

118

THE
LAND QUESTION,
IRELAND.

CONFISCATION

OR

CONTRACT?

NOVEMBER, 1880.

SIXTH THOUSAND.

IRISH LAND COMMITTEE,
31, SOUTH FREDERICK-STREET, DUBLIN.

LONDON: WILLIAM RIDGWAY, 169, PICCADILLY.
DUBLIN: HODGES, FIGGIS, & CO., 104, GRAFTON-STREET.





THE
LAND QUESTION,
IRELAND.

CONFISCATION

OR

CONTRACT?

NOVEMBER, 1880.

SIXTH THOUSAND.

IRISH LAND COMMITTEE,
31, SOUTH FREDERICK-STREET, DUBLIN.

LONDON: WILLIAM RIDGWAY, 169, PICCADILLY.
DUBLIN: HODGES, FIGGIS, & CO., 104, GRAFTON-STREET.

5383/55/494

DUBLIN:

PRINTED AT THE UNIVERSITY PRESS,
BY PONSONBY AND WELDRICK.

CONFISCATION OR CONTRACT?

THE objects of the Agitation which is at present desolating Ireland have been repeatedly proclaimed by Mr. Parnell. "The feudal tenure," said that gentleman at Cincinnati, "and the rule of the minority have been the corner-stone of English Misrule. Pull out the corner-stone, break it up, destroy it, and you undermine English Misgovernment. When we have undermined English Misgovernment we have paved the way for Ireland to take her place among the nations of the earth. And let us not forget that that is the ultimate goal at which all we Irishmen aim. None of us—whether in America or in Ireland, or wherever we may be—will be satisfied until we have destroyed the last link which keeps Ireland bound to England." And the language of Mr. Parnell has been the same in Ireland as it was in America. "I would not have taken off my coat and gone to this work," he said at Galway when speaking of the objects of the Land League, "if I had not known that we were laying the foundation in this

movement for the regeneration of our legislative independence." "We ask you," he said when speaking of the present Administration to the men of Roscommon and Westmeath, "while this weak, vacillating, and cowardly Government are inquiring into this question and making up their mind, to show that you have inherited some of the determination of your fathers, and that you are determined to hold by your homesteads until you have undone the conquest of seven hundred years ago."

While the Agitation thus proclaims that the demand for the Confiscation of the land is only a preliminary to the demand for Dissolution of the Union, and while the Administration is making up its mind to what extent the demands thus made should be conceded, it may be well to clear the question of all verbal ambiguities, and for that purpose to ask, What the Irish People is, and who the Irish Landlords are, and in what English Misgovernment consists?

For eighty years Ireland has been united to England. The Union was effected by English Statesmen to promote English interests. It was effected against the wishes of the Irish gentry, and against the wishes of the great mass of the Irish People. It was essentially an English measure. True, it was represented to the Irish Parliament of the day that the Protestant Establishment could not be maintained, and that Proprietary Rights could not be effectually secured, unless the Irish

People were merged in a larger nationality and subjected to a more comprehensive law. This was the argument of the Earl of Clare. How far the promises of that great Statesman have been realised it is superfluous to inquire. But whoever may have reason to complain of the legislation of the Imperial Parliament, it is not the masses of the Irish People. It is true that Parliament has ruled from England; but it has done what no Parliament sitting in Dublin would have had the power to do. It has reversed the relative position of Irish parties. It has obliterated every vestige of the Penal Laws. It has granted the fullest measure of Catholic Emancipation. It has remodelled the Municipal Corporations in the interest of the numerical majority of the Irish People. It has lowered and extended the parliamentary franchise till the parliamentary representation of the country is in the hands of the masses of the population. For the Irish peasant farmer and the Irish peasant the Parliament in England has manifested even a paternal care. The Irishman of the lower order is educated by the State; he is provided with medical attendance at the public charge; he is maintained at the expense of the wealthier classes, in destitution, decrepitude and age. To conciliate popular favour the Imperial Parliament has yielded every popular demand but one—the demand for the political suicide of that Parliament itself. It has destroyed the great Protestant

Establishment which it was created to protect; it has confiscated a portion of the Property which it was created to secure. It has gone still further. With respect to Irish land it has paused in the career of legislation which professed to emancipate industry by repealing the Corn Laws and the Navigation Laws, and the other laws which were alleged to fetter Free Contract and Free Trade. It has placed a fetter upon Contract. It has placed the Irish peasant farmer in the same position of disability and protection as the married woman, the idiot, and the infant. Such for three generations has been the English Misgovernment in Ireland.

But while the English Government has done all this for Ireland, there is one thing which it has never done—it has never *governed*. In Ireland, as in every country in Europe, as in England itself, there is an anti-social, a disaffected class. That class in Ireland is not merely composed of the Ribbonman, the Whiteboy, and the Croppy; it is largely reinforced by a party which usurps the name of Nationalist and declares itself the undying enemy of the English name and race. It is this class which has supplied the force and motive power of every agitation, which has disturbed and desolated Ireland since the Union. An Irish agitation is the one thing with which the Government in England has shown itself incompetent to deal. Even when the demands of the agitation bore the guise of

justice, the Government has shown itself less solicitous for justice than for peace. In the face of an unreasonable agitation the attitude of authority has been more ignominious still. It has connived at it; it has colluded with it; it has quailed before it. It has coerced its friends, in the vain attempt to conciliate its foes. It has never put forth its strength to vindicate the law except under the influence of panic. It is here that the English Government in Ireland has failed. The English Government of Ireland, in fact, is in the position of the countryman in the classic adage. It has taken hold of the Irish Wolf by the ears—and it can neither securely hold him, nor safely let him go.

The fundamental error of those who adopt the views of the Agitator as to English Misrule is betrayed in their use of the corresponding phrase, the "Irish People." The true Irish People is the population of 5,315,224 human beings who now exist upon the Irish soil. That population is Irish, but it is not Celtic. For upwards of a thousand years the most energetic men of the most energetic races in Europe have fought for the soil of Ireland with the Celt. Danes, Normans, and Saxons have invaded it; Huguenots and Palatines and Dutch have settled on it. In the fierce struggle for existence none but the strongest have survived; and the survivors have intermarried and intermixed and fused. The Irish People, like the English People, is a mixed

race. If we may believe Professor Huxley, there is more English blood in Ireland than there is in many an English county. But in Ireland the English blood has been improved. The Celtic fire has given a splendid animation to the Saxon mass. *Mens agitat molem*. It is this Irish People which for generations has supplied Statesmen to the British Senate, commanders to the British Armies, administrators to every dependency of Britain. The Irish People is not, as Mr. Forster would seem to fancy, a multitude of Celtic farmers confronted by a knot of alien landlords. It comprehends 444,729 agricultural labourers with their families who are at the mercy of the farmers. It comprehends upwards of three millions of human beings represented by men devoted to professional and industrial pursuits. Of this diversified population the great mass stands aloof from political agitation, and its existence is ignored by politicians, because it is devoted to the cause of law and order.

This population, like every other population, includes its disaffected and its desperado classes; and it is these who keep Ireland disturbed by a smouldering civil war. It is these who at the present moment are mutilating cattle, and assassinating men, and wreaking their vengeance upon women and young children. An Englishman would smile contemptuously if anyone were to describe the ratteners of Sheffield or the roughs of London as the English People. But that is

the very mistake which he himself makes whenever he begins to talk of Ireland. No—the outrages which excite the horror and arouse the indignation of the world are not perpetrated by “the high-souled Irish People”—they are perpetrated by the ratteners and roughs of Ireland.

It has been boldly proclaimed from a thousand platforms that “Landlordism” in Ireland is the creation of the English Law. A more flagrant misstatement of the historical fact can scarcely be imagined. If any Englishman has a doubt upon the subject let him dip into the *Primitive Property* of Laveleye. It will show him that even in the old Celtic times the property of the Celtic Sept, as population increased, became appropriated by the Celtic Chief (p. 124). It will tell him the position of the *saer tenants* and the *daer tenants* of the Brehon Laws (p. 235). It will show him that even at that early period there were ruined men—vagabonds with no land to cultivate in a country where the cultivation of land was the only regular means of existence (p. 237). There he will learn the position of the Celtic tenants of the Celtic Chief. Their position is described by Spenser. Their rent consisted of exactions which were not rent, but “cuttings.” The right of refection—the *droit de gîte et d'alberge* of feudal France—enabled the Chief to quarter himself and his retainers upon their scanty means. In addition to this, the Celtic tenant was compelled to give his labour gratui-

tously to his Celtic master (p. 236). In the old Celtic times the Celtic tenant was in reality a serf. But, as early as the time of James I., the English Misrule in Ireland effected what the boasted legislation of Stein and Hardenberg effected in Prussia two centuries later. It commuted these corvees, and cosherings, and cuttings into rent. It emancipated the Celtic villein. The Chief Secretary for Ireland is wrong. It was not the English Misrule, but the Celtic Customs, to which we are indebted for our legacy of evil; and Laveleye, adopting the opinion of Sir Henry Maine, does not hesitate to say "that we must look back to the *fuidhirs*" of the Brehon Laws "for the origin of the deplorable relations between landlord and tenant, which Mr. Gladstone endeavoured to remedy by special legislation" (p. 238).

Before we examine that special legislation, however, let us inquire who the "Irish Landlords" are. Mr. A. M. Sullivan proclaims to the world in the columns of the *Times* that their rights are based on Confiscation; and following in his wake Mr. Parnell openly proclaimed at Cork that "the people of Ireland are engaged to-day in a great struggle—a struggle for the land of their country, which was wrested from them centuries ago."* But the aboriginal Irish were never wholly dispossessed. The Norman Conquest left the Celtic

* The *Daily Express* of October 4, 1880.

Chieftains and the Celtic Septs in possession of their lands in twenty-one counties out of the thirty-two into which Ireland is now divided. Of the 20,159,678 acres which constitute the acreage of Ireland, only 511,465 were confiscated after the Rebellion of Tyrone. Of the domains which were forfeited in the course of the Great Rebellion, one-third was re-granted to the ancient proprietors at the Restoration. Of the million of Irish acres which were forfeited at the time of the Revolution, one-fourth was restored to the old proprietors under the civil articles of the Treaty of Limerick, and one-seventh of the remaining three-fourths was restored to those who could not plead the letter of the treaty, but were considered objects of clemency and grace. Since the final confiscation two centuries have now elapsed—more than double the period of prescription which the peasant proprietors of France can claim for the confiscation which forms their only root of title. The heirs of the proprietors who were dispossessed are scattered over the four quarters of the globe. The grants have passed from the grantees into other hands by purchase. Millions of money have been expended by the present race of proprietors and their predecessors in title in the reclamation and improvement of the confiscated lands. Nor is this all. Lands to the value of £52,404,494 have gone through the Courts established for the Sale of Landed Estates in Ireland, and have passed into the hands of purchasers who

have advanced their money on a title created by the Imperial Parliament, and guaranteed by the honour of the English People.

It is the fashion to describe the landed proprietors of Ireland as the "English Garrison." It is true that as a class they are prepared to risk their lives and fortunes to maintain the English connexion, though it neither protects them nor allows them to protect themselves. But this so-called English Garrison is no longer merely English. It comprehends the inheritors of old Celtic names, and the representatives of old Celtic houses. It comprises a numerous and influential body of Catholic gentlemen and nobles. It is no longer Orange, or Conservative, or Tory; for it is largely reinforced by the Radical, the Liberal, and the Whig. It is no longer even a body exclusively composed of large proprietors; for the facilities of transfer created by the Registration Acts, the opportunities of bringing land into the market supplied by the Landed Estates Court, and the encouragement to tenant-farmers given by the Church Act of 1869 and the Land Act of 1870, have increased the number of small proprietors, and diminished the number of mere tenants. Nor are these the only persons who are interested in the soil as owners or quasi-owners. The proprietary includes women dependent on the land for their jointure and their dower; younger children whose only provision is their portion; mortgagees who have advanced their money on the title;

creditors who look to the land as the fund which will be available for the payment of their debts.

The character of the tenants who hold under this proprietary is as diversified as that of the proprietors themselves. It includes the family connexions of the landlord class who devote themselves to agriculture as a profession. It includes the wealthy salesmasters and extensive graziers who emulate in wealth the proprietors under whom they hold, and who are in the Commission of the Peace, if they are not Deputies to the Lieutenants of their Counties. It includes not only the great graziers of Meath, but the great dairy-farmers of Limerick and Cork, and the great agriculturists of Leinster and of Ulster. These classes are well able to protect themselves, and they utter no complaints. Of the classes dependent upon agriculture, the Census of 1871 gives the number of tenant-farmers of all classes as 423,829; but if none were called farmers but those who hold land enough to live by without working as labourers for others, the number would probably be found not to exceed from 120,000 to 140,000: and it is by the lower portion of this class alone that exceptional legislation is demanded.

Before yielding to that demand, it would be wise to inquire into the character and provisions of the existing law. The basis of the existing law is "An Act to Consolidate and Amend the Law of Landlord and Tenant in Ireland"—the statute 23 & 24

Vict. c. 154. That Act was introduced by a Liberal Government, and was fondly supposed to have settled the Irish Land Question in a liberal sense. It was proposed and carried through the House of Commons by the Liberal Attorney-General of the day. That gentleman was not only a Liberal; he was an Irishman; he was a Catholic; he was the inheritor of an old Celtic name. His prejudices, so far as a man so eminently fair could have prejudices, were in favour of the tenant. His eminence as a lawyer was such that amid universal acclamation he was raised by a Tory Government to the Bench of Her Majesty's Court of Appeal in Ireland. Few living Irishmen are regarded with more affectionate respect than the Lord Justice Deasy. His great legislative measure is familiarly known as Deasy's Act.

By the primary provision of that statute it is enacted that "the relation of landlord and tenant shall be deemed to be founded on the express or implied *contract* of the parties and not upon tenure or service" (sect. 3); the relation "shall be deemed to subsist in all cases in which there shall be an *agreement* by one party to hold land from or under another in consideration of any rent" (*ibid.*). Here the Liberal Government boldly applied the great principle of which it had made such triumphant use in the agitation which resulted in Free Trade. It declared that the relation between landlord and tenant should be founded exclusively on contract. But while the Legislature thus

enacted that the relation of landlord and tenant should be founded not on tenure but on contract, it imported into the contract a number of conditions of a character favourable to the tenant. It authorised the tenant or his personal representative to remove all agricultural fixtures affixed to the freehold by the tenant at his sole expense (sect. 17). It enabled the tenant, in the absence of express agreement to the contrary, to cut turf, where the demised premises contained turf-bog unreclaimed, for the use of himself and his undertenants (sect. 29). It made it unlawful for the landlord to distrain for rent which became due more than one year before the making of the distress (sect. 51). It prevented the landlord from bringing an ejectment for non-payment of rent till a year's rent, in respect of the lands held under the contract of tenancy, should be in arrear (sect. 52). It enabled the tenant, if an action for non-payment of rent is brought against him, to defeat the action, at any time before judgment or service of a notice of trial, by paying into Court a sum of money for the rent, with an undertaking to pay for costs a sum far less than that incurred by the landlord by reason of his default (sect. 62). It enabled the tenant, even after judgment has gone against him, to defeat the action by the payment of rent and costs at any time before the writ of *habere* should be executed (sect. 64). It conferred upon the tenant, even after the *habere* had been executed, and after

the landlord has been put into possession, the right to oust the possession of the landlord, and to redeem his interest by payment of rent and costs within six months after the execution of the *habere* (sect. 70); and it has been held that the landlord may be compellable to account to his own tenant for the profits that he *might* have made during the temporary and uncertain period of his possession.

Such are the benefits conferred upon the tenant by the Landlord and Tenant Act of 1860. The Landlord and Tenant Act of 1870 went still further. It legalised the Ulster Customs (sect. 1). It gave the tenant "compensation for the loss sustained by him by reason of quitting his holding" when "disturbed in his holding by the act of the landlord" (sect. 3). It gave him a "compensation to be paid by the landlord in respect of all improvements on his holding made by him or his predecessors in title," even when he is ejected for non-payment of his rent (sect. 4); and it enacted that "all improvements on such holding should, until the contrary is proved, be deemed to have been made by the tenant or his predecessors" (sect. 5). Where the tenant does not claim or has not obtained compensation under the preceding sections, it awards him "such compensation as the Court thinks just," in cases where it is proved that the "tenant or his predecessors in title on coming into his holding paid money or gave money's worth with the express or implied consent of the landlord" (sect. 7). He is declared

entitled to compensation for his crops (sect. 8), as well as for his tillages and manures (sect. 4). Even this was not all that the Legislature did. It declared in the case of tenancies under £50 a-year, according to the Government valuation, which is far under the actual rent, that "any contract made by a tenant by virtue of which he is deprived of his right to make any claim which he would otherwise be entitled to make under the disturbance section should, so far as relates to such claim, be void both at law and in equity" (sect. 3). It declared that "any contract between a landlord and tenant whereby the tenant is prohibited from making such improvements as may be required for the suitable occupation of his holding and its due cultivation should be similarly void" (sect. 4). It avoided every contract made by a tenant of holdings under the specified valuation "by virtue of which he is deprived of his right to make any claim which he would otherwise be entitled to make" under the section relating to improvements (sect. 4). Not only did it impose a penalty upon the landlord in case of eviction, where the letter of his original contract allowed him to evict, but in the case of holdings held at a rent of £15 or under it declared eviction even for non-payment of rent to be disturbance, "if the Court should certify that the non-payment of rent causing the eviction has arisen from the rent being an exorbitant rent" (sect. 9). In estimating these claims

the Court is authorised by the Act to take into consideration the whole *conduct* of the landlord in his dealings with the tenant (sect. 18); a power more indefinite and more arbitrary than was ever claimed by the Star Chamber or the High Commission. Finally, the Act authorised the Commissioners of Public Works in Ireland to advance to any tenant for the purpose of purchasing his holding, whether by contract with his landlord, or by bidding at the sales of the Landed Estates Court, a sum not exceeding two-thirds of the purchase-money, to be repayable in thirty-five years by an annuity of 5 per cent. on the advance (sects. 44, 45).

By a subsequent Act, 39 & 40 Vict. c. 63, a year's notice to quit is declared necessary to determine a tenancy from year to year (sect. 1). By a previous Act, 1 & 2 Vict. c. 56, the occupier is entitled to deduct one moiety of the poor's rate from the rent payable to his landlord (sect. 74); and in cases where the holding is valued at or under £4, and the occupier has no greater estate than a tenancy from year to year, the landlord is bound to pay the whole (6 & 7 Vict. c. 92, s. 1).

It may be safely said there is no code in the world which has so carefully provided for the protection of the tenant as the Irish Code. Under no code is the eviction of a tenant surrounded with such difficulties and delays, or attended with such ruinous expense. Under the French Code no right of compensation exists for improve-

ments in the nature of drainage or of irrigation. In Belgium there is no such thing as compensation for disturbance. There is no such thing as compensation for disturbance in any country in the world but Ireland. The Agricultural Holdings Act, passed by the Conservative Government in 1875, has extended a portion of the provisions of the Irish Code to England. But in England, with the exception of the Ground Game Act of 1880, passed by the Government of Mr. Gladstone, there is no legislative declaration that an agreement between a landlord and a tenant shall be void. In the English legislation, with the one exception, the sanctity of contract is preserved. With the one exception no English tenant has the benefit of a law limiting his freedom to contract, or declaring his deliberate contracts to be null and void. Pretermittting the great political question of Primogeniture and Entail—a question which involves far wider and more important issues than that of Irish land—there is no reform demanded by the English Law Reformer that has not been already made in Ireland. Take, for instance, the demands made by the author of the *Essay on the Land Laws of England*, published by the Cobden Club, for the “emancipation of land” in England (p. 124). For 173 years Ireland has possessed an effectual Registry of Title. By the Land Act, the law of Agricultural Fixtures has been assimilated to that of Trade Fixtures. Legal and Equitable estates have been fused by the Judicature

Act. In addition to all this, the Irish tenant has been awarded the fullest compensation for his improvements : he has been awarded compensation even for disturbance whenever he is arbitrarily disturbed. In a word, a ruinous penalty has been imposed upon the landlord when he exercises the right which his contract gives him to evict.

Nor has the right of eviction been unfairly or capriciously exercised in Ireland. The statistics laid before the House of Commons in the debate upon the Disturbance Bill demonstrated that, in this respect, the Irish landlords have been cruelly maligned. They proved that the right of eviction had been exercised with the greatest consideration and regard for those evicted. To prove the contrary, the Agitation has been compelled to repeat the exaggerations which were made upwards of thirty years ago. They go behind the Act of 1870—they go behind the Act of 1860—they go back to the years of the great famine—a famine occasioned by the preposterous redundancy of the population and the infinitesimal sub-divisions of the soil. Even Mr. Dillon, M.P., when addressing a Land League gathering at Clonmel, “was compelled to ask the meeting to consider Landlordism, not by what it was now doing, but by what it did to the Irish People in times gone by.” But it is not with times gone by that we are dealing—we are dealing with the present. It is only demoniacs who live among the

tombs; it is only ghouls that feed upon the dead.

Under the existing land law Ireland has prospered. How greatly it prospered is shown by the statistics furnished to successive Lords Lieutenant. The country has made a century's advance within the last five-and-twenty years. It is true that Ireland is subject to the vicissitudes of inauspicious seasons. But even the Englishman periodically prays to be delivered from plague, pestilence, and famine. It is true that Ireland has sat as a mendicant by the wayside of the nations. But even the cotton spinners of Manchester and the cutlers of Sheffield are periodically dependent on the world for alms. The evil to which Ireland is peculiarly subjected is the rise of agitation whenever the country is depressed, and the pusillanimous alarm of England whenever an Irish agitation rises. Instead of enforcing law, it begins to think of legislation. It forgets that there are things which no legislation can effect in Ireland. No legislation can remove its western coasts from their proximity to the "melancholy ocean." No legislation can staunch the constant rainfall of its "weeping skies." No legislation can convert its wide tracts of bare and barren rock into productive soil. No legislation can obliterate Canada or the Western States, or prevent the one from producing corn, and the other from producing cattle. No legislation can increase the

area of Ireland or set a limit to the never-ceasing increase of its superabounding and portentously prolific population.

It is in this last phenomenon that the real pinch of the difficulty lies. Here, at all events, Ireland resembles Belgium, with which it is so often and so invidiously contrasted. Again, let us listen to De Laveleye when writing under the sanction of the Cobden Club. "The situation of the small Flemish tenant-farmers," he says, "is, it must be owned, rather a sad one" (p. 228); for "owing to the shortness of their leases they are incessantly exposed to having their rents raised, or their farms taken from them" (p. 228). And we are told the reason why. "The reason why these small farmers are ground down by rack-rents is that *there are too many of them*" (p. 229)—"*the peasants of Flanders unfortunately will not leave their own province, and their intense competition for farms raises the rents in a manner ruinous to themselves*" (p. 229).

The Duke of Argyll has protested in the House of Lords against the idea that the advent of a Liberal Administration was to be regarded as the signal for a fresh alteration in the laws respecting land. What is the pretence for legislation now? It is this very competition which in a redundant agricultural population exists for land, and which exists in Belgium with as much intensity as it exists in Ireland. In Belgium the hardship is endured; in Ireland it is proposed to be remedied by measures subversive of everything we know of

civilisation and of law. Sir Henry Maine, in his *Ancient Law*, has remarked that the movement of all progressive societies has hitherto been a movement from Status to Contract (p. 170). The demand of the Agitation is that Ireland should be legislatively declared a retrograde society, and that the social movement should be from Contract back again to Status. Mr. Parnell would avowedly take the dealing with land out of the domain of Contract. But the remarkable thing is, that in every remedy which has been suggested for this alleged inability to contract, the element of Contract is necessarily presupposed. The tenant-farmer who declares himself incompetent to contract with his landlord declares himself competent to enter into a contract with the State. The man who protests against freedom in the Contract of Letting is clamorous for freedom in the Contract of Sale. The man who, on account of the severe competition for land, requires to be emancipated from his contract, is the very man who wants to avail himself of that competition in order to exact the last farthing he can wrench out of a purchaser when he sells his farm. In the Contract of Sale he requires for himself what in the Contract of Letting he refuses to his landlord. The man who declares himself incompetent to contract with his landlord protests that he is competent to contract with the Purchaser, with the Banker, with the State. He declares himself capable of entering into a binding contract with everyone

in the wide world except his landlord. The fact of the case is, that the demand of the Agitation ignores the very constitution of the world. The principle of Contract is founded in nature itself; and like nature it can never be expelled. *Expellas furcâ tamen usque recurret.* It exists in the Hindoo Village Community as it existed in the Irish Sept; and it would exist in Ireland in all its force the moment the legislation which attempts to ignore it or control it was effected.

The grievances of which the Irish tenant-farmer complains are insecurity of tenure and exorbitancy of rent. But in spite of the alleged insecurity of tenure, the Irish tenant refuses the offer of a lease; in spite of the alleged exorbitancy of his rent, he claims the privilege of sale. The explanation is obvious enough. He prefers his tenancy from year to year on account of the compensations of the Land Act; and he claims the privilege of sale because his rent is fair. Paradoxical as it may appear, the present crisis has risen, not from the severity, but from the leniency, of members of the landlord class. The great Absentee Proprietors, in consequence of their absence, have let their lands on terms so far below the letting value that their tenants are afraid of losing the advantages which they enjoy, and clamour for Fixity of Tenure. The Western Proprietors, on the other hand, with a similar easy good nature, have permitted sub-letting and subdivision to such an injurious extent that families

are settled upon plots of ground which are utterly insufficient for the maintenance of human life, and these families demand that their misery should be rooted in the soil. The great bulk of Irish proprietors are exempt from responsibility for this. Residing on their own estates, they manage their own affairs; and being thrown into personal contact with the people, they understand their ways. It is not proprietors such as these that over-let or under-let their lands. They ask for moderate rents, and their tenantry are satisfied, and their rents are punctually paid.

But taking the Agitator on his own ground—insecure tenure and exorbitant rents—even supposing rents to be exorbitant and tenure insecure—let us examine the various remedies which he proposes. They all imply the repudiated principle of Contract; but they all of them involve the element of Confiscation. Let us analyse them one by one.

The *Periodic Revaluation of Rent* is the panacea which some of the radical reformers would suggest. But even Mr. Bright, in his speech delivered to a Birmingham audience in January, 1879, repudiated such a nostrum. The free trader, the animating spirit of the anti-Corn Law League, the friend and confidant of Cobden, could not tolerate, even in the case of Ireland, such an inroad on the principles of Free Contract and Free Trade, or refuse to apply those principles to dealings with the soil. But the panacea proposed is not a panacea but a poison. As Judge Longfield remarks:

“the value of a farm is that rent which a solvent tenant will be ready to offer for the farm on a lease of moderate duration” (*Cobden Club*, p. 48). “The cursory inspection that is made by a professional valuator,” according to that experienced authority, “is utterly inadequate to the occasion” (p. 49). But this is not the worst. “It is highly probable,” he says, “that in the excited state of feeling that would be raised by an alteration of the law, no valuator would venture to express an opinion of the value of the land that was not in accordance with the tenant’s wishes” (p. 51). His conclusion is, that “the value as fixed by any tenant-right measure would be less than half the rent which a solvent tenant would be willing to pay” (p. 51). In other words, a measure securing a compulsory Valuation would be a measure not of justice, but of Confiscation.

The *Ulster Customs* are the glory of the North. But we may say of Customs what Mackintosh said of Constitutions—they cannot be created; they must grow. Be that as it may, the Ulsterman at the determination of his tenancy only sells what he or his predecessors bought. This fact is recognized in the system of Parliamentary Tenant-right which Judge Longfield proposes to create. The merit of that system is, that it does not ignore this element of justice. But the system, if not impracticable, is involved in elements of litigation, and is derided by the Land League. It is just that when a tenant or his

predecessors, on coming into the holding, has paid money, with the express or implied consent of his landlord, that the tenant on quitting the holding should be entitled to a compensation; and, so far, the privilege of the Ulster Customs is extended to the rest of Ireland by the Land Act (sect. 7). But even the Land Act admits that it would be contrary to justice to extend it further. To extend it further, and to enable a tenant who paid nothing when coming in to exact a sum of money when going out, is to benefit him at the expense of the landlord. It is Confiscation pure and simple.

The same may be said of *Fixity of Tenure*. "It is not difficult to prove," says the Right Hon. Mountifort Longfield, writing under the sanction of the Cobden Club, "that a law establishing Fixity of Tenure would be as impolitic as it would be unjust. It would utterly fail in its professed object. It would be a mere violent and wrongful transfer of property from a certain number of individuals who are now called landlords, to another set of individuals who are now called tenants, and who would then become landlords in their turn" (pp. 45, 46). Nor is this all. Take the example selected by Judge Longfield, who as Judge of the Landed Estates Court has had more experience in matters relating to Irish land than any other living man (p. 46). A tenant's rent is fixed by an arbitrator at say £100 a-year as a fair rent. Availing himself of his privilege of

free sale, he sets up his holding for sale by auction, and sells it for £2000. The incoming tenant becomes subject to the interest on £2000 in addition to the fair rent of £100 a-year. In other words, the landlord is robbed of £2000 in order that the rent payable by the occupier may be doubled. To crown the absurdity of the injustice, the man who protests that he cannot be trusted to deal with his landlord for a lease, on account of the severity of the competition, is the very man who avails himself of the severity of that competition to double the rent upon his neighbour. The whole proposal is absurd. Fair Rent is strangled by Free Sale, and Fixity of Tenure is only Confiscation in disguise.

The Roman Catholic Archbishop of Dublin, while reprobating the chimerical schemes advanced by the leaders of the Agitation, expressed, or intimated his approval of this chimera of Fixity of Tenure. But the Arch-agitator is more perspicacious than the Archbishop who puts him under ban. Mr. Parnell, in his speech at Longford, openly derided the "advocates of Rents valued periodically, of the Longfield system of Parliamentary Tenant-right, of the extension of the Ulster Custom to the rest of Ireland, and all the other nostrums which are put forward from time to time in a vain attempt to retain and perpetuate Landlordism in Ireland."* *A Peasant Proprie-*

* The *Daily Express* for 18th October, 1880.

tary is Mr. Parnell's nostrum. Of a Peasant Proprietary, where it coexists with justice, the historian and the economist must speak with all respect. It was the English yeomanry which conquered the chivalry of France and made the power of England. It is the Peasant Proprietary of France which forms its great conservative force, and maintains its social equilibrium. But whether it would be possible to create a Peasant Proprietary in Ireland is doubtful. Mr. Gladstone, in his Third Midlothian Speech, expresses his doubts upon the subject, and proclaims his belief that the distribution of land in these countries must be determined by the operation of economic laws. But even if a Peasant Proprietary were actually created, it would be so far from removing, that it would aggravate, the Irish evil. It is notorious that under a system of small proprietors the price of land is constantly rising. M. de Lavergne, cited in *Free Trade in Land*, avers that in France the market price of land has quadrupled in ten years (p. 114). It is equally notorious that of all rack-renters the small proprietor is the hardest. Mr. Cliffe Leslie, in the publication of the Cobden Club, admits that among the peasant proprietors of France, "with greatly rising prices of agricultural produce, there is a steady and general augmentation of rents" (p. 305). De Laveleye, writing of Belgium in the same publication, admits, "where Peasant Proprietorship exists side by side with leasehold farming in an

over-populated country, the tenant-farmer is placed in a worse condition than if the estates were large" (p. 229). And this is confirmed by the experience of Ireland itself. If there is any living authority upon land, it is Mr. De Moleyns, one of Her Majesty's Counsel in Ireland, who for twenty years has sat as Chairman of Kilkenny. In his admirable handbook of the Irish Land Law, that gentleman remarks, that it is "the smaller investors in land, purchasers usually in the Landed Estates Court," who most rigorously enforce the "covenant for payment of a scrupulously adjusted rent" (p. 263). His remark is confirmed by the Chief Justice of the Common Pleas Division of the High Court of Justice in Ireland. In the case of *Berkery v. Molony*, Chief Justice Morris observed, that "the class of landlords to which the Respondent belonged invariably pursued matters to extremities, and extracted the last farthing from those who had the misfortune to be their tenants." And the Respondent was a tenant-farmer and a Celt. The reason is obvious enough. It is only great proprietors, as Judge Longfield shows, when speaking of the Ulster Custom, who can afford to be indulgent (p. 39). But not even a Peasant Proprietary would remedy the evils, or remove the great reproach of Ireland. "If all the land in Ireland," says Judge Longfield, "was divided in fee-simple among the peasantry, the number of murders would not be diminished"

(p. 7). "When the Celt becomes the absolute owner of land," he says, "he is just as willing as the Saxon to become a landlord, and to insist upon all a landlord's rights, which he then seems to think very reasonable" (p. 55). And with the usual result. "The latest agrarian crime I saw mentioned in the newspapers," says the same high authority, "was the murder of a man with a Celtic name. He was stated to have been the owner in fee of forty acres of land, which he set to four or five tenants, and went away to earn his bread elsewhere. He returned, having become entitled on his discharge from some public employment to a pension of about £14 a-year. He took back some of the land from the tenants to reside on it himself, forgiving them a year and a-half's rent in exchange. He was brutally murdered" (p. 29). For the reasons which he assigns, Judge Longfield thinks that in a system of peasant proprietors murder would become more unnatural, more brutal (p. 7). His opinion is hostile to the system. "I shall not enter into much discussion respecting the utility of such proprietors," he says, "because I feel it would be very difficult to create them, and impossible to keep them up in such a country as Ireland" (p. 28). He regards the system not only as "inconsistent with the mental activity of Irishmen," but as inconsistent with the circumstances of the country (*ibid.*).

In Ireland no Peasant Proprietary exists at present, and there are only two ways in which it can be called into existence—by Confiscation

or by Contract—the two agencies, which, like the two principles of the Manichees, are now contending for mastery in Ireland. A Peasant Proprietary, arising by Free Contract, might be an element of good. If the tenant wishes to buy and the landlord is willing to sell, the State might well consent to facilitate and aid the contract. Even if the State, overlooking all political considerations, should deem it wise to do away with the Law of Primogeniture and the Privilege of Entail, great estates would eventually be comminuted, and a class of small proprietors would be created by the natural operation of economic laws. It is by such means that Mr. Arnold and Mr. Kay, the authors of *Free Land* and *Free Trade in Land*, propose that such a class should be created. But this would be the work of time; and the Irish Agitator does not care to wait. He is impatient. He demands the creation of a Peasant Proprietary on the instant, and that can only be effected by a general Confiscation. It may be effected by open and avowed Confiscation, such as that by which the French Revolution effected the robbery of the French *noblesse*; or it may be effected by Expropriation, which is only Confiscation in disguise.

The Expropriation of the existing race of Irish landlords is no mere amusement for a summer's day. The value of the fee-simple of the Irish soil amounts to some £305,413,020 sterling. The displacement of the Irish Proprietary would

be like the displacement of one of the great natural objects which are the landmarks of the land. The faith in Mr. Gladstone must be that of a fanatic, if anyone believes that by his mere fiat this mountain can be removed into the sea. Mr. Gladstone, to do him justice, makes no such preposterous pretence. The demand of the Agitation is that what it calls Landlordism should be destroyed. Mr. Gladstone sees the impossibility of this. "I do not believe," said that Statesman in his Third Midlothian Speech, "that the large properties of this country, generally or universally, can or will be broken up into small ones. I do not believe that the land of this country will be owned, as a general rule, by those who cultivate it. I believe we shall continue to have, as we have had, a class of landlords and a class of cultivators; but I most earnestly desire to see the relations of those classes to one another harmonious and sound." There is nothing which the Irish Proprietary more desires. But how is this to be effected? The utmost that Mr. Gladstone could himself suggest when he addressed the electors at West Calder was but little. He warned them against "quack remedies." He warned them against Reciprocity and Protection; he declared a Peasant Proprietary to be incompatible with the economic laws which rule the country. He told his agricultural auditory that they must make up their minds to the competition of Canada and the Western States. He warned them that their "fair claims

were in the main but two"—one to be allowed to purchase every article that they required in the cheapest market, and the other to be relieved from every unnecessary legislative restraint.

That Landlordism in some form will continue to exist in Ireland is certain. Even an Irish Agitation must break itself into empty foam when it beats against the possibilities of things. The question is not whether Landlordism is to continue to exist in Ireland, but who henceforward are to be the landlords. The Cobden Club has shown, in regard to Ireland, "that the dispossession of the present proprietors, and the substitution of the actual tenants, as the sole proprietary class, would mean economically the withdrawal from the soil of the class having the largest capital and enjoying the largest credit; and the reproduction in another shape of the present evil of a class monopoly in the ownership of land" (p. 283). This, as the writer shows, would be to defeat the very object of the Prussian legislation (*ibid.*). But in Ireland such a dispossession would do far more. It would expropriate a class of proprietors which is unpopular because it favours and supports the English connexion; and it would create a class of proprietors animated with a hatred of the name of England. This is the admitted aim of Mr. Parnell. This is the menace which the English People has to face.

"The State is perfectly entitled, if it please," said Mr. Gladstone at West Calder, "to buy out

the Landed Proprietary as it may think fit, for the purpose of dividing the property into small lots." This is a perilous axiom for a Statesman to utter to an ignorant auditory on a slight occasion. In Ireland it has already produced an impression among the lower orders that the rights of the Landed Proprietors are not rights, but usurpations. Among the English people, it is true, the veneration for the rights of property is so great that they are safe from this illusion. But they in their turn are subject to an illusion which it is important to dispel. The State cannot afford to buy out the Landed Proprietors of Ireland. The English people would never submit to the addition of £300,000,000 to the National Debt, and rely for repayment of the money on the honour of the Irish peasant. So clearly is this perceived that no one dreams of the idea. The utmost that the most advanced organs of public opinion suggest is a partial Confiscation of the landlord's rights with Compensation for the confiscated part. But this is not compatible with English justice. If the State is entitled to buy out the Landed Proprietor, the Landed Proprietor is entitled to call upon the State to buy him out. The State has no right to leave him with a mutilated property upon his hands. The State, if the landlord so requires, should purchase the whole of his property or none. It should buy it out and out. Suppose that by some legislative measure of a Liberal Government the landlord

should be reduced to a mere rent-chargeant on his own estate—what security could the State offer him for the punctual payment of his rent-charge? No security but that which the State itself rejects—the honour of the Irish peasant. Reduced to a mere rent-chargeant, the landlord would come to be regarded as a mere burden on the land, and the peasantry would strive to shake the burden off. So it happened in the French Revolution; such was the result, as stated by De Tocqueville in his *Ancien Régime*. On the occurrence of a famine, on the failure of a crop, in any period of transient distress, the Lawlessness of Ireland would refuse the payment of the rent-charge, as it now refuses the payment of rent. There would be the same clamour against eviction. There would be the same resistance to the law. There would be the same paralysis of authority, which at the present moment is the opprobrium of the English Government in Ireland. The Irish Landlord has a right to ask for liberty to elect before he is condemned to such a situation. If he is paid the full value of his property by the State he can retire from Ireland, and enjoy elsewhere a higher type of life under the protection of a more authoritative law. It is true that old associations bind the landlords to the old land; but, apart from the old associations, there is little to induce them to reside in Ireland. The Union deprived them of a force which even a minority of high-spirited, and wealthy, and edu-

cated men possesses—the force which restrains the dominant majority by the fear of Civil War. For there is danger even in a small minority when it is driven to desperation and is at bay. Of that force the Union has deprived the English interest in Ireland—and what has it given to replace it? Nothing. The lives and the properties of the friends of England are not protected by the English rule. The Queen's writ does not run in Ireland for them. As far as they are concerned the Government in England is the laughing-stock of the Irish Agitator. He openly derides it.

The true character of the Agitation which is now carrying alarm is everywhere understood except in England. French Statesmen have visited Ireland for the sake of ascertaining what the Agitation really is, and on their return to France they have openly denounced it as unreasonable and unjust. German Publicists have considered its appeal to the analogy of the Prussian legislation, and they have pronounced that the nature and objects of the Prussian legislation have been misrepresented and misunderstood by the leaders of the new revolt. Even the great American Journals—the *New York Herald*, the *New York Evening Post*, and the *New York World*—denounce the objects of the Land League as communistic and subversive. They proclaim the Agitation to be “a moral revolt, not only against the payment of rent, but against obedience to all laws, and to all constituted authority.” They tell “the Irish

People," that "their leaders are deceiving them in a flagrant and shameless manner," and they warn them against "the unhappy error that the rights of property in America are not considered or respected, and that Republicanism means license, and that the legal restraints and amercements under which they now chafe would be got rid of by a change of government." They give expression to the deliberate opinion that "the issues which are convulsing Ireland to-day will not be finally settled on Irish soil, nor will they be exhausted of their vitality, without shaking the whole fabric of British society to its foundations." Everywhere is the true nature of the Irish crisis understood except in England; and in England the Government is cowering and fluttering before the Agitator like a bird that is fascinated by a serpent.

It is idle for the people of England to regard this as a mere Irish question. The English People may be willing that political experiments should be made on Ireland. In English estimation it is the *corpus vile* on which experiments may be safely made. But let the Englishman take warning. Everything that is done in Ireland will eventually be done in England. It is a consequence of the English Union. It is in vain that Statesmen may declare that what they do is not to be converted into a precedent; it becomes a precedent the moment it is done. And let no friend of the existing Constitution blink the

truth. Ireland is the stepping-stone between America and England. Initiate a democratic movement here and it will spread. Revolution will bound across the Channel. It is with a social revolution that we in Ireland are menaced now. When Statesmen and Publicists begin to talk of Confiscation, we are no longer in the region of Reform—we are in the very crisis of a Revolution.

Houses of the Oireachtas