
[Read, Tuesday, 2nd December, 1884.]

Before entering on the subject of my address to-night, I feel that I must thank you very heartily for the great honour you have conferred upon me in placing me in the position of president of your society. When I look over the list of eminent men who have filled this office since the commencement of your society in 1847, I confess that I enter on my duties to-night with a feeling of great diffidence. And this feeling is not lessened by the consideration that in some respects my opinions may not be in accordance with those of many of the members of this society.

In former times the principle of laissez-faire was almost unknown. It was thought reasonable to make laws regulating the price of bread—the rate at which money might be lent; even the dress which people might wear, and their religious opinions, were the subject of legal enactments. Speaking generally, these laws, although purporting to be for the public benefit, were at first made chiefly in the supposed interest of the crown, then in that of the aristocracy or wealthier classes; until at length thinkers like Adam Smith arose who pointed out the folly and injustice of such laws, and the advantages of freedom, and by slow degrees persuaded men that laws of the kind I have mentioned above, made nominally for the benefit of mankind, were in reality either simply injurious, or made in the interests of a class and not in those of the nation at large. The result of this teaching was shown in the repeal of the corn laws, the usury laws, and many other similar enactments, which restricted the freedom of men in their dealings with their own countrymen as well as with foreign nations. In fact free trade (which was the application of the principles of laissez-faire in one branch of human affairs) triumphed, and the great majority of thinking men now admit that its
triumph has been advantageous to the country. Along with these changes came great political reforms, the effect of which was to transfer political power, first from the hands of the sovereign, and then of the aristocracy, to the people at large; and as when power was vested in the aristocracy we find that there was a tendency to legislate in favour of that class, so now one may anticipate a tendency to legislate in favour of the class in which political power is now or will very shortly be vested, and it will be the duty of political economists to point out the folly and injustice of class legislation in the supposed interest of the multitude, just as they did in the case of the aristocracy.

Already our statute book gives signs of this tendency. Out of many examples I might give, I shall take that of education. In former times education was supplied by the clergy; then kings and nobles founded universities and colleges; but these were for the benefit chiefly of the rich, and except in rare instances the mass of the people got little or no advantage from them, although they were largely endowed with funds which can hardly be looked on as other than public property; and the education of the poor was either totally neglected or left to the exertions of private benevolence. Then came the reaction. First the state made small grants in aid of schools established by individual exertion, then it created an education department, and in a great measure took into its own hands the education of the people, at a small fixed charge; then it made education compulsory; and already a cabinet minister proposes that it shall be free—that is, that the education of the poor shall be paid for, not by themselves, but by the tax-payers at large; and there is even a small party who propose that the children should not only be taught free, but fed during school hours at the public expense—and that this is in some sort a necessary sequence from compulsory attendance at school, is shown by the medical reports lately issued on the subject of over-pressure in board schools.

Here we observe a great swing of the pendulum from one extreme to the other, and we see clearly the tendency to curtail the liberties of men in the supposed interests of a particular class. No one values national education more highly than I do; but even its great benefits may be purchased at too high a price. Compulsory education by the state has a tendency to diminish the self-reliance and independence of the masses, and to remove some of the prudential restraints on the increase of the population, and even (as the medical testimony shows) to produce direct evils to those whose object it is to benefit. All legislation in this direction should be jealously watched, as it must, if followed to its logical consequences, be injurious not only to the energy but to the prudence of men.

I might give many cases of the same kind, such as the question of state interference in regard to the dwellings of the poor, contagious diseases, the liquor traffic, etc.

While we cannot but sympathise with the objects of those who call for legislation on these and similar matters, we should not forget that the tendency of such legislation must be to lessen individual exertion, and to interfere with individual liberty. It also has a tendency, I think, to widen the space which separates the rich and the
poor, and to weaken the ties which hold society together. While the poor are in the habit of receiving help from their more prosperous neighbours as a matter of kindly sympathy, there exists a tie between the different classes of society which will not exist when the help is supplied by the state. Did anyone ever hear of a pauper feeling or expressing any gratitude for relief in the workhouse? He looks on it as his right, and complains that he is not treated with sufficient liberality; but of gratitude to the better portion of the community, who are paying for his support, he has none—and thus the poor-law has a tendency to widen the breach which separates the rich from the poor.

Now I think the feeling of this society has been for a considerable time running counter to the principle of laissez-faire; and it is on this that I fear my opinions may not be acceptable to some of the most respected of my fellow members. It is a notable fact that the works of Herbert Spencer, the great apostle of laissez-faire, are more read and thought of in America than here; and it seems to show that the necessity for such teaching is most felt where the democracy is strongest. Societies such as ours could not be more usefully employed than in pointing out the economic errors into which a democracy is likely to fall, as experience shows that absolute governments and democracies have both a tendency to interfere with individual liberty of thought and action. While I heartily approve of the objects with which they were passed, I confess that I look with great jealousy on such laws as those regulating the hours of labour, on the Contagious Diseases Acts, and the proposed legislation on the liquor traffic, and I fear that the evils remedied by such laws will be less than those which they will eventually create.

Of this kind of legislation the most recent and perhaps the most striking example is the Irish Land Act of 1881, by which freedom of contract with regard to land is taken away, and men are compelled to receive and pay, not that which they have contracted for but a sum fixed by a court of law. It would not be proper in this place and at the present time to discuss the merits of this legislation, nor do I think any useful purpose would be gained by doing so, as the minister who introduced the measure in his speech on that occasion relegated political economy to Saturn and the Moon, which was of course tantamount to an admission that the Act could not be defended on economic grounds. It will, however, be legitimate and perhaps useful to consider the probable effect of some proposed legislation on the subject of Irish land.

A Bill was introduced last session for the purpose of enabling the occupying tenants to borrow from the state the entire purchase money of their farms. This measure is in no sense a party measure. Its principle (for I am not dealing with details), is approved alike by the government, the landowners, and the representatives of the popular party in Ireland. The government hope that it will quiet the land agitation; the landlords, that it will enable them to rescue something from the wreck of their properties; and the leaders of the popular party, that it will enable the tenants to become owners of their farms in fee and eliminate the landlord class altogether. One thing
is clear, and that is, that if this measure is to produce any appreciable effect, it will require a very large sum of money to work it. The tenement valuation of Ireland is in round numbers about £13,800,000; but of this about £2,100,000 represents town property, so that the value for our purpose may be set down at something over £11,500,000. Before the Act of 1881, £310,500,000, or twenty-seven years' purchase of the tenement valuation, would have been a moderate price; but let us value the land now at twenty years' purchase of the tenement valuation only, and we get £230,000,000 as its worth. If the whole country is to be dealt with, probably more than £200,000,000 will be required; if one-half, £100,000,000; and one-fourth, £50,000,000; and less than one-fourth would probably not produce any effect. £50,000,000 of money is a large sum; but to produce any marked effect it must be got, and got pretty quickly, otherwise the object in view (of quickly quieting the country) will not be secured. Now it is said that government can easily get this money on the credit of the state, without any expense to the taxpayer; it is merely endorsing a friend's bill, which he will meet when it comes to maturity. But in human affairs the friend sometimes neglects to take up the bill, and the unhappy surety has to pay himself; and I think that if this measure becomes law, someone besides the tenant purchaser will have occasionally to meet his obligations. It may be the Imperial Treasury, or it may be the county rates; but considerable expense will fall on the whole or some portion of the public. It is a mistake also to think that even on unexceptional security the state can raise large sums of money without affecting the rate of interest. I think, for instance, that if it were proposed to raise a loan of £50,000,000, that the Chancellor of the Exchequer would find it impossible to float a 2½ per cent. loan at £92½; but these are in effect the terms on which he recently proposed to convert the 3 per cent. into a 2½ per cent. stock. If England were able to pay off one-half of her national debt, it is probable that the remaining half could be had for £2 per cent. It is obvious from these considerations, that this Bill proposes to use the national credit, which has a well defined money value, easily applicable (by reducing the interest on the debt) for the benefit of the nation at large, for the exclusive benefit of two classes of the community only, viz.:—the landlords and tenants of Ireland. It is also unfair to other members of the community, other than tenant farmers, who may wish to buy land, to be obliged to compete in the land market with rivals supplied with capital by the state, at a rate much below its market value. It is in fact open to all the objections made to a system of bounties by the state.

But supposing these difficulties are got over and the money procured, will the proposed application of it quiet the country? I think not. I do not think that you can change the nature of a tenant farmer by calling the annual consideration which he pays for the use of his farm “interest,” instead of “rent.” But I do think that by calling him a fee-simple owner, instead of a tenant farmer, you may make him imagine that his position is improved, and that he should spend more and work less. The principle on which Mr. Bright and those who favoured the creation of a peasant proprietary when the Irish Land
Act of 1871 was passed, is entirely overlooked in the proposed legislation. The idea then was by a process of natural selection to pick out the elite of the peasantry, who by greater thrift or skill than their neighbours had acquired some capital, and enable them by a loan of two-thirds of the purchase money (they themselves providing the remaining one-third) to become fee-simple proprietors of their farms. Such men would have from the first many of the feelings of proprietors, and not of mere tenants, and having a substantial stake in the country would strengthen the conservative element, and form a small but powerful and growing party in favour of property and order. It was also probable that having acquired habits of industry and thrift (as evidenced by their having saved money), they would in their improved position pursue a like course of conduct, and not increase their expenditure to the extreme limit of their means. Under this system, about ten per cent. of the land sold in the Landed Estates Court since the passing of the Act of 1871 was bought by the tenants, at prices averaging about thirty years' purchase of the tenement valuation. By the committee which sat in the years 1877 and 1878 on the purchase clauses of the Irish Land Act of 1871, this was considered an insignificant and unsatisfactory result, and was thought to compare unfavourably with the action of the Church Commission, which sold to the occupying tenants of the glebe lands in the same time about sixty-six per cent. of those lands. Under the Church Act, the tenant could borrow three-fourths of the purchase money from the Commission, and the remainder from any one who would lend it to him. The price fixed by the Commission was such that the purchasing tenant could easily raise the remaining one-fourth on the security of his farm, or (as often happened) sell his rights of pre-emption for a considerable sum. The result was that the purchases or apparent purchases by tenants under the Church Act greatly exceeded those in the Landed Estates Court; but at this moment the purchasers under the Church Act are holding meetings and petitioning Parliament to return them part of their purchase money; while I am not aware of a single instance in which the purchasers in the Landed Estates Court have attempted to avoid their contracts. From this I infer that the latter class really became and have acquired the feelings of proprietors, while the former are but little if at all changed from their former condition. They in many cases borrowed the entire purchase money, and have little or no stake in the country—the only difference between their former and present condition being, that the sum they pay for the use of their farms is called interest instead of rent, which is recovered in case of non-payment not by ejectments but by sale. Now I venture to think that if the proposed measure should become law and be largely availed of, that you would have on the first occasion of a bad harvest an agitation springing up for a reduction of interest charged by the state on the loans; and this agitation would be directed not against the landlords but against the state itself. Agitators would describe the interest as a tribute to a foreign oppressor, and so far from things quieting down, the agitation which has already been so successfully carried on would become more active than before.

Then as regards the expectation of the landlords—that the tenants
will buy largely and at fair prices under the proposed system, it is to be remembered that it is generally competition which fixes the price of a commodity. I will not give more than I find necessary to purchase the article I desire, no matter how much money I may have. The tenant is at present in this position—that few are anxious to compete with him for the purchase of land in his hands, and those who are find that they have to compete with a man who can get money on more favourable terms, and that too partly at their expense, and also that they become unpopular for daring to compete with a tenant wishing to purchase his holding. The consequence I think will be, not that the price of land in the hands of tenants will be raised, but rather that it will become unmarketable, except on terms so low as to give the tenant an immediate advantage in respect of the annual payment he has to make, either as rent or interest for the use of his farm. Suppose that a statutory tenant agrees with his landlord to buy his farm at twenty years' purchase. By the proposed law he will derive no immediate advantage by so doing. At the end of thirty-five years, it is true, his liability to pay anything ceases; but he does not look so far ahead. The change to him is from a landlord, whom he can beg from or bully as he finds most convenient, to one who cannot (in his estimation) be so dealt with, and he therefore prefers to remain, as he is hoping by continued agitation to procure a further reduction of the existing rent. If the landlord wishes to sell, he must induce the tenant to buy, by offering his land at less than twenty years' purchase of the judicial rent, so as to give the tenant an immediate advantage in his annual payments. To be obliged to sell on such terms would be ruin to the great bulk of those (viz., the incumbered owners) who are supposed to be benefited by the proposal. Incumbered proprietors will naturally resist a sale except on such terms as will give them some surplus, and those who are incumbered to the full, or nearly the full value of their estates, will not find it to their advantage to sell, except on terms which in the present state of affairs they are not very likely to get. There is no doubt that to an intelligent tenant the terms offered by this Bill are highly advantageous. It is, however, to be remembered that many of the tenants are ignorant and suspicious. The line—

"Timeo Danaos et dona ferentes"

describes with great accuracy their feeling towards the state; and the costs of conveyance and necessity of punctual payment will be serious objections in their minds. They are persuaded that the resources of agitation are not yet exhausted, and that an agitation against the landlords can be conducted more successfully that one against the state. In these circumstances, as I said before, they are not likely to become purchasers except on terms which their landlords cannot voluntarily accept; but if they do they will be in the position of men whose circumstances are suddenly improved, not by their own thrift or industry, but as it were by a kind of chance; and instead of saving they will enlarge their expenditure, as ignorant men do when suddenly enriched, and will be as little prepared to meet a bad year
as on any former occasion; and when that time comes, a fresh and very dangerous agitation may be looked for.

Anyone who has observed what has happened in Ireland since 1870, will see that I have not overstated what is likely to occur. In 1871 the first Land Act was passed, which gave the tenant very important and valuable rights; and for several years up to 1879 the seasons in Ireland were fairly good, and the price of much of the produce of Irish land rose, and yet the farmers were never less prepared to meet a reverse than when the bad season of 1879 came on them. They had not only increased their expenditure to the limit of their improved incomes, but had borrowed largely from banks and local money lenders. This may seem strange, but was really to be expected. The position of a large number of comparatively poor men was suddenly and considerably improved, not by their own exertions, and they naturally proceeded to spend more on themselves and their families. They had, however, no experience to guide them as to how far they could safely go; and, rendered sanguine by their sudden prosperity, they spent more than their position (improved as it was) warranted, and were in consequence obliged to take up money at interest, which their more secure tenure enabled them to raise to some extent, on the security of their farms; and thus when the bad season came in 1879, they were possibly in a worse position than ever before to meet the strain of that year. For these reasons I do not think that the Bill introduced last year, if it becomes law, will fulfil the expectations with which it will have been passed, and I also think that the cause of the depression in the Irish land market is quite misunderstood. It is not the want of capital, for the rate of interest has seldom been lower, and money is daily leaving the country for investment abroad. It is not the low price of farming produce, for the prices of the principal kinds of farm produce are, although momentarily depressed, still much above the average of the last thirty years. It is not that the rentals are exorbitant or fictitious, for lands on which judicial rents have been fixed are as unmarketable as any other lands in the hands of tenants. Want of security is the cause. Until agitation ceases, and contracts are respected—and when not respected, systematically and effectually enforced by law—it is vain to expect a rise in the value of Irish land.

The principal motives which influenced those who desired to create a peasant proprietary were two—viz., to get rid of the difficulty of compensation for improvements, and to increase the conservative element by increasing the number of proprietors, who having something to lose would naturally oppose revolutionary measures which might deprive them of their property. It has been found that great as the evils of the French Revolution were, the sub-division of land which it caused had without doubt produced a very large and conservative body of landowners, who have hitherto successfully resisted the socialistic tendencies of the proletariat, and it was hoped that an increase in the number of landowners in Ireland would have a like result. The first of the objects I have mentioned has been met, and more than met, by the legislation of 1871 and 1881, which not only provides ample compensation for any improve-
ments which the tenant may have effected, or for any loss or inconvenience he may suffer on giving up possession of his farm, but practically gives him fixity of tenure, on terms fixed, not by agreement with his landlord, but by the discretion of a judge. The second will not, I think, be obtained by the proposed legislation. Without a revolution it can only be secured by slow degrees, and the Act of 1871 gave, so far as assistance by the state is concerned, quite as much as could prudently be given.

There are, however, alterations in our land laws of another kind which would slowly but steadily promote the same object. It seems absurd to encourage by state aid the creation of small proprietors, and at the same time to keep on the statute book laws which tend not only to prevent the sub-division but to increase the size of properties. Our laws of primogeniture and entail, and the power of making settlements of land which those laws make possible, have this effect. These laws had their origin in the feudal system and were well suited for feudal times. If as a condition of tenure a landowner engaged to supply a number of men for the service of his sovereign or lord, he must keep his estate together; and it is the obvious interest of the superior lord to frame his grant so as to oblige him to do so. In process of time, however, lawyers and judges (who were often churchmen) found means of evading the law of entail, and when military service ceased to be rendered, a principal object of these laws came to an end. But they were still in a sense necessary for the purpose of maintaining the House of Lords; and it was thought that they might be used successfully for what I may call the purposes of family ambition. A successful and ambitious man, who wished to found or perpetuate a family, left his estate to his first son for life, with remainder to that son's first son in tail. In this state of things the tenant in tail, as soon as he came into possession, could bar the entail and sell the property; but to prevent this it was usual for his father to call on him, on the occasion of his coming of age or marrying, to re-settle the estate, giving him in consideration of his doing so an annuity or other provision to enable him to maintain an independent position until the death of his father. When thus resettled, the estate could not be sold before the coming of age of the great-grandson of the original proprietor; and in this way, and by a new settlement in each generation, a very large part of the surface of the country was in the hands of men who could not deal with it in any way for a term exceeding their own lives. If settlements of land, whether by will or deed, were not permitted, and real estate went on, on intestacy, as personal estate does now, not to a single individual but to the next of kin, the tendency would be to increase largely the number of proprietors. It may be said that if the power of leaving all the estate to a single child is permitted, that it is in vain to alter the law of primogeniture; and that we should follow the French law, which necessitates the distribution of at least a part of every man's estate among all his children. But I do not think such a law would be necessary or useful; none such prevails in America, and yet we find that no attempt is made there to give all to one child for such reasons as induce men to do so here. There is
a disposition in many minds to treat all laws (as well those founded in policy merely as those resting on morality) as rules of right, and men so minded would have a feeling (as our law stands) that in dividing their land they were treating their eldest sons unfairly; whereas if the law was different, they would naturally divide their land as well as their money among all their children. If settlements of land were abolished, titles to land would be greatly simplified, and its transfer by means of a registry or record of title greatly facilitated, and one of the chief difficulties of dealing with land in small parcels removed.

As before stated, our laws of descent and settlement are framed with a view to keep real estate in the hands of a single individual to the exclusion of the other members of his family. These laws do not commend themselves to one's notion of natural right, whose maxim it is that "equality is equity." They were, as has been shown, founded in notions of policy not equity, but while political power was chiefly vested in the landed aristocracy, their injustice to the junior members of those families was not so much felt. Sinecures and public offices were the rewards of political services, and the family of an extensive landowner was on the whole better off by having an influential head, who could by political services purchase lucrative posts for the junior members of his house, than by having their ancestor's property equally divided among them. I have heard that Edmund Burke said that the laws of primogeniture could not permanently be upheld if sinecures were abolished. Reform and the ballot have greatly diminished, and will eventually destroy these privileges of the aristocracy; and it will soon be apparent that younger sons are not only placed in a position of great inferiority, but that they have nothing to hope from the influence of the head of their house. This in time will produce a very dangerous class of agitators against the rights of property, from the ranks of the aristocracy themselves—all the more dangerous because their case will be one of real hardship. The chief subtleties of our laws relating to land, and the difficulty in dealing with the title to it, arise from the law of settlement. Settlers and testators usually provide for those contingencies which they expect or would like to happen; but in the fullness of time it frequently occurs that what they calculated on does not happen, and that which they did not anticipate comes to pass. Then the ingenuity of judges and lawyers is exercised as to what effect is to be given to the language of a document which was framed without the least regard to the existing state of facts, and whose framer, when the document was drawn up, had no intention of expressing any opinion on the manner in which his property should be disposed of, in the events which have actually happened. This principal source of doubt and difficulty would be at once removed by such a change in the law as I have proposed, and the working of a cheap and complete record of titles greatly facilitated.

It will of course never be possible, as some people hope, to make the title to lands as simple and as easily dealt with as money in the funds, or shares in a railway or ship. The difference between land and shares in this respect is admirably stated in the following
"The general public, indeed, have been rather unreasonable, and must learn sooner or later to distinguish between what is possible and what is impossible in facilitating the transfer of land. The ease with which the other great element of English property—consols, stocks, and shares—passes from owner to owner, has led to a demand for similar facilities with regard to land. But land is not stock, and never can be transferred as simply. Consols are creations of the human mind; they are expressions indicating the indebtedness of the government of the country to a number of individuals who have lent it money. The debt thus created may be divided into any number of different parts, and the several portions may be passed from one person to another, according to such regulations and by means of such symbols as may be specified for the purpose by the borrowers whose interest of course, it is to make those regulations and symbols as simple and intelligible as possible. But land is an actual commodity, existing in nature, apart from any artificial arrangements on man's part. It may be actually occupied, it may be cultivated, built upon, and otherwise dealt with, in an almost endless variety of ways. Like stock, it is capable of subdivision; but one bit of land differs infinitely from another, and it is not sufficient to transfer from one person to another a certain quantity of land in the abstract; a particular piece is required, and must be accurately defined, so as to ensure its distinction from any other piece. Moreover, owing to the way in which land may be used, a number of different interests may exist in it. The actual enjoyment of it may be in one person, and the right to revenue from it and to possession under certain circumstances in another. Even the actual enjoyment may be much divided. The minerals under the surface may belong to one owner, the pasturage to another, and the rights of passage over it to a third, or possibly to the whole nation. Again, certain rights over other people's land may be necessary to the enjoyment of one's own. It is of no use having land, if you cannot get to it, and it is often of the greatest importance to have an outlet for the flow of water off one's own land on to the land of another. It follows from these causes, that there must always be many questions incident to the transfer of land which do not arise in the case of stock. Questions of boundaries, of the actual occupation of the land, of the modes of getting to it, and the means of enjoying it, may always have to be looked to, and to ascertain the truth upon such subjects means often a certain amount of expense and delay. No simplification of the machinery of transfer can obviate attention to such matters, and no legislation, therefore, can enable land to be transferred with quite the same ease as consols. The difficulties which can be removed by legislation are those connected with the instruments and technical mode of transfer, and those connected with the number of interests which are allowed, not in the occupation and enjoyment of the land, but in the legal ownership of it."

By taking away the power of settling land, the number of interests to be dealt with would be diminished, and those most difficult to deal with satisfactorily on a record of title would be altogether abolished.

The evils arising from settlements have been long felt, and attempts have been made from time to time to mitigate them. Statutes have been passed giving tenants for life power to make leases for terms exceeding their own lives, and enabling them, with the sanction of the Court of Chancery, in some special cases to sell or exchange their estates. This process was, however, very expensive, and so slow that it was not much used. Within the last three years,
however, very important reforms have been made which cannot fail to produce considerable effect.

By the Settled Land Act of 1882 (45 & 46 Vic. c. 38) a tenant for life may (speaking popularly) act as if he were owner of the fee of all his estate, save the principal mansion house and the demesnes thereof, and other lands usually occupied therewith, subject to this limitation only, that the consideration shall be paid either to the trustees of the settlement, or into court. The trustees are not bound to see that the price is sufficient, nor are they answerable for the re-investment of the purchase money: their duty is simply to keep the money safely while it is in their hands, and see that any land or security authorised by the Act, and on which the tenant for life may direct the money to be re-invested, is conveyed on the trusts of the settlements by which the property sold had theretofore been bound.

By this Act settled land, save demesne land, becomes at all times as marketable, and can be dealt with on the record of title in substantially the same way as if it were fee-simple. A principal objection to the recording of a title to land (viz., that on the occasion of a settlement the record is for practical purposes closed) is thus removed, and the advantages of recording become much greater than before.

Another statute, the 44 & 45 Vic. c. 41, entitled the Conveyancing and Law of Property Act, 1881, makes numerous and important improvements with reference to the law regarding real estate. It is a complete Deeds Clauses Consolidation Act, and gives forms of deeds which are very concise, but which if used will have all the effect of the most lengthy and elaborate instruments. It provides also what may be called statutory conditions of sale, which will be implied in all sales unless the contrary is expressed—thus shortening the conditions heretofore necessary to be prepared and handed to a purchaser, on the occasion of a contract for sale. It provides for the enlargement of long terms into fee-simples, and makes provision for the discharge, as regards a purchaser, of any incumbrance not immediately payable, or in relation to which, if immediately payable, there is any doubt or contest; and generally it simplifies the laws relating to land, and provides for the more economical sale and concise conveyance thereof.

A third Act, the 44 & 45 Vic. c. 44, known as the Solicitors Remuneration Act, 1881, gives power to the Chancellor, with the assistance of some other judges and functionaries, to make a general order as to the remuneration of solicitors, in respect of business connected with sales, leases, purchases, mortgages, settlements, and other matters of conveyancing; and it directs that any general order under this Act may, as regards the mode of remuneration, prescribe that it may be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum; or by a fixed sum for each document prepared or perused, without regard to length; and may, as regards remuneration, regulate the same with reference, among others, to the following considerations:—the skill, labour, and responsibility involved therein on the part of the solicitor, the number and importance of the documents prepared or perused, without regard to length. Formerly a solicitor's remuneration depended much more on the length of the documents he prepared.
than on his real labour or skill, and consequently deeds and other writings relating to land became verbose and lengthy to an astonishing degree. However, it may be confidently anticipated that the effect of the last two statutes I have referred to will be, in time, and I should hope a not very long time, greatly to lessen the length of documents and to cheapen and simplify dealings with land; and the three statutes taken together mark an important epoch in the history of land law reform.

Opinions have long differed as to the best mode of dealing with titles to land. Some prefer the old system of transfer by deed—the validity of the title depending on the legal effect of a long chain of documents and facts, which the purchaser must construe and verify for himself and at his own risk. Others object to this as very expensive and cumbrous, and advocate a system of registry or record of titles approaching in some degree to the system adopted with reference to the public debt or railway shares. It is of course a necessary consequence of this last system, as existing in Ireland, that the person named as owner on the register or record should have an indefeasible title to the land recorded in his name, and every transfer on the registry or record would confer on the transferee a similar title. Speaking generally, lawyers prefer the first, and the general public the second of these systems. Seeing that under the second system all titles to land depend on the honesty, skill, and care of the recording officer, lawyers have not unnaturally hesitated to intrust to a single individual such great interests and such large powers. They also doubt whether in a large class of cases it is economical, because it renders necessary strict proof of each dealing at the time it occurs; whereas the old system required no proof of matters beyond forty years, and acted on recitals as evidence of matters more than twenty years old. The general public is, however, charmed with the simple mode in which the funds and shares are transferred, and does not clearly see the differences which make dealings on a register or record much safer and simpler in the case of the funds or shares than in the case of land, and it instinctively feels that if land is to be frequently transferred, and in small parcels, the old system will not answer. Both systems are, however, in existence in Ireland at the present moment, and each is capable of considerable improvement. Some persons may think that it is useless to talk of improvements in both systems. Make up your mind, such persons may say, as to which is the best, and improve that if you can, but abolish the other. This would be a good argument if public opinion called for an abolition of the system of registry or recording of titles; but that is not at present the direction which opinion is taking. The public, and some legal men in the first rank, are in favour of a registry or record of titles, and therefore that system is not likely to be abolished just yet. But the other is that on which ninety-nine one-hundredth parts of the land of this country is actually held, and it will obviously, even if the new system prove a success, take a long time to transfer titles to it from the existing system of registry by deed. The Incumbered and Landed Estates Courts have been in existence for more than thirty-five years, and have not yet sold more than one sixth or one-seventh of the land.
of Ireland, of which one-sixth or one-seventh not more than one-twentioth or one one-hundred-and-twentieth of the entire country is recorded. From these facts it is plain that a very long time must elapse before all Irish land could be placed on the Record of Titles. In the meantime, which may be a century or more, land will be more or less affected by the old or existing system, and a system which is to last a century is worth improving.

One most important improvement in the registry of deeds would be a complete land index in perfect dictionary order, and this could be very readily constructed from the townland index of the Ordnance Survey of Ireland, if a law were passed that in future all deeds should be registered against the ordnance names of the lands comprised in them. It is right to state that the *Index of Ordnance Townlands* for 1871 (the idea having been suggested by Sir Thomas Larcom) was compiled by Mr. Wilme of the Registrar General's office, for the Census Returns of that year, and the Supplement for 1881 was also compiled by him under directions of the present Registrar General. At present the parties to a deed may describe the lands comprised in it by any names they like. Parcels of land have no legal names, and errors and expense often, and serious wrong sometimes, arise from this. The following is an instance. A person who was owner of a townland, which I will call Blackacre, built on it a hunting lodge which he named Fox Lodge. The Midland Great Western Railway took a part of Blackacre, on which Fox Lodge stood, for the purposes of their railway, and were handed a perfect title to it, which they verified by a search in the Registry of Deeds in the usual way. A short time after they had completed the purchase, taken over possession, and paid their money, a gentleman called to say that he had a judgment mortgage affecting the land sold to the railway, which he would thank the company to pay. The company's agents referred to their title and search, and finding no such judgment mentioned in them declined to pay, and produced their search against Blackacre; but the judgment creditor showed that his judgment was registered against the recently imposed name of Fox Lodge, and made good his claim, which the company had to discharge. It was not possible for the company to have known of the change of name from the title deeds handed to them, as the name Fox Lodge did not exist when the latest deed in the title was executed. In order to avoid this danger, purchasers are obliged to ascertain as well as they can, and at their own risk, all the names by which the land they are dealing with was ever known. In this way there are often five or six, and sometimes many more alias names, against each of which searches have to be made for the purpose of showing title to a single parcel of land. The extra expense and labour arising from this is obvious. All this extra risk, expense, and labour would be avoided, by adopting for the purposes of registry the ordnance names. Parties might also use any other names they liked, but should state in addition or (if omitted in the deed) by endorsement, that the lands sought to be conveyed were known on the ordnance maps by the name of so-and-so, giving the ordnance name, against which alone the deed would be registered. This obvious improvement
could be effected by a short Act, directing that the registry to be
effectual, must be made against the name by which the land, the sub-
ject of the deed to be registered, is known on the ordnance maps of
Ireland. It can I think hardly be doubted that the arts of printing
and photography might also be used to improve the registry, and
many minor alterations could be introduced which would render the
process of registry more simple and effectual, and that of searching
cheaper and more expeditious.

The Record of Titles Act is a modern law, and came into existence
prematurely. As the land laws of this country stood in 1865, when the
Record of Titles Act was passed, it was, I think, well-nigh impossible
that it should succeed. Lord Westbury's English Act for a similar
purpose, by which it was proposed to show on the face of the record
(or register, as it was termed in England) every interest in land known
to our law, proved a complete failure. Lord Cairns more prudently
satisfied himself by dealing with some only of the more important
interests; but even his Act was, at the time it was passed, quite
premature. Law reformers should have followed a different order
in their reforms. They should have simplified the law relating to
real estate, and lessened the number of interests which may exist at
the same time in the same parcel of land, before attempting to con-
struct a record of title. The Settled Land Act of 1882 is a most
important reform in this direction; and so far as the Irish record is
concerned will, I think, operate very beneficially at once. In England,
where it is proposed to record or register titles not parliamentary,
and let them gradually by lapse of time grow into perfect titles,
the advantages of this law will not be fully felt for a considerable
time. The joint effect of the Record of Titles Act and the Settled
Land Act in Ireland, will be to place land almost in the position of
money. Trusts will be enforcible against individuals or the purchase
money of the estate, but will not affect the lands in the hands of a
bona fide purchaser, and all land (save demesne land, as described in
section 15 of the Act) will be at all times a marketable commodity.

The improvement of the Record of Titles Act, therefore, becomes
a matter of some importance. That Act assumes that every matter
which ought to be recorded is recorded as soon as it takes place.
But this is a very erroneous assumption. If a person having money
in the funds or railway shares, dies or sells, his interest is forthwith
transferred in the books of the bank or of the company into the
name of his executor or assignee, because until that is done the exe-
cutor or assignee not only cannot sell, but cannot receive the half-
yearly dividends on the stock or shares. But in the case of recorded
land, although the heir or assignee cannot sell until the land is
transferred on the record into his name, he can receive and give valid
receipts for the rents, and bring effectual actions against tenants and
others in respect of the land. The consequence of this is that the
heir or assignee very frequently neglects to have the record written
up, and several years and several devolutions of titles may and often
do take place before any absolute necessity arises for writing up the
record, and then every step in the title has to be gone through and
strictly proved, and considerable delay and expense is often occasioned
thereby. By section 35 of the Act an heir at law, in case of intestacy, cannot be recorded until six months after he has applied for that purpose, and if, as sometimes happens, a mortgagee of an unrecorded heir comes to record his mortgage, great dissatisfaction is expressed at the working of the system. Of course parties have only themselves to blame for delays or expense arising from such causes as I have mentioned; but still the system suffers discredit, and it would I think be an improvement if the law were altered so that no proceeding in respect of recorded land could be taken, or valid receipts given, save by the owner actually named on the record; and if an heir might be recorded as owner at the end of six months from the death of his ancestor, provided he was in actual possession or had received a gale of rent. Other modes of inducing parties to record the several dealings with recorded land as they occur might also be adopted—such as charging increased fees if the recording of any necessary matter was delayed beyond a certain time. It is not generally known that the effect of the Record of Titles Act is, as regards recorded land, to repeal the Statute of Limitations. A squatter gets possession of a small part of the fee-simple estate of a recorded owner, and remains in possession for twelve years, without any acknowledgment of the owner's title by payment of rent or otherwise, and thereby becomes absolute owner of the lands, so that the recorded owner could not evict him; but if at any time the recorded owner transfers the estate on the record to a purchaser for value, that purchaser can enter and evict the squatter, although the person from whom he bought could not have done so. It may perhaps be said that the Statute of Limitations is an immoral law founded not in natural right but in policy; but it is certainly, to say the least, very inconvenient to have such a law applicable to some cases and not to others of a like kind; and it is almost certain eventually to lead to violence. To avoid this, I think that on each occasion of an actual sale, a notice of the intended transfer on the record should be posted in some conspicuous places on and near the lands, stating the fact of the proposed transfer, and that unless objected to within a short day, to be named in the notice, the transfer would be entered on the record, and would bar all claims under the Statute of Limitations; and proof of this notice having been posted and of no objection having been filed should be given before the completion of a transfer on the record. In case of an objection being made, the court should rule it, and the officers in making the transfer have regard to such rule. At present the transfer of an estate on the record is effected by the officer alone. The deed or other instrument executed by the owners is only his authority for the transfer, which the officer himself makes and signs on the record. I think it would be a great improvement if the parties themselves or their attorneys (that is, persons specially authorised by a power of attorney) executed the transfer on the record, which should be countersigned by the officer. This would be in close analogy to the transfer of stock, and would render fraud and error much more difficult. It would also save the cost of a deed on each occasion of a transfer. I also think that the time has come when parliament should determine whether or not the Irish Record of Titles should
be continued. If it should, I think the recording of all titles granted by the land judges should be made compulsory.

In the proposals I have made, my object has been to make the transfer of land either in large or small quantities as simple and cheap as possible, and to abolish such interests as tie up property and render it unmarketable. If this were done, there would still be properties of all sizes in the country, and I am convinced that a mixture of large, small, and middle-sized estates, such as may suit the various wants of the different classes of society, will be found most advantageous alike to individuals and to the entire community.

Since this paper was written, our society has lost one of its oldest and most respected members. I allude of course to the late Judge Longfield, whose loss will be felt not only in the society, but by every section of his countrymen. An eminent judge, a learned scholar, and a profound political teacher, he, through his whole life, placed his great talents at the service of his country. The law in his hands did not over-ride but was made to subserve justice, and when he found it defective or unsuited to the altered state of the country, he never failed to point out the defects and suggest a remedy. If his advice had been attended to, many of the evils from which we are suffering at this moment would have been averted. His lectures as Whately Professor of Political Economy, and the addresses and papers he read before this society, show how completely he had mastered economic and social science, and the numerous commissions and boards on which he served, how willing he was to labour for the public good. During his later years he devoted much of his time to the affairs of the Disestablished Church, of which he was a member, and to which he contributed during his lifetime a sum exceeding £34,000. By those who knew him in private life, he will ever be remembered as a kind and generous master, a most delightful companion, whose conversation was alike instructive and captivating, and a true friend, whose advice, sympathy, and purse, were ever at the service of those who enjoyed the privilege of his friendship.


[Read, Tuesday, 16th December, 1884.]

The demand for legislation to facilitate the lending of public money on small plots of land in Ireland—a demand which is beginning to be made for England also—and the repeated failures to give effect to this demand in Ireland, may make a description of the constitution and operations of a continental Land Credit Bank of some interest.

Mr. H. D. MacLeod, in his Lectures on Credit and Banking, says:—

"Many banks in central Europe have been founded for the purpose of making advances to cultivate land, and a very large portion of the advance in agriculture during the last one hundred and thirty years has been due to them."