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FROM THE WRITER.]

# THE IRISH TENANT-RIGHT QUESTION

EXAMINED BY A COMPARISON OF  
THE LAW AND PRACTICE OF ENGLAND  
WITH  
THE LAW AND PRACTICE OF IRELAND;

*With Suggestions on the basis of Legislation, and the consequences which  
would follow the adoption of Fixity of Tenure or  
the Ulster Tenant-Right.*

BY  
ROBERT BAXTER, ESQ.

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LONDON:  
EDWARD STANFORD, 6 & 7, CHARING CROSS, S.W.

1869.

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*The Land Question in Ireland is in every mind: but those not conversant with agriculture have no means of usefully reflecting on it—from the want of experience in the routine of culture and the equitable claims resulting. Having been for a long series of years practically conversant with husbandry, and taken part in the adjustment of these claims, so as to be made aware, by experience, of the expectations of both Landlords and Tenants—the principles of law by which they are controlled—and the practical working of our English laws of Tenant Right, I have ventured to attempt an explanation, in the hope that it may throw light upon a subject which, to all but an agriculturist, seems dark and unfathomable.*

10, QUEEN SQUARE, WESTMINSTER,  
November, 1869.



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# Houses of the Oireachtas



# THE IRISH TENANT-RIGHT QUESTION.

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## CHAPTER I.

### *Questions arising between Landlord and Tenant.*

NOTHING is so necessary to the well-being of a country as the wise regulation of rights of property in land. Importance of judicious land laws.

So long as an owner who has bought it lives and is the occupant, his right of property is absolute, and he may do what he will with his own.

On his death arises the right of testamentary disposal, or a transmission to his children or relatives. But whether the laws of England, tending to preserve the unity of the estate, or the laws of France, which break it up into fragments, are best calculated for social advancement it is not our present purpose to inquire.

When the owner parts with the possession to another occupier new and often conflicting interests arise, and the occupier is paramount so long as the rent is paid and the terms of the holding are complied with.

No one doubts the right of an owner in possession to keep it, but the time and terms (as to

Tenant-right) on which he can resume possession from his tenant have constantly been matters of private discussion between the parties concerned, and are now in the sister isle publicly debated in multitudinous gatherings, and will soon become the leading topic of debate in our legislative assemblies.

Not a party question.

This topic, however, ought never to be treated as a party question. We are sufficiently advanced in practical experience to judge between sound and unsound principles of regulating the rights of property. The national evils resulting from laws which violate broad equity and discourage the outlay of capital, or unduly advance the price of the occupancy of land, are so well understood, that if a Government is pressed on to false action by a formidable agitation, it becomes the obvious duty of its political opponents to rally round it, and defeat the cabal which, if successful, would sap the prosperity of the commonwealth.

Tenant-right limited to compensation on quitting.

The terms constituting Tenant-right are necessarily confined to the compensation on quitting. It does not depend on the length of holdings. For whatever period a tenant takes a farm he must be liable to quit at the end of that period, unless he makes a further agreement with his landlord. If the period be from year to year, terminable by a notice, he must leave when the notice has expired. No demand has ever been seriously made on behalf of a tenant who has entered for a terminable period, that he has a right of his own will, without consent of his landlord, to extend it. Such a claim, if con-



ceded, would be an entire overthrow of all known laws of property.

It is alleged of Ireland that the relations between its landlords and their tenants are utterly unsound, discouraging the improvement of the land, working extreme injustice on the tenant, and tending to provoke those barbarous outrages, and that sympathy for their perpetrators, which degrade the social status of that country.

In solving difficult social problems experience is unquestionably the safest guide, and it is a happy circumstance that side by side with Ireland, roused to a state of excitement bordering on civil war on the subject of tenant-right, stands England, another member of the same Empire, with a still greater complication of tenant-right, calmly resting upon the wise laws which regulate it, landlords and tenants equally satisfied with the definition of their own rights, without the one trenching upon the prerogative of the other.

It is a truism that the more advanced the science and practice of agriculture, the more intricate must be the claim for Tenant-right, and in this respect no one of any experience on the subject will deny that agriculture in Ireland is simple and primitive, compared with the elaborate and scientific cultivation of England.

Scarcely any one will be bold enough to assert that the English are less tenacious of their rights than the Irish, and that an English tenant could feel himself happy under treatment which will drive an

Excitement in Ireland.

Contentment in England.

Tenant-right more intricate in England than in Ireland.

English as tenacious of rights as Irish.



Irish occupier into rebellion. In that process of bargaining which distinguishes what is called "the screw," we may match the Saxon against the Celt, and be satisfied the Saxon will maintain his rights with at least equal tenacity to that of his Celtic friend.

The law which satisfies England should content Ireland.

If, therefore, we can find laws established in England on the subject of Tenant-right, so well defined and so practically carried out as to produce universal satisfaction in the complicated relations of English tenure, we may entertain some hope that the question of Tenant-right in Ireland, however portentous the dimensions it assumes, and however appalling the language in which it is treated, is still capable of a safe and satisfactory solution.

The principle of English law of Tenant-right.

It is part of our English law, recognized and enforced by the ordinary courts of justice, that whilst on the one hand every tenant is bound to cultivate in due rotation of crops and on the best system of husbandry, so, on the other hand, he has a right on leaving his farm, to be paid by his landlord for expenditure incurred by him in labour, manures, rents, and taxes, in preparing for this rotation of crops, when he leaves before he has fully reaped them, and to be paid upon such a scale as is defined by what is called the "custom of the country," unless when he entered the farm he received without payment the like advantages from his predecessor.

This custom varies in nearly every county, and even in different parts of the same county, but is



well defined and proveable by the payments made by the same tenant on his original entry, or, if proof of this is not forthcoming, then by what is paid by adjoining tenants throughout the district where his farm lies.

This is the law pervading England and Wales, Carried out by arbitration. and it is enforced practically by the out-going tenant appointing a professional valuer, and the landlord or incoming tenant appointing another, and these two valuers settling the particulars and amount, or if they disagree remitting it to an umpire for decision. If the parties refuse to appoint valuers, the out-going tenant may bring an action against his landlord for recovery of the Tenant-right, particulars of which he proves before the judge of assize.

A tenant proposing to take a farm in any district consults a valuer as to the Tenant-right attaching to the farm, and the amount of capital which will be absorbed by it, if he is not acquainted with these particulars himself, and this amount he has to add to the capital necessary for carrying on the ordinary operations of farming, when estimating the resources requisite to enable him profitably to manage the farm. Its effect well understood.

We have no Government valuers, nor have we any special court for assessing Tenant-right. Liability to Tenant-right is one of the thousand liabilities recognized by law, any one or all of which may be enforced before the ordinary courts of justice, and our judges of assize in their circuits receive, mingled with disputes of all kinds, these No special officer or tribunal to administer it.



claims, and find them a very small part of the litigation of which they have to dispose.

Easily  
worked.

Nothing can be more simple than the operation of this law, notwithstanding that the details, as we shall presently see, which constitute the claims for tenant right are extremely complicated, requiring the closest attention of the valuer of the incoming tenant, to prevent any unjust charge, and, notwithstanding that the custom of the country varies, as has been observed, in every district.

Because left  
to referee  
chosen by  
each party.

The happy manipulation of these claims results from the outgoing and incoming tenant each selecting his own valuer, in whom he has confidence ; and these valuers and their umpire being trained to the work, and at a very moderate cost, settling the claims in 99 cases out of 100, without any legal dispute.

Tenant-right  
never a public  
difficulty in  
England.

Tenant-right, which in Ireland is occupying the attention of the whole country, has never been a topic of extended public dispute in England. This is owing to the happy principle practically acted upon by our judges in the administration of the law, that an outgoing tenant shall receive compensation for any expenditure he has made upon his farm in the ordinary routine of cultivation, of which the incoming tenant will receive the benefit ; beyond that to which he entered without payment, but that he shall be limited to this in his claim for Tenant-right.

Permanent  
outlay in  
England not

English law does not allow a tenant to claim for buildings erected by him, and he therefore



never erects them, except under special agreement for compensation with his landlord. The like rule prevails as to under-draining and other expensive and permanent improvements, which entail great acreage cost, and require great skill in execution. These, if done by the tenant, will be upon special agreement with his landlord. For subsoiling or for reclaiming, where the expense would be covered by the profit of two or three crops, the custom generally gives compensation in proportion to the crops which have not been taken by the outgoing tenant, but will be reaped by the incomer.

matter of  
tenant-right,  
but of arrange-  
ment with  
landlord.

## CHAPTER II.

### *How Tenant Right arises in English Husbandry.*

In order to understand the reasons upon which the English customs are founded, it will be necessary to examine the routine of farm culture.

In husbandry  
a year of rest  
or fallow  
necessary.

No land, however rich, will bear constant repetition of exhausting crops; and however highly it may be manured, it needs, for cleaning and for restoration of its fertility, one year of comparative rest after a certain series of crops. This year of rest is called *the fallow*. Upon it the ploughings and harrowings are twice and thrice repeated, until the land is cleaned and the soil is pulverized, and the manuring is twice as heavy as in any other year of the course. The number of crops which intervene between fallow and fallow is called *the course*.

Courses of  
cropping.

The more general *course* pursued throughout England and Wales upon the lighter and moderately fertile soils is the four field or five field *course*.

This consists of—

(1st year.) The fallow with turnips, or other green crops.

(2nd year.) A white corn crop, with seeds.

(3rd year.) Seeds—grazed. If the course be four field.

(4th year.) Wheat.

Or if the course be five field.



(4th year.) Seeds.

(5th year.) Wheat.

Upon more fertile lands, instead of one wheat crop closing the course, two white corn crops will be taken in succession, generally oats and wheat.

Upon strong and very rich land a second white corn crop is taken after the fallow, before laying down for seeds, and instead of seeds pastured red clover is mown, and sometimes peas or beans are interspersed between the white corn crops.

In these instances the course is prolonged to six or seven years between fallow and fallow. But the four or five years' course sufficiently exemplifies the principle of Tenant-right, and to that therefore we adhere.

It will be understood the fallow year is the renovator of the whole series or rotation of crops. The dressings and manure of the fallow sustain the turnip crop, and the following white corn crop, and the seeds of the third or fourth year.

The fallow year involves an outlay only returned by reaping the full course of crops.

If the seeds be fed off, no special manure is put on for the wheat crop of the fourth or fifth year.

If the seeds be mown, or the land betray weakness, the fourth or fifth year's wheat crop receives farm-yard manure or bought tillages.

It is thus obvious that the land left by the occupier at the end of the fallow year carries with it to the next occupier the renovating power for the succeeding crops which has been derived from the dressings and manure bestowed upon the fallow, and that the outgoing tenant has been paying rent and taxes for the land thus fallowed.



Incoming tenant if he takes part of these crops, pays part of the outlay.

The outgoing tenant, then, has expended upon rent and taxes, dressings and manure upon the fallow, an amount which would not be returned to him unless he stayed to gather the succeeding crops of the whole course. The only crop he takes is the turnip crop, the value of which is deducted from his outlay on the fallow, and the balance is paid to him by the incoming tenant, and is technically termed "full tillage."\*

If he has stayed to gather not only the turnip crop, but the white corn crop following, it is considered that he has been recouped half the outlay upon his fallow, and he only receives half the amount, which technically is termed "half tillages."

Other work in husbandry done for incoming tenant payable by him.

These are compensations to the outgoing tenant which obviously arise upon all farms in regular course of cultivation; but besides these, the season of quitting most materially affects his further claims. If he leaves at Martinmas (November), he leaves having sown the wheat crop on the seeds, and will be entitled, at the least, to the value of the seed sown, and the ploughing and harrowings constituting the expense of sowing, with any bought tillages with which he may have manured the crop; and if on his original entry, instead of paying for seed, labour, and manure, he paid the value of the crop at harvest, deducting the year's rent, he will be entitled to reap the

\* Any one desiring to investigate the minutiae of these charges, will find them in "Bayldon on Tillages," published by Longman, 1823.



crop or demand the value of it on the same terms.

If the tenancy expire at Whitsuntide (May), he will have sown the spring crops also before he leaves, and for this, in like manner, he will be entitled to be repaid the seed, labour, and the manure, if any.

If when he entered upon the farm he paid for the manure in the farm yard, he will be entitled to be paid the value of the manure which he leaves on going away. Repayment  
for manures.

If he buy manure and put it on the land, and has not taken a crop, he will be allowed full value.

If that manure be of a nature to benefit the land for more than one year, he will be allowed, after one crop, half the value, or in the case of bones a third after having taken two crops.

The expense of full tillage or fallows may vary from £10 to £12 an acre, including rent and taxes, and if turnips be grown their value will be deducted, being probably from £3 to £5 per acre, leaving from £7 to £9 per acre the nett payment to be made for the full tillage. Scale of  
Tenant-right  
payments.

Upon a farm in high cultivation the total valuation to be paid by the incoming tenant where full and half tillages and way-going crop are allowed, will amount to £4 or £5 per acre upon the whole farm, so that upon a farm of 250 acres there is £1,000 or £1,100 to be paid on entry to the outgoing tenant.

This, which is called the full system of Tenant-



right, assumes that the tenant on his original entry paid upon the same scale, or that the land was not then in due course of cultivation, and that there were no fallows to which he entered without payment, nor any land fitted to bear a ley crop.

If outgoing tenant on a original entry did not pay Tenant-right due, he does not receive it.

If a tenant enter with the fallows ready made for him, without paying for them, it is obviously equitable that he should leave with his fallows made without receiving payment, and this is the law.

It may happen that the landlord has let a farm held by himself in due course of cultivation and well cared for, without receiving any Tenant-right whatever, and in this case the tenant so entering is, on quitting, bound by the law to leave the farm in an equally good state, with fallows, manure, and everything in due order and condition as when he entered.

It is obvious also that there may be every possible variety of entry,\* in some cases fallows paid for, in others not, or some cases manure paid for, in others not; in some cases a way-going crop paid for, in others only seed and labour of sowing, in others the crop sown and nothing charged for seed or labour.

In all these varying cases the law simply defines that a tenant must quit upon the same terms as he entered, and whilst he is in possession of the

\* The details of the custom of the country in each county in England and Wales is given in the "Practice of Tenancy," collected from the survey of Kennedy and Granger, Ridgway, 1828. Without relying upon its perfect accuracy, it gives an intelligible picture of the variety of the customs.



farm he must cultivate it on the rules of good husbandry according to the custom of the country.

Complicated as are these details, the principle on which they are dealt with is simple and unmis-  
*takeable. Whatever an out-going tenant expends in the due course of husbandry of which the incomer reaps the benefit is TENANT-RIGHT, unless on his original entry the tenant received a like benefit without paying for it.* This rule fully compensates the outgoing and lays no more than an equitable charge on the incoming tenant.

Simplicity of the English principle of Tenant-right.

This principle is established by law without any agreement with the landlord. No settlement or limitation of estates affects it ; it is fixed on the land by the custom of the country, and can be enforced against the landlord, no matter how limited his estate, or whether he be trustee or owner in his own right. An agreement with the landlord may restrain or enlarge it, but in the absence of agreement it is in full force.

The legal liability arises without agreement, and overrides all settlements.

The various modifications of the details of Tenant-right which the custom of different counties and districts present, arise from the presumption that the articles excluded from compensation were originally entered upon without payment, and therefore must be so left.

As respects grass lands, the only Tenant-right recognized by the custom of the country is the value of any unexhausted manure which may have been laid on it.



### CHAPTER III.

#### *Tenant Right arising out of Irish Husbandry.*

Irish course  
of husbandry  
analogous to  
English.

In Ireland the English system of rotation of crops is pursued more or less upon all arable lands where farms are of sufficient acreage to allow it. Oats are greatly substituted for wheat, but this makes no difference as respects Tenant-right.

Fallow year  
equitably  
raises a claim  
to Tenant-  
right.

If the Irish cultivator do justice to his land, he must have a fallow. If he has expended labour, manure, rent, and taxes on this renovating year, he leaves an outlay of which the incomer will receive the benefit, and for which in broad equity he ought to pay, unless the outgoing tenant, when he entered, received fallows ready made without payment.

No matter what the rotation of crops between fallow and fallow. The year of rest and renovation creates a just demand in respect of the benefit it transmits to the incoming tenant. The demand may be cut down or extinguished by peculiarly exhausting crops. One potatoe crop or two white corn crops will cancel the benefit of the fallow and the right of compensation. But in any law of Tenant-right which is proposed to do justice between incoming and outgoing tenant, it would be unnecessary to specify crops. The English rule *that the incoming tenant shall pay for any expenses of the ordinary routine of husbandry of which he and*



*not the outgoer reaps the benefit beyond what the outgoer on his original entry received without payment*, will be practically and easily applied by valuers mutually appointed. If no benefit is transmitted by reason of exhausting crops, no demand can be established.

For farms in Ireland large enough to admit a regular rotation of crops, there seems no reason why the English system of Tenant-right should not be attached to the estates. Every equity of the holder will be provided for which arises in the usual course of cultivation. It may be difficult in Ireland to ascertain on what terms the tenant originally entered, or what was then the state of cultivation of the land. But this difficulty arises in England, and is solved by the best local evidence the valuers can obtain, or by the general custom of the district, and in this as in all disputed facts, the respective valuers of the parties claiming and paying, or their umpire, must be left to settle it in the best way they can. If the English law were applied to Ireland there could in this class of occupiers be no complaint of injustice as respects the ordinary course of cultivation.

But a very large proportion of land in Ireland is held on cottier holdings of a very few acres, within which no regular rotation of crops can be established. These are chiefly worked by spade husbandry, and it is to be feared are pitilessly cropped by potatoes year after year, with scanty manurings of very eccentric composition. To search here for a renovating principle through which the

English principle of compensation applied.

Large proportion of small cottier holdings.



Here even the English principle will compensate.

outgoer has expended his labour or money for the benefit of his successor, is like searching for gold in a gold-bearing granite vein. It may be there, and it may be found ; but no law regulates it, and no rule of discovery can be laid down. The principle of the English law will, however, meet it. If any unexhausted benefit of manures or of dressings is transmitted to the incomer, the valuers will detect and define it, and the incomer must pay for it.

Great difficulty arises in permanent improvements.

So far it seems very easy to provide adequate compensation without unfair charge on the landowner, by following English law and customs. But there is a wide and very difficult field lying beyond, for English practice furnishes no exact parallel. The English tenant who wants to erect permanent and expensive improvements, like a reasonable man, comes to his landlord to pay the whole or a part of the expense, and comes to an agreement what scale of allowance shall be made to him for his own proportion, in case he leaves before he has reaped the full benefit of it. It is said the Irish tenant does not act thus, but executes the improvements without arrangement with his landlord. It is difficult to divine what is the physical or moral impediment to the ready-spoken and courteous cultivator of the emerald isle communicating with his landlord or his agent. No inhabitant of this nether world is so gently persuasive or bewitching in his arguments as our island brother. But it is said neither landlord nor agent can often be found, and when found no such



enthusiasm in the improvement of his estate as would induce him to put his hand in his pocket can be awakened. It is added that in many cases his agreement as a limited owner would not bind his successor in estate so as to secure the compensation to the tenant.

We cannot conceive the difficulties of a previous understanding between landlord and tenant can be so insuperable in Ireland when they do not occur at all in England. No tenant can expect his landlord to assent to everything, nor can a landlord act on the rule of objecting unnecessarily to all his tenant's proposals. There must be mutual courtesy and forbearance as well as a mutual desire to act reasonably, and if a churlish landlord should crop out upon the surface of this intercourse he must be treated as an instance of unconformable stratification, and not be looked upon as indicating the character of the whole geological series.

Why should not Irish tenants agree on these with their landlords, as the English do?

The difficulties in permanent improvements arise—

- (1.) Upon buildings.
- (2.) Upon drainage, whether arterial or furrow drains.
- (3.) Upon subsoiling or clearing land from stones.
- (4.) Upon fencing ; and
- (5.) On reclaiming waste land.

(1.) In the erection of buildings great judgment is necessary both as to the degree of accommodation for the farmer, the proper housing and

Buildings and difficulties of compensation.



yards for the cattle, and the position in which the buildings should be placed.

A landlord, the owner of two or three contiguous small holdings, may judiciously desire to have one set of buildings which, at a single expense will accommodate the whole. The three independant tenants will naturally want as many separate homesteads. The judgment of the landlord in this case may be the proper conclusion. Nevertheless, if each tenant, without communication with his landlord, makes his separate buildings, the question may any day arise upon his quitting the farm, "Shall he have any Tenant-right in respect of these buildings, and to what amount?" On his quitting it may be found that the buildings of the adjoining tenant suffice for the occupation of both farms, and the landlord may let it to the adjoining tenant accordingly. Here arises the complication; the tenant has laid out his money on the buildings, but they are of no value to the landlord or his incoming tenant. In such a case, if the buildings were erected without the sanction of the landlord, it is difficult to see how any equity arises in favour of the outgoing tenant; but unquestionably he would make the lack of compensation a great ground of complaint.

Drainage and its difficulties.

(2.) Again, with respect to drainage. The execution of such a work requires great skill, and for want of judgment in executing it, twice the necessary amount may have been spent and the work may always be imperfect, because badly designed, and in order to make an effectual drain-



age, it may be necessary to abandon the old works, and, at an expense not at all lessened by the old, to form a new drainage. In such a case the old drainage would not benefit the incoming tenant or the landlord, but the outgoing tenant has laid out his money upon it and expects remuneration.

(3.) As to "subsoiling and clearing stones;" <sup>Subsoiling.</sup> if the expense is so slight as to be repaid by three or four years of cropping the compensation is simple, but the expense may exceed £5 an acre.

In some cases, from the natural advantages of the locality or soil, the annual value may be so increased by the improvement, as in the course of five or six years to give back to the tenant the whole cost of the improvement, and render it inequitable for him to demand any compensation; but the tenant will say I have laid out my £5 an acre, and though the additional annual value for the time I have since occupied it has given me back more than the £5, yet I am handing over to the incomer land at this highly increased value and ought to be paid for it.

(4.) Then as to "fencing;" great judgment is <sup>Fencing.</sup> required to avoid unnecessary expense and to secure a permanent fence cheaply maintained. The cost of fencing in England, on the average size of moderate farm fields, is about £5 per acre. This would not be borne by the average of Irish land, and as it is a peculiar characteristic of Irish farming to leave the fences to take care of themselves, it will rarely happen that a farm delivered up will



represent in its fences the prime cost or the primitive efficiency of their construction, and the subject becomes a very delicate matter of compensation.

Reclaiming  
waste lands.

(5.) As to reclaiming waste land. As the expenses will generally, in the first instance, be more than the value of the land, it is impossible to fix upon the land the whole of the actual cost, and make the landlord or incoming tenant liable to pay it. If this reclamation were executed by agreement, the compensation might be fixed before the work was done; but in the absence of agreement the question will remain highly complicated and difficult of solution.

Any future  
law should  
require pre-  
vious commu-  
nication with  
landlord.

Or that tenant  
runs the risk  
of its being  
valueless.

It would be obviously desirable in all cases of future permanent improvements, to require a previous communication with the landlord or his agent, in order that if the landlord assents (and he should have power to assent and bind his successor although only himself tenant for life), the tenant might receive on quitting compensation on principles to be defined. So also that in every case in which the landlord does not consent the tenant must run the risk of its being decided that the outlay does not improve the value of the estate, and therefore does not give him any right to compensation.

Owners of  
limited estates  
should be em-  
powered to  
bind succes-  
sors.

The proposal to empower life and other limited tenants to bind their successors is not without its serious difficulties, but as a choice of evils is clearly the least of the two. The limited proprietor may make injudicious arrangements,



but if corrupt bargains are made void, and the proof of money passing from the tenant to the proprietor is made to vitiate the transaction, want of judgment will be the only evil to be endured ; and it is far more just and far more judicious in the present social state of Ireland that estates should suffer the consequences of want of care or of judgment in the limited proprietor than that injustice should be done to all the tenants on an estate, and a colour given to the accusation that landlords as a class do not keep faith with their tenants. With the liability there should be given power to any life tenant on the estate to charge on the estate the compensation for permanent improvements, which he may be called upon to pay by a terminable annuity measured so as to meet the equity of the case.

Subject to the question whether the improvement for which compensation is claimed has increased the value of the estate at all, the scale of compensation might be fixed upon the basis of considering that the improvement would be recouped to the tenant by a given number of years' subsequent enjoyment of the farm, to be estimated by the valuers with reference to the outlay and the permanent character of the improvement. The intention will be that the term should be such as to recoup to the tenant, by the enjoyment of the additional value imparted to the farm, the entire cost of the improvement. A maximum should be fixed, which might equitably be stated.

Suggested  
Tenant-right  
for permanent  
improvements.

1. As to buildings not exceeding 20 years.
2. As to drainage, not exceeding 20 years.



3. As to subsoiling or clearing stones, not exceeding 10 years.
4. As to fencing, not exceeding 10 years.
5. As to reclamations of waste land, not exceeding 20 years.

Such of the years as have been enjoyed by the tenant being deducted from the allowance.

So tested as  
not to charge  
the estate  
beyond the  
actual increase  
of rental arising  
from them.

It would be right also to test the efficiency of these improvements by requiring the valuers in each case to estimate the rental value of the farm without the improvement and deduct this from the rental value with the improvement, and then compare the improved rental with the gross compensation, and if 5 per cent upon the gross compensation should exceed the amount of the increased rental, then to reduce the compensation to such an amount as at 5 per cent. would be equal to the increased rent. This check would prevent any estate being burdened with a compensation which did not represent a positive improvement of adequate value.

No binding  
law of Tenant-  
right in  
Ireland.

With regard to the law and practice of Tenant-right in Ireland, we have ample information before us in the Report of the Commission of 1845, of which the late Earl of Devon was chairman; in the Report of the Committee of the House of Commons, of which Mr. Macguire was chairman, in 1865; in the Report of the Marquis of Clanricarde's Committee of the House of Lords in 1867; and in the two Reports for the Irish Government made by Dr. Neilson Hancock, one in the year 1859, the other in 1866, published by Parliament in the present year. From these reports it is abundantly



clear there is no definite system of Tenant-right sanctioned by the law in Ireland.

The system which is called the Ulster Tenant-right is the only one which has any extensive adoption, and though the inquiries were extremely minute in 1845, and were tolerably wide in the reports of the later Committees, yet it does not appear that even the Ulster Tenant-right has been more than occasionally adopted beyond the province of Ulster.

Ulster  
Tenant-right  
not enforce-  
able at law.

It would have been expected that a system so often referred to, and so much dwelt upon would have had some legal sanction, but this is by no means the case. The vast majority of the witnesses whilst they approve of the system, distinctly state they could not recommend it to be made legally binding. We have thus before us the anomaly of a custom pervading nearly an entire province without any legal sanction, and (a fact still more remarkable) men of business professing to justify and to uphold a custom which they declare ought not to be established by law.

When we examine the principle of the Ulster Tenant-right, we cannot sufficiently express our amazement that any man of business could defend it. The custom is stated to be nothing less than this, that a tenant quitting a farm may sell the tenancy to any stranger for the most money he can get, and expect the landlord to adopt the stranger at the same rent. It is also gravely told us by witness after witness, so as to place the fact beyond a doubt, that the sale sometimes produces

Not defensible  
in principle.



an amount equal to 10, 20, and even 30 years' purchase of the rent at which the farm is held.

An attempt is made to explain these facts upon two distinct hypotheses. The one that the tenant has improved the land so as really to add this value to it; the other that the competition for land is so great that purchasers give two or three times the value to obtain it.

Example of  
its effects.

But let us look at the custom and trace its results. Assume a farm of 50 acres let at a rent of £50. Assume a sale under the custom at 20 years' purchase being £1,000. The new tenant enters at the old rental of £50, but with an added rental of another £50, being 5 per cent. upon his purchase money, making £100, so that he commences life by paying double the landlord's rent.

This takes place whether the outgoing tenant has or has not increased the value by improvements. Some of the most experienced witnesses indeed repudiate the notion that the custom has anything to do with improvements, but justify the transaction on the ground that it is the custom of the country, and to depart from it might provoke some lamentable outrage. Let us, however, follow the incoming tenant. He has paid his £1,000, and has no security that he may not be turned out at the end of a few years. There is no law to compel his landlord to allow him, in his turn, to sell, and he may have to quit without any compensation; his £1,000 spent and no profit having accrued from the farm in consequence of the double rent which he has been paying. He must live in a state of



excitement from the fear of such a catastrophe, and his only security lies in working upon the fears of his landlord; so that it becomes the interest of every Ulster tenant to intimidate and harass the landlord-class and prevent their exercising the rights of property which the law has vested in them.

The extent to which the system of the Ulster Tenant-right has been sanctioned by the landlords creates a very serious difficulty. Its provisions are unreasonable, unjust to the landlord, and inconsistent with the welfare of Ireland, but it is so widely spread, and has been so long established, that it will require special consideration. However mischievous the practice, the custom must be considerately dealt with so as not unnecessarily to conflict with even the prejudices of the parties who have hitherto enjoyed it. It may thus be necessary in any measure which embraces the question of Tenant-right throughout Ireland to make exceptional provision for Ulster to the extent of securing Ulster tenants in the possession of their farms, under due limitations, as if they were holdings by a statutory lease for 21 years; specifically providing that with the advantage of such a lease, the Ulster tenants shall hold their farms subject to the same Tenant-right as is applied by Parliament to all the other parts of Ireland.

It may be well before leaving this part of the subject, to say a word on farm leases. All persons conversant with the state of land tenure in England fully understand that generally speak-

Prompt  
lawlessness  
and menace.

Part sanction  
of Ulster  
Tenant-right  
may render  
special  
provisions  
necessary.

As to farm  
leases.



ing English tenants do not demand or care to have leases. They look almost invariably to the character of their landlord, and judge of the probability of their being undisturbed by his treatment of other tenants on the same estate. The law of Tenant-right secures them against injustice on quitting, and if they make any exceptional outlay it is upon an understanding and agreement with their landlord. The custom also defines the course of husbandry, so that they do not need agreements on this head, unless they desire exceptional liberty. Leases entail some expense, and, what is still more alarming to a farmer, specific restrictions upon cultivation, and no farmer looks forward with any complacency to a lawyer's bill or lawyer's penalties on his mode of farming.

It will probably be found that there are the same prejudices in the mind of the Irish cultivator against taking a lease; and if the laws of husbandry in Ireland were assimilated to those of England, he would soon feel happier in following the custom of the country than in binding himself by his hand and seal.

If, however, from local circumstances leases are desired, every encouragement should be given for the granting of them. If confidence between landlord and tenant is enhanced by a lease, by all means let the parties adopt it; but a mere lease amounts to nothing—the terms of quitting and the restrictions on cultivation embodied in it are of every importance.

Before you make a lease a fair system of



Tenant-right must be defined, and even if leases by compulsion be contemplated, which is absurd, these terms must be first prescribed.

In any legislation on Tenant-right care must be taken to make it self-working, and to be carried out between party and party, as in England, without any legal forms or special officers or courts. Past legislation has failed (see "Hancock's Reports," 49-53), because of the complicated and troublesome details — returns and applications which it prescribed. Irish farmers, and English too, detest a court of inquiry, or the complication and weariness of long returns. These things are not in their way. The plough and not the pen, colloquial and not written communications, are their delight; and a law which does not allow them to go about their business in their usual way will never be acted upon. The tenant must be free within customary rules to farm as he likes, and he and his landlord must be allowed, without any official sanction, to agree on improvements, so that the whole may work freely and without restraint or expense.

Any law to work well must be free from all official routine or special returns or courts.

The remedies for the land grievances of Ireland may thus be summed up :—

Summary of remedies.

1. Apply to the Irish course of husbandry the same law of Tenant-right as has been found so satisfactory in England.
2. Let this law be carried out as in England, by valuers mutually appointed without the intervention of any special court or Government valuer.



3. Let the Irish Tenant-right be enlarged beyond the English to cover permanent improvements. For these the tenant should be paid on the basis of a given number of years' enjoyment to be fixed, in the absence of agreement with his landlord, by the valuers, within a specified maximum according to the real benefit conferred on the estate.
4. Let the tenant be required to give notice to his landlord of any proposed permanent improvement, and if he does not get his landlord's consent, and still executes it, let him only be compensated if the outlay has added to the value of the farm.
5. Let limited owners be empowered to bind the estate by their consent to improvements.
6. Give the limited owner, paying permanent Tenant-right, power to charge it on the estate by a terminable annuity so calculated as to cease when the improved rental received by him, would cancel the amount of tenant-right paid. This to be defined by a joint certificate of one of the Tenant-right valuers and an actuary, given on oath before a magistrate.
7. Let special provisions be made in the province of Ulster for enjoyment for 21 years at the present rent, to cancel their claim to Ulster Tenant-right, subject to prohibition against subletting or subdividing,



whilst it allows assignment without division.

8. Empower limited owner to grant leases, not exceeding 21 years, on condition of farming in due course of cropping, according to the most approved customary husbandry, prohibiting subletting or subdividing, though allowing assignment of the whole.

## CHAPTER IV.

### *Consequences to Ireland of the adoption of fixity of Tenure, or of the Ulster Tenant-right.*

Fixity of  
tenure  
examined.

FIXITY of tenure is the popular cry. If it means anything, it imports that a tenant, once in possession, can never be disturbed so long as he pays his rent. Inferentially, we must add, the scale of rent can never be raised, since, if you allow a landlord to raise his rents at pleasure, he may make that process a certain ejection of the tenant.

Tenant will  
become land-  
lord No. 2.

The first result presenting itself is that under fixity of tenure the tenant becomes the owner, subject to a rent-charge which cannot be varied, and the landlord is converted into an owner of a rent-charge instead of an owner of the estate. The immovable tenant thus becomes a second landlord, sells or lets at pleasure, and may live on or spend as he chooses the profit he thus obtains.

Next Tenant  
may become  
Landlord  
No. 3.

We are not told whether the tenant of the landlord No. 2 is also to enjoy fixity of tenure. If not, and the cultivator under No. 2 landlord is to be subject to eviction, the law of fixity of tenure would simply have transferred what the agitators are pleased to call the arbitrary and tyrannical power of eviction of the original landlord to landlord No. 2, and all the evils which result from arbi-



trary evictions under the so-called first tyrant may be repeated under the second.

We must assume then fixity of tenure would prevent eviction by landlord No. 2, and if this be the case, the cultivator may, by a sub-bargain or transfer of the possession at an additional rent, transform himself into landlord No. 3.

The system thus unfolding itself presents to us an actual cultivator working the farm, but presided over by three landlords ; each demanding a separate rent, and each interested to see that the farm is well cultivated, to the extent of keeping the rent secure, which it would not be if the land became impoverished.

Actual cultivator may have three or more Landlords of the same land.

The domestic portraiture of this happy family is somewhat peculiar. The poor cultivator, whose rent has been ultimately fixed under the triple screw of landlord No. 1, landlord No. 2, and landlord No. 3, has not only to pay three rents—which will be probably more than the last shilling the land can bear—but also at the same time to please three masters, each one of whom may distrain upon him if the rent be a day in arrear. Should he want a little indulgence, the routine of the Circumlocution Office will be nothing compared with the civil references which one of his masters will make to the other, and the improbability of an ultimate benevolent indulgence pervading all the three. Should he wish his landlord's sanction to any special improvement or accommodation, how hopeless the task of convincing the judgment of three masters at once of its propriety ; and if the Irish cultivator



asserts that the occupancy of an Irish estate is intolerable under a single landlord who never comes near him, what will be his contrast of happiness to find himself under three masters, who would be continually coercing him.

It is suggested, the rent under fixity of tenure might be resettled by the valuation, every ten years, of a Government valuer. But this is the last thing an Irish tenant would desire. Even in England this would be universally deprecated. Practically speaking, English tenants generally hold under full value; and rent is not often raised except on the death of landlord or tenant, or at very long intervals. In Ireland the rents are still more below the real value; and a periodical valuation would rapidly raise them, if it is honestly made. The valuer, too, with the priestly suggestion of "a revolver," and "a tumble," would as little desire his office as the tenant would welcome his presence.

It is further suggested that there must be, with fixity of tenure, a prohibition of subletting or assigning without the head landlord's consent.

But how would this work? The landlord cannot turn out the tenant, and the tenant could not hand over the possession to any one else! This is what in chess is called a stale-mate, and in physiology, paralysis. Where, under such circumstances, would be the ownership of the estate? It would be like a Polish democracy—all powerful for obstruction—incapable of action! A state of things in which neither landlord nor tenant would



lay out capital in improvements, because he is not master; and in which Irish land would rapidly sink in value, because no one would buy it.

Ireland has had a long and bitter experience of the system of middlemen. When the large landed proprietor was moderate in his demands of rent, the middleman has been inexorable. Ireland has realized the truth of a proverb written by the Wisest of Men—"the poor man that oppreseth the poor is like a sweeping rain, which leaveth no food." After great efforts occupying an entire generation, the middleman has been banished from the Irish land system. But the fixity of tenure would bring him back again, and in the dual system of Japanese officials. And just as the increasing violence of our great cities has led to the police always parading in pairs, so would the increasing folly of Irish turbulence call up two middlemen by the side of every one landlord that existed before, with this speciality, that the second man will always give an additional turn to the thumb-screw in the fixing of the rent.

Let us contemplate Ireland pervaded by such a system, and we shall see the actual cultivator without any profit from the oppressive weight of the rents laid upon him, trying to repair his fortunes by scourging the land with more crops than it is calculated to bear, thus reducing the fertility of the country and his own chance of livelihood. Instead of one landlord he will be supporting three, and the difficulties of accord between landlord and tenant will be increased in the same proportion.

Ireland would resume the scourge of middlemen.

Ruin of the country which would result.



A country cannot prosper unless cultivators can earn a good return.

No agricultural country can ever prosper unless the actual cultivator can make a comfortable profit out of his farm ; and every experience of human nature tells us that a large landed proprietor will always let his farms upon an easier rent than a man in the position of a fellow-farmer. No country can prosper if between the actual landlord and the actual cultivator the middleman is allowed to take an additional profit beyond what the head landlord demands.

Agriculture in Ireland is prospering.

There is no doubt of the fact that the farmers of Ireland are now, and throughout the present generation have been, prospering and laying up money ; but if the Legislature were to sanction either of the systems alluded to, the scene would rapidly change, and the present tenants might become idle and unreasonable landlords, and the next race of occupiers be ground down into poverty.

A wise law of Tenant-right would increase this prosperity.

A wise law of Tenant-right may be introduced into Ireland, enhancing the prosperity which now pervades its agriculture ; but revolutionary changes in the land system would only eradicate the prosperity, and introduce confusion and poverty in its stead. The cultivators of Ireland have a moderate grievance, which may be easily removed ; but they are now thrust forward by reckless agitators to raise the insane cry of making themselves landlords, with the certain consequence to their country of crippling its resources and entailing misery upon its cultivators.

Agitation, the bane of Ireland, must be

Tenant-right may be dealt with by the application of the principles of English law, but the



monster evil of Ireland is agitation, which goads the people into disaffection and deeds of blood. This can only be remedied by a firm administration of law—a frank and outspoken condemnation by our rulers of the anti-social schemes as they are successively made the war cry of Ireland, by a steadiness of purpose which will convince the agitators they can gain nothing by violence—and by an impartiality which will not suffer itself to be ruffled by the rudest and most provoking treatment.

repressed by law, and an outspoken condemnation of wild schemes.

The disorganization of centuries will require years of patient and wise government; and so long as it is the interest of an influential class to excite disaffection in the people against their landlords, and to multiply small, however impoverished holdings, the relentless war of interested agitators fighting for their pockets against a Government struggling to spread intelligence, independence, and prosperity amongst the people—will continue to be fought out, until slavish and unreflecting submission to the agitator shall break down under the growth of enlightened self-reliance and the gradual conviction that the Government of the Empire, in which they take no second place, is just and wise.

Patient and wise government will at the last win its way against all disaffection.

To attain this happy consummation we must abstain from revolutionary changes. These excite false hopes and arouse the passions of the multitude. If the Legislature sanction organic changes, the people conclude the Constitution is unsound, and that the changes will go still further. Every step beyond the pace of dignified calmness is

But we must abstain from revolutionary changes.

construed into an alarm, which agitation may increase to a surrender at discretion. To impart the confidence of strength the rule must be unflinchingly firm, whilst to win esteem it must be carefully considerate of real grievances, and sternly repulsive of exaggerated or unjust demands. The ruler who yields to clamour what justice cannot claim does only sow the wind that he may reap the whirlwind.