

of course allowed. This would be less than 1d. per head yearly. The combined fees in each case of coroner (one and a-half guinea), medical witness (one guinea for evidence, two guineas for *post mortem*, and averaging 20 guineas for analyses, two guineas per day if summoned), and two pence per entry as superintendent registrar, would probably average this rate, so that the sanitary and medico-legal duties, now so neglected, would be performed without increased cost to the community. When the pauperizing tendency of deaths among the remunerative members of society by preventible disease, and the cost of their interment is calculated, expenses towards checking disease are really economical. The decisions of a competent medical assessor would prevent much costly litigation. Many thousands yearly are spent in England in salaries of Burial, Chemical, Factory, and other medical inspectors. Insurance fees and hospital or professional duties in cities would considerably increase the emoluments.

These offices would likewise constitute a co-ordinated machinery for the scientific study of epidemics among men and animals. The invaluable observations, as regards the nature and prevention of zymotics, which medical men commissioned to study the cattle plague recorded, should have stimulated the government to a liberal encouragement of such investigations. Yet, after having granted many thousands of pounds for the study of the cattle plague, not as many hundreds were apportioned for the investigation of cholera, although we were on the threshold of the discovery of the cause of that pestilence.

If a central government department of health were established, or a Privy Council medical adviser for each of the three kingdoms, all those important statistical, topographical, and meteorological facts which concern the well-being of the nation should be collected from the medical supervisors and yearly published, and if a laboratory and chemical assistant were given to each of these medical advisers, such important questions as the detection of poisons, or analysis of water supply, might be reliably and economically conducted. The increased chances of the detection of crime would be a powerful deterrent. I was about to venture on some suggestions for a Bill to enact the changes I have urged, but as there are acts by the score bearing on the subject, and as full enquiry is needed beforehand, I prefer to join with the British Medical Association in calling for a royal commission to investigate the manner in which sanitary and medico-legal functions are discharged in this and other countries.

V.—*Marriage Settlements ; their Social and Economic Effects.* By James MacDonnell, Esq., Barrister-at-Law.

[Read, Tuesday, 26th May, 1868.]

In the upper and middle ranks of society in this country the custom of settling estates is so common, that one seldom meets a person who is the absolute owner of all the property from which his income is

derived. It will generally be found that a married man is tenant for life only of his estate, and unable to sell or otherwise dispose of it for any period longer than the duration of his own life. Property thus circumstanced is said to be in settlement, and the greater part of the land of this country, and a very large proportion of the public funds, are in settlement. Settlements are most commonly made on marriage, and it is to the social and economic effects of such settlements that I wish to call your attention on the present occasion.

The ordinary settlement of real estate (*i.e.*, of land) made on the marriage of a lady and gentleman, gives the property to the husband for the term of his life, and, after his death, to the first son of the marriage, and his heirs in tail male, subject to a jointure for the wife, and portions for the younger children. A settlement of this sort is popularly (but, as I think, erroneously) esteemed a great security against extravagance or folly on the part of the husband. His interest being cut down to a life use of the estate, he cannot alienate it from his family for a longer period than the term of his own life, and he will also find his life estate more difficult to sell or mortgage, as no one likes to have a property of so precarious a tenure. It is therefore expected that the difficulty of selling or mortgaging his life estate, and the unfavourable terms to which he must submit in case he does so, will deter him from making the attempt, and at all events on his death the estate itself will revert to his family; and, accordingly, many settlements open with a recital that the deed is entered into for the purpose of preserving the estate in the name and blood of the settlor. So great is the reliance placed on this security that many affectionate and worthy parents will not hesitate to permit their daughters to marry very wild and extravagant men, provided they possess, or are believed to possess, property, and are willing to settle it in the manner I have described above. And hence arises what seems to me the great social objection to marriage settlements. They tend very much to make parents indifferent to the importance of such qualities as sense and prudence in young men seeking their daughters in marriage.

The settlement is expected in some sort to stand in stead of these qualities; of course it does not do so, and great unhappiness is often the result. Nothing is commoner, when an extravagant and thoughtless young man of fortune is engaged to be married to a young lady, than to hear the friends of her family discuss the matter after this manner:—"He is a little wild, and is reported to have had some dealings with the Jews; but he is a very jolly fellow, and has probably sown his wild oats by this time, and, at any rate, they can tie up the estate." And accordingly the estate is tied up, and the parties are married, and everybody is satisfied that the young lady's father has behaved with great prudence in the negociation of the marriage, and secured his daughter a most respectable position in society. But it may be that he has, unawares, married his daughter to a selfish, worthless man, and that, trusting to the settlement, and attracted by external show, he has neglected to look for those qualities in his son-in-law, without which his daughter's married life cannot prove happy. Suppose two brothers, one an

eldest son, just come into the family estate, always accustomed to much consideration—gay, extravagant, and rather selfish—never having felt the necessity for work, and, therefore, somewhat indolent, making pleasure his business, and leading, if not a bad, at least a worthless kind of life. The other, his younger brother, with a younger brother's portion of £2,000 or £3,000, but an active, energetic man, with a considerable amount of self-denial and self-control, who has done well in college, and is rising in his profession. Which of these two will be considered the more eligible party in a matrimonial point of view? To the philosophic eye, the latter, to society at large, the former. And yet, I believe, if it were not for the settlement, the younger brother would have a chance even with society. Parents who would not hesitate to entrust the person of their daughter to the keeping of the elder brother would think twice before they let him get absolute control over her fortune or his own, but with the settlement thrown into the scale he weighs down the younger brother, who is in reality the better match of the two. Thus it is that settlements have a tendency to depreciate the value and importance of moral qualities in the eyes of parents and guardians, and to deprive persons possessed of such qualities of the social value (if I may use such a term) which they ought to possess.

I stated at the opening of this paper that I thought it an error to suppose that a settlement was any real security against extravagance or folly. I believe that when the estate is preserved it is not by force of the settlement at all, but by the prudence of the husband and wife, and that if they are, or if the husband is, incurably extravagant, the estate will, in ninety-nine cases out of one hundred, be lost notwithstanding the settlement, and that in the one hundredth case it is preserved at the expense of family quarrels, which would be well avoided at the cost of giving up the property. People think that the difficulty of raising money on life estates, and the high rate of interest that must be paid for it, will deter men from attempting to borrow money on the security of settled property. And so it will in the case of prudent persons who want the loan for some useful purpose, and calculate the profit and loss before they embark in the undertaking. But this reasoning is founded on a total misapprehension of what really occurs in the case of an imprudent or extravagant man. He makes no calculation beforehand. It never occurs to him, in the first instance, to realize his property, and then deliberately waste it. There is no such method in his madness, and, therefore, the difficulties which he may ultimately encounter present no obstacle to his mind whatever. What really happens is this: He has a good income, and spends it freely. At the end of a year he has spent some hundreds more than he received; but he has plenty of credit, and most of his tradespeople would rather receive fresh orders for new goods than payment for what they have already delivered. When I was in College I frequently heard young men, when dunned by their tailor, debate with themselves whether they would pay his account, or order more clothes; a fresh order was always considered to pacify the importunate tailor quite as well as cash in hand. And so it did, for a very considerable time, until, in

fact, the youth's affairs were known to have become desperate. On this principle our extravagant friend spends each year more than his income ; the excess of his expenditure beyond his income, becoming larger in each successive year. At first he gets credit easily, in fact he has it thrust upon him, and all the more on account of his large expenditure. But after some years, ready money becomes very scarce with him, and his tradespeople become very importunate, and he is obliged to cast about for some means of raising money to meet their demands. Money he must get. He finds his life estate, it is true, a very inconvenient kind of property with which to go upon the money market, but it is all that he has, and his necessities will not admit of delay, and accordingly, let the rate of interest be ever so high, or the terms ever so unreasonable, he is not in the least deterred by these circumstances.

And thus it happens that in a few years after his marriage, an imprudent man may find that he has run out the value of his life estate, and that he and his wife and two or three children are without the means of support. It is but sorry comfort under such circumstances, to tell the poor wife that on her husband's death she will have the jointure, and her son the estate. She is thinking of her immediate and pressing wants, and is unwilling to contemplate her husband's death as the only mode of extricating her and her children from their unhappy position. Her prudent father, too, will now perceive that there was one very important contingency for which his settlement has failed to provide. However, in one way or other they live ; very often disreputably enough, almost always with the loss of their independence and self-respect, and, in time, the eldest son comes of age, and, generally speaking, he joins his father in barring the entail, and letting in the father's debts on the estate. The son of such a father has not probably been very well brought up ; and father and son in a short time encumber the estate to its full value, and the wife is obliged to postpone her jointure, and the estate is sold up, the family having probably got one-third less out of it than they would have done, had it not been settled at all. If the estate had not been settled, no doubt the father would have run out all the estate, and possibly at an earlier period. but then he would have had whatever advantage there was to be had, from spending it all, instead of two-thirds only, and his eldest son would not have been accustomed to rely on the estate as a provision, but would have had the ordinary incentives to exertion, and might have become a useful man. The son, however, has been brought up as inheritor of the estate, without any profession, or an education fitting him for success in business, and finds himself, in the prime of his life, a helpless and useless member of society.

I have assumed that the eldest son, on coming of age, joins his father in opening and further incumbering the estate, and this is what usually happens. It may, however, happen that the son is prudent or selfish, as the case may be, and refuses to join his father ; and then arises a family feud which lasts during the remainder of the father's life. The son is accused of standing in the way of an arrangement which would enable the father to support his

family, and is of course obliged to shift for himself. That he should have any means of doing so, is in the last degree unlikely; he has been brought up to no profession; "he cannot dig, to beg he is ashamed," so he generally betakes himself to those friends of the unfortunate, the money-lenders, and raises money on post obit bonds, *i.e.*, on his interest in remainder in the estate expectant on the death of his father; and hard as the father found it to raise money on his life estate, the son will find it far harder to get it on his remainder. And thus the estate, for the most part, goes, notwithstanding the settlement, and the family gets some, but the Jews still more of it. If, however, the son is a man of energy, or if, as sometimes happens, he gets some support from his relations, he may preserve the estate, but almost certainly at the expense of a mortal feud with his own father.

I have described, as accurately as I can, what happens when a man of reckless extravagance settles his estate. Let us now consider what happens in the case of a prudent man. In such a case it will often happen that the settlement is in exact conformity with the wishes of the settlor, and then it is wholly inoperative, for it has only accomplished that which would have equally happened if it had never been executed at all. But it is difficult for men to see into futurity, and it may also happen in many cases that the person designated by the settlement as the future owner of the estate, will be unsuited for such a position. He may be possibly an idiot, or a lunatic, or a man of bad disposition or extravagant habits—in fact, the last of his children whom the parent would wish to succeed himself as head of the family; but he is unable to mend the matter now. The settlement is, of course, binding in law, and idiot, lunatic, or extravagant though he be, the estate must go to the eldest son. Again, the settlor when he settled the estate, may have contemplated many improvements which, as he sees later in life, would have greatly enhanced the value of his property. He would gladly effect these improvements now, but he has not, perhaps, the command of ready money, and he can only raise money on his life estate, on such extravagant terms as would make it imprudent for him to make the attempt. We thus see that what was intended as a check on extravagance wholly fails to effect its object, but is a complete bar to a judicious expenditure, which would be of advantage alike to the tenant for life and the remainder-man. It also seems to me a fault in settlements that they tend to make the eldest son independent of his father. The natural order of things is that children should be dependent on, and look up to, their parents; and the knowledge that the estate must come to a particular son, whether his conduct is pleasing to his parents or not, seems likely to make sons so circumstanced less respectful and considerate than they would otherwise be.

Settlements seem to me to be entirely repugnant to the implied contract on which the rights of property are defended. The surface of the earth was originally the property of all the inhabitants, and no individual had an exclusive right to any portion of it any more than any of us could claim an exclusive right to any of the public

thoroughfares of this city. We have a right to walk or stand in them, but the instant we have left any particular spot any other man may do the same, and we have no right to prevent him; and accordingly, at first there was no such thing as the exclusive ownership of land. People lived in tents, and wandered about. The place occupied by Abraham one year might be occupied by Lot the next, and by a third person the year following; and none of them, by such occupancy, acquired any special right to the particular place. But in course of time, and when population increased, this was found to be a very inconvenient system. No one would take any pains to improve a place which would not be in his hands next year. Men would not dig wells or build houses, or, in later times, enclose and otherwise improve property, when they could not enjoy the fruits of their improvement. Hence arose the idea of exclusive property in land. Men saw that if any individual was permitted to have the exclusive right of property in a particular place it was likely that he would cultivate it in a suitable manner, build on it, fence, and otherwise improve it, and that in this way the earth would be made to yield more for the sustenance of mankind, than it would do if the entire community were to exercise its right of co-ownership over each particular spot of land. Hence arose an implied contract between society and each individual owner of land—that society would permit his exclusive occupation, trusting to his intelligent self-interest to make the most of his profession, and thus extract for himself and the community the most he could out of his bit of land.

That this is the original foundation of the rights of property in land is not now always apparent, but it would at once become so if any large number of proprietors were at the same time to act in gross violation of this implied contract. Suppose, for instance, they were to propose to destroy their property or to turn it into hunting ground, removing the houses and fences, driving away the inhabitants, and restoring the ground to its original condition, as was in old times occasionally attempted by kings of England. Would not every one feel now, as then, that this was very wrong; and is it not certain that what in former times created discontent and violence, would not now (if attempted on a large scale and in populous districts) be permitted at all, and that it could not be defended on the ground that it was a legitimate exercise of the rights of property. But a man, when he settles his estate, violates this implied contract with society; he deprives himself of the power of making the most of the land he possesses; he deliberately binds himself during the rest of his life not to exercise his judgment as to what may be the best use to make of his land, and he contracts to give it at his death to his eldest son, although he is then unborn, and may be the one of his whole family whom, when he comes to know his character, he would think least worthy of the trust. It might, for instance, be greatly to his advantage and that of his family and of society at large, that he should sell a part of his estate to a railway company; but he cannot do so, and the company is put to the expense of an Act of Parliament and costly Chancery proceedings, to undo the effect of this man's settlement. The sums that railway companies have been

obliged to expend in getting possession of settled property, over and above what it would have cost to acquire the same property from absolute owners, must have amounted to millions of money, all of which was pure loss to the commonwealth.

Again, it might be very advantageous to work mines on a settled estate, but the nature of the settlement prevents the tenant for life opening any new mine, and thus the State is deprived of the use of valuable minerals during the whole term of the life of the settlor, and possibly they are lost altogether, for speculators will not search for such things unless they have a reasonable expectation that when found they can be turned to good account.

But the settlement also prevents the owner himself making improvements on his own estate of admitted advantage both to himself and his family. Some part of the land is wet, and a £1,000 or £2,000 spent in drainage would greatly improve the value of the property. The owner has this money in hand, and could realize a large interest by its expenditure in this way, and yet he will not do so, because if he did, the entire value of the improvement would go to the eldest son to the exclusion of the other children, and as the father has already settled upon him the lion's share, he is unwilling to add to it the ready money he has, which he naturally intends to go, in part at least, to the other members of his family. I remember a few years ago I was staying at a friend's house. He was a wealthy man, with plenty of ready money, and yet he was draining part of his estate under the Board of Works. I asked him why he did this, seeing he had probably more money lying idle at his bankers than he required for this drainage. I also mildly insinuated that it savoured somewhat of a job, taking public money at a low rate of interest when he had plenty of his own, and that if it had been refused he would equally have drained the estate at his own expense. He told me that I was mistaken. That he would not have spent a penny on the land if he had not got the money from the Board of Works, for the estate was in settlement, and would go on his death to a particular member of his family, for whom he did not wish to make any further provision, and that he took the money from the State, because when got in this way it became a charge on the land in the hands of the successor, whereas if he spent his own money in the improvement he could not get it back, but would be obliged to let it go as part of the estate. Now these loans are made out of the public exchequer to enable men to improve, who have not the command of ready money, and it seems hard that they should be given to men having plenty of money in hand, merely to enable them to correct in some sort the folly of the settlements they themselves have deliberately made. Of course where one man circumstanced as my friend gets the money there are several who do not, and it is highly probable that in their cases the improvements are not effected at all, and thus their settlements are directly answerable for the unimproved condition of these estates.

The tenant for life of a settled estate can only lease it for the term of his own life, except under special circumstances to which I shall presently allude. All his tenants have therefore a very pre-

carious tenure. Most of them are, of course, men in a comparatively humble rank of life, and their interest is too small to make an investigation of title profitable. They, therefore, are obliged to accept whatever leases the landlord will give, and take chance for their being valid, and if, as frequently happens, they are made in excess of the rights of the owner for life, the tenants are at the absolute mercy of the remainder-man, when he comes into possession of the estate. There is no more crying evil than this connected with the right to settle property, especially in an agricultural country like Ireland, where land is the staple commodity. So much has this been felt that numerous Acts of Parliament have been passed, giving tenants for life leasing powers, but these, while they mitigate the evil to some extent, seem to me a clear admission that the system is bad.

I have stated broadly the evils likely to be produced by settlements. It is now right that I should state that these evils are susceptible of considerable mitigation, and are, in fact, mitigated to some degree in well-drawn settlements. A well drawn deed of this kind will contain leasing powers, powers of sale and exchange, a clause enabling the tenant for life to open mines, cut timber, &c. by which the extreme rigour of the settlement is lessened. I call attention to this partly lest I might be thought to have overstated the case, but still more for the purpose of expressing my regret that they are so often omitted in Irish settlements. The leasing power is the only one that is commonly inserted, and it does not usually contemplate more than an ordinary agricultural lease, and is quite unsuited to leases for the purpose of building, mining, or improving. The others are very frequently omitted in Irish deeds, although they are rarely wanting in English settlements. Their more general adoption in this country would be of considerable advantage. Powers of sale, in particular, should be inserted in every well drawn deed, and are of peculiar value with reference to the Record of Titles and Landed Estates' Court Acts. It would also be a very great improvement if the tenant for life was given a right to appoint the estate among his children, or to select the one of his children in his judgment the most deserving to succeed him as owner of the property. This would meet the very serious evil I have already pointed out, of an unworthy or imbecile individual necessarily taking the entire family estate, and would also give the parent sufficient power to ensure a due respect from every member of his family. There is also another very important difference between the English and Irish customs in regard to the settlement of estates, in which our neighbours' example is worthy of imitation. Settlements of very small estates are much less frequent in England than in this country. Unless the property is of some magnitude it is wholly inexcusable to put it in settlement. I had before me last week a case where the property settled consisted of an undivided moiety of a small farm, producing a net rental of £46 10s. The estate settled was therefore value for £23 5s. a year. It was strictly settled by direction of the then Lord Chancellor of Ireland, and with the approbation of the Master in the matter. (It was the estate of a young lady who

was a minor and a ward of Court) The expense of making this settlement, and removing a trustee who refused to act, and appointing another in his place, consumed no inconsiderable portion of the small inheritance.

If the right of creating life estates by settlement were abolished, I do not think that family estates would run any greater risk of changing hands than they do at present. In truth, I think they would run less risk, for men would then be obliged to rely on sound moral training instead of the physical restraint of a deed, and all families desirous of preserving their property in "their blood and name" would address themselves to this, the only effectual means of doing so. I may mention, in proof of the truth of the views I put forward, that I heard from the late Judge Hargreave that the great estates of the Bedford family were never in settlement before the late Duke's time, and yet they have been preserved in the family for many generations; and, on the other hand, hardly a single great estate sold in the Landed Estates' Court was ever out of settlement. This makes it certain that it is at least possible to preserve an unsettled estate and to lose a settled one.

It will be observed that the evils I have tried to point out in our system of family settlements are of two kinds—one which I may call social, and which affects principally the persons making the settlement and their children; another, which I call economic, and which affects third parties, as, for instance, tenants, as well as the family making the settlement. The first class of evils applies equally to all settlements, whether of land or money. The second applies almost exclusively to settlements of land, and evils of this kind demand our attention much more than the former, because they are more widely felt, and affect others as well as the parties and privies to the settlement. I would, therefore, propose, in the first instance, to abolish the power of settling land, but permit the settlement of personal property still to continue. I would, however, think it right to permit the settlement of the real estate of married women, so long as our present laws prevail with respect to the property of such persons. Personal property, such as money, stocks, &c. has not the same kind of duties connected with it that land has. It is not set to tenants, or capable of reclamation or improvement as land is, and so far as the interest of the community at large is concerned, very little inconvenience would be felt by the settlement of such property. But with land it is very different. Its management requires the intervention of third parties at every moment. The tenant suffers if he has to deal with a limited owner. The limited owner is not, as I have shown, in a position to discharge his duties by the land, in improving or otherwise dealing with it to the best advantage, so that the injury to the commonwealth arising out of settlements of lands is very widely felt; and this is proved by the various Acts of Parliament which have from time to time been passed with reference to settled estates—some giving powers of leasing, others powers of sale, and so forth, all of them intended to mitigate the evils of the system, but containing clauses so cumbrous and expensive in their working, that it is almost (in fact in the case

of small estates altogether) better to submit to the evils of the settlement than the expense of the remedial acts

The legal right to settle land, and the very extensive use which is made of it, seem to me to present great impediments to the equitable adjustment of the Irish land question, and, in truth, to lie at the root of this great and difficult subject. Until the owners of land are free to follow what an enlightened self-interest may point out as their wisest course, it is idle to advise them to adopt such a course. It may be both the duty and the interest of the landlord to allow his tenant to make improvements, and to pay him by an extended term, or a charge on the estate, for doing so; but if he cannot legally do this, what is the use of proposing the question for his consideration. You must have the landlords free to contract as a primary condition to all just dealing between them and their tenants. But this is repugnant to the very idea of a settlement, the primary object of which is to limit that freedom, and to prevent all dealing which could by possibility affect the remainder-man. Every other consideration must give way to the one principal object of keeping the estate intact, no matter at what expense or inconvenience to the family itself, or the public at large. I know I may be met here by a reference to the enabling statutes to which I have already referred, all recognizing this difficulty, and trying to obviate it by enlarging in one shape or another the power of the limited owner. These statutes, however, contain so many conditions and restrictions, it is so frequently necessary under them to give notices or procure consent, or to institute proceedings before the Courts, that they are practically worthless. In theory nothing could be better than Mr. Cardwell's Act, but in practice, owing to the causes I have mentioned above, it is a dead letter. It stands as a protest against the system, but as a remedy it is as bad as the disease itself.

I have now stated as briefly as I could what I conceive to be the social and economic effects of marriage settlements. They seem to me, especially those which relate to real estate, to be wholly unsuited to the age of progress and improvement in which we live; to answer only the selfish objects of individuals, regardless alike of the true interests of those individuals themselves and the rights of the public; and while they fail to effect the objects for which they were framed, they inflict serious injury, both moral and material, on the entire community.

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VI.—*British Citizenship as opposed to American Citizenship.* By Francis Nolan, Esq., A.B.

[Read, Tuesday, 23rd June, 1868.]

THE right of every state to the services and allegiance of all its citizens is universally admitted. This right would seem to draw after it the correlative duty that every state should afford protection to those to whose obedience it considers itself entitled. That these