

ON  
THE ECONOMIC CAUSES  
OF THE  
PRESENT STATE OF AGRICULTURE  
IN IRELAND :

Part V.

A PAPER READ BEFORE  
THE DUBLIN STATISTICAL SOCIETY:

BY

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# DUBLIN STATISTICAL SOCIETY.

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THIS society was established in November, 1847, for the purpose of promoting the study of Statistical and Economical Science. The meetings are held on the third Monday in each month, from November till June, inclusive, at 8, P. M. The business is transacted by members reading written communications on subjects of Statistical and Economical Science. No communication is read unless two members of the council certify that they consider it accordant with the rules and objects of the society. The reading of each paper, unless by express permission of the council previously obtained, is limited to half an hour.

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*On the Economic Causes of the present state of Agriculture in Ireland, (Part V.)—Legal Impediments to the Application of Capital in planting Trees and cultivating Waste Lands.* By W. Neilson Hancock, LL.B. M.R.I.A., Archbishop Whately's Professor of Political Economy in the University of Dublin.

GENTLEMEN,—In the former papers of this series I have directed your attention to the general legal impediments to the application of capital to agriculture in Ireland. In this paper I purpose to bring under your notice the special impediments which are created to such application by the state of the law in particular cases, and I shall, for the present, confine my observations to the cases of trees and waste lands.

As to trees, then, our first enquiry will be, what is the cause of the great scarcity of trees in Ireland? The fact of such a scarcity existing has been long admitted. "In this country," says Sir Robert Kane,\* "we may practically exclude wood from our consideration as a fuel; there is no feature of an Irish landscape more characteristic than the desert baldness of our hills, which, robbed of those sylvan honours that elsewhere diversify a rural prospect, present to every eye a type of the desolation which has overspread the land. This barrenness of trees is but of recent origin. Numerous localities in every part of Ireland derive their names from having been originally embowered in forests. In every district where man's neglect, combined with nature's rank luxuriance of vegetation, has given occasion to the formation of those bogs for which our country has become a bye-word, it is found that, immersed in the turf, are quantities of large timber, generally fir, birch, and oak. That the country was some centuries ago as remarkable for its extent of forests, as it is now by the reverse, appears by all our histories. Many causes conspired for their destruction. In some districts they were extirpated to increase the arable surface; in others, in order to destroy the shelter which bands of outlaws found in their recesses. An extensive export trade in oak was at one time carried on, and two centuries ago the manufacture of iron was in very great activity throughout the country, and led to the cutting down, as Boate says, of innumerable trees in order to prepare charcoal. During all this time, no one planted.

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\* Industrial Resources of Ireland.

All sought their immediate profit, and cared not for the future ; and the final result has been, that at present the timber grown in Ireland is not sufficient for those uses for which it is specially adapted, and as a fuel we may consider it never to be employed."

Now I propose to inquire whether the state of the law with regard to trees was the cause of the facts described by Sir Robert Kane, in the striking words, "During all this time, no one planted." For this purpose, I shall proceed to give you a sketch of the law respecting trees. According to the common law, "If land on which trees are growing be demised, though the trees are not excepted, they cannot be felled by the tenant, as he is only entitled to their annual fruit and shelter." Neither can they be cut down by the landlord, unless they have been excepted out of the demise, or power have been reserved to the landlord to enter and fell them, for the tenant has a special interest in their fruit and shade. If the tenant plant timber trees, they immediately become subject to this state of the law, and neither he nor the landlord can fell them, unless the tenant be authorised by the terms of his lease, or by the consent of the inheritor. Formerly, tenants in Ireland were, in the absence of express stipulation, authorised by the common law to cut for estovers, to be applied in repairs of buildings, any timber growing on the lands. But this power was taken away by a statute passed in the Irish parliament (31 Geo. III., c. 40, s. 1). It requires a very slight knowledge of economic principles, to predict the effects of this state of the law. Tenants would not expend capital in planting trees, when they only got the fruit and shelter, whilst the most valuable part of the return belonged to the landlord. Landlords could not plant without the consent of their tenants, who would of course refuse to let the ground be occupied in a manner so unproductive to them. Even where trees were planted, they were not taken care of, as the tenants had no interest in preserving them.

The remedy for this state of the law was obvious enough—to give the tenant the property in the trees—thus securing his interest in planting and preserving them. Accordingly, we find this admitted in an act of parliament passed upwards of eighty years ago (5 and 6 Geo. III., c. 17), which recites "that it is equal to inheritors whether tenants do not plant, or have a property in what they plant. The act then proceeds to enact, that tenants for lives renewable for ever shall not be impeachable for waste in timber trees or woods, which they shall thereafter plant—in other words, vesting in them the property of the trees thereafter planted." The act then goes on to repeal the common law in another class of cases ; namely, that of tenants for life or lives impeachable for waste, or tenants for years exceeding twelve years unexpired. If a person holding for any of such interests, plant sallow, ozier, or willows, the absolute property vests in him. If he plant other timber trees, he shall during the term be entitled to housebote,

ploughbote, and caribote, and on the expiration of the term, or the maturity of the trees, shall be entitled to the trees, or the value of them, if within six months from planting he register the trees. But the largest class of cases, namely, that of yearly tenants, and tenants holding for terms of which less than twelve years remained unexpired, was left wholly subject to the operation of the principles of the common law, condemned by the statute itself. About twenty years later, another statute was passed regarding trees (23 and 24 Geo. III., c. 39), providing for the case of tenants for life or lives, and tenants for years exceeding fourteen years unexpired, by enabling them to cut, sell, and dispose of the same, if registered by affidavit within twelve months from planting. But, like its predecessor, it left the largest class of tenants under the operation of the common law. The principle of registration on which these two statutes have been framed is an extremely objectionable one, as it imposes a considerable expense and trouble at the time the trees are planted, and so tends to discourage their being planted. It is further objectionable in violating the fundamental principle of legal presumptions, namely, that where an event can happen in one or two ways, the law, in selecting one or other as the subject of a presumption, should always presume that the event happened in the more usual way, and throw the onus of proof on the party who alleges that it happened in the unusual way. Thus, it is more likely that trees will be planted by the parties in occupation, or the tenants, than by the landlords. Therefore, the law should presume in the absence of evidence to the contrary, that all trees are planted by tenants, and throw upon the landlords the proof of any trees having been planted by them. But this system of registration does the reverse, for it presumes all trees not registered to have been planted by the landlord, and throws on the tenant not only the onus of proving that he planted the trees, but limits him to one mode of proof, and to one year after planting, to establish his case. But the largest class of tenants is denied even the scanty protection of this defective system of registration. When such is the state of the law with regard to trees, can we be surprised at the statement of Sir Robert Kane, "During all this time, no one planted?" The remedy for this evil is to alter the law, by enacting that all trees shall, in the absence of any contract to the contrary, be presumed to have been planted by the occupier, and shall be his property. Under such a change of the law, the future interests of the country would be made coincident with the immediate profit of the occupier, for wherever the planting of trees was wanted, it would be profitable to plant them. Thus the self-interest of the occupier, seeking his immediate gain, would lead him to do that which would be most advantageous to the community. The present scarcity of trees, arises, not as Sir Robert Kane alleges, from parties "having sought their immediate profit, not caring for the future;" but from those human laws which, by making the immediate profit of all parties connected with land at

variance with the future interests of themselves and of the community, have reversed the natural laws by which the all-wise providence of God has made man really secure the future interests of the community, when least caring for them, and when most seeking his own immediate gain.

A further defect in the law is ably stated in a communication to the Land Occupation Commissioners. "Under the encouragement which I conceived the laws in force afforded to me, I planted extensively on lands which I held by a terminable lease, and registered my trees. They are mine, said I, to all intents and purposes. I took the best care of them, fenced and protected them, and of course paid rent, &c., for the land they grew on for a number of years; and I considered them not only as a shelter and ornament to my place, but as a crop which I was raising on my farm for the benefit of myself and my family. But *legibus aliter visum est*. On taking out a renewal of my lease, which the landlord gave me on very fair terms, it appeared that my crop of timber, most of which had been growing for nearly forty years, while I paid the rent, &c. of the land, could not be made mine by law. Let me do the landlord full justice. He had no disposition to possess himself of my trees. He felt that they ought to be mine. But the only lease he could give me was one by which I not only can never call one branch of the trees I planted, protected, and paid for, mine, but by which I am liable to very severe penalties if I cut a switch off one of them. I am not blaming the landlord for this—he cannot help it. I am blaming the law."—"This law is not only unjust in principle; it is practically delusive. I thought I was protected when I planted; so think hundreds still; they have not yet found out the delusiveness of their position. They wont be so when their leases expire, and who will again plant a tree on a farm held terminably, if the law be not amended? My landlord did not wish to take my trees, nor did he wish to pay me for them, and he could not give them to me. Suppose he had said, 'Your only alternative is to cut them down.' I must then destroy utterly the place I have been making for forty years, in order to get my rights—and this because the law so wills it. My lord, 'tis monstrous! Will the face of the country improve under such a law? Shall I be mad enough now to begin planting again, and leave a copy of this statement for my son with "da capo" written at the end of it, against the expiration of my present lease? No. I may grow furze, or heath, or brambles, but I wont grow timber."\* In this case the tenant, being a man of intelligence, discovered that the hardship he suffered arose from the law. But I remember hearing of a similar case in a northern county, where the tenant attributed the landlord's unwillingness to purchase, or secure him the value of the trees, entirely to the landlord. The negotiations about renewing the lease were prolonged, till the time within which the tenant could cut the

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\* Land Occupation Commission Report.—Appendix, No. 59.

trees had almost expired ; but on the last day the tenant assembled the whole country side, and cut down and removed every tree from the place, being compelled to destroy the greater part of the value of the trees, in order to secure to himself the small compensation for his labour and capital, which the law allowed in the right of cutting. The country people, seeing an improving tenant resort to such a step, never thought of the law respecting trees, but were loud in their indignation against the landlord, very unjustly ascribing to him a set of circumstances over which he had no control.

Such, then, being the effect of the law respecting trees, I proceed to notice the facts stated with regard to waste lands. According to Lord Devon's Digest, "there is scarcely any subject investigated by the commissioners, upon which the evidence is so concurrent as that of waste land reclamation, with a view of increasing remunerative employment for the labouring population. Mr. Griffith's valuable report and table show that Ireland contains:—

	Acres.
Waste land improveable for tillage, .....	1,425,000
Waste land improveable for pasture, .....	2,330,000
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Total improveable.....	3,755,000
Waste land unimproveable, .....	2,535,000
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Gross total.....	6,290,000

"Connected with many of the largest estates in Ireland are extensive tracts of lands thinly peopled, and affording opportunities for easy reclamation. Without going the length of supposing that employment for the people upon bringing such lands into a profitable cultivation is to furnish a cure for the evils of Ireland, we concur in the opinion so strongly expressed in former reports, that very great advantages may be expected from judicious arrangements for that purpose."

In order to discover the cause of there being near four millions of improveable waste land in Ireland neglected, it is necessary to consider the position of the parties by whom waste land may be improved. These are three. First, the landlord ; secondly, the tenant ; and thirdly, some new purchaser. The landlords are prevented from reclaiming by want of money, or, where they have money, by the law which makes all their improvements follow the settlement of the land, instead of being at their own disposal. But why do not the tenants reclaim the waste lands ? Here again the law intervenes, and lays down this principle, "A tenant has no right to alter the nature of the land demised, by enclosing and cultivating waste land included in the demise." If he does so, it will be waste. His landlord cannot in general relieve him from this restriction, because it is a usual provision in leasing powers, that the tenant is not to be made punishable for waste. It will naturally occur to you, that our ancestors must have been very

*dis*

great fools to establish such an absurd rule as to make the *reclaiming* of land *waste*, but they had a perfectly valid reason for establishing the law, and the folly rests with us who retain the rule when the reason is no longer applicable. In ancient times, when land was extremely abundant compared with the population, and when surveys were scarcely known, the enclosing and cultivating waste land was but little required, and was calculated to alter the evidence of the landlord's title, and the rule was adopted to guard against this risk. At the present day, these circumstances are reversed; the risk of losing evidence has vanished, and the demand for land is great.

But landlords again are frequently restrained from granting any lease of waste land by the restriction of their leasing power to land "*usually let to tenants.*" Thus, in the statutable leasing power conferred on tenants in tail of granting leases for forty-one years or three lives, it is expressly provided that the power shall not extend "to any lease of any lands or tenements which have not been most commonly letten to farm, or occupied by the farmers thereof, by the space of twenty years next before such lease thereof made, nor to any lease to be made, without impeachment of waste." This proviso puts a two-fold stop to the leasing of waste lands. First, it is impossible that such lands can be occupied by farmers twenty years before the reclamation commences; secondly, a farmer cannot, as we have seen, enclose and cultivate waste lands without committing what in legal language is termed waste.

But why are waste lands not sold to capitalists? Here the impediments to the transfer of land intervene. In many cases, the waste lands are in strict settlement, and the proprietors have no power of sale. But even where they have the power, the cost of tracing sixty years' title, searching for judgments, paying stamps on conveyances and searches, and preparing the conveyances, is so great as nearly always to exceed the entire value of the waste land. Should the purchaser seek to diminish the expense by dispensing with any of the usual precautions to secure his title, then arises the legal principle which confiscates all improvements on the slightest flaw in the title being discovered—so that the unfortunate purchaser increases his own insecurity by every penny he lays out in improvements, as he thereby increases the value of the prize to be gained by any one who can take advantage of a flaw in his title and oust him. When such is the way the law operates on waste lands, can we be surprised at the quantity still unreclaimed in Ireland? Need we look to any other cause for it than the state of the law?

Other causes have been suggested and other remedies proposed. Some ascribe the neglect of waste lands reclamation to the landlords instead of to the state of the law, and they propose that the government should confiscate the landlords' property in them, and undertake reclamation of them with money borrowed on the security of the public credit. But is not the plan of enabling



landlords to sell, at once simpler and more just? Can there be any business more unsuited for a government to carry on than the reclamation or cultivation of land? The next plan for the reclamation of wastes is by having a public company for the purpose, and there is a Waste Land Improvement Company in Ireland; but its operations have been so unprofitable, and therefore so useless, that it is about to be dissolved. Such undertakings are as unsuitable for a company as for a government, for the well known reasons laid down by Adam Smith. The next plan is that suggested by the Land Occupation Commissioners, of "the state making some advances for these purposes, at a moderate rate of interest." This plan, however, is clearly objectionable. If the expenditure on reclamation of waste lands is not as profitable as any other undertaking, it is wasteful and injurious to lay out any money on them. If their reclamation be profitable, the parties reclaiming can afford to pay the market rate of interest for money as well as any other capitalists, and therefore have no right to get any advantage over other traders in getting a loan at a moderate rate, meaning, of course, something lower than the market rate of interest. But if parties are to pay the market rate of interest, they can get the money as easily without the aid of the state as with it. The plan of getting government loans or grants is founded on one of two common fallacies—either that the want of capital is the main cause of the present state of Ireland, or that government ought to confer bounties on particular undertakings. But the way government can promote the reclamation of waste lands is by altering the law, so as to enable the lands to be sold, and capital to be expended on them without risk of forfeiture. Government is unable to create capital; it can only borrow from one class of the community to lend to another; neither can it superintend the details of reclamation; but it has the power of doing what no private exertion can effect—namely, of altering the law.