THOUGHTS

ON

'FREE TRADE IN LAND.'

BY

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'There has been a continual war in the constitution of England between two jarring principles—the evil principle of the feudal system, with its dark auxiliaries, ignorance and false philosophy; and the good principle of increasing commerce, with her liberal allies, true learning and sound reason.'

SIR WILLIAM JONES, *as quoted by* Mr. C. Leslie.

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'La substitution, qui paraît un obstacle à la dissipation, la favorise, en ce qu'elle donne à une classe de la société le privilége d'une banqueroute légale et périodique. Ce fatal privilége tourne contre ceux qui l'exercent; il dispense d'ordre, de travail et de moralité; il nuit doublement à la bonne administration du sol, en le retenant de force entre les mains de ceux qui l'épuisent, et en ôtant à ceux qui pourraient l'améliorer les moyens et jusqu'à l'envie de l'entreprendre. LÉONCE DE LAVERGNE.

The permanence of our national institutions, and respect for the rights of property, would be better insured by admitting to the class of landowners sagacious and prudent men, the architects of their own fortune, than by artificially maintaining families in a position the duties of which they cannot perform.' J. CAIRD.

PREFACE.

I HAVE ONLY TO REMARK, by way of preface, that the substance of the following pages was written several months ago, and has, therefore, an entirely independent origin. Recently the subject has excited much attention, and I have thought that the publication of these observations may not be entirely useless.

I venture, further, to suggest, that so complicated a matter will hardly be well settled without the issue of a Royal Commission to report on the whole question. The Commission on the law of Real Property issued in the last reign, was productive of excellent results, and furnished ample materials for the assistance of those to whom the framing of the Acts for the amendment of the law was entrusted. I think similar results would follow on the present occasion, and that, whatever the Report of such a Commission might be, the evidence elicited, and the

exhaustive discussion of so intricate a subject by such a body, would greatly assist the Public and the Legislature in deciding what to do, and what to leave undone. The subject can hardly be neglected by Government under existing circumstances, and the sooner it is taken up systematically, the better will the work be done.

January 1869.

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CHAPTER I.

PRIMOGENITURE.

People who entertain what are called 'advanced' opinions have long had a vague idea that something must be done as to the tenure of land in England, to the state of which, as they think, many evils are to be attributed; and their attacks are generally directed against what they designate as 'the laws of primogeniture and entail,' the abolition of which would, we are told, lead to 'free trade in land' and various incidental benefits. It would certainly be a great mistake to suppose that this tenure as it now exists is the expression of any deliberate and well-considered scheme adopted by our forefathers after careful discussion; but it does not thence follow that it works badly, and that we should gain much by disturbing it. To tell the plain truth, there can be no doubt that we have 'drifted' into it, after the

fashion to which Englishmen are now so well accustomed. We have long since got rid of the strictly feudal tenures, but they have left their mark in various ways, and it can hardly be doubted that some of those who are most desirous for a change of our land-laws are strongly prejudiced against them from a sense that there is still this taint of 'feudalism' about them. It is another case of the powerful effects of a 'bad name.'

Divesting ourselves, however, of any such feeling, let us see what is the real effect of the law of 'primogeniture.' We may frankly admit in the first place, that such a law is not rational or just. It cannot be fair, according to any ordinary notion of fairness, that one child should have all the land where the other children have not property of other kinds to make up for the want: so that if a man possessed principally or entirely of landed property should die without a will, his eldest son should have the principal part or the whole of his fortune, to the exclusion of other sons and of daughters. There may be reasons of state why this should be, and so we are told there are, but it is quite certain as a matter of history that this custom was derived from feudal times, and is really a relic of the old military tenures. The Romans—the most ingenious law-makers of ancient times—never dreamt of such a law; and no one can doubt that, had the English people not

inherited this system, it would not have been invented in these days. There is, in fact, nothing in the nature of things, apart from that custom which becomes a sort of second nature, to cause a man to single out one child and to give him such a huge advantage over his brothers and sisters. But custom and the pride of family are paramount. Great men do this, and have done this for centuries, and thus set the fashion which small men imitate, and so the habit becomes general, and is regarded as the most natural thing in the world. The custom once being established, great incidental benefits are discovered to result from it, and the subject is discussed as if the law had resulted from the appreciation by its framers of the importance of these benefits; whereas, as has been said, these, if they exist, were the effects, not the causes, of the law.

But, admitting as fully as possible how unfairly the law works, the question remains whether its abolition would have any important effect on the character of the holdings of land. I am firmly convinced that such a change of the law would have no important effect whatever. Any person of the least experience will admit that very few estates of importance pass to the eldest son of the owner in fee by reason of his intestacy. Almost all such estates are settled and pass to the son of the tenant for life in possession under the terms of the settlement;

and where this is not the case, the owner is in general very careful to make a will, or if he does not do this, omits it because he approves of the disposition made by the law. Such owners, were the law changed, would be yet more careful to make their wills, so as to prevent a division of the land.* The truth is, when a man has become rich enough to buy a large estate, he is generally bitten with the notion of 'founding a family,' or at any rate of making a great man of his son; and he knows that in order to do this he must leave the estate to one son, the importance of a 'new man' greatly depending on the number of his acres. If, on the other hand, such an owner is himself a member of an ancient family, it is with him a matter of family tradition to hand down the family estate untouched or undivided to his descendants. So, speaking generally, the custom is omnipotent, and the devolution of the land depends on it, not on the law of primogeniture, which accords with the general sentiment of the people, but does not create it.

We are, however, told by some that the law fosters and helps to maintain the custom. This is a point rather of speculation than of fact, and it is not

* It is not a little curious that in France, according to M. de Lavergne, the limited power of giving by will which there exists is scarcely at all exercised. (See his *L'Agriculture et la Population*, p. 182.)

possible to prove whether this assertion is or is not correct. My own conviction is that the law has very little to do with the matter, and that the custom would remain in full force were the law repealed in this present session of Parliament.

Intestacies take effect for the most part in the case of small properties, where they produce, by reason of the law in question, very great hardships, without the smallest compensating benefit; and the repeal of the law would, as I believe, be most salutary, as bringing the law of intestacy into harmony with common sense and justice, without affecting the power of anyone to give his land to one child, should he be so minded. The most jealous friend of large estates, whether for reasons of state or of political economy, could not with reason object to this change, as all that is required for the prevention of the division of estates could be done, as now, by will or settlement, and the law would no longer be guilty of committing excessive injustice for the sake of an idea.

Let us, then, get rid of one more anomaly from our jurisprudence, and banish the law of primogeniture in case of intestacy as to land to that place whither fines and recoveries and other such ancient and respectable abuses have long since departed.

CHAPTER II.

THE LAW OF ENTAIL.

THERE are few subjects as to which those who have no legal training seem to be more confused, or as to which popular prejudice is more mistaken, than the law of entail. One would suppose that the law of England, instead of 'abhorring perpetuities'—to quote its quaint language—really cherished them with a peculiar veneration. The 'perpetuity' is the creature of the customs of the people, not of the law, save in so far as the law permits a man, by his will, or by deed made in his life, to direct how his property shall be held when he is resting in his grave. Viewed in the abstract, the existence of such a power is a strange thing, but it is fair to assume that the experience of centuries has proved it to be salutary and useful, however anomalous in itself. But those who most highly approve of giving an owner this power must admit that it should have a limit, and that it would be intolerable that the dead man should speak for ever. The law of England is very careful on this point, and no land can be settled for a longer period than a life or lives

in being, and twenty-one years after the death of the last tenant for life. In practice, the usual custom is to settle an estate on the father for life, then on the son for life, with remainder in tail to the unborn child of the son. When the grandson comes of age the land can be again settled, and his interest changed to a tenancy for life, with remainder to his unborn child as before. By this system of settlement and resettlement it is obvious that a property can be retained in the same family generation after generation, the owner in possession being in general only tenant for life, with no power of disposing of the family estate. The tenant for life, or the trustees of the settlement, have in general powers of sale and exchange, but they are only exercised under extraordinary circumstances, useful and important as they undoubtedly are. In all well-drawn settlements there are also ample powers of leasing, so that as little inconvenience as possible may arise from the limited interest of the owner for the time being. The land can, in short, be disposed of when thus settled, should the necessity arise, but the embarrassment of any one of these limited owners will not ruin his descendants, and thus the property of the family is retained intact from generation to generation. The creditors of a tenant for life cannot seize on and sell the fee simple, and his debts are not a charge on the land in which he

ceases to have an interest at the moment of his death. Moreover, as the resettlement is generally effected as soon as the young heir in tail comes of age and before he has begun to taste the sweets of heavy indebtedness, there is rarely any serious obstacle to this arrangement of the family property, and a reckless gambler is often a party to a plan for protecting his family against himself.

I believe this short summary contains, in substance, the whole mystery of the law of entail.*

* The common settlement, on a marriage, of the intended husband's real estate, is to the husband for life, then to secure the wife's jointure and the younger children's portions, and subject thereto, to the first and other sons successively in tail; and then to the daughters, as tenants in common in tail, with cross-remainders in tail, and ultimately to the husband in fee. The operation of such a settlement is to give the estate after the husband's death, subject to the jointure and younger children's portions, to the eldest son, and after him to his issue *ad infinitum*; and if they fail, to the other sons and their issue, successively in like manner. If they all fail, then the daughters take equally, and the share of each daughter goes to her issue in like manner; but if there is a failure of issue of any daughter, her share goes over to the other daughters and their issue. If all the children die without issue, the estate reverts to the husband, and he may dispose of it by deed or will, subject to the interest of his widow. . . .

When the eldest son attains twenty-one, he and his father together can unfetter the estate, and resettle it as they please, subject only to the jointure and portions. And after the father's death the son may do it by himself: nor can the father defeat his power of alienation. Where a son attains twenty-one in his father's lifetime, the father frequently grants his son a provision during their joint lives, in consideration of

There are endless legal refinements interwoven with it, but with these I have nothing here to do, save to remark that this law of settlement is undoubtedly the great source of expense in the conveyance of land. This expense is bitterly and justly complained of, but so long as this law remains unchanged, long titles will be required, and with them will follow long abstracts of title and long bills of costs. While land can be thus settled, conveyancers will most naturally be timid as to dormant claims under old wills and the like, and they will demand evidence on many points which would not otherwise be material, so that delay and expense will be inevitable. Gradually, but very gradually, owners of land are availing themselves of the new law as to the registration of titles, and this will do much to facilitate future transfers, but the process of obtaining the registration is expensive* and troublesome, and if a man has anything doubtful in his title, he had rather be quiet and take his chance, than expose his deeds to the

which the son joins with his father in resettling the estate in such a manner that, if he dies without issue, the estate may go over to the younger branches of the family. . . It is not unusual to give the estate merely to the issue male of the marriage, and then to direct it to revert to the parent, subject to the widow's jointure and the daughters' portions.—*Lord St. Leonards.*

* I have been informed that the cost of registration is equal to that of 'five conveyances on as many sales.' I cannot vouch for the accuracy of this statement.

keen eyes of the registrar. The same difficulties which cause expense and trouble on a sale of land make the owner shrink from registration. A slight knowledge of the law as to the construction of wills affecting land, with the subtleties of contingent remainders, executory devises, and other such refinements which we get from the law of settlement, will enable any man to understand the dangers which may exist, and against which a sound lawyer is ever on the alert. If it be true that on small purchases the expense of transfer amounts in general to one year's rent of the property sold, we certainly pay rather dearly for the elaborate system to which we have succeeded.

The main argument in favour of giving this liberty of settling land, is that a man's power of ruining those who come after him is thereby limited, and thus the family is preserved, however disastrous the career of the individual may have been. Leaving to the next chapter the consideration of the general question whether settlements are or are not on the whole expedient, I would here observe that it is a grave question whether this, their main purpose, might not be accomplished without involving the titles to land in so great complexities and subtleties. I venture to think that, even if nothing more be done, it would be a great improvement were a law to be passed enacting simply that no land shall be

settled by deed or will excepting on persons living at the date of the deed or at the death of the testator—in other words, that the fee shall be disposed of by the deed or will amongst living persons, and all heirships in tail to unborn children shall be abolished. This change would really only limit the power of settling the land as regards the twenty-one years subsequent to the death of the last tenant for life, but it would on the other hand get rid of a vast mass of legal intricacies, and thus simplify titles.

The practical result would no doubt be that, instead of resettling the land on the coming of age of a man's son, that resettlement would be deferred until the birth of a grandson to whom the remainder could be limited, and so on in each generation. The practical danger to the family estate would be that the young man would hold the remainder in tail for a longer period—that is, until his marriage and the birth of a son, instead of the shorter period of his minority; and this might of course involve his charging the remainder with debts incurred after his coming of age. It is of course more likely that a man of more mature age would decline to resettle the property, and would prefer to take the chance of becoming absolute owner by surviving his father, than that a man just come of age should so refuse. These are certainly real dangers to a family, but whether they are injurious to the State is another

question. I have no doubt that such a change would lead occasionally to the ruin of an ancient house; but I think that, as regards the nation, this injury would be far more than compensated by the shortening and simplification of titles, and the greater facilities which would thus be given to the transfer of landed property.

CHAPTER III.

'FREE TRADE IN LAND.'

THERE can be no doubt that, in one sense, we have already free trade in land. That is to say, any owner of the fee simple of land may sell it to anyone else for such price as he may think fit. The law opposes no obstacle to the transaction in the case supposed.

But those who clamour for this free trade, and who will not admit that we have it, really object to the fact that most so-called 'owners' are really only owners for life, or some other limited estate, and cannot therefore charge or deal with the land; so that the amount of land offered for sale is much smaller than might naturally be expected, and the money value of what is offered is thus unduly enhanced. It seems obvious that, were no lands settled, sales would be more numerous than they now are, and prices would be lower than those which now prevail. Such an opinion is, at any rate, not a new one, for Adam Smith says:

> The small quantity of land which is brought to market, and the high price of what is brought, prevents a great

number of small capitals from being employed in its cultivation, which would otherwise have taken that direction.*

The same opinion is shared by the distinguished economist to whom we are indebted for the best edition of Smith's great work:

By preventing the sale of land, or placing it, as the lawyers say, *extra commercium*, entails are obviously adverse to the spread of agricultural improvement. Should an individual who has no taste for rural pursuits, or who is ignorant of the best mode of managing land, succeed to an entailed estate, he cannot dispose of it to another; so that property is thus frequently hindered from coming into the hands of those who would turn it to the best account.†

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* *Wealth of Nations.*

† M'Culloch, *Smith's Wealth of Nations*, notes, p. 559. The eminent French writer M. Léonce de Lavergne expresses the same thought: 'La substitution, qu'on représente comme favorable à la culture, n'a que de mauvais effets, *parce qu'elle met obstacle à la libre transmission.* Il est sans doute fâcheux qu'une propriété sorte des mains qui la possèdent héréditairement, et la mobilité de la propriété en France, surtout avec les lois fiscales qui grèvent chaque changement, est un de ses plus grands vices; mais ce qu'il faut déplorer, c'est la cause qui pousse le propriétaire à vendre, ce n'est pas la vente elle-même. Dès qu'un propriétaire est endetté, appauvri, il est à désirer, pour le bien commun, que sa propriété sorte de ses mains le plus tôt possible; elle ne peut plus y prospérer. Sous ce rapport, la loi française, qui ne met que peu d'obstacles à la transmission, vaut mieux que la loi anglaise.'—*Écon. Rurale de l'Angleterre*, p. 123.

Take another French authority:—'A cet égard, des lois qui ne mettent aucun obstacle à la circulation et à la diffusion de

The change of ownership is not in all cases beneficial; but it is obvious that it may be so, and it ought not, therefore, to be hindered by the law, especially where a man's embarrassments make him unfit to hold the land. It often happens that a man in embarrassed circumstances holds an estate during a long life, and cannot spend a shilling upon it; nor can the land be sold, he being merely the owner for his life and having no power to charge or deal with the fee. Or, to take another case, a man may not be actually embarrassed, and yet he may have only a moderate income with an immoderate family, and, as the whole estate goes to the eldest son, the father is naturally indisposed to add to its value at the expense of the younger children; and, in order to provide for them, he is compelled to save as much as possible, and thus to make up for an inequality with which he has really nothing to do by extracting all that he can get from the land.

la propriété, et des lois qui la réservent au petit nombre ou tendent à lui fixer des proportions artificielles, n'ont pas les mêmes effets. Les unes, en laissant la terre accessible à tous, placent la société tout entière sous l'impulsion des mobiles les plus essentiels à ses progrès; les autres, suivant la mesure des restrictions qu'elles imposent, nuisent à la formation des habitudes d'ordre, d'économie et d'activité dont les classes laborieuses ont besoin pour déployer toute leur capacité productive; mais nous le répétons, ce n'est pas sur les formes de la culture, c'est sur sa fécondité que de telles lois influent.'—*Passy, Systèmes de Culture en France*, p. 81.

Again, it is to be observed that the present system tends directly to create or increase the incumbrances on the land. It would be so obviously unjust that the younger children of a family should have nothing, that, to avoid this result, the estate which, to prevent its division, is settled on the eldest son, is at the same time charged with portions for all younger children, and these portions are in very many cases a source of serious embarrassment to the heir. The adoption of some such plan is, however, necessary, unless a man's younger children are to take nothing.

The effect of these and other causes in increasing the amount of incumbrances on landed property in England is not a matter of speculation. Take the evidence of Mr. Caird. Speaking in 1850, he says:

> In every county where we found an estate more than usually neglected, the reason assigned was, the inability of the proprietor to make improvements, on account of his incumbrances. We have not data by which to estimate with accuracy the proportion of land in each county in this position, but our information satisfies us that it is much greater than is generally supposed. Even where estates are not hopelessly embarrassed, landlords are often pinched by debt, which they could clear off if they were enabled to sell a portion, or if that portion could be sold without the difficulties and expense which must now be submitted to.*

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* *Eng. Agriculture in* 1850–51, p. 495.

If these objections to our present system of entails are amongst the gravest, they do not stand alone. By giving the land to one son and charging the estate with portions for other children, a sort of division of the estate is made; but it can hardly be doubted that, as a rule, a father, having full control of the whole property, would make a far wiser and more equitable apportionment. As Mr. M'Culloch well says (*l. c.*):

> A system of perpetual entail makes the succession to property depend, not on the good or bad conduct of the individual, but on the terms of a deed written a century, perhaps, before he was in existence. It consequently substitutes a species of fatalism for an enlightened discrimination, throwing property indifferently into the hands of the undeserving and the deserving; and it cannot do this without weakening the motives which stimulate men to act the part of good citizens, and strengthening those of an opposite description.

Certainly, it often happens that if the land were to be given to the best man in the family, it would pass to a younger rather than to the eldest son. We are so accustomed to yield to seniority in this matter, that we seem to have forgotten a great instance in which it was ordained that 'the elder shall serve the younger.' The maxim, '*detur digniori*,' would certainly be far more sensible than giving such amazing weight to the fact that a man, no matter how stupid or profligate he may prove to be, was born a year or two before his brother.

No change of the law, short of the prohibition of all settlements as irrevocable instruments, will really meet the objections here mentioned, and make each generation of proprietors able to do justice to the land or to get rid of the burden of holding it.

It may be urged that such a change would involve a curtailment of that freedom in dealing with his own which is so dear to every Englishman; but it is to be observed that, even were settlements prohibited by law, such a prohibition would not interfere with a man's power to give his land by will or deed to any one child or to any person or persons he might direct. The supposed law would merely say: 'If you give the land, you must give the whole and not a limited interest.' In fact, each generation of owners would have far more real power than under the present system of repeated tenancies for life, as every owner would be able to deal with the land as he pleases, and would only be limited in directing the course of things after his death.

The Code Napoleon goes much further, for it only enables a man to devise by will one half of his estate if he has one child, one third if he has two children, and one fourth if he has more than two; and as to the rest, directs absolutely the mode of its division amongst his children. Not to refer to other objections, it is obvious that such a law tends

to a rapid and extensive, because compulsory, subdivision of the land,* and the operation of the law is strongly disapproved by high authorities, both French and English. Take, for instance, the opinion

* M. Passy, it is only fair to remark, thinks that the facts as to the division of land in France do not bear out the popular notion on this subject. 'La propriété territoriale est loin de se morceler en France avec plus de rapidité que dans ceux des autres pays de l'Europe où les populations croissent à la fois en nombre and en aisance.' In this sentence he has summed up the results of a very careful analysis of the case. (See his *Systèmes de Culture en France*, p. 196.) I cannot pretend to decide between him and M. About, but it is, I think, clear that such a law would act more rapidly in England, having regard to the comparative rate of increase of our population. See farther on this subject M. de Lavergne (*L'Agric. et la Pop.*, p. 176). See also M. de Laveleye (*Econ. Rur. de la Belgique*, p. 54), where he states that in Flanders division very seldom takes place simply as a consequence of the law of succession, the people preferring anything to such a breaking up of the land as would injure its productiveness. The report just issued of the French 'Enquête Agricole' states that, speaking generally, estates of 250 acres are rare in France, that estates of medium size are disappearing, and that the area possessed by small proprietors is very large and is increasing. Seventy-five per cent. of the agricultural labourers of France are also proprietors (pp. 11, 12). The French Code enables those entitled to shares of an estate to claim them *in kind* (en nature), so that a will giving equal shares, one in money and one in land, would be voidable, and thus the law in many cases compels a division even of the several parcels of land forming the estate. In this way it is very common to have a small estate composed of various bits widely separated the one from the other (Ibid. pp. 13, 14). In p. 19 an illustration is given of an estate in 'la Meuse,' where 2,080 acres are divided amongst 270 proprietors in 5,348 parcels.

of M. About, who will not be suspected of any undue partiality for aristocracy:

Cette loi, inspirée par un amour aveugle de l'égalité, est un attentat permanent contre la liberté individuelle et l'autorité paternelle. Elle ne permet pas au chef de famille de déshériter le fils qui l'a offensé ou déshonoré; elle constitue au profit de chaque enfant un droit né et acquis sur la fortune du père vivant. Elle réduit le père à la condition d'usufruitier, sous la surveillance de sa propre famille; elle l'oblige à dénaturer frauduleusement son bien, s'il veut en disposer selon sa volonté et conformément au droit naturel. C'est une loi jugée au point de vue moral.

Parlerons-nous des effets qu'elle a produits en un demi-siècle sur la société française? Elle a poussé jusqu'à l'absurde la division des propriétés, elle a dévoré en licitations et en frais de justice une notable partie du capital acquis; elle a défait peut-être un million de fortunes au moment où elles commençaient à se faire. Le père fonde une industrie et meurt; tout est vendu et partagé; la maison ne survit pas à son maître. Un fils a du courage et du talent: avec sa petite part du capital paternel, il fonde une autre maison, réussit, devient presque riche et meurt: nouveau partage, nouvelle destruction; tout à recommencer sur nouveaux frais; un vrai travail de Danaïde. L'agriculture en souffre, l'industrie en souffre, le commerce en souffre, le sens commun en rougit.

Il est trop évident que le père ne doit pas sa fortune à ses fils; il leur doit l'éducation et les moyens d'existence. Quiconque appelle un enfant à la vie s'engage implicitement à l'élever et à le mettre en état de se soutenir par le travail. Mais c'est tout, et la raison ne décidera jamais qu'un homme riche à quatre millions et père de quatre enfants, soit débiteur de 750 mille francs envers le polisson qui lui a fait des actes respectueux pour épouser la cuisinière. . . . Les rédacteurs du code avaient un horrible

souci du droit d'aînesse. Ils ont lié les mains du père de famille pour qu'il ne dépouillât point les cadets au profit de l'aîné.*

La révolution de '93, en morcelant les biens nationaux, a fait une chose agréable au peuple et même utile pour un certain temps. Il est bon qu'il y ait beaucoup de propriétaires ; un propriétaire est un homme plus heureux, plus pacifique, plus civilisé, plus complet, et pour ainsi dire plus étendu que celui qui n'a rien ; car la propriété est comme une rallonge de la personne humaine. Le code civil a consacré un principe d'équité naturelle en supprimant le droit d'aînesse. Mais personne n'avait prévu l'effet désastreux que ces deux causes associées devaient produire en un demi-siècle. . . . Tout le monde a voulu acheter, presque personne n'a voulu vendre. . . . La concurrence des acheteurs a produit une telle hausse que le revenu net est tombé en plus d'un endroit au-dessous de 2 pour 100. Et plus d'un malheureux, aveuglé par la passion, empruntait à des taux usuraires de quoi payer le prix de son champ ! C'était la ruine organisée ; la ruine des hommes et du sol. Car la terre ne tarde pas à s'épuiser si l'on ne lui restitue sous forme d'engrais les éléments qu'on lui a pris sous forme de récolte. L'hectare de blé nous donne

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* *Le Progrès*, p. 264. If M. de Lavergne is correct (and I know not where to find a higher authority), M. About is wrong in his facts, and the truth is that the division of land had attained a great development before the Revolution. He quotes Arthur Young, who says that in his time one-third of France was held by small proprietors ; and though this is probably an exaggeration, M. de Lavergne thinks it clear that the number of these proprietors was then very great. He attributes this state of things to sales by extravagant landlords, and to the grants of waste lands made by the government to the peasantry. See *Enquête Agricole*, p. 13, note ; and p. 15, note.

en moyenne 17 hectolitres; l'expérience a démontré qu'il en pouvait donner trente.*

Mr. Mill takes to some extent the same ground:

The only reason for recognising in the children any claim at all to more than a provision, sufficient to launch them into life and enable them to find a livelihood, is grounded on the expressed or presumed wish of the parent, whose claim to dispose of what is actually his own cannot be set aside by any pretensions of others to receive what is not theirs. To control the rightful owner's liberty of

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* *Le Progrès*, p. 145. In another part of the same work M. About complains bitterly of the want of cattle in France, which defect he attributes to the smallness of the farms, and the general absence of anything like 'grande culture.' It is rather unfortunate for this argument that in Flanders, the chosen home of 'petite culture,' where, as a rule, the farms are smaller than in any country in Europe, there are on an average 55 horned cattle, 12 horses, and 8 sheep to every 100 hectares (250 acres), against 33 horned cattle, 6 horses, and 200 sheep on the same area in England, or, reckoning 8 sheep to each horned beast, 64 head of cattle in England to 68 in Flanders—and this although about half of the area of England, and only a sixth of Flanders, consists of natural pasture.—See L. de Laveleye, *Écon. Rur. de la Belgique*, pp. 51, 93. See also *Enquête Agric.*, p. 119, where the following figures are given as to the progress of French agriculture since 1856:

Nature of Articles	Value of Quantities Exported	
	1856 Francs	1866 Francs
Butter	13,188,043	73,230,377
Cheese	2,082,898	6,981,695
Fowls and game . .	618,392	2,370,318
Eggs	11,257,198	42,334,494
Totals . . .	27,146,531	124,916,882

gift, by creating in the children a legal right superior to it, is to postpone a real claim to an imaginary one.*

I think the law of England is right in allowing a man to give his land to whom he will, but it is another question how long after his death a man's wishes shall affect the mode of devolution of his estate. We are now accustomed to let a man speak even for sixty or seventy years after his death as to the mode in which the estate shall be enjoyed; but I propose, for the reasons already stated, to limit this power, and to make each owner for the time being an owner in fee who may give the land to whom he will, but shall not be able (except in the case of leases) to give to anyone a less estate in it than that which he himself holds.†

* *Polit. Econ.*, vol. ii. p. 481.

† It is not my object, nor would it be suitable, to enter into legal questions in this paper; but it will not, perhaps, be out of place to make one or two observations in passing on this part of the question. The following points would, I think, require special consideration, were the law changed as I propose:—

1. The power of the owner as to the creation of terms of years by way of lease or otherwise. The owner for the time being must have every power necessary for the due management of his estate; but it is obvious that if such an owner, being owner in fee, were able, as now, to create without limit terms of years on which no rent or a merely nominal rent is reserved, he could settle the land just as effectually as now, and possibly with even worse results.

2. The power of an owner as to charging his estate by his will with portions for children or a jointure for a wife, so that

he should not be compelled to divide his estate, should he think it best to leave it as a whole.

3. The power of a man or woman intending to marry, and desiring to charge the land in favour of a wife or husband and the children of the intended marriage.

4. The case of a woman who marries when seised of an estate, or who comes into possession of an estate during her marriage. It might be convenient that a husband should be allowed to give by his will a life estate to his wife in any portion of his landed estate. This would enable him to provide a residence for his wife without giving it to her absolutely.

5. The powers required to provide for the management of estates during the minority of the owner.

All trusts by way of settlement other than those specially permitted by statute would have to be declared void and of no effect.

CHAPTER IV.

SOME OBJECTIONS CONSIDERED.

THE ARGUMENT of this paper would be incomplete, were I not to refer to the objections which are commonly made to any such change in the law as that which is here suggested.

To all that has been said one principal and fundamental answer will be made. It will be said—Why should we disturb that which works well? Why should we quarrel with laws which have not prevented England from becoming one of the best cultivated countries in Europe?

The answer must be that the present system does not work well either for landlords, farmers, or labourers. And here the issue must be joined. At the same time, even if it were admitted that the law works well, it would not follow that another and more natural law would not work far better, and while I fully admit that English landowners and farmers have done much, I am convinced that this has been done in spite, and not in consequence of the law. If this be so, it will, of course, follow that with an altered law the land would produce

more, and thus the condition of the people at large would be improved.

As to the landlords, the law may be a delightful one for eldest sons; but if we are to judge of its working as to the State, we must consider how many owners under settlements are really unable to do justice to their estates. On this point there are no statistics, but I confidently leave to the common sense of the reader to decide whether such a law as I have described can exist without involving the production of a large class of embarrassed owners. There are splendid exceptions to the rule, where men of vast incomes devote their best energies to the good of their estates; but these, if we take the country as a whole, are truly exceptional cases; and if the management of settled and unsettled estates be compared, there can, I think, be no doubt whatever as to the result of the comparison.* The Dukes of

* The vast importance of the character of the owner of land is well illustrated by the history of the Holkham estate. Mr. Caird says (p. 165): 'After fifty years of undeviating attention to his duties as the landlord of a great estate, Mr. Coke might truly boast that he had converted West Norfolk from a rye to a wheat-growing district. From 5*s*. an acre his rents rose to 20*s*. and 25*s*.; and his tenants became prosperous and wealthy. In that period as much as 400,000*l*. is said to have been expended by him in farm buildings and other permanent improvements; and this liberality drew from his tenants an equal spirit of enterprise. It is calculated that they expended for artificial food and manures, in the same time, not less than half a million, to their own great advantage, as well as that of

Northumberland and Bedford and the Marquis of Westminster may have set an excellent example in the management of their estates, but what is the condition of the farm-buildings in the country at large, to say nothing of the dwellings of the poor? The answer to this question proves to me conclusively that something is wrong in the mode of tenure. I cannot believe that these things would so long have remained as they are, had the ownership of land been untrammelled by the fetters of settlements. The truth is that a mode of settlement which is comparatively, if not absolutely, harmless in the case of very large estates, is quite unsuited for properties of moderate size; but, unfortunately, small men will copy the customs of the great. It may be replied that in France, where a wholly different law exists, the condition of agriculture is bad; but the cause is to be found in a law which errs in the other direction, and, for other reasons, produces the same result, namely, the embarrassment of the owners of the soil. If we compare the two systems, I believe that theirs is worse than our own. They escape some of the worst evils of our system, thanks to the fact that the peasantry are so generally owners as well as workers; but they

the estate.' An embarrassed owner could never have taken the first step in this case. He must have sunk, and his estate with him.

subject themselves to other inconveniences through interfering with freedom of bequest.* We might escape these and greatly improve our condition in those points where it is defective, if we would adopt a middle course and leave real liberty to each generation to take care of itself.

The following remarks of M. Léonce de Lavergne are, I think, of much interest:

Ce qui importe à la culture, ce n'est pas que la propriété soit grande, mais qu'elle soit riche, ce qui n'est pas tout à fait la même chose. La richesse est relative: on peut être pauvre avec une grande propriété et riche avec une petite. Entre les mains de 1,000 propriétaires qui n'ont chacun que 10 hectares et qui y dépensent 1,000 fr. par hectare, la terre sera deux fois plus productive qu'entre les mains d'un homme qui possède à lui seul 10,000 hectares et qui n'y dépense que 500 fr. Tantôt c'est la grande propriété qui est la plus riche, tantôt c'est la petite, tantôt

* La plupart de nos grands propriétaires gagneraient à posséder moins de terre et plus d'argent. Ceux qui ont au dessous de 5,000 à 6,000 fr. de revenu net auraient presque tous avantage à renoncer au sol, et parmi les petits, il en est un grand nombre aussi qui feraient mieux de ne plus s'acharner à résoudre un problème insoluble. Que cette liquidation, si elle avait lieu, dût profiter à la grande, à la moyenne ou à la petite propriété c'est ce qu'on ne pourrait dire à l'avance et ce qui importe en réalité fort peu. (Léonce de Lavergne, *Écon. Rur. de l'Angl.* p. 122.) The opinion I have expressed as to the effect of the French law of bequests is opposed to that of many eminent French writers. They do not admit that the backward state of their agriculture has anything to do with their laws, but is to be attributed to political causes wholly independent of their laws as to wills and successions.

c'est la moyenne; tout dépend des circonstances. La meilleure organisation de la propriété rurale est celle qui attire vers le sol le plus de capitaux, soit parce que les détenteurs sont plus riches relativement à l'étendue de terre qu'ils possèdent, soit parce qu'ils sont entraînés à y dépenser une plus grande partie de leurs revenus. Or il est certain que, dans l'état actuel des choses, nos propriétaires français sont moins riches que les propriétaires anglais, et conséquemment, moins disposés à faire des avances au sol. Les plus petits sont parmi nous ceux qui traitent le mieux la terre, c'est une des raisons qui ont fait prendre tant de faveur à la petite propriété.

En Angleterre . . . si ce n'est pas précisément la très-grande propriété, c'est la meilleure moitié de la propriété moyenne qui peut être et qui est en effet la plus généreuse envers le sol. . . . Presque toujours la propriété n'est négligée que parce qu'elle est trop grande pour le revenu du possesseur. C'est ce qui arrive surtout quand celui-ci est endetté; dans ce cas, plus la propriété est étendue, plus sa condition est mauvaise; ce n'est plus qu'une fausse apparence, une illusion funeste.*

Hear also Mr. Caird:

If the farmers of England are to be exposed to universal competition, the landlords must give them a fair chance. If they refuse to part with the control of their property for the endurance of a lease, they must themselves make such permanent improvements as a tenant at will is not justified in undertaking. The farmers of that part of the continent nearest our shores have far better accommodation for their stock than the majority of English tenants. The substantial and capacious farmeries of Belgium, Holland, the north of France, and the Rhenish provinces,

* *Écon. Rur. de l'Angleterre*, p. 119.

contrast most favourably with the farm-buildings common in most English counties.*

The inconvenient, ill-arranged hovels, the rickety wood and thatch barns and sheds, devoid of every known improvement for economising labour, food and manure, which are to be met with in every county of England, and from which anything else is exceptional in the southern counties, are a reproach to the landlords in the eyes of all skilful agriculturists who see them. One can hardly believe that such a state of matters is permitted to exist in an old and wealthy country. . . . With accommodation adapted to the requirements of a past century, the farmer is urged to do his best to meet the necessities of the present.†

Let us now consider for a moment the case of the farmer. Great complaints are made by some that the class of farmer-owners—the old yeomanry of the middle ages—has largely diminished. This may be so, and there can be no doubt that this class would have been from time to time renewed far more than it has been, had land come more freely into the market. It is obvious that, if not from time to time renewed, any such class must gradually disappear through deaths, extravagance, and the countless other 'chances and changes' which must occur in every class. Sales of land by such owners are inevitable; and if the land, when sold, is bought up by those who settle it and hold it, and, in fact, cannot part with it, it follows, as a matter of course,

* *Eng. Agric. in* 1850–51, p. 491. † Ibid., p. 490.

that cultivation by owners of the farmer class is gradually supplanted by the tenant-farmer system, even in those districts where the yeomanry have been most numerous.

In this sense the present state of the law may have affected the class of farmers. But a more powerful influence has been in operation, inasmuch as it is clear that a man with only a moderate capital can in England use it better as a farmer than as a proprietor as well as farmer, because he will thus have all his money free for use in his trade as a cultivator, instead of having a large sum locked up at a low rate of interest in the price of his land. M. de Lavergne states that the diversion of capital from cultivation to ownership is one of the 'principal faults' of the rural economy of France. It has been suggested that an owner can farm his own land by borrowing the capital required for its due cultivation, and thus retaining the full benefit of his labour and improvements, the interest on the money borrowed being equivalent to the rent paid by an ordinary farmer. This may be so where the facility of borrowing on landed security is greater than it is here, but such a plan could hardly be depended on without a great simplification of titles and a complete system of registration. In Belgium, it is said that a sale or mortgage is effected at the cost of a few francs.

It is frequently argued that our present system of large estates and large farms is a result of economical causes only. It is said that there may be a great gross produce, and a poor profit to the farmer, as in the case of the small farmer of Belgium, whose rent is excessive, owing to extreme competition; while, on the other hand, there may be a less gross produce and more profit to the farmer, owing to the use of machinery and other economies which are only possible for men of capital occupying farms of large size. This may be true, but in point of fact the English farmer is very often neither driven by high rent to exert himself, nor encouraged by a lease to lay out capital on the land, and is therefore in the worst possible position for doing justice to it.

Nothing is more remarkable in English agriculture than the prevalence of tenancy from year to year. This absence of leases seems to me to discourage improvement, and so to bring about a stationary condition of agriculture, except where the landlord has the means and the inclination to take the lead. It cannot be expected that, as a rule, men without any security for a tenure of more than a year will lay out capital on the land, and Sir H. Verney has well pointed out that without a lease a farmer has no security to offer to a lender of money. The farmer may acquiesce in this state of things, but the consumer is deeply interested in encouraging a

different system, if it be true that the absence of leases does seriously limit the total production of the country.

It is a grave question how far the general absence of leases in England is to be traced to the law now under consideration. It may be so indirectly, inasmuch as the owners of the land, having succeeded to a system under which so much authority is vested in proprietors as such, naturally seek to maintain this authority, and, for this purpose, keep the farmers without leases, in order that their political dependence may be secured. Were the land more divided, and the social position of the owner less widely separated from that of the cultivator, there would probably be more inclination to grant leases, as each owner would have less weight in his county, and would feel more anxious as to the prosperity than as to the votes of his tenantry. To this extent I think we may trace the absence of leases to the law of entail. It is part, and a very injurious part, of a too paternal and elaborate system.

In saying this I do not mean that there are not other causes which have discouraged the granting of leases. Mr. Caird, who is a strong advocate of leases, admits that there is a prevalent dislike to them on the part of the tenantry of England, 'chiefly from the fact that there is really less change of tenancy, and

a lower scale of rent under a system of yearly tenure than under lease.' In fact the landlord is more liberal towards the tenant who is content to be entirely under control from year to year. This is not wonderful, but it would be far better for the State were there less anxiety to keep this control, and more freedom of action given to the cultivator of the soil. I do not say that any such change of the law as is here advocated would necessarily effect any important improvement in this matter, but I think its tendency would be in the right direction, and that owners of a somewhat different class might be more likely than those who now hold the land to grant those 'leases with liberal covenants' of which Mr. Caird speaks, and which have produced such excellent results at Holkham and Woburn. The experience of the farmers on these estates shows, I think, conclusively that the condition of the farmer who has a lease, and has made good use of it, is better than that of the man who stands still in the old ways, even though the lessee may have to pay a somewhat higher rent at the end of his term. It is quite true that the state of the small farmers of Belgium is bad, because their rents have risen very rapidly. They have leases of about nine years' length, and very rapacious, because needy, landlords. It does not thence follow that there would be the same rapid rise in England, even were the granting

of leases to become general. M. de Laveleye says that our tenancy at will would be unbearable there, because, with such a tenure, the rise of rent would be 'incessant,' instead of being limited, as now, to the time of the falling in of the leases. Surely English landlords who should grant leases would not thenceforward change their characters. They would be liberal to the lessees, if not as liberal as they are to the tenants at will. If so disposed, they can raise rents now, and they refrain, 'grâce aux habitudes, aux sentiments qui dominent,' and so, as I believe, would they do were they dealing with lessees. At the same time, I feel confident that, on very many estates, there should be better cultivation and higher rents, and thus the profits of landlord and farmer might be increased with much incidental good to the State.*

* Great complaints are made of the shortness of leases in France, and the consequent impoverishment of the land, the farmers improving during the first years of a lease, and draining the land of its goodness during the latter years. See *Enquête*, p. 22.

The following extract from a letter to the *Times* dated September 1, 1868, is interesting in reference both to the farmer and the labourer. It is signed W. H. Wheeler, C.E. He writes from Boston:

SIR,—In the discussions as to the improvement of the condition of the agricultural labourer, one thing has been lost sight of which I think deserves consideration.

Farming is becoming every day a more scientific pursuit,

The justice of the view here advocated receives a strong illustration from the state of the great estate and, consequently, requires a better educated class of labour to conduct its operations. Machinery is rapidly superseding manual labour, and whoever, in going over a farm homestead, casts his eye on the steam thrashing machine, the drills and chaff-cutters, the steaming apparatus, the reaping machine, and the other numerous mechanical appliances which are daily being multiplied, cannot but come to the conclusion that the man who is capable of understanding and properly using these machines, must be a superior being to his predecessor, who knew of nothing but the flail and the sickle, who walked up and down the field throwing the seed on the ground with his hand, and whose utmost idea of drainage was cutting a furrow on the surface of the newly-sown land. * * * *

If Canon Girdlestone wishes to see a contrast to the picture he drew at Norwich of the agricultural labourer, let him visit the fens of Lincolnshire. He will find a strong, healthy, intelligent class of men, living in good cottages, and earning wages sufficient to support themselves and families in comfort. The difference is not to be accounted for by the proximity to any manufacturing town, or special branch of industry, but may be so by the old proverb, 'Like master, like man.' The farmer cannot leave his house without being reminded—by the long line of embankments on the coast, or the drains with which his farm is surrounded, by the steam pumps and sluices —of the energy and skill by which alone his land has been reclaimed. The lesson thus taught is strengthened by the high rent which, in consequence of these works, he has to pay, and acts as a stimulus to him to put out all his energies to make his land yield a fair return to his capital. There is no room for an idle or unskilful farmer. Every yard of land is made to do its duty, and weeds and sluggards are alike rarities. Nowhere do artificial manure and cake merchants find better customers than in the Fens; and every machine which has been proved economical and profitable to work, will be found in use. Such being the masters, the men have naturally

of the Duke of Cleveland, as described by Mr. Caird. It appears that the rents had not been raised for fifty years in 1851, nor had there been in that time a dozen changes of the tenantry. Mr. Caird goes on to say that the Duke might have expected to have 'a contented and prosperous tenantry,' busied in improving the estate, the annual produce of which is so amply secured to them. On the contrary, 'their easy rents have been made during a period of comparatively high prices, with little exertion. The certainty they felt that no additional rent would be exacted, and that the son would, as a matter of course, succeed to his father on the same terms, led to an indolent feeling of security. Lower prices have found them even less prepared than their more highly-rented neighbours; and the Duke, in declining to make abatements, is not more exempt from complaints than other landlords who have not the same excuse. . . . . The population of the whole country has doubled, and that of the particular

adapted themselves to the increased requirements; and, as labour has its value according to its quality, wages here are fifteen shillings a-week, instead of eight or nine, as in Devonshire. Nor is there that surplus quantity which appears to be the case in Canon Girdlestone's experience; but, on the contrary, there is rather a complaint of the scarcity of hands. The young men, being intelligent and well educated for their class, readily find situations on the railways as porters, or in other capacities, and so leave their homes for situations of this kind where they can earn higher wages.

county had, within the ten years preceding 1841, made a more rapid increase than that of any other county in England. The demand for all articles of consumption produced by the farmer, besides corn, must have kept pace with the increase of the population. In the midst of this activity and industry we find a great estate standing nearly still for half a century, the landlord declining to avail himself of the natural and legitimate benefits of his property, the farmer letting slip the opportunities he possessed, the labourers increasing in numbers, but finding from agriculture little or no increase of employment, and the increasing population forced to seek from abroad those supplies which the land in their own neighbourhood has failed to yield in sufficient abundance.'*

The history of the English agricultural labourer is not pleasing to contemplate. Those who know what his present condition is may well ask whether it can possibly have been worse in former centuries. The truth is, that though there has been an improvement in some counties and in some estates, if we take the whole nation the improvement has been of very slow and fitful growth as compared with the progress made by other classes of the community.† The

* *Eng. Agric. in* 1850–51, p. 348. See also p. 273.

† The statement I have made seems to be fully borne out by Mr. Caird:

country has made gigantic strides in wealth, in intelligence, and in luxury, but the labourer remains

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In twenty-six counties the average rent of arable land, in 1770, appears from Young's returns to have been	*s.* 13	*d.* 4	an acre.
For the same counties our returns in 1850–51 give an average of .	26	10	„
Increase of rent in eighty years .	13	6	or 100 per cent.
	Bushels.		
In 1770 the average produce of wheat was	23		an acre.
In 1850 51 in the same counties it was	26½		„
Increased produce of wheat per acre	3½		or 15 per cent.
	s.	*d.*	
In 1770 the labourer's wages averaged	7	3	a week.
In 1850–51 in the same counties they averaged . . .	9	7	„
Increase in wages . . .	2	4	or 34 per cent.

	Bread.	Butter.	Meat.	
In 1770 the price of provisions was	1½*d.*	0*s.* 6*d.*	3¼*d.*	per lb.
In 1850–51 it was . .	1¼*d.*	1*s.* 0*d.*	5*d.*	„

	s.	*d.*	
In 1770 the price of wool was .	0	5½	per lb.
In 1850–51 it was . . .	1	0	„

In 1770 the rent of labourers' cottages in sixteen counties averaged	36	0	a year.
In 1850–51 in the same counties .	74	6	„

—(*Eng. Agric. in* 1850–51, p. 475.) At the present time the price of meat is nearly twice what it was in 1850, to say nothing of a further advance in rents. It is to be feared that the advance in wages has not been at all proportionate.

too generally ill clothed, ill housed, and ill educated. His condition at the present moment is discreditable to the country; and if the law has anything to do with it, the law ought to be changed. It is obvious that no one connected with the land is so deeply interested in right legislation as the labourer, for he cannot help himself. He is isolated and ignorant; and if the law is against him, he is helpless. The law is against him, so far forth as the law keeps the

See further, Report of Commission on Employment of Children &c. in Agriculture, p. XLVI. &c. 'Previously to the American war, which commenced in 1775, the agricultural labourer was in a most prosperous condition. His wages gave him a greater command over the necessaries of life; his rent was lower, his wearing apparel was cheaper, his shoes cheaper, his living cheaper than formerly; and he had on the common and wastes liberty of cutting furze for fuel, with the chance of getting a little land and in time a small farm.' (*Labourer's Friend Magazine* for 1831, as quoted in Report.) 'The year 1775 is noticed as the period from which a marked change for the worse in the condition of the agricultural labourer began to be visible. The change was attributed to the inadequate wages compared with the cost of the necessaries of life, the prices of which were raised by taxation, to the consolidation of small farms, to the loss of privileges by enclosures of common, and also to the loss of small portions of land which had contributed to the labourer's resources, and which his necessities compelled him to sell.' The Commissioners quote with approval the following remarks of Sir George Nicholls, (p. XLVIII.): 'The application of more capital and skill to the purposes of cultivation, and the consequent increase in the size of farms, have tended to increase the distance between the farmer and the farm labourer, elevating the one, and relatively depressing the other.'

land out of the hands of men of capital, and locks it up in the hands of men who are embarrassed and would be glad to be rid of it. How can such men build cottages, and support schools, and do that which the owner of the soil ought to do towards helping the labourer to help himself? Take the following facts as to the educational question:

In a western agricultural district Mr. Fraser reported on the subscription lists of 168 schools. It appeared that 169 clergymen had contributed on an average ten guineas each, and 399 landholders about five guineas each, making up between them seventeen twentieths of the whole subscriptions. The rental of the landowners is estimated at 650,000*l.* a year. The stipends of the clergy are not stated; but if they were a tithe of the rental, it will be found that, as compared with the landowners, the clergy had contributed at least eight times their fair share, besides giving probably their zealous personal services. Mr. Hedley, gives a corresponding return for eighteen schools in an eastern agricultural district, in which the clergy had contributed much more than one half, the landowners less than one third, and other persons little more than one twentieth of the total subscriptions.*

It has been repeatedly noticed by the school inspectors, and it is our duty to state that as a class the landowners, especially those who are non-resident (though there are many honourable exceptions), do not do their duty in the support of popular education, and that they allow others, who are far less able to afford it, to bear the burden of their neglect.†

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* *Questions for a Reformed Parliament*, p. 158.

† *Report of Royal Commissioners* (1861), p. 78, quoted *ibid.*

This is strong language from such a quarter. The case is not better as to the dwellings of the poor. Evidence on this point is hardly needed. The evidence is before the eyes of anyone who will look. But if authority is required, take the following passage from Mr. Kay's well-known work, quoted by Mr. Leslie in *Fraser's Magazine*, February, 1867, p. 149:

> The accounts we receive (1850) from all parts of the country show that their miserable cottages are crowded in the extreme, and that the crowding is progressively increasing. People of both sexes and all ages, both married and unmarried, parents, brothers, sisters and strangers sleep in the same room, and often in the same bed.

Again:

> Accounts published by Parliament last year (1866) showed that between 1851 and 1861 the number of houses had diminished in 821 agricultural parishes, while the population had increased; and it is known that in many other parishes a decrease in the rural population was accompanied by a still greater decrease in the number of houses in the same period.*

Mr. Fraser, after visiting Norfolk, Essex, Sussex, and Gloucestershire, reports to the Commissioners on the employment of women and children in agriculture:

> Out of the 300 parishes which I visited, I can only remember two—Donnington in Sussex, and Down Amney

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* Mr. Leslie in *l. c.*

in Gloucestershire—where the cottage provision appeared to be both admirable in quality and sufficient in quantity. In one return they are described as 'miserable;' in a second as 'deplorable,' in a third as 'detestable,' in a fourth as a 'disgrace to a Christian community.' The moral consequences are fearful to contemplate. Modesty must be an unknown virtue, decency an unimaginable thing, where, in one small chamber, with the beds lying as thickly as they can be packed, father, mother, young men, lads, grown and growing up girls, are herded promiscuously; where every operation of the toilette and of nature—dressings, undressings, births, deaths—is performed by each within the sight or hearing of all; where children of both sexes, to as high an age as twelve or fourteen, or even more, occupy the same bed, where the whole atmosphere is sensual, and human nature is degraded into something below the level of the swine. It is a hideous picture; and the picture is drawn from life. Appendix to Report, p. 35.

Mr. Fraser sees signs of improvement on the estates of wealthy owners, and adds:

There are some grounds for hoping that twenty-five years hence, the villages of England will present a different and a more pleasing picture to the eye of the traveller than they present now.—(p. 39.)

The Reports of the other sub-Commissioners tell the same tale. When the landlord has capital, the march of improvement is rapid, but, too often, the owner of the soil is unable to do his part, and thus there is no hope for the people except in their removal from the locality to which by custom and association they have become attached.

Such facts as the above cannot be explained away; but it will, no doubt, be said that the law of entail has nothing to do with them. It would be idle to repeat the reasons I have given before for thinking otherwise. To any unprejudiced person it must, I think, be perfectly clear that any law which tends to separate men of capital and intelligence from the ownership of the land is a law which is opposed to the interests of the labourer, and has a direct tendency to keep him down at his present level, if not to make his condition even worse than it now is.

I am well aware that many of the sufferings of the poor are traceable to their own improvidence and to those laws which encourage them in this by placing in their way so many sources of temptation to excess, but the importance of this consideration does not lessen the importance of those other points which I have mentioned. To quote once more one so often quoted:

> Je ne crois pas que l'extinction progressive de la misère soit un problème insoluble, mais ce qu'on appelle aujourd'hui, par un singulier abus de mot, le socialisme, et en général tous les systèmes qui ne tiennent pas suffisamment compte des nécessités de la production, sont les principaux obstacles à la solution. Elle est tout entière dans la combinaison de ces deux moyens, qui au fond n'en sont qu'un : accélérer le progrès de la production, développer l'esprit de prévoyance ; elle n'est pas ailleurs.*

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* Léonce de Lavergne, *L'Agric. et la Pop.*, p. 199. See the

Another objection to the argument of this paper professes to go to the root of the matter by showing that the law meets and disposes of the difficulties I have suggested. Thus it is often said that, having regard to the powers of sale contained in settlements and conferred by Act of Parliament, the land is not really kept out of the market by the present system. This has been strongly urged by Lord St. Leonards amongst others.

This argument seems to me to be quite fallacious. It is of course far better and more convenient that these powers should exist, so that land may be exchanged for other land; but it must be remembered that such sales merely effect the exchange of one piece of land for another, as the purchase-money of the land sold is always reinvested in other lands which are settled to the same uses. However useful

same work, p. 195, where this writer says: 'C'est le rapport de la production, à la population qui, en fin de compte, est la mesure du salaire.' Hence the low condition of the agricultural labourers and small farmers of Flanders, as described by M. de Laveleye (p. 69). He thinks they live worse than our English labourers; though, in the case of the small farmers, they work for themselves; the fact being that owing to the keen competition for land in a country so thickly peopled, the landlords absorb a very large proportion of the produce of the soil. With them, as with us, though from different causes, the profit of the trade of the agriculturist is small, and so the rate of wages of the labourer is low. In those parts of England where capital is abundantly and judiciously applied to cultivation, profits improve and wages with them.

such operations may be, it is obvious that they do not take land out of settlement. One piece is taken out, and another of like value is held in its place. If, therefore, my objection to the land being held by owners of limited interests be a sound one, it applies to the one piece of land just as much as to the other, so that such a proceeding does not really remove my difficulty. It removes an objection to the settlement of land which was so flagrant as to have become unendurable, but it does not prove that there are not other and weighty objections, such as those which I have endeavoured to explain.

Lord St. Leonards goes further, and says:

> The father, although necessarily confined to a tenancy for life, is invested with such ample powers over the estate, that for all purposes of reasonable enjoyment he would be ignorant, were he not otherwise aware of the fact, that his rights of ownership are curtailed; he is enabled to make every disposition of the estate which tends to meliorate it; he has every capacity of an owner in fee to benefit the estate and himself, as the temporary owner of it, in common with the remainder-men, but none to injure it.*

There is a very short answer to all this. The tenant for life, however great his powers, knows perfectly well that every shilling he spends on the land will benefit, not his whole family, but his eldest son only; and this, save in exceptional cases, justice

* *Letters on Property Law*, 126.

forbids him to do. He cannot get rid of the estate, and he cannot improve it without committing an injustice. Therefore he avoids spending money in improving the land; and, so far from having no power to injure the estate, his doing nothing is just the one thing which does the most serious injury possible to his property. I am at a loss to understand how Lord St. Leonards can assert that a tenant for life has no power to injure his estate. The condition of a settled estate must depend on the way in which one tenant for life after another performs the duties of proprietor; and certainly, if a man has power by spending money to 'meliorate' his property, his refusing so to do must be injurious to it.

I think I have thus referred to the principal objections which are usually made to any such change of the law as that which I have suggested, but there are others of a somewhat different character which deserve attention.

It will no doubt be said that such a change would tend to the destruction of many ancient families and to the gradual impoverishment of the peerage, who would retain their nominal dignities without that appendage of wealth to which we are accustomed, and which seems, from long habit, essential to the maintenance of the order. Without saying anything derogatory to this ancient and dignified institution, the reply is obvious that it will rest with themselves

to maintain or dissipate their estates, and that it is not certainly complimentary to them to allege—as is alleged impliedly by the advocates of the law of settlement—that these ancient families require to be protected from themselves; that so little confidence can be placed in the scions of these great houses, that the tenure of land in the whole empire must be modified in order to prevent them from destroying their own *status* by their extravagance; that they can be trusted with votes on the most important affairs, in the first assembly in the country, but cannot be trusted with the full control of their own property; that their habits are so wasteful that, in one or two generations, but for the beneficent aid of the law of settlement, these men would be left with nothing but their historic names—objects of compassion in their splendid poverty, and in danger of bringing contempt on their authority as senators.

In other words, we are to keep up this elaborate system to protect people who ought to be able to look after their own interests. It may, however, be replied that it is of far more importance to the State that the tenure of the land should be established on right principles, so as to simplify titles, and to facilitate the transfer of estates, whether large or small, from needy or embarrassed owners to those who are able and willing to improve the land, than that certain ancient names should retain their dignity and

power. I believe that our great houses can take care of themselves, and do not require to be protected and dandled any longer by this law. Even now some of them have fallen from their high estate, and others will fall, but the places of the fallen will be supplied by men who are from time to time elevated on account of their eminence or wealth; and the law should be framed for the good of the whole people, and not be twisted to save the families of a few favourites of fortune.

It may be further said that such a change in the law would lead to division of estates. The tendency is said by many to be in the other direction from obvious and powerful causes; but were it otherwise, it need cause us no alarm. We are far from the French '*morcellement*' and, as some think, too far. But, without further discussing this point, it is very clear that, with land at its present price, none but the very rich can afford to buy large estates, and no such change in the law of tenure as I have suggested would affect this state of things. A poor or comparatively poor man wants more than 2*l.* 10*s.* or 2*l.* per cent. per annum on his capital, and he regards land as an expensive luxury which he must dispense with, just as he exists without covering his walls with the works of Millais or Landseer. The truth is that the wealth of the country increases rapidly, but the acreage of the

country remains unchanged; and, in addition to this, Englishmen are fond of the country and its pleasures, and so compete eagerly for the possession of the land. As M. About puts it:

> Les Anglais ne placent pas le bonheur au même endroit que nous. Nous le logeons à la ville et par excellence à Paris; ils ne le voient qu'à la campagne.

There may be some exaggeration, but there is, certainly, much truth in this statement.

In short, there will, I doubt not, be much division of estates if the law as to settlements should be repealed, but the lots will be eagerly bought up by men of fortune, who will seek, as far as possible, to procure the land in large masses, and the process of accumulation will be continually going on side by side with that of division. For my own part I see nothing to fear in accumulation, if the owners of great estates have ample means. We want more such landlords as the Marquis of Westminster.

It may again be urged that such a change would make the land less attractive to men of wealth, because there would not be the same facilities for founding a family. It seems to me, on the other hand, that the social power and privileges attached to the ownership of large estates will still continue to be so important and so attractive, that rich men will continue to purchase land, and will still endeavour to leave their estates to their descendants improved

to the utmost of their power. But even if one cause of the attractiveness of land to large proprietors were removed, it must not be forgotten that these sources of attraction are numerous, and the removal of one would not involve the loss of others. So long as men are free to buy and sell and leave their real estate as they please, land is certain to be a favourite investment with rich Englishmen; and it would be even more liked than it is, were titles less complex and uncertain, and their verification less costly.

It may, moreover, be fairly argued that even were less land bought by those who seek for social or political influence through its ownership, and estates were to pass in smaller portions into the hands of those who are deeply interested in the proper cultivation of the soil, and care more for agriculture than politics, the results to the State would be eminently beneficial. Cases have occurred in our own time where huge estates have been broken up with the best possible consequences. I am not now speaking of peasant proprietorship. We are, as yet, far from any such tenure, nor do I wish to discuss its fitness here.* In a great country like ours purchasers can always be found for estates of moderate size. It

* All Frenchmen do not agree with M. About as to the effects of small holdings in France. Take for instance the following remarks of M. Léonce de Lavergne:—'Il' (Arthur

very often happens that the tenants of such estates would be greedy purchasers, and it is not easy to find a better owner than an opulent farmer. In such cases, at any rate, the 'magic of proprietorship'

Young) 's'est trompé sur le point de fait, en attribuant à la division du sol l'état arriéré de l'agriculture française en 1789. Les provinces les plus divisées étaient, au contraire, alors comme aujourd'hui les mieux cultivées, sauf un petit nombre d'exceptions, et on peut dire, en règle générale, qu'avant comme après 1789, le progrès agricole a marché en France avec la division pourvu qu'elle fût naturelle et volontaire. Qu'il en doive toujours être ainsi, c'est ce qui n'est pas aussi sûr; le morcellement excessif a ses inconvénients, et les avantages de la grande culture commencent à frapper les esprits, à mesure que les débouchés s'élargissent. Dans tous les cas, si Arthur Young n'avait eu d'autre but que d'attaquer la division *forcée*, il aurait eu pleinement raison.'—*Écon. Rur. de la France*, p. 429.

Again, speaking of the division of the land:—'Les vraies causes de notre infériorité agricole ne sont pas là; elles sont dans notre organisation militaire, financière et administrative, qui épuise les campagnes d'hommes et de capitaux, et qui les épuiserait plus encore sans le contre-poids de la petite propriété.—*Revue des deux Mondes*, Dec. 1867, p. 757. See also M. H. Passy in the work before quoted where the cause of 'la petite culture' is advocated with much fairness, and full weight is given to the arguments used on the other side.

M. de Laveleye again (*Écon. Rur. de la Belgique*) has shown most clearly that there can be excellent cultivation in a country of very small holdings—some where the proprietors are also cultivators, and very many where the latter are tenants only. The condition of these tenants is bad in consequence of excessive competition for the land, but they labour intensely and with excellent results as regards the average production of the soil. Rents rose about 40 per cent. in Flanders between 1830 and 1860, and M. de Laveleye thinks that the production of the soil doubled (p. 72).

has its full force, and is certain to act as a powerful incentive to good husbandry and the adoption of every known improvement. It is one thing to improve one's own land, and quite another thing to improve the land of another, even though one may have a certain share in the results of such improvements. But the sense that one has the whole must certainly quicken a man's intelligence, and nerve his arm to exertion.

I should not venture to quote the opinions of Mr. Bright on the subject of this essay, as so many would regard him as prejudiced, but I presume I may accept his testimony as to facts which have come under his own observation. In a speech delivered on the 13th of March, 1868, he spoke as follows:

> The other day I was driving in the county of Somerset, and I was passing two villages called, I think, Rodney Stoke and Bleadon, and, seeing a great appearance of life and activity, I asked the driver what was to do there. He said, 'This is where the great sale took place.' I said, 'What sale?' 'The sale of the Duke's property?' 'What Duke?' I asked. 'Why, the Duke of Buckingham. It was about fifteen years ago. All the property was sold hereabouts; the people bought the farms, and you never saw such a stir as is going on in this neighbourhood. All these new houses have been built since then;' and he pointed them out, and showed me that the new owners were cultivating very considerable tracts of land, which in former times had never been cultivated at all. The appearance of the villages, in short, was such as to astonish every person who passed through them, being so wholly

different to that which you would see in any other part of the country. Now, what had happened here? The great estate of an embarrassed Duke had been divided and sold. He had not been robbed. The land had been paid for, the tenants were in possession, the old miserable hovels had been pulled down, new houses had been built, and new life had been given to the whole district.

There is nothing remarkable in this case. Such cases would, I believe, be numerous were things left to take their own course, and were sales not prevented as they now are by the law as to settlements of land. We English are said to be too fond of *laissez faire*, and not to govern enough; but in the present case we have gone to the other extreme, and do all in our power to protect our citizens from themselves.*

It may be said, give the land to trustees as you do in the case of personal property, and let them manage it as they will. But the cases are quite distinct. In the first place, speaking generally, per-

* Speaking of the county of Leicester, Mr. Caird says (p. 220), 'The best landlords in the county are said to be capitalists from the towns, who, having purchased estates, manage them with the same attention to principles and details as gained them success in business. They drain their land thoroughly, remove useless and injurious timber, erect suitable farm buildings, and then let to good tenants on equitable terms. Nominally these rents are high; but farms provided with every facility for good cultivation can far better afford to pay a good rent, than can a dilapidated estate any rent, however apparently moderate.'

sonal property has about it a certain 'self-containedness' which land has not. Land, as I have so often said, needs the continual application of fresh capital to ensure a due return, while personal property for the most part represents capital which has already been expended, wisely or unwisely, say in making a railway, and which brings in a return larger or smaller, according to the risk run by the owner, without his being required to lay out another shilling. The money has been spent, and so long as there is a return, there is value. New capital may be required in some cases, but these are exceptional, and in all cases where the property is worth anything, there is an end to this expenditure, the venture is finished at last, and is represented by so much capital more or less productive.* Not so with land. The best land left to itself soon ceases to be of much value, and the character of the owner is of vital importance. But the owner of personal property has for the most part very little to do with the management of the adventure in the results of which he shares, and these results do not depend on

* It is no doubt needful to spend money in maintaining property in a state of efficiency, but this is procured from the current receipts, and deducted from gross profits as an ordinary trade-expense, if the property is really of any value. If money is demanded from the shareholders in an undertaking for current expenses, it would imply that the venture is really not profitable.

his capital or his intelligence. He is a recipient merely, and whether, therefore, A B or C D is owner, is of no consequence; nor is it of any consequence whether the owner of the income be owner of a life interest only, or of the whole. He takes what is given him, and with this must rest content and no exertions of any one shareholder can, as a rule, have much effect on the results of the adventure. Personal property may therefore be settled without material injury to the State. It is true that many companies have suffered from the fact that so large a number of their shares have been held by trustees who have not duly watched the proceedings of the Directors, but this inconvenience, is, I think, more than counterbalanced by the convenience of having some kind of property which may, without serious injury to its productiveness, be moulded by settlements so as to meet the varying needs of families. From what has thus been said there results a fundamental objection to the ownership of land by trustees. It stands to reason that they are not in general so good managers as those to whom the land really belongs. They may do their very best, and may have the best intentions, but they have not the eagerness of true owners. They have their own business to attend to, and this is sure to have the first place. They cannot thoroughly attend to both, and so the business of the trust has to yield.

As hinted before, this is too often the case as to railway shares and similar personal property, but it is far more likely to occur as to land, where attention so constant and vigilant is needed, if the management is really to be good.*

* Take an illustration from Mr. Senior's last work on Ireland, vol. ii. p. 85 :—'We rode before dinner up the bank of the Kenmure river, through a village belonging to Trinity College, which intersects Lord Lansdowne's property. The contrast was striking. From well-built cottages inhabited by comfortable-looking people, we passed to hovels green with damp and moss, the mud floors lower than the road, many without chimneys, some without windows, the smoke coming out at the door.

'"This," said Mr. Trench, "is a specimen of a neglected estate. Most of these people are under-tenants. The instinct of a Southern Irishman is to underlet. However small his tenement may be, he tries to get a subtenant to work for him. A corporate body like the College, which has only a divided and temporary interest in its land, wants the vigilance which, either by himself or by his agent, every owner must exert, or see his land degenerate as this has done, and as the College property in general has done, into a pauper warren."'

Ownership by a college seems to me to have very much the same defects as ownership by trustees, and I think this case affords a very good practical confirmation of the views expressed above. The consequences of neglect would not be just the same in England as in Ireland, but they would not be less important.

I am aware that some college property is well managed, e.g. in the cases of Trinity and Caius Colleges at Cambridge. But I fear that the exception proves the rule, and that, speaking generally, Mr. Trench is right. I have been informed that Caius College has large funds available for making permanent improvements, and is thus in the position of a wealthy landowner. How far this is a common case with colleges, I am not able to state.

To sum up the main argument. What I want for the owners of land is more real freedom—more power to deal with their estates as they will. I wish that the owner should be really an owner, and not merely a sort of manager for the family of which he is a member. I want to see the land passing from hand to hand with the utmost facility which the nature of the property will permit, so that we may get rid, as far as possible, of embarrassed proprietors, and may enable those who cannot afford to hold land to relieve themselves of the burden. I want to enable proprietors of land to divide their estates and arrange their affairs as they may think best for their families when the actual facts are before them, instead of compelling them to adhere to the inelastic provisions of instruments made without reference to the actual circumstances. In short, I would trust each generation to take care of itself, and I would make this change, not for the sake of change, but because I think experience has taught us with abundant clearness that the owner of a limited estate in land is too often an incompetent manager,

Under the 'University and College Estates Act' much has been done towards improving the estates of colleges in Oxford and Cambridge. Money can be raised for draining, building, &c., and thus the college can act much in the same way as an ordinary owner, the interest on the money expended sufficing to provide a sinking fund as well as to maintain the income of the college.

as being prevented by the circumstances of his position from doing justice to his property. I think we want owners who are powerful, because they are free from burdens, and I do not think we shall get them by binding men to the land whether they will or no, and compelling them to adhere to an investment which is neither profitable nor agreeable.

Agriculture becomes every day more and more complex, and more and more dependent on capital and intelligence in owners and cultivators. We depend, therefore, more than ever on obtaining the right class of men as owners, and we must get them if freedom of trade will bring them. We want them for the sake of the farmer, for the sake of the labourer, and for the sake of the consumer of the produce of the soil. Hitherto, the law has stood between the capital and the land. I ask that this obstacle may be removed, and I confidently believe that its removal will be a boon to all classes of our countrymen, not excepting the class on whose account we have so long retained so elaborate a system of tenure. They do not need these props and stays. We have done with 'protection' in most things, and I think it is high time we got rid of it in this case also, and left each family and each generation to preserve its own fortune and dignity.

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