the State—noblemen of vast landed possessions—the law being represented by the present Lord Chancellor Cottenham, and Lord Brougham, and also by lawyers of both branches of the profession, who were examined by the committee. There was this further remarkable circumstance attending this document, that, differing on all other subjects, this committee unanimously agreed as to one, and mark the strong language in which this unanimity is con-

veyed. They complained 'that the transfer of real property is subjected by law to difficulties, expenses, and irregularities—that the Committee are convinced that the marketable value of real property is seriously diminished by the tedious and expensive process attending its transfer. It is a work of time to raise money on landed security; and the law expenses incident to the transaction are a considerable addition to the sum borrowed; and the Committee state, 'that they are anxious to impress on the House the necessity of a thorough revision of the whole subject of conveyancing, and the disuse of the present prolix, expensive, and vexatious system.' The Committee, by way of remedy for these evils, recommend four things: '1st, The improvement of the law of real property; 2ndly, The simplification of titles; 3rdly, The simplification of the forms of conveyance; 4thly, The establishment of some effective system for the registration of deeds.' There is one other important consideration respecting this committee; that it was appointed by all parties with a view, so far as it was possible, of relieving the landowner from any hardship proved and admitted, as a set-off against any injury from the great alteration which was made in that session with respect to the duties on corn."

Another authority on this subject is that of a gentleman at the head of one of the wealthiest and most successful mercantile firms in Dublin. Mr. Jonathan Pim has, in a very able work on the "Condition and Prospects of Ireland," directed public attention to the pressing necessity of legislation to facilitate the transfer of land. In his preface he says: "The various information which has come before him, as one of the Secretaries of the Central Relief Association of the Society of Friends, has greatly strengthened the conviction previously entertained, that the circumstances under which the landed property has been placed have, *more than any other cause*, contributed to the poverty of the people, and have greatly increased the effects of the recent calamity." The arguments respecting the sale of land are repeated throughout the work, "with a view of showing the evils of large encumbered estates, and the necessity of such alterations in the laws as may give security and simplicity of title; may facilitate and cheapen the means of transfer; may free land from the various restrictions which interfere with its improvement, and may permit its sale to those who possess the capital indispensable for that purpose."

Thus, we see that the reality of the first cause I have assigned is not only admitted on the highest authority, but the greatest willingness is expressed to apply a suitable remedy. This feeling is further indicated by "the appointment of a Commission by the Government in February, 1847: after a recital of the report on the burdens of land, the Commissioners are directed to inquire into two of the matters recommended for consideration by the Lords, viz.: The simplification of deeds, and a general registry of land."*

* Stewart's Lectures, p. 15.

To proceed, however, with a consideration of the legal impediments arising from the cost of transfer, I shall notice some instances which have been furnished to me by an experienced solicitor, illustrating the extent to which the cost of transfer impedes the sale of land. 1st, a case of a sale of land for £1,200; the costs to vendor and purchaser together amounted to £200, being about seventeen per cent, or one-sixth of the purchase-money. 2nd, a sale for £500, where the costs to one party alone were £124, being twenty-five per cent., or one-fourth of the purchase-money. 3rd, a sale for £2£0, where the costs to one party alone were £40, being sixteen per cent. or about one-sixth of the purchase-money. 4th, a sale for £230, where the costs to one party alone were £19, being about eight per cent. 5th, a sale for £150, where the costs to one party alone were £23, or about sixteen per cent. The costs do not increase in proportion where the purchase-money is very large. Thus, in a case where it was £5,000, the costs to one party were only £152, or about three per cent., and another case where the purchase-money was £30,000, the costs were only £900, or about three per cent. These instances are very similiar to those mentioned by Mr. Stewart, in his lectures on the transfer of land, as usual in England. Thus he says he is guilty of no exaggeration in saying that, in small purchases, the expenses of transfer frequently amount to one-sixth, and sometimes to one-third of the value, or even a larger proportion; that circumstances had very recently come to his knowledge of one transaction, in which £150 was the purchase-money, and the expenses were £50; and another, in which £630 was the purchase-money, and the expenses were £200.

But the amount of money actually paid by the vendor and purchaser represents only a part of the cost of transfer. There is, besides, the delay between the sale and the completion of title; and also a threefold risk incurred, arising from the uncertainty as to the amount of the legal expenses, and the uncertainty as to the period within which the transaction can be completed; and lastly after every care, the risk of the title turning out defective. There is also the loss of time and labour incurred by the vendor and purchaser themselves, which, if valued at the market price of their exertions, would make a considerable addition to the amount already mentioned as actually paid on the transfer of land.

I need not dwell on the impolicy of keeping up this enormous cost of transfer. The effect of it is to prevent the land getting into the hands of those who can make the most of it. As far as this cost arises from the state of the law, it is a tax burdensome on the community, and unproductive to the exchequer. To show, however, that this cost arises from the state of the law, and could be easily diminished, it will be convenient to analyse its causes, and to point out how they may be removed. The cost of transfer of land may be divided into the following four distinct elements: the expense, delay, and risk attending the investigation of title;

the expense of searches for incumbrances ; the stamps on searches and conveyances ; and the length of conveyances.

The first of these elements, which is the only one I shall have time to notice at present, arises entirely from the rule of law, that the vendor of land must produce sixty years' title to every acre that he sells. How could other trades be carried on if a similar rule were enforced? What would be thought of a law that compelled you to examine the title to the leather every time you bought a pair of shoes? How could the cotton trade be carried on, if the spinner could not buy a bale in Liverpool without tracing the title from the time the plant was grown in Louisiana, and sending to New Orleans to search for incumbrances? Or how, again, could the tea trade be carried on, if an abstract of title had to be submitted with every chest, showing all the hands it had passed through from the time it left the banks of the Ho-ang-ho?

So great is the element of cost arising from the examination of title, that in the sale of leaseholds it is almost always dispensed with as far as the title of the lessor is concerned ; and, in the case of sales of small portions of freehold, it is frequently dispensed with, the parties preferring to trust to the chance of the title being bad to incur the necessary expense of getting a perfect security. But this rule admits of a very easy remedy, by extending to land the principle of market *overt* so wisely established in the case of all other kinds of property. The principle of market *overt* is well stated by our great law commentator, Blackstone :— “ Property may, in some cases, be transferred by sale, though the vendor hath no right at all in the goods ; for it is expedient that the buyer, by taking proper precaution, may, at all events, be secure of his purchase ; otherwise all commerce between man and man must soon be at an end. Therefore, the general rule of law is, that all sales and contracts of any thing vendible in fairs or markets *overt*, shall not only be good between the parties, but also binding on all those who have any right or property therein.”

In order to extend this general rule of law to land, three things would be necessary : First, a general register of all land, containing the names of those having the first estate, and also the names of those having subsequent estates, and also the names of all those having charges or incumbrances affecting it ; secondly, the establishment of periodical public sales of land by auction, in each county in Ireland, to be deemed markets *overt* ; thirdly, the enactment, as a general rule of law, of the principle, now sanctioned in particular instances, that the limitations and incumbrances affecting any land should, on its being sold, be transferred to the fund arising from the sale.

If these preliminary arrangements were adopted, the doctrine of market *overt* might be safely extended to land by enacting, first, in the case of land registered as belonging to a party having an estate in fee, without any other parties appearing in the register,

either as having subsequent interests, or incumbrances, that the land might be transferred by the registered party executing a form of transfer, somewhat similar to that now used in the sale of stock in the funds ; secondly, in the case of land where the party having the first estate had only a limited interest, on account of there being either subsequent estates or incumbrances appearing on the register, that such party having the first estate, or any incumbrancer authorised by contract or by law to do so, might proceed to sell the land at one of the periodical sales, on giving notice to the registrar of the county, and advertising for three months previous to the sale ; the registrar being required to give notice to all parties appearing on the register as interested in the land. That the highest bidder at such sale, on paying the purchase-money into the Court of Chancery, to the credit of the parties so appearing to be interested, should acquire an absolute estate in fee-simple in the land, discharged of all prior estates, interests, or incumbrances, except leases or other contracts with tenants ; the limitations, charges, or incumbrances previously affecting the land being all transferred to the purchase money so paid into court.

It might be objected to this plan, that the incumbrancers might be defrauded by the land being sold for less than its real value. The remedy, however, for such an event is in the hands of each incumbrancer ; he has full notice of the sale ; if he thinks the land is going too cheap, let him bid more for it and become the purchaser. At present parties are deterred from buying land to sell again, because the enormous cost of transfer is incurred on each occasion ; but were the cost of transfer reduced to a nominal amount, land would be constantly bought on the speculation of selling again, just as funds, railway shares, and other readily transferable property is bought. An incumbrancer, therefore, would have no hesitation in buying land he did not want to hold, if he saw it going too cheap, just as an incumbrancer, under similar circumstances, would now buy railway shares. But were the sale of land perfectly free, there would be no danger of its being sold at too low a price, for a class of capitalists would be immediately created like stockbrokers, who would make it their business to attend all sales of land, and try to make a profit by buying to sell again. The competition of these parties would always secure for the seller the fair market price for his land.

I may observe, too, that, by a very simple arrangement, the seller and the incumbrancers could be secured the advantages of selling the land either in portions or in one lot, whichever would realise the larger sum of money. The arrangement to which I refer is this :—In case any parties applied to have any part of the estate put up in separate lots, let the auctioneer first put up these lots, and ascertain the highest bidder for each ; and then put up the residue of the land, and ascertain the highest bidder for it ; and then put up the entire estate in one lot, and in case any one bid more than the total of the sums bid for the separate lots, then let

the highest bidders for the lots have an opportunity of advancing on their offers: the land to be ultimately knocked down to the single purchaser, or to the lot-purchasers, according as his bid exceeded or fell short of the total of the sums bid by the highest bidders for the separate lots.

As to the plan of a general register of land, there exist in Ireland all the materials for having it of the most perfect description. First, we have the Ordinance Survey to furnish that essential basis of the system, a complete identification of boundaries and parcels; secondly, we have a registry of conveyances affecting land; thirdly, we have a registry of judgments and other charges. From these materials a most complete register could be formed. Let the ownership of land be registered by reference to the Ordinance Survey, setting out the name of the party taking the first legal estate; let the names of all parties taking subsequent legal estates, or taking equitable estates, be next recorded in the same book, with a reference to the register of conveyances; and then let all parties having judgments or other charges in any way affecting the land, be next set out in the same book also. To render the last arrangement complete, an alteration in the law of judgments would be necessary, which I shall notice in my next paper. This would be a really complete register, as the names of all parties interested in any portion of land could be ascertained in one or two pages, without any labour or delay in searching.

The plan of register here suggested is in part borrowed from the plan suggested by Mr. Stewart, whose lectures I have already referred to; and he mentions a useful report as to a general map printed among the papers of the Society for the Amendment of the Law, which I have not been fortunate enough to see. Mr. Pim's book "On the Condition and Prospects of Ireland," to which I have already referred, also contains some very useful suggestions as to a general register.

There is an other authority on the general question which I must quote, as he combines the peculiar qualifications of being a most distinguished economist, and having been long conversant with the law of real property—I allude to Mr. Senior, whose economical writings many of you must be familiar with, as they have long formed some of the leading text-books in our University. He has twice held the chair of Political Economy in Oxford, and is the Examiner at the London University. He was for eighteen years a conveyancing barrister, and for the last ten years a Master in Chancery, in England. In his evidence before the Committee of the House of Lords, on burdens on land, he says, "He is aware that the system of conveyancing imposes great difficulties, great expense, great delay, and great uncertainty, upon the transfer of land (Q. 5,409). Again, he says, "There is scarcely a title that is marketable," in the legal sense of that term—meaning a title without a flaw; "there is scarcely any title which is not subject to some legal doubt."

And again, "A man who has agreed to sell a field for 200*l.* does not know that he has not contracted to spend 500*l.* in showing his title; and the person who has agreed to pay does not know that he has not contracted to spend £500 in getting the title approved." And again, "I believe this [speaking of England] is the only civilised country without a general register, and the [United Kingdom] the only civilized country requiring a sixty years' title, or even forty years. I believe that in almost every country but this, the transfer of property is effected in the books of a notary, or a registrar, or some public officer, and that you require only the title of the person who sells. In fact, land in almost every country but this is transferred in the same manner in which stock is transferred. You look to the last purchaser only." (Q. 5422.)

Thus, you see that Mr. Senior takes precisely the same view that I have brought forward in this paper, as to the effect of the present state of law in impeding the transfer of land, as to the general impolicy of such impediments, and as to the means of removal being a register of land and a sale similar to market overt. He has not, however, drawn the conclusion from this state of the law to which I have directed your attention; namely, that it accounts in a great degree for the present state of agriculture; being, in fact, one of the principal causes of it.

In conclusion, let me observe, that when the conditions are fulfilled which I have stated as necessary to the prosperity of agriculture—in other words, when there is free sale of land and security for the expenditure of capital, the greatest advantages accrue to the community in general. For when the sale of land is free, it has a constant tendency to get into the hands of those who can improve it most, since such parties can afford to give the highest price for it. Thus the seller gets a high price, the buyer gets an opportunity of exercising his skill, and the community gets the cheapness and abundance consequent on the improvement. In the second condition is comprised what Adam Smith has so well described as the *only* encouragement which industry requires from the hands of a government: "The increase of the manufactures and the agriculture of Europe has arisen," he says, "from the fall of the feudal system, and from the establishment of a government which afforded to industry the only encouragement which it requires—some tolerable security that it shall enjoy the fruits of its own labour." On the perfection of this security for the application of labour and capital to the work of improvement, depends the progress of a nation in prosperity and civilisation.