THE MECHANISM OF LAND TENURE.

BY

WILLIAM TIGHE HAMILTON,

FORMERLY

SECOND REMEMBRANCER OF THE COURT OF EXCHEQUER IN IRELAND.

Quicquid delirant Achivi, plectuntur Reges.

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THE MECHANISM OF LAND TENURE.

By transposing the names in the well-known line upon my title-page, we see the unfortunate state of things in Ireland which has raised the most important question of the day, namely—How the right of property in land is to be treated, so as to effect good for all and harm for none.

Upon the solution of this problem depends the weal or woe of Ireland.

I do not propose to enter into the details of any particular schemes—of any party aspects—such as the vision of Fixities and other unhealthy dreams. My object is rather to point out the real elements of the subject with which we have to deal, in a Mechanical sense, and thus show what is possible and what impossible.

No doubt endless proposals have been made to do this or to do that. But I have not yet seen one single practical suggestion as to *how* the particular *this* or the particular *that*, which is desired, can be done—in relation to other things. Most of these may be, and many of them certainly are, out of sight, and only still in the bosom of the law. But there is one thing of which all may feel sure, and that is, that nothing ever will, or ever can, prosper, either in Ireland or in any other country, which is not founded upon strict justice—whether it affects the owner, the occupier, or the labourer.

I do not think that the relative interests of these have as yet been duly balanced in any of the schemes which I have seen, and yet that of each is of equal value to the Individual, and ought to be of equal concern to the State.

The first thought ought to be, What means are within the powers of legislation which can be made available to adjust the rights which they may involve, if it be deemed that they do need adjustment as to Principles rather than Practice? It is here I find fault with most writers. They all come well up to the fence. They all arrive together to the one point—that the tenant ought to have help. But then they scatter in all directions, with very little thought how others are to get further.

Perhaps one of the most remarkable signs of the time is the fact, that it has been thought necessary to form an association for the Defence of Property—the very bond of social existence. It may therefore be worth a few notes as to what that is which is now assailed.

The Right of Property is no novel thing. Its grateful shade grows for all—giving "health in the breeze and shelter in the storm." It was designed for the use of all. The "dominion" over "all the earth," and its produce, was vested in the first man as a whole, and the subsequent separation of these into distinct rights was first recognised in the sons of Adam. It was because the fruits of the Flock were deemed more acceptable than those of the Soil, that, through jealousy, Cain murdured Abel!

In that instance we have the first notice of a distinct right of property in different individuals.

It is sad to think that its early recognition was coeval with the first murder. It was thus bloodstained at first as it has often been bloodstained since, in every age and clime. But still over all there has ever survived a sacred right admitted by all endued with the Moral feelings which usually accompany civilization.

Ireland no doubt affords many—too many—examples of its violation, through cupidity, or turbulence, or false policy. But centuries have passed, and these things have no relevancy to the state of things now before us, though some try to make it so appear.

But I must here protest against the bad feeling and waste of time employed in efforts to rake up past grievances,

which it may be pleasant to some to remember, but far more pleasant to others to forget. We have not now to discuss the wrongs of people long gone to rest, but the wrong treatment of present things. What is the use of reading and writing so much about Elizabeth, and James, and Cromwell, and about Sir Wm. Petty, and Sir John Davis, and about the effect of the penal laws upon the character of the nation? It is a mere waste of time to bring up England's past wrongs to Ireland in support of any view of any sort bearing upon the present. It involves, too, a great misconception of fact.

The wrongs done by England to Ireland were both *Moral* and *Material;* but the former died with the generations which suffered them, and all claims upon their score ceased with that final establishment of civil and religious equality, as well as liberty, which Ireland now enjoys—more completely than any other country in Europe—even than Switzerland. Motives drawn from this source have no bearing whatever upon the rights and relations of the present owners and cultivators of land. They do not at all affect the material conditions, in which both exist alike, and which are the same for one as for the other.

The Material wrongs done—such as the crushing of Irish industry and the exclusion of Irish products—are of a different nature. These affect the common position; and claims to indemnity on their score may still exist in favour of both classes, though not for one against the other.

England has, indeed, supplied two large instalments of an honourable debt. She has expended millions to save the Irish from starvation, without other return than disloyalty. She has lent millions to advance Irish improvement, which has been duly repaid. She may go on in the same way, and with equal advantage. It may yet be deemed her interest, if not her duty, to take up the great scheme of railway purchase, and crown the liberties of Ireland with the utmost freedom of locomotion, now, as ever, the great civilizer of manners and conducter to wealth. This, however, is only one of the many material ways of assisting Irish enterprise and Irish industry, so familiar to all, and so closely inter-

woven with a comprehensive treatment of the special question before us. These would be the proper moves with which to checkmate the barren efforts of the Irish agitators, and compensate the people for disappointed dreams when they next awake to the realities of social life. But do not let us try to disinter the mortal remains of the last generation of wrongs. We have to deal with the living, not the dead.

The present population has really no privity with that of former days. It has been imported from former periods of time just as if it had been imported from different countries. Race remains, but no more. The individuals are accidents of the time, not inheritors of ancestral claims, as some would offer in flattery.

But let us now pass from the subject of property as a *whole*, to property divided into *parts*. These cannot be accidental. Their separate existence at once implies design—that is, the action of distinct owners, or, in other words, the exercise of the right of free contract. This is the power which gives motion to property, and it is equally sacred.

By its operation, property in land divides itself into three interests—that of the owner, of the occupier, and of the labourer. These elements exist in nature, and must be always kept in view. A share in his proper division is the reward offered by nature for individual exertion, and the right of free contract is the means provided for him. There is none other possible in a moral view. We cannot elude this condition of society. We must sustain free contract in everything, or we congeal what nature created liquid.

The very claim of free sale shows the natural craving for free contract.

There is but one universal principle—freedom of construction in mechanics, freedom of contract in all other dealings.

The rude, exceptional legislation of our forefathers—whether for civil or religious purposes—are things gone, never to return. We may be severally circulating in different systems, but we are all gradually moving on towards the right of private judgment in all our concerns. It may, at times,

seem a distant, but it is still a bright star, whose guidance we cannot possibly resist.

Here let me say, in passing, that this principle of contract was first brought out in its entirety by Lord Clanricarde's Bill of 1853—but with the addition of full provisions to carry the principle into practical effect, in the manner which was suggested in that Bill—and well known on the Continent. The Act of 1860 only went so far as to recognise the soundness of the Principle. It is the subsequent Bill of 1867 studied—and now perfected—by the Lords' Committee, which renews the original proposal to give this principle practical operation as between landlord and tenant in a state of amicable dealing—not merely in a state of litigation, as it would be under the Act of 1860.

Nothing is more common than to hear people say that the treatment of this subject is very difficult. That is their own fault. It seems difficult, because they don't exactly know what they want, or how they are to get it. It is difficult, because they are continually confusing the different elements, each of which demands separate as well as combined treatment. But the most serious difficulty of all is, that they are evidently hankering after doing something which nature never intended that they should do—that is, make the *Public* the managers of *Private* property. From the moment they think that they can reach what nature placed beyond their reach, they are met by difficulties all but, if not altogether, insurmountable.

Nature has endowed the world with an endless variety of material qualities, and man with an endless variety of mental capacities—to work out his own material interests. It is when we seek to interfere with this free action that we get into a mess. The interest of one man is stronger than the wisdom of a hundred. It is collective interest, not collective wisdom, which governs the world.

Property is the reward offered for individual industry, and nature will not tolerate any artificial substitute for her management and her laws. As well might we presume to manage the weather. We can do no more than register its

variations, whilst we endure its vicissitudes. It is only when property is in dispute—partially or wholly—that the State can properly interfere to afford Shelter to the exposed. I take it that that is the sound doctrine of the subject, whilst it indicates the actual situation.

Gradations, too, are essential for progress. The very life of society is the effort to advance from grade to grade—from weak to strong. Out of this grows mutual help.

It is the clear definition, and, if necessary, the proper adjustment of relative rights, which need the application of legislative mechanics. It is into this I propose to go, before the views of the Government are known. As yet they are, of course, unknown. To have announced them sooner would have seemed much like an attempt to lay out the foundations of a new house, while the old one was in flames.

All we have got, as yet, is an intimation that no rights of property shall be infringed. This seems paradoxical, in view of the popular expectations, and looks rather like an offer to feed two people upon one loaf without cutting it! It is, however, important as marking the limits of action of one of the powers that be.

English opinion indicates a very just tendency to grapple with the subject and see right done. This is the other of the powers that be. These are the prime movers of our mechanical action.

Of the two, the people are the most free. They have indicated no limits to their action by promise or pledge. But in ploughing through the subject they seem to have cast aside a great deal of what is useless, and to have at last laid bare a very simple—and I will say just—idea, namely, that from a variety of causes attendant upon unwilling or helpless Owners and defective Land Laws, Tenants have been allowed gradually to acquire an equitable right of property in certain things now mixed up with that of the Landlord, and that something must be done to disentangle the conflicting interests—so as to secure to every man his due—to each, in fact, his own. This would be justice to the tenant. More would be injustice to the landlord.

I can see no difficulty as to this, if the subject be properly handled, as I hope presently to show.

The misfortune of Ireland has been that every measure for the improvement of Land Law has been made a party one. This is the peril which the Government Bill must meet. It will be used as a test of numerical, not intellectual strength. It would be truly fortunate if the precedent of the Petty Sessions code, which was prepared by me for Sir William Somerville, could be followed as to any land measure.

I set little value upon the report of any Commission. It can only give the results of a variety of opinions upon a general or theoretical subject. What would be of real value would be a collection of the same opinions upon the skeleton of a proposed practical measure. The judgment of all would thus become concentrated on a consistent whole, and the collected views would be practical, not theoretical.

Commissions are good for many purposes. Good—when a Government wants to delay a troublesome question; good—when it wishes to delegate to others a responsibility which it ought to take upon itself; good—when the object is merely to collect facts. It is quite otherwise where, to the duty of collecting facts, is added that of deciding on their import. For the latter it would be a tribunal whose success would depend upon personal qualities alone. It would be the originator of its own wisdom, not the minister to that of others. Here, for the sake of justice, you must have men trained to scan other men's motives—to weigh evidence—to distinguish the outer Irishman from the inner Irishman, two different beings—and skilled to apply that system of rules which wise men have constructed as safe guides to truth.

By all means they must keep the *Forms* of law at arm's length. In these we are as far behind the other nations of Europe as we are before them in *Principles*.

The course of proceeding taken as to the code to which I have referred will indicate my suggestion.

The prospect of hostility at the idea of a possible interference with magisterial authority, which had assumed a very threatening aspect, was at once disarmed by sending copies of

the first sketch of the measure to all those whose opinion was likely to be valuable, without distinction of party. From that moment all difficulties ceased—the true objects were seen and appreciated, various opposite opinions were reconciled by extensive modifications, and the measure passed with a total absence of all Party criticism. It had been made to feel its own way by turning it, for a time, loose from official secrecy. This could not be done with a party measure, because if done the measure would at once cease to be a party one. As it is, the Government will be anchored before the public has been even sounded for good holding ground.

But we must now enter the region of legislative mechanics —the proper adaptation of means to an end—and must study closely not only the rigid appliances which offer, but all the various unseen forces whose skilful combination will govern the result. Hitherto little notice has been taken of these. The subject, however, possesses a special importance.

Most people seem now to have formed some sort of idea—be it right or be it wrong—as to what should be done to adjust conflicting land interests. They are giving their countenance to general ends. But if so, they are bound to make themselves masters of the various ways in which these can be reached, and satisfy themselves that the one selected is not only practicable, but the best.

I have myself obtained some little insight into the practical evils of our land tenure system during many years' superintendence of the Irish Court of Exchequer Receiverships, which covered a large mass of small properties, distributed through every part of the country, and generally in a very racked condition. Perhaps, then, I may be able to suggest what may qualify, if not reconcile, some opposite views, and assist others to lay firmer hold of a subject whose present loosened condition is a national calamity.

It won't do to say that we can easily take some means to effect this or that—that various ways will occur—that the lawyers can settle all that. I distrust everyone who shirks the task of proving to demonstration that his scheme is adapted to an Irish medium. It is one thing to make a

machine which will *go* in a Museum ; it is another to make one which will not only move, but *work* in a Factory. It is, therefore, upon its mechanical details that the value of any scheme, as well as its fate, depends. It is by the details that, if good, it will succeed, or, if bad, be defeated, whenever it comes to be discussed. This will be a trying, and often fatal test.

Having thus far endeavoured to obtain a clear view of the *subject* with which we have to deal, I have now to explain the special *mode* of remedying its alleged evils which seems to me to commend itself most to law, equity, and common sense —three ideas which so many confuse, from not understanding that they are but successive developments of the same original idea of justice, adapting themselves in their several generations to the wants of progressive civilisation and the circumstances of each succeeding age. Justice ever begins in its rudest and most rigid form, but as it runs refines. It is in its purest state that it is now needed.

We have been in a difficulty as to the past, and if we don't take care we shall be in the same difficulty as to the future. Now, the best way to get out of the one, and not to get into the other, is to see how it happened. It happened then simply because rights existing in land were never required to be defined in Writing, as is so admirably done in some foreign countries. This is the practical meaning of *contract* contrasted with *status*. It is creation by design, not by accident. Contract involves no particular state of rights. Even the feudal lord contracted with his vassal for certain services, now no longer the return for tenure. Contract, then, is nothing more than a method for creating rights. When it is not in writing, it is the sport of the law. When it is in writing, and in a proper form, it fixes all rights, prevents their admixture, and bars litigation.

My own experience tells me to despair of any useful land measure, no matter what its political aspects may be, until the whole of the old law is swept away, and a new one planted in its stead. Its branches are rotten, though its stem and its tissue are still sound. Nothing would be more easy. As the

law now stands, none of the parties interested in land could ever see his rights, without legal help. This is one of the most severe grievances of the time. It has always been more or less such. But modern legislation has thrown the whole into worse confusion.

What People in general want are clear definitions of their rights, all stated within the compass of one simple Act of Parliament.

What the Legislature wants is to have the law defined—in all its parts—within the compass of one simple Bill; so that they may easily see where alterations can and where they cannot be safely made.

At present they are as men in the dark, led by lawyers—the worst possible constructors of legal measures.

The melancholy view given in a recent history of land legislation is proof of this. The view, indeed, has no melancholy features as to present circumstances in Ireland, but much as to the abortive attempts of lawyers to devise remedial law.

We want to enable men of business to regulate matters with which they alone are conversant, not to be always trying to put new wine into old bottles. It is the bottles that should be new, not the wine alone.

The fact is, that the present law is a mass of confused, often contradictory, decisions, drawn from ancient sources.

The Act passed in 1860 entirely changed the state of the law as to the relation of landlord and tenant, by providing that in future this relation should be deemed to be founded on the Express or Implied Contract of the parties, not upon tenure or Service, leaving it to the courts of justice to reconstruct upon this new principle the rules which should govern that relation.

This Act was only declaratory, not executory. It touched *pleading*, not *conveyancing*. It made no provision for entering into contracts, and it has had little other effect than rendering it unnecessary to prove a reversion in certain actions—but necessary to reconstruct the general law.

Now, the common law is the growth of decisions, which

have been more or less influenced by the now obsolete principles of service. Consequently this could only become applicable to the new relation in Ireland, through the slow process of Judicial action. Again, the whole of the old law of construction, of implication, and of presumption, was left untouched, whilst its subject-matter was transformed. The right to compensation for improvements was even based on a presumption !—a further source of confusion.

It was to meet this most unsatisfactory state of things that a general measure seemed so necessary—a counterpart, in fact, of the Petty Sessions code, which had proved its utility some fifteen years before ; and I then undertook the work for my friend Lord Athlumney—one of the wisest and most practical of modern statesmen.

We worked upon it for several years, in free consultation with men of all parties, till we came in sight of one of the most important of law reforms. It was then brought into the House of Lords, and became known as Lord Clanricarde's Tenure Bill of 1867.

A committee then sat upon it for two sessions ; and after some of the ablest men of the day had made such alterations as seemed advisable, it was reported to the House in 1868. It has been at rest ever since. But I will now endeavour to explain what seemed so necessary then, and what seems equally so now.

As a result of collected wisdom, it ought to have great weight. It is aimed at a state of things of which few have any clear conception, because shrouded in law.

The leading object of this Bill was the simplification of the law of tenure, a term which must now be understood, not in a feudal sense, as in the Act of 1860, but simply as the Holding of land, as between two parties.

With this view, the Bill sought to consolidate and amend the *whole* of the *common* and *statute* law of Ireland, applicable to the relation of landlord and tenant—using such familiar language as would be intelligible to all, and thus presenting a complete and consistent code, in a practical and popular form.

The consolidation embraced the fundamental principles of the *Rights of property*, as recognized by English and Irish—and in fact universal—law.

The amendments introduced such subordinate regulations as, without infringing upon the former, were calculated to render them more effective, in facilitating agreements for the Holding or Improving of lands.

The Bill offered two very important results; first, a revision and purification of the whole subject, with a declaration of what ought to be deemed the respective rights of the parties; and secondly, the great convenience of a complete system of regulations applicable to all land dealings—superseding the whole of the old law now widely spread over acts, treatises, and reports, and so disjointed by modern treatment that it is often inaccessible, and always vexatious, from its uncertainties and inconsistencies.

The proposed substitute for this was a simple law, founding Tenure, and all its derivative rights, upon clear principles of *Express*—not *Implied* contract, as allowable under the Act of 1860—and disentangled from all residuary ideas of feudal service or their influence.

In addition to several important secondary objects, upon which I need not now dwell, the Bill had two primary objects; first, clear security for the holding in the interest of the landlord; and next, clear security for improvements in the interest of the tenant.

We could see no safety for either of these interests unless they were to be defined in writing.

With this view the Bill provided that, after a given date, any agreement for the occupation or improvement of land which was not in a Statutory form, with the special particulars in Writing, should be absolutely void. Clear rules were laid down to enable the adoption of these, but with the utmost facilities for the parties to adapt them to their own views in each case.

These statutable forms were such, that in the majority of cases they would only require for their completion to have the blanks filled. Litigation often turns upon the careless omis-

sion of some of the particulars essential to an agreement—whatever its specific object may be. The forms only extended to these particulars, so as to secure the non-omission of essentials.

One of the great advantages which would result for both landlords and tenants, especially those of the smaller class, from the imperative use of such forms, would be their protection from the attempts which might be made by interested persons to defeat the humane intention of the Bill in reducing the costs of agreements, by drawing them up in a longer and more expensive form—if the option were allowed.

With this view also, the Bill provided, and the Committee recommended, that such agreements might be prepared by any competent person, abolishing the need to employ a licensed conveyancer, which has hitherto proved a serious cause of expense. It would be a needless expense where forms had only to be filled, not wholly prepared. With the same view the Bill provided very simple forms for almost every transaction likely to arise.

Perhaps one of its most valuable and novel features was its proposed system of Loan Bonds to facilitate improvements. The main principle of this Bill was no novelty. It was originally proposed by O'Connell as an important law reform. His idea was that all holdings should be in writing, and that general conditions should be provided for the majority of cases, by a general statute—which would in fact be a general Lease for the whole country, governing each case according to the expressed desire of the parties.

To this hasty outline I will add, that it was not only proposed that every transaction should be in statutory form, but that every such form should be Registered in the county, as public security.

Such was the simple law reform proposed and carried out in every variety of detail by this Bill. Its original scope was far more extensive than was thought feasible at that time. The Bill admitted the existence of very extensive equitable rights on the part of tenants, and empowered landlords to agree with them as to their value, and then to charge the

amount upon the lands as against all the world. Happy would it have been for the parties concerned and for the public if they had all joined to carry this measure in its full scope. Our progress might have been greater than nature has actually forced upon us, in spite of man's perversity. But such was the hostility evinced at that time to this just provision by those who thought it more than sufficient and by those who thought it less than sufficient, that, for peace' sake, it was left out of the Bill of 1867. It was also more extensive in another point of view. It was *retrospective* as well as *prospective*. The subsequent alterations made by the committee did not affect its principles, except on one point. It modified in several ways the minor regulations in favour of simplicity. But it also deemed it wiser, that it should be *prospective* only. To show the extent of their views, I append the report of the committee. But there would, however, in my opinion, be no real difficulty in the way of substituting a Statutory Form for every Lease in existence, as it would cost but a trifle, and involve little trouble. We should then have one uniform law for every holding in the country.

I am now as clear as ever, that neither owners nor occupiers will be—or ought to be—content, till they have been provided with a measure, as simple, and as clear, and as free from cost, and as easy to be framed, as the one I have described. I may add that the Bill did not propose to establish any new sort of Judicial machinery. We know nothing of how such a system would work. We want the subject to work itself with as little aid as possible, except self-acting regulations. There may be disputes, and these can easily be settled.

In this view sufficient machinery is all ready-made. We have got all we want. We have only to authorize the court, which is called upon to evict, to entertain the question of equitable property, and award the value—its payment into court to precede eviction. In most cases the court would be that of the County Chairman. But until these are made, as they ought to be, the sole tribunals—of first instance—it

might be one of the superior courts. In either case the usual appeal would lie open.

There is a strong reason for bearing the tribunals we have rather than flying to others that we know not of. It would not seem wise to make the people whose dearest existing rights are now decided by those courts, think that they were not equally competent to decide upon any new created rights.

Lawyers may not be the best constructors of Acts of Parliament—but they are certainly the most competent to construe their meaning when constructed by others. They have been educated upon *old* not *modern* ideas. They have been taught to practise upon the most verbose system of forms in Europe. But they are, for that very reason, the better qualified to arrange facts and sift evidence.

Let him then charge the claim on the lands according to the simple Loan Bond System of Lord Clanricarde's Bill.

This use of existing machinery is fully equal to all the exigencies of the case. It fulfils true mechanical conditions. We are not to waste power—which means that we ought not to meddle with any right until it is in dispute. We are, if possible, not to use what are called idle wheels—which means that we are not to create new agencies where those existing will suffice. We are to obviate friction as much as possible—which means that we shonld reduce all costs and expenses to the smallest possible amount. I fear that most of the schemes hitherto proposed do not fulfil any of these conditions, and some of them might be deposited at the Society of Arts as memorials of incapable ingenuity.

We know very little now as to the real extent of any tenant's equitable property if in question. It may be great or it may be small. We every day see supposed facts vanishing as fictions. We know very little, too, of the special or peculiar considerations which may be set against it in each case, and which a just judge cannot overlook.

I must, therefore, reiterate the suggestion that every tenant who wishes to entitle himself to a right of compensation, should be required to place upon record, in a Statutable form, before a given day, the Elements, which it would be necessary

to know, in case his claim should be denied. These elements are the original rent and original value—the expenditure of the tenant on improvements, or the sum paid for good-will, as the case may be, with the present rent and present letting value. These items—with certain corrections for acts done by the landlord, or for undervalue, or for increase in the prices of produce, or for co-existing deteriorations, would at once give the amount equitably due to the tenant.

This should be done before time exhausts the evidence. It should then be open to revision by the Landlord, and confirmation, variation, or rejection by the Court. The result should stand good—permanently in cases of good-will payments, but temporarily in cases of improvement expenditure—until each class of improvement might be deemed exhausted, for which a proper scale is easily fixed. We should thus glide out of the old period into the new with great ease. Time's scythe would cut many knots.

There is, however, a considerable class of tenants in whose favour some special system might, perhaps, be established.

I allude to those who, beginning as mere squatters, have become by personal industry what are called peasant tenants. These are the more helpless classes, and might require a more helpful treatment. It is, without doubt, amongst them that the largest proportionate quantity of this Equitable Property exists—and to whom the largest share of Compassion is due—for having vested their mite in the soil.

It is difficult to apply any legal machinery to such cases. The delicacy of their interest would hardly bear it. It would be probably far safer for them to be left to private tutelage—until the Government is wise enough to aid in purchasing them out, and promoting their free Emigration. They are now altogether redundant. They consume their own produce—not that of others. They contribute nothing to the wealth of the country, and little to its strength—except mere population.

For the cases of the more strong classes I can see no better machinery than what I have suggested. I have arrived at this conclusion by thinking how I should myself proceed, if

I had to decide upon any given case. I should require the claimant to state his case by filling a statutable form with his facts. I should allow his opponent to examine and answer this if he could. I should call upon each party to name an Expert to view the place together, and report the facts—as well as their opinion upon matters which might not be within my own experience. I should then decide according to the best of my own judgment, guided—but not fettered by theirs. They might appear to me to be incompetent—or even in collusion. I think that—after admitting such further evidence as the established experiences of law would sanction—I should thus arrive at the truth, and award justice. I believe that every County Court Judge in Ireland would do the same.

I have that faith, too, in the natural love of justice of the Irish towards *themselves*, that I believe that if this scheme was once firmly adopted, so as to show that more could never be conceded, its justice would be admitted, and that Tenants, seeing that there is no special magic by which they could be transformed into Proprietors, would prefer to remain at peace with those who have become so before them. It is notorious that they are now saying this everywhere—behind the scenes. The reality lies deep under a troubled surface, and is only visible during intervals of calm.

I have now to say a few words as to the Land Act of 1870, which concerns several subjects treated in a most objectionable manner. What else could be expected from an attempt to darn an old garment with new thread!

The first subject to notice is the Ulster tenant-right. It appears to me as if the first section of the Act was prepared without due attention to the real nature of this custom. It is a custom, and was already held to be a legal one—that is, that it was not illegal. The Act only declared it legal; and in this, left it where it found it. It did not convert it into a right, as against the owners of landed property, as some desire.

But from supposing that it gave some such new force in Ulster, it went on to make an empty offer of it to other places

out of Ulster upon a very singular condition—that it should be a usage corresponding "in all essential particulars with the Ulster tenant-right custom." But surely it ought to have been known that in Ulster the custom is of an endless variety. In some cases, the tenant is free to sell; in some, not. In some, he may sell by auction; in some, not; and so on, as to a variety of essential conditions. How, then, would it be possible for a custom elsewhere to be identical in essentials, with a variety of others—often contradictory!

It is true that in all these cases, it is said that the custom is to be enforced in manner provided by the Act. But I can discover no explicit provision as to this in the Act. It would take a Judge to point out how such custom could be treated as a matter of Compensation. Perhaps it might be done, but not in any way clear to those concerned.

The Usage is, that a tenant may sell his interest to another. But how can that usage be enforced as a Compensation, which could only arise upon Eviction? This is a mystery to me.

There is, however, no mystery about the Disturbance Clause. It touched one of the rights claimed by a tenant—an Occupation right. It acknowledged this, which means, in the eyes of the tenant, the right of perpetual occupation—the impossible aspect. The possible aspect, which it assumed in the eyes of more educated men was a right, in case of capricious removal, to be indemnified for the *inconvenience*. To take away the power of eviction would at once have destroyed the integrity of property; but to moderate it by restraining its excercise, except upon certain conditions, was another question, fairly open to discussion. The securing an indemnity may be a matter of *policy*, but it harldy amounts to *justice*, as it, of course, infringes—to that extent—the present rights of others.

Occupation right is wholly inconsistent with Proprietary right. It seems to be based upon some vague idea of *hereditary* transmission. But this would cover but a small part of the ground. Good-will payments are alleged to be prevalent over the whole country. These are, of course, the incidents and exponents of a change of tenancy, and bar all idea

of succession. In all these cases, the tenant is a mere purchaser, not an inheritor

It has been sought to apply to this claim the precedent of railway compensation as a statutable recognition of an occupation right. This recognises the inconvenience caused to two persons, and fixes an indemnity for Each of them, on the one hand, as against the Public on the other. But it sets up no right as between the owner and occupier. If I give a lift to another in my vehicle, and we are both upset through the negligence of a third person, we each get compensation for our broken bones as against him, but our relation to each other is not altered. This occupation right is a case rather for private benevolence, not for public interference. However, when it is said that the tenant must be protected by law against capricious eviction, it cannot be taken as meaning more than that, if evicted, he must have indemnity against actual loss. I will not discuss whether this was rightly measured. I fear the tenant would have fared better if left wholly to private consideration.

I know that O'Connell's expression of the "sacred right of possession," was appealed to as authority. But he had clearly in view the legal idea that possession was nine-tenths of the law, which implied an alleged right, not a mere existence. It is no authority even for his opinion. He was too good a jurist to confuse rights.

The compensation given by the Act of 1870 was merely for the loss of occupation, without any reference to its duration or to the final condition of the land as contemplated by the provisions of Lord Clanricarde's original Bill. Some such indemnity is, no doubt, just, and rests upon a sound principle. If so treated, it would have operated to encourage tenants, rather than make them indolent—because secure of a certain return, whether deserved or not, if evicted.

The Land Act assumed that because a man happened to be in occupation, he was therefore entitled to the soil to a certain extent. It was a fearful mistake, as it first gave solid bottom to the present wild notions.

But the step cannot now be retraced. It must remain as

the law of the land—unless, in any new Bill, its being placed upon more wise ground, can be effected by some new concessions. This is not impossible.

With respect to the principle of the Ulster Custom, the question was well considered, whether it would be possible to give it more force than bare legality. It relates simply to an Accommodation payment of very variable amount—personal to the parties, and having no relation to the Commercial value of the holding. It has nothing to do with improvements, and cannot be mixed up with the Landlord's Estate. It may, of course, include improvements, which are then bought, not made.

The greater prosperity of the North over other places is not due to this Custom—but, as some think, in spite of it. The very same fallacy was taken up as to peasant-proprietorship on the Continent. But the prosperity in each case is really due to the greater spirit of enterprise, and of thrift in the people themselves.

In connection with this subject, I will only say that I deprecate taking any account of occupation rights, that is, accommodation value. I can recognise none as *just* except the actual investment of the tenant in equitable property. But I regard the further idea of allowing any tribunal to meddle with anything but money investment as perilous in the extreme.

I regard, too, the idea of placing rents under the tutelage of Courts as a severe infringement of the rights of property, for which there is no real precedent in our law. It would be to create fixity of tenure and fixity of rents in disguise without any of their supposed advantages, where the sole object ought to be to ascertain a right, and fix its money value.

I am persuaded that this scheme would never work except to produce Confusion and Litigation, and general Dissatistion.

In continuation of this subject, we must notice that the tenant has two clear equitable rights, in addition to that conferred upon him in 1870.

The first and most important of these is that of compensa-

tion for what he may have sunk in the land, whether in money or in labour. He may have purchased improvements with the possession from another tenant, or he may have made them himself. This is the improvement matter. The other is what is called good-will payment or Northern tenant-right. It may, but seldom does, represent improvements.

But we must keep the value given for mere possession quite distinct from that representing improvements, because they require distinct treatment. For example, the custom of the North—with whose proposed extension to the South so many are infatuated—would simply lead to this, that every tenant who holds at an under value should be empowered to transfer his possession to another, and put into his pocket the difference between that and the real value, which, of course, belongs to the landlord. It is not likely that that will be done, particularly as a strong tide is now running against this Northern anomaly. The desire of most wise people seems to be to stop its further growth as soon as possible.

But to view the two things again for a moment, together. The fact is, that throughout Ireland these two tenant-rights are—with few exceptions—recognised and conceded as customs. Let people say what they like for their purpose, tenants are seldom evicted without reasonable compensation. However, both forms of right rest on custom only, and it is supposed that by legalizing this the tenant would be more secure than at present. I doubt this. It is said that the English courts recognise customs, but that the Irish do not. Most of the customs so recognised in England have no existence in Ireland. Customs common to both countries seem to be equally recognised in each, but in each as Customs only. The custom seems to be in both taken rather as evidence of implied agreements or understandings. It can have no other base. But who would be able to define by legislation the varied evidence so represented? It would be a mechanical impossibility.

The attempt, too, would be most dangerous to tenants. To show this, let us again revert to each of the two customs separately, and see what it is.

In the North the custom is a pure commercial transaction. Men can there, from having other resources, afford to pay for the possession of land as a luxury. In the South, the fact is, that in most cases the tenant pays it as a pure good-will offering—an insurance upon his life. In both—call it what you will—it is the landlord's insurance for his rent. That is its true mechanical function. How it arose is immaterial. I will only notice in passing what a remarkable evidence it affords that the tenant has been ever more shrewd than the landlord in fixing the value of land, and everywhere more competent to make his own bargains than some people would suppose.

However, the question now is, could such a custom be made a right as much as a compensation claim? But it must be evident, that the moment it received legal existence it would lose the essential attributes which keep it alive. In ceasing to be mere custom, and passing out of the domain of flexible interest into the inflexible treatment of law, its motive and its sanction would vanish. The interest of the two parties varies inversely as each other, and according to the well-known rule in mechanics, that what you gain of one sort you lose of another, can any one doubt but that that of the proprietor would prevail, and the northern custom be hunted down till it perished?

Here is the great danger to the tenants. They would risk a great material interest. The nation would lose a great moral agency—that of a kindly custom.

Perhaps, however, the annihilation of its subject-matter would be for the ultimate good of all. But it would seem to be a great danger to touch such an investment as this custom now preserves.

The other great branch of tenant interest stands upon a different footing. The good-will payment is a matter of purchase. It is permanent, and will run on with the land, without exhaustion, until it meets a violent death. But the interest in improvements is exhaustive. It is temporary. Moreover it is to a certain extent visible and tangible, and can be differently handled from the other.

But here, too, I am satisfied that the tenants as a class will incur great danger, under any system of *compulsory* Rights—except as regulated by the Bill under notice. Individuals may gain. But the class—which will never cease so long as land is land—would soon find themselves hemmed in by devices of which they now little think—not designed for their particular hurt, but for the general protection of property—as property. This danger would be akin to that which now overhangs them, from the agitation of the question of Fixity of tenure, which has brought with it the idea of the Re-valuation of rents. It seems to be the opinion of the most competent judges, that, as a rule, Irish land is let much under its real value. The tenants may indeed escape a compulsory valuation, founded upon the now doubled and tripled prices of produce.

But attention has been aroused to the fact of value, and perhaps any move in legislation will be followed by such a revision of Rents as they may not relish. If they take, they will be made to give. However, they are now in for an altered situation. A public opinion strong enough to prevail may, no doubt, provide some sort of compulsory legislation, and they must take the consequences.

Let it, h owever, be always borne in mind that a valuation could be of no use except for purposes of Taxation—in order to give relative not absolute values, and so fix relative rates. The only true valuators are the landlord and the tenant. They alone, when left to free action—as they ought to be—can fix the proper Rental value of any tenement—so various are the elements of a just estimate.

It will be seen that the simple Bill which I have described above, contains the *whole* of the law necessary to govern the relation of landlord and tenant, and aims at no more than helping men to help themselves. It does this, not only by assisting to fix their respective rights, but by opening to them two very important channels for the flow of Private and Public Capital to their aid.

Beyond this, I will only call particular attention to one of its most noteworthy features. It contemplates that a land-

lord and a tenant may either enter into an agreement that the latter shall hold for a certain *term of years*—this more *durable* tenure to cover all claims for compensation at its end —or that the latter shall, if he pleases, hold from *year to year*, but with security for a fixed compensation, if evicted before the end of a given period. This would be matter of choice, and settled by mutual consent, as might appear most for their respective interests.

Another important consideration is, that all this is done within certain wide limits, irrespective of the limitations of property, which is left far more free than it is now.

Then, in all cases, legal formalities are superseded, and the Tenant's security would be a Statutable Form, costing only as many Pence as a Lease now costs Pounds.

The Bill can speak the rest for itself. It is in print. I will only add, that the greatest difficulty which was experienced in devising its details was to find a motive to induce a Tenant to take a lease. He mostly hates the very idea of it. It implies strictness, and it implies finality. He clings to freedom and perpetuity. But shut him out from all rights, except such statutory contract, and the difficulty will end.

Under the last mode of dealing, the tenant would have the privilege he prizes so much now—the clinging to his farm as he does to his life—without any gloomy anticipations of an end. His compensation agreement would be the policy of an insurance upon his outlay—either for himself or for his family.

There would be no difficulty on the other side, as the Landlord could recover no rent except when fixed by statutory agreement.

This is one of the many advantages of a system which enables all rights to be convertible into money, and not solely into tenure or other like complicated interests, which only represent money in an indefinite shape. The poorest man can understand and handle the first but not the last.

The other great branch of the Land Question, which was co-ordinate with Lord Clanricarde's Bill, is that which is known as Mr. Bright's scheme.

It never appeared to me likely that Mr. Bright would ignore the right of private judgment and private action—the great features of the day. We can regard it as a great transaction to assist progress, by buying wholesale and selling retail. For the rest I can only say that every one who has studied the Land Question in all its bearings, must have discovered that there is a vacancy which some such measure would well fill.

I will not presume, as others have done, to define Mr. Bright's views. I can only define what would seem to fit and fill the vacancy. I do not believe, however, that he has overlooked the great moving powers by which Civilization is advanced, and its Reward secured. I do not believe that his design was to upset large proprietorships and replace them by small. I do not understand him to assume that Peasant proprietorship is a panacea—or even a very valuable thing in itself—because I am myself persuaded that it is only in their co-existence, in certain fair proportions, that good may lie. It is by relaxing laws and allowing nature free action that we can alone fix those proportions. We must work by natural not supernatural means.

Through a Tenure Bill we can unite large proprietorship—that is, Capital—with the interest of those whose lot it is to cultivate—that is, Labour. Through the other measure we can establish the enjoyment of pure and simple Proprietorship on a small as well as a large scale. There is room for both—and there are reasons for each.

To try to create peasant proprietorship for its own sake would be a grievous mistake. In Belgium—and, to my own knowledge, in several other foreign countries—what is so often presented to the eye is not peasant proprietorship at all. The peasant proprietor is out of sight. He is a petty, grinding Landlord. What we do see are his Tenants—upon whom, however, such is his needy pressure—that, if we look a little closer than a mere railroad glance allows—we shall find that the men and their sons are mere slaves, whilst their wives and their daughters become the very beasts of burden of the locality.

This is one danger for the community usually attributed to small proprietorships. Another danger is said to be, that it would tend to the continued subdivision of land—and the propagation of indigence, inasmuch as you could not deny such a right to any proprietor, however small.

I do not fear either of these dangers. The experience of most foreign countries is inapplicable. We should have correctives here which they have not there. There subdivision of ownership is carried on by a special law. In Ireland we have no such law. We have it as to Personal property, but not as to Real property. Our greater freedom brings us nearer to the law of nature, which permits us to *increase* as well as to *multiply*, and gives us the motive of interest alone to decide as to its extent. In this country we should begin at the other end—proceeding by Multiplication, not Division—for the Peasant and the Peer are like creatures in their desire always to aggrandize their position and their means. The great draws on the small. Dr. Johnson said that the Lord Mayor's show was not to gratify the rich city magistrate, but to encourage the poor city apprentice. Let us only open the way to every man, and the encouragement will find itself. The aspirations of all are cumulative. But we must begin at a beginning; and as the disturbing forces —the countervailing action—which prevail in Foreign law would not prevail in Irish law, we might reasonably expect more favourable results. But the success of any such scheme would depend altogether upon its proper mechanical treatment—as to the means and the mode.

With regard to the means, the enterprising Tenant must be helped to purchase his actual farm if it be for sale, or some other if it be not. Without State aid for this—in a particular way—no action would be possible. If he could pay the price of the Land, he could not pay the cost of the Title and of the Conveyance.

I fear, however, that a purchase by the State, upon the principle of repayment by instalments is here open to the most serious objections. The State ought never to become a Landlord—and as seldom as possible—a Creditor.

But the State can purchase in gross, and sell in retail— and if this is accompanied by a loan bond system, as simple and as costless as that under Lord Clanricarde's Bill—the money will soon come forth. The benefits, too, would thus be limited to those who may be worthy of them. The rules of commerce will secure that.

Then as to this temporary use of State funds to purify title and subdivide its subject, it has already advanced large sums for the improvement of property—which have been regularly repaid after producing widespread benefits. Why should it not make like advances for the improvement of proprietorships? The benefits would take a new shape.

The *material* results might not be very great, but the *moral* results would be of pricelesss value. A supposed—perhaps real grievance—would be swept away in the only manner possible.

With respect to the mode of action, there is a mechanical condition which appears to be essential, and that is, the radical reform of our legal machinery—in which we are so far behind other nations. We are still using hand-power, where they are using self-acting machines. I have seen one of these abroad, which is extremely applicable to our present wants. I can best define it figuratively. Names, dates, sums, and descriptions are thrown into a hopper, and on the other side there comes out a perfect conveyance to a purchaser, or lease to a tenant, as the case may be—and all this by almost the turn of a wheel. This is, in fact figuratively the system of Title and Conveyancing by Registry—which involves no more difficulty abroad for the transfer of Land than it does in England for the transfer of Stock.

With these two adjuncts, but not without them, I am satisfied that the principle of Mr. Bright's scheme would belong to a high order of statesmanship. But I strongly object to this system being made a part of any Tenure Bill—with which it has nothing whatever to do. Its object is not to regulate Tenancy, but to turn the Tenant into an Owner—the germ of a landlord. It is, strange to say, his natural

ambition to become himself what he is advised by false friends to hate in another.

Whatever view we may take of any measure, we must never lose sight of the great danger of leaving opens for Litigation. There are no people more fond of civil litigation, or more averse to criminal litigation, than the Irish. The latter they like to keep in their own hands ; but they are willing to leave the former in those of the proper authorities. They are somewhat fond of its excitement. Many of them would rather pay costs than rent. But we ought to thwart this tendency as much as possible.

There is indeed a very unsound idea afloat on this subject.

A writer once actually urged that to promote litigation was "rather a recommendation of a scheme than the contrary;" that litigation was the negative of lawlessness, and that the thing of all others which we wish to create or confirm is the habit of resorting to Law. No doubt, this is the doctrine of Westminster Hall; but it ought not to be that of St. Stephen's. But has not the writer here confounded lawless criminal action where there is no right, with lawful civil action where there is right—criminal with civil objects? We might as well argue that medicine was the negative of indigestion, and that the thing of all others we should wish to confirm is the habit of resorting to its frequent use.

Litigation is good where a valid dispute arises, but not as part of a new state of rights—if it can possibly be avoided.

Another unsound idea afloat—as in the Act of 1870 and a former Act,—is, that any result but litigation could come from the proposal to reverse a well-known presumption of law, and declare that all improvements should be Deemed the property of the Tenant unless the Landlord could prove the contrary. This would realise the litigious motive on a giant scale, for it presumes a law-suit in every townland in Ireland.

The discussion of this question hardly comes within the scope of my design, because the principle is not wanted as to improvements which can be treated so easily by direct action. It could obviously find no room in a future system of contract, or in any system of written rights.

But, supposing for a moment that it could be deemed expedient to ignore this simple system, and leave the relation of landlord and tenant in its present loose state, at the mercy of the present disorganised law, it might be well to consider what the mechanical effects of that reversal would be.

If these things are to be deemed the property of the tenant —as I hold they ought—why give them by a presumption only, and not by direct legislation? It is a sound principle of equity, that if a tenant adds tangible things to the tenement, he should be free to take them away, but not to force the landlord to take them whether he thinks them valuable or not.

This sound principle of equity was proposed by Lord Clanricarde's Bill of 1853, as far as it could reach—that is, to what may be tangible or visible. It was adopted by the Act of 1860 as to trade fixtures and machinery. The Bill before us, as settled by the Lords' Committee, applies it to every tangible thing, as in the Bill of 1853.

The sole conditions required are that the things shall be registered to prevent future litigation, and that, if removed, the land shall be left in as good condition as that in which it was received.

By thus leaving the matter wholly to the interest of the parties, it is clear that, if suitable to the tenement, the landlord will pay the value. If not suited, the tenant could not complain if told to take them away for what they might be worth. It extends to all tangible things the same rule, which English law, in its perversity of language, calls *fixtures*, but which really means *movables*. It does it by direct action, not by the intervention of legal presumptions.

This idea of reversing presumptions is more than dangerous in a mechanical sense. It would be an infringement of the integrity of property to allow anyone to engraft rights upon it, without the proprietor's consent. To establish it would be to admit a legal co-partnership in the soil between the occupier and the owner, and bring on that struggle for rectification of rights which would in the end most certainly be disastrous to the interests of Tenants, and far more so to

theirs than to those of the Landlords—for the land and the sky over it must always remain for the latter, though other things may be swept away.

With regard to its effects in a mechanical sense, I must say a few more words. It may sound, perhaps, plausible to those who do not trace its practical effects. The idea is not a novel one. The question was mooted among the officials concerned in the issue of the Devon Commission, but discarded as more ingenious than useful. The wise men of the day thought it fraught with mischief. So will anyone who reflects upon what it really means. The right presumption ought to be a vital part of property itself. Without it property would lose its integrity. The accessory would be substituted for the principal—the accident put into the place of the substance. The confusion of rights would be endless. The proprietor of the visible would be always on the watch, as against the invisible.

Could there be a more ingenious mode of breeding and fostering distrust between landlords and tenants? The former would be driven, as in feudal times, to keep watch and ward against the inroads of such marauders, as these presumptions of law would be deemed. But what is a presumption of law? It is the inference which lawyers have from time immemorial been deciding—that certain acts or omissions, due to the weaknesses, or negligences, or failings, or, perhaps, kindnesses of men, shall be presumed to mean, whether they did mean so or not. The subject has become one of the most refined and scientific branches of, in its right sense, English jurisprudence. To place landlords and tenants bodily under its control would be ruinous to both. The idea does not belong to the nineteenth century. Here we are, craving for plain facts, and plain dealings, and plain law, in order to get out of the difficulties into which a contrary state of things has brought us, and the remedy is actually to disorganise facts, and then cast a shroud of old law over all.

The fact is, that the plan is pregnant with litigation. Its very essence is that what is now a settled rule of property

in England shall be unsettled, until Lawyers shall have re-settled it again.

In appearance, perhaps, it takes the *onus* of proof off the weaker party; but, in doing so, it places the *onus* of initiating litigation upon the stronger. It is tantamount to a notice that every tenant in Ireland should prepare for a suit which the richer must institute and the poorer defend. He would have to defend it, too, through a maze of implications of law which have already been the curse of the country. To implied rights of occupation would be added implied rights of property.

This won't do. If we are to have a change of rights, don't let us make it by such a subtle contrivance. Let it be done by direct, not indirect methods—openly, and in the face of day.

Those who are conversant with legal literature and legal practice would hardly advise the introduction into our already overcharged system of law of such an element of strife as this lame and lazy old idea would soon introduce.

There is also another fruitful source, not only of litigation, but of endless annoyance, which is incident to the law at present, and which will continue to be incident to it, unless it be obviated by some very special provision. It seems to have been quite overlooked by those who are discussing the question. I allude to the difficulties which arise in arranging the succession to a tenement when a tenant dies. Holdings are generally for years, and not for lives. The interest in the last case is *Real* property, and descends to the Heir. The interest in the former case is *Personal* property, and distributable amongst all the family. The consequent difficulties are most distressing. The evil is a notorious one. It is the same as the foreign evil of the same sort. Its prevention was aimed at by a clause in the original of Lord Clanricarde's Tenure Bill, which abolished the distinction between these two kinds of property, and made the Tenant's interest *Real* property in all cases. But it was not pressed, because it opened such a large question as to the English law of primo-

geniture. Its adoption, however, would, in many ways, greatly enhance the value of a tenant's interest.

The present confusion of claims and still greater confusion of the law, to which they are now subject, renders the task of the Legislator one of great difficulty. His need is to know the proper remedies to check the bad landlord, and also to check the bad tenant. I can see none but by insisting upon the necessity of Written Contracts. This would bring new motives into play. It is the merest delusion to suppose that the Irishman is too ignorant to work under a contract system. He is far more competent than is generally assumed by those who do not know him well.

The extent of good-will payments, as I have before said, indicates his shrewdness. But, even if it were not so, is the Legislature capable of making a better bargain than he is? The probability is, that Legislative Bargains would please none.

How much wiser to treat the subject as done by Lord Clanricarde's Bill, and provide—a normal state of law—a normal relation—which would certainly be adopted in the vast majority of cases—whilst it would leave the parties free to depart from it by mutual consent. The departures would be the peculiar cases in which they deemed themselves competent to adapt themselves to peculiar circumstances and peculiar interests. It would give protection exactly where it is wanted and accepted—not where it is not wanted and not accepted.

All men are the best judges of their own interests. Let us then allow them to follow these as they may think best—helping them where they are working in a right direction for the public good,—but not helping them when they are working in an opposite direction.

Wm. Tighe Hamilton.

15 *February*, 1881.

APPENDIX.

REPORT OF THE LORDS' COMMITTEE.

May, 1868.

"ORDERED TO REPORT—

"That the Bill referred to the Committee is the same, with some improvement in its details, as that submitted to the Committee of last year. In resuming the examination of the Bill, in which much progress had been made, in the previous Session, the Committee did not think it necessary to look for further evidence, but proceeded at once to consider the provisions of the Bill before them. These they have very carefully revised, with the able assistance of Mr. Tighe Hamilton, by whom the Bill was drawn, and they recommend that the Bill, as now amended, be adopted by the House.

"With a view to facilitate the comprehension of the general scope and object of the Bill, the Committee submit the following observations explanatory of its leading provisions.

"EXPLANATORY OBSERVATIONS.—The Act passed in 1860, intituled 'An Act to Consolidate and Amend the Law of Landlord and Tenant in Ireland,' entirely changed the state of the Law as to the relation of Landlord and Tenant, by providing that it should for the future 'be deemed to be founded on the express or implied Contract of the Parties, and not upon Tenure or Service,' leaving it to the Courts of Justice to reconstruct, upon this new principle, the Rules which should govern that relation.

"The Bill continues this relation upon the basis of Contract, but requires that all Contracts between Landlords and Tenants shall be *express*, not *implied*, and that they shall be in a definite form, regulated by the Provisions of the Statute.

"PART I.—WRITTEN CONTRACTS.—One of the most important alterations in the Law proposed by the Bill is, that after the 1st of January, 1872, any Contract for the Occupation of Land which is not in Writing, shall be absolutely null and void, except in the Case of Land which was previously to that Date in the Possession of the Holder, and which shall continue to be held by him on the same Conditions as before.

"The Bill then proceeds to lay down the Rules by which written Contracts shall be governed.

"These Rules have been framed with a view to giving the utmost Facility to the Parties concerned to make such Agreements with each other as they may think proper; but, in order to prevent uncertainty and litigation, it is provided that all Agreements shall be made in Statutable Forms, which will in the great Majority of Cases only require, for their Completion, to have the Blanks filled. Litigation constantly turns upon the Omission of some One or more of the Particulars which are essential to the Completeness of any Agreement, whatever its specific Object may be. The Forms only extend to these Particulars.

"One of the advantages which will arise from making it imperative to use these Forms will be the protection of both Landlords and Tenants, and especially the smaller Class of Tenants, from the attempts which might be made by interested Persons to defeat the intention of the Bill as to reducing the Cost of Leases or other Contracts, by continuing to draw them up in a longer and more expensive Form, if it were left optional to do so.

"The Bill also provides that any such Contracts may be prepared by any Person,—abolishing the Necessity for employing a licensed Conveyancer, which has hitherto existed, and has been a serious Cause of Expense.

"The Bill contains some Clauses which, in accordance with the rules which govern the Proceedings of the two Houses of Parliament, it will be necessary to omit before the Bill is sent to the House of Commons; amongst them is a Clause for the reduction of Stamp Duties on Leases, to which the Committee attach considerable importance.

"The Bill does not propose any Change in the existing Remedial System for the Enforcement of Rights except in two respects: It contains Provisions designed to prevent expensive Litigation, by

enabling the Courts of Quarter Sessions to decide all Disputes as to the due performance of Agreements relating to the Occupation of Land by the present Procedure, without limit as to value; on the other hand, it restricts their Jurisdiction to Cases of Contracts in Writing.

"PART II.—CONTRACTING POWERS.—Under this Part, those who are absolute Owners of their Estates will have full Power to make any Contracts they may think proper, with respect to the holding or improving of Lands. Limited Owners will have power to enter into similar Contracts, but only under such Restrictions as are necessary to guard against wrong being done to those who are to succeed to the Estate.

"PART III.—FORMS OF LEASES.—This Part prescibes the Form in which Leases shall be made by all Owners.

"The Conditions and Covenants usually imposed by Leases are carefully defined, and it is provided, that in the absence of any distinct Agreement to the contrary, a Lease shall be understood as imposing these ordinary Obligations on the Parties: but Power is reserved to them to omit or vary any of these Conditions, or to insert any others, according to their own discretion and to the circumstances of each particular case, requiring, however, that this shall be done by express words introduced into the Lease.

"PART IV.—This Part prescribes the Restriction under which limited Owners shall be entitled to make Leases for Terms beyond their present Powers.

"Persons interested in the Property by Rights of Succession are to be entitled to object to proposed Contracts of this kind which they may regard as injurious to them, and the Chairman of the County is to decide on the Validity of their Objections.

"PART V.—FORMS OF COMPENSATION AGREEMENT.—This Part prescribes the form in which such Agreements may be made.

"There is a Form for Compensation in case of Tenants' Improvements.

"And a Form for additional Rent in case of Landlords' Improvements.

"PART VI.—COMPENSATION POWERS.—This Part prescribes the Restrictions under which limited Owners may make Compensation Agreements beyond their present Powers.

"The Principle adopted here is that the Amount to be allowed as Compensation to a Tenant is to be determined by the estimated

Addition to the annual Value of the Property to be caused by the Improvements he contracts to make, and that the continued Occupation of the Lands is to be considered as gradually extinguishing the Claim for Compensation in a Time which is never to exceed Twenty-five years.

"Persons interested in the Property will have the same right of objection to such Agreements as is reserved to them by Part IV. as to Leases.

"PART VII.—LOANS FOR IMPROVEMENT.—This Part is intended to provide a simple Machinery by which Landlords and Tenants may obtain Loans of Money for the Improvements of Lands.

"Certain Restrictions are imposed upon limited Owners, which are in Principle the same as those under which Parliament has, by recent Legislation, given to Persons having only a limited Interest the Power of creating Charges on Land for the purpose of Improvement. But the Bill will render it more easy than heretofore for Landowners to make use of this Power.

"Two Modes of Proceeding will thus become available where the Owners and Occupiers of Land wish to co-operate with each other for its improvement. The Bill will allow Money to be borrowed, making the Loan when advanced to the Landlord a First Charge on his Property in the Lands improved, or, where the Loan is advanced to the Tenant, a First Charge upon his Interest and Right to Compensation.

"PART VIII.—DISTRESS FOR RENT.—The Bill does not abolish the Power of 'Distress,' but places its Exercise under certain Restrictions designed to prevent Abuses said to occur under the Law as it now stands.

"Though some have strongly recommended that Landlords should not have any further Powers for recovering Rent than those enjoyed by other Creditors for obtaining Payment of Debts, others think that if the prior Right over the Produce of the Soil, which the Law now gives to Landlords, were taken away, it would operate to the Disadvantage of the smaller and poorer tenants, since it would compel Landlords, for their own Protection, to refuse the Indulgence, which they now very often grant, to those who are in temporary Difficulties. This view is strengthened by its seeming to be the one adopted by Parliament, after much Discussion, in recently settling the Law of Hypothec in Scotland, in which the same Principle is involved.

"PART IX.—COTTIER TENANCIES.—This Part does not materially alter the present Law, except by requiring the Adoption of a Written Contract as one of the Conditions of allowing a Summary Jurisdiction.

"PART X.—REGISTRY.—The Bill provides that all Contracts for improvements, and all Leases, where the Term shall be for a Year or more, shall be registered with the Clerk of the Peace of the County. Three Copies are to be executed; one to be retained by the Landlord, another by the Tenant, and the third to be deposited with the Clerk of the Peace."

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