

THE DUBLIN STATISTICAL SOCIETY.

ON THE CONNECTION

BETWEEN THE

CONDITION OF TENANT FARMERS

AND

THE LAWS

RESPECTING THE

OWNERSHIP AND TRANSFER OF LAND

IN IRELAND.

A PAPER READ BEFORE

THE DUBLIN STATISTICAL SOCIETY,

ON WEDNESDAY, 23RD FEBRUARY, 1853

By JONATHAN PIM, Esq.

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On the Connection between the Condition of Tenant Farmers and the Laws respecting Ownership and Transfer of Land. By Jonathan Pim, Esq.

Few subjects have engaged so much of the public attention in Ireland as the condition of the tenant farmers, and it is generally admitted that the present laws, and the practice generally prevailing with respect to the letting of land, have had very injurious effects in impeding the improvement of the country. Various remedies have been proposed as panaceas for these evils. Tenant right, fixity of tenure, valuation of rent, compensation for improvements, have each had its respective advocates. Whenever the attempt has been made to reduce these proposed plans to practice as the basis of legislation, difficulties have arisen which appear not to have been previously anticipated; so that no one of these schemes, when carried out into detail, has given satisfaction to the several parties interested.

The difficulties which have thus arisen, and the complicated nature of the various legislative measures proposed, naturally lead us to consider whether any of these plans are calculated to effect a cure; whether the causes of the evil do not lie deeper, and require remedies of a different character.

The legislation proposed by the late Attorney-general was not limited to the mere question of compensation for improvements, but rather sought to prevent the recurrence of the evils complained of. One bill proposed to effect this object by affording facilities for the improvement of the estates of landed proprietors having limited interests, by enabling them to borrow money for this purpose, and to make the debt a first-charge on the lands improved. A second was intended to consolidate and amend the laws relating to the leasing of land by persons having limited interests, or under legal incapacity; and to extend and simplify the leasing power of such persons; and also to enable them to make valid contracts with their tenants, for securing to the latter the value of any improvements which they might make. A third bill contained a greatly amended law of landlord and tenant, presented as a complete code of law on this subject, and in an unusually clear and intelligible form.

It is unnecessary to offer any opinion how far these bills were adapted to effect their intended purposes; but it is evident that the late Attorney-general went much deeper into the question than had been before proposed by any person holding office under the crown. Instead of attempting to palliate the evils arising from complicated and oppressive laws, he sought by improved legislation to remove the

causes of these evils. Still it is worthy of consideration whether more extensive amendments of the laws are not necessary, and whether the true remedy is not to be obtained by such changes in the laws which regulate real property, as may render the sale and transfer of land easy and inexpensive; may give certainty of title, and afford ample facility for ascertaining the legal owner of an estate, and all the claims which exist against it; and may enable that owner to make contracts, and exercise all the powers of an owner, notwithstanding the existence of a settlement, and without reference to trusts.

Security and certainty of title are of the first importance, as unless the land be held by one whose title is unquestionable, it is not likely to be managed in the most efficient manner. To obtain a complete and certain root of title, and to put an end to the various uncertainties and complications that now exist, probably requires the same means which have worked so usefully in the Incumbered Estates Court—namely, an investigation by Commissioners, who, after full examination and sufficient notice to all claimants, shall be empowered to declare the legal owners of such estates as may be brought before them, and all charges affecting the same, and to give them a parliamentary title, good against all the world. It is only justice towards the owner of an unincumbered property to afford him facilities for obtaining a perfect title, equal to those which the law gives in the case of estates sold on account of the incumbrances affecting them. At present it would be difficult to obtain fair value for any property, unless sold under "the Court."

But even if this important object were effected, and if the whole soil of Ireland were held by a clear parliamentary title, it would again become involved, unless means were taken to preserve it from future complications. Perhaps the only means of effecting this is a well-arranged system of registration, by which all transfers of land shall be registered with reference to maps—no transfer being valid until the registry has been made, and the title of the person thus registered as the purchaser being afterwards unquestionable. To attempt an explanation of the machinery for such registration would be foreign to the objects of this paper; but it may be observed that the registration should be in duplicate—one registry being made in a local register—say for the Poor-law Union in which the property was situated, and the other at a general registry-office in Dublin, as a check against fraud, and to obviate the inconveniences which might arise in the event of fire.

To give a perfect root of title, and to make those arrangements by means of registration, which would afford complete facility for tracing all future transfers, and thus ascertaining with certainty the actual owner of any estate, whether small or large, would be of great importance; but it would be very incomplete to stop here. If all land is to be made a marketable commodity, the legal owner must be enabled to sell, and give a valid transfer to the purchaser, notwithstanding the existence of mortgages and other incumbrances, and whether he hold the estate in fee-simple for himself, or as a

trustee for others. If we are to avoid the long delays and the heavy expenses of an investigation into the title of the seller, the purchaser must be secured in the possession of the property purchased, when he has paid the purchase-money to and received a conveyance from the person registered as the legal owner, without reference to the question whether that owner be in debt or not, or whether he have held the property in his own right or only as a trustee. This would really give facility and cheapness to the transfer of land, as the purchaser would have only to ascertain that the person signing the transfer is the same who is registered as the owner, and he then gets a perfect and unquestionable title to the property purchased. In the case of mortgages and some other incumbrances, arrangements may be made for the registration of the mortgagees or incumbrancers, as parties to be served with notice of any intended sale; and then the purchase-money may be required to be paid into court for the benefit of the parties who may be entitled to it.

Some may suppose that if a person holding landed property in trust possessed such uncontrolled power to act with it as if it were his own, it would operate as a complete bar to all entails and settlements of estates, by vesting them in trust. This is by no means a necessary consequence. In England, powers of sale are frequently given by deed to the trustees of a settlement, and are often found very useful. The purchase-money received for the land sold should of course be subject to the same trusts as the land itself. There is a vast amount of funded and other property completely in the power of trustees, in the management of which fraud very rarely occurs; and from the greater publicity which necessarily attends all transactions respecting land, the opportunity for a fraudulent sale is considerably less than in the case of trusts of personal property. An additional precaution may also be taken by appointing several persons as trustees; and as the signatures of all would be necessary to render any transfer valid, the chances of fraud would thus be so much diminished that they might safely be disregarded.

The arrangements above proposed are—1st, a parliamentary root of title; 2nd, a complete registry of all subsequent transfers, which should be legal proof of ownership; 3rd, the power recognised by law as inherent in the legal registered owner, notwithstanding the existence of trusts or incumbrances, to exercise all the rights of property, whether for sale or leasing, and to make contracts binding on all his successors, and on those for whom he may be trustee. These arrangements would not only afford great facility for the sale and transfer of land, but by the unrestricted powers given to the registered owner, would enable him to give such leases as circumstances might require, and to make such agreements with his tenants for compensation for improvements, or otherwise, as their mutual interests might dictate. They would put an end to the necessity for any act to consolidate and extend the leasing powers of persons having limited interests, or under legal incapacity; and, in a much more simple, complete, and efficient man-

ner, would meet all the wants for which such a law is intended to provide.

It is submitted that the facility thus afforded for the sale of land, and the powers recognised in the registered proprietor for the unfettered management of the estate, are no more than are requisite to meet the wants of the community, and to afford free scope for developing the resources of the country. The laws respecting land would thus be rendered much more simple. Land could be sold and transferred with almost as much cheapness, ease, and certainty as the public funds, or other personal property; and would thus become—what it has never yet been in Great Britain or Ireland—a really marketable commodity.

There can be no doubt that the legislation which would give security and certainty of title, and render the transfer of land easy and inexpensive, would confer a great boon on the proprietors of land and on the public. It would raise the value of land by rendering it marketable, and the increased facilities for investment thus afforded would be a great benefit to every class in the community. But it is not at first sight evident how it would affect the condition of the occupying tenant, or what advantage would be conferred on him by facilities for the sale of land, which he may not be either able or desirous to purchase.

It may be well, before discussing this question, to give some consideration to the measures which have usually been looked to for the improvement of the farming class.

The system of *Tenant-right*, as it exists in some parts of Ulster, evidently depends merely on the good feeling and sense of justice of the landlords, joined with the fear that an interference with the claims of the tenants might produce serious disturbance. No one has ever yet shown any feasible plan for extending it to the rest of Ireland, or for giving it the force of law.

Fixity of tenure is generally understood to mean, that the tenant shall have a perpetuity of his present holding, at a rent to be now fixed. The term *Valuation of Rent* implies that the rent is not to be decided by mutual agreement, or by the state of the market, but to be fixed from time to time by the award of valuers specially appointed for this purpose. These proposals might well be passed by as impracticable—the first on account of its manifest injustice, and the other because, even if an impartial tribunal could be obtained, no just means exist for the enforcement of its decisions. The valuation must be either at the regular market price of the day, or above it, or below it. If at the regular market price, the valuation would be simply useless, making no difference in the amount of the rent; if above the market price, the tenant would not take the farm, because he would be able to get a cheaper elsewhere; and if below it, the landlord would refuse to let his land. The only just criterion of value is the rate which can be obtained in a fair and open market, when both parties are able to make a

free bargain, and neither possesses any unfair advantage over the other. It would be as impracticable to regulate the rent of land by any other standard, as our ancestors found it to regulate the wages of labour or the prices of food.

That the tenant should receive compensation for any improvements he may make during his period of tenancy appears equitable. In the absence of a contract, all the requirements of justice are fulfilled if he restore the land, on the termination of his lease, in as good order and condition as it was in when he received it. If there be no specific agreement, he is not required to expend his capital in the erection of buildings, or in the amelioration of the soil. He is bound not to deteriorate, but he is not bound to improve. The landlord has, therefore, no just right to those improvements which the tenant may make, or omit to make, at his pleasure. Yet there is great difficulty in giving a legal sanction to the equitable claims of the tenant. The various measures which have been laid before parliament with this object in view, have been so complicated in their details, that they seem only suited to compel the parties to make a definite agreement, in order to avoid the trouble and vexation in which claims under such a law would be likely to involve them.

Even if a law were passed giving the tenant a legal right to compensation for all improvements, how is it possible to prevent the landlord from barring the tenant's claim by a clause in the lease?

It, therefore appears that none of these plans would have the effect of raising the farming class from the degraded condition in which many of them now are. Nor is it possible to do so by any act of parliament. All that legislation can do is to remove impediments, and to secure the peaceful enjoyment of the fruits of industry. But the habits of the agricultural classes are greatly in need of improvement; and habits of patient and persevering industry are of slow growth. The evil has long existed, and there is no panacea for its immediate removal. It has been increased by complex and restrictive laws; and the amendment should be sought in greater simplicity of legislation, not in further complications. The remedy is to be obtained by affording free scope for the play of individual interests, and for the making and enforcing of fair and equal contracts—not by legislating for the various classes connected with land, as if they were incapable of managing their own affairs.

It is not pretended that the measures herein proposed would have any direct effect on the condition of the occupying tenants; far less that they would produce these immediate and almost magical results which the advocates of tenant-right claim as the natural fruits of the adoption of their views. But a little consideration will show that they would exercise an indirect but very important influence; and the improvement to be expected, although gradual, would be steady and progressive.

The first result which may naturally be expected from these facilities for the sale of land is, that the proprietors of land will be placed in a much sounder economical position. Assuming that the principles on which the Incumbered Estates Act is founded will be still further carried out, and that an incumbrancer will continue to possess a ready means of enforcing payment of what is due to him, by the sale of the property on which it is secured, we may anticipate that the owners of land will in future be, for the most part, free from those embarrassments which have heretofore so much hindered the judicious management of their estates. It may, in short, be fairly assumed, that the soil of the country must eventually come into the hands of active men, possessing good habits of business, who will know that their own interests are bound up with the interests of their tenants; and who, being independent in fortune, will not be obliged to sacrifice the future interests of their properties, in order to raise money to meet the pressing claims of the moment. Benefit will also arise from the gradual formation of a class of proprietors farming their own lands; which, if left to the operation of natural causes, and not unduly forced by hot-bed legislation, will be among the most valuable fruits of any measure by which the sale of land may be facilitated.

The difficulties which the present system throws in the way of efficient management are so well known, that it seems unnecessary to particularise them. There have been comparatively few landlords in Ireland who have not been hampered by pecuniary embarrassments, or so restricted by the deed of settlement under which they have held their estates, that they have been incapacitated from making any agreement which would warrant a prudent tenant to expend his capital or his labour in the improvement of his farm. Under the system proposed, all land would have an owner, registered as such in a public office, and competent to exercise the rights and fulfil the duties which the ownership of land involves, as fully as can now be done by the proprietor of a fee-simple estate; and this owner would seldom be prevented by pecuniary difficulties from pursuing whatever course was most likely to benefit the property. There would, therefore, always exist *the power*, at least, to give the improving tenant a long lease, or to make with him such an agreement for compensation or otherwise as might induce him to improve; and thus a great point would be gained, by ensuring the solvency of the landed proprietors, and enabling them to act according to what they might consider the interests of the estate. It would, in short, be opening a door for the application of the free principles of commerce to the management of land, instead of the feudal restrictions by which it has hitherto been trammelled.

The principle of free competition will bear to be carried out in this, as in all other transactions in which the industry of man is concerned. No laws are needed for the exclusive protection of any class. They are worse than useless. They tend to create a monopoly, or confer undue privileges, and then, in order to restore the

balance, there is a demand for other laws to protect other classes also. Freedom of action is all that is required—a fair field and no favor. But care must be taken that the parties concerned are really free—that no restrictions exist which interfere with freedom of contract—and that there are no laws which give one party an advantage over others. It is of great importance that the laws should be explicit and simple, and that there should be as little interference as possible with that mode of management which individual interests may dictate. If all parties connected with land be placed on a footing of complete equality, and if they possess sufficient facility for forming and enforcing contracts, their mutual interests will suggest the most beneficial arrangements; and it seems probable that land will rarely be let, even for a single year, without a definite agreement.

It is an important question for our consideration, whether there are any legal circumstances affecting either landlords or tenants, as a class, which give one party an undue advantage, and practically interfere with the freedom of contract.

The most important point in which the condition of the landlord differs from that of other parties to any contract involving a money payment, is the power which he enjoys, by means of the law of distress, to compel the payment of his rent in preference to the other debts of the tenant. This prior right of payment not only injures the tenant by diminishing his credit as a trader, but, by giving to the landlord a lien on all the property which may be found on the holding, it renders him less careful of the character and solvency of his tenant than he would be if he did not possess such a power. He is thus frequently induced to let his land to the highest bidder, without reference to his character or means of payment—subjecting the farmer possessed of capital to an unfair competition, by admitting the offers of persons who, having nothing to lose, are willing to offer any rent in order to obtain the possession of land. This undue competition, by producing a factitious and excessive demand for land, places the tenant in a disadvantageous position, and disables him from entering into a contract with his landlord on equal terms. Until the tenant is placed on that footing of equality, which may enable him to make a free contract, no act for compensation for improvements will protect him, unless it go the length of prescribing all the conditions on which land shall be let, and regulating the whole relation of landlord and tenant; a course of legislation which would be manifestly inconsistent with the spirit of our institutions.

The conviction is, therefore, forced on us, that, in order to improve the condition of the tenant, it is in the first place necessary to amend the laws which regulate the ownership and transfer of land, so that the title may be clear and readily investigated, and the registered owner always competent to exercise the rights and fulfil the duties which belong to his position; that no act for the extension of Tenant-right, or for affording the tenant compensation for improvements, is likely to produce the beneficial effects which have

been anticipated from them ; and that no amendment of the law of landlord and tenant, however valuable in itself, will fully meet the wants of the case, and effect a permanent settlement of the land question, unless the right of prior payment be relinquished and the landlord be placed on the same footing as other creditors.

It is, at the same time, evidently just that if the right of prior payment be taken away from the landlord, by the abolition of the power of distraint, he should be given increased facilities for the recovery of his land, in case the rent be not punctually paid.