

DUBLIN STATISTICAL SOCIETY.

ON

THE RELATION

BETWEEN

LANDLORD AND TENANT

IN

IRELAND.

A PAPER READ BEFORE

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BY

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THIS society was established in November, 1847, for the purpose of promoting the study of Statistical and Economical Science. The meetings are held on the third Monday in each month, from November till June, inclusive, at 8, P. M. The business is transacted by members reading written communications on subjects of Statistical and Economical Science. No communication is read unless two members of the council certify that they consider it in accordance with the rules and objects of the society. The reading of each paper, unless by express permission of the council previously obtained, is limited to *half an hour*.

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The subscription to the society is one pound entrance, and *ten shillings* per annum.

On the relation between Landlord and Tenant in Ireland. By Samuel M. Greer, Esq. Barrister-at-Law.

IN venturing to direct the attention of this Society, for a short time, to certain provisions of law which now regulate the relation between landlord and tenant in this country, I feel that I am dealing with a subject which some may consider hackneyed and ill-chosen. It is so important, however, to the agricultural classes of this country, that I am willing to run this risk, in order to discuss some branches of the subject which have not yet received an adequate share of public attention. Indeed it would be utterly impossible, in a single paper, to give even an outline of the question in all its bearings; and this is the less necessary, because certain great leading principles are now pretty generally admitted on both sides; and the points to which I refer lie more in the debatable ground, which has not yet been so accurately surveyed, or mapped out by statesmen or or economists.

Without further preface, then, the proposition which I maintain is this:—That when there is no specific contract making a different provision, a tenant should be bound to deliver up his tenement at the end of his tenancy in as good condition merely as he received it in; and if beyond this he have added to its letting value, during his tenancy, by his own industry and capital, he should be allowed to possess a legal interest in that increased value *so long as it shall subsist*.

Many persons try to evade the consideration of this question by alleging that the object in view, that is, the encouragement of improvements, would be more satisfactorily attained by removing those restrictions arising from entails, encumbrances, and disqualifications of various kinds, by which most of our Irish landlords are now disabled from making leases or contracts for the improvement of their estates. No doubt it would be a great improvement to have some person always in being competent to act as complete owner of the estate; and a very signal improvement in that respect will be effected, if Mr. Napier's enabling bill shall receive the assent of Parliament. It would also materially facilitate contracts for improvement and the purchase of land, by parties able and willing themselves to improve it, if a complete general registry, both local and central, of the titles and encumbrances of land were established, together with a simpler and a cheaper mode of transferring such titles. A reform of this description is greatly required, and cannot be much longer delayed, being supported not merely by public opinion and by all

mercantile analogies, but also by many of the most enlightened lawyers and conveyancers of the age.

But the proposition which I have advanced would not interfere with any of these projected reforms, nor would any of them supply its place, nor render its consideration unnecessary, since it contemplates a state of circumstances and a defect in the law which none of these reforms would provide for. At present we have many landlords seized in fee-simple of estates wholly unencumbered; and yet, although such landlords are perfectly competent to make binding contracts for improvements, we find that they do not choose to make such contracts, and that their estates remain unimproved, and frequently questions arise between them and their tenants for want of any contract. The legislature is compelled, therefore, to deal with the rights of these parties in the absence of any special contract; and in so doing it cannot be held to infringe unduly upon the privileges of either party, especially if it still permit them to shape their contracts in any other form which they may prefer. In the same way, while every man is at present permitted, in the freest manner, to dispose of his property by will, yet the law very wisely provides for its disposal in case he should fail to make a will; and no one complains of this as an undue restriction, or any restriction at all upon his testamentary rights.

But the law, it may be said, is not silent in the case I have supposed; it provides at present for the disposal of improvements made without any special contract between landlord or tenant. No doubt it does, by conferring them at once, without delay or condition, upon the landlord. But this is the very subject of complaint, as such a provision serves to transfer to one man the fruits of another man's industry, without compensation or equivalent, contrary to every principle of natural equity and common sense. It serves, at the same time, substantially to vest in the favoured class of landowners a monopoly of the right to make improvements, by depriving the occupiers of all legal security for the outlay of their own capital, or for advances for improvement, which they could easily procure from other parties, if they had available security to offer.

But this branch of the question is not the one which I propose to discuss here. Whatever opinions may be cherished by some interested parties in favour of the present state of the law on this point, it does not commend itself to the moral sense of the community as fair or just, or in conformity with our advanced state of civilization; and, therefore, no statesman has ventured to defend it in the frequent discussions which the subject has received in the House of Commons. On all sides, and by all parties has it been there admitted, not merely that the improving tenant has a *moral* right to some compensation for *bona fide* improvements, but also that he should be furnished with a *legal* right to such compensation, as against the owner of the soil. This concession to the claims of the tenant is not only involved in Mr. Sharman Crawford's bill, which is now committed to the care of Mr. Serjeant Shee, but it is

equally involved in the bills which were introduced by the present Duke of Newcastle, and by Sir W. Somerville, when they respectively filled the office of Chief Secretary in this country; and, last of all, in the bill which was introduced by Mr. Napier, as the Attorney-General of the late administration.

But, while all these bills embody the common principle of curtailing the landlord's feudal rights and privileges, and enlarging those of the occupying tenant, they differ very materially in the nature and amount of the compensation which they award for improvements. It is to this difference that I wish to direct the attention of the Society, that we may ascertain, if possible, what should be deemed a *fair* compensation to a tenant for his improvements. The argument on both sides is very clearly stated in a report of the Society for the Amendment of the Law, published in the "Law Review," vol. 8, page 106-7, in the following terms:—"There are only two standards applicable for this purpose" (to determine the proper amount of compensation that should be awarded,) "first, the increase in value of the land at the end of the tenancy, caused by the improvements; and secondly, the prime cost of the works, subject to a proportionate deduction for subsequent enjoyment by the tenant. The first is the one adopted by Mr. S. Crawford's bill as to most improvements; the second, that of the Government bill, and Mr. Pusey's bill. *Primâ facie* there is much to be said in favour of the former; it is obviously the *just, and only strictly just* method. The tenant would by it, so far as his acts are concerned, be held bound to restore the land in as good, but in no better condition, than it was in when he took it, and for all increase of value arising from his acts he would receive an equivalent in money if removed from the tenancy." Now, this standard of compensation, so obviously just, is the one which I advocate, not merely because it is no more than fair to the tenant, but because it gives him the greatest possible stimulus to increase the value of his holding, and thus add to the national wealth.

The able report I have referred to decides in the end against the principles of what I may distinguish as the *continuing compensation*, because it might be very difficult in some cases to determine how much of the increased value of a tenement at any time was due to the tenants' improvements, and how much to other causes. But this is a difficulty that would soon be overcome by experience, enlightened by the zeal and scientific study which are now so extensively applied to agricultural pursuits; and if further legislation should eventually be required to meet or to avoid the difficulty, it could be applied more successfully after the experience which the new system would supply than at present. In the meantime, it appears to me neither fair nor logical to part with a principle confessedly sound, because there may be some difficulty in working out its details, in order to encounter difficulties still greater in establishing an arbitrary rule, which, fix it as you will, must in some cases work injustice. It must necessarily be more difficult,

in any instance, to determine prospectively the effect of any given agricultural operation in adding to the annual value of the soil, than to determine the same question after the supposed operation has been accomplished. The one calculation rests on theory and hypothesis, the other on facts and experience. But in order to fix on the number of years' enjoyment which will certainly reimburse the improving farmer for the work in question, you must first have satisfactorily ascertained the exact amount of increased value that may be relied on as its result. And then, in order to lay down an inflexible uniform law regulating the period of enjoyment which will be allowed as an adequate compensation in all such cases, you must strike an average, as it were, and fix upon some arbitrary period which, although sufficient perhaps in many, or even in most cases, to insure reimbursement, must certainly fall short of this result in many other instances.

The undoubted effect of limiting a certain statutory period for the tenant's compensation, would be to restrict the amount of improvements that could be profitably effected, by raising in every case the question, Will such a work pay *in so many years*? instead of, Will it *ever* pay? But it is clearly for the benefit of the community at large, as distinguished from landlords and tenant-farmers, that the wealth of the country should be increased to the utmost extent by all practicable improvements; and, therefore, a law which would give to the tenant-farmer only a portion instead of all the increased value arising from his own labour, and which should thereby deter him from investing his capital in the land, would be injurious to the interests of the commonwealth, as distinguished from all private or class interests. It would be to surround the country with a belt of five or ten miles width, reclaimed from the ocean, when you might as easily secure a breadth of forty or fifty miles without injuring any one.

There seems to be a strong feeling or prejudice in some quarters against giving the tenant-farmer a continuing interest in his improvements, on the ground of such a divided interest in the soil as this would create being both anomalous and inconvenient. As to the supposed anomaly, we find the law, as occasion has required, carving the land into legal and equitable estates, trusts, and uses, into joint tenancies and co-parceneries, mortgages and equities of redemption, tenancies, reversions, and remainders—creating all sorts of co-existing and successive interests. And still more to the purpose, we find the very anomaly in question realised in the north of Ireland, under the custom of tenant-right, and the occupier enjoying a concurrent interest with the landlord in the soil; and, what materially strengthens my argument, we can appeal to this custom as productive of good results to both of these classes, and also to the community at large. The mere division of interest in the soil, therefore, need be no obstacle to the tenant's *continuing compensation*. Nor is there more weight in the alleged inconvenience or injustice of making the landlord a mere rent-charger, as it is sometimes

described, on his own estate. In the first place, he would still enjoy the rights of improving, *ad libitum*, himself, and of enjoying all the fruits of his improvements. He would also have the privilege of purchasing, whenever he chose, his tenant's improvements at their market value, and of profiting exclusively by any extrinsic circumstance by which the value of his lands might be enhanced. If this be held to be the condition of a mere rent-charger, why let him be a rent-charger by all means, rather than continue to be a bar to improvements which he will not himself undertake. The landlord's present inherent right or property in the soil is represented by the inherent, productive powers of the soil, and the amount of labour and capital which have been expended upon it. His interest may be fairly regarded as so much hoarded labour; and as such it should be protected for his enjoyment with the utmost vigilance and care. But while the law protects with religious care the fruits of the labour of the dead, is it not equally bound to protect the labour of the living, and to open up every available field of labour for their subsistence? The present controversy principally involves the landlord's existing right unduly to restrict the market for labour. It mainly affects the labourer's interest. For many years past every landlord in Ireland has had an opportunity of borrowing funds from Government on the easiest terms for the improvement of his property. Those who have failed to use this privilege, on the chance of being sufficiently remunerated after repaying the treasury advances in twenty-two years, can hardly, with a good grace, demand the enjoyment of their tenants' improvements, made at their own risk, and after the lapse of only seven years. Nor do they deserve much sympathy for being made "mere rent-chargers," by reason of improvements which the energy and enterprise of others have accomplished, by investing on their farms the labour of workmen who might otherwise have been a burthen upon the community.

But then it is argued that the tenant cannot invest this additional labour profitably, unless by developing the latent powers of the soil, and these powers being still recognised as the landlord's, he ought, in fairness, to have a share in the increased produce. Without stopping to inquire whether the exclusive right to this undeveloped fertility may not justly be forfeited for its non-development, when the prosperity of the country needs every stimulus, I am willing to admit that there may be considerable force in this argument in regard to draining, subsoiling, irrigation, and other processes which act directly upon the soil and tend to make it more productive. But it cannot have much weight in regard to buildings, farm-roads, and most kinds of fences, which do not call forth any hidden powers of the soil, nor make any pecuniary return. And even in the case of draining and similar works, I do not see that the argument can fairly be pushed further than this—that if there be a clear nett profit after outlay, labour, and superintendence are fully compensated, the landlord might justly claim not

the whole, but a portion of the nett profit. And it is then open to the answer, that, in this way, the landlord would secure a part of the proceeds of every successful speculation which his tenants might make in their improvements, without sharing the losses which might accrue in their unsuccessful adventures. So that it might readily happen that the farmer should be a loser upon all his works in the aggregate, while the landlord would be enabled to carry off as profit a part of the produce of each successful speculation, whereas, the risk and the profit should be co-relative and mutual.

But even in cases where there should be a clear profit on the aggregate of all the improvements effected, if we concede the right of the landlord, by virtue of his interest in the soil, to a share of this profit, it still remains an open question whether this share should not be measured by a proportionate part of the increased annual produce, leaving to the farmer a continuing interest in the remainder as long as the improvements should endure, instead of allotting to the latter a limited period of enjoyment by way of compensation, and then handing them over to the landlord to enjoy the reversionary interest in them. In this way, the landlord and tenant, as to increased value, would become partners as it were, dividing the nett profits as they accrued—enjoying them simultaneously and not successively.

In a social and political point of view, it would be of no little importance to induce and encourage the agricultural classes to make *bona fide* reproductive improvements, which would give them individually a continuing stake in the country, and a direct interest in its tranquillity and progress. Every tenant who permanently increased the value of his holding would thereby give hostages to society for his good conduct, and would originate a sort of guarantee fund, by which, as we know from experience in the north of Ireland, the punctual payment of his rent will be effectually secured.

Perhaps the greatest advantage to be expected from giving the occupier a continuing interest in his improvements, instead of a limited period of exclusive occupancy, would be that he might then be safely left to himself to undertake, at his own risk, whatever works he chose, the stringent test of increased letting value being afterwards applied, to determine whether these works had been of any and what practical utility. In this way most of the troublesome, complicated, and expensive machinery of all the Government bills on this subject might be safely dispensed with, this machinery being carefully devised to determine *for the landlord's protection*, whether the tenant is to improve at all, and if so, how, where, and at what cost, and to provide that the estimated outlay be all faithfully expended; while the far more practical and important question of the beneficial effects actually resulting from this outlay is left, strange to say, wholly out of the account; and so it must be if the original outlay, and not the increase in value, be made the test of compensation. It is almost impossible to exaggerate the inconvenience that would arise from the cumbrous machinery even of

Mr. Napier's bill In many districts the tenant's first step, a notice of improvements, would elicit, in nine cases out of ten, a notice to quit. In other places the trouble and expense of the prescribed forms would deter multitudes of small farmers, who, with the aid of their families, might nearly double the value of their holdings, from claiming the protection of such an act; and the very stinted measure of compensation which it provides would render it nearly inoperative with all classes. Whereas, if you only abandon the false criterion of mere outlay, and recompense according to the beneficial result, you not only get rid of a burdensome machinery, but you hold out its natural reward to skill and ingenuity and persevering industry, and make the humble farmer feel that he is working for himself and not for another. You give him, moreover, free and full scope to carry on his improvements in his farm, when it may best suit his own convenience, and from year to year, continuing as his means may permit, to go on from less to more; and you preserve him from being brought into collision with his landlord until some conflict of interest really arise between them, if such a conflict should arise and not be amicably settled.

The mode of giving compensation for improvements, by fixing a limited period for their enjoyment, is also liable to the serious objection that, towards the end of that term, it would present a powerful motive to the tenant to exhaust the fertility of the soil, and thus diminish the value of his improvements to the landlord. The danger of such depreciation, where farms are let for terms of years, has introduced into England the practice of compensating for manures and other transient improvements. But such a remedy would be inapplicable in the present case; and the evil would be all the greater, if a second series of improvements were not allowed to be undertaken before the first had been fully compensated. Whereas, for bettering the condition of all classes, the wise course would be to induce the occupier, by the strongest motive, to increase the productive powers of his farm by all the agencies which modern science and persevering industry can apply, and to maintain it in the highest state of cultivation and improvement which his skill and capital can accomplish.

Another objection to the fixing of an arbitrary compensatory period for improvements is its *communistic* tendency. The organization of labour has been justly denounced, not merely because of its fixing the wages of labour arbitrarily, instead of by fair competition, but also because it would sanction no higher remuneration to the diligent and skilful workman than to the idle and ignorant, bringing all to one common level; and hence the phrase *communism*. Now if, in our organization of improvements, the principle of an average compensation be introduced when each case should be disposed of, and could easily be dealt with on its own merits, we sacrifice the interests of one class to those of another, and must be prepared to encounter some of the evils which will certainly arise

from the extravagant and unfounded assumption that all tenant-farmers are equal in skill, discernment, and industry.

The subject of this paper has been referred, among other matters, to the consideration of a special Committee, including some of the most able and distinguished members of the House of Commons; and it is said that this committee has affirmed the exclusive right of the occupier to improvements which can be separated from the freehold, including *buildings, fixtures*, and, I presume, *trees*. If so, they have fully sanctioned the only sound test for determining the benefit which the occupier should derive from his improvements; and in apportioning compensation in cases where these are incapable of removal, they are bound, for the sake of consistency, to adopt the best machinery that can be suggested to secure the tenant, not some average term, but the full value of his own improvements, so long as they may subsist.

The argument in favour of the improving tenant's continuing compensation is by no means exhausted yet, but I have nearly reached the limits prescribed for a paper, and must now conclude. On many most important questions, nearly related to the subject of discussion, I have offered no opinion; partly for want of time, but principally because I sought to direct attention to a few leading principles, which, if once recognised by the legislature, would speedily effect such changes in regard to agricultural improvements in this country, as would amount to a social revolution. In effecting changes of this description, however urgently required, it is generally better, for the peace of society and the good of all, that they should be so shaped as to assort with the previous institutions and habits of the country, and that they should be accomplished gradually rather than by any sudden or violent alterations, which are sure to alarm the timid, and are liable to fail in their expected result, and to bring unexpected mischiefs in their train.