

II.—*On some of the difficulties in the way of creating a Peasant Proprietary in Ireland.* By Murrough O'Brien, Esq.

[Read 18th December, 1877.]

THE enquiry, commenced last session, at the instance of Mr. Shaw Lefevre, into the working of the Bright Clauses of the Land Act, and the interest shown in the sales of the Church Temporalities Commissioners, suggested this paper. I have not any new facts or theories to lay before the Society. My object is rather to give some examples of the difficulties now in the way of creating a peasant proprietary in Ireland.

The sales effected by the Church Commissioners to tenants in all parts of Ireland, both directly and through the Landed Estates Court, offer suitable illustrations. My intention is to give some of the minor details of these sales, and especially on two points on which questions were asked by the Committee, viz. : where the money came from, and the amount of costs paid by the tenant ?

To explain the nature of the property offered for sale by the Church Commissioners, I may state, though at the risk of repeating what is well known, that the number of tenants dealt with (exclusive of those holding in perpetuity) was 8,432, described as "yearly and other tenures," *i. e.*, tenants holding from year to year, or by terminable leases.

A small number of these holdings were house property in towns ; a somewhat larger number were town parks of small towns and villages (a class of property that sold very readily); but the greater part was agricultural land held by small farmers, paying generally a full rent, rather above than below the customary rent of their neighbourhood. The amount of the rental was £95,400, so that the average rent was about £12.

The average rateable value of the 544,142 agricultural holdings which there are estimated to be in Ireland, is about £20, so that on the property dealt with by the Church Commissioners the holdings were smaller than the average. The rents also were higher and the occupiers were certainly poorer. I draw attention to this, because the reverse has been stated to be the case, and because in comparing the Irish Church Act Sales with those under the Bright Clauses of the Land Act, it should be borne in mind that sales of the latter kind have been generally to a well-to-do class of tenants, while the reverse has been the case under the Church Act.

It is estimated that before 1878 nearly 6,000 tenants will have bought their farms from the Church Commissioners, the greater number having availed themselves of the privilege of borrowing three-fourths of the purchase money.

It has been suggested that the number of sales is due to the fact of the property being chiefly situated in busy and prosperous Ulster. This, however, has not been the case ; the southern glebes, though small in extent, were generally better land and more easily disposed of. In Ulster the greater part of the property consisted of extensive tracts of poor, barren, or mountain land, divided into very small

farms, and held by the poorest class of tenants. In the mountains of Fermanagh, Tyrone, Londonderry, and Donegal, lay many of the largest glebes, occupied by a very poor but industrious population. To these the clear and simple instructions of the Church Commissioners were of the greatest value.

Among the causes which have prevented the effective operation of the 44th, 45th, and 47th clauses of the Land Act are alleged to be: (1) want of money, and (2) legal expenses. With regard to the first, it must be remembered that the years during which most sales were made were very favourable to borrowers. The rate of interest was low, it was not easy to find investments for money, and thus funds were available for the purchase of these lands which would not have been so in other years. That the difficulty of procuring money is not an insuperable one, is shown by the number of sales effected to a very poor class of tenantry. The possibility that has always been open to the labouring classes of buying a farm, *i.e.*, the tenant-right of one, has produced habits of thrift and saving in a most remarkable degree in the Irish labouring poor. Details of the sources from which the money was derived to buy these small farms are not without interest, for the anxiety to obtain perfect security of tenure led the tenant to make every effort to purchase under the favourable terms offered.

It is natural to suppose that the small farmers have not much ready money. Rent days are fixed on or after a fair, so that stock may be sold. Current expenses of farm and family swallow up savings. All improvements are, as a rule, made by the tenant, and maintained at his expense. But though many of the poorer tenants had not the one-fourth required under the Irish Church Act in the shape of a balance at the bank, it was not out of their power to raise it. Stock might be sold, and was often heavily sold, to buy the farm and pay the costs of transfer. Many a tenant without money is a thoroughly solvent man; he has stock on his pasture, crops in his fields, and a valuable interest in his farm. Other parties, too, are interested in the purchase. The farm is family property, and if the occupier (who may be old, childless, and virtually only a life-owner of it) has not the money, others interested in it have. In a number of cases it has transpired that a son or daughter has purchased the farm, to secure it to the old people for life, and to occupy it hereafter. Children gave most liberally to their parents, and money was sent from America and England by relations, who had no intention of deriving any benefit from the purchase. Even out of the low wages paid in this country savings were made available for this purpose. For example, a farm having been bought for £216, and the whole amount paid down, in answer to my enquiry I was informed that the tenant's children had bought it for him out of savings at service. Having expressed some doubt whether such a large sum could have been thus saved: in reply to further enquiry, a neighbour wrote thus to me. "You thought it could not be so that the money was paid by service. It is the truth, there are three of them at service; two of them are in the one house this twenty-five years at good pay. All they made they kept fast." Thus the savings of twenty-five years

were at last made available to place the family in a state of independence. Many other similar cases have been noticed. Sometimes the tenant-right of part of the farm was sold to a rich neighbour: and so the house and a smaller farm, with absolute security, were exchanged for the larger farm held at will. In other cases a neighbour was allowed to buy in the tenant's name, the occupier getting a long lease or perhaps one for ever. Many of the purchasing tenants were shopkeepers, dealers in cattle or horses, as well as farmers, and some were returned emigrants. Not a few were labourers as well as farmers.

The story of one of the larger farms will show how efforts and sacrifices were made among the richer occupiers also to secure the freehold of the land. A dairy farm of fifty Irish acres was offered for sale for £2,200. The tenant was a young man, and held his farm from year to year. Since his accession he had built an excellent barn, stable, and byre, in a thoroughly permanent manner, at a cost of about £500. The land had also been greatly improved. A new dwelling house was to have been next commenced, the existing one being little better than a thatched cabin. To secure his farm, for which a payment of £600 in cash was required, the tenant sold his whole stock, including 18 milch cows. Improvements were for the time stopped, the building of the dwelling house postponed, the land was temporarily let, or strange cattle taken in for grazing. Thus, and by great economy, he has again been able to stock his farm, and is now preparing to recommence his interrupted building.

A fear was expressed during the enquiry by the Committee of the House of Commons lest a "*low order of purchasers should arise.*" Now, amongst the smallest purchases made from the Church Commissioners, might be pointed out some of the most improved holdings under the old system where tenant-right prevailed; and on some very small plots, from a few perches up to an acre or two, since their sale improvements of a most substantial and permanent character have been noticed. It is natural to expect that the smaller the freehold, the more care and labour will be concentrated upon it; and in the "*Landlord and Tenant*" *versus* "*Peasant Proprietors*" controversy, it has been shown that though, where farms are large, the ownership and occupancy may be in different persons, consistently with high cultivation and execution of necessary improvements, yet where they are small this is not the case. It is impossible for the owners to house properly the occupants of small farms, and improve their land. This is best done where the occupier is also the owner.

From the Belgian Statistics* for 1876 it appears that in that country the number of separate landowners is 1,142,222, and the average size of their properties $6\frac{1}{2}$ acres. It is sufficient to notice this, without dwelling on the well-known prosperity and comfort of the farming classes in Belgium.

That there is a natural demand in Ireland for small farms seems perfectly plain. As with other property, so land sold by retail brings a higher price than by wholesale, and what has prevented this de-

* "*Annuaire Statistique de la Belgique,*" 7^{ieme} annee, 1876.

mand being more felt here has been shown again and again to be chiefly due to the "glorious uncertainty" and "ruinous cost" of the law, arising from the absence of a cheap, simple, and expeditious mode of transfer. If this had always existed, it is unlikely that there would have been any occasion to try and regulate the distribution of land, and to rectify the evil effects of the present system. Where there are no checks, as in the transfer of some tenant-right interests, a small farm is almost certain to sell at a higher rate than a larger one. If a "low order of purchasers" means purchasers of small plots, it has yet to be shown that such a class of freeholders is undesirable; and unless this is shown, it is to be hoped that facilities given to larger may not be withheld from smaller purchasers, who in the opinion of many observers are those who will value most and use best the privilege of ownership.

Arthur Young truly says of the labouring poor,

"Their welfare forms the broad basis of public prosperity. In proportion to their ease is the strength and wealth of nations."

In his *Tour in Ireland* he comments on the advantages of the Irish poor over the English, arising from the possession of a potato garden and a cow; and of the motive thus supplied for saving, he says:—

"Every farthing they can save is devoted to the purchase of cattle. In England, a man's cottage will be filled with superfluities before he possesses a cow. I think the comparison much in favour of the Irishman. A hog is a much more valuable piece of goods than a set of tea things, and though his snout in a crock of potatoes is an idea not so poetical as

'Broken tea cups wisely kept for show

Ranged o'er the chimney, glistening in a row,'

yet will the cottier and his family at Christmas find the solidity of it an ample recompense for the ornament of the other."

The same motive to a great extent accounts for the difference still to be seen between the furniture and clothes of the labouring poor in Ireland and in England, and is doubtless the cause of the frugal and thrifty habits of our agricultural labourers and small farmers.

More than half the holdings in Ireland are classed as of the value of £10 and under, and therefore any scheme for converting occupation into ownership which is not suited to small holdings will exclude a large part of the country from the intended benefit.

The second cause, legal difficulties and costs, was very fully dwelt on in the evidence. Where the Commissioners of Church Temporalities dealt directly, as they generally did, with the tenant, their system of complete and clear instructions, with printed replies needing only a few words to be filled in, made the intervention of a solicitor unnecessary, except for the preparation of the conveyances. Their short form of conveyance and mortgage, then made the cost of the transfer much less than it otherwise would have been. But where lands were sold in the Landed Estates Court, the tenant had not these advantages, and the difficulties and expense of sales under the Bright Clauses are well illustrated in such cases. It is almost impossible to define with the accuracy and minuteness required by the Landed Estates Court the rights of way between small holdings. It

frequently occurs on townlands held by many occupiers that there is no defined way to every plot. The tenant reaches his fields by different ways, according to the state of the crops and weather, without any serious disputes. But if it is necessary to set out and define a right of way in legal and exact language, to fix it once and for ever, each person whose land is crossed is up in arms, and an expensive struggle is commenced. Mr. Lynch mentioned a case where, four tenants having filed objections to a right of way, 220 persons had to be served with notices, and in the end the right of way was left still undefined. On the Church Lands farms have been met with, at rents of £5 or £6, consisting of from eight to twelve different plots, others were over a mile in length and only forty or fifty yards in width. The difficulty of settling the rights of way between occupiers in such cases is obvious. It was suggested by some of the witnesses examined before Mr. Lefevre's Committee, that these lesser rights and easements might be disregarded; and if left undefined, difficulties would no doubt be settled as they now are, by the ever-changing necessities of each case, tempered by the courtesy that prevails among neighbours, and which is as common among the poor as among other classes.

To show the expense of transfer to small purchasers, I give the costs paid in each case by twenty-one tenants on a townland in Tyrone. The sale was effected in the Landed Estates Court. Four only of the tenants paid the whole purchase money in cash, and therefore in all but these cases mortgages were required as well as conveyances. (*See next page.*)

The costs of transfer, amounting to nearly 11 per cent. on the purchase money, are in addition to, and exclusive of any expense incurred objecting to or settling rights and easements. In the case of the smallest holding, the costs, which are over 25 per cent. on the purchase money, are equal to six years' purchase of the rent. The expense on the part of the sellers of this townland was not less than £130, so that the whole transfer cost fully £500, or nearly 15 per cent. I give the items of one of the bills. They are all drawn according to the scale approved by the Landed Estates Court, but when settled it is unlikely that sales of this kind were contemplated.

*Particulars of purchase-money, costs, etc. in the case of a townland sold for the Church
Temporalities Commissioners in the Landed Estates Court.*

	Purchase Money.	Paid in Cash.	Costs of Transfer Deeds.	Percentage of costs on purchase-money.	Borrowed by tenant at 5 or 5½.	Observations.
	£	£	£ s. d.		£	
1	220	55	19 9 3	8.85	—	Tenant a Schoolmaster.
2	461	116	20 12 0	4.46	100	
3	85	85	11 7 6	13.38	—	Neighbour purchased, giving occupier a lease for 99 years.
4	118	30	18 17 3	15.98	20	£10 from children in America.
5	273	273	10 0 0	3.66	100	
6	177	45	19 0 6	10.74	10	£35 saved in service.
7	215	215	9 15 0	4.07	—	Tenant a cattle-dealer.
8	101	26	18 18 9	18.75	25	
9	103	26	18 18 2	18.35	20	
10	160	40	18 8 7	11.51	—	£20 from friends in America.
11	115	29	19 0 3	16.53	20	
12	272	72	19 13 8	7.23	—	
13	84	42	18 12 3	22.15	15	£27 from sons in America.
14	72	36	18 12 9	25.88	—	Daughter of tenant in service purchased for him.
15	96	48	18 3 2	18.91	30	
16	158	40	19 5 8	12.20	10	
17	141	36	18 17 1	13.37	30	
18	231	58	19 12 3	8.49	30	
19	101	26	18 17 3	18.67	—	£26 saved in service.
20	216	216	13 2 9	6.08	—	Children of tenant in service purchased for him.
21	92	46	18 16 10	20.48	20	
	3,491	1,560	367 0 11	10.91	430	

COSTS OF CONVEYANCE.

Writing acknowledging receipt of purchase money,	£0	3	5
Fee on order to lodge, and lodging same, ...	1	0	0
Instructions for conveyance including draft and copy to lodge, and all duties connected therewith, as enumerated by Court schedule, ...	5	0	0
Fee on memorial, and registering same, as per said schedule, ...	1	0	0
Attending to have conveyance executed by Commissioners under seal, ...	0	6	8
Application to Court for credit for balance of purchase-money, ...	0	13	4
Draft requisition not to record, and copy for signature, ...	0	4	4
Writing with same for signature, ...	0	3	5
Signing by solicitor, ...	0	3	4
Attending to file, ...	0	6	8
Paid printer's account, ...	1	3	0
Paid for map, ...	0	13	6
Paid stamp duty on conveyance and memorial, ...	1	2	6
Paid registry fee on memorial, ...	0	10	6
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TOTAL	£12	10	8

COSTS OF MORTGAGE.

Instructions for mortgage to secure, ...	£0	13	4
Drawing and engrossing same, ...	1	10	0
Paid parchment, ...	0	3	0
Attending at stamp office to have duty assessed, ...	0	6	8
Paid stamp duty, ...	0	3	9
Drawing and engrossing memorial, ...	1	10	0
Paid stamp duty and parchment, ...	0	6	6
Writing with deed and memorial for execution, ...	0	3	4
Attendance witnessing execution, ...	0	6	8
Fee on registration, ...	1	0	0
Paid registry fees, ...	0	8	0
Postages, ...	0	1	0
Paid Commissioner's fee on affidavit, ...	0	1	6
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TOTAL	£6	13	9

The Court scale, according to which this bill is drawn, is wholly unsuited to the sale of a townland in small parcels. As the lots and all other particulars are set out on the rental at the seller's expense, no special instructions are required. The conveyances being absolutely alike, except in the area and map of the land, the deeds are of a very simple nature.

In Mr. Fisher's essay, published by the Cobden Club, on the land laws of America, he mentions that the cost of preparing a simple deed or lease there is from 4s. to 8s.

In this case the memorial and registering was, I understand from Mr. McDonnell's evidence, unnecessary, and therefore this expense might have been saved. So might also have been about £1, paid for not having the title recorded, which it would have been far better to have had done. That it would have been better may be said on the authority of the many able lawyers who gave their sanction to the passing of the Record of Title Act. In an address to this Society, Lord O'Hagan said of this measure :

"I believe the Record of Title Act to be sound in its principle, simple and effective in its machinery, and intelligible in its terms. I trust that it will gradually but surely exert a most useful influence on the people of Ireland. It will increase the value of estates to those who possess them, and afford the industrious agriculturist the chance of purchasing the fruit of his toil." "If the principle the Act affirms be carried out, with full effect, and to all its natural consequences, we may trust that it will promote the formation of a substantial middle class—a body of small independent proprietors, whose interest in the soil, and security in the enjoyment of the fruits of their labour will render them industrious, law-respecting, and order-loving citizens."

At present a Parliamentary title deteriorates rapidly. Lord O'Hagan says:—

"In the course of a few days the benefit of the Parliamentary title becomes comparatively trifling.

While of the recorded title, it is the case that "a glance at the proper folio of the record will at any time show the exact state of the title." Thus the Record of Title Act was considered especially suited to small properties when passed, yet in the case of the above townland, and according to common practice, I believe, purchasers are advised not to avail themselves of the advantages it offers, and it has become almost a dead letter.

If existing means are to be utilized for the preservation and continuance of the small freeholds which the state is now creating, it is worth enquiring how this act may be made available for the purpose.

It was repeatedly stated in the evidence that tenants purchasing under the Bright Clauses have had to give at least four or five years' purchase more than outsiders; and if four or five years' purchase more be required to pay for the transfer, the gross price of small farms will be so high as to be beyond the reach of most occupiers, or if bought with state aid, there will be a misapplication of the public money by its appropriation in part to the payment of costs, the amount of which is regulated by an artificial and inexpedient system, quite unsuited to the wants of the community, and behind the requirements of the age.

Whether the aid given by the state might not be increased was a subject the Committee touched upon. The success of the Church Commissioners is partly attributed to their lending three-fourths instead of two-thirds of the purchase-money, as is done under the Land Act. There seems no reason why, if aid be given for a desirable object, the advance should be limited to three-fourths, if a larger loan would be more effective, as it would often be. The limit of the loans under the Church and Land Acts was evidently fixed to leave a margin for security; but in many cases the tenant-right would be ample security for the whole purchase-money, and the security is increased by each payment, where the loan is repayable by a terminable annuity. Mr. Lane says in his evidence, that in Derry, tenant-right is worth from seventeen to twenty-five years' purchase. The evidence given and the amounts awarded in land cases corroborate this statement, and many instances are on record of forty years' purchase and upwards having been given. The average of a number of instances that occurred on the Church lands since 1870 is nineteen years' purchase. It is evident that the tenant-

right would be ample security in many cases for a loan of the price of the fee at a fair value.

I would also suggest that where the state advances the purchase-money, or part of it, it might also take entire charge of the transfer, and provide the deeds, adding a small percentage to the purchase-money to cover the costs, so that the intervention of a solicitor for the tenant would be unnecessary. I believe the Quit-Rent Office furnishes a precedent for this. By one payment the rent is extinguished, and the deed is handed to the purchaser without further charge. If the cost of transfer of land with a perfectly clear title is so great, as the clearness of the title becomes dim by lapse of time, it is evident that all subsequent dealings would be much more expensive, and this heavy tax may lead to the extinction of the small freeholds again. An avoidable expense is also the dealing with two public departments, and there being two sets of deeds. In the case of Church lands sold in the Landed Estates Court, there was a conveyance from Landed Estates Court and mortgage to the Church Commissioners. Under the Land Act there is a conveyance from Landed Estates Court, and a charging order from the Board of Works. Where the state is grantor and mortgagee, even though it is so through two different departments, an economy might be effected by some such plan as making the grant subject to the annuity by which the loan is repaid, the annual payments being endorsed on the deed as they are made. One instrument might thus suffice for the whole transaction.

The expense of surveying may also be referred to. Notwithstanding that we have the revised ordnance map, made at great public expense, showing every feature in great detail, yet for almost every transfer in the Landed Estates Court a new survey is made on an enlarged scale. It is worth consideration whether this might not be more often dispensed with. In an interesting account of the Ordnance Survey, published in 1873, by Captain Palmer, R.E., he says that since 1859 about 2,000 square miles have been redrawn at the expense of the suitors in the Landed Estates Court. An evil incidental to this must be the diversion of the surveying staff from the very necessary work of revision and enlargement. The six-inch map shows very clearly any plot exceeding an acre in extent, and fails in one of the purposes it was meant to serve as a national map if not used in the sale and transfer of land. If a survey of the townland to which I have referred above, made on a scale of twelve inches to a mile for the purpose of sale, be compared with the printed 6-inch map, it will, I think, be evident that the latter is quite large enough to show each farm. Some slight saving of expense might be effected in this direction by dispensing with an entirely new survey, and using the existing map. Under Lord Cairns's Act the twenty-five-inch scale has been fixed upon as the most suitable for the public map of England; yet in Ireland we are committed to the six-inch scale. The survey at present has cost over three-quarters of a million pounds, and for the purpose of showing agricultural holdings, I venture to think that not only is the six-inch map quite large enough, but that maps on the twenty-five-inch scale would often be inconveniently large and cumbersome.