

adopting Mrs. O'Connell's advice in following such good English and Irish precedents ?

I think therefore an irresistible case is made out for having extended to Ireland the English law and practice as to the boarding-out pauper children and care of helpless cripples in Cripples' Homes, like the one at Bray, which we owe to the active philanthropy of Mrs. Sullivan, an example so thoroughly appreciated by Mrs. O'Connell. I think that Irish guardians should have all the powers of discharging their duty as administrators of state charity to these helpless classes that English guardians now have, and that the principles of the state charity should not, so far as they are concerned, be different in one part of the United Kingdom from what it is in another.

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VII.—*Bright Clauses of the Irish Land Act.* By J. H. Edge, Esq.

[Read, 27th January, 1880.]

I MAY at the outset plainly state that I do not intend to travel over the whole ground occupied by the subject which I have chosen for my text. I take it that all reasonable people and a large number of the unreasonable people in Ireland agree in wishing success to the "Bright Clauses," however much they may differ in their views as to the best mode of bringing them into successful working operation. The discussions with respect to them seem to separate into two branches—the first and most popular, the financial; the second, the legal. The first, embracing amongst others, the vexed questions of the extent to which advances ought to be made by government, and of the constitution of a board to buy up estates, has given rise to most controversy, and is, I freely admit, the most important branch. The second comprises the restrictions on alienation imposed by the Irish Land Act of 1870, the simplification of tenure, and in general all the legal difficulties surrounding the project. This second branch of the discussions on the Bright Clauses has been mostly regarded as one involving tiresome technical details; and though it has evoked many valuable opinions and suggestions has certainly not been brought so prominently before the public or dealt with so exhaustively as the financial question. I shall confine my remarks this evening exclusively to the legal aspect of the Bright Clauses, trusting, however, that I may elicit criticisms from the non-legal as well as the legal members of our Society.

The 44th and 46th sections of the Land Act of 1870 prohibit alienation, assignment, sub-division, and sub-letting, without the consent of the Commissioners of the Board of Works, during the continuance of the charge created for the purpose of discharging the government loan, under the penalty of forfeiture.

First as to alienation. The law officers of the Crown have advised that alienation includes testamentary dispositions, so the legislature,

in effect, created the strictest entail which could possibly be conceived. Was there any occasion for this; or, even if it was desirable, was it practicable? I would answer in the negative to both queries. I think it is against public policy to force a man to let his farm, if of freehold tenure, devolve by intestacy, to his eldest son who may be a profligate or idiot, to the exclusion of the rest of his family, and it is idle to suggest that the consent of the Board could be obtained, for no one can be expected to apply to the Board to sanction a will which may be changed from time to time, and which is often made in dying moments; besides it is unreasonable to expect that farmers would suffer the most confidential communication of their lives—namely their wills—to be discussed and criticised by any person beyond their own professional advisers. It cannot be urged, on the other hand, that the course adopted by the legislature will, in all cases, prevent farms being cut up amongst the holder's family, because where the tenure is chattel—that is, where the farm is carved out of an estate held under a lease for a long term of years—an intestacy will cause the beneficial interest in the farm to become divisible into as many shares as the holder may have had children; and if he left a widow, a still greater division must take place, as she would be entitled to one-third, and the remaining two-thirds only would be left for equal division amongst the children. I think, then, that assuming the opinion is right, that a prohibition against alienation extends to wills, such a prohibition is highly inexpedient.

The second prohibition is against assignment. This restriction has this in its favour, that it is a usual one in Irish leases, and therefore at least in accord with the usage of the country; but to defend it on this ground requires the strong assumption that the Board of Works corresponds with a landlord, whilst the avowed object of the Bright Clauses was to create a class of farmers who would have no landlords. The Board ought, I think, only to be allowed to prohibit whatever is against public policy, and cannot be considered in the light of a private owner; and if it is in accordance with public policy to encourage a sale to A. B. for the purpose of making him an occupying fee-simple proprietor, how can it be wrong for A. B. to put C. D. in his place? It would be impossible for a public board to enter into inquiries as to the solvency or morality of either the original purchasers or their assignees, and even if such inquiries were conducted with strict impartiality, they would not give satisfaction. I think, then, that freedom of assignment as well as freedom of devise ought to have been conferred by the Act.

Subdivision is the next prohibition, and this stands on different grounds; and I intend my remarks on it to apply to subdivision by testamentary disposition as well as by act *inter vivos*. It may be a public good to make a tenant-farmer of twenty acres a fee-simple proprietor, and it may be the reverse to enable him to divide his farm into small allotments; so it must be at once admitted, that you cannot lay down any general rule with regard to subdivision as you can with regard to assignment, but that each case must stand by itself. In many instances tenants have had large holdings conveyed to them. In some instances a holding consisting originally

of several distinct holdings, has been purchased under the Bright Clauses by one tenant. In such cases it might be well open to argument, that it was for the public good to split up the large holdings, and to distribute the distinct holdings which had become united in one tenant amongst his family. There is also another element besides the size of the farm which ought to be taken into account in considering the advisability of subdivision: that is the house accommodation. To put two families, as is too often the case, one into each end of a house, is decidedly to increase the business of the petty sessions court of the district, and to galvanise into activity the nuisance authority of the neighbourhood; and to allow a mud cabin to be built as a second residence on a farm is only a degree better. I think, then, that in the conveyance of a holding it should be stated whether subdivision was prohibited, or, if allowed, on what terms—such as into not more than a specified number of farms of not less than a certain specified acreage each, and on certain additional specified buildings being erected. And where terms are imposed, a fixed period, such as half a year, should be allowed after a subdivision has been made; and if such has been effected by a will, after the will has come into operation, for complying with them. I think this method would be preferable to imposing the condition of obtaining the previous consent of any authority; but if it was considered necessary in any cases, from the difficulty of defining the limits of the subdivision or the other terms to be imposed, to impose such a condition, the authority ought certainly be a land judge or a county court judge, and not a body like the Board of Works.

And this question of consent suggests the inherent inconsistency in these restrictions—namely, that they are only to last during the continuance of the annuity payable to that Board, which means thirty-five years at the longest. The 48th, 49th, and 50th sections of the Land Act evidently contemplate the security being the land rather than the personal security of the owner for the time being liable to pay it. The payment, then, of the annuity cannot be endangered by the substitution of one tenant for another, or by subdivision within proper limits—in fact the security may be enhanced by a solvent man buying out a pauper. If, as I believe, these restrictions were introduced for the purpose of preventing the policy of the Act being defeated, they ought to have been annexed *in perpetuo* to the various holdings as incidents of tenure.

The last prohibition is sub-letting; and as the policy of the Act was to create a proprietary who would occupy their farms, it is obviously necessary to prevent a neighbouring landlord purchasing a number of these holdings merely for the purpose of enlarging his estate; and it is also necessary to prevent the original tenant himself, who has purchased under the Bright Clauses, setting his farm in small lots, and becoming a squireen on the most diminutive and therefore the worst scale. I think, then, that sub-letting should be allowed only with the consent of the county court judge, except for labourers' cottages, to the extent mentioned in the amending Act of 1872.

The second question—simplification of tenure—has during the last few years attracted a great deal of attention as a general subject, and

of course any measure tending towards it will assist the working of the Bright Clauses by making the transfer of land cheap and speedy. I may say, in fact, that it is the interest of the whole community to facilitate the transfer of land. I say advisedly, the whole community, and do not intend to except either the landed gentry or the two legal professions. When a landed proprietor wishes to sell or mortgage his broad acres money and patience are wasted, whilst the wheels of the conveyancing coach are slowly spoked round and round, through all the ruts and holes in the title; and, on the other hand, gains of the legal professions are seriously impaired by the deterrent influences of delay and costs—a very large proportion of the costs going, not into the pockets of the practitioner, but to support offices rendered necessary by our complicated land tenure. I cannot now enter at any length into the wide field of the simplification of the law, I only have time to note one or two of what appear to me glaring defects. One is the number of landlords imposed in succession on the greater part of the country, suggesting by way of comparison the various degrees of preference shareholders in a bankrupt company, except that their mutual relations to each other are far more difficult to define. I would try to remedy this state of things by enacting, that wherever fixity of tenure has been voluntarily created by a landlord, the landlord's estate ought to be regarded in a court of justice as an incumbrance, and not an incident of tenure, so that in fact a land judge would be bound to place a fee-farm rent in the schedule of incumbrances. I would at the same time guard the landlord or grantor from any loss beyond the sentimental grievance of having his importance as a local magnate somewhat diminished, by making his rent redeemable at whatever figure, according to the price of the day, would yield a corresponding income in the government funds, and by making the various exceptions and reservations in the lease or the grant redeemable at what might be ascertained to be their full value.

To show you that the inconvenience of the present system of sub-ifeudation, or, to speak more plainly, the multiplicity of landlords existing on the same estate, is felt as a practical hindrance to the Bright Clauses, I shall read you a letter signed "Clericus" which appeared in *The Freeman's Journal* of the 30th April of last year:—

"There is one defect in the Bright Clauses of the Land Act to which sufficient attention is not drawn. It is this—that they do not afford any facility whatever to tenants who hold under middlemen, of purchasing the rights of these middlemen. A great deal of the land of this country is held from middlemen, who hold under a lease for ever, or what practically amounts to the same, for nine hundred or less years at a merely nominal rent. It would be a vast advantage to the occupying tenants, and would tend to render them happy and contented, if the Bright Clauses were extended to them. Instead of paying the heavy rent they do at present, they would be enabled to acquire the rights of the middleman, and thus to hold their farms at a merely nominal, or at most a very low rent. I know two considerable estates held by middlemen, who are going to sell in the Landed Estates Court. The under-tenants would have no difficulty in purchasing if they got two-thirds of the purchase-money from the court. As the law at presents stands, however, it is more than likely they shall have new landlords. Your influential advocacy of their cause

might induce Mr. Lefevre to take their case into account, when he introduces his motion before the House in a few days."

The estates referred to by the reverend writer had evidently more than one middleman intervening between the head landlord and the occupying tenant—the immediate landlord of the occupying tenant being subject to a substantial rent, and the middleman next the head landlord being only liable to the nominal rent referred to in the letter.

There is another topic to which I have already referred, and on which I am tempted to say a passing word, and that is the absurd difference in the devolution of descent, in case of intestacy, between a farm held in freehold and one held from year to year, or for a term of years. The freehold tenure gives too much to the heir, to the injury of the younger children; whilst chattel tenure, by cutting up a farm, pauperises the country and renders it of little value to any one. But perhaps as great an injury as either of these I have mentioned is the difficulties which the difference between the two tenures create both in complicating titles and bewildering the uninitiated. I propose the assimilation of the two tenures, taking what appears useful from each. Stating my proposal generally, I would give the whole farm to the heir, charged with portions in favour of those persons who would have shared it with him had it been a chattel. For example: in the event of a farmer dying leaving a widow, an eldest son, and younger children, I would give the whole farm to the eldest son, allotting one-third of the net annual profits to the widow during her widowhood, and another third to the younger children during their minorities. By this arrangement the eldest son would get the remaining one-third from his father's death, by way of his share, and in compensation for his share being burthened with the management of the farm, and he would be entitled to the whole on his mother's second marriage or death, and on his sisters and younger brothers attaining full age. Of course I do not propose to limit a father's right to make a will, further than in the case of conveyances under the Bright Clauses, to such an extent as may be necessary to prevent sub-division; and such restrictions could not, as I have already attempted to explain, be generalized in any Act of Parliament, but must be defined in each particular case. I may observe, however, that most of the small farmers in Ireland die intestate, and that the subject I have alluded to is one of growing importance, since the Land Act of 1870 has increased the value of tenants' interests.

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