

intestacy; and amongst the Instructions to Depositors should be one giving advice as to the drawing up of wills and obtaining probate.

The difficulties and annoyances I have pointed out in procuring probate in small cases may be considered but a trifling grievance, not worth attention at present in the face of questions of all-absorbing importance; but it is none the less a grievance affecting a considerable number of the representatives of 35,000 persons who are estimated to die each year under circumstances in which they have made or might make wills. Few grievances have been more carefully considered and had such thoughtful and practical remedies proposed for them as those contained in Mr. Smith's paper, which I have quoted. Grievances of this kind, which I can truly describe as serious and irritating, when they affect thousands of people, every day they continue unredressed, after an adequate remedy has been proposed by a competent authority, go to swell the current of irritation against the institutions of the country which it is desirable by all means to allay.

XIII.—*On the Cost and Delay in Obtaining Loans on Land and the high rate of Interest charged to Tenants for Loans.* By W. Neilson Hancock, LL.D. Q.C.

[Read, 21st December, 1880.]

THE failure of the potato crop in Ireland, in 1845, which led to Sir Robert Peel's cabinet adopting and carrying Free Trade, was followed by the still more extensive failure in 1846. This brought on a paralysis of credit, and so directed attention to the peculiar inconvenience of our laws with regard to loans on landed security—the delay in making out title.

When a crisis renders a commodity temporarily unsaleable, or saleable only at a great sacrifice, the laws affecting the borrowing of money become of great importance. Thus, in 1846, to meet the sudden calamity, immediate loans were required. Delay was fatal to the owner, who had gone into his usual expenditure, and not anticipating the reduction which became inevitable. Delay was equally fatal to the tenant, who had to meet part of the loss out of his investments of the savings of good years in improvements. He was offered reduction if rent were paid before a certain day, or could only escape law proceedings by like prompt payment.

From these causes the subject received an extraordinary amount of study and attention, which I observe it has not yet received from the public at the present time, and I will quote some of the authorities which I brought before this Society in 1848, just after the events happened.

The first authority is the Report of the Select Committee of the House of Lords on the Burdens of Land, made in 1846. The Committee was described by Mr. Stewart, one of the editors of an edition of *Blackstone's Commentaries*. He says:—

"The Committee was composed of the most eminent men of all parties in the state—noblemen of vast landed possessions; the law being represented by the then Lord Chancellor Cottenham, and ex-Chancellor Lord Brougham, and also by lawyers of both branches of the profession, who were examined by the Committee. There was this further remarkable circumstance attending this document—that, differing on all other subjects, this Committee unanimously agreed as to one; and mark the strong language in which this unanimity is conveyed."

The Committee of the House of Lords

"Complained that the transfer of real property is subjected by law to difficulties, expense, and irregularities; that the Committee are convinced that the marketable value of real property is seriously diminished by the tedious expensive process attending its transfer. *It is a work of time to raise money on landed security, and the law expenses incident to the transaction are a considerable addition to the sum borrowed.*"

The Committee further state that—

"*They are anxious to impress on the House the necessity of a thorough revision of the whole subject of conveyances, and the disuse of the present prolix, expensive, and vexatious system.*"

Amongst the witnesses examined before the Lords' Committee was the celebrated Mr. Senior, the first Professor of Political Economy in the University of Oxford, and whose intimate connection with the late Marquis of Lansdowne, and late Earl of Rosse, appear, from his published conversations on Irish affairs. He says:—

"He is aware that the system of conveyancing imposes great difficulties, great expense, great delay, upon the transfer of land."

This is as true of borrowing any considerable sum as of actual sale. Again, he says:—

"There is scarcely a title that is marketable"—[in the legal sense of that term, meaning a title without a flaw]—"there is scarcely any title which is not subject to some legal doubt. 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 forty years. I believe that in almost every country but this the transfer of property is effected in the books of a notary, or a registrar, or some public officer, and that you require only the title of the person who sells. In fact land in almost every country but this is transferred in the same manner in which stock is transferred. You look to the last purchaser only."

To show that Mr. Senior's views were applicable to Ireland, I quoted an Irish authority, which I will now repeat. Mr. Jonathan Pim, in his very able work on *The Condition and Prospects of Ireland*, stated that—

"The various information which had come before him, as one of the Secretaries of the Central Relief Association, had greatly strengthened the conviction, previously entertained, that the circumstances under which landed property had been placed had, *more than any other cause*, contributed to the poverty of the people, and had greatly increased the effects of the recent calamity."

Amongst the reforms which Mr. Pim urged were "those for giving security and simplicity of title and to facilitate and cheapen transfer."

Now upwards of thirty years have elapsed since the report of the Lords' Committee was made, since Mr. Senior's evidence was given, and Mr. Pim's *Condition and Prospects of Ireland* published, and yet the evils pointed out in it remain substantially unredressed. In all moral teaching on savings, we are told one great object is to have savings against a rainy day, but the large landowner, and the tenant who has invested in improvements, in purchasing the improvements of preceding tenants, or in tenant-right, his savings in good years, and the small proprietor who has invested his savings in buying his holding under the Church and Land Acts, are all embarrassed in using their saved property in the present crisis, which is the result of an accumulation of many rainy days, by a system of borrowing money on land, which was thirty-four years ago pronounced by a influential Committee of the House of Lords, as "prolix, expensive, and vexatious."

Cognate Reforms that have been carried since 1846—Post Office Savings Banks.

Whilst the borrowing of money on land has remained so long in this sad state, other collateral reforms on cognate subjects have, in the meantime, been carried to wonderful perfection.

Two years after the report of the Lords' Committee on the burdens on land, a calamity overtook the poor in Ireland in the failure of the Cuffe-street Savings Bank, the depositors in which got 10s. in the £1 from the general taxes, and in the failure of the Killarney and Tralee Savings Banks, the depositors in which had to bear an almost total loss of their savings. The subject was brought before this Society, and one of the remedies proposed was complete State security by means of the Post Office. Mr. Gladstone carried that reform in 1861 as Chancellor of the Exchequer to Lord Palmerston's Government, and Professor Fawcett, as Postmaster-General to Mr. Gladstone's Government, has carried the further reform of Penny Savings Banks, with this wonderful result—that a child putting a penny stamp on a piece of paper which he gets for nothing, has security of the United Kingdom for repayment.

Now, why should the farmers be tempted to lend their savings to the State at $2\frac{1}{2}$ per cent. by such a wonderful system, and be deterred from investing their savings in improvement of land by a prolix, expensive, and vexatious system of using their investments on an emergency. If it is worth while for leading statesmen to devise a system for securing £1,000,000 of savings in Post Office Savings Banks, is it not well worth their while to study how to extend that system to tenants' savings invested in land, to the extent of some £70,000,000.

Creation of Railway Debenture Stock.

It may be said it is easy to apply it to State loans and State deposits, but it is impossible to apply it to land. But the lending of money on part of the land of Ireland has been wonderfully simplified in the last thirty-four years.

Since the Lords' Report of 1846, the largest expenditure of capital

on land in Ireland has been on the portion occupied by railways. Much of this was made with borrowed money. At first the arrangements for borrowing were expensive and inconvenient, and the railway companies had to seek government loans, but they have now adopted the English system of railway debenture stock, by which loans on land are divided into any sum, large or small, to suit the lender, are all registered in the railway company's office, and easily transferred; and so the railway debenture charges on land, are exempt from the prolix, expensive, and vexatious system condemned by the House of Lords in 1846; and what is the result? Railway companies can now borrow at less than 4 per cent.

Register of Property in Ships.

It may be said that this system can be applied to large undertakings like railway companies, but it could not be applied to distinct individual holdings like estates or farms.

But eight years after the Report of the Committee of the House of Lords as to land, the system of mortgaging ships was brought by the Merchant Shipping Act of 1854 to the perfect condition it has now been in for twenty-six years, the whole matter being managed by the Custom House officials at each port, without expense, or taxation, or trouble, so as to show at a glance the exact state of the property in the shares of any ship, and the exact proportion of the charges upon it, and so as to enable any emergency to be met by an instant loan. By using the proper papers this power can be exercised as easily in any part of the world as in the port where the ship is registered.

Application of the Ships' Register Principle to Land.

This ships' register principle is so perfect, that it has been taken as the model of the land transfer system prepared by Lord Selborne, and adopted by Lord Cairns for England and Wales, but not yet extended to Ireland.

Why have thirty-four years been allowed to elapse in dealing with the prolix, expensive, and vexatious grievances pointed out by the Lords' Committee, in 1846?

The difficulty in carrying into effect in Ireland the wisest law reforms, is declared in a remarkable passage of the introduction of Earl Russell to his speeches and despatches, describing the first and second Incumbered Estates Act.

"The proceeding was commenced in 1848. . . . A Bill was introduced. . . . Sir John Romilly, who had been recently appointed Solicitor-General, framed, in conjunction with Mr. Walter Coulson, a series of clauses which completely altered the character of the Bill, and tended to make it far more effective. But parliament so modified the clauses, as to preserve to the first incumbrancer a power to nullify the whole Bill. This Act passed in August, 1848. It is the 11 & 12 Vic. c. 48, and is entitled 'an Act to Facilitate the Sale of Encumbered Estates in Ireland.'

"When the Session was over," Earl Russell adds, "being very anxious on the subject, I went over to Ireland chiefly for the purpose of inquiring into the probable operation of this Act. Lord Clarendon, who was then Lord Lieutenant, requested the Chancellor of Ireland [Sir Maziere Brady] to

come to the Viceregal Lodge to confer with me. He told me *that the Act would probably be evaded, and I gathered from him that in his opinion it would be a dead letter.*

"When I returned to England, I sent for Sir John Romilly, and instructed him to prepare a new Incumbered Estates Bill for Ireland. I gave him full liberty to prepare it as he thought desirable, both as to the scheme to be adopted, and as to the provisions to be introduced for working it, permitting, at his request, *that the working of the Act should be confided to a new court to be constituted for that purpose.* When Sir John Romilly introduced the Bill in the House of Commons, he was complimented highly by Sir Robert Peel, who said he was not one of these lawyers who took away the key of knowledge, and prevented others from entering in."

Earl Russell concludes thus:—

"The authorship of so large and useful a measure has been attributed by many to Sir Robert Peel, and by Lord St. Leonards to himself, but to the decision of the Government, over-ruling technical views, . . . and to the constructive skill of Lord Romilly and Mr. Coulson, this enactment must finally be attributed."

This simple story indicates the difference between the branches of public business in which reforms are carried out, and those in which they are not. The Post Office is since Sir Rowland Hill's times, one of the most completely organized departments in the public service. The ships' register and ships' mortgages, were organised by the Board of Trade. In the law there is no single organization, no legal administrative department, or, as the French call it, Minister of Justice. Earl Russell, who had this defect in our administrative system so plainly before him in 1849, supported the proposition for a Minister of Justice in 1857, when an address to the Crown for this reform was carried by a large majority of the House of Commons. This was a proposition which had been urged by Lord Brougham and Lord Langdale, and supported by Sir Robert Peel.

In the language of one of its advocates, "There never could be any real law reform without a separate department of public justice."

To the want of a permanent department of a Ministry of Justice must be ascribed the fact that the principle of using the Ordnance Survey, which cost so much, as the basis of a cheap system of charging and transferring land, has been allowed to remain in abeyance thirty years—though Parliament charged a department of the State, overwhelmed with other business, with carrying out the principle in Lord Romilly's Map Registration Act of 1850.

To the want of a Ministry of Justice may be ascribed the failure of Lord Cairns' Land Transfer Act of 1875 for England, the neglect to carry out the recommendation of the Royal Commission of 1826 for having the Scotch reform of the office of sub-sheriff extended to Ireland, and the neglect of providing cheap machinery for proving wills of the poor—a want which was noticed fifty years ago by the Select Committee of the House of Commons on the Poor.

High Rate of Interest charged on Loans to Tenants.

I have been told of interest reaching the high figure of 25 per cent. on farms with tenant-right recognised. Now, the cause of

this high rate of interest was pointed out so far back as 1873, by Mr. Howe, sub-agent to the Marquis of Downshire, in a speech to the County of Down Constitutional Association. He showed that the present system gives priority to the creditor who adopted the most expensive proceedings. I brought this statement of Mr. Howe's before the Society at the time. Now, had his warning been attended to, and the necessary reforms adopted to enable tenant-right to be cheaply and locally registered, like property in ships, with the priority of family or creditors' claims as cheaply and as certainly set out, the family claims, including the ancient solace to an outgoing tenant, then we would have had no 25 per cent. interest in the present crisis.

Instead of the tenants, in tenant-right districts getting the benefit of the latest improvements in English jurisprudence—the ships' register—which an English commission at the time recommended to be applied to land, they have been saddled for the first time with a considerable part of the prolix, expensive, and vexatious system of conveyancing, applicable to freehold property, which the Select Committee of the House of Lords had condemned in 1846.

Conclusion.

I venture to notice these matters, which lie entirely within the domain of economic science and jurisprudence, because I have seen it stated on scientific authority that free transfer of land has caused some of the present difficulties. I believe exactly the reverse—that the high rate of interest on tenants' loans, and the cost and delay in landlords' loans, arises from our not having followed the advice of Mr. Senior and Mr. Pim, given more than thirty years ago, and from our having neglected the complaints of the Select Committee of the House of Lords of 1846, as to burdens on land.

Hence it is a matter of time and cost to know who is owner of a piece of land, and who can make a valid contract respecting it; for we have not adopted the Scotch principle, five hundred years old, of a lease taking priority of a landlord's incumbrance. We have legalized tenant-right; but have devised no means of enabling those who have invested their savings from good years in it, to use them in a bad year, without the burden of a high rate of interest.

We have cast the same burden on the small proprietors, created under the Church and Land Acts, and so have marred the contentment their creation was intended to produce.

When the reform I venture to recommend rests on the authority of the great Sir Robert Peel, Earl Russell, Lord Brougham, Lord Langdale, and Lord Romilly—when the object of it is to carry out the advice of Mr. Senior and Mr. Pim, and redress grievances so strongly condemned by a Committee of the House of Lords, so far back as 1846—the proposal creates no difficulty. If adopted, it would benefit small proprietors, large proprietors, and tenants alike; it would reduce the cost, delay, and interest of loans on land; it would be a useful adjunct to any plan of sale or purchase; whilst it does not touch the landlord and tenant question, which has become too much a subject of direct politics for present discussion in this Society:

it would lay a foundation for mitigating the struggle of classes by diminishing the pressure of costs, taxes, and interest upon each, by the simple process of adopting, in a matter pure economic science and law reform, the advice of some of the greatest economists and jurists of the present century.

Let those who think contentment is a matter of race or religion, and not of modern laws and institutions, study the system of local justice for the affairs of the humble suitors as provided in the Scotch courts; the Scotch Poor-law with its clerical guardians, its out-door relief to women and children, its right of judicial appeal to the humblest poor person against refusal of relief; the Scotch system of compulsory education in the vast majority of cases on the basis of religious education taught by the school-master; the Scotch law giving precedence to the contract of industry above the contract of extravagance; and the Scotch law for encouraging improvements, a law which preceded ours by more than a century. Then let him visit Braemar, as I did this year, so close to Balmoral, the highland residence of her Majesty, and see there the handsome Roman Catholic church, not for the tourists, but for the peasantry. He will learn that the Queen has been residing for years close to many of her Celtic Roman Catholic subjects, who were a century and a-half ago in rebellion against her ancestors.

One of these Scotch institutions—more perfect jurisdiction of local courts—both the papers to-night advise to be extended to Ireland. Why should there be any delay in extending at once to Ireland all that is best in Scotch and English institutions? Such assimilation would soften the differences of classes, prevent Irish affairs from being misunderstood in England and Scotland, and so facilitate the solution of the direct landlord and tenant question which I have felt myself precluded from discussing at the present time in this Society.

XIV—*Proceedings of the Statistical and Social Inquiry Society of Ireland.*

THIRTY-THIRD SESSION.—SIXTH MEETING.

[Tuesday, 25th May, 1880.]

The Society met at the Leinster Lecture Hall, 35 Molesworth-street, J. K. Ingram, LL.D. F.T.C.D. President, in the chair.

Dr. Hancock read a paper on "The Law Reforms which have been successfully advocated by the Trades Union Congress, and on the further Law Reforms which they now seek."

The ballot having been examined—John W. Jenings, Esq.; John Naish, Esq. Q.C.; Arthur W. Samuels, Esq. B.L.; and Charles Teeling Waters, Esq., were declared duly elected members of the Society.