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I.—*A Plan for extending the Jurisdiction for selling Incumbered Estates to cases where a Receiver has been appointed over a Life Estate.*—
By W. Neilson Hancock, LL.D.

[Read 19th March, 1855.]

GENTLEMEN,

The chief benefit which the Incumbered Estates Act has conferred upon Ireland, has been the substitution of solvent for insolvent proprietors. To appreciate the full extent of this change, we must raise our views above the notion of considering the ownership of land as a mere right for the convenience of the person who happens to possess it. It is in truth a high office, carrying with it great power and influence, and forming the basis of a large part of our arrangements for local government.

This view of a landlord's position assists us in explaining the anarchy and disorganization of Ireland for the past half century. A large part of the governing classes were in a false position. Hence the want of confidence between different classes, hence the attacks on the character of the people, hence the delusive theories to account for the state of the country, and hence the opposition to all changes and improvements.

The operation of the Incumbered Estates Act has not been, as some expected it would be, to transfer the property in land to tenants, and to create a peasant proprietary. It has only introduced a new body of proprietors, more numerous indeed, and not possessed of the nominal position of their predecessors, but more solvent and more ready to discharge the duties incident to property.

The view of the subject which I have been suggesting to your minds, is best illustrated by the cases where properties have been sold that were previously under Receivers of the Court of Chancery. In such cases, the duties incident to property were almost entirely ignored; the land was managed for what could be got out of it, and there was no one to take any part in the local institutions of the country. So seriously did this evil prevail in some districts, that during the famine, the benevolent members of Relief Committees and the public officers engaged in mitigating distress, found their efforts completely paralysed by the total want of any middle or higher classes in the localities to manage the relief operations. The other evils of having property under the management of receivers, are fully detailed in the evidence taken before the receivers' committee of the House of Commons in 1849; and I may quote some of the conclusions of that very influential body, composed as it was of some of the leading statesmen of the day, Sir Robert Peel, Sir James Graham, Sir John Romilly, Mr. Napier, Mr. Bright, &c. Thus they state, "the prominent evils of the present system of management under receivers, appointed at the instance of creditors, are so generally admitted, that the witnesses are unanimous in its condemnation."

Again they report,

"When a creditor originates legal proceedings, and transfers the estate of his debtor to the dominion of a Court of Equity, the relation of landlord and tenant is virtually severed; pecuniary claims, hostile litigation, evasions of liability, and confusion of right generally follow; and the effect thus produced cannot but be prejudicial to the condition of the estate, and the interests of all parties concerned in its prosperity.

"It would therefore appear generally desirable, that in any case in which an estate is brought under the court at the instance of a creditor, the proceedings should be accelerated with all reasonable despatch, and the estate withdrawn as speedily as may be consistent with substantial justice, from a jurisdiction which suspends the performance of some of the most useful duties of property, whilst its rights are prejudicially and expensively asserted.

"In conclusion, your committee wish to express their conviction, that the present management of property under the courts is attended with equal detriment to the agriculture of the country and the condition of the tenants."

Upon the admitted evils of the receivership system was based that provision of the Incumbered Estates Act, which gives jurisdiction to the court, when the estate is under a receiver, although the owner should object on the ground of the amount of the incumbrance affecting the fee not being equal to half the value of the estate.

All the arguments and reasoning founded on the evils of receivership apply with equal force to the case of a receiver over a property where the incumbrances affect only the life estate; and yet this class of cases is exempted from the operation of the act.

The reasons for this exemption are obvious enough. It was justly thought that it would be a serious injury to the parties entitled in remainder, and no benefit to the tenants or the public, to

sell the life estate to a stranger. Again, it was also considered too harsh a measure to convert the estate into money, and to give those in remainder not the family estate, with a position which they might be well qualified to fill, but a mere sum of money.

From some facts that have come under my observation, a plan has suggested itself to my mind, by which the difficulties on which this exemption is founded may be obviated.

The plan which I would venture to propose is as follows:—

Whenever a receiver is appointed over the estate of a tenant for life, the protectorship of the settlement should be transferred to the court having jurisdiction for the sale of incumbered estates.

The court should then proceed at once to value the life estate, and should call upon the tenant in tail, to declare whether he is willing to be made immediate owner in fee, upon the terms of having a charge put on the inheritance equal to the value of the estate. If he should consent, the commissioners should convey the estate to him, with parliamentary title, subject to the charge, and subject to such arrangements for the benefit of other persons entitled under the family settlement, as they, acting as protectors of the settlement, should deem advisable.

If the tenant in tail refuse to enter on possession of the estate, then the commissioners should proceed to sell the estate, and should invest the purchase money; the interest to be applied to the payment of the debts of the tenant for life, and the fund to go to the remainder-man, at the time of his interest arising.

Upon the view that I have been suggesting of the ownership of land being a high office, involving duties and responsibilities, this would be only following the precedent of what happens in more important offices. In recent years, we have seen several cases of abdication amongst European monarchs, when they were unable to cope with the difficulties of their position; and the usual practice has been to call the next heir to the throne. Whilst the plan would thus secure the chief benefit of substituting a solvent for an insolvent proprietor, it would effect this object without doing any violence to feelings of family pride; it would not unnecessarily separate an estate from a title, or from any position of legitimate influence.

At the same time the benefits of parliamentary title would be conferred on the estate, the remainder-man would have a perfect leasing power and complete means of managing the property for the benefit of the community, the example of his predecessor's deposition would enforce the lessons of prudence, and thus would make him a useful member of society.

The creditors would get a sum of money paid to them at once, instead of suffering by the wasteful mismanagement and ruinous expenses of a prolonged receivership.

As to the mode of estimating the value of the life estate, it would only be necessary to calculate the net proceeds of the estate, after deducting the costs of chancery management, and then to value this sum as a life annuity. If the health of the tenant for life should be precarious, so that the remainder-man would think the usual price of the life annuity to be too high, he should have the