

SOME OBSERVATIONS

ON THE

TENANT-RIGHT OF ULSTER:

A PAPER READ BEFORE

THE DUBLIN STATISTICAL SOCIETY:

BY

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DUBLIN:

PUBLISHED FOR THE SOCIETY BY HODGES AND SMITH,  
104, GRAFTON STREET.

1849.

# DUBLIN STATISTICAL SOCIETY.

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*Some Observations on the Tenant Right of Ulster.* By Conway  
E. Dobbs, Jun. Esq. Barrister at Law.

GENTLEMEN,—In calling the attention of this society to a subject so much discussed, as the Tenant Right of Ulster, I wish to do so, principally with reference to that argument that is so commonly put forward, namely, that the comparative peace and prosperity of the province of Ulster, are conclusive proofs of the value of that custom, and should be considered as placing beyond dispute, the merits and the benefits conferred by it.

In maintaining that argument, it has been assumed as a matter of fact, that the custom of Tenant Right is based upon, and the sum paid for it is measured by, the value of those improvements which have been effected by the former occupiers; and undoubtedly, if this were the case, the justice and merits of the system would be beyond dispute. There are few who would hesitate to admit that a system, which secured to the tenant the legitimate fruits of his own industry, or of the industry of those who preceded him in occupation, was founded in justice, and could hardly fail of being productive of general good. When, therefore, the benefits and advantages arising from Tenant Right are doubted and disputed, it must necessarily be on the ground, that the sum paid for Tenant Right is paid not for past improvements, but for something quite extraneous to the existing state of the farm. The principal object, therefore, that I have proposed to myself, is to enquire as a matter of fact, whether the sum paid by the incoming tenant to the outgoing tenant, on a sale of Tenant Right, is measured by the value of the improvements effected by former occupiers, or not.

In considering a subject so entirely practical in its nature, it might appear unnecessary to notice any speculative theory that has been put forward as to the probable origin of the custom; but as its supposed derivation from the Plantation of Ulster has been urged in support of the view which treats the Tenant Right as founded altogether in improvements, I think it desirable to suggest a more probable origin of the custom; an origin, also, which, if correct, would fully explain most of the peculiarities connected with it.

The origin of Tenant Right, it appears to me, may be altogether ascribed to the manner in which the linen manufacture has

been carried on in the province of Ulster. Since the year 1700 the export value of that manufacture has increased from the sum of £153,000, to upwards of four millions. During the whole of the early part of that period, and indeed down to a comparatively recent date, the manufacture was entirely in the hands of the rural population, and had gradually spread over nearly the whole province. Of this the account, published by Mr. A. Young in 1777, affords conclusive evidence. In his journey from Newry to Market Hill, he says, "I am now got into the linen country. All the farms are small, and let to weavers." Again, at Armagh, he says:—"The farms are small; the only object the linen manufacture. This is the case all the way to Newry; also to Monaghan, and towards Lurgan and Dungannon. There are few labourers unconnected with the manufacture." In his journey from Belfast to Antrim, he says:—"The linen manufacture spreads over the whole country, consequently the farms are small, being nothing but patches for the convenience of the weavers." And similar observations are made by him when in Fermanagh and Donegal. The same author, also, in the appendix to his book, observing on the general connexion between flourishing manufactures and flourishing agriculture, and noticing the extraordinary backwardness of Ulster in the latter, observes,—“You there see a whole province peopled by weavers. There, literally speaking, is not a farmer in a hundred miles of the linen country in Ireland: no weaver thinks of supporting himself by the loom; he has always a piece of oats, a patch of flax, and grass and weeds for a cow; thus his time is divided between his farm and his loom.” Now, if we take the above statements, in connexion with the fact stated by the same author, namely, that the wages of these weavers were treble those of husbandry labourers, I apprehend we shall find a state of things existing in Ulster for upwards of one hundred years, that sufficiently accounts for the origin and continuation of what is called Tenant Right. The comparatively high wages, resulting from employment as weavers, accumulated small capitals in the hands of a large body of the population. The possession of small patches of land was of the utmost importance to them; not as farmers, or for agricultural purposes, but, as Mr. Young observes, for the convenience of their trade as weavers. The progressive increase of the manufacture, requiring a corresponding increase in the number of the persons employed, necessarily increased the value of those small patches of land, and thereby extended and perpetuated the system. That this is the true origin of the system is further confirmed by the fact, that those counties in which the linen manufacture was most extensively carried on, are the very same counties in which the Tenant Right has been most firmly established; for we find Mr. Griffith, in his evidence, naming the counties of Down, Armagh, Tyrone, Fermanagh, and Sligo, as the counties in which Tenant Right most prevailed, and Sligo is the only county out of Ulster in which the

linen manufacture has existed to any extent. If this, then, was the true origin of Tenant Right, I think it may safely be asserted that the introduction of Tenant Right was not originally based upon the value of antecedent improvements, but may fairly be ascribed to the factitious value which small holdings had acquired, as useful adjuncts to that which was the main business of the population of Ulster, namely, their trade as weavers.

I shall now proceed to that enquiry which is of much greater importance, namely, whether, at the present day, it is, in point of fact, the existing improvements on the farms, that are the subject of sale, or the consideration in respect of which the incoming tenant pays a sum of money to the outgoing one.

In considering this question, it is necessary, in the first place, to understand distinctly what are those improvements, which, if made by the tenant, ought to be considered as a legitimate subject of sale by him. It appears to me, that those improvements are properly confined to buildings, fences, and drainage. The condition of the soil, consequent on mere ordinary cultivation, ought not to enter into the calculation, and for this obvious reason, that the contract itself, between landlord and tenant, implies a proper agricultural user during the period of occupation. The tenant may so work land, that, in a course of a year or two, the letting value of the land would be greatly depreciated, and, in such a case, the landlord is entitled to recover damages from the tenant for such misuser, and for that reason, in all modern leases in England, covenants are inserted, by which the tenant binds himself to cultivate in a particular manner. This shows that proper cultivation of the land is there considered as part of the consideration to be paid by the tenant for his occupation; and that, so far from the tenant having any claim for compensation on account of his judicious husbandry, it is his neglect that may entitle the landlord to recover damages at his hands. Then again, as to those improvements which are considered permanent improvements, I apprehend, that drainage may be altogether thrown out of consideration, as every one acquainted with Ireland knows, that, hitherto, no improvements in that way have been effected by the holders of the small farms; and they are the class of persons amongst whom the sale of Tenant Right is most prevalent. The permanent improvements, therefore, which would legitimately form the subject of sale by the tenant, are buildings and fences, and it is, therefore, with reference to these that I shall consider the question.

With respect to buildings, one fact is very important. It appears, by the census tables of 1841, that whilst the total number of houses in the province of Ulster amounted to 414,551, of that number 125,898 were of the fourth class, and 179,745 were of the third class. The description of the fourth class, as contained in the same report, is "All mud cabins, having only one room." And the description of the third class, is, "A better description of cottages than the fourth class, still built of mud, but varying from two

to four rooms, and windows." Now, coupling this with the fact, that it is generally the idle and unimproving tenant who sells, and also remembering that the sale generally takes place in respect of small holdings, I do not think a very exalted opinion can fairly be entertained of the value of the buildings on those farms that are the subject of sale; indeed I should suppose that a cabin, that would fall within the third and fourth class, above described, instead of being a building which would render the farm more valuable when returned to the possession of the landlord, would most likely be levelled to the ground by any landlord, who was anxious for the permanent improvement of his property.

But even if we suppose that the buildings and fences erected by the former occupiers, were of such a description as to increase the letting value of the farm, can it for one moment be contended that the sum given for Tenant Right is measured by their value? The value of the Tenant Right, though subject to great variations, is stated by the Commissioners in their report to average from ten to fifteen years' purchase, or half the value of the fee. Now, is it possible to allege with truth that the fences and buildings on the small farms in the north of Ireland, are of such a nature as to warrant that price? Take the case of a farm of ten acres, paying a rent of ten pounds a-year, the sale of the Tenant Right, in such a case, would amount at least to £100; and even supposing that farm to be well fenced, and with a house sufficiently good for a farm of such a size, I should think that an allowance of £25 for the house, and £15 for the value of the fences would, in almost every such case, amply compensate the tenant for his expenditure. In such a case, therefore, the larger part of the £100 would, necessarily, be paid for something quite irrespective of permanent improvements.

Independent, however, of all reasoning on this subject, the evidence taken before the Commissioners shows clearly, that, as a matter of fact, the sum paid for Tenant Right is not at all measured by the value of the improvements made on the farms.

Mr. James Andrews, when asked, whether it would not be desirable to substitute a law giving compensation for improvements, in lieu of the Tenant Right custom, said, "The Tenant Right is more valuable than any compensation for improvements; we have not many sales of farms except by ill-doing tenants, who work the land until they have nearly exhausted it. I have seen parties get a good deal of money by such sales, who would be fairly liable to an action for dilapidations."

Mr. Sharman Crawford says, "By Tenant Right, I understand the selling by the occupier of his interest in the occupation; it sells sometimes for £20 or £30 an acre, set at £1 an acre."

Mr. M'Cartan, a strong supporter of Tenant Right, says, "I have known the price to be more than twenty-five years' purchase. In fact, in buying a lease, they buy the interest in the

lease, and thus buy the Tenant Right. They would say, the lease is worth £100, and the Tenant Right is worth £100, I will give £200."

Rev. Dr. Brown, another ardent friend of Tenant Right, is asked, "Do you consider that Tenant Right can fairly be confined to compensation for improvements?" And his answer was, "It is carried practically much farther, and bears an additional value as a purchase of good will. The general impression in our country is that every man, who holds land or houses, has a certain interest in them, the value of which is regulated by the circumstances of the country."

Messrs. H. and T. Murray, Mr. M'Crea, and Mr. J. Lamb, all farmers, concur in saying, "That Tenant Right has not much reference to the improved state of the farms, and that it is merely the purchase of the possession."

In addition to these testimonies, I would merely add two or three instances stated by gentlemen in their evidence. Mr. J. Vandeleur Stewart, says "That he knew a man give £60 for a farm of four acres, with a very miserable cabin and no lease." Mr. J. Sinclair, "Knew a person give £80 for a farm paying £3 a-year." And Mr. Blacker says, "That on one occasion Lord Downshire showed him a farm which he wished to square, and to run straight mearings. By so doing, he was obliged to take a piece off another farm, and agreed to leave the value of the Tenant Right to arbitration, and the award made was £23 an acre for land paying 27s. an acre." In this last case the payment could not possibly have been attributed to buildings. Several witnesses, in their evidence, also state that, though improvements increased the value of Tenant Right; they did not increase it to the extent of the improvements.

Now, what is the legitimate conclusion to be drawn from all this evidence? The foregoing statements are made by persons in the position of tenants, as well as of landlords; by persons who advocate the continuance of Tenant Right, as well as by those who might be supposed to be adverse to that right; and they are confirmed by the amount actually paid in the various districts to the outgoing tenant. It does, therefore, seem to me impossible to arrive at any other conclusion but this, that though in individual instances the sum paid by the incoming tenant may not greatly exceed the fair value of the improvements made by the outgoing tenant, or those who preceded him in occupation, yet that undoubtedly, in every case a portion, and, in the great majority of cases, by far the largest portion of the sum paid for Tenant Right is paid for the mere right of occupation, or, to use the words of Mr. John Hancock, "It is a sum paid by the incoming to the outgoing tenant, for the peaceable enjoyment of his farm." It is, in fact, a sale of good will, and nothing more.

Nor can it be fairly objected to this statement of the evidence,

that the attention of the witnesses was not called to the consideration of the question, how far it was to be considered as compensation for improvements; for, in several of the extracts above given, the answers were given to questions directly calling attention to that point. In particular I would refer to the evidence of Mr. Andrews, when he says, "That Tenant Right was more valuable than any compensation for improvements." To the same effect is the evidence of the Rev. J. Blakeley, who expressed his decided opinion that it would be most desirable to do away with Tenant Right, and introduce compensation for improvements in lieu of it. And the evidence of Mr. Lowry and Mr. Orr, both farmers in the county of Down, was to the same effect. Now certainly there could be no meaning whatever in these answers, if there was the slightest foundation for the opinion, that the price paid for Tenant Right was based upon, or measured by the increased value given to the farm either by buildings, or other permanent improvements made by preceding occupiers.

Assuming then that I have established the fact, that in practice the price paid for Tenant Right is not measured by the value of existing improvements; I shall now proceed to call your attention to the question, what are the benefits conferred by Tenant Right and to whom is its existence advantageous. It is not disputed that the custom recognizes fully the landlord's right to raise the rent from time to time, if the letting value of land be raised in the market; and that it also recognizes the right of the landlord to control the sale, so far as regards the person who is to be the purchaser. In addition to this the evidence fully shows that, in practice, all the arrears of rent, due by the outgoing tenant, are paid to the landlord out of the sum to be paid by the incoming tenant, and all the agents, who were examined, in their evidence say, they never allowed the landlord to lose anything. Such then being the recognized rights of the landlord, it does seem to me that, in every case in which a sale of Tenant Right takes place, the parties really benefited by the transaction are the landlord and the unimproving tenant; and the parties, on whom it operates as a serious tax, are the improving landlord and the industrious tenant. For take the case of the unimproving landlord. What can he desire that this tenant-right does not give him? The amount of his rent is not affected by the existence of the custom. The change of tenancy is generally in his favour, as it most commonly substitutes, for an ill-doing tenant, a more industrious one; and in every event, the whole amount of the arrears of his rent are secured to him. If, therefore, he be content with the existing state of things, the recognition of Tenant Right relieves him from all anxiety. It is immaterial to him whether his tenant be idle or industrious, whether he be an improving tenant or one deteriorating the farm he occupies; the industry of others will always afford an ample fund for the discharge of his rent. If, on the



other hand, the landlord be not satisfied with the existing state of agriculture; if he conceive that the consolidation of small holdings is an important element in the advancement of the country in agricultural wealth; it is manifest that the existence of Tenant Right, in its present state, creates an insuperable barrier to such improvements, unless he has the means and the inclination to repurchase his estate from the occupiers. If, indeed, the sum paid for Tenant Right was, as is alleged, the measure of the value of those permanent improvements that make the farm more valuable to the landlord, he certainly could not, with justice, complain; but, if it cannot in any instance be so measured, its effects in checking and controlling the exertions of an improving landlord are manifest and apparent.

Then again, as to the tenant, it is the idle and unimproving tenant, who sells, and the benefit resulting to him from the sale cannot be doubted. But where is the advantage to the more industrious tenant who succeeds? To the extent that the sum, he pays, is a payment for good will, and not for permanent improvements, it is, if the fruits of his own industry, virtually lost to him. No doubt, if afterwards obliged or desirous of selling, he may realize again the sum actually paid by him; but it is a realization without interest. And if, as is too often the case, the money paid is not the fruits of his own industry, but has been obtained by loan, he will have to pay interest for that which is producing none to himself; a state of things that could hardly end but in his ruin.

These conclusions appear to me to be fully borne out by the evidence taken before the commissioners. In making extracts of that evidence, I shall not advert to the cases, where witnesses express simply an opinion favourable or unfavourable to the Right without assigning any reason for their opinion; and I shall also, as far as possible, confine myself to extracts from the evidence of those witnesses, whose general opinion was strongly in favour of the Right.

The Rev. J. Brown, D.D., who regretted the efforts to abolish Tenant Right, says, "He was of opinion that the landlords did themselves serious injury by denying it; in every instance he knew of, it had proved beneficial to the landlord to encourage it, because the tenants could not sink into abject poverty, which they do otherwise. Its recognition prevented the country being overstocked with paupers. It contributed to promote the interests of the country, because it allowed a man the means of emigrating when he became unfortunate; but, as to the increase of wealth, of course wealth could not be increased by it." Mr. Bateson says:—"We found that the Tenant Right, in proportion to the smallness of the farm, went on in an increasing ratio, and we determined in all cases to reduce it to five years' purchase. We found the tenants were in the habit of borrowing money to get into possession, though it was, in fact, not worth a fraction of the sum paid, and they came into possession in debt to other persons."

Mr. James Sinclair says:—"It has some advantages, and some disadvantages, one disadvantage is quite plain, that it is frequently sold for a sum of money which is borrowed, and which hangs, as a dead weight, upon the incoming tenant: but that out of the way, I think it is a valuable and useful custom." Mr. Williams, a farmer, says:—"Tenant Right has a good effect; for, when a person is not able to hold the land, it is better to enable him to get some money to emigrate, when he is a hindrance to the landlord, and no good to the estate." Mr. E. Sproule says:—"Its effects are rather beneficial than otherwise to the landlords. It gets up arrears, and he gets a better tenant with some capital, and with fresh spirit. To the tenantry it affords the only security which now exists for remuneration for improvements." Mr. H. L. Prentice says:—"It has its advantages, and its disadvantages; I think it very just to pay a man for his improvements, and to give him something for his Tenant Right. The effect on the incoming tenant is generally very bad; he has frequently to borrow or resort to extraordinary means to raise the purchase-money, and comes in a worse tenant than the one going out: it affords facilities for removing one tenant and putting in another." Mr. R. H. Dolling "Thinks sale of Tenant Right the happiest thing possible: it prevents agrarian outrage; effects a lower rate of rent; whilst it perfectly secures the landlord." Mr. James Andrews "Thinks it could not safely be curtailed: it has both good and bad effects. Being sold at a higher rate by the outgoing tenant, it takes away capital that ought to be left with the incoming tenant; for there is such eagerness to get land, that a man will give all that he has to get land, and leave himself without capital. But, in the state of things in Ireland, with our small farms there is no other means of securing the improvement of the land, and giving confidence to tenants. My opinion is, that unless we could get the Scotch system of competition, which is the true system, we cannot get on with our population without it." Mr. J. Hancock says:—"I consider Tenant Right beneficial to the community; because it establishes security in the possession of land, and leads to the improvement of the estate without any expenditure of capital on the part of the landlord. It likewise affords the best security for his rent, as arrears are always allowed to be deducted out of the amount the occupier receives for Tenant Right. It is very conducive to the peace of the country; for almost every man has a stake in the community, and is, therefore, opposed to agrarian outrage as well as riots."

In addition to these testimonies, other witnesses dwell on its good effects, in procuring for the landlord a better tenant: others dwell on its beneficial effects on the outgoing tenant, and the landlord: and very many witnesses, who approve of the custom, allude to the frequency with which the incoming tenant borrows the money, and is obliged shortly to sell again; one witness, Mr. Wray,

saying, "That he knew one farm, from that cause, change hands three times in six years."\*

Now I cannot but think, that a due attention to the foregoing evidence fully bears out the view that I have already stated, as to the effects of the sale of Tenant Right on the parties concerned in the sale itself. Every witness who mentions its beneficial effects, does so with reference to its effect on the interests of the landlord and of the outgoing tenant, or to the general effects resulting from its existence in preventing agrarian outrage, and to its supposed effects in promoting agricultural improvements. As to its merits in conferring these latter benefits, it does seem to me that there is much misapprehension. That excessive competition for land has not produced the same evil results in the province of Ulster, that it has done in other parts of the country may, no doubt, be attributed to the custom of Tenant Right; and in that respect, the very cause which led to the extreme subdivision of land in that province, namely, the conversion of its population into weavers, has also led to the establishment of that system, which has in some degree alleviated the evils that would otherwise have attended it; but surely that does not prove that Tenant Right, in itself, is advantageous, or has been the cause of the comparative prosperity of Ulster. The application of a remedy for the removal of a disease, and the consequent alleviation of that disease, does not prove that the remedy is, in itself, palatable or desirable. The patient may gladly submit to it, because its rejection may produce worse consequences. And so it is with Tenant Right. All will admit that hardly too high a price can be paid for peace, and the absence of agrarian outrage; but certainly industry would flourish more, if it had to pay no price at all for that which ought to be the ordinary condition of every civilized country.

Then, as to the argument founded on a comparison between the province of Ulster, and the rest of Ireland, and the inference drawn, that the custom of Tenant Right existing in that province is the cause of that difference, it is an argument that appears to me singularly fallacious and utterly unfounded in point of fact. To afford ground for such an argument, it should be shown that the position of Ulster was the same as that of the rest of Ireland in other particulars. But has that been done? In Ulster, for a period of 150 years, there has existed a great and extensive manufacture. Industry has there raised, in a comparatively short period, a small seaport into the position of commercial capital of Ireland. Ulster has also had, during the same period, a resident proprietary who have, in general, shown no disinclination to encourage agricultural industry by the granting of leases; if such

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\* To the same effect is the evidence of Mr. James Walker, a farmer; Mr. Russell, agent to Lord Cunningham; Mr. Posnett, agent to Lord Dunganon; Mr. Orr, and Mr. S. Orr, of Coleraine; Mr. A. Spotswood; Sir J. Stuart; Mr. Lowry.

disinclination did exist, the custom of tenant right, it must at least be admitted, made an abundant provision for the repayment to the tenant of any expenditure in permanent improvements. With all these advantages, is the agricultural condition of Ulster such as, under such circumstances, we might reasonably expect it to be? One fact is sufficient to prove that this is not the case. It is well known that by far the largest portion of the flax consumed in the linen manufacture, is imported from abroad. Now can such another instance be found in the annals of manufacturing industry? A great and progressing manufacture existing for one hundred and fifty years, in a country peculiarly suited for the production of the raw material of that manufacture, and that adjoining country altogether failing in supplying the demand for that raw material. In Belgium, with a limited territory and a crowded population, an extensive linen manufacture is not only fully supplied with the raw material, but we even find that country exporting into these countries 60,000 cwt. of flax.

The comparison should not be between Ulster and the rest of Ireland; where manufacturing industry has had no existence; but it should be between Ulster and some other district with similar advantages. What advantage has Scotland possessed that Ulster did not also enjoy? The opening of the seventeenth century saw them both in much the same position as to manufactures and agriculture. In both, manufacturing industry has since made great and extensive progress. In both, an obscure seaport has risen to great commercial eminence. The agriculture of Scotland is now the foremost in the world. The agriculture of Ulster is only a degree better than that which is the most backward in western Europe.

In making these observations with regard to Tenant Right, I do not wish to be supposed to advocate its abolition, or any interference with it in those districts, where it has been already recognized, and where, by long usage, it has obtained the force of custom. To do so would, even if practicable, be most unjust; for, when a landlord has once sanctioned such payment by an incoming tenant, it would indeed be contrary to every principle of justice for him afterwards to debar that tenant, or his representatives, from the exercise of the same right, when they are to benefit by it, which he had previously permitted, when it operated to their prejudice. This consideration ought to prevent any interference with it, where the right has been once recognized. But when the comparative prosperity of Ulster is ascribed to the existence of that right; and when persons are found to advocate the system as it exists in Ulster as advantageous in itself, and therefore to be extended to other districts, it is clearly of importance to ascertain its real merits.

In the case of landlord and tenant, as well as in all other cases of contract, sound principles teach us the propriety of leaving it to the parties themselves to determine the nature and terms of that contract. Recent events have impressed it strongly on the minds of the landlords of this country, that in future the

value of their property must not be rated at the amount of rental that can be extracted out of it, but must mainly depend on the condition and prosperity of their tenants. The true object, therefore, of all legislation on this subject ought not now to be, to restrict and abridge the exertions of an improving landlord by the interposition of such a check and hindrance, as the Tenant Right of Ulster presents to his exertions ; but it should be to relieve the landlord from all those impediments that the existing state of the law may present to his forming such contracts as may tend to encourage agricultural improvement. The gradual introduction and extension of such contracts would, I trust, in time lead to the gradual extinction of that practice of Tenant Right which now prevails in Ulster. And the voluntary extinction of that custom would convey to my mind the strongest proof, that the social condition of that province had returned to a healthy state, and that the agriculture of Ulster was, at length, about to reap the full benefit of its manufacturing industry.