

III.—*Some Notes on the present position of the Irish Land Registry Question.* By W. Neilson Hancock, LL.D.

[Read 18th December, 1877.]

I.—*The subject not a question of party politics in Ireland.*

THE Irish Land Registry question, indeed the whole question of facilitating the transfer of land in Ireland, from the commencement of its discussion in 1847, down to the latest utterances on the subject, never has belonged to party politics, that is, never has been a question advocated by one party and opposed by the other. There can, therefore, be no party triumph in any particular solution of it, although there may be a just emulation between individual statesmen and law reformers as to who can help this object most.

In England the question first assumed prominence from the unanimous recommendation of a Select Committee of the House of Lords on the Burthens on Land in 1846. The Committee reported:—

“That the transfer of real property is subjected by law to difficulties, expenses, and irregularities. But 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 sums borrowed.”

Amongst the witnesses examined before the Committee, was Mr. Senior, the distinguished political economist, then Master in Chancery, who had been for eighteen years an English conveyancing counsel. In the discussions on other branches of the land question his writings have been always referred to as an authority for the land-owners. He said:—

“I believe this [speaking of England] is the only civilized country without a general register, and the [United Kingdom] the only civilized country requiring a sixty years' title or even a fifty years'. I believe that in almost every other 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 in almost every country but this, land is transferred in the same manner in which stock is transferred; you look to the last purchaser only.”

*Origin of the Land Registry and Land Transfer question in Ireland.*

In Ireland, the first person to direct public attention to the subject was our late President, Mr. Jonathan Pim, in a small pamphlet entitled “Observations on the Evils resulting to Ireland from the insecurity of Title, and the existing Laws of Real Property, with some Suggestions towards a remedy.” Mr. Pim was at that time Secretary to the Relief Association of the Society of Friends, whose exertions during the famine were so justly commended by Mr. Lantaigne in his opening address at our last meeting. When the first pressure of the famine was over, Mr. Pim gave the results of his experience in a remarkable work on the *Condition and Prospects of Ireland*, published on 20th January, 1848. In that work he states—

"That 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 of Ireland 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."

Mr. Pim, after referring to the difficulty of proving titles to land in Ireland, adds :—

"To declare all existing titles good would be of comparatively little value, *unless means were taken to lessen the difficulty for the future.* A national registry of landed property appears to afford means not only for facilitating and cheapening transfers, but also for giving perfect proof of titles, as it is only needed for that purpose to require that all mortgages and all other acts or deeds affecting the property shall be registered in the same book of registry, in such a manner that they may be apparent to every one inspecting the registry, say, for example, in a manner similar to the entry of a mortgage on a ship's register.

"Other countries possess simple forms of transfer which have been found efficacious. If such answer in Prussia, or France, or Belgium, why should they not do for us also. The accurate maps of the Ordnance Survey afford great facilities.

"Such a system of registration, under which transfers of property in fee should be made by an authorised entry in the books of registry, much the same way as a transfer of stock is now made at the bank, would save most of the legal expenses of transfers.

"The great number of large estates in Ireland has been already remarked. The confiscated property was in general granted in portions of considerable extent, and the difficulties before alluded to have prevented much sub-division. No class of small proprietors or yeomanry, such as are still to be found in some English counties, ever existed in Ireland. Property constantly tends to accumulate in large masses: the large landed proprietor frequently purchases a neighbouring estate and unites it permanently to his own, by entailing it, thus diminishing still more the number of proprietors in fee; land becomes vested in fewer hands, and the many are impoverished. It should be the object of the legislature to counteract this tendency by promoting the subdivision of freeholds again, not by positive laws, but by arrangements which, without interfering with the freedom of property, should encourage the sale of estates in smaller portions.

"Is it not of the utmost importance to the well-being of society that the number of those who hold the land in fee should be increased? that land should be held in estates of various sizes—that a class of small proprietors or yeomanry should be raised up? \* \* \* \*

"Thus might we hope to create an independent yeomanry; thus might we encourage the exertions of the people, and emulate in our small farms the indefatigable industry, the careful garden cultivation of Belgium and Switzerland."

I have quoted at such length from Mr. Pim, because, although the clauses of the Land Act in favour of a peasant proprietary are rightly and properly known as the "Bright Clauses," owing to their having been introduced mainly through the influence of Mr. Bright as a member of the Gladstone cabinet, it should not be forgotten that the first proposal for legislating in this direction was made by Mr. Pim, who, through his extensive commercial connections, and still more through his devotion to the business of the Relief Association during the time of the famine, acquired a knowledge of Irish affairs, as his book shows, such as few possess. The suggestion to reform the Land Laws in such a way as to allow the peasant pro-

prietor to deal with land in the cheap and easy way in which it can be dealt with in Belgium and other foreign countries is therefore not an English idea, or a party idea; it is a social science idea, started by an Irishman, eminent as a man of business and as a philanthropist.

*Further evidence of the non-party character of the question.*

In England, ever since the Report of the Land Title Commission of 1857, statesmen, quite independent of party, have vied with and supported each other in helping reforms. Lord Cairns introduced a bill in 1859, Lord Selbourne in 1873, and that bill, in a modified form, Lord Cairns carried for England, as the Land Transfer Act of 1875.

When the Land Act was pending in 1870, while many clauses of the Bill led to discussion and division, on the Purchase Clauses, or, as they are commonly called, the Bright Clauses, there was not "a single hostile division. Not a word of adverse criticism marked their passage through Parliament." So, again, last session, the Government promptly acceded to Mr. Shaw Lefevre's application for a Select Committee to investigate the working of the clauses.

Since the rising of Committee, although the subject was not noticed in the Queen's Speech, there was at Galway a Viceregal intimation of opinion that it is to the small farmers we must look if we wish to see the agricultural prosperity of Ireland increasing, and, as to the purchase clauses of the Land Act, his Grace said:—

"No one could reflect upon the strong love which existed in the breasts of Irishmen to be owners or tenants of the soil, without being convinced that any facilities which would enable them to avail of that, the anxious wish of their hearts, must contribute to that peace and contentment.

"The system [of assisted purchases under the Land Act] was, doubtless, an experiment, but if it opened out a way for the holders of small farms to become possessed of them, and thus induced general contentment and peace, he, for one, hailed it as an advance in the right direction."

Such an authoritative expression of opinion reduces the question to a mere matter of administrative business. How can what Mr. Pim proposed for the benefit of Ireland in 1848 be now most conveniently and promptly effected?

The question naturally divides itself into three parts:

1. What is peculiar to the peasant proprietors and small leaseholders.
2. The reform of the existing system recommended in the interest of the large proprietors.
3. What is common to both classes of proprietors.

(1.) *What is wanted especially for the peasant proprietors and small leaseholders.*

For their wants it is necessary that the registry should be local—in poor law unions; that it should, as in the case of the Belgian peasant proprietors, be based on the map used for taxation purposes. In Ireland the annually revised map of the tenement valuation exactly fulfils this condition. To supply the system of local registries

that would give the greatest amount of intelligence, and monetary and other security, for the least cost and the least creation of new offices or patronage, the treasurers of the Poor-law unions should, I think, be the local registrars, represented on the spot by the local bank manager.

I have examined the matter with great care, and consulted some very prudent people about it since I was examined before the Land Committee last session. I have no doubt that the Belgian model is the true one to follow; that our tenement valuation maps and land indexes, annually revised, afford a perfect machinery for the work; that while the annual revision of the valuation will afford security for land transfer, the combination of land transfer and valuation will obviate the only weak point in the valuation system—the difficulty of getting early and perfect information of changes of property, so as to make the necessary changes in due time, for electors' lists, for jury service, and for the proper collection of taxes.

Through the courtesy of Mr. Ball Green, the Commissioner of Valuation, I am enabled to show both the original maps used in country districts and also those on a much larger scale for towns.

If anyone will look at these maps, and the valuation connected with them, he will see at a glance that there is at this moment a perfect land index for every inch of the soil of Ireland, and an index of the occupiers as correct as it can be made in the absence of the information proposed to be supplied by the local registry, and also an index of the immediate lessors.

We thus have now exactly the information which Parliament in 1850, when it passed Lord Romilly's Map Registration Act, considered to be the first step towards the introduction of map registration, the true basis of any simplification of land registry and transfer sufficiently great to really suit peasant proprietors, small leaseholders, and yearly tenants.

The union registry, based on the tenement valuation map, is the true analogue to the transfers of yearly tenants and leasehold interests, in the proprietor's office in the presence of the agent with reference to the estate map, which prevailed in all large tenant-right estates in Ulster.

In the English substitution of freehold for copyhold interests, this one really valuable element of copyhold (local transfer) has been ignored; and although the Land Transfer Act of 1875 contemplates local registries, they have not been developed.

As to the Irish registry, the nearest analogue to the proprietor's office and the estate agent is the bank, which is treasurer of the union, and the local branch bank manager. One value of the proprietor's office in the tenant-right system was that it was a usual place for the payment or lodgment of money, and a place where part of the money had necessarily to be paid. So now, part of the money in nearly every transaction passes through banks, and there could not be a safer place for a transfer of money on the completion of a transaction than a bank counter. When the analogy of the transfer of Government stock is referred to, it is to be borne in mind that this transfer has always been effected at a bank.

*Why the Belgian model should be followed.*

It remains to state why the Belgian model is the best one to follow. When Mr. Pim proposed his plan in 1848, and when some leading members of this Society were examined by Mr. Bright before the Poor-law Committees in 1849, Sir John Romilly's Act was passed in 1850, though not in accordance with our views, still in part fulfilment of what was recommended. Shortly afterwards, out of a fund raised by members of our Society, we obtained a very able report from Mr. Edward Graves Mayne as to foreign systems of registering transfer of land by maps and indexes. Of all the systems which he investigated, Mr. Mayne recommended the Belgian as the best. It had been introduced by the Dutch when they had control over Belgium, and has for upwards of forty years been freely accepted by the Belgian people.

Mr. Graves Mayne reports :

"The Belgian registry deserves a somewhat detailed description, because the survey used in connection with it possesses a marked superiority for legal purposes over those of most other continental countries. This is owing to the circumstance that the Dutch government, by which it was chiefly executed and which had nearly completed it before the revolution [of 1830], constructed it with a two-fold object in view—viz., the registration of incumbrances as well as the assessment of taxes; whereas most of the other surveys were designated solely for either fiscal or topographical purposes.

"The Registry Office was established in 1796. Attached to this there are three divisional bureaux in Brussels alone, besides 181 others scattered throughout the kingdom."

As the population of Belgium is 5,403,000, and that of Ireland in 1871 was 5,412,000, it follows that the 163 union registries proposed for Ireland would not be so many in proportion to the population as the 181 which exist in Belgium. As the area of Belgium is only 7,363,982, while that of Ireland is 20,819,829 acres, it is obvious that the proposal of 163 registries for Ireland is a very modest one as to area compared with Belgium—the area of each Irish registration district being about three times as large as that of the Belgian.

Mr. Mayne further reports :—

"The [Belgian] system owes much of its comparative completeness to the survey by which the land itself is identified, and the value, contents, and ownership of every estate throughout the kingdom are shown at one view."

This is a precise description of our tenement valuation, and the Domesday books that have been founded upon it.

He adds :—

"There is not one large cadastre [survey] for the whole kingdom, nor is there even one for each province. But each commune has a separate survey.

"Of the practical value of the survey, as affording ready and certain information to the public respecting landed property, and thus facilitating in an eminent degree its transfer in the market, no more conclusive instance can be given than the common advertisements for sale placarded in the streets of Brussels, which almost invariably contain reference to it."

Now it is to be borne in mind that the keenest competitors of the Irish agriculturalists and flax-growers in the English market are the Belgians. If Irishmen are to compete with them successfully they must have the latest improvements, not only in machinery, but in institutions, and of these above all others they must be allowed to use the Ordnance Survey, which cost £750,000, and the maps of the Tenement Valuation, which are so carefully revised each year, and to the cost of whose revision the peasant proprietor has to pay his share.

In so strongly advocating the adoption of the Belgian plan, as suggested by Mr. Pim, I think it right to add that I wish to apply to this subject the principles I have early in the year laid down in my suggestions for improving the law of succession. I think this change should not be forced on large proprietors against their will. Just as there are local courts for smaller causes which will not bear the cost of central courts, so there ought to be local transfer of land for interests that will not bear the cost of our present complicated and expensive system.

(2) *The reform of the existing system recommended in the interest of the large proprietors.*

It would occupy too much time on the present occasion to enter into the details of this branch of the question. It is sufficient to know that so far back as 1848 Parliament gave powers to improve the indexes of names and lands. In 1850 it directed the Ordnance Survey to be used, and it condemned memorials. The recently published report of the Treasury Committee upon the Deeds Office, shows that these reforms have not been carried out, either as enacted or in a modified form. These reforms, and the consolidation of offices connected with the transfer of land and the placing of the Registry of Deeds Office under the regulation of the judges, like other legal offices, is recommended. All these reforms are valuable in themselves. The proposal of them, on such authority, indicates that the existing system is a defective and burdensome one for the rich, and if so, how entirely unsuited it must be for the peasant proprietor!

But the inquiries of the Commission of 1857, and of the Land Transfer Commission of 1869, make it impossible that these reforms should be treated as a complete solution of the question; they will improve the registry of deeds system for those who wish to use it, but will not give Ireland the benefit of the annually revised maps and land indexes of the tenement valuation, in which she is in advance of England, neither will they give Ireland the benefit of the latest English legislation on the subject.

(3) *Reforms common to both classes of proprietors.*

There are 632 proprietors, with property of value of £2,000,000 and upwards, who placed themselves on the Record of Title since it was passed in 1865. Those who placed themselves on the record of Title in England since 1862 were allowed to adopt the land transfer system, established there by the Act of 1875. As the Irish Record

of Title of 1865 was copied to a large extent from the English plan of 1862, on any principle of assimilation the above 632 proprietors have a right to the benefit of the latest improvement in legislation on the subject. As in the last year about 42 per cent. of the recorded estates were under £100 in value, and only 12 per cent. were above £10,000, this is a reform in which all classes of proprietors, irrespective of value, are interested.

#### *Summary of Conclusions.*

As it is not proposed to displace the existing system for those who prefer to continue to use it, and as there has been most serious delay in carrying out reforms on this subject, sanctioned or directed by Parliament so far back as 1848 and 1850, it would appear to be good policy to separate the control of the new system proposed for peasant proprietors, from that of the old system retained for those who wish to adopt it. This course was followed when the Encumbered Estates Commission was established in 1849, and the Record of Title established in 1865. Again, as professional opinion is so divided as to the new system, and as the use of maps has been so little appreciated or understood, it would appear to be wise to combine with the judicial element, for the control of the new system, some representative of the Ordnance Survey or tenement valuation, and also (if bank managers be made the registrars, as proposed) some bank director to represent the bank—knowledge requisite for the complete success of the system.

What I propose, then, is :

1. That there should be, for those who chose to use it, a local registry of land in poor-law unions, based, as in Belgium, on the map used for taxation purposes. That the bank manager of the bank which was treasurer of the union should be the local registrar.
2. That the Land Transfer Act of 1875 should be substituted for the Record of Titles Act in Ireland, as has been done in England.
3. That the Registry of Deeds should be preserved for those who wish to use it, but the making of rules as to it should, as recommended by the Treasury Committee, be handed over to the judges, so as to be under the same control as the other offices of the law courts, which the Treasury Committee recommend should be consolidated with it.

If the reform were carried out in this way, the new and the old would not be mixed together. The new plan would be carried out in a way to please the peasant proprietors and small leaseholders, and would be entrusted to officials familiar with the reform proposed to be brought into play.

The Registry of Deeds would be reformed by the judges in a way to please the large proprietors and the legal profession. Neither system would stand in the way of the other. There would be a wholesome rivalry as to which would best accommodate the class of the public specially interested in each case.

Large proprietors would not be disturbed in their usual arrangements for the sake of carrying out what was essential to small pro-

prietors. On the other hand the cheap, prompt, and ready mode of transferring property locally, which is essential for small proprietors, now that Parliament has created some thousands of them, would not be forced upon large proprietors and the legal profession against their wish.

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IV.—*Remarks of G. Shaw Lefevre, M.P., and Right Hon. Hugh Law, M.P., on preceding Papers.*

G. SHAW LEFEVRE, M.P., who was received with applause, said he felt very much pleasure at being called on to say a few words on the very able and interesting papers they had just heard read. He felt that he owed that honour to two reasons—first, that he had recently been elected President of the Statistical Society of London, which was engaged, as they were, in investigating the condition and progress of their own and other countries, and in part also to the fact already alluded to by the chairman—that he had ventured last session, as an humble member for an English borough, to handle a purely Irish question, and move for a committee to inquire into the cause of the comparative failure of what were happily called the Bright clauses of the Land Act, and also to report whether any further measures could be taken to facilitate the acquisition of their holdings by the tenant farmers of Ireland. He was glad to say that this proposal had received the most cordial support from all quarters (hear, hear). The Government most readily accepted the proposal for a committee, and the members of that committee included such men as Mr. Bright, Mr. Butt, Captain Nolan, Mr. Law, Mr. Fay, and many other members on one side, and Mr. Plunket, Mr. Verner, Sir W. Bartelott, Mr. Bruen, Mr. Wilson, and others on the other side; and he might take the opportunity of saying that he had received from all quarters the most gratifying support. Further he had every reason to hope that the subject would not run the danger of being split on that most dangerous rock for Irish questions—namely, party politics (applause). For his own part he could only say he had no party object whatever in forwarding this question (hear, hear). He had for a long time past given very full attention to the subject, even more from an English than from an Irish point of view.

He had never been able to subscribe to the doctrine which he heard promulgated in many quarters, that land must, of necessity, in a rich country, be the luxury only for the rich; and still less could he subscribe to that doctrine in a poorer country like Ireland.

He had always believed in the necessity for there being a numerous and a varied proprietary of all classes, and that the economic political and social condition of the country would be greatly enhanced by such a state of things. When they looked at the number of proprietors in this country, as evidenced by the recent Doomsday Book, and compared it with the number in any other country in Europe as well as in the New World, they could not be but greatly startled at the great disproportion. Whether they took the rich countries of