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NOTES

ON

LORD CARLINGFORD'S REPORT.

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LORD CARLINGFORD'S REPORT.

THE Irish Land Act of 1870 was not the exclusive work of Mr. Gladstone, with whose name it is inseparably associated. He was assisted, among others, by Lord Carlingford, better known as Mr. Chichester Fortescue, who was then Chief Secretary for Ireland. It was, therefore, only natural that, when Earl Spencer resigned his position as one of the Royal Commissioners on Agricultural Distress, Mr. Gladstone should nominate Lord Carlingford as his successor; more especially as the Land Agitation in Ireland had then begun to assume formidable proportions, and fresh legislation on the subject was already discernible in the near future. Mr. Stansfeld also was placed on the Commission, at the same time, in succession to Mr. Goschen.

As might have been anticipated, these new members did not coalesce very readily with the majority of the Commissioners; and, accordingly, when the Preliminary Report, dealing with the Irish branch of the subject, was presented to Parliament in

House of the Oireachtas

January last, we do not find their names among the signatures. 'Not feeling themselves able entirely to concur with their colleagues in their Report,' Lord Carlingford and Mr. Stansfeld prepared a separate Report of their own. The Report of the Commissioners is signed by thirteen of the members, including the Duke of Richmond and Gordon, Chairman; that of the dissentient minority has six signatures appended. It is this latter document which we now propose to examine. For convenience sake we shall henceforward speak of it as 'The Report.'

The Report opens by enumerating the most important causes of agricultural distress in Ireland, 'capable of removal or mitigation by legislative means,' which it declares to be—

'(1.) The extreme smallness of many of the agricultural holdings.

'(2.) The overcrowding of population in districts of poor land, where the occupiers often depend for a livelihood upon employment during a portion of the year in Great Britain, or in other parts of Ireland, the partial failure of which has, of late, reduced them to a condition which, without charitable efforts of a remarkable kind, would have been one of starvation; and above all—

'(3.) The general feebleness of industry and backwardness of agriculture, produced largely, as we see reason to believe, by a sense of insecurity which, notwithstanding the effects of the legislation of 1870, still prevails among the occupiers of land

in Ireland, tending to paralyse energy, to hinder improvement, and to produce, too often, feelings of dangerous discontent.'

No one will deny that the first two of the causes here specified contributed very largely to the agricultural distress which prevailed in Ireland during the winter of 1879–80; though few will be disposed to coincide in the opinion that they can be removed, or materially mitigated by legislative means. Indeed the Report, as we shall see, does not attempt to propose any special legislation respecting them; it is taken up altogether in dealing with the third cause, which it justly regards as 'the most difficult and complex portion of the whole subject.'

That industry is feeble in many parts of Ireland, and agriculture backward, are facts with which we are but too painfully familiar. No one can travel through any considerable portion of the island without seeing abundant proofs on every side. But that this 'feebleness' and 'backwardness' are due largely to a 'sense of insecurity', prevalent among the occupiers of land, cannot be so readily admitted.

Granting, for the present, that such 'a sense of insecurity' does exist in some localities, we would ask can it fairly be regarded as the sole, or even as the chief cause of the feebleness of industry and backwardness of agriculture—can no other explanation be given? Have ignorance and sloth contributed nothing to the result? Have obstinate adherence to traditional methods however defec-

Houses of the Oireachtas

tive, simply because they were old, and prejudiced hostility to modern improvements, simply because they were new, had no part in retarding agriculture? Is political agitation, continued through successive generations, which has debauched the minds of the people, teaching them to look to Parliament, instead of relying on their own energy and skill for the improvement of their physical condition, to be left wholly out of account as an efficient cause of the feebleness of industry.

And further, are active industry and good farming to be uniformly found in those cases where no 'sense of insecurity' operates to 'paralyse energy and hinder improvement'? Are lease-holders, even for long terms, always intelligent and industrious farmers? Are free-holders, or peasant proprietors, uniformly characterized by energy and skill in the management of their holdings? There is at this moment a number of tenants in perpetuity, and of peasant proprietors in Ireland, quite sufficient, if their condition were carefully and honestly investigated, to prove that, whether or not a sense of insecurity paralyses exertion and hinders improvement, the fullest sense of security does not evoke skill or stimulate industry? It is simply notorious that, at least among the smaller Tenants who form the vast majority in Ireland, the worst managed farms are those held under lease; and that settlements of peasant proprietors, such as that at Ardfert for example, are generally warrens of paupers. Through three of the provinces of Ireland, if we

Houses of the Oireachtas

find a district characterized by comfortable houses, suitable offices, well divided fields, regular fences, and good husbandry, we may be perfectly certain that the inhabitants are neither lease-holders nor peasant proprietors, but yearly tenants, who owe their prosperity and comfort principally to the enlightened liberality and fostering care of the owner of the soil.

In the remaining province the state of things is different. Through great part of Ulster, but by no means universally, we do find industry and intelligence, and, foremost of all, thrift; but these qualities are inherent in the race to which the majority of the inhabitants belong; and are not the result of tenant-right, which, in its present form, is of comparatively recent growth, and which has never been recognised on some of the most prosperous estates. The existence of manufactures, which afford local employment for the surplus population and provide a local market for many agricultural products, is another element in the prosperity of Ulster, which the Report fails to notice, far more efficacious than the prevailing conditions of land tenure in that province. But there are parts of Ulster where there are no manufactures, and where the population is purely Celtic, and in these there is no greater strength of industry or forwardness of agriculture than in other parts of Ireland.

The truth is, that a 'sense of insecurity' is rather the excuse for 'feebleness of industry and backwardness of agriculture' than their cause.

Irishmen are not more ready to admit their faults than the inhabitants of other countries, or less prone to shift to others the blame which properly belongs to themselves; and, having been told by successive generations of agitators that they are the 'finest peasantry in the world,' and that their impoverished condition is due wholly to the tyranny of their 'oppressors'—meaning the people and Parliament of England—they are fain to accept, possibly to believe, the pleasant hypothesis; and to seek in political agitation the remedy for their 'grievances,' which, all human experience teaches, is to be found only in energy, industry, and perseverance. Hence, the theory that the backward state of agriculture in Ireland was caused by a sense of insecurity among the occupying tenants was pretty certain to be supported by evidence before the Royal Commission; and the Report proves that Lord Carlingford and his co-signatories accepted it without hesitation. Let us not, however, be misunderstood; we do not assert that there is no 'sense of insecurity' among Irish tenants; we cannot undertake to answer for the 'sense' in which any body of men may choose to view their position; all we say is, that the 'sense of insecurity' is not the sole, or even the principal cause of 'the general feebleness of industry and backwardness of agriculture' that prevail in Ireland; and we may add the expression of our belief that it is beyond the power of legislation either to improve agriculture, or to stimulate industry.

House of Lords

The Report next proceeds to account for the 'sense of insecurity,' which it attributes partly to 'the fear of capricious eviction,' and partly to 'the fear of an increased rent.' There is no positive assertion that capricious evictions actually take place; but it is confidently stated that 'the practice of raising rents at short and uncertain intervals prevails to an extent fully sufficient to shake the confidence of the tenants, and to deter them from applying due industry and outlay to the improvement of their farms.' This is a very different statement from that in the earlier part of the Report which represented the 'sense of insecurity' as enfeebling industry and retarding agriculture. A man may be very industrious, he may be a skilful agriculturist, and he may cultivate his land to the best advantage, and yet be unwilling to invest money or labour in the 'improvement of his farm.' In fact, in the passage just quoted as to the effect of a 'sense of insecurity' in preventing improvements, properly so called, Lord Carlingford merely states a particular case of the general proposition that men will not invest money without security, or the prospect of some equivalent advantage. We are not going to dispute the truth of so self-evident an assertion; but we cannot avoid remarking on the inconsistency which represents a 'sense of insecurity' as paralysing industry, and deterring tenants from expending money on the improvement of their farms; and, in the very next sentence, affirms that all existing improvements have been made by those

Houses of the Oireachtas

same tenants. Both statements cannot be true; and if it be the fact, as alleged, that the existing improvements were effected by the tenants, it follows from the principles laid down by Lord Carlingford that they must have been remunerated, in some form, for the outlay of their labour or capital—and this is precisely what took place. The tenant got the land at a rent below the value, on condition of executing some necessary work, either wholly or partially at his own cost; it may have been to build a house or an out-office; to make a fence, or deepen a watercourse; but, whatever it was, the tenant was indemnified by the reduced rent, and the work was thus done virtually at the landlord's expense. 'Compensating periods,' of which Lord Carlingford speaks as part of the 'English system,' and as 'unsuited to Ireland,' have been long familiar in this country. Formerly, it was quite a common practice to give reclaimable land rent-free for a certain number of years, after which it became subject to a stipulated rent. Much waste land was brought into cultivation in this way, and neither the tenants who reclaimed it, nor their successors in title, ever thought of questioning the Landlord's right to the rent till the apostles of the new Land Gospel appeared upon the scene. Similarly, many of the existing improvements were effected by tenants who held under leases, and who may be supposed to have counted the cost before undertaking them. They were compensated, according to their own estimate, by the length of time their leases had

Houses of the Oireachtas

to run; and when the leases expired they had no further claim.

Although it may be useless now to re-open the controversy, we cannot allow Lord Carlingford's assumption that the improvements on farms in Ireland were executed, for the most part, by the Tenants, to pass unchallenged. No doubt the Tenants did a great deal of the actual work, for which they were compensated in the manner sketched above; but, in many cases, the Landlord effected the improvements himself; and in the majority of instances he contributed to their cost, either by actual payment, in money or material, or by allowance in the rent. Recent inquiries made by the Land Committee, the results of which have been published (*Facts and Figures*), revealed the fact that the existing agricultural improvements were the work of the Landlords to a much larger extent than was generally supposed; and persons who know Ireland are well aware that, as a rule, the so-called 'improvements' effected by Tenants added very little to the letting value of a holding, and nothing to its productiveness. Lord Carlingford must know these facts, and, knowing them, it is scarcely candid of him to represent that the 'dwelling-houses, farm buildings, and other elements of a farm, including often the reclamation from the waste of the cultivated land itself, have been, for the most part, the work of the Tenants.' But his lordship had made up his mind to discard the Land Act of 1870, and to adopt the 'platform'

of the agitators; and he could not decently do so without some show of argument: accordingly he selected the 'sense of insecurity' as the groundwork of his new policy—and having established its existence, presumably to his own satisfaction, he proceeds to enlarge upon the theme, in support of the further legislation which The Report recommends.

Before entering upon the consideration of the changes in the law that are suggested, we must turn aside for a little, to direct attention to a very important difference of opinion that exists between this Report and that issued by Lord Bessborough's Commission. In the latter Report much space is devoted and much trouble taken to establish for the Irish Tenant a traditional 'possessory right' in his holding—in other words, a joint ownership with the Landlord—and upon this 'possessory right' the proposals of the Bessborough Commission in favour of the Tenant are based. It is not necessary that we should now discuss the arguments, or rather the assertions, of the Bessborough Report in support of this alleged 'possessory right'— that has been done in a recent publication by the Land Committee (*Foregone Conclusions*)—but we must refer to one point on which great stress is laid in that Report; namely, that the Land Act of 1870, by granting compensation for disturbance, expressly recognised the existence of the 'traditional possessory right' claimed for the Tenant, with its necessary consequences of 'Fixity of Tenure' and

'Free Sale.' Lord Carlingford, himself one of the authors of the Land Act of 1870, categorically denies the truth of this assumption, and refutes it by arguments which are simply unanswerable. He thus explains the 'principle upon which the third or disturbance section of the Land Act is based.'

'That important section endeavours to give increased security of tenure to the small occupier, whose tenancy is unprotected by custom, by requiring the evicting landlord, at the discretion of the Court, to make him compensation for the loss sustained by him in quitting his holding,' to use the words of the Bill as introduced into Parliament. Such payments have always been felt to be necessary, and have been made by humane Landlords, in order to relieve the small Tenant, who has lost his home and occupation, and enable him to seek a livelihood elsewhere, by emigration or otherwise. But that the loss contemplated by the section is not that of the value of the tenancy for the purpose of sale to a successor is evident from the Act itself, which calculates the compensation, not by the value, but by the rent of the holding, and where the rent is found to be "exorbitant," gives compensation even where it is unpaid. If this were otherwise, the rack-renting Landlord would escape the penalty which the law intends to be a check upon capricions eviction, having by his own act, in imposing an excessive rent upon the tenant, destroyed or impaired the saleable value of his interest.'

House of the Oireachtas

Lord Carlingford might have added, what is to some extent implied in the foregoing extract, that, by restricting the right of compensation for disturbance to one class of Tenants; by establishing among them a sliding scale, varying with the valuation; by fixing a maximum amount of compensation; and by excluding all Tenants whose holdings were valued above a certain amount from participation in the benefits of the section, the Legislature had indicated with sufficient clearness the principle on which it was founded, namely, by the imposition of a pecuniary fine, varying inversely as the valuation, to prevent Landlords from 'capriciously evicting' the poorer Tenants on their estates. No one outside the Bessborough Commission ever dreamed of wresting the 'Disturbance Clause' of the Land Act of 1870 into an argument in support of 'possessory right,' traditional or otherwise, inherent in the Tenant; but as Lord Bessborough has done so, it is well to have the weightier authority of Lord Carlingford so definitely expressed on the opposite side; and the more so, because Mr. Gladstone, in his new Land Law Bill, appears to have adopted the theory of the Bessborough Report. We shall be curious to see how Lord Carlingford will deal with this branch of the question, when the Land Law Bill reaches the House of Lords. Fortunately for him, consistency, either in policy or argument, has followed Astræa to the stars; but it will tax his ingenuity to establish for the Irish Tenant a 'traditional possessory right' to joint ownership of the

land, of the existence of which he was unconscious only three months ago.

We must not omit to notice that the Report we are considering, equally with that of the Bessborough Commission, pays a just tribute to the manner in which Irish Landlords deal with their Tenants. Speaking of the fear of increase of rent, it says—'We find that upon many, and especially the larger estates, the rents are moderate and seldom raised, and the improvements of the tenants respected,' and again, after describing the nature and effect of the 'sense of insecurity,' which it alleges to be so general as to call for legislative interference, the Report goes on to say—'We desire to repeat that upon very many estates the condition of things thus described is not to be found.'

But none the less does Lord Carlingford go in for the 'Three Fs,' as the basis of the legislation recommended in the Report. It is pitiable to reflect upon the poverty of expedient displayed in dealing with the Irish Land Question. We have now before us three distinct documents professing to exhaust the subject, all emanating from the Government or its declared adherents. We have the Bessborough Report, the Carlingford Report, and the Land Law Bill. In the preparation of these documents some thirty or more of the foremost members of the great Liberal party have taken a direct and active part, but they have not advanced a single step beyond the formula enunciated by a country priest, with a taste for alliteration, on a vil-

House of the Oireachtas

lage platform ever so many years ago. 'The Three Fs,' in one shape or another, is the sum and substance of each and every one of them; the only difference being the order in which they are taken, a difference in itself suggestive of the confusion of idea and vacillation of opinion that existed among their framers. Thus Lord Bessborough starts with 'Possessory Right' and 'Fixity of Tenure,' deducing from these premises 'Fair Rents' and 'Free Sale' in systematic order. Lord Carlingford repudiates 'Possessory Right,' but finds in a 'Sense of insecurity' arising from the 'fear of an increase of rent,' sufficient warrant for his acceptance of the popular formula, and leads off with 'Fair Rents,' followed by 'Free Sale' and 'Fixity of Tenure.' Mr. Gladstone, in the Land Law Bill, does not condescend to argue the case, even to the modest extent of a preamble, but plunges at once *in medias res* with 'Free Sale,' in the foreground, closely attended by 'Fair Rents,' and waited on, in the distance, by 'Fixity of Tenure,' somewhat disguised, but still plainly recognisable. Beyond the magic triad none of them can venture.

It is difficult to ascertain the precise meaning attached by Lord Carlingford to the term 'Fair Rent.' The Report does not attempt to give any definition, nor does it lay down any principles for ascertaining the amount of the 'Fair Rent,' from which its relation to the existing rent could be deduced with anything like certainty. We quote the passages bearing on the point:—

'Without referring to the present deplorable, and, it is to be hoped, temporary condition of many parts of Ireland, and without dwelling upon the lawless restraints of the legal rights of Landlords which are known to have often prevailed, we are convinced that, in ordinary times, freedom of contract cannot be said in any real sense to exist between the majority of Irish occupying tenants and their landlords. We think, therefore, that some public authority may legitimately intervene between the parties for the purpose of settling, upon the appeal of either of them, the question of rent. Evidence which we have received of the successful action of the Land Courts, both in Ulster and the other provinces, in ascertaining and indirectly fixing the fair rent of a holding under certain provisions of the Land Act, appears to us to be very encouraging, and leads us to believe, in common (as we have found) with many good judges in Ireland, that some such tribunal, armed with larger authority, would succeed with much less difficulty than might be supposed in exercising, with substantial fairness, a direct arbitration on this subject.' And further on:—

'In fixing the fair rent of a holding, the Court should not take into account buildings, fences, roads, or other such permanent improvements, which had been decided to be the property of the tenant; and in the case of reclamation, or other works developing the capabilities of the soil, the Court should not take them into account, unless

satisfied that the Tenant had enjoyed them for a period and at a rent admitting of full reward for his labour and outlay.'

These passages contain all that the Report has to say on the subject of 'Fair Rent'; they are studiously vague and indefinite; but they leave us under the impression that the 'Fair Rent' contemplated by Lord Carlingford is one that would be fair to the landlord as well as to the tenant. It is to be carefully remarked that there is no suggestion that the rent should be reduced in proportion to the value of the 'possessory right,' as recommended by the Bessborough Commission; or to the new scale of enforced preliminary compensation for a disturbance which has been rendered impossible, as provided in Mr. Gladstone's Bill: there is no reference even to payments for tenant-right or good-will, made by the tenant on incoming. Lord Carlingford knew well that such payments are altogether outside the existing rents; and that it would be open robbery of the landlord to reduce the rent, subject to which the tenant had purchased the interest in the holding, by an amount equivalent to the yearly value of the purchase-money. Hence there is no trace of a suggestion that the rent should be estimated with reference to the value of the tenant's interest; or even with reference to the value of the improvements, except in so far as they had been actually decided to belong to the tenant, and as he had not been compensated for them by the enjoyment of the farm for a sufficient time at a proportionate

rent. Even on the question of the Court, objectionable as the establishment of such a tribunal for the settlement of rent would be, the Reports seems to regard it only as a last resort, and has the fairness to throw it open to the landlord as well as to the tenant.

But though the Report appears to fall far short of the revolutionary theories on the subject of 'Fair Rent' propounded in the Report of the Bessborough Commission and adopted in Mr. Gladstone's Bill, it comes fully up to the mark on the question of 'Fixity of Tenure.' The following are the conclusions arrived at :—

'A further and very difficult question follows inevitably, as it seems to us, upon proposals to enable a public authority to fix the amount of rent between landlord and tenant; the question whether it would be possible, under such circumstances, to leave the *ultima ratio* of eviction absolutely in the landlord's hands, subject only to such compensation to the tenant as a Court might award. It is to be feared that the right of appealing to a Court on the subject of rent would be one which in ordinary times many occupiers would not venture to exercise (whether their fears were well-founded or not), if the uncontrolled power of eviction remained with the landlord.'

'Looking at the question, therefore, from this point of view, and considering the circumstances and feelings of the Irish tenantry, and also, we fully believe, the true interests of the landlords them-

House of the Oireachtas

selves, we are of opinion that the principle of fixity of tenure, subject to an appeal to the Land Court, should form part of any fresh legislation on the relations of landlord and tenant in Ireland.

'It might, we think, be provided that a landlord should not be at liberty to use the ordinary powers of the law for the removal of a tenant from his holding, except in the cases of non-payment of rent, sub-division, or waste.

'If on other grounds he desired to change a Tenant, with whom he was unable to part amicably, or to take portion of his estate into his own hands, he might be required to apply to the Land Court, which should not give its sanction to the use of the legal process of removal unless satisfied that good and reasonable cause had been shown, connected with the legitimate interests of the landlord's estate, or the conduct of the tenant.'

There is neither vagueness nor ambiguity about these sentences; their meaning is plain and plainly expressed. Let a Tenant but once get into possession of a farm, and he acquires, with the possession, the absolute right to continuous and perpetual occupancy, provided only he pays the rent. The Report makes the usual feint of reserving to the Landlord the right of re-entry in case of sub-division or waste of the holding by the Tenant, and the privilege of applying to the Land Court for liberty to bring an ejectment for good and reasonable cause, connected with the legitimate interests of his estate, or the conduct of the Tenant. These are plausible reserva-

tions, but they are wholly illusory, and no man knows this better than Lord Carlingford. Commenting, in 1870, in the House of Commons, on a somewhat similar proposal, his Lordship—then Mr. Fortescue—said—

'The proposal of his hon. friend would certainly be viewed by the Irish tenants as equivalent to perpetuity of tenure subject to periodical revaluation. He proposed, it was true, to attach to it three conditions, under either of which the tenure was to be forfeited—namely, non-payment of rent, sub-division of the holding, and serious waste of the farm. But, for his own part, he must declare that he was no believer in the possibility of enforcing these conditions. When once the perpetuity of tenure was acceded which his hon. friend proposed, it would, in practice, be absolutely impossible to enforce any restriction, and still less any forfeiture, for any cause short of non-payment of rent. His hon. friend believed that the thing was possible; but he certainly could not agree with him. To suppose that, under such circumstances, the landlord would retain in his hands any practical power of preventing subdivision of the lands was, according to his knowledge and experience of Ireland, an absolute delusion' (3 Hansard CCI. 992).

Such was Lord Carlingford's opinion in 1870, clearly and confidently expressed. Have Irish tenants, in the ten years that have since elapsed, become so submissive to the law that they could now be bound by legal restrictions that were then

declared to be practically inoperative to restrain them? Even the single condition of forfeiture which Lord Carlingford believed could be enforced, namely that for non-payment of rent, is now practically in abeyance. And, if statutory rights, reserved by express enactment, are thus impossible of assertion before the ordinary legal tribunals, what chance would a Landlord have of being listened to in the Land Court, when seeking to obtain permission to proceed against his Tenant on such trivial grounds as the legitimate interests of his estate, or the conduct of his Tenant?

But it is chiefly to the extension of the right of 'Free Sale' that the Report looks for anything like a permanent settlement of the Irish Land Question. On this point the language is clear and explicit.

'We believe that the true mode of securing to the Irish Tenant, both in fact and in feeling, the value of the interest which he has created, inherited, or purchased, as well as the strongest stimulant to improvement for the future, will be found in the legal recognition of that usage of native growth, already so familiar in Ireland, by which a tenant assigns his interest to a solvent successor, or disposes of it to the Landlord at the price which a solvent successor would give.'

Lord Carlingford does not base his recommendation on any such unsubstantial grounds as the imaginary 'possessory right,' invented by the Bessborough Commission. His argument—whether

sound or otherwise does not matter for the present —is that 'it is to the Tenants we must generally look for better dwellings, better farm buildings, better labourers' houses, better fences, and for the reclamation and permanent improvement of the soil. And if this be so, it becomes of the last importance, as a matter of public policy, to put the Tenant in a position which will furnish him with adequate and even ample inducement to devote his industry and capital to the land of another.'

This can best be done, in Lord Carlingford's opinion, by giving the Tenants the right of 'Free Sale,' which the Report describes as 'a natural growth of the circumstances of Ireland, always ready to spring up wherever it is respected, or even tacitly permitted.' The line of argument pursued, though starting from entirely different premises, is much the same as that adopted by the Bessborough Commission; and, if not exactly an argument in a circle, is uncommonly like one. Lord Carlingford first postulates a 'sense of insecurity' prevalent among Irish Tenants, which he ascribes to 'the fear of an increase of rent.' He proposes to remove this 'sense of insecurity' by establishing a Court to fix the 'Fair Rent'; and, lest the tenant might be deterred by fear of eviction from entering the Court, he proposes to confer upon him 'Fixity of Tenure' likewise. But since it is impossible to provide 'Fair Rent' and 'Fixity of Tenure' for the Tenant, without depriving the Landlord of all effective control over his property,

Houses of the Oireachtas

and reducing him to the position of a mere rent-charger, or annuitant; and since a Landlord in such a position could have no possible inducement to expend money on the improvement of his estate, it follows that, if improvement is to be effected at all, it must be by the Tenant; and to induce him to expend the necessary capital or labour, he must be invested with the rights of ownership of which the Landlord has been stripped. Such is the chain of reasoning developed in the Report; and, briefly stated, it amounts to this, that, in order that Irish Tenants may feel secure in their holdings, Irish Landlords must be expropriated; or, as Mr. Parnell more forcibly expresses it, 'Landlordism must be abolished.'

Lord Carlingford speaks in glowing terms of the benefits conferred on Ulster by the existence of tenant-right in that province. We cannot accept the theory that the prosperity of Ulster is due to the existence of tenant-right, any more than that the poverty of Connemara is caused by its absence. We regard tenant-right as the effect, not the cause, of the prosperity that exists in the north of Ireland; the 'natural growth,' as the Report says, 'of the sound relations which have long prevailed between Landlord and Tenant in the best parts of Ulster.' But even if it could be shown, as assumed in the Report, that tenant-right had conferred on that Province all the advantages claimed for it, it does not follow that it would be equally successful elsewhere. We might quote Lord Carlingford's opinion,

Houses of the Oireachtas

given in 1870, to prove that the extension of the Ulster Tenant-Right to the other provinces of Ireland would be impossible, and that, even if possible, would not be beneficial; but it is not necessary, for the system of tenure which the Report recommends, and which the Land Law Bill proposes to establish in a much more advanced form, is not the Ulster custom at all, but something altogether different. There is no analogy between a custom under which rents are a matter of contract between Landlord and Tenant, under which the Landlord can, if he chooses, resume possession of his land, and a system which provides for the adjustment of rent by a Court, and which guarantees fixity of tenure to the Tenant. The only element common to both is the privilege of sale—the privilege which interferes least with the property of the Landlord, and which is limited by the right of preemption secured to him—and it is inconsistent and absurd for Lord Carlingford to argue from the results of the custom which has spontaneously grown up in Ulster, that corresponding results will attend the legal establishment of an entirely different system of statutory tenure over the whole of Ireland. We believe the results will be very different; we believe that, if the present system of tenant-right in Ulster be swallowed up in the new statutory tenure of which 'Fair Rents' and 'Fixity of Tenure' are to be the leading features, the effect will be to destroy the present happy relations existing there between Landlord and Tenant. Landlords in

Ulster, when stripped of all rights of ownership, will not take a greater interest in their estates than Landlords, similarly circumstanced, in other parts of Ireland; Ulster Tenants will not be slower to assert their newly-acquired rights than Tenants in Munster or Connaught. Like cause will produce like effect in each case; and if the effect of the new legislation be to drive out the Landlords of Galway and Cork, those of Down and Fermanagh will not long remain behind.

Lord Carlingford is not blind to the fact that the right of sale, as it exists under the Ulster Custom, frequently leads to excessive competition for farms, but he seems to think that this is a less evil than any attempt to 'limit artificially the value of the Tenant's interest.' In this his Lordship is not a whit more consistent than the agitators whose principles he adopts. He sees no objection to limiting artificially the value of the Landlord's interest in the most arbitrary manner, by the introduction of a system of valued rents; he will not tolerate freedom of contract, much less competition, when a farm is to be let; but when it is to be sold, there must be no restriction whatsoever; the sale must be absolutely free. And yet, it is obvious that competition in the latter case may be even more injurious to the incoming tenant than in the former. Whatever be the inducement that causes tenants to undertake to pay high rents—whether it be the scarcity of land, the dearth of other means of livelihood, the '*pretium affectionis*,' or what you will—the

very same inducement will stimulate them to pay high prices for the interest in farms offered for sale. Every pound added to the price will add a shilling a-year to the existing rent, whatever that rent may be; with this difference, that if the shilling were paid as rent, the tenant would have the pound in his pocket towards the necessary outlay on the farm; whereas, if he parts with the pound in the shape of purchase-money, he may, not improbably, have to pay from two to four shillings a year, to some local bank or local usurer, for a pound to replace it, in order to carry on his business, Multiply the pound and the shillings by any number you please, according to the size of the farm, and the keenness of the competition, and the same argument holds good—the Tenant who purchases the interest in a farm, except as an investment for *bonâ fide* spare capital, beyond what is required for the due cultivation of the farm, is worse off than if he were to pay an equivalent annual sum as rent. But his judicious friends will not permit him to take the safer, and generally the more convenient course, while they compel him to adopt that which will probably be less convenient, and will certainly involve the greater risk of loss.

Though recommending the extension of the right of sale to all parts of Ireland, the Report admits that there are objections to the unqualified application of the system to every holding, one of which it states, as follows:—

'The tenant's interest might in many cases con-

Houses of the Oireachtas

sist to a large extent in the difference between a fair rent, and the low rent actually paid to the Landlord; and this value, where no tenant-right payment has been made at the beginning of the tenancy, is not morally the property of the occupier. To treat it as such by legislation would be a wrong to the Landlord.'

This is plain truth plainly spoken, but none the less likely to be forgotten, if indeed it be not already forgotten, amid the confusion of the conflict. Let us hope that when Lord Carlingford introduces the Land Law Bill in the House of Lords he will remember that he has so recently given utterance to an opinion not easily reconcilable with some of the provisions of that measure.

We are unable to find in the Report any suggestion that the Landlords of Ireland should be compensated for the loss of the rights of which it is proposed to deprive them; or for the depreciation of their property, which must ensue if the recommendations of the Report be carried into effect.

The constitution of a 'single Land Court or Commission for all Ireland, not exclusively legal in its composition, and some members of which should be possessed of practical agricultural knowledge,' is recommended in the Report. It is further suggested that this Court 'should hold its sittings in every county in Ireland in turn, and might divide itself into two or more circuits for that purpose.' In addition to its statutory powers, the Report thinks that 'such a body might

in many cases act as arbitrator by consent between Landlord and Tenant, beyond the provisions of the statute'; and that 'it should have power to convert into a binding order any arrangement so made.'

We do not think it likely that the Court would be much troubled with arbitration business, or that it would have much time to attend to it; and we cannot even conjecture how long it would take a Court, charged with the regulation of all relations between Landlord and Tenant, to make the tour of the entire country. Some Landlords might be respited for years.

Having 'devoted the larger portion of the Report to the question of the occupation of land in Ireland,' Lord Carlingford has but little to say about 'other remedies' for the present unhappy state of the country. He has, however, the courage to recommend voluntary emigration assisted by the State—a recommendation from which Lord Bessborough shrank—and, where practicable 'voluntary transfer' of some part of the surplus population to reclaimable waste or semi-waste lands at home. He prudently refrains from committing himself to any definite proposal on either subject, and intimates pretty plainly that he does not know where the reclaimable waste or semi-waste lands are to be found in Ireland, or how the 'voluntary transfer' of the people to them is to be effected. We must acknowledge that we are in a similar state of ignorance.

Unable to offer any practical proposal for relieving the overcrowded districts, except State-assisted emigration, which could hardly be extended to the whole surplus population, the Report winds up with a platitude about the effect of 'Free Sale' in extinguishing the very small holdings, almost identical with the lame conclusion of the Bessborough Report on the same important branch of the case.

No reference is made either directly or indirectly to the condition of the agricultural labourers; and yet Lord Carlingford, as an Irishman, must know how important a factor they form in the Irish problem; and, as a Statesman, must foresee that he shall have no sooner satisfied—if he ever can satisfy—the tenants at the expense of the landlords, than a fresh agitation will spring up which can only be allayed by contenting the labourers at the expense of the tenants. This may be staved off till the labourers have political power—but how long can that be withheld from them?

Lord Carlingford offers two suggestions for the amendment of the Land Act of 1870. He recommends that the word 'exorbitant' applied to rent in the 9th section should be changed to 'unreasonable'; and that section 12, which provides that a Tenant of a holding or holdings valued at not less than £50 a-year, may contract not to claim compensation under the Act, should be brought into harmony with section 4, which forbids Tenants to contract themselves out of certain claims under

it. He further believes that the case of the 'great farmers, and especially of the holders of the great grazing farms, will be best met by liberal leases containing full provisions or securities for permanent or unexhausted improvements.' His Lordship intends the specific recommendations made in the Report to apply only to the case of the 'ordinary resident Irish Tenant.'

Bearing in mind that Lord Carlingford was, as already mentioned, the joint-author, with Mr. Gladstone, of the Irish Land Act of 1870; that it was he who gave utterance to the profound constitutional maxim that 'Ireland should be governed according to Irish ideas'; and that, as an Irish politician, he might be supposed to know something of the wishes, if not the wants, of that section of the community who call themselves the 'Irish people,' one would think that Mr. Gladstone, in framing his new Land Bill, would have been content to confine legislation within the limits Lord Carlingford had laid down; and that, where he deviated from the recommendations of the Report, the caution of the statesman would have led him to stop short of those limits, rather than to exceed them. But it is not so. We have already indicated some points on which the Land Law Bill goes beyond the rcommendations, not only of Lord Carlingford's, but even of Lord Bessborough's Report; and it will not be uninteresting to pursue the subject a little farther, though our space will not allow us to do so in more than a cursory and imperfect manner.

We do not find in Lord Carlingford's Report anything to prevent a Landlord from seeking an increase of rent if he believes his land to be under-let—on the contrary, the Report expressly argues that 'there would be no difficulty in authorizing the Tenant to exercise the right of sale, without invasion of the Landlords property, and without hampering his power of obtaining a better rent for an under-rented farm.' Mr. Gladstone's Land Law Bill absolutely prohibits the Landlord from demanding a higher rent, except at the risk of exposing himself to penalties which no prudent man would be content to face. The prohibition in the Bill is not against the actual raising of the rent; but against the attempt to do so, and this attempt is handicapped by no less than three distinct alternative penalties, at the option of the Tenant.

Again, the Land Law Bill increases the scale of 'Compensation for Disturbance' on certain classes of holdings, and extends it to others hitherto exempt, while it removes altogether the maximum limit beyond which the Act of 1870 refused to go; the Report makes no recommendation on this point, except in connexion with 'exorbitant' rents, and thirty-one year leases, which it touches in the most cautious manner. Nor is this the result of any oversight or indifference, for it is stated, in the early part of the Report, that 'it would appear that the larger Tenants, to whose case the "Disturbance" section of the Act scarcely applies,

are dissatisfied with the amount and method of protection afforded to them in respect of their improvements'; clearly showing that the question of 'Disturbance,' in connexion with the larger tenants, was before Lord Carlingford's mind when framing the Report, from which we must infer that he deliberately refrained from recommending any increase or extension of the scale laid down in the Act of 1870.

The Report lays down the principle that 'the interests and rights of all Landlords who have adopted, wholly or partially, what may be called the English System on this subject.'—that is the system by which the Landlord provides the permanent or fixed equipment of the farm—'ought to be most carefully guarded'; the Land Law Bill (section 7, sub-section 8), contents itself with providing that 'where an application is made to the Court under this section in respect of any tenancy, the Court may, if it think fit, disallow such application where the Court is satisfied that the holding, in which such tenancy subsists, has theretofore been maintained and improved by the Landlord'; thereby, not only leaving a discretion with the Court to accede to the application for a judicial rent, even where the Landlord has himself maintained and improved the holding; but throwing upon the Landlord the burden of proving that he has done so.

It is, however, on the question of 'Fair Rent' that the Land Law Bill leaves the Report entirely

behind. Lord Carlingford recognises two parties to the contract for the hire of land; and does not hesitate to refer to 'the lawless restraints of the legal rights of Landlords, which are known to have often prevailed'; when he speaks of 'Fair Rent,' he means what the words imply, a rent fair to both parties. Mr. Gladstone's idea of a 'Fair Rent' is something very different from this; he adopts the 'principle' of the Bessborough Commission, that the 'Fair Rent' of a farm must neccessarily be considerably below the 'commercial rent'; and he provides machinery for reducing it to a point even lower than the Bessborough Report dared to suggest. In fact the 'Fair Rent' of the Land Law Bill is Lord Carlingford's 'Fair Rent,' reduced with reference to the Tenant's supposed improvements; to his imaginary 'Possessory Right'; and to the increased and extended scale of compensation for impossible disturbance laid down in the Bill. There is no way by which the two can be reconciled; they are fundamentally and eternally irreconcilable. And the reason is obvious — Mr. Gladstone adopts the theory, invented by the Bessborough Commission, of 'Possessory Right' or joint ownership by the Tenant in the soil, which Lord Carlingford rejects, and which he proves conclusively not to have been even thought of when the Land Act of 1870 was passed. It is to the recognition of this 'Possessory Right' by Mr. Gladstone that we owe the proviso in Section 7 of the Bill, that, where tenant-right does not exist, the 'Fair Rent' is to be estimated with reference

to the scale of compensation for disturbance; the evident object being to measure, however roughly and unequally, the value of the Tenant's imaginary ownership. But Lord Carlingford knew nothing about this 'Possessory Right,' or rather, he did know that it had no existence; and hence made no allowance for it in his estimate of the 'Fair Rent'; and thus, as we have said, the 'Fair Rent' of the Report, and the 'Fair Rent' of the Bill are two fundamentally distinct things, and cannot be reconciled by any ingenuity of argument.

With such divergence of opinion between Mr. Gladstone and Lord Carlingford, the joint authors of the Land Act of 1870, we trust we shall not appeal in vain to Parliament—Lords and Commons alike—to proceed with full deliberation and extreme caution in the formidable task which the Government has imposed on them, of legislating on the Irish Land Question. At another time, we might have appealed to the sense of justice and love of fair-play characteristic of Englishmen; but the English people are now in one of their dangerous fits of virtue; and, in their desire to do what they believe to be 'justice to Ireland,' it is much to be feared that the less imposing duty of doing justice between man and man in Ireland may be lost sight of. And yet the question is one which concerns themselves far more nearly than they now imagine, or than perhaps they would bear patiently to be told. They will find it out for themselves before long.

Houses of the Oireachtas

Houses of the Oireachtas