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THE
BRIGHT CLAUSES
OF THE
LAND ACT.

BY

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"The tenure of land of all human institutions most affects the character of man."

From Mr Disraeli's Speech at Oxford, in 1864, on the Church.

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THE
BRIGHT CLAUSES OF THE LAND ACT.

THE Land Act was passed in the hopes of settling the Land Question. It should, therefore, accomplish its avowed objects. Amongst others not the least important is the creation of a peasant proprietary through the operation of the Bright Clauses. These clauses, owing to the difficulty of putting them into operation, are almost a complete failure.

Since the passing of the Act property to the amount of over £6,000,000 has been sold in the Landed Estates Court. Only 600 tenants have purchased their tenements.

In nearly the same time the Irish Church Temporalities Commissioners, only disposing of £2,000,000 of property, have created 6,000 peasant proprietors.

These figures speak for themselves.

There is a Committee now sitting to inquire into the causes of the failure. Much valuable testimony has been collected. It will be some time before the blue-book containing it will be issued, and, as it must necessarily be a very bulky volume, it will probably share the fate of blue-books in general, and be little read even by those whom it most concerns. My object in these few pages is to call the attention of Irish landlords who do not read blue-books, to the advantages, especially from a conservative point of view, that are likely to arise from making the Bright Clauses effective.

A glance at the state of Europe at the present moment sufficiently proves the conservative tendency of a peasant proprietary. In some of the leading States it is the one abiding conservative element—the strongest barrier against revolutionary projects, so true is it, as Burke says, that “Landed Property is in its nature the firm base of every stable Government.”

But all this is generally admitted. Only it is stated that it is impossible to argue from mankind in general to Irishmen. They are a peculiar people—a “sport,” as it were, of humanity,—and require peculiar treatment. This is so far true that they have had a peculiar history; and, as the character of a nation is greatly moulded by its history and traditions, the Irish of the present day have inherited certain unhappy traits which still painfully distinguish them from races who have been longer under the influence of civilising laws. But, under the beneficent legislation of late years, crime, as the Lord Chancellor had the courage to remark in the debate in the House of Lords on the horrible murder of Lord Leitrim, is gradually decreasing. And were it otherwise, I have no hesitation in saying that it would be an argument rather for, than against, the creation of a peasant proprietary. If agrarian crime is on the increase, it certainly is not the duty of the Legislature to stimulate it by refusing to amend an Act of Parliament passed, as regards the Bright Clauses, with the object of gratifying, in a legitimate way, the land-hunger which is at the root of all Irish disaffection, when that part of the Act has turned out a mere delusion.

There are about 12,000 landlords in Ireland, and about 600,000 tenants. The proportion of landlords to tenants is far too great, particularly in a purely agricultural country. The consequences are bad, both from an economical and moral point of view. From the absence of competition for large

estates when put up for sale, they go below their value.* A feeling of uneasiness, sometimes justified by the results, is created amongst the tenantry on every change of ownership. Small capitalists, who care for nothing but land, lock up their money in banks, awaiting an opportunity for investment, which, except in Ulster, where the purchase of the tenant-right costs nearly as much in proportion as the fee-simple of the estate would sell for, they generally wait for in vain. Where tenant-right does not exist, experience proves that the small farmers are chary of putting their spare cash into their farms. Under this system, the Irish labourers are the worst housed in Europe. The landlords cannot over all their vast estates, and the farmers will not, go to the expense of providing them a better habitation. The creation of a peasant-proprietary would tend in Ireland, as in other countries of Europe, to mitigate all these evils, while it would promote the growth of a feeling among the agricultural classes now not very prevalent—a feeling of identity of interest between the peasant-proprietor and the Constitution under which he lives—the feeling which saved Germany in 1848, and France in the trying crisis through which she has just passed, thanks, in a great measure, to the conservative proclivities of the peasant-proprietary, though, with the exception of Belgium, the smallest in Europe.

Setting aside, as unworthy of serious consideration, the “God-made-men-and-Hervey’s” style of argument, I believe that the same effects would be produced in Ireland by the creation, on a sufficient scale, of a peasant-proprietary. Of course this will be disputed by those who take Lord Dunraven’s view, in his very eloquent speech in the House of Lords on the debate on Lord Leitrim’s murder, that Irishmen have

* The estates sold by the L. E. Court to the tenants averaged 24·6 years produce—the other sales only 21·38.

no taste nor talent for agriculture. If so, as Ireland must always remain an agricultural country, our case is desperate indeed. But it is difficult to reconcile this opinion with the following remarks of the late great and good Bishop of Lichfield, in his speech on the Irish Church Bill.

“In New Zealand, Englishmen, Irishmen, and Scotchmen live together upon the best terms. The qualities of each particular class becomes blended with the other to the improvement of all. No disunion as to tenant-right can arise, because every tenant has the right to purchase the land he holds at a fixed price. Under these circumstances, the tenants, instead of being lazy and drunken, strain every nerve to save the money which will enable them to become the proprietors of the land they occupy. In this way it happens that the most irregular people of the Irish race become steady and industrious, acquiring property, and losing all their wandering habits, until it becomes almost impossible to distinguish between the comparative value of the character of Scotch and Irish elements.”

Taking it for granted that the Legislature passed the Bright Clauses with a sincere wish that they should prove operative, I would just glance for a moment at the impediments to their free working. The causes are not far to seek.

There is, first, the anomalous position in which the Landed Estates Court is placed with regard to these clauses as between landlord and tenant. The clauses were passed for the benefit of the tenant. It is the duty of the Court to look exclusively to the interests of the landlord.

The steps to be taken by a tenant anxious to purchase are too complicated, and force him to employ a solicitor. The legal expenses are too great, amounting in small purchases in some instances, to from 20 to 30 per cent. of the purchase-money.

The proportion of the purchase-money advanced (only two-thirds under the Land Act, while it is three-fourths under the Act of 1869) is not sufficient.

The clauses relating to alienation deter tenants from purchasing, as under them it would seem that they cannot borrow one shilling without risk of forfeiture.

There is a difficulty in estimating the real value of the property to be sold—the measures taken by the Board of Works to ascertain it being a resort to the tenement valuation, which is no safe criterion.

The action of the Board of Works is necessarily slow, hampered as it is by the control of the Treasury.

These facts have all been abundantly proved by witness after witness before the Committee.

As a remedy, Mr. Vernon, the Governor of the Bank of Ireland, than whom no one has had more varied and extensive experience of the management of land, proposes that a Commission be created like the Church Temporalities Commission, with the sole object of carrying out the Bright Clauses. Whenever an estate is put up for sale in the Landed Estates Court, the Commissioners should send down an officer of their own to ascertain from the tenants what number were willing to purchase. This officer should tell them at the same time the maximum number of years purchase the Commission would be prepared to give, and let them understand that, if the the estate could be bought for less, they should have the benefit.

The Commissioners should have power to re-divide and stripe the ground previous to sale, and to determine all rights of turbary and common.

They should advance three-fourths of the purchase-money on mortgage, and give the purchaser leave to alienate, but not, until the mortgage had been paid off, to sublet or divide.

Lastly, Mr. Vernon proposes that the State should lend the Commission the residue of the Church Funds to carry out their objects, and so dispose for a most beneficent pur-

pose of what is otherwise only too likely to prove an apple of discord.

These are the broad features of Mr. Vernon's plan. Into its details I have not space to enter, as my object is rather to deal with the objections to the principle involved in the Bright clauses, than to any proposed mode of carrying them out. Should anyone doubt of the practicability of Mr. Vernon's scheme, I would refer him to his evidence before the Committee, and to Dr. Handcock's (which has been published in a pamphlet), when his doubts will in all probability be removed. The real objections were not always those most openly insisted on. It seemed to be generally felt, both by those who were opposed to a peasant-proprietary, and those who were only half-hearted in its behalf, that it would work too well.

For the fact is, that though every witness—without, I believe, a single exception—admitted that a peasant-proprietary was, abstractedly considered, a source of strength to a State, yet many of them qualified the admission with so many reservations and restrictions, that it would be better to leave things alone, than face the discontent which their half measures would be sure to provoke.

The objections refer principally—1st, to the number and small size of the holdings; 2nd, to the danger of subdivision; 3rd, to the advance of so large a proportion of the purchase-money as three-fourths; and 4th, to the probability that in bad years the tenants would not be able to repay the instalments.

As to the objections on the score of the smallness of the present holdings, it is really beside the mark. The evil, if evil it be, exists already, and the Land Act renders the remedy of consolidation by disturbance a difficult, tedious, and expensive operation. Were land as easily acquired, and

as transferable as scrip, it would be found, I think, that consolidation would go on as quickly among the peasant-proprietary, as in the case of those estates which remained in the hands of the large landlords. In France, the strenuous effort of the small proprietor to add by purchase to his holding during his lifetime, goes far to counteract the bad effects of the present law of inheritance. Under Mr. Vernon's scheme, almost all the tenants will be eager to buy, but all will not be equally industrious. If they cannot meet the interest on their instalments, which ought to be most rigorously exacted, they must sell, and in nine cases out of ten, they will find their best purchaser in their nearest neighbour. It will be Pharaoh's dream reversed. The fat kine will swallow up the lean ones.

The process will indeed be a slow one, and so much the better. There is no estate in Ireland which, if sold to the tenants, would not exhibit a proprietary with holdings considerably larger than the average size of peasant properties in France or Belgium, and the magic of ownership will convert many a now careless tenant into a thrifty proprietor.

This has been the effect of even the divided ownership which the Ulster Tenant-right confers. The holdings in Ulster are the smallest in Ireland. In 1864 I had a controversy with Lord Dufferin in the *Daily News*, arising out of his celebrated letters in the *Times*. My letters were afterwards published in a pamphlet, in which I find the following:—

“I come now to Lord Dufferin's third argument, pronounced to be unanswerable by the *Times*, that if insecurity of tenure produces emigration, there ought to be hardly any emigration from Ulster, where a custom of Tenant-right gives that security, whereas the emigration from Ulster is in excess of that from Connaught and Leinster, and as 23 to 27 when compared with all Ireland.

“I turn to the Statistics,* and I find that the total number of farms above one acre decreased between 1841 and 1864 by 15·1 per cent. in Leinster, 29·9 per cent. in Munster, 22·6 per cent. in Connaught, and only by 14·2 per cent. in Ulster. So that, other things being equal, though there is little difference between Leinster and Ulster, the emigration of occupiers from Munster was about two to one, from Connaught, as three to two compared with Ulster.

“But other things are not equal. It is not fair to take Leinster into consideration at all, for there, owing to the general nature of the soil, better adapted for grazing than tillage, a good deal in the way of consideration had been effected before the potato famine. It should be remembered that if the smallness of the holdings were the sole cause of the emigration of the occupiers, it ought to have been nearly twice as great from Ulster as from the other provinces, as the following figures from the Statistics will prove:—

“Leinster: area, 4,876,211 acres; number of holdings in 1864, 104,438.

“Munster: area, 6,096,990 acres: number of holdings, 114,921.

“Ulster: area, 5,478,867 acres; number of holdings, 203,066.

“Connaught: area, 432,043 acres; number of holdings, 120,698.

“Thus, according to Lord Dufferin’s argument, the emigration of farmers ought to have been from Ulster at least two to one as compared with Munster, *whereas the proportions are reversed*. Has tenant-right nothing to do with this?

“Again, Lord Dufferin states that the emigration from Ulster is as 23 to 27, compared with the other provinces, and therefore he argues that Tenant-right has nothing to do

* The Registrar-General’s Returns for 1864.

with it; but as he mixes here the emigration of the labourers with that of the farmers, he does not state the case quite fairly. I will, however, take it in this way (though it has only an indirect bearing on the argument), and what is the truth? The decennial census of 1861 (the last), tells us that the population of Ulster in that year was 1,914,255, exceeding that of Leinster by 456,843, of Munster by 400,697, and of Connaught by 1,001,247; and yet, with this enormous excess of population, the proportion of its emigrants to the total population of Ireland is less than the average from the other provinces."—*Irish Peers on Irish Peasants*, p. 20.

Thus then Ulster, the province of the smallest holdings and largest population, came safest out of the famine. I do not mean to say that its comparative prosperity is solely owing to the divided ownership which Tenant-right confers, but I cannot help thinking that it has a great deal to do with it. The price it fetches in the market—sometimes in the case of small holdings what the fee-simple would sell for—shows how highly it is prized. How bitter then must be the disappointment if the Bright Clauses, which held out promises to the small holders of something far better than the Ulster Tenant-right, to which there is more than one objection on economical grounds, should remain, as they have proved hitherto, almost a dead letter.

But it may be said, "This plan of devoting the Church surplus to the creation of a peasant proprietary will work very slowly. Extend the Ulster Tenant-right to the whole of Ireland, and you will have results similar to those in Ulster."

If Mr. Vernon's or some similar plan be adopted, we may expect a sensible addition to the number of peasant proprietors every year. Since the passing of the Irish Church and Land Acts, some eight or nine millions worth of property has

been sold. Had only half the property disposed of by the Landed Estates Court been sold to the tenants, it would have given—on the supposition that the holdings were of the same average size as on the properties disposed of by the Church Commissioners—from fifteen to sixteen thousand peasant proprietors to this date. The moral and economical effects of such a body of men scattered through the different counties of Ireland would be by no means inconsiderable. At the same rate, the six million of Church surplus would give us in six years about eighteen thousand more. By that time the State would be in a position to judge of the result of the experiment, and to continue it or not at its pleasure.

The legalization of the Tenant-right in Ulster affords no grounds, either on the score of logic or justice, for its extension to the rest of Ireland. All the Land Act has done is to convert a moral obligation, voluntarily undergone from time immemorial, for causes that (after all that has been written about them) are still mere matters of conjecture, into a legal obligation. The Legislature found this divided ownership an existing fact, and gave it the force of law. But to ratify a relation existing between persons who had themselves established it, and to force the same relation upon other persons amongst whom it had never existed, and of whom one portion would indignantly repudiate it as a gross violation of the rights of property, are two very different things.

But the more determined the Legislature is to resist a claim of this kind, and to take its stand upon the Land Act as the final expression of the principles that ought to regulate the relations of landlord and tenant in Ireland, the more incumbent the obligation to remove all obstructions to the free working of the Act.

Some would draw a hard-and-fast line, below which no tenant should be assisted by the State to become a proprietor.

When it is recollected that half the holdings in Ireland are rated under ten pounds, it will be at once seen how invidious the adoption of such a line would prove. Anyone acquainted with the North of Ireland, must have witnessed the comfort and tidiness pervading many an humble homestead of two or three acres, of which the occupier makes his living partly by the tillage of his little plot, and partly by labour. It is only by the conversion of these small tenants into proprietors that, for a long time to come, at least, we are likely to see any improvement in their habitations. Neither the large landlords over their vast but generally encumbered estates, nor the small farmers, can afford to build cottages for them. Convert these small holders into owners, and we may infer from the sales already made to some of their class by the Church Commissioners, that many of them will strain every nerve to improve their present wretched habitations, or even to build new ones.*

One witness, Sir F. Heygate, suggested that the limit should be the ability to keep a team. This would exclude the great body of the Irish tenantry, and create quite an unnecessary amount of disaffection that would provide a rich harvest for our professional agitators. On very small farms, it is far better economy to keep only one horse and plough in co, as it called, with a neighbour, which is often done, or even to hire horses, than to keep a team. Besides, the use of hired machinery is gradually spreading in Ireland, even amongst the small tenants. In France, it is stated in Mr. Cliffe Leslie's essay in the Cobden Papers, that more machinery is used in the department of the Lower Rhone, where the holdings are the smallest in France, than in any other district.

* See Mr. Shaw Lefevre's notes of a visit to some Church lands where tenants have bought their holdings.—*Journal of Statistical Society of Ireland*, Part 52, p. 183.

I would ask those who object to the conversion of the Irish tenants into proprietors on account of the smallness of their holdings, to consider the case of Belgium. There, we learn from the "Statistique Annuaire de la Belgique, 1876," that the number of landowners is 1,142,222 against 12,000 in Ireland, and the average size of their properties is $6\frac{1}{2}$ acres! The holdings in Armagh are the smallest in Ireland, and their average size is about 14 acres.

But then there is the second objection I have noted—the danger of subdivision, now only checked by the landlord's *veto*. More than one witness agreed before the Land Act Committee with me,* that this danger was in a great degree imaginary. Its apprehension springs from the state of things before the potato famine, when the whole social system was based upon the potato. But all confidence in the potato is gone. The famine, and the consequent emigration, have, in a great measure, given a new direction to the views of the Irish peasant as to making provision for his family. The Irish in the colonies are exercising a centrifugal force on the home population. It is the general wish of the head of a family now to send all his sons but one to America or Australia, and to keep the farm in the old country for that one, and, if possible, to add to it, which, where Tenant-right exists, he has often an opportunity of doing. Cases of subdivision will, of course, occur, as there will always be improvident men in every class; but anyone who has observed the great change of ideas with regard to it among the mass of the farming class, may safely prophesy that they will be few, and, as bearing upon the general question of a peasant-proprietary, quite insignificant. Moreover, it should be remembered, that as long as the peasant proprietor remains indebted to the State, he will not be allowed to subdivide.

* I was examined before the Committee.

I come now to the third objection, that three-fourths of the purchase-money is too large a sum to be advanced by the State—that two-thirds, as under the Land Act, is quite sufficient.

One object is, when an estate is to be sold, to induce as many tenants as possible to purchase, in order to lessen the difficulty of dealing with the residue.

Besides, as Dr. Handcock remarked in his valuable evidence before the Committee, “where the State, under the Irish Church Act, allows 6,000 tenants to owe three-fourths of the money, it is an invidious thing to have a different scale under another Act.”

If the purchaser were likely to find himself unable to pay the interest on the advance, *i. e.*, $5\frac{1}{2}$ per cent., which would repay interest and principal in thirty-five years, there might be some force in this objection; but as regards his yearly payments, he will be in about the same position that he now is in with regard to his rent. Hear Dr. Handcock again:—

“Take the case of a tenant at £20 a year. If he bought for twenty-three years’ purchase, we will say, under the Church Act, then the annuity he would have to pay would be £18 19s. 6d. for thirty-two years.” Dr. Handcock’s evidence, p. 12.

Again, p. 54:—

Mr. Verner.—“Do you think it advisable that people should be encouraged to hold land under heavy debt or mortgage, such as their farms are under by purchase from the Church Commissioners? If it is an annuity for thirty-five years, it is very little more than a rent.”

Just so—with the prospect of exemption in thirty-five years, or, by dint of hard industry, sooner; and what a stimulus this would give to good farming may be conceived, when we reflect upon the effect of even a divided ownership in Ulster, where the incoming tenant has in many cases borrowed the

greater part of the money necessary to purchase the tenant-right on much harder terms than those now granted by the Church Temporalities Commissioners.

The fact is, the terms are so favourable that it will be generally more advantageous for the purchaser to borrow the money, and to employ his capital in the cultivation, than to invest it in the purchase of his property.

I come now to the fourth objection—the alleged difficulty about the repayment of the instalments, and the invidious position in which the State would be placed with regard to them in unfavourable years, especially in the event of another famine.

As I have already said, the State should enforce punctuality in the repayment of the instalments, and they will have no difficulty in enforcing it. I know of no instance in which public odium has attached to a landlord for insisting on the payment of a just rent; and those estates are the most prosperous, and those tenants most contented, where punctual payments have always been the rule. What Irish tenants have always objected to, as regards rent, is the element of uncertainty, which, in the case of these purchases, will have disappeared for ever. These instalments should be treated as a land-tax or quit-rent, and, under ordinary circumstances, as rigorously exacted, where rigour is necessary, which will be seldom. Should a peasant-proprietor be unable to meet an instalment, he will be in a much better position than a tenant unable to meet his rent, for he will have power to sell—and land remaining at the same value as when he bought—at an advantage greater or less in proportion to the number of instalments already paid. The contemplated commission should have power in such a case to sell his property, or to allow him to sell it in lots to suit the adjoining owners, with a view to squaring their holdings, but not otherwise to subdivide it.

This would, in most instances, ensure a higher price for the vendor.

As to unfavourable seasons, the peasant-proprietor, in common with everyone else who lives by farming, must take his chance. Seasons, good and bad, run in cycles. He must take the rough with the smooth, and make the good seasons pay for the bad. There has been very little rent lost on fairly-rented estates in Ireland since the potato famine. On the large estates, of which I have had the management for the last twenty years, not a penny.

In the event, indeed, of another famine similar to the last, which, owing to the different system now established in some places, and gradually extending into others, is highly unlikely, the instalments could not be in all cases punctually met. The State would lose, but nothing like to the extent it lost by the last potato famine, during which a fourth part of the population disappeared, and three thousand landlords were swallowed up, almost at one gulp, by the Encumbered Estates Court. The State, taken by surprise, lost millions in advances for unprofitable relief works, which were never repaid. But another famine would find both the State and the country better prepared. And, as I have already proved, Ulster, the province of the largest population and smallest holdings, suffered least, owing to the superior energy of the small farmers there—the result, as I contend, in some measure, of the divided ownership in the soil. A still stronger stimulus will be supplied by the absolute ownership, and, therefore, we may expect that the peasant-proprietors will, in the event of another famine, be better prepared to meet it than the small tenants who have not the same motives for exertion.

Still, there is no State insurance against a famine, but any temporary loss from the non-payment of the instalments during

its continuance will be more than repaid by the moral and economical gain to society, for which the State exists, through the creation of a peasant-proprietary—the moral gain, from the introduction into the community of a class who will no longer look to revolutionary agitators for the realizations of hopes never to be realised—the economical gain in the increased productiveness of the soil, resulting from the certainty to the owner of the full and permanent enjoyment for himself and his children of the fruits of his industry.

It is not always, alas! in Ireland that justice and sound policy demand the gratification of a popular cry. In this case, it is not only the bounden duty of the State to gratify the hopes which its own act has created, but it would be sheer folly in a Conservative Government to feed the agitation on the land question with a substantial grievance.
