THE

LAND QUESTION, IRELAND.

No. X.

MR. GLADSTONE'S BILL.

APRIL, 1881.

ISSUED BY

THE IRISH LAND COMMITTEE.

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LONDON: WILLIAM RIDGWAY, 169, PICCADILLY.

DUBLIN: HODGES, FIGGIS, & CO., 104, GRAFTON-STREET.

DUBLIN:
PRINTED AT THE UNIVERSITY PRESS,
BY PONSONBY AND WELDRICK.

568—22, 4, '81.

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WHATEVER may be the difference of opinion which exists on matters of mere party politics, there is a vague feeling of anxiety which pervades the whole community at the present crisis. It is not that the fate of an administration is at stake; it is not that a great party triumph, or a great party catastrophe, is likely to occur. It is that we seem to have reached a turning point in the history of the Nation. Hitherto the progress of reform has been a progress consistent with the Nation's life. Great constitutional changes have been effected, but they have been effected within the limits of the constitution. Great social and financial measures have been carried; but they have left the foundations of property untouched; they have done no violence to the reverence for prescription, and the regard to law, on which the rights of property are based. In the benefit of these changes Ireland has shared. The Irish Nation has been regarded as a free community — a community composed of free men, sharing in the advantages of, and allowing its transactions to be regulated by, the unseen opera-

tion of the potent principles of Free Government, Free Contract, and Free Trade. It is a matter of no small moment that the measure now before Parliament is one which assumes that there is no room for the play of Free Contract in the regulation of what the Prime Minister allows to be the most numerous and the most important transactions between man and man in Ireland. It is a thing to arrest attention when the Free Trader proclaims that Free Trade has no application to the case of Irish Land. Still more momentous is the proposal that the fundamental principle of Free Government should be ignored in Ireland, and that, instead of allowing the rights of Irishmen to be regulated by a system of fixed law, administered by the Judges of the land, they should henceforward be committed to the arbitrary discretion of individuals of whom we know nothing, and who are to exercise their arbitrary powers during the pleasure of the Crown, which, in reality, is the pleasure of the Minister of the day.

A Bill which introduces a change so subversive of all our pre-existing ideas requires the most careful examination. The Prime Minister in his speech endeavoured to explain its leading provisions, but those provisions are so complicated and so strange that, in spite of the light thrown by the Minister upon the Bill, it remains little better than an illuminated mist—a mist through which it requires the utmost caution and perspicacity to detect a way.

'The core of the measure' which the Prime Minister submits is to confer on Landlord and Tenant 'the privilege of going into a Court of Justice to make their bargains.' The 'salient point and cardinal proposal' of the Bill, in the language of its author, is 'the institution of a Court' which is to take cognizance of 'the most important and numerous transactions of life between man and man in Ireland.'

The Court to which the Bill proposes to delegate these momentous powers in the first instance is 'the Civil Bill Court of the county where the matter requiring the cognizance of the Court arises' (sect. 31). Of this Court, a legal functionary styled the County Court Judge and Chairman of Quarter Sessions (40 & 41 Vict. c. 56, s. 3) is the sole Judge, and of this functionary the sole qualification is, that he shall be at the time of his appointment a Practising Barrister of ten years' standing at the least, who shall have actually practised ten years in Her Majesty's Superior Courts in Dublin (14 & 15 Vict. c. 57, s. 2). He is an Inferior Judge, at a salary which is not sufficient to tempt the foremost members of the Bar; no increase of that salary is contemplated by the Bill, and he is expected to discharge the additional duties which it casts upon him *gratis*. This functionary is already fully occupied with the Civil Bill business of a number of consolidated Counties, and with the Land Claims which are brought before him under the Land Act of 1870. By the Act of 1877, the

number of County Court Judges was reduced from Thirty-three to Twenty-one—a number which was then considered scarcely sufficient for the discharge of their existing duties. By the Land Act of 1870 it is provided that 'the Judge shall himself without a Jury decide any question of fact arising in any case brought before him under the Act' (s. 23). The Government Bill contains no such proviso; but throughout the Bill the existence of such a proviso is implied, and it is assumed that the County Court Judge, in exercising the vast jurisdiction which is to be conferred upon him by the Act, will decide on every question of fact without the assistance of a Jury.

Under the Civil Bill Act of 1852, in the case of the ordinary business of the Court, an Appeal lies from the County Court Judge to the Judges of Assize. Under the Land Act of 1870, any person aggrieved by an order of the Chairman might appeal to two Judges of the Superior Courts, or to the Judges of Assize, as the case might be, and they, if they thought fit, might state a case for the consideration of the Court of Land Cases Reserved (s. 23). Under the provisions of the Judicature Act this was altered. Any person aggrieved by any decision of the Judges upon any question of law under the Land Act of 1870 might '*require* the Judge or Judges making such decision or order to reserve such question of law by way of Case Stated for the consideration of the Court of Appeal in Ireland (s. 49). This provision was inserted at

the instance of Mr. Butt, in the interest of the Tenant; but this again is modified by Mr. Gladstone's Bill. The Bill creates a new Court of Appeal—the *Land Commission*. It proposes that 'any person aggrieved by the decision of any Civil Bill Court with respect to the determination of any matter under the Act may appeal to the Land Commission,' and that 'such Commission may confirm, modify, or reverse the decision of the Civil Bill Court' (s. 41). A question might be raised, whether the Appellate Jurisdiction created by the Act of 1870 is to be ousted by the Appellate Jurisdiction to be created by the Act of 1881. But the speech removes the doubt as to the extent of the powers of the Commission suggested by the Bill. 'As a Court,' said Mr. Gladstone, 'it will be charged with the final authority over the decisions *in all Land Cases*, and it will be the business of the Court to lay down rules for the guidance of the Civil Bill Courts which will in reality be the Courts of first instance in Land Cases' of every kind. The Bill proposes that 'the Land Commission may review and rescind or vary any order or decision previously made by them, or any of them'; but it proposes that, 'save as aforesaid, every order or decision of the said Commission shall be final' (s. 40). The Land Commission is thus invested with a higher jurisdiction than Her Majesty's High Court of Justice, with a higher jurisdiction than Her Majesty's Court of Appeal in Ireland; it is invested with the jurisdiction of the House of Lords, and is the Court of Ultimate Appeal, to deal

with property to the amount of some £300,000,000 sterling, and to determine the rights and obligations—nay, the very income—of every Landed Proprietor in Ireland, so far as they are affected by the Land Acts.

Nor is this the only prerogative of the Land Commission. It is to be exempt from the restraining and controlling powers by which inferior jurisdictions are kept within the limits of their authority; for the Bill proposes not only that 'the Land Commission shall have full powers to decide all questions whatsoever, whether of law or fact, which it may be necessary to decide for the purposes of the Act,' but that 'they shall not be subject to be restrained in the execution of their powers under the Act by the order of any Court, nor shall any proceedings before them be removed by *certiorari* into any Court' (s. 40). In ordinary cases enactments which provide that proceedings shall not be removed by *certiorari* to a Superior Court are held to be inapplicable when the lower tribunal has overstepped the limits of its jurisdiction. But there are no limits to the jurisdiction of the Land Commission. The Court is constituted 'so that no matter relating either to the assignment or tenure of land or to rent can escape the supervision of the Court if the present tenant desires it'—these are the words of the Prime Minister—and in the exercise of this comprehensive jurisdiction all that the Prime Minister requires is that 'the Court must act upon the general principles of justice.'

Nor is this all. The Judges of Her Majesty's High Court of Justice are invested by the Judicature Act with the power of making Rules for the Regulation of Practice or Procedure in their Courts; and if they purport to make rules which go beyond the sphere of mere Practice or Procedure, such rules have been held to be *ultra vires*, and, consequently, void. But a higher jurisdiction than this is deliberately conferred upon the Land Commission. The Commission 'may from time to time make, and when made may rescind, amend, or add to, Rules' not merely with respect to certain specified matters, but 'as to any other matter or thing, whether similar or not to those above mentioned, in respect of which it may seem to the Land Commission expedient to make Rules for the purpose of carrying the Act into effect' (s. 42). In the case of the Rules made by the Judges of the High Court of Justice, the Judicature Act provides that the Rules shall be laid before Parliament, and that they may be annulled by an Order in Council on an address from either House (s. 69). But the Land Bill omits even this salutary provision, and the consequence is, that even if the Rules of the Commission should override the Law of the Land, or the Act of Parliament itself, it will require an Act of Parliament to remedy the usurpation.

Where such extensive powers are vested in individuals, it is all-important to inquire into the status of the individuals in whom they are to be vested. They are vested in three gentlemen, to

each of whom there is to be paid 'a salary not exceeding two thousand pounds a-year' (s. 39)—a salary which will scarcely command the exclusive services of first-class men of high position in the social scale. The Commissioners to be constituted under the Act are to be *A. B.*, and *C. D.*, and *E. F.;* and the only qualification required for any of them is, that *C. D.* is to be 'one of the Judges of the Supreme Court of Judicature in Ireland' (s. 34). How any one of the Judges of the Supreme Court, the number of which was reduced by the Act of 1877 to the minimum sufficient for the public service, can be spared from the discharge of the duties of an office, which is supposed to occupy the whole of his time and attention, it is difficult to see. In the homely words of one of the Northern Members, all the Bill gives is the 'piece of a Judge,' and, from the nature of the case, it must be the smallest piece. Nor is it easy to see why any Judicial Dignitary whatsoever should be taken from his duties on the Bench, to assist in the duties of the Commission. Under the provisions of the Bill, the Layman is invested with all the functions of the Lawyer. The Bill proposes that 'any power or act by the Act vested in, or authorized to be done by, the Land Commission may be exercised or done by any one member of the Land Commission' (s. 37). It does not even provide the qualification of the Church Act (s. 4), that any person aggrieved by an order of one Commissioner may require his case to be heard before the whole of the Commissioners *in banco.*

The Bill goes further. It proposes that 'the Lord Lieutenant may from time to time, with the consent of the Treasury as to number, appoint and remove *Assistant Commissioners*' (s. 36); and it enacts that 'any power or act vested in, or authorized to be done by, the Land Commission may be exercised or done,' not only 'by any one member of the Land Commission,' but 'by such Assistant Commissioner, or number of Assistant Commissioners, as the Land Commission may from time to time determine with the assent of the Lord Lieutenant' (s. 37). A mere Assistant-Commissioner, therefore, a man for whom the Bill provides no qualification, and who owes his existence to the favour of the Land Commission, may adjudicate upon questions which will determine the status of the Duke of Abercorn, or the Duke of Leinster; and may fix the rents which the tenants of a whole Estate, or of a whole county, may have to pay for a period of fifteen years under the subsequent provisions of the Bill. The peculiar circumstances of Ireland may demand the appointment of such Commissioners and such Commissionaires; but never since the times of the Star Chamber and the Court of High Commission were such extensive powers vested in any body of men; never before in the whole history of England were such extensive powers vested in a single man. And these omnipotent functionaries will not even exercise their omnipotence as independent men; for the Assistant Commissioners will hold office at the pleasure of the Triumvirs, and the Triumvirs will

hold office, not *quamdiu se bene gesserint*, but during the 'pleasure' of the Crown (s. 34).

The chief case in which the newly constituted Court is to intervene is stated in that portion of the Bill which is entitled the *Intervention of the Court.* The Bill proposes that 'the Tenant of any present tenancy, to which the Act applies, may from time to time, during the continuance of such tenancy, apply to the Court'—that is, the Chairman of Quarter Sessions—'to fix what is the Fair Rent to be paid' (s. 7). This is in reality the central point of the Government proposal—the point from which every consequence radiates within the sphere of the operation of the Bill.

The impossibility of valuing Rents by Public Authority was clearly perceived by the Prime Minister in 1870. 'Look at the practical difficulty,' he exclaimed—'We are to value Rents. What an army of Public Officers are you to send abroad to determine from year to year the conditions of the 600,000 holdings in Ireland—conditions which are settled with comparative ease when settled by private intercourse, but conditions the fixing of which beforehand by Public Authority would be attended with tenfold difficulty.' 'How are these Rents to be valued?' he asked—'What is the test? The prices of produce? Of what produce? Of one kind of produce or of all kinds? Can any man fix by law any system upon which it will be possible to adjust Rents by calculations founded upon prices?' 'The mathematical result,' said the Premier, 'is, that if

you undertake to fix the valuation of Rents by Public Authority, you must likewise undertake to fix the whole conditions of every agricultural holding in Ireland.' The Prime Minister does not profess to have changed his mind as to the truth of these considerations; he has merely resolved to disregard them. 'Referring to the Public Authority what ought to be transacted by the private individual may,' he says, 'be an infinitely smaller evil than some which you have to contend with.' Accordingly, the Prime Minister, finding he has to contend with the Land League, resolves to make a 'holocaust of contract,' and to relegate the 'practical difficulties' and the 'mathematical results' of 1870 to Jupiter and Saturn. He requires a score of Inferior Judges, whose time is already fully occupied by their ordinary business, to perform the task of valuing 600,000 holdings; and to aid them in the performance of the task, he himself undertakes to perform what he must still regard as an impossibility, and to supply his Chairmen with a 'test.'

A variety of attempts have been made to arrive at a definition of FAIR RENT. The Rent which the Poor Law Act of 1838 (1 & 2 Vict. c. 56) accepted as the basis of its Rate was 'the Rent at which, one year with another, the hereditaments might in their actual state be reasonably expected to let from year to year, the probable annual average cost of the repairs, insurance, and other expenses, if any, necessary to maintain the hereditaments in their actual state, and all rates, taxes, and public charges,

if any (except tithes), being paid by the tenant' (s. 64). For the purposes of general taxation the Valuation Act of 1852 (15 & 16 Vict. c. 63), which formed the basis of the famous Griffith's Valuation, enacts that the Valuation of Lands 'shall be made upon an estimate of the net annual value thereof, with reference to the average prices of the several articles of agricultural produce hereinafter specified, all peculiar local circumstances in each case being taken into consideration, and all rates, taxes, and public charges, if any (except tithe rentcharge), being paid by the Tenant' (s. 11). But though such a valuation might be made the basis of taxation, it was never intended to be, and was never taken to be, a basis for the estimate of Rent. Accordingly Mr. Butt, in the Land Bills which he introduced in 1877 and 1878, defined a Fair Rent to be 'that which a solvent and responsible tenant could afford to pay, fairly and without collusion, for the premises, after deducting from such rent the addition to the letting value of the premises by any improvements made by the tenant or his predecessors in respect of which the tenant, on quitting his farm, would be entitled to compensation under the provisions of the Land Act' (s. 44). But the definition of Mr. Gladstone goes far beyond the definition that contented Mr. Butt. He courts popularity by complying with a popular demand, and he speciously defines a Fair Rent to be 'such a Rent as, in the opinion of the Court, after hearing the parties, and considering all the

circumstances of the case, holding, and district, a solvent tenant would undertake to pay one year with another: provided that the Court, in fixing such rent, shall have regard to the tenant's interest in the holding' (s. 7).

The more obvious objections to this definition, or description, call it which you will, are patent. Fair Rent is reduced from what the land is intrinsically worth to a mere matter of opinion. The opinion to be formed on the consideration of 'all the circumstances of the case,' when the circumstances are so numerous, so minute, and so remote, that they would defy the calculations of a second Adam Smith. It is an opinion to be formed on the evidence of what solvent Tenants would undertake to pay, when the solvent Tenants would not be bound by their undertaking, and when in all probability they would be members of the Land League. *Quicquid horum attigeris ulcus est.*

But if we wish to see the full scope and purport of the definition, let us consult a remarkable Essay, originally written for the Cobden Club, and republished within the last month at the instance of the Prime Minister himself. It is an Essay on the Tenure of Land in Ireland, by the Right Honble. M. Longfield, who, as Commissioner for the Sale of Incumbered Estates, and as Judge of the Landed Estates Court, has had a life-long experience of the results of judicial valuations. 'The settlement of Rent by Valuation,' says Judge Longfield, 'appears just only to persons who do not know what a

valuation of land is, and always must be. The value, certainly, is that Rent which a solvent tenant will be ready to offer for the farm on a lease of moderate duration' (p. 48). That test, of course, is excluded by the Bill. Private contract by free offer and acceptance is a portion of the old economical arrangements of Ireland which is relegated to Jupiter and Saturn. But in the absence of Free Contract there can be no trustworthy valuation. 'As soon as the possession of land ceased to be a subject of contract by mutual agreement,' says Judge Longfield, 'the valuators would have no average market value to refer to, and would form their estimates on the wildest principles' (p. 51). Nay more. He considers it highly probable 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 land that was not in accordance with the tenant's wishes' (*Ibid.*) 'It is not uncommon,' he adds, 'to see two valuators differing enormously in their estimates, and yet neither suffering in reputation as if he had made a discreditable mistake'; and, he gives it as his deliberate opinion, that in all probability '*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*' (*Ibid.*)

Let us look, then, to the value as fixed by the tenant-right measure which is embodied in the Bill. In fixing the Rent which a solvent tenant would undertake to pay—if he had the power of undertaking—the Court must have regard to the

Tenant's Interest in the holding, and the Tenant's Interest in his holding is to be estimated with reference to the following considerations.

In the case of any holding subject to the Ulster Tenant Right Custom, or to any Usage corresponding therewith, the Tenant's Interest is to be estimated with reference to the Custom or the Usage (s. 7). This is a vague and ambiguous form of expression. It is not the expression of a lawyer. In what manner is the 'reference' to be made? In whose favour? and with what results? The Prime Minister did not inform Parliament in his recent speech. Judging from the general purport of the speech, and the general policy of the Act, the reference of the Bill would seem to be some reference in favour of the tenant, and so far as one can guess the interpretation of a political conundrum, the answer to the riddle would be this. The Chairman is to estimate, as best he can, the value of the tenant's right, and he is to deduct the interest of the sum which represents the value from the landlord's rent. But how is such an estimate to be made? On what principle? and on what data? In Ulster the tenant right is various, and the standard by which it is to be determined, like the Lesbian Rule, must vary. If, as the leaders of the Land League say, the Ulster Tenant is to be at liberty to go into the market and sell his Tenant Right for the highest price that it will fetch, the market price, it is evident, will be diminished by the slightest increment of rent. If the Act is to be administered,

as it is intended to be administered, and as it will be administered, past a doubt, in favour of the tenant, it will be impossible for the landlord in any case to raise his rent, for the smallest raising of the rent will necessarily depreciate the right. But more. In Ulster there is not only a divided ownership of the land, but in practice the land, strange as it may appear, commands a double price; and in *Friel's Case*, reported in Donnell's Land Cases, Mr. Justice Lawson actually decided the value of the Tenant Right to be forty-two years' Rent, or double the value of the fee. Not only, then, will it be practically impossible for the Landlord to raise his rent; but if the interest of the money value of the Right is to be deducted from the Rent which a solvent Tenant would undertake to pay, were it not for the existence of the Right, the Right, it is evident, may absorb the Rent, and the Rent actually payable may be reduced to zero.

If we take the case where there is no evidence of any such custom or usage, we are conducted to equally startling results. In such cases the Tenant's Interest, according to the Bill, is to be estimated not only with reference to his right to compensation for improvements—which was all that was demanded in the Bills of Mr. Butt—but with reference to the scale for compensation for disturbance. What the Bill means by the term 'reference' is, in this case, tolerably clear. In the case of *improvements* the reference contemplated apparently is this. Suppose that the rent originally

payable for a holding was £100; and suppose that, by reason of the improvements of the Tenant, the Land is worth £120. If, then, £120 is what a solvent Tenant would undertake to pay, there would be nothing inequitable in deducting the £20 due to the improvements of the Tenant, and fixing the Judicial Rent at the original rent of £100 per annum; provided, of course, that the Tenant could not again claim for improvements under the Land Act of 1870, when he quits his holding, if he ever quits it. If then the 'reference' to the scale for compensation for *disturbance* is to be explained in the same manner as the 'reference' to improvements, the operation of the Bill may be illustrated in the following manner. Suppose, as before, that the rent actually payable by the Tenant is £100 a-year, and that, in the opinion of the Court, after hearing the parties and considering all the circumstances of the case, £100 a-year is what a solvent tenant, under a system of free contract, would undertake to pay, one would imagine that the undisturbed Tenant would be obliged to pay his previous rent. But no. The Court must have regard to the Tenant's interest in the holding, and the Tenant's interest in the holding must be estimated with reference to the scale of compensation for disturbance payable under the Act, which, in the case supposed, would amount to a sum not exceeding three years' rent, that is to say, £300. Deduct the interest on £300 at 5 per cent. from the existing rent, and the rent payable by the tenant would be 15 per cent. lower than the

rent which, but for the proposed legislation, he would be both legally and morally obliged to pay.

Or put the case as it is put by a leading article of the *Times* of the 13th of April, 1881. 'Take the case of a Landlord in the West of Ireland withan estate of £5000 a-year, divided into £25 holdings let at, or a little over, Griffith's Valuation. The capital value of the property at 20 years' purchase is £100,000, and this sum the owner may have paid for it since the Act of 1870 passed. If his tenants agree to apply to the Court to have Rents fixed, the first duty apparently of the Tribunal will be to deduct seven years' rent from the twenty, and to assess the fair rent on the basis of the reduced value. Thus, however easy the existing rents were, the introduction of the allowance for tenant-right—compensation for disturbance being recognised as tenant-right though no disturbance has taken place—*must cut down the Landlord's annual income by fully one-third, and in the same degree reduce the capital worth of the property.*'

A measure attended with such results is so monstrous that attempts have been made to put a different construction on the Bill. Lord Monteagle contends that the question for the Court would be, not 'what portion of the fee-simple belongs to the tenant as his interest,' but, 'can the tenant at such and such a rent sell his interest for as much as the disturbance scale would give him?' But it comes to the same thing in the end. It is clear from the Glossary that the Tenant's interest

in his 'holding' is his interest in the 'land,' and that an interest in the 'land' is intended to be conferred upon the Tenant is evident from the speech of Mr. Gladstone. 'What the Tenant had to assign at Common Law,' says Mr. Gladstone, 'was so small that the assignment was little worth giving or receiving. But in the Land Act, not, I must own, with a view to fortify the principle of Tenant Right, but simply to defend the Tenant in possession of his holding, and to render it difficult for the Landlord capriciously to get rid of him, we proceeded to enact a scale of compensation for disturbance without which he could not be removed. That being so, it was evident a valuable consideration was, by the Act of 1870, tacked on to every Yearly Tenancy in Ireland. And under the Act of 1870, whether we intended it or not, Tenant Right has become something sensible and something considerable.'

Giving the Prime Minister credit for not wilfully suppressing the truth in 1870, the Legislation of that year has produced an effect which he never contemplated or intended. It was confessedly a piece of inadvertent Legislation. Now, if the legislation of 1881 is not to be inadvertent also, let us examine how the matter stands at present; and it stands, as we conceive it, thus. Before 1870, the Tenant from year to year possessed a precarious estate, liable to increase of rent, and liable to determination on a six months' notice. According to the Prime Minister, it was a thing worth nothing. To mitigate the apparent hardship of the Tenant's position the Land Act

of 1870 provided that, if he were capriciously, without reasonable cause, evicted, he should be entitled to compensation for disturbance, the compensation to the Tenant being a penalty imposed upon the Landlord for the exercise of his legal rights. This did not satisfy the Tenant. 'In nearly all cases of dispute between Tenant and Landlord,' says the Report of the Bessborough Commission, 'what the aggrieved Tenant wants is, not to be compensated for the loss of his farm, but to be continued in its occupancy at a Fair Rent' (p. 7). The Bill proposes to do this; but in reality it does far more. It not only confers Fixity of Tenure at a Fair Rent—it confers Free Sale, and so manipulates the calculation of Fair Rent as to provide that the *existing* Tenantry should have 'something considerable' to sell. This 'something considerable' the Prime Minister does not define; he is content to call it 'something'—a considerble something, to which 'reference' must be made in determining Fair Rent. Lord Monteagle is less reserved, and is more outspoken than the Premier. He scorns and throws aside disguise. He reduces the 'reference' to the question, 'Can the Tenant, at such and such a Rent, sell his interest for as much as the disturbance scale would give him?' But if the Tenant is never to be disturbed, on what possible grounds can he claim compensation for disturbance? And if he has no claim for compensation for disturbance, on what ground should 'reference' to such a claim be made in the calculation of the Fair Rent which a

solvent Tenant would undertake to pay under a system of Free Contract?

Trace then the progress of recent Legislation as embodied in the Land Acts. The Tenant, having the command of the ballot-box, demands that he should be awarded compensation out of the Landlord's pocket, if the Landlord should venture to exercise his legal rights. The Legislature complies with the demand. The legal right is not avowedly taken away, but a penalty is imposed upon its exercise, and the right, like Olivia's guinea, is one which the Landlord may keep in his pocket, but must never use. But the Tenant is not satisfied with this. He exclaims that he does not want compensation for disturbance, but requires that henceforward he should be rooted in the soil, and not disturbed. Again the Legislature yields, and the *possession* of the land, the privilege of occupying it and using it, is taken away for ever from the Landlord, and he is reduced to the position of a mere Rentchargeant. The occupying Tenant is not contented even yet. He takes his stand at the ballot-box, and invokes the assistance of the Land League, and he demands some 'considerable something' which he may have it in his power to sell. The Bill of the Prime Minister concedes it. Having deprived the Landlord of his common law right—having deprived him of the possession of his land—he now proposes to deprive him of a portion of his Rent; and he tells the house that, being backed by an overwhelming majority, he intends to carry out his

will. Such is the result of inadvertent Legislation. But at the present moment the Legislation is no longer inadvertent;—it is Confiscation open and avowed.

Whether the Proprietor will ever be enabled to resume the *possession* of the land which is at present in the occupation of a Tenant is one of the mysteries of the Bill. The Bill, which deals so fully with Fair Rent and Free Sale, is strangely reticent as to FIXITY OF TENURE. 'My proposition,' said the Prime Minister in 1870, 'is that, if you value Rents, you may as well for every available purpose adopt Perpetuity of Tenure at once—it is only Perpetuity of Tenure in disguise.' It is in this disguise that Fixity of Tenure goes masquerading through the Bill. It is there; but it is never mentioned, and it never drops the mask. The purpose of the Bill, however, is permitted to transpire in the language of the Speech. There will remain to the Tenant,' he says, 'liberty to apply to the Court for a Judicial Rent, which may be followed by a Judicial Tenant Right, to exist for a Statutory Term of fifteen years, Renewal to be provided as long as the present tenancy exists, and the present tenancy not to determine by a mere change of tenants.' 'Evictions,' he adds, 'will hereafter, as I trust, be done away with, except for causes both reasonable and grave.' These grave and reasonable causes are set forth in the 4th section of the Bill as the Statutory Conditions which regulate the Statutory Term. But even in the case of a Statutory Term the Land-

lord cannot re-enter for breach of condition; he can only compel the Tenant to quit his holding, as in the case of an ordinary tenancy from year to year, by ejectment for non-payment of rent, or by ejectment founded on a notice to quit (s. 13); and during the pendency of even such ejectment proceedings the Tenant, as it would appear, may defeat it by an exercise of his statutable Right of Sale (*Ibid.*).

So anxious is the Prime Minister to prevent the Landlords from resuming the possession of their Estates, that the Bill goes further. If a Tenant should determine to sell his tenancy under the provisions of the Bill, he must give notice of his intention to his Landlord, and 'on receiving such notice the Landlord may purchase the tenancy for such sum as may be agreed upon, or, in the event of disagreement, may be settled by the Court to be the value' (sub-s. 3). But even this privilege is clogged with a proviso the equity of which it is hard to understand. Even in the case 'where a present tenancy in a holding is purchased by the Landlord from the Tenant in exercise of his right of pre-emption under the Act,' the Bill provides that 'if the Landlord, within fifteen years from the passing of the Act, *re-lets* the same to another Tenant, the same shall be subject, from and after the time when it has been so re-let, to all the provisions of the Act which are applicable to present tenancies' (s. 45, sub-s. 2).

The Bill having thus evicted the Landlord from the possession of his land, and having made a

considerable deduction from his rent, in order that the Tenant may have 'something considerable' to sell, proceeds to confer upon the Tenant the privilege of FREE SALE. The first Section of the Bill proposes that 'the Tenant for the time being of every tenancy to which the Act applies may sell his tenancy for the best price that can be got for the same,' subject to the 'regulations' and 'provisions' of the Act (s. 1). 'The power of the Landlord, or of the Court, to raise the rent,' says the Prime Minister, 'is the due and just means of preventing the Tenant-right of the Tenant from passing into extravagance and trespassing on the just rights of others'; and, accordingly, with this view the Bill provides that 'the Tenant shall give the prescribed notice to the Landlord of his intention to sell his tenancy' (sub-s. 2).

If, then, on the receipt of the prescribed notice, the Landlord thinks proper to demand an increase of Rent, one of two things may happen. If the Tenant 'accepts such increase' his tenancy is converted into a Statutory Term of fifteen years (s. 3), during the continuance of which he cannot be 'compelled to pay a higher Rent than the Rent payable at its commencement,' and cannot be 'compelled to quit the holding,' except 'in consequence of the breach of some one or more of the conditions' referred to in the Act as Statutory Conditions (s. 4), and is entitled to a *toties quoties* provision for 'Renewal.' If, however, the Tenant 'does not accept such increase' he has a privilege, from participation

in which the Landlord is excluded, and he may, if he think fit, apply to the Court to fix the Rent. When once the Rent is fixed in the manner provided by the Act, a Statutory Term will be created which will have all the incidents of the Statutory Term created by the agreement of the parties; and in either of these cases the Tenant will enjoy a perpetually renewable interest, subject to the payment of a Rent determined either by the Free Contract of the parties, or by the judicial determination of the Court.

But the Bill gives another alternative to the Tenant. It provides that 'where the Tenant does not accept such increase, and is compelled to quit the tenancy, but does not sell the tenancy, he shall be entitled to compensation as in the case of disturbance by the Landlord' (sub-s. 3). It is difficult to see the equity of this provision. If the Landlord is to be compelled to accept a Fair Rent, the Tenant should be compelled to pay it. Why should a Tenant who repudiates a Fair Rent be permitted to elect to quit his holding and to claim a compensation to which he would not be entitled under the Land Act even if he were compelled to quit? The object of the Bill is to prevent the Tenant from being disturbed, by giving him Fixity of Tenure at a Fair Rent, as a substitute for compensation for disturbance: why should he be permitted to repudiate the boon conferred upon him by the Bill, and, in spite of his clamour against eviction, to claim the *privilege* of being evicted?

But the Bill, in the third place, provides that

'where the Tenant does not accept such increase, and sells his tenancy, in addition to the price paid for such tenancy, he shall be entitled to receive from the Landlord ten times the amount of such sum (if any) as the Court, on the application of the Tenant, may determine to be the excess of the increased rent over a Fair Rent within the meaning of the Act.' To test the justice of this provision of the Bill, let us take a simple case. A Tenant is in possession of a holding for which he is paying a rent of £100, and for which his Landlord demands an increase of £50 a-year; the Tenant refuses to comply with this demand; the Landlord cannot apply to the Court to fix the rent, and the Tenant elects to sell his tenancy. His 'Tenancy,' according to the glossary, is his 'interest in the holding during the continuance of his tenancy,' and the 'Rent of a tenancy' is 'the Rent *for the time being* payable by such Tenant.' What he sells, therefore, is a holding subject to £100 a-year, and for this he receives its full value, under his statutable privilege of Free Sale. Now, suppose that £150 is the Fair Rent which a solvent Tenant would undertake to pay under a system of Free Contract; and suppose that £100 is the Judicial Rent which a solvent Tenant would be compellable to pay under the system of the Bill; the excess of the Fair Rent of contract over the Judicial Rent of compulsion is £50; and by the provisions of the Bill the Tenant is entitled to receive from his Landlord ten times the amount of that sum, or £500, as the penalty for

making a reasonable demand, which he cannot enforce against the Tenant who elects to sell, and which the Judge, on the application of the Tenant, may decide that he cannot enforce against the buyer who thinks fit to buy.

Nor is this the mere blunder of the draftsman. No Parliamentary draftsman can be ignorant of the fact that rent cannot be raised by a mere demand to raise it. It is the deliberate injustice of the Bill; for the injustice is repeated. The 12th section of the Bill provides that, 'where a Tenant sells his tenancy without notice from the Landlord that he is about to raise the Rent, and the Landlord *demands* a higher Rent from the Purchaser of the tenancy than he received from the Tenant, the Purchaser may sell such tenancy *forthwith;* and if he sells the same forthwith, he shall, in addition to any moneys he may receive from the sale of such tenancy, be entitled to receive from the Landlord the amount by which the selling value of his tenancy may have been depreciated by the increase of Rent' (s. 12). The iniquity of this is patent. The Tenancy which the Purchaser has bought is subject to the existing Rent by the very definitions of the Bill, and it is subject to that existing Rent that he proceeds to sell it. He sells exactly what he bought. But in addition to what he realises by the sale—which may be a considerable advance on what he paid—the Bill declares him entitled to demand and receive from the Landlord 'the amount by which the selling value of his Tenancy may have been depreciated by

the increase of Rent' which the Landlord has demanded—an increase which the Landlord has taken no proceedings to enforce, and which the Purchaser, by applying to the Court to fix a Judicial Rent, might effectually prevent him from enforcing.

The full consequences of the Bill are best seen in the light reflected upon them by the Prime Minister's speech in 1870. In 1870 the Prime Minister deliberately refused to be a party to any scheme for the *Valuation of Rents* by Public Authority, on the ground that no Public Authority could by any possibility perform the duty. 'The mathematical result,' he said, 'is, that if you undertake the Valuation of Rents by Public Authority, you must likewise undertake to fix the whole conditions of every agricultural holding in Ireland.' This impossible task the Prime Minister now proposes to impose on the County Court Judges, already overwhelmed with the business of their Civil Bills and the existing Land Claims. But what is the necessary result of this? 'My proposition,' said the Premier in 1870, 'is, that if you value Rents, you may as well for every available purpose adopt Perpetuity of Tenure at once—it is Perpetuity of Tenure in disguise.' But what is *Perpetuity of Tenure?* The principles of Political Science may be disregarded, but their disregard does not alter the nature of things or arrest the operation of the laws of nature. 'The one principle which is involved in Perpetuity of Tenure,' said the Premier, 'is, that the paramount interest in the soil is to be transferred from the Owner

to the Occupier, and that the Owner of the soil is to become a Tithe Commutator only on a larger scale' —'a mere Annuitant who loses all interest in the prosperity of the country.' In the words of the Minister, it is a virtual *Expropriation of the Landlord.* The Prime Minister stated these things in 1870, as he said, to 'provoke confutation.' No confutation of their truth has ever been offered; they cannot be confuted. But if they are true, what are the consequences of their truth? If the principles of Political Science, as far as Ireland is concerned, are to be relegated to Jupiter or Saturn, the principles of Political Morality remain, for the Prime Minister invokes them. And what is it that justice imperatively requires in such a case? The Prime Minister has told us. 'I do not think that anything *dishonourable*,' he said, 'anything that intends an injury to another, has been projected by those who have set up Perpetuity of Tenure for the Irish Occupier as their favourite scheme, because we have not a doubt that they have seen that, inasmuch as Perpetuity of Tenure on the part of the Occupier is virtually Expropriation of the Landlord, and as a mere readjustment of Rent, according to the price of produce, can by no means dispose of all the contingencies the future may produce in his favour, *Compensation* would have to be paid to the Landlord for the rights of which he would be deprived.'

Here then, on the Premier's own showing, we have the whole concatenation of the consequences

which are enveloped in the Bill. A Court is to be constituted for the Valuation of Rents; Valuation of Rents entails Perpetuity of Tenure; Perpetuity of Tenure is the Expropriation of the Landlord; and the Expropriation of the Landlord, if the country is not to adopt a course which is at once 'dishonourable' and 'unjust,' must be followed up by Compensation. But the Bill contains no reference to Compensation, though it not only deprives the Landlord of the possession of his Land, but indefinitely diminishes the amount which he can claim for Rent.

The peculiar circumstances of Ireland may require that its Land Laws should be fundamentally remodelled; but they do not require that this Social Revolution—for in his speech of 1870 the Prime Minister expressly called it a Social Revolution—should be effected by the ruin of a class. If the Government for the public benefit authorizes the compulsory purchase of property, it grants a compensation for the mere compulsion. But here the compulsory enactment entails a ruinous depreciation. We have seen that the Landlord is practically debarred from resuming the tangible possession of the land which is at present in the occupation of a Tenant. We have seen that the capitalization of the compensation for disturbance, and the grant of the amount to the Tenant, as his interest in his holding, would probably diminish the Landlord's capital by at least a third. We have seen that the compulsory valuation of Rents would probably re-

duce the Rent payable in future to less than half the Rent which a solvent Tenant would undertake to pay. We have seen that heavy penalties are henceforward to be imposed on a Landlord if he incautiously demands an increase of Rent which, in the newly constituted Court, he may be unable to sustain. We have seen that even to maintain a fragment of his pre-existing rights the Landlord will be driven into a hostile Court—a Court constituted for the very purpose of benefiting the Tenant—a Court in which witnesses and valuators will be under the influence of an organised conspiracy to defeat his rights—a Court which in the face of the Land League will be unable to guarantee him the enjoyment of the modest rights which it awards. The large Estates of the great Absentee Proprietors may be able to sustain the depreciation of property that will thus ensue; for such Proprietors regard their Irish Income as a mere adjunct and addition to their English Incomes. The small Estates, which are subject to large head rents, will be sunk to the water's edge. The Estates of the small resident proprietors will be swamped. The Estates which are heavily encumbered will be finally submerged. All this ruin will be entailed on the Landed Proprietor of Ireland. And why? Because the Irish Land Laws are iniquitous? No. The Prime Minister denies it. Because the great body of the Irish Proprietors have been guilty of oppression? No. The Prime Minister admits that they have been put on their trial, and that they have been triumphantly

acquitted. Why then are the Landed Proprietors to be subjected to a Confiscation as sweeping as if it had been effected by Foreign Conquest or by Civil War? The Prime Minister informs us. It is because 'a limited number of the class has been distinguished by conduct different from that of the predominating numbers.' This the Prime Minister calls Justice. But his Justice is no reflex of the Eternal Justice which administers the world. The Divine Equity would have spared even Sodom and Gomorrah for the sake of ten righteous, and the Statesman who claims to be guided by the 'Divine Light' is prepared to rain down the ruin of Sodom and Gomorrah upon ten thousand righteous as a punishment for the sins of ten.

In his speech of 1870 the Prime Minister invoked the principles of Eternal and Immutable Justice as eloquently as he invokes them now. 'That rare, that noble, that imperial virtue,' he said, 'has this above all other qualities, that she is no respecter of persons, and she will not take advantage of a favourable moment to oppress the wealthy for the sake of flattering the poor, any more than she will condescend to oppress the poor for the sake of pampering the luxuries of the rich.' He compared the face of Justice to the face of Janus; he compared her countenance to that of the Lions, which present one tranquil and majestic aspect to every quarter of the globe. *Verborum volubilitas inanis!* The Prime Minister has taken advantage of his favourable moment. He has changed his front. His Lions have dis-

appeared. His Janus has turned out to be a Janus Bifrons—a false Deity with a double face. His Imperial Virtue has been excluded from all participation in the affairs of Ireland; and his Political Morality, like his Political Economy, has been banished to Jupiter or Saturn.

What reason has the Prime Minister assigned for the abandonment of the principles which he enunciated in 1870? In 1870 he demonstrated that it was impossible for any Public Authority to value Rents. In 1881 he makes light of the impossibility, and determines that it shall be done. In 1870 'he had not heard, and he did not know, and he could not conceive, what was to be said in favour of the prospective power to reduce excessive Rents.' In 1881 he makes the establishment of a Court for the reduction of excessive Rents the salient point and cardinal proposal of his Bill. In 1870 he denounced the plan of the present Bill as one calculated to throw the whole economical arrangements of the country into confusion. He now proposes to entrust the work of confusion to a Commission of Triumvirs. In 1870, he denounced the plan as one calculated to drive out of the field all solvent and honest men. He is determined now to drive them out. In 1870 he denounced the plan as calculated to carry a widespread demoralisation through the masses of the Irish people. He is determined to demoralise them. What change has come over the spirit of his dream? What has happened to convert him? In 1870 the Prime Minister

was no infant phenomenon, no inexperienced politician. He had reached his grand climacteric; he was the Premier of England. If there is now a scarcity of land in Ireland, there was an equal scarcity ten years ago. Ten years ago men were as content to pay the fancy price for land, which the Premier pedantically calls the *pretium affectionis*, as they are at present. Ten years ago there were a few bad landlords. But these things were not peculiar to the time; nor are they peculiar to Ireland. The area of every country in the world, the area of the great globe itself, is limited. The *pretium affectionis* is paid wherever there is an affection to be gratified, and the ability to purchase the gratification. In every country in the world, in every department of human life, so long as human nature retains any trace of its primeval imperfection, there will be a small minority of men who will attempt to push their legal rights to the very limits of the law. It is so with the peasant proprietors of Belgium; it is so with the peasant proprietors of France. It is not these familiar facts, these elementary truths of political science, which have changed the Prime Minister of England. Why does he not honestly avow the reason of the change? When Sir Robert Peel abandoned his old opinions on the great question of Protection, he boldly proclaimed to Parliament and to the Nation, that whatever merit might attach to the measures which he introduced did not belong to himself, but ought to be attached to the name of the man whose pure motives, and indefati-

gable energy, and unadorned eloquence, had forced the world to listen to him—to the name of Richard Cobden. Let the Prime Minister imitate the honesty of Sir Robert Peel. Let him confess that whatever merit may attach to the great measure of Confiscation which he is about to pass does not belong to him, but to the unadorned eloquence of Mr. Parnell—to the indefatigable energy of Mr. Dillon—and to the pure motives of the Land League. Let him confess that his Administration has allowed Ireland to be converted into an Aceldama, and that his *pretium affectionis* is the price of blood.

W.

THE END.