sions, in various county courts, and have examined the rate-books of the unions which are almost always in court, and I do not see any reason at all why the rate-book, or a book fashioned on the same lines, could not be made a binding and conclusive evidence of title as to tenancies from year to year. It could be very simply done, indeed. It is already conclusive evidence for registration of voters and jurors, subject to the right of any man omitted from it to claim to be put on it. The county court judge might have power given him to hear and adjudicate upon any claim to be put on the register in respect of a tenancy from year to year. Without, therefore, establishing a compulsory record of title for great estates, there is no reason why these small tenancies, which are without the range of the registry Acts, should not have a register of their own. I do not see any reason why landlord and tenant, and mortgagees alike, should not be bound by its records, and an entry of a judgment in an official book should be sufficient to charge the land therewith.

I have pointed out some hardships in the present law, which have come under my attention. Whether the remedies should be those I have mentioned, or whether some other remedy should be given, I leave to the judgment and experience of this Society. I venture to submit that the subject is well worthy of serious consideration.

IV.—*A Description of some Leases based on the principle of Parliamentary Tenant-right.* By James McDonnell, Esq.

[Read, 28th January, 1879.]

Sir George Campbell, in an admirable pamphlet published in June, 1869, points out with great clearness the *de facto* state of land tenure in Ireland. He shows that although the legal conditions were at that time substantially the same in both England and Ireland they had seldom in practice been fully acted on or recognised by either landlord or tenant in Ireland. He shows how under this strange condition of things [laws made on the principle of contract only and customs prevailing on the principle of status or tenure] there had sprung up tenant-right in the north, and elsewhere somewhat analogous usages, or at least expectations, any interference with which on the part of the landlord was resented by the tenant, and often led to violence. He thus describes the Ulster custom.

> "The tenant's-right is really a very beneficial co-proprietorship of the somewhat indefinite and uncertain character of rights held by custom rather than by law. The landlords certainly have some powers of control and regulation. It is admitted that they have a right of veto over the admission of the new tenant. The transaction is only completed by entry in their transfer books, and they may refuse to receive the new tenant on any fair and reasonable ground. They generally exercise their power to give a sort of right of pre-emption to the adjoining farmers, where the farms are so small as to render consolidation desirable; for the tillage farms of the north are as small as in any part of Ireland. Some landlords have striven hard to regulate the price—to say that they will not allow incoming tenants to exhaust their means by giving too much, and fix

a regulation price; but it is notorious that this attempt has always failed. Even when nominally carried out for a time, it is like purchase in the army—large sums beyond the regulation are habitually given behind the landlord's back; there is no limit but the market price; the custom overrides all rules.

"The point which is hopelessly puzzling to an outsider, is the question how the rent is fixed. It is admitted to be liable to enhancement from time to time. Regular periodical revaluations are, I am told, rare; but on the occasion of changes of tenancy and such opportunities, the landlord gets a rise commensurate to the general rise in values and rents in the country. There is no intelligible rule. It is one of those things settled among the natives by some sort of rule of thumb, which a foreigner cannot exactly understand, as is sometimes the case in most countries. The utmost point to which I could get was this: that if the landlord attempted to raise the rent to such a point as to destroy the value of the tenant-right, the tenants would then very seriously kick, and it would be necessary to resort to arbitration or some such mode of adjustment. The value of the land as expressed in rent is so concealed by the predominance of custom, that the parties themselves do not know it. Almost all land agents declare with one voice that the tenant-right does not affect the rent; that the landlord, in fact, gets as much as he could get under any other system. It is impossible that this can be literally true; but this much is the fact, that the people of the north are so frugal and saving, they have so many opportunities of making money in various ways besides the land, and they are so ready to invest their savings in land in order to obtain the security of a tenure practically permanent, to which they can retire, that they will give very large sums for tenures which yield them a very small return for their money. Further, the tenant-right gives the landlord an absolute security for his rent, and so saves him all risk and anxiety, it being an acknowledged rule that he can at once come down on the tenant-value for arrears of rent; if necessary, he forces a sale, and takes the rent as a first charge on the proceeds. In fact, if a tenant breaks down, the landlord's agent frequently manages the whole affair, sells the tenure, takes his rent, and holds a sort of court to hear and adjudicate on all claims against the tenant, who gets the balance only, if there be any.

"Practically, therefore, the landlord suffers far less from this system than might be supposed. He is accustomed to it, and the loss which he really sustains is hid from him. He generally does not care to strive against the custom. It is sometimes said to be extraordinary and unaccountable that farmers give for the tenant-right of a farm a price as high as that which the fee-simple of the land would fetch. But then it must be remembered that what is called the fee-simple is only the landlord's-right, burdened with the tenant-right of another, who is practically co-proprietor. Iti s quite intelligible that a farmer should give £40 for a right of occupancy carrying the possession which he desires, rather than pay the same sum for a superior landlord-right which gives no possession. If the two rights could be sold together, they might fetch £80, but I believe the great majority of farmers would rather give £800 for the tenant-right of twenty acres, than the same sum for the fee-simple of ten acres. I have been giving illustrations taking the tenant-right at a higher figure than is very common; but I gather that in great districts in the north it would average at least £20 to £30 per acre. The power of the landlord being, however, of an uncertain, and as it were of an elastic character, the value of the tenant-right varies very much according to the estate and the character of the landlord for the time being. When there is a liberal landlord, who manages his estate on a well-known system, such as the late Lord Downshire, the tenant-right rises to a high and certain value; when the landlord is hostile, it falls in some degree, according as he is able to exercise more or less interference.

"The confidence of the people in the right which the custom secures to them is great, although it appears that the courts of law have never recognised it—a fact which seems to me very surprising, seeing how

constantly all parties act under it, and how frequently almost all landlords have in practice recognised it, by receiving arrears of rent from the purchasers of the tenancy, interfering to secure the pre-emption of the adjoining farmers, and such like dealings. I found in one case that a man who had not only erected a capital farm-house, and excellent farm buildings, but had actually set up, first, a scutching mill, and then a very extensive flax manufactory upon his land, had no legal right of any kind—not even a lease: he had done all this solely on the faith of the tenant-right system.

"Lord Dufferin's strong objections to this system are not, I think, generally shared by any class in the country. The principal objection made is that it absorbs the tenant's capital and leaves him without sufficient means properly to cultivate the land; but this is an objection which would apply with still greater force to all rights of property. You cannot have the benefit of the 'magic of property' without the disadvantage of it costing money. The Ulster system secures these advantages at a cost less than the cost of complete property, and it seems to suit the people and the country. True, in Scotland a man would devote the same money to taking on lease and stocking a larger farm; he might more economically develop the resources of the soil, and pay the landlord a larger rent. The farmer might be a more enterprising and productive member of society; but then we must compare the Irish farmer not only with the Scotch farmer but also with the Scotch labourer. Where we have six Ulster farmers, we should perhaps have in Scotland one farmer and three labourers. The position of the Scotch labourer is not altogether good. It has been remarked lately that he is too much of a wandering *proletaire*, without local ties or the softening influence of a home and home surroundings. Although a 200 or 300 acre farm in Scotland, worked by an ordinary farmer and his men, is a very excellent institution, and a 1,000 or 1,500 acre farm is a very interesting model of industrial enterprise, there may be such a thing as an over-civilization. If, as is I think the course of things, the Scotch system more and more tends to the greater farms to which I have alluded, we shall have nothing but great agricultural manufacturers, working great enterprises by bodies of workers for wages. That division of society into the widely separated classes of capitalists and *proletaires* which is the great puzzle and as I think the great evil and difficulty of the day, will be carried out in agriculture as it has been carried out in manufactures, and nothing will remain of the old conservative society. The small Irish farmer, if he wants the means of the large Scotch farmer, has at all events the grand advantage that he works for himself and not for another. His wife and children rear poultry, carry to market milk and butter, and make money in little ways from which the great farmer is precluded. In virtue of fixity of tenure, he has the ornamental garden and the pleasant looking orchard which you hardly see in a great barrack-looking Scotch farm steading. Notwithstanding subdivision by inheritance, in these days, when there are so many outlets for the young men, and land passes so freely from hand to hand under an established system and among a prosperous people, the tendency is for farms to become larger, not smaller. All the testimony I could gather was conclusive on that point.

"On the whole, then, I am not sure that I would not rather see the 20 acre farms of Ulster, develop into 50-acre farms, under the prevailing semi-proprietary system, than see Scotch 300-acre farms develop into 1,500-acre farms. At any rate, be it in the abstract good or be it bad, the main point is that the system of small farms and tenant-right is a fact in the north of Ireland, and that it works at least tolerably well, or is not proved to work ill. The day might come when over-civilization has led to a tyranny of *proletaires* and reds over the rich among ourselves, and we might then long for a conservative Ireland of small landowners with something to lose by revolution."

I have quoted Sir G. Campbell at some length, because of all the earnest and able men who came to Ireland in 1869 to study the land question, he was the one whose power of viewing the situation

from an Irish stand-point struck me most. This was, I think, in a great degree owing to the fact that he had studied the land question in India, and seen its operation in many countries, and was not therefore blindly wedded to the English system—suited perhaps for wealthy proprietors and capitalist tenants—not, however, prevailing in almost any other country, and but ill adapted to the wants and feelings of a less rich and comparatively backward people like the Irish.

In truth, a large number of the Irish tenants are not sufficiently advanced either in wealth or independence to admit of a pure contract system of tenancy being successfully introduced, even if (which many persons doubt), such a system is really the best. It would have been wiser to have recognized this fact, and based legislation upon it. This is substantially what Sir G. Campbell proposes; for in the plan which he suggests, he says:—

> "In my view, the safest course is to keep before our eyes as the one main object, the maintenance of the present distribution of interests in land as nearly as possible as they exist, to make as little change as possible —to accept as nearly as may be present facts. I doubt whether any detailed law which could now be drawn would effect this object. What is necessary is to engraft the custom of the country and the several customs of the various parts of the country on the law as now administered by the courts; in short to enact that custom shall no longer be ignored, but shall have force and effect."

The fault of this proposal (and the same fault pervades the Land Act of 1870) is that it ignores altogether the patent defects in the Ulster customs. They are neither reasonable nor certain. A custom is not reasonable which contains within it two antagonistic principles, without any rule to fix when and how far each of those principles is to prevail. The antagonistic principles to which I refer are, the unlimited right of the landlord to evict, or in other words, to raise the rent, and of the tenant to sell. Either right pushed to an extreme will destroy the other. It is obvious that if an unlimited power of eviction is given to the landlord, he can at any time destroy the tenant-right. If, on the other hand, the tenant is given an unlimited power of sale, it can only exist on the condition of the landlord not being permitted to evict the tenant. Again, a custom is not certain which limits the landlord's right to raise the rent beyond a certain point, but fails to show where that point is, or how it can be ascertained. Thus the books tell us that a custom to pay twopence an acre in lieu of tithes is good; but to pay sometimes twopence and sometimes threepence, as the occupier of the land pleases, is bad for its uncertainty. In like manner, a custom that poor householders may carry away rotten wood in a chase is bad, being too vague and uncertain. The Land Act of 1870 has legalised the Ulster custom, but it has not defined that custom, and has therefore in reality done nothing to settle the question. The uncertainty—the feeling of distrust—on both sides is as strong as ever. In some respects, indeed, stronger; for landlords are now more disposed to look for their extreme rights than before. Now, as before, a grasping landlord will gradually eat away the tenant's interest, and a pushing tenant will often sell as his, part of the estate of a good-natured landlord.

What was really necessary was to ascertain whether a reasonable

system could be evolved out of the very vague and illogical custom, so as to give, in a form at once definite and elastic, their just rights to each party. The Land Act aimed at no such object; its policy was to destroy all Irish usages and to substitute the English contract tenancy and large farms, with as little hardship to individuals as might be during the period of change. That this is so will be apparent when we consider that although the 1st section of the Act gives legal validity to existing Ulster tenant-right customs, it also enacts: "Where the landlord has purchased or acquired, or shall hereafter purchase or acquire from the tenant the Ulster tenant-right custom to which his holding is subject, such holding shall henceforth cease to be subject to the Ulster tenant-right custom;" and in like manner the 3rd section of the Act provides compensation for disturbance, and the 4th, compensation for improvements; but the 12th section enables the tenants of holdings valued at £50 a year and upwards to contract themselves out of the Act. The tendency of the foregoing clauses is gradually to destroy small tenancies and Irish customs altogether, and to substitute for them large farms and English contract tenancies; and already sufficient time has elapsed to show a decided movement in this direction.

Many persons doubted the wisdom of this policy when the Land Act was under discussion, and the foregoing, as consequences likely to flow from it, were pointed out by Judge Longfield (than whom there could be no higher authority) in a letter published in *The Times* newspaper of the 26th March, 1870. Judge Longfield, instead of trying to stamp out the Irish customs, would have preferred shaping legislation on those customs—following the custom where good, and amending it where bad or defective. He proposed to give to every Irish tenant the right of acquiring by purchase a tenant-right in his farm, equal to seven times the yearly rent of it. The consideration in the case of a new tenant might be paid in cash, for which he would be entitled to a corresponding reduction in his rent. In the case of long existing tenancies the consideration would often consist in whole or in part in the value of the existing tenant-right, or of the improvements effected by the tenant. In such cases the tenant would often have to pay no money down; but in that event he would get no reduction of his rent. When the tenant-right had been thus acquired, the tenant was to be declared to be a tenant with parliamentary tenant-right, and could not thenceforward be evicted for any cause save non-payment of rent, wilful waste, or subletting. The landlord might, however, raise the rent, or the tenant reduce it at stated intervals —subject to this proviso, that if the tenant declined to pay the increased rent, the landlord should be bound to buy him out at seven years' purchase of such increased rent; and that if the landlord should refuse to make the reduction sought by the tenant, he should have a right to take up the farm, on paying the tenant seven years' purchase of the reduced rent named by the tenant. Thus, if the landlord attempted to raise the rent beyond the true value, he would be obliged to redeem the tenant-right at a sum greater than its real worth; and if the tenant attempted to reduce the rent to less than the true

value, his own tenant-right would be bought from him at less than its real worth. Each party would have the same interest in ascertaining the true value; for if either made a mistake, the other could immediately take advantage of it for his own benefit. It will be found that the necessary consequence of this arrangement will be to divide any rise or fall in the value of the land between the landlord and tenant, in the exact proportion in which they originally held. The condition of the parties will be one of co-proprietorship, in which each will be at all times entitled to the benefit of a rise in the value of his share, and liable to bear his share of any loss by reason of a fall in the value of land. No attempt on the part of the landlord to raise the rent beyond the full value of his own share could succeed, nor could a tenant make away with his landlord's due proportion of any rise in the value of the farm. In like manner each party would find himself under the necessity of submitting to his proper proportion of any fall in the value of the farm, owing to bad times or similar causes. By this means all uncertainty and vagueness vanishes, and the tenant-right custom becomes well defined and clear. It is a fact worth mentioning, that this proposal was favourably received by the Irish press of all parties—conservative, liberal, and nationalist alike—as one well suited to the wants and feelings of the people, and in strict accordance with principles of right.

Owing to the publication of the *Cobden Essays for* 1869 (in which it appeared) having been unfortunately delayed to a very late period, Judge Longfield's proposal was not known until after the Land Act was introduced; and notwithstanding a vigorous attempt to insert it in the Bill, made by Mr. Morrison, Member for Plymouth, it was found impossible to induce the Government to alter their course. Although in one sense fully within the limits of the Land Act, it was plainly without its policy; for it would have encouraged and perpetuated tenant-right which it was the policy of the Land Act to destroy.

A farm on my father's estate in the County of Antrim having recently fallen into possession, and another farm on the same estate, held under a lease for a single life, having been bought by a tenant who wished to surrender the lease, presented what appeared to my father and me a favourable opportunity of practically trying Judge Longfield's plans; and the two leases, copies of which I have laid on the table, were offered to and gladly accepted by the tenants who now hold under them. In the first lease (being a lease of the farm actually in hand at its date) the farm was valued and the rent fixed at £81 a year. This rent both parties agreed to as a fair value; but instead of naming that rent in the lease, a fine of £420 and a rent of £60 were fixed on (the interest at £5 per cent. on £420 amounting to £21, the balance of the rent). The tenant, in consideration of these payments, will be entitled to hold the farm for ten years. At the end of that time, if neither party seeks to change the rent, the tenant will continue to hold on for ten years more at the old rent of £60. If the landlord wishes to raise the rent (say to £70 a year) he may do so—subject to this, that if the tenant declines to pay so much, the landlord must take the farm off his hands and pay him seven years

purchase of the increased rent of £70, *i.e.* £490, as compensation, in addition to any improvements made by the tenant in pursuance of the provisions of the lease, and which you will see by reading the lease can be ascertained in a moment by either party. If, on the other hand, the value of land has declined, the tenant may name a reduced rent (say £50). If the landlord declines to submit to this reduction, he must, as before, take up the farm, and give the tenant £350 as compensation, in addition to the value of any improvements made by the tenant. It is a peculiarity of this arrangement, that the landlord cannot without loss raise the rent beyond, in the instance before us, $\frac{49}{81}$th parts of any increase in the value, or the tenant reduce it below $\frac{49}{81}$th parts of any fall in the value. Thus, suppose that at the end of ten years (I assume for simplicity sake that no improvements have been effected during that period) the farm has risen in value £10, the landlord can increase his rent to £67 8s. 1d. and it will be the tenant's interest to submit to that rise. If, however, the landlord tries to appropriate the entire rise of £10, and raises the rent to £70, see what will happen to him.—The tenant will refuse to pay that rent, and the landlord must redeem him by a payment of £490, which at 5 per cent. will be equal to an annual payment of £24 10s., which, deducted from £90, the entire improved letting value of the farm, leaves only £66 10s., which is less than the landlord would have got if he had asked for only his just proportion of the increase. The same fate exactly (*mutatis mutandis*) will befall the tenant if he attempts to reduce the rent below $\frac{49}{81}$th parts of any fall in value.

Thus it will be seen that this mode of dealing is a co-proprietorship between the parties, in which each will be entitled to (and by the natural action of the system, in fact obtain) his fair proportion of the unearned increment, or bear his fair proportion of any fall. It is a great advantage to the tenant that in bad times his tenant-right is not liable to be destroyed as at present, but only lessened in value, as in the instance before us, in the proportion of 21 to 80. It may be said that the whole of the unearned increment belongs to the landlord. Economists of the Mill school will of course at once deny this, and maintain that it belongs to neither landlord nor tenant, but to the state. In practice, however, it would be found difficult to recover this property for the state, and it would probably be a wiser course for the state to sanction a reasonable division of it among the persons interested in the land. It would give landlords and tenants a greater interest in forwarding local improvements, such as branch railways and the like. I also think (as between landlord and tenant) that a landlord would in fact be better off who got $\frac{49}{81}$ parts of any rise in a certain and peaceful way, than one who got the whole under the existing uncertain and expensive method, which can only be enforced by means of a law-suit unavoidably attended with expense and angry feeling.

As regards the second of the leases of which I have spoken, the tenant had bought a farm on my father's estate, which was held under a lease made in 1842 for a single life aged 50 or 51, at a rent of £104 per year. He paid £1,100 for the lease, and, being a prudent man,

immediately thought how he could secure his £1,100 in the event of the life dropping. The cost of insuring the life for £1,100, added to the interest of that sum, would greatly increase his annual outgoings. In these circumstances he came to Dublin, and proposed to surrender the lease of 1842, and enter into a new arrangement on such terms as my father would think fair. We proposed to the tenant the terms embodied in the second lease, and gave him time to return home and talk the matter over with his friends. Having done so, he elected to take the new lease, and surrender the old one, and I have little doubt that he acted wisely. We had asked Judge Longfield to make the necessary calculations for us. The data on which he based his calculations were: value of money, 5 per cent.; expectation of life in lease, eighteen years; surrender value of lease, £1,100; rent subject to which tenancy was to run for ten years, £104. It follows from these data, that the full letting value of the farm was £197; and the Judge calculated that the tenant should pay, in addition to £1,100 (the surrender value of the lease), £220 to entitle him to a tenant-right lease. As a matter of calculation, on the above-named assumption of facts, the new lease is exactly equivalent in value to the old lease. Neither the landlord nor tenant gains or loses on the transaction; but the risks arising from the uncertainity of human life are eliminated, which saves the tenant from the chance of a serious loss, and he has a tenure substantially equal to a perpetuity, at a rent which, speaking roughly, can never exceed three-fourths of the full letting value of the farm. If the value of the land continues the same for the next ten years the landlord will be in a position at the end of that term to raise the rent to £146 a year. The tenant during that time will have enjoyed the use of a farm worth £197, on payment of an annual sum of £170 (£104 rent + £66 interest on £1,320, at 5 per cent.). The difference, £27 a year, if accumulated at compound interest at 5 per cent. will at the end of ten years amount to £337. If at that time the tenant objects to the increased rent of £146, he can demand seven times £146, = £1,022, which, with the £337, the value of the difference of rent for ten years, will make £1,359—a little more than the consideration he paid. The landlord, on the other hand, will have a farm worth £197, from which, however, must be deducted £51, the interest at 5 per cent. of £1,022 he must refund to the tenant; and on setting the farm to a new tenant at £197 a year, he will be as well off as if he had got £146 from the old tenant. If the old tenant, as he probably will, elects to remain on at the increased rent of £146, the two parties will thenceforth be co-proprietors in the proportion of 146 to 51, and any future rise or fall in the value of land, not owing to tenants' improvements, will be divided between them in those proportions. If the tenant objects to the division, his interest will be redeemed at a price greater than he himself estimates his interest to be worth. If the landlord objects to the division, he can buy out the tenant at a price smaller than he (the landlord) estimates it to be worth; so that neither party can complain, and each has in truth the strongest interest in ascertaining the real value of the farm, as an error is pretty certain to injure the man who makes it. The landlord need have no hesitation in acting promptly on his

opinion, as he will know that he is dealing with a solvent person, who cannot be injured by any error as to value the landlord may make; and the tenant will in like manner feel that the considerable sum the landlord would have to pay down, and the loss he must suffer if he over-estimates the value of the farm, will operate not only as an effectual bar against capricious eviction, but also make the landlord most careful not to demand more than is really his due. Thus the uncertain element of the Ulster custom is removed, and a self-acting system, free from all necessity of a public or judicial valuation, and entirely in harmony with the feelings of the country, substituted for it.

It will be seen that both the leases I have referred to give the tenant the value of any improvements effected by him after the date of the lease. He would therefore, on giving up possession, be entitled in addition to seven years' purchase of the rent, to the value of his improvements, according to the scale laid down in the lease. Seven years' purchase has been fixed in these leases as the measure of the tenant-right. It is sufficiently high to give the tenant substantial security, without an excessive drain on his capital; but the system might be worked on any number of years' purchase agreed on by the contracting parties. The tenants in both cases gladly accepted these leases, and considering that they secure to the landlord not only the fair value of the land at present but a substantial proportion of any rise from the general advance of the country, as distinguished from the tenant's exertions, while they give to the tenant substantial security of tenure at a moderate rent and a fair value for his improvements, I think I am justified in the expectation that they will prove satisfactory to both the contracting parties, and I have brought them under the notice of this Society, in the hope that other fee-simple owners may adopt the system, and perhaps that some steps might be taken to promote a Bill to enable tenants for life to make leases of this kind. It is obvious that without legislation no tenant for life could lease on fine or make a binding contract as to the value of any existing tenant-right in lieu of a fine. I do not think it would be difficult to give powers of the kind which would not be unjust to remainder-men. In many cases no money would pass, as the old tenant-right would be commuted into the new parliamentary tenant right; and where money had to be paid, arrangements could often be made for applying it in discharge of debts affecting the inheritance, or it might be expended in permanent improvements, which would enhance the value of the estate in remainder. In this last case, also, the state might safely advance the money under the Land Improvement Act, as a first charge on the land—the annual instalments to be paid by tenant, and only to fall on the landlord in the event of his taking the farm up from the tenant.