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LANDHOLDING IN ENGLAND

MARY A. M. MARKS

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LANDHOLDING IN ENGLAND

BY THE SAME AUTHOR

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LANDHOLDING IN ENGLAND

Considered in Relation to Poverty

BY

MARY A. M. MARKS

AUTHOR OF

"ENGLAND AND AMERICA," "THE CORN LAWS," ETC.

LONDON

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TO THE

RIGHT HONOURABLE

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PRESIDENT OF THE BOARD OF AGRICULTURE

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WITH THE DEEPEST RESPECT FOR HIS LABOURS IN

RESTORING THE LAND TO THE LANDLESS

THE LANDLESS TO THE LAND

CONTENTS

PREFACE

MY object in writing this sketch of the history of land in England is to give the general reader some account of the most salient features of landholding in the past, and of the causes which have made it what it is at present; and in doing this, I have tried to show the connection between our land system and poverty. Poverty has a very sharply-defined history, and that history runs parallel with the history of land. The depopulation of country districts is no accident, it is the direct and inevitable consequence of the disappearance of small holdings. We cannot understand the present without knowing something of the past. The history of the past often reveals to us that the evils of the present are not caused by the inevitable laws of nature, but by interference with those laws, and should not therefore be regarded as inevitable. Our land system is too often regarded as, on the one hand, of so reverend an antiquity that to touch it is to break with all the traditions of Englishmen, and on the other, as so great an improvement, in a democratic direction, on the system of the past, that we cannot materially improve it. But the change has been, not towards democracy, but towards more unlimited private ownership—a very different thing.

My first intention was merely to mention in passing some of the ancient statutes relating to land, but I found that some further account of them was absolutely necessary. I should, however, have been afraid to venture on this, but for the assistance given me by Mr Richard Brown of Whitley Bay, Northumberland, who has most kindly helped me both with his knowledge of the subject and his criticism of the chapters dealing with the transfer of land after the passing of *Quia Emptores*.

A portion of the matter of this book appeared, in a greatly abbreviated form, in the *New Age* of 1906.

MARY A. M. MARKS.

June 1908.

LANDHOLDING IN ENGLAND

CHAPTER I.—IN SAXON TIMES

"There is much that is primitive and simple to be met with, but (apart from the personal habits of the age) nothing of barbarism in the land institutions of Saxon England, unless, indeed, an excessive love for it [land], and an almost exaggerated deference for its possession may be so classed."—"The Land Laws of England," C. Wren Hoskyns.

I PROPOSE to give a brief account of the several steps by which England has arrived at her present position of a country without peasant proprietors. The commonly accepted views contain many errors as to when and why changes took place, and several most important causes are generally entirely overlooked. As we more than other peoples love to go by precedent, it is good that we should be quite sure what precedent has been as to this matter.

"Land," says an ancient Irish Tract, supposed to be a part of the Brehon Code, "Land is perpetual man." From the land comes everything which composes our bodily frame; and thus Selden explains the ancient custom of doing homage by offering earth and water—that of which the man is made.

All Englishmen are afraid of that which is new. Very many Englishmen are afraid that this country would no longer be stable if once the great estates ceased to be as large as they are at present, and if small holdings were greatly multiplied. It will be shown that whatever small freeholds are, they are no new thing, but a very old one—older far than the Norman system in which we trust. It will also be shown that the possession of a little land promotes those virtues known as "conservative," rather than

those virtues known as progressive. The more conservative a man is, the more ought he to desire for his country a numerous peasantry, who are not petty tenants-at-will, subject to eviction, but little freeholders, secure in their tenure.

The Saxons were of the great Gothic stock—the second of the three great migrations from East to West, from Asia to Europe.[1] At first they were called Scythians; but even by Pliny's time, one tribe of them had become so predominant that the Persians called all Scythians "Sacae," from their ancient name of "Saksun." The Saxons were of the same blood as the Teutons, but they had spread farther west, and Tacitus does not mention them among the great Germanic tribes. At first the Saxons settled on the north side of the Elbe, on the neck of the Cimbric Chersonesus—the old name of the Danish provinces—and in the three isles, Nordstrand, Busen and Heligoland. Soon they spread over the whole region between the Elbe and the Eyder—over Jutland, Friesland, Schleswich and Holstein. They became a Confederacy of Tribes, of which the Angles of Holstein were the chief; and so the whole Confederacy came to be called "Anglo-Saxons."[2]

From their earliest appearance on the stage of history, the Saxons were sea-rovers—to put it plainly, pirates— and Heligoland was their chief nest. Long before the Romans left Britain, the Saxons had become so terrible that the officer appointed to protect our southern coast was called "the Count of the Saxon Shore."

But though the Saxons were pirates, and though their conquest of Britain was one of the most ruthless known to history; though till they became Christian they created nothing, destroyed all the Romans had created, and were solely engaged in cutting one another's throats, in what Milton calls their "wars of kites and crows"; yet they brought with them a precious inheritance, destined to shape the political history of all their after-time. This was the idea of an Assembly of the People; it was called the Witenage-

[1] The first migration was the Celtic; the third, the Sclavonic.

[2] "The Anglo-Saxons, Lowland Scotch, Normans, Danes, Norwegians, Swedes, Germans, Dutch, Belgians, Lombards, and Franks, have all sprung from that great fountain of the human race, which we have distinguished by the terms, Scythian, German, or Gothic."—Sharon Turner, "History of the Anglo-Saxons," i. 93.

mot, or Assembly of the Wise, and without its consent the acts of a Saxon king were illegal. This inheritance has been more or less the common property of all the men of Gothic blood. And inextricably bound up with this idea was the custom of Trial by Jury, whereby a man is tried by his equals, and not by his superiors, as was the case under despotic governments. English law has never lost the impress of this principle.

In historical times, two great systems of land-tenure have prevailed—the allodial and the feudal. The systems may differ in detail in different countries and among different races, but fundamentally all systems belong to one or the other of these two. The differences between them have often been misapprehended. Because the allodial system was a freehold system, it has been sometimes supposed that no duties attached to lands held under it. But we may safely say that some duties (gradually crystallised into the shape of rent, but at first personal service) have always attached to the holding of land, and under the allodial system a man was as much bound to defend his country as under the feudal. The grand fundamental difference was that in the allodial system a man did not hold of an overlord; the duty and service he owed were to the community, not to an overlord. Under the feudal system, all land was held of a feudal superior. The system was a ladder—the little men held of the great men, who in turn held of some great noble, who held directly of the King. And even some little men came to hold directly of the Crown —or as it was called, *in capite*. This was especially the case where lands had been forfeit, and were granted or sold by the King to a new owner. The reason why the King was so willing to grant even small estates *in capite* was merely self-defence. Allegiance to a feudal superior was sometimes a very dangerous doctrine—the Norman barons had so high a notion of it that they vehemently resisted the King's demand that their tenants should take a second oath—of allegiance to the King. A baron's tenants formed in effect a little army, ready to fight in the baron's little wars with his neighbours—and sometimes to march with that baron against the King himself!

The old Saxon system, brought with them by the Saxons when they conquered England, was allodial. The word

allodial is defined by Blackstone as "every man's own land, which he possesseth merely in his own right, without owing any rent or service to any superior."—"Commentaries," II. c. 7.

Counties were divided into Trithings, Rapes or Lathes, and these again into Hundreds or Wapentakes. These two words, "hundred" and "wapentake," used in different parts of England to denote the same division, suggest that after the Saxon conquest the lands of England were divided among each hundred fighting men, or, as we may say, every hundred spears. The Hundred or Wapentake was divided into tithings, and a tithing is sometimes spoken of as a "ville," or town, but we shall better understand the ancient ville if we think of it as a "township," for it was more than a collection of houses. The divisions into Hundreds were not equal, and the amount of land in a Hundred is not known with certainty. The hide may be estimated roughly at a hundred acres (it was sometimes more), but there could be several hundred hides in a Hundred, for Hundreds are spoken of as "single," "double," "triple," and "quadruple." Nor were there a hundred villes in a Hundred. "Never that I know," says Spelman, "are 100 villes found in any Hundred in England. Those are thought large which have 30 or 40; many have not 10, some have only 2, or even 1." Blackstone says the Hundred consisted of a hundred families.[1] From all this it is clear that the Saxon system started from the tithing, and the tithing from the household.

There is little doubt that before the Conquest all lands in England were held by the custom of Gavelkind—that is, they were "partible" among all the sons. There was no primogeniture until the custom of knight's service brought it in—partly because the eldest son was the soonest able to bear arms, partly because he would perform his military service with more dignity if he held all the land. In Gavelkind, if one of the sons had died, leaving a son, that son inherited with his uncles. By the time of King John, the presumption was that all soccage lands were held by primogeniture, unless Gavelkind could be proved. But

[1] As ten families of freeholders made up a town or tithing, so ten tithings composed a superior division, called a "Hundred, as consisting of ten times ten families."—"Commentaries." Introduction, s. 4.

in Kent, all such lands were presumed Gavelkind, and primogeniture must be proved, either by showing that the lands had been "disgavelled," or that they were originally granted on knight's service. Of course this applied to the grants made since the Conquest to Norman feoffees. Gavelkind was an ancient custom of the Saxons and Danes (68 of Canute's Laws).

In Gavelkind, if there are several houses, the eldest son takes his choice of them. If there is only one, it is his, but he must pay its value to his co-heirs.

There is another old custom in Kent and Sussex called Borough English. By it, the youngest son inherits the land. This has been accounted for by supposing that the elder sons would be grown up and off to the wars before their father's death, and therefore unable to fulfil the duties of the tenure. Like Gavelkind, Borough English cannot be disputed as a custom ; it must be shown not to hold good in the particular case. It is not peculiar to Kent and Sussex. A letter in the *Gentleman's Magazine* for 1783 says that the custom of Borough English then still remained in the manor of Taunton Dean in Somerset. "Where, if a tenant dies, having no wife, the youngest son shall enjoy his lands ; and if there be no son, then the preference shall be given to the youngest daughter."

The serfs of Saxon times were the descendants of the conquered Britons, or freemen who had been degraded for crimes, or sometimes men who had sold themselves through misfortune.[1] But these serfs were not numerous in comparison with the classes of the semi-free—the villeins of every degree up to the class known as freemen.

Before the Conquest, land-tenure in England included three rights which have been called "the test of land-freedom." They were :

1. The right of alienation, or transfer by sale or gift.
2. The power of disposal by will.
3. The power of transmission by inheritance.

After the Conquest, the first two were virtually abrogated

[1] The man who had committed a crime, and could not pay the fine, and could find no one to pay it for him, clasped his hands in court, and said that he had no one "to make amends" for him. Then he lost his freedom, and sank with his children into the ranks of the *servi*. For a year, however, he might be redeemed.

as to great estates, and the third was completely changed in character so as to subserve only the feudal rule of succession.

In Saxon times, there was: first, "folk-land," or land of the people—that is, the common land of the township, which belonged to the community as a community. Secondly, there was "book-land," by which was meant land granted to individuals by charter.[1] These folk-lands and charter-lands have been compared to the *publica terra* and the *privatus ager* of the Romans: the "public land" was the subject of the famous agrarian agitations. It was only by consent of the Witen that a Saxon king could grant any public domains — the folk-land. In Saxon times the King was not the lord paramount of all land. That was a much later theory; Edward III. was the first English king to claim universal ownership.

Under the Saxon system, any part of the folk-land could be held by individuals as tenants of the Commonwealth, and might, as we have just seen, be granted with consent of the Witen to private persons. But all land was subject to three conditions: 1. Military service in defensive war; 2. the repair of bridges; 3. the repair of royal fortresses.

The large owners were the Eorls, or Earls. They held under the Crown. The small were the Ceorls, or Churls. They were independent landowners in their humble way. Hallam says of them: "They are the root of a noble plant; the free soccage tenants, or English yeomanry, whose independence stamped with peculiar features both our Constitution and our national character" ("Middle Ages," ii. 386). The churl was a yeoman, and when he held 5 hides (600 acres) he became "of thaneright worthy." A register was kept of lands, deeds, decisions, and mortgages. Transfer was very simple—the Saxons trusted to publicity. A grant of land was enrolled in the Shirebook, after proclamation made in public Shiremote, for any that could claim the lands to be conveyed. Such transfers were "as irreversible as the modern fine with proclamations of recovery" (Gurdon on "Courts Baron"). Hoskyns

1 This is often called copyhold in later times. The original idea of copyhold went back to the Saxon conquest.

says of Saxon times : " It might almost shame a reader of our Bluebooks on ' Sale and Transfer of Land,' to find a ' Registry of Title,' and what was then almost its equivalent, a ' Register of Assurances,' existing in the ancient English County Courts, while the age of Christendom was yet written in three figures." This is an illustration of the terrible truth that the world can move backwards, that progress is very far from being constant, that ebb and flow by no means necessarily counterbalance each other, with a constant if slight gain of territory ; but that a truer image is afforded by the wearing away of a coast in the storms of each succeeding winter, with occasional catastrophes by which a whole village may be carried away or a harbour ruined for ever.

In these old times before the Conquest, the power of disposition by Will was unrestricted—even an oral declaration was valid if made in the presence of eight or ten witnesses. All Wills had to be established in the County Court.

It is from Domesday Book that we get the deepest insight into life in rural England in the tenth and eleventh centuries—and most of the life was rural ; there were very few towns of any size. Domesday sheds a light backwards over the seventy years since Ethelred the Unready, and tells us almost as much of England before the Conquest as of England afterwards. It shows us what the English meant when they took the Conqueror at his word, and demanded their old laws. Long before Domesday, the land had been divided into hides, or as it was called " hidated." Domesday constantly refers to these former " hidations," and tells us that such and such land was taxed at so much " in the time of King Ethelred," or " in the time of King Edward," or " in the time of Harald "—whom it never calls King. The first hidation for assessment was made in the time of Ethelred the Unready (979-1016). That unlucky monarch raised a tax called the " Danegeld," variously described as a war tax for resisting the Danes when they came, and as a bribe to induce them not to come. For long, the " hide " was a very elastic term. The Latin equivalents show that it meant whatever land was attached to a homestead. After the Conquest, a " carucate," or " plough-land " (called also an " oxgang ") meant as much

land as one team of oxen could plough in a year.[1] Hides were not even always of the same size—one that was mostly arable would be of smaller extent than one in which there was much forest and waste. The object of hidation was assessment, and what the land could pay was taken into account. This helps us to understand how a hide sometimes contains (as in Dorset) 240 acres. Usually, it is anything between 30 and 60 acres.

Long before Ethelred the whole land was divided into tithings and hundreds. We shall best understand the tithing by considering it as a parish. It could not consist of fewer than ten men—that is, ten families, or homesteads; and Domesday shows that it was seldom as small as this. It was called a tithing, because each of the ten householders would contribute one tenth of any fine or compensation adjudged to be due from the community for the offence of an undiscovered criminal. For, ferocious as the Saxons had shown themselves in war, in peace they preferred to punish criminals in purse, instead of in life or limb. Instead of hanging him, or chopping off a hand or a foot, they made the offender pay a fine. And if the offender could not be discovered, the little society of the village, or the larger society of the hundred or the shire, had to make good what he had done, so far as money could do. Thus crime was unpopular, and a criminal was looked upon with disfavour, even by those whom he had not personally injured. From the tithing upwards there were common responsibilities. The lord was responsible for the evil deeds of his villeins; and if there was no lord, but the land was held in community, then the community was liable.

The great man of a township did not own it in the sense in which it is owned by a modern squire. The part which he farmed himself—called in Norman times the demesne—was all that was his in this sense. The rest was held by tenants, sometimes called "sokemen" from the "soke" or jurisdiction; and said to hold in "soccage" because they gave plough-service by way of rent. In those days,

[1] A carucate was only plough-land. The rest of the estate is given in acres. Four virgates made 1 acre. This was long measure. When used in connection with a hide, a virgate means much more—it is then anything between 15 and 30 acres. The acre of Domesday is about the same as our own, as defined by Edward I. It is always unequal-sided, never square.

when roads were bad and few, and communication difficult, every township had its own jurisdiction, some part of which still survives. These local courts could not sit without a certain number of sokemen. There was the Court Baron, presided over by the Town Reeve, elected by the township, and the Court Leet, or local criminal court. In both these courts, questions of book-land could be decided.

NOTE.—Spelman says, under the word *Allodium*,[1] that it is *prædium liberum nulli servituti obnoxium*—free land, subject to no service; the opposite to *feudum*, which is always subject to some service. A feud cannot be handed down even to a son or nephew without consent of the lord; but *allodium* can run over the whole line of heirs, and be given or sold to anyone—even though the lord should demur. On this account, it is called *allodium* by the Saxons, from *leod*; for *a* means *to* or *for*, and *leod*, the *people*; and as a *feudum* is the property of a lord, so is an *allodium* the property of the people. In the Laws of Canute, "allodial" is opposed to "feudal," and is called "book-land," which in the Laws of Alfred is hereditary land, and seems to be the same as what is now fee-simple. *Allodium* is also called free land, which a man holds of none, nor acknowledges any in another place or jurisdiction—for land is bound to a lord as to protection and jurisdiction. See Spelman, *Glossarium.*

CHAPTER II.—UNDER THE NORMANS

THE word "feudal" is probably derived from the word "fee" or stipend. But if it is derived, as some think, from the Old French for "faith," its practical meaning is the same—it means property held in return for a promise of something—rent, or personal service, or both.[2]

[1] Allodium. In Swedish, *udalgodo*; Ger. *allodium*; Fr. *alleu*, or *franc-alleu*; Low Latin, *allodium*. A word of uncertain etymology. According to Pontoppidan, it comes from *all* (*odh*=all property, whole estate, or property in the highest sense of the word). *Odh* is connected with *udal*; Danish, *odel*; Orcadian, *udal*; all having the same signification as the word *allodial*.—Lloyd's *Encyclopædic Dictionary*.

[2] "The grand and fundamental maxim of all feudal tenures is this, that all lands were originally granted out by the sovereign, and are therefore holden, mediately or immediately, by the Crown."—Blackstone's "Commentaries," II. c. 4.

Fee is the Old French, *Fe*; Latin, *Fides*; and a *fee*, anything granted by one and held by another, upon promise of *fealty* or *fidelity*.—Richardson's *Dict. sub. voce.*

Under the feudal system, the tenant, or vassal, owed his overlord military service ; he was required to serve himself, and—if he had tenants under him, to raise a certain number of men, to serve in the wars for a certain time—usually forty days. He also had to pay certain "fines," and "recoveries," on his accession to the inheritance—we now call these "death-duties." If he held of the Crown (which was called holding *in capite*), he had to pay his share of the "relief" which the King demanded of his faithful subjects when he married or knighted his eldest son, or married his eldest daughter. This custom also survives under the form of a grant from Parliament.

Probably the chief change as to land at the Conquest was at first one of persons—the substitution of Norman barons for the deprived Saxon earls ; and another and more real change, the great increase of book-land, owing to the many confiscations, which threw much land into the gift of the Crown. But confiscations were not wholesale. The old system was not abolished ; a new system was indeed introduced, but it existed side by side with the old. Two hundred and fifty years later, Edward II. swore to observe the laws of the Confessor. In all popular agitations, the demand is always for the old Saxon laws, and king after king swears to observe them.

The position of the serfs remained unchanged by the Conquest : they were no better off. But when the first horrors of conquest were over, the freemen of England suffered less than those of France from the operation of the feudal system. This was partly because the masterful Norman kings took care to delegate as little power as possible to their equally masterful barons—who considered themselves the King's "peers," his equals in all but precedence ; but it was still more because our kings long remained foreigners, far more interested in the affairs of France than in those of England. Thus the line of cleavage went from highest to lowest of the nation, and soon the barons themselves cast in their lot with "the English," because their own great interests now lay in England, and not in Normandy across the sea.

William of Normandy was not a mere soldier of fortune. He was one of the most astute of rulers. He knew when to strike and when to spare. He soon saw that he could

not hope to maintain his hold on both England and Normandy unless he made friends with the body of the English people. He did not rely wholly on his sword: he presented himself for election, according to the old Saxon custom—of which we still retain a trace in our Coronation service. And, however much we may believe that the election was a farce, it was a concession to public opinion, and as such was an abandonment of the purely military claim of a conqueror. He went much further than a sham election. Master Wace, in the "Chronicle of the Conquest,"[1] says: "Then he called together all the barons, and assembled all the English, and put it to their choice, what laws they would hold to, and what customs they chose to be observed; whether the Norman or the English; those of which lord and which king. And they all said, 'King Edward's; let his laws be held and kept.' They requested to have the customs which were well-known . . . and it was done according to their desire, the King consenting to their wish."

This seems to have taken place immediately after the Conquest. But there was a later confirmation. From the year 1082, William was constantly harassed by the fears of a Danish invasion, to co-operate with Hereward—still holding out with a remnant of desperate men in the swamps of Ely. Twice had a Danish fleet reached our shores, and twice had it sailed home again, afraid to strike. Not daring to trust the English, William brought in great numbers of mercenaries from Normandy and Brittany, and quartered them on the English, whom they ate out of house and home. In 1085 another invasion was feared. At Christmas a great Council was held at Gloucester, and it was determined to make a survey of the whole land of England. The survey was ready by the Easter of 1086—it was the great Survey called Domesday Book.[2] This could not have been done in the time if there had not already been in existence a complete description of lands, based on the old Anglo-Saxon charters. At Easter, 1086, the King summoned all the freeholders

[1] Taylor's translation, 1837. The "Chronicle" is written in Norman French, and in rhyme.

[2] Cumberland, Durham, Lancashire, and Northumberland are omitted. We possess only an abridged version of Domesday—the original version counted everything, down to swine.

of England to meet him at Salisbury, there to take the oath of allegiance. It has been supposed by some historians that this marks a radical change in the position of English landowners. But an old chronicler, Eadmerus, a monk of Canterbury, who wrote in the reign of Henry I., gives the 71 Laws of Edward the Confessor, and says: "These are the laws and customs which King William granted to the whole people of England after he had conquered the land, and they are those which King Edward, his predecessor, observed before him." These freemen were not vassals—vassalage was unknown to the Saxons. They were the holders of "udall" land. Having thus made it their interest to be faithful to him, William went back to Normandy, for his last war of devastation; his famous career ended ignobly with the burning of Mantes.

The Norman manor answered pretty exactly to the Saxon hide. The names given to both in Domesday are all equivalents for "homestead." [1]

A careful study of Domesday Book will, I think, convince us that slaves (called *servi*) were at anyrate nothing like so numerous as any of those classes of men who were more or less free.[2]

First above the *servi* seem to have come the *colliberti*—described as "half-free"; free as to person, but not as to tenement.[3] They could go where they chose, "but not with their land."[3] This refers to a curious right under the

[1] *Mansa, mansura, contignatio, hospitium.* Our word "mansion" is derived from *mansa.*

[2] At Enfield, where 17 villeins held each 1 virgate (a quarter of a hide); and 36 had half-a-virgate each, and 7 cottagers had 23 acres, and 5 other cottagers had 7, the entry finishes thus, "and 18 cottagers and 6 servi." At Calbourne in Hants, 27 villeins and 5 bordars had 14 carucates, while there were only 11 servi. 25,000 servi are given in Domesday, but the Survey is not complete. The population of England was then at least 2,000,000.

[3] The tenure of a collibertus seems to have been nearly the same as that of a sokeman—that is, aid in ploughing for a certain number of days. Coke says that "*coleberti*, often also named in Domesday, signifieth tenants in free socage by free rent . . . *Radmans* and *radchemistres* (*rad*, or *rede*, signifieth firm and stable) . . . are free tenants who ploughed and harrowed, or mowed or reaped on the lord's manor (*ad curiam domini*) . . . and they are many times called sochemans, because of their plough service." They were persons who had bought their freedom—"ransomed" men.

The "bordar" (*bordarius*), whose name has occasioned much con-

Saxons, whereby a man could choose a suzerain. This suzerain became his protector, and could demand service in return. Besides any other advantages, the price paid to a man's family if he happened to be murdered or injured, was higher in proportion to the dignity of the suzerain who was thus deprived of his services.

The villein [1] has been called "the highest of the unfree." In Roman times he was the slave who worked upon the *villa*,[2] the country estate of a great man. He was called a "villanus," because he was enrolled as belonging to a villa (*quia villae adscriptus est*), and *adscriptus glebae*, as belonging to a glebe or meadow. There were two kinds of villeins—villeins *regardant*, and villeins *in gross*. The villein *regardant* was so called because "he hath the charge to do all base or villeinous services" within the manor, "and to gard the same from all filthie or loathsome things that might annoy it; and his service is not certaine, but he must have regard [3] to that which is commanded unto him" (Coke). A villein *in gross* belonged not to the manor, but to the person of the lord, who could sell him if he chose. The chattels of the villein *regardant* were his own, or rather they belonged to his holding.[4] He was called a tenant-in-villenage, and the part of the manor which he tilled was a *villagium*, or "village," to distinguish it from the demesne, or part farmed by the lord, which of course usually surrounded the manor-house. We call it

troversy, was a cottager with land (*Borde*, Norman French for "cottage"). His service was to supply the table of the lord with small provisions, such as poultry. Some *bordarii* paid rent. There were *bordarii* in the burgs. Coke says that *bordarii* are "in effect bores or husbandmen, or cottagers," and that those mentioned in Domesday are "bores holding a little house with some land of husbandry bigger than a cottage . . . *coterelli* are mere cottagers," who hold a cottage and a garden. *Censores* were free tenants at a fixed money rent.

[1] "*Villani* in Domesday are not taken there for bondmen . . . such as are bondmen are there called servi."—Coke, "Of Fee Simple."

[2] "Vil" or "Villa" now usually refers to a "town." In ancient Italy it meant an estate, and the *villani* were the tillers of the estate.

[3] "And it is to be understood, that nothing is named regardant to a manor, etc., but a villeine. But certaine other things, as an advowson, and common of pasture, etc., are named appendant."—Littleton.

[4] The fine for killing a villein was paid to his kindred, not to his lord.

"the home farm." The villein paid the land tax, and sometimes even commuted his personal service for rent. A female villein was called a "niefe"—a word derived from the Latin for "native," "because for the most part niefes are bond by nativitie"—that is, are born unfree.

That the villein was not a slave is proved by the fact that he could bring an action against any person, except his lord.[1] And in certain cases, he even had an appeal against his lord, and if his appeal succeeded, he was enfranchised for ever. The rights of the lord over him were strictly limited by law. If a villein sued his lord, and the lord answered, the villein could demand a trial. This became of great importance to the villeins, when they were attempting to obtain freedom to go where they would.

"Freedom," in the classes above the *servi*, was not quite what the word means to us. There were two great features of freedom—freedom to go where he would and to sell his land as he would. These two constituted complete freedom, and there was a sort of sliding scale of freedom, down to the actual serf whose body could be sold. Sometimes this serf was called a "villein *in gross*." Most villains were villeins *regardant* — they could not be removed from the land. Many were considerable farmers. At Fulham, we find a villein with half-a-hide—which must have been at least 30 acres, or anything above that up to 60 acres. He paid 4s. "for his house." Another, with the same quantity of land, paid 8s. Thirty-four others had each half-a-virgate; 5 had each 1 hide. In Hampshire, 4 villeins had 1 carucate. At Basingstoke, 20 villeins and 41 bordars had 11 carucates, and 20 villeins and 8 bordars had 12. Here there were but 6 *servi*.

The Normans were not Frenchmen, and the Anglo-Saxons were not Teutons. Both were of kindred Gothic stock. But for the two hundred years after the Conquest, the kings of England had as great a stake in France as in England. They lived half their lives in France; the wars they made were more often with France than with the Scots. In Saxon times a tenant in "common soccage" paid in money, not in person. But with these perpetual wars, men were wanted as much or more than money, and

[1] The villein is called a freeman in the Laws of Henry I. (c. 70-76). These laws are the Confirmation of the Laws of the Confessor.

this tended to fixity of tenure. The Norman kings, and the barons under them, wanted a man to perform the duties of the fief, and were not extreme as to whose son that man should be—a son-in-law, or an adopted son who married the old tenant's daughter, would serve the turn of providing a fighting man. Primogeniture seems to have been rather a custom than a law—nor does any law in the Statute Book establish it.

There were only two ways by which a serf could become free: he could enter into religion, or he could get into a walled town. Magna Charta does not trouble itself about serfs. The barons did indeed win a great battle for liberty, but their motive was to preserve themselves and their own rights from the aggressions of such a king as John.

The change was great. The whole theory of the State was altered. The old Saxon idea of the community slowly dwindled and died, as feudal lordship developed. And though the Saxon leaven long remained as a modifying influence, it cannot be said to have triumphed. To other causes than the land we owe the political freedom we have attained, and it cannot be said that even yet the land is free. The incubus of feudal domination broods upon it to this day. The towns have won their freedom; in the country, the Norman laws still hold good in practice.

There is yet another legacy, which affects every rural district in the kingdom. "Another violent alteration of the English constitution," says Blackstone, "consisted in the depopulation of whole countries, for the purposes of the king's royal diversion . . . the slaughter of a beast was made almost as penal as the death of a man. In the Saxon times, though no man was allowed to kill or chace the king's deer, yet he might start any game, pursue, and kill it upon his own estate. But the rigour of these new constitutions vested the sole property of all the game in England in the king alone. . . . From a similar principle . . . though the forest laws are now mitigated, and by degrees grown entirely obsolete, yet from this root has sprung a bastard slip, known by the name of the game laws . . . but with this difference; that the forest laws established only one mighty hunter throughout the land, the game laws have raised a little Nimrod in every manor."[1]

1 "Commentaries on the Laws of England," Bk. IV. pp. 408-409.

CHAPTER III.—THE THREE STATUTES OF EDWARD I.

"Homage is the most honourable service, and most humble service of reverence, that a frank tenant may do to his lord. For when the tenant shall make homage to his lord, he shall be ungirt, and his head uncovered, and his lord shall sit, and the tenant shall kneel before him on both his knees, and hold his hands jointly together between the hands of his lord, and shall say thus: I become your man (*Jeo deveign vostre home*) from this day forward of life and limbe, and of earthly worship and unto you shall be true and faithfull, and beare to you faith for the tenements that I claime to hold of you, saving the faith that I owe unto our soveraigne lord the king; and then the lord so sitting shall kisse him.

"But if an abbott, or a pryor, or other man of religion, shall doe homage to his lord, he shall not say, I become your man, etc. for that he hath professed himselfe to be onely the man of God. But he shall say thus: I doe homage unto you, and to you I shall be true and faithfull, and faith to you beare for the tenements which I hold of you, saving the faith which I doe owe unto our lord the king.

"Also, if a woman sole shall doe homage, she shall not say, I become your woman; for it is not fitting that a woman should say that she will become a woman to any man, but to her husband, when she is married. But she shall say, I do you homage, and to you shall be faithful and true, and faith to you shall bear for the tenements I hold of you, saving the faith I owe to our soveraigne lord the king."
—Littleton, "Of Homage."

THE reign of Edward I. is most important in the history of landholding in England. It was the period of the consolidation of the feudal system; it was the beginning of legislation on the transfer of land.

Military service was the foundation of the Norman land system. When there was no standing army, military service was a great part of the rent paid for land. The system was not without its compensations. As the term of service was strictly limited (forty days was the usual time), wars, though frequent, were not so continuous as they became when they were carried on by men whose sole occupation was fighting. But besides this the Norman system was a system of fines, most useful when taxation was more or less spasmodic. The sums exacted for recoveries, and the great profit a feudal lord made out of his wards and their marriages, enabled him to pay the sums demanded of himself by the King. Church lands were

exempt from all these burdens,[1] so the first attempts of tenants to evade feudal burdens were by sham surrenders to religious houses. The tenants received their lands back at a nominal rent, to hold as Church vassals, and thus not only escaped military service, but were exempt from fines and recoveries. By the feudal theory, all land reverted to the "chief lord" at his vassal's death, and had to be recovered by the heir, for which of course the heir had to pay. Sometimes this payment was called "a relief," because it relieved the lord;[2] or a "recovery," because it recovered the land. An ecclesiastical community was a continuous corporation; it never died, so its lands never reverted, and therefore never paid recoveries.

When about one-fourth of the lands of England was held by the Church in frankalmoigne, the exemption of Church lands from military service began to make a serious difference in the number of fighting men liable to be called out for the wars in France, Normandy, or Scotland, especially in France, where for nearly 500 years the kings of England tried to retain their ancient possessions. So in 1279, when Edward I. was conquering Wales, and meditating the conquest of Scotland, he enacted the Statute of Mortmain, or the "Dead Hand."[3]

The object of this, as of all statutes of Mortmain, was to prevent the loss of feudal service by ensuring that land should never be transferred except upon the original conditions, and subject to the original burdens.[4] The Statute of Mortmain did not produce the desired effect

[1] The tenure of Church lands was in "frankalmoigne," or "free alms." Tenants in frankalmoigne had only to perform the "three necessities"—to keep up highways, build castles, and repel invasions. When the King wanted money, the clergy gave him so much in the £ of their revenues, taxing themselves separately from the rest of the kingdom.

[2] "The relief on a knight's fee was £5, or one quarter of the supposed value of the land; but a soccage relief is one year's rent."—Blackstone.

[3] "For that a dead hand yieldeth no service."

[4] This was not the first statute of Mortmain; there was another in 9 Henry III. (1225). It said that "religious men" could not acquire land from a tenant without the consent of the chief lord. The Statute of 1279 enacted that land transferred except on the original conditions of service should revert to the lord; or to the King himself, if the lord were "negligent," and did not resume possession within one year.

—it was evaded by fictitious transfers and recoveries,[1] and in 1285 was passed the famous Statute of Westminster the Second[2]—more often called the Statute *De Donis Conditionalibus*, or "Concerning Conditional Gifts"; a statute which is said to have caused more discussion than any other on the Statute Book. Its effects were tremendous, and remain to this day. Before it, all inheritances in land were fee-simple[3]—which meant that the holder could leave his land to his heirs. It had always been the law of England, even in Saxon times, that on failure of the heirs specified in the original grant of the land, the land must revert to its original proprietor—called the "donor." But this was only as long as the donee had no child; the birth of a child gave him the power of "alienating" the land, and then he could repurchase it in "fee-simple absolute." He could do this, even if the child died before him, or if he wished to disinherit the child. The "condition" was held to have been fulfilled by the *birth* of an "heir," though that heir might never inherit; and as a fee-simple absolute, the land could descend to the holder's heirs in general, or to legatees, in accordance with the Common Law. Until the birth of a child to the donee, the donor was said to be invested with the "fee-simple expectant," and the expectant estate was called the "reversion."

If the tenant did not "aliene" the land, the course of descent was not altered by the birth of issue, for if the issue afterwards died, and then the tenant died, without making any alienation, the land, by the terms of the grant,

[1] "A feigned recovery was a device invented to break an English entail."—Chalmers' *Encyclopædia*.

[2] Statues were often named from the place where Parliament sat.

[3] "Tenant in fee simple is he which hath lands or tenements to hold to him and his heirs for ever."—Littleton. "'To have and to hold' meant to *have* an estate of inheritance, and to *hold* it of some superior lord."—Coke. "Land *holden* was distinguished from land *allodial*."—Notes to "Coke upon Littleton."

Blackstone says: "Tenant in fee-simple is he that hath lands, etc., to hold to him and his heirs for ever; generally, absolutely, and simply; without mentioning *what* heirs, but referring that to his own pleasure, or to the disposition of the law."

That is, a fee-simple is land which can be left, as money can be left, according to the wishes of a testator, and fee-tail is land which the testator cannot leave as he wishes. It is therefore often spoken of as "tied-up."

could descend to none but the heirs *of his body*, and therefore, in default of them, must revert to the donor. "For which reason, in order to subject the lands to the ordinary course of descent, the donees of these conditional fees-simple took care to aliene as soon as they had performed the condition by having issue; and afterwards repurchased the lands, which gave them a fee-simple absolute, that would descend to the heirs general, according to the course of common law. And thus stood the old law." Blackstone adds that probably the inconvenience of these "fettered inheritances" induced the judges to "give way to this subtle finesse (for such indoubtedly it was) in order to shorten the duration of the conditional estates. But, on the other hand, the nobility, who were willing to perpetuate their possessions in their own families, to put a stop to the practice procured the Statute of Westminster the Second (commonly called the statute *de donis conditionalibus*) to be made; which pays a greater regard to the private will and intentions of the donor, than to the propriety of such intentions, or any public considerations whatsoever. . . . And hence it is that Littleton tells us, that tenant in fee-tail is by virtue of the Statute of Westminster the Second." [1]

The Statute *De Donis* made tenements given "conditionally" revert to the donor, if the tenant had no issue. Most of the questions about land which was not "common land" (to be considered later), concerned its transference. *De Donis* was devised to prevent the turning of "fee-simple" into "fee-simple absolute," by collusive recoveries. Religious communities were now forbidden to obtain lands by recovery. A jury was to try each case; if the jury decided against the religious person or community, the land in question was to be forfeit to the lord of the fee—that is, it was at once to revert to the donor. There were other provisions in the statute against the devices adopted to hold land exempt from feudal burdens. Tenants are forbidden to "set up crosses in their land, to

1 "Commentaries," Bk. II. 112.

Tail, from the French, "to cut," meant an estate "docked, cut off, or abridged"—a limited inheritance, "what issue shall inherit, and how long the inheritance shall endure." Tail may be general or special—to a man's *issue by any wife, or only by the wife mentioned* in the grant.

defend themselves against the chief Lords of the fee," alleging "the privileges of Templars and Hospitallers." Such lands were to be forfeited to the chief lord, or to the King, as by the Statute of Mortmain.

Pigot calls *De Donis* "the family law." Both Coke and Blackstone agree in condemning it. Coke, writing in the reign of James I., says of it:[1] "The true policy of the common law was overturned by this statute. . . . But the truth was that the Lords and Commons, knowing that their estates in tail were not to be forfeited for felony or treason as their estates of inheritance were before the said act, and finding that they were not answerable for the debts and incumbrances of their ancestors . . . always rejected such Bills" (as were "exhibited" against it). And he says again: "When all estates were fee-simple, then were purchasers sure of their purchases, farmers of their leases, creditors of their debts, the king and lords had their escheats, forfeitures, wardships, and other profits of their seigneuries: and for these and other like cases, by the wisdom of the Common Law all estates of inheritance were fee-simple; and what contentions and mischiefs have crept into the quiet of the law by these fettered inheritances, dailie experience teacheth us."[2]

And Blackstone, writing in the reign of George III.,[3] says: "Children grew disobedient when they knew they could not be set aside; farmers were ousted of their leases made by tenants-in-tail, for if such leases had been valid, then under colour of long leases, the issue might have been virtually disinherited; creditors were defrauded of their debts, for if tenant-in-tail could have charged his estate with their payment he might have also defeated his issue by mortgaging it for as much as it was worth. Innumerable latent entails were produced to deprive purchasers of the lands they had fairly bought; of suits in consequence of which our ancient books are full. . . . But, as the nobility were always fond of this statute, because it preserved their family estates from forfeiture, there was little hope of procuring a repeal by the legislature; and therefore, by the connivance of an active and politic prince, a method was devised to evade it."

[1] Coke on Nevil's Case, 7th Report, 34.
[2] Coke upon Littleton, "Of Fee Tails." [3] "Commentaries," II. 116.

Another most important statute was enacted five years later (1290). It is sometimes called the "Statute of Westminster the Third," but more often, *Quia Emptores*.[1] Its object was to prevent the "conditions" under which lands were sold from changing the tenure. Before the Statute of *Quia Emptores*, the King's greater barons frequently granted out smaller manors to inferior persons, who in their turn granted out still smaller estates in the same way, and this "subinfeudation" was going on indefinitely, until the great barons saw that they were losing all their feudal profits of escheats,[2] wardships and marriages, which fell into the lands of these "mesne" or middle lords, the immediate superiors of the actual tenant. The preamble of the statute very frankly says that "great men and other lords" thought it "very hard and extreme" that they should thus lose their profits, so henceforth all feoffees must hold of the chief lord (lord paramount), and not of the feoffer, or person who transferred the holding. And all lands must be sold subject to the same "service or customs," to which it had been subject by the original tenure. *Quia Emptores* "abolished all subinfeudations, and gave liberty for all men to alienate their lands to be holden of the next immediate lord" (Blackstone). This did not authorise alienation in Mortmain.

Before the Conquest, land could be left by Will. This almost ceased at the Conquest, and by the Common Law lands could be transferred only by "solemn livery of seizin" (delivery of possession), by matter of record, or sufficient writing. But *Quia Emptores* allowed freeholders (except the King's tenants *in capite*) to leave lands by Will.

For three hundred years, the legal history of English landholding is in great part the history of devices to obtain land free from feudal burdens, and of counter-devices to defeat these attempts. It must not be supposed that these feudal burdens constituted the whole of the demands made upon the people. The fifteenths and tenths granted by Parliament for the needs of the King and country were not

[1] *Quia Emptores terrarum.* "Whereas the Buyers of lands of the fees of great men," etc.

[2] "Escheat," from *échoir*, to fall in, meant the falling in of an estate to the lord or donor, by the death of the tenant, or otherwise.

included in the feudal burdens—which represented rent, as the fifteenths and tenths represented taxes.

As rent began to be substituted for personal service, the feudal system degenerated more and more into a mere system of extortion, described by Blackstone in a passage which shows the seamy side of the system. Those who have read the "Paston Letters" will remember instances of the abuses as to wards.

> "By the degenerating of knight-service, or personal military duty, into escuage, or pecuniary assessments, all the advantages (either promised or real) of the feudal constitution were destroyed, and nothing but the hardships remained. Instead of forming a national militia . . . the whole of this system of tenures now tended to nothing else but a wretched means of raising money to pay an army of occasional mercenaries. In the meantime the families of all our nobility and gentry groaned under the intolerable burthens, which (in consequence of the fiction adopted after the Conquest) were introduced and laid upon them by the subtlety and finesse of the Norman lawyers. For besides the scutages . . . which however were assessed by themselves in Parliament, they might be called upon by the king or lord paramount for *aids*, whenever his eldest son was to be knighted, or his eldest daughter married; not to forget the ransom of his own person. The heir, on the death of his ancestor, if of full age, was plundered of the first emolument arising from his inheritance, by way of *relief* and *primer seisin*; and, if under age, of the whole of his estate during infancy. And then, as Sir Thomas Smith very feelingly complains, 'when he came to his own, after he was out of *wardship*, his woods decayed, houses fallen down, stock wasted and gone, lands let forth, and ploughed to be barren,' to make amends he was yet to pay half a year's profits as a fine for suing out his *livery*; and also the price or value of his *marriage*, if he refused such wife as his lord and guardian had bartered for, and imposed upon him; or twice that value, if he married another woman. Add to this, the untimely and expensive honour of *knighthood*, to make his poverty more completely splendid.

> And when by these deductions his fortune was so shattered and ruined, that perhaps he was obliged to sell his patrimony, he had not even that poor privilege allowed him, without paying an exorbitant fine for a *licence of alienation*."—"Commentaries," II. 75-76.

Blackstone well calls this a "complicated and extensive slavery." Palliatives were applied from time to time by successive Acts of Parliament, but what was wanted was to abolish the system altogether.

The legislation of Edward I., in the three great Statutes of Mortmain, *De Donis*, and *Quia Emptores*, had the same ultimate object of keeping the land as a nursery of fighting men. Mortmain ensured that no more lands should be exempt from feudal service, by forbidding landowners to alienate, or allow those who held under them to alienate lands to the Church. *Quia Emptores* by empowering freemen to sell—as long as they sold under feudal tenure—virtually made the smaller estates Crown fiefs, and turned the old "udall" freeholders into feudal vassals. These small landholders, whose lands were "udall" from time immemorial, and had been guaranteed to them by the Conqueror, could now sell, upon the sole condition that he to whom they sold should hold the lands of the "chief lord"—the King or other—"by such customs" as the seller had held them. There was now freedom of sale, but not of conditions. And as all "udall" lands were held under an obligation to defend the King, "alienation from service" was rendered impossible.

CHAPTER IV.—THE BLACK DEATH

"Tenure in Villenage is most properly, when a villeine holdeth of his lord . . . certaine lands or tenements, according to the custom of the manor . . . as to carry and recarry the dung of his lord out of the manor unto the land of his lord, and to spread the same upon the land, and such like. . . . And some freemen hold their tenements according to the custome of certaine manors by such services . . . and yet they are not villeins; for no land holden in villenage, or villein land, shall ever make a freeman villeine. But a villeine may make free land to be villeine land to his lord.

"Villenage is the service of a bondman. And yet a freeman may doe the service of him that is bond. And therefore a tenure in villenage is twofold; one, where the person of the tenant is bond, and the tenure servile; the other, where the person is free, and the tenure servile. . . . The villeine may purchase some kind of inheritance in fee simple, which the lord of the villeine cannot have."—Littleton.

A GREAT change for the worse in the position of small tenants began in the reign of Edward III.; it was partly the result of the French wars, but still more of a terrible physical calamity.

The conquest of France was the motive of a far-reaching development of the theory of tenure. Up to now, Norman and Saxon had held land by tenures which, differing but slightly in appearance, in practice differed enormously. The smaller landholders, the "freemen," represented the conquered Saxons. But though he had conquered them, the Conqueror thought it prudent to leave them in possession of their lands on the old terms of forty days' military service —always represented as for the defence of the country. These "udall" tenants were not vassals. They held as they had held in Edward the Confessor's time, and they took no oath of allegiance except to the King. The great Norman landholders, who came over with the Conqueror, and divided the spoils of the Saxon earls, took the same oath of allegiance; but their tenants were vassals, and took another oath of allegiance to their lord. Edward III. made the claim which has often been ascribed to the Conqueror. In the twenty-fourth year of his reign (1349-1350), he enacted, "That the King is the universal lord and original proprietor of all land in his kingdom"; and that no man

doth, or can possess any part of it but mediately or immediately as a gift from him, to be held on feudal service. This one sentence sums up the three great Statutes of Edward I.—the tendency of them all was to tighten the hold of the great lords, and also that of the King, on the lands.

We all know the stories of Crecy, Poictiers, Agincourt, and Joan of Arc ; but we do not all realise that our wars for the conquest of France lasted—with truces—for a hundred years, and it is with some shock of surprise that even the well-informed of us see for the first time these wars spoken of by French historians, as "La Guerre de Cent Ans." The first effect of them was to pour immense wealth into England. Besides the actual spoils of war—the loot of towns and castles—there were the enormous ransoms paid by the prisoners taken at Crecy and Poictiers. The ransom of the King of France was fixed at 3,000,000 gold crowns ; and the King had to wait a prisoner three years before impoverished France could raise the first instalment of this monstrous sum. This sum equalled £5,000,000 of our money ; but it must be considered equivalent to very much more, since as late as the reign of Henry VIII. money was about twenty times its present value. Four dukes paid 200,000 florins—the gold florin of Edward III. was worth 6s. And besides all this, there were concessions of castles and estates, to be granted by the victorious King of England to his favourites. But as usually happens with the prosperity accompanying war, that prosperity was inflated, and the great drain of men in the wars was not made up by the ransom money.[1]

Then came the unfortunate expedition of the Black Prince to restore Pedro the Cruel to the throne of Castile. In a great battle, the King of the people's choice was defeated, but

1 France suffered incalculably more than England. England was never the battlefield of her foreign wars. The inevitable devastations caused by the marching of armies fell on her enemies, not on herself. The pestilences which invariably follow war helped the depopulation of France. The Black Plague, which we call the Black Death, was not the only pestilence, though it was the worst, which raged in France during the Hundred Years. Normandy suffered the most from the war. Twelve parishes with 941 parishioners in the thirteenth century were reduced to 246 inhabitants during the English occupation.

he soon dethroned Pedro a second time. The Black Prince could not get the money Pedro had promised him to pay his army with, and was obliged to tax Guienne. Guienne revolted, the truce was broken, and war renewed. The English army in Spain was eaten up with disease, and the Prince himself was never the same in body or mind. He died four years later, six years before his father. The long and glorious reign of Edward III. closed in gloom and angry discontent, and the long and disastrous minority of Richard II. was the price that England paid for restoring a tyrant.

The beginning of the Hundred Years' War was marked by a calamity so vast, so universal, that it is impossible to understand the social changes of these times without taking it into account. It was the most frightful pestilence known in history. The terrified peoples of Europe called it the Black Death. It devasted every country from China to Iceland and Greenland. Especially did it fall heavily upon England.

Very little is known about it, except its ravages. It appeared first in China, in the year 1333. It is said to have begun after a parching drought, "in the country watered by the rivers Kiang and Hoai." Next year, it broke out again in the province of Tche—also after a drought. It was everywhere accompanied by great convulsions of nature—earthquakes, volcanic eruptions, droughts, floods. It spread across Asia, depopulating India, Tartary, Mesopotamia, Syria, Armenia. It raged in Egypt. By 1347 it touched Europe, breaking out first in Cyprus—then in Greece, Turkey, and Vienna—where, for some time, 1200 died daily. In Europe, besides earthquakes and other convulsions, there was a pestiferous wind, and in Italy, "a thick, stinking mist" spread before it. Italy lost half her population. It is the plague known to readers of Boccaccio. It spread to Germany. In January of 1348 it was at Avignon. France suffered even more than Germany. It even stopped the war. Just after Calais surrendered, a truce was made—it was impossible to go on fighting in face of the plague. It spread to the north of Europe. Two-thirds of the people of Norway died—the plague was brought to Bergen by a ship from England. Lastly, in 1351, it came to Russia and laid it waste. On the North Sea, in the Mediterranean, ships drove at the will

of wind and tide, and drifted ashore, bringing the Black Death with them—their crews all dead.

In England it first appeared at a Dorset seaport on the 1st of August 1348. It spread through Devon and Somerset to Bristol—thence to Gloucester, Oxford, London, and so northward. Seven thousand died in Great Yarmouth. Scotland at first escaped, but the Scots, thinking to take advantage of their plague-stricken enemy, crossed the border. They were repelled, and the plague fell upon them, destroyed the invading army, and spread through Scotland. Ireland was but lightly visited.

For one whole year it raged in England. We are told that as a rule the sick died in three days. It was observed that the young and strong perished, the old and feeble escaped. The living were hardly able to bury the dead. In Norwich 57,304 persons died, "besides religious and beggars." The ecclesiastical records which have come down to us show that somewhat over half of the clergy fell victims. The Diocesan Institution Book of Norwich records 863 institutions to Church livings that year. At the request of the Bishop, Pope Clement VI. issued a bull, allowing the instituting to rectories of clerks only twenty-one years of age—the reason given being fear lest divine service should cease, as there were 1000 parishes in the diocese without priests. Three Archbishops of Canterbury died in that one year. The Abbot of Westminster and twenty-six of his monks were buried together in a common grave in the south cloister of the Abbey. High and low perished —a daughter of the King died of the plague. In London, from Candlemas to Easter, 200 were buried daily. As the burying-grounds could not suffice, the Bishop of London bought the plot called "No-man's-land," and gave it for a "pest-pit," and Sir Walter Manny gave the Spittle Croft— —where afterwards he founded the Charterhouse. 50,000 corpses were buried in layers in one of these "pest-pits" alone. The sitting of Parliament was suspended. The King's Bench was closed. The 13,000 students of Oxford were dispersed.

In country places, many whole villages were depopulated. A dreadful murrain broke out in cattle and sheep. The cattle wandered about without herdsmen, and died by thousands, and it was said that the birds of prey would

not touch their bodies. The great harvest of that year rotted on the ground. About half the population of England died.

As long after as the seventeenth year of Henry VII., a petition to the King says that "by reason of the great visitation of Almighty God, there was so great dearth of people," that "most of the dwelling places and inhabitations" of Great Yarmouth "stood desolate and fell into utter ruin and decay, which at this day are gardens and void grounds"; and so the value of the benefice had fallen from 700 marks to £40 a year. Land fell in value, because labour was dear, there being so few labourers. The assessments of towns had to be lowered. Three years after the Black Death Oxford's assessment was reduced to one-third less than it had been in the Domesday Survey!

And, as always happens when life becomes peculiarly insecure, the restraints of morality were cast off, and men grew worse instead of better, because they were so likely to be dead to-morrow.

A learned German Professor, Dr Heckel, of Berlin, who wrote upon the Black Death from its medical side, says of the effect in England: "Smaller losses were sufficient to cause those convulsions, whose consequences were felt for some centuries, in a false impulse given to civil life, and whose indirect influence, unknown to the English, has, perhaps, extended even to modern times."

Especially did the Black Death effect an entire change in the system of farming. Both secular landlords and monasteries took more and more to letting on lease, instead of under the old system of farming by stewards. Labour was commuted for money. The losses in sheep upset taxation—for wool had been the King's chief resource when he wanted money. On the other hand, now that tillage was become so much more expensive, and even in some parts impossible, owing to the shortage of labour, land was put down in pasture. There was more profit in ten acres of grazing than in twenty of tillage. Moreover, there was some restriction on the export of corn, but none on the export of wool; and so it often happened that "hundreds of acres were watched by one shepherd and his dog." Villages fell into decay, houses were pulled down, tenants were ejected, and the first beginning was made of the great

army of "landless men," vagabonds. It does not improve a man's morals not to have where to lay his head, and many of these vagabonds took to thieving. They were freely hanged; but even in the Middle Ages hanging did not diminish crime, and we hear of them more and more as time goes on.

Meanwhile, the moment the villeins found how greatly their numbers were reduced—and their value enhanced—they banded together for better wages. In that very plague year of 1349 the first Statute of Labourers was passed, fixing the rate of wages at the rate which obtained in the twentieth year of the King (1347). But it is useless to fight with the law of supply, and even imprisoning the serfs could not make them work for the same wage as before. The great body of the labourers, "bond and free," joined together in "coactions," after the manner of a modern trades-union. They even subscribed money for these unions, which were described as "the malice of servants in husbandry." Statute after statute was made against "coactions," but in vain; and though Wat Tyler fell, and the Charters of Manumission granted during the panic were revoked as soon as the fright was over, serfdom was dead. The landlords, while predicting that they "all would perish in one day," dropped their claims to be masters of the villeins' bodies and souls.

These Statutes of Labourers show the helplessness of magistrates and lords to retain or recover their runaway servants. The 1 Richard II. complains that "counsellors, abettors and maintainers are getting the villeins to work for *them*, instead of for their lords, and telling them they are free from all manner of service," as well of body as of tenure. The villeins menace life and limb to the officers of their lords, assemble on the highroads, and take counsel together to help each other to resist their lords. The 5 Richard II. says that many villeins of great lords and others, as well spiritual as temporal, flee into cities and free towns, and pretend to institute suits against their lords—thus putting the lord in the dilemma of letting the case go unanswered, or by answering acknowledging the freedom of his villein. So now the lord shall not be barred of his right by answering. By 12 Richard II. no servant may go from one hundred to another without a "testimonial"

under the King's seal. If he does, he shall be set in the stocks—to which end, there shall be stocks in every town. The "prudhommes" of the hundred shall have a seal to use at their discretion—the name of the county to be written round the seal, and across it the name of the hundred. Any servant or labourer found in a city or town or elsewhere, wandering without a letter patent sealed with such a seal, to be put in the stocks till he finds surety to return to his service, or to serve in the town he comes from, till he gets a letter to depart for reasonable cause. But he may freely depart at the end of his term of service, and serve elsewhere, provided he is sure of work there, and has a letter. Anyone found with a forged letter to have forty days' prison, or till he finds surety for returning and serving. He is not to take more wages than is limited—servants have long asked "outrageous" wages, much greater than in past times. Servants are so dear that husbandmen cannot pay their rents or hardly live on their lands. Then follow the rates of wages. A bailiff for husbandry, 13s. 4d. a year and his clothes—one suit a year. The "master hind," 10s., the carter and shepherd the same. The oxherd and cowherd, 6s. 8d. A woman labourer, 6s. A ploughman, 7s. at most — "without clothes, courtesie ou autre regard par covenant." Anyone who gives or takes more shall pay the value of the excess, and the second time, double, and the third time treble, or forty days, if he cannot pay. Able-bodied beggars are to be treated as those who leave their hundred without "letters testimonial," except religious persons and hermits having letters from their ordinaries. Impotent beggars are to remain in the towns they are in, and if the people of the towns cannot feed them, then in the hundreds where they were born.

The 13 Richard II. abolished the fines. But every new statute begins by saying that the former laws are not observed.

In Henry VI.'s time the wages of a bailiff had gone up to 23s. 4d., a year, and clothing worth 5s., with meat and drink. A chief hind, carter or head shepherd, 20s., and clothing to value of 4s., with meat and drink. A common servant of husbandry, 15s., and clothes to 40d. A woman, 10s., and clothes to 4s., with meat and drink. A child of fourteen, 6s., and clothes to 3s., with meat and drink.

"And those that deserve less to have less." A "free mason or master carpenter," 4d. a day with meat and drink or 5d. without. A master tiler or slater, a "rough" mason, and carpenter, and other workmen for building, 3d. a day with meat and 4d. without. Other labourers 2d. or 3d. Wages were higher from Easter to Michaelmas than from Michaelmas to Easter. We hear no more of fines till the 23 Henry VI., and then they are to be no more than 3s. 4d. (a quarter of a mark).

The best proof of the comparative comfort of English labourers is found in the sumptuary clauses of these statutes, and in the directions as to what "meat and drink" is to mean. The 36 Edward III. c. 8 orders that "garsons" as well servants to lords as servants of "mysteries," and artificers, shall be served once a day with meat and drink—flesh or fish; and the rest with other victuals, as in summer, cheese, butter, and other such victuals fit for their degree. The cloth of their clothes is not to cost more than 2 marks in all (this includes their cloth shoes); and they may not use dearer cloth of their own buying, nor gold and silver embroidery, nor silk, "nor anything belonging to these things. And let their wives, daughters and children be the same, and use nothing costing more than 'the old twelve pence.' Handicraftsmen are not to wear silk cloth, or cloth of silver, nor ribbons, chains, seals, or other things of gold and silver; and their wives are not to wear silk veils, but only thread; nor fur, but only lambskin or rabbitskin." So the Act climbs up the ladder; and its perfectly futile ordinances only serve to show that everybody, from the labourer to the burgess and the knight, was aping his betters. Wives of knights with only 200 marks a year in lands are not to wear gowns trimmed with miniver, nor ermine sleeves, and their womenkind may not wear "revers" of ermine, or any jewellery, except on their heads. Garsons, yeomen, and servants of merchant-artificers, or tradesmen, are to dress as the garsons and yeomen of the lords paramount. Waggoners, carters, oxherds, shepherds, swineherds, and all others who have not 40 solidi (40d.) of goods and chattels, to wear no cloth but "blanket and russet," at 12d. the ell.

But the villeins had gained their freedom dearly—they

lost their grip on the land. They crowded into the towns —as Heckel says, "a false impulse" was given to town life. The first step had been taken towards getting the people off the land. Much of this evil, however, temporarily repaired itself later.

The Statutes of Labourers were an attempt to perpetuate villeinage by forcing the villein to work for the lord at the old rate of wages. After twenty years of abortive legislation on one side and increasing organisation on the other, the peasants rose in the very serious insurrection of 1381—an insurrection attributed to the outrage on Wat Tyler's daughter, but far too widespread and simultaneous not to have been brewing a long while. Wycklif and his "poor priests" had been preaching doctrines equivalent to those afterwards known as "liberty, fraternity, equality." John Ball had asked :

> "When Adam delved and Eve span,
> Where was then the gentleman ?"

And the next half-century was to show that the doctrines of the Lollards had spread through every rank of society. Wat Tyler's "Rebellion" extended from Kent to Yorkshire, and from Hampshire to London It was put down with great severity, but the counsellors of Richard II. saw that it would not be safe to persist in asserting the old rights.

The result of the rise in wages and the practical abolition of serfage was that more and more of the large landowners ceased to farm their own lands by stewards, and let them on leases—often of thirty years, until by 1433 landlord cultivation was almost abandoned. Town corporations and religious houses also leased their lands. Usually the lease was "stock and land"—that is, the stock, live and dead, was leased too, and at the termination of the lease the tenant had to replace it. As everything made of iron was valuable, even rakes and hoes were specified, and spits, and raw iron for mending the ploughs. There were many dairy farms—for them the leases were shorter, no doubt that the landlord might be sure the live-stock was kept up. The landlord always covenanted to keep buildings in repair, and he insured the tenant against the murrain, but not against the scab—for the scab was curable. The utmost

loss the tenant could have to bear on the murrain was 10 per cent. These leases of stock and land were advantageous to both sides. The result was to create a great number of freeholders — the ordinary payment for unstocked land was 6d. an acre and twenty years' purchase. The landlord seems to have had rather the worst of the bargain, for if the tenants fell into arrears, he did not know precisely which land to distrain on. We read of a tenancy in Oxfordshire: "Seven capons should come from tenants there, and one does not know whence to collect them." And again: "There is a sum of £56, 13s. 4d., an arrear of ninety-five years, and we do not know what to distrain on" (given by Rogers). Perhaps this accounts for the great number of freeholders—the lord might prefer to sell at twenty years' rent (or ten in the fourteenth century), and be done with it, than to have to whistle for his capons and his arrears, afraid of distraining upon the wrong man. Very often, in a single holding, there would be several leases, not coterminous, for one holding — showing that the tenant had rented additional land. This would increase the difficulty of evicting him. But, in point of fact, there were hardly any evictions. In those days there were not a dozen applicants for one farm; nor was there much moving about. A man liked to take land in his own birthplace. Even in London it was thought very improper to offer a higher rent over the head of a sitting tenant.

Rent for mere use of land changed very little from the earliest times to the end of the fourteenth century.[1] But in the fifteenth century the purchase price of land rose. By the middle of that century, the price was twenty years' purchase.

Rents were often in corn. That is, the tenant paid corn to the money value of the rent. A great advantage of this was, that when corn was cheap, because corn was plenty (the only reason of cheapness) the tenant gave more corn, but had more to give. In years when corn was dear because it was scarce, he gave less—but it was worth as much to the landlord. Of course a corn rent could always be paid in money, if the tenant preferred it.[1]

[1] "The rents which have been reserved in corn, have preserved their value much better than those which have been reserved in money, even where the denomination of the coin has not been altered.

CHAPTER V.—PRIMOGENITURE

GREEKS, Romans, Britons, Saxons, divided lands equally, some among all the children, some among males only. But when the Emperors of Germany began to create honorary feuds, or titles of nobility, estates were made "impartible," that is, descending to the eldest son. This was done to increase the dignity of the "Counts of the Empire." The splitting up of estates was also inconvenient for military service, and younger sons were induced to take up with a country life, instead of engaging in military or civil employments.

In Saxon times, even the Crown was only hereditary in the *family*. Within that limit, the Crown was elective, and this was recognised at every coronation; and to this day, the acknowledgment of the King by the people is a part of the ceremony. The Crown of England is, theoretically, partly elective. In old times, this was more than a theory. In the days when kings were leaders, and on the personal character and ability of the King the safety of the country

. . . The old money rents of colleges must . . . have sunk almost to a fourth part of the corn which they were formerly worth. But since the reign of Philip and Mary, the denomination of the English coin has undergone little or no alteration, and the same number of pounds, shillings and pence, have contained very nearly the same quantity of pure silver. . . . But though the real value of a corn rent varies much less from century to century than that of a money rent, it varies much more from year to year. . . . From century to century, corn is a better measure than silver, because, from century to century, equal quantities of corn will command the same quantity of labour more nearly than equal quantities of silver."—Adam Smith, "Wealth of Nations," Bk. I. chap. v.

"Next to tenancy at will, we rank money rents as the great bar to improvement in English agriculture. To the conversion of money unto corn rents the Scotch farmers attributed their superior condition, and ability to continue improvements on their farms even during the trying times 1833-35. They say the tenants were 'saved' by this.

"A corn rent is the payment of a certain fixed quantity of farm produce to the landlord in lieu of a fixed sum of money. The tenant pays only so much money as the number of quarters of wheat or barley which constitute his rent have actually sold for in the market."—Greg, "Letters on Scotch Farming in England, 1842."

depended to an extent far greater than is the case now, this theory gave the right to pass over an infant or an incapable heir, in favour of a prince of more mature age, and more fit to reign. It is only in a comparatively settled state of things that a nation can afford to make the personal fitness of its ruler a matter of minor importance. Important it must always be, and a rash, foolish or unworthy ruler—whether he be called king or emperor or president—can do incalculable mischief; but in ancient times he could absolutely ruin a country. For obvious reasons, however, the natural course was for the eldest son to succeed. Power cannot be divided between the members of a royal family. But where the possession of land is concerned, the case is entirely different.

In England primogeniture was introduced by the Conquest. But this is only true of lands held by knight-service—soccage estates often descended to all the sons equally, as late as the reign of Henry II. Primogeniture came in gradually. Henry I., as a compromise between the old laws and the new—Saxon and Norman—directed that the eldest son should have the principal estate, the rest, if there were others, to be divided among all the sons. But by Henry III.'s time soccage lands had almost entirely fallen into primogeniture. Only in Kent and in parts of Sussex did the old Saxon tenures of Gavelkind and Borough English still linger.[1] In those counties the presumption was that lands descended by Gavelkind, and the contrary must be proved by a claimant. In all other parts of England primogeniture was presumed, unless Gavelkind could be shown.

By the system of entails, the land must descend to the next direct heir. But it often happened that a tenant-in-tail wished to alienate his land, and innumerable devices and legal fictions were invented to enable him to do so.

De Donis was in force for two hundred years; and all this while entails could not be barred, though ever since the reign of Edward III. the Chancery lawyers had been hinting that recoveries could bar them. But it was never done till the twelfth year of Edward IV. (1473). That astute monarch (who, whatever his superior legal right, actually

[1] Gavelkind divided the lands among all the sons; Borough English gave the land to the youngest son.

obtained his crown by victory on the field of battle) had observed how little effect the many attainders for treason had on families during the civil war, when these families were protected by entails, so that their estates could be forfeited only for the life of the attainted holder. He therefore allowed Taltarum's treason case to be brought into court, when the decision of the judges established that "a common recovery could bar an entail."

Of these "common recoveries," Blackstone remarks:

> "At present, I shall only say, that they are fictitious proceedings, introduced by a kind of pious fraud, to elude the statute *de Donis*, which was found intolerably mischievous, and which yet one branch of the legislature would not then consent to repeal: and that these recoveries, however clandestinely begun, are now become by long use and acquiescence a most common assurance of lands; and are looked upon as the legal mode of conveyance . . . and even acts of parliament have by a side-wind countenanced and established them."—"Commentaries," II. 117.

The "pious fraud" was one of the most extraordinary of legal fictions. A, a tenant-in-tail, who wished to turn his estate into fee-simple, in order to obtain the power of bequest or alienation, would get someone, B, to bring an action against him for the recovery of the freehold, by claiming to be the true owner. A, instead of defending his title, would get a third person, C (generally someone who notoriously had no lands, lest A's natural heirs should try to recover from him), and put him forward as the person from whom, or from whose ancestors, A derived his title, and who had "warranted" A against all comers. B would then ask leave to "imparl" C—that is, to confer privately with him. But when B came back into court, it was to announce that C had "departed in contempt of the court"—that is, he had run away. Upon this, judgment would go by default against the claim of A, and the lands would be awarded to B as an estate in fee-simple; A and his heirs becoming entitled to a recompense of equal lands from C, by virtue of his supposed "warranty," because if C had not run away, a stranger would not have

been able to claim "by title paramount." The oddest thing is that B was not necessarily the man to whom A wanted to sell. It might be that A only wished B to reconvey the land to himself, by which means A would get it in fee-simple, and could do as he pleased with it. In later times there was not even the formality of actually going through this farce—the several incidents of it were stated on a "record"—the appearance of C, the mysterious imparlment, C's disappearance and all—and it did quite as well. But, ridiculous as it must seem, this farce had the good effect of giving a man a clear title. Taltarum's case is usually quoted by lawyers as the one which made this method of barring entails an avowedly legal process; but it obtained before, and it certainly says a good deal for the honesty of B and C that no one ever seems to have tried to take the fiction seriously, and remain in possession. Of course, the whole neighbourhood where A's land lay would know the facts of the case, but if B had chosen to cleave to the estate, it would have been exceedingly difficult for the Common Law to touch him. Sir F. Pollock says: "It is possible that in the earlier days of common recoveries everything was really left to his honour." [1]

Primogeniture, in becoming all but universal, did not take the people off the land in the fifteenth century—that is, in the days of fixed tenures, and rents which were never "enhanced." It had, however, one very mischievous consequence, which Mr Rogers calls "the institution of the Younger Son." Under an unequal division of the land, the younger son was a hanger-on of his elder brother. He had to be provided for in some other way than by giving him a part of the paternal estate. Rogers goes so far as to say that "the great war with France was waged in the interest of the younger son." He certainly got the most out of it, and his presence made it easier to carry it on, for he would come bringing with him a goodly number of his brother's tenants. It is a great mistake to suppose that

[1] "Still later, the part played by C was assigned by settled usage to the crier of the Court, who in this capacity was called 'the common vouchee,' and thus cheerfully, and, we presume, not ungainfully passed his life . . . in perpetual contempt of the Court of Common Pleas, and liability to be fined at the King's discretion."—Pollock, "The Land Laws," p. 82.

chivalry had no commercial aspect, and that mediæval wars were waged solely for honour and glory. They were very profitable concerns, in many ways, besides the thumping sums for ransom which a lucky capture ensured. A little later the younger son was to be the prime cause of those perpetual plantations which kept Ireland unsettled from generation to generation. Perhaps Mr Rogers was thinking of this when he said: "For generations he was a mischievous, and sometimes a hateful, adventurer." He was worked off on Ireland, just as later he was worked off on India.

CHAPTER VI.—THE RISE OF THE CHANCERY

THE history of landholding in England cannot be either complete or intelligible, without some slight account of the Court of Chancery.

In early Norman times, the Chancellor was the King's Secretary. He kept the Records, but he had no judicial powers. But with the rise of the House of Commons, the Chancellor became a very much more important person. He was usually an ecclesiastic—it was essential to have someone who could read and write with ease. When the Lords met in Council, the Chancellor represented the King, and so he was known as "the Keeper of the King's conscience." Gradually, he and his office became the focus of the interests of the King, the Lords, and the Church. Abuses crept in with increase of power. The Chancery officials seem to have done pretty much as they chose. In the reigns of Edward II. and Edward III. there are loud complaints that the Chancellor's clerks charge what they like for writs—but as these charges went into the King's treasury, he was not disposed to restrain the clerks. Besides this, Chancery was always usurping the rights of the people, by inventing new offices—of course, with new fees. Equally of course, the transfer of land was always the great point at issue. Little by little, out of the universal desire to evade feudal burdens and to obtain the power of bequeathing land, a most extraordinary system grew up, in which the Law of Chancery set itself

against the Common Law—ostensibly to "soften its rigour," but in effect to make the transfer of land so difficult, complicated and dubious—and so expensive—that we came to talk of "the glorious uncertainty of the law," meaning that, where "real" property was concerned, a man could hardly be so much in the right that a Court of Chancery might not pronounce him to be in the wrong, or so much in the wrong, that a Court of Chancery might not pronounce him to be in the right. The great business of Chancery concerned the land.

Restrictions on the transference of land are so inconvenient, both to those who wish to sell, and to those who wish to buy, that no sooner was a law made in the interests of the feudal lords than the lawyers found a way to evade it, adapted from the Roman Civil Law. This was by conveying lands to Uses, the masterpiece of legal evasion. The Statute of Mortmain was thus defeated. A man who wished to give land to the Church, but was prevented by Mortmain, would alienate the land to B and C, who agreed to pose before the law as new tenants, but really allowed the "use and profits" of the land to go to the Church. B and C were thus mere holders in trust for the Church.[1] The person who had the "use and profits" was called "*cestuy que use*." The advantages of this method were obvious. The laity quickly followed the example of the Church. Grants "to uses" were common in Edward III.'s time, and the rule by the time of Henry V. It went on, until there began to be transfers of the "use" itself to a "use," until it was decided that "an use cannot be engendered of an use." The procedure was this: A, a tenant in fee-simple, would make a feoffment (or assignment) to B, C, and D, conveying the land to them, perhaps to his own use, perhaps to the use of E. Several feoffees were usually named, because then there could be no legal succession while any one of them lived. And as by the time of Henry V. the lawyers had decided that the use of lands was an interest distinct from legal ownership,

[1] It is evident that tenants connived at evasions of Mortmain. The 15 Richard II. (1391) forbids "religious persons, Parsons, Vicars and others," from buying lands adjoining to their churches, "and the same by sufferance and assent of the tenants, have made churchyards," and have made "parochial buryings" in these churchyards.

and not liable to feudal burdens, the man who had only the use could commit treason without forfeiting his lands.

Especially did this manner of conveying lands prevail "among all ranks and conditions of men by reason of the civil commotions between the Houses of York and Lancaster, to secrete their possessions, and to preserve them to their issue, notwithstanding attainders; and hence began the limitation of uses with the power of revocation" (Gilbert, "Law of Uses").

For eighty-six years—from the deposition of Richard II. to the accession of Henry VII.—the succession to the Crown was in dispute, and during thirty of these years the country was torn by civil war. Most of the considerable holders of land in England had fought on one or on both sides; when a man was a loyal subject to-day, and a traitor to-morrow, according as the fortune of war inclined to the White or the Red Rose. In the time of Henry VI. it was determined that "uses" might be enforced without going to Parliament—indeed, it would often have been highly inconvenient, and sometimes impossible, to go to Parliament. So the Court of Chancery winked at fraudulent recoveries; and though the 15 Richard II. prohibited the holding of land under the condition that someone else had the use, Chancery set the Common Law at defiance, and thus "the creation of a use became a means whereby the benefit of ownership might be secured to persons without any of its burdens. . . . The factious baron vested his estate in a few confidential friends, and committed treason with comparative safety. The peaceful proprietor adopting the same precautions enjoyed and disposed of the beneficial interest unvexed by the exactions of the lord, and regardless of the rules of Common Law" (Hayes on "Conveyancing").

The device was also resorted to by swindlers and fraudulent debtors.

In the last year of Edward III. (1376-1377) a statute was passed against persons who "borrowing divers Goods in Money or in Merchandize of divers People of this Realm, do give their Tenements and Chattels to their Friends, by Collusion thereof to have the Profits at their Will, and after do flee to the Franchise of Westminster, or of St Martin le Grand . . . and there do live a great Time with an high

Countenance of another Man's Goods and Profits of the said Tenements and Chattels, till the said Creditors shall be bound to take a small parcel of their Debt, and release the Remnant." These nefarious transactions are now declared void in law. The modern swindler, who settles a comfortable income upon his wife, before his bubble bursts, is only a humble imitator of the mediæval fraudulent bankrupt.

The practice of assigning uses was based on the difference between principal and interest—principal could be forfeited, or could lapse and revert, but mere interest could not. But in all these arrangements, the "beneficiary" (called in the Old Norman French, "*cestuy que use*") had to rely on the honour of the trustees. Common Law did not recognise these bargains. It said that the nominal tenant was entitled to the benefits, and if he refused to hand over the profits to *cestuy que use*, the latter had no remedy—he would be non-suited at Common Law. He would then appeal to the Chancery, "for the love of God and for charity," and the Lord Chancellor would decide that "in conscience" the nominal tenant ought to keep his promise, and would issue a writ to compel him to hand over the use and profits—for though the Common Law could not enforce its decisions the Chancery could. Hence Chancery and Equity Courts were known as "Courts of Conscience"; and Equity was defined as "that which mollifies or softens the rigour of the Common Law."

Between Edward III. and Henry VIII. many statutes were passed to make the beneficiary owner subject to certain liabilities in respect of his land, but means of evasion were always found. "Feoffment with livery of seizin was the regular mode of transfer by which one person could convey lands to another at common law, or the fictitious process of fine or recovery might be brought into use. There were other legal means of transferring lands, but in all cases the modes of conveying were open and notorious. But in conveying lands to uses there was no open act of transfer, and the Chancery laid it down that there was no reason why the intention of the donor should not be carried into effect at a future period. . . . A use might be raised on the happening of any future event, or on the expiration of any specified time. . . . Thus a power was acquired of

creating future interests in lands to be shifted and to pass from one person to another which was unknown to the common law and which gave rise to the complicated system of conveyancing which prevails at the present day" (Digby). The device of uses was applied to copyhold and leasehold lands, and here still more complicated questions arose, as the lawyers invented one new method after another of destroying the effect of each new statute passed to prevent secret conveyance, whether of lands or of leases; until at last the lawyers themselves did not understand the law—to the great increase of litigation, and profit of lawyers.

In such a state of things it was inevitable that great abuses should creep in. Chancery became corrupt. Parliament was always complaining of this court. More than one Chancellor was impeached for bribery. As early as 1382 it was said of the Masters in Chancery that they were "over fatt both in bodie and purse, and over well furred in their benefices, and put the King to very great cost more than needed." They made a regular trade of the cases brought before the court, and took money and presents for speedy judgments. Unnecessary copies of proceedings were thrust on suitors to be paid for very dearly. The officials ignored the orders of Chancellors. Parliament fixed the fees of the Masters, but did not enforce them.[1]

The evils grew with time. "A Rod for the Lawyers"—a pamphlet published in the middle of the seventeenth century—says this of equity proceedings under the Commonwealth:

> "And when either party sees he is likely to have the worst by Common Law, then they have the liberty to remove into the Chancery, where a suit commonly depends as long as a buff coat will endure wearing especially if the parties have, as it is said, good stomachs and strong purses; but when their purses grow empty their stomachs fail. Then, when no more corn is like to be brought to the lawyer's mill, it is usual to ordain some men to hear and end the business; but alas! then it is too late; for then prob-

[1] The writ of subpœna is said to have been invented by John de Waltham, Bishop of Salisbury, Master of the Rolls in the time of Richard II.

ably both parties or at least one of them, are ruined utterly in prosecuting the suit, want of his stock, and following his calling."

Chancellor, Masters, clerks, all were in the same boat. The Chancellor sold the offices in his court, or gave them to his friends. The Masters took bribes, and the clerks forced unnecessary attendances of suitors, for which the suitors had to pay. The proceedings in "Jarndyce *v.* Jarndyce" exactly represent what the procedure of Chancery came to. In 1653, in a debate in Parliament, the Chancery was described as the greatest grievance of the nation. It was said that, for dilatoriness, chargeableness, "and a facility of bleeding the people in the purse vein," that court might compare with, if not surpass, any court in the world. "It was confidently affirmed, by knowing gentlemen of worth, that there were depending in that court twenty-three thousand cases, some of which had been there depending five, some ten, some twenty, some thirty years, and more; that there had been spent therein many thousand pounds, to the ruin nay, utter undoing, of many families; that no ship almost that sailed in the sea of the law but first or last put into that port, and if they made any considerable stay there, they suffered so much loss, that the remedy was as bad as the disease; that what was ordered one day was contradicted the next, so as in some cases there had been five hundred orders and more; that when the purse of the clients began to empty, and their spirits were a little cooled, then by a reference to some gentlemen in the country, the cause so long depending at so great a charge, came to be ended; so that some members did not stick to term the Chancery a mystery of wickedness, and a standing cheat, and that, in short, so many horrible things were affirmed of it, that those who were, or had a mind to be advocates for it, had little to say on the behalf of it, and so, at the end of one day's debate, the question being out, it was voted down."

But Chancery was not thus ended. A pamphlet entitled "The Honest Lawyer," printed in 1676, says that a Chancery suit is one "where one order shall beget another, and the poor client be swung round (like a cat before execution) from decree to re-hearing, and from report to

exemption, and vice-versa, until his fortunes are shipwrecked and himself drowned." The court is described as "a mere monopolie to cozen the subjects of their monies."

Some improvements had, however, been made in the time of the Commonwealth, and up to the middle of the nineteenth century abuses were checked one by one, and at length destroyed.

CHAPTER VII.—ENGLAND BEFORE THE SUPPRESSION

THE consequences of the usurpation of Bolingbroke were on the whole bad. The effect was to destroy the real "Old Nobility" of England, a class which with all its faults produced in every generation men capable of directing the councils of kings; and it did this only to make way for Henry VIII.'s new nobility, noble in nothing but the name—mostly adventurers, with no great traditions of the past to inspire or restrain them. No one can fail to be struck by the contrast between the independent spirit of the old Norman and Plantagenet barons and earls, and the sordid subserviency of the new men, who sold themselves without shame for mere wealth. And when liberty revived, and the struggle with arbitrary government was renewed, it was the commons and not the barons of England that led the van.

Although the Black Death had so much reduced tillage and increased grazing, it is impossible to doubt that the first half of the sixteenth century was one of prosperity and happiness for the people. Sir John Fortescue's famous comparison of the condition of the French commonalty with that of the English was written when he was in banishment with Margaret of Anjou and her son, the unfortunate Prince Edward. It does not turn on any land question. As its name implies—"The Praise of the Laws of England"—it is a comparison between a country where there are laws which can be called "Laws of the Land," and one where laws are only laws of the Prince—a country where, as was said by the Civil Law (professing to follow the Institutes of Justinian)—"What pleases the Prince has

the effect of Law." Henry VI.'s last Chancellor is instructing Edward in the principles of constitutional liberty, and he shows him how the French peasantry were worn down and impoverished by a system of intolerable and arbitrary exactions—soldiers quartered upon them, taking all they chose and paying for nothing, a fourth part of all the produce of their vines taken for the King, cities and boroughs assessed for great sums to support his wars, every village heavily taxed, and never any intermission or abatement of these burdens, but once or twice in every year no village is so small but may expect to be plundered. Fortescue appeals to the Prince to remember how he himself in his travels could sometimes hardly be accommodated even in the great towns, because the King's troops were so oppressive, living on the people, and paying for nothing. "In England no one takes up his abode in another man's house, without leave of the owner," and the King himself must pay at a reasonable rate for what he takes. Then he compares the French peasant with the English. The Frenchman hardly ever tastes anything but water—the Englishman drinks none, except "upon a religious score, by way of penance." He is fed in abundance with all sorts of flesh and fish, is clothed in good woollen, his bedding and other "furniture" is of wool, and that in great store. Everyone according to his rank hath all things which make life easy; *he can provide himself with salt*; he can enjoy the fruits of his farm. There is scarce a small village in England in which you will not find a knight, an esquire, or some substantial householder, and many yeomen of estates sufficient to make a "substantial" jury (they must have 100s. a year). Where do you find this? In other parts of the world, except in large cities and walled towns, there are very few except the nobility whose possessions are of any considerable value. In France the soldiers, if they cannot get fuel in one village, "march away full speed to the next." They make the people feed and clothe the women they bring with them—even to the smallest trifle of a lace or point. So the peasants never taste anything but water except on festivals, and wear sackcloth, and go barelegged and barefooted. A very little of the fat of bacon is all their meat, or the offals of beasts killed for the better sort—for whom quails,

partridges and hares are reserved upon pain of the galleys. As for their poultry, the soldiers eat it—the peasants hardly get the eggs. And if a man is observed to thrive, he is presently assessed higher than his neighbours, and so is soon reduced to their level again. The nobles and gentry are not so heavily burdened, but if one of them is impeached for a State crime—though by his enemy—he is very often examined privately, perhaps in the King's own apartment, and sometimes only by the King's pursuivants; and if the King judges him guilty, he may quite likely be put in a sack and dropped by night into the river. Whereas in England the King cannot lay taxes or make new laws without consent of the whole kingdom in Parliament assembled. Nor can any man be condemned save by process of law. For the laws of England know nothing of "the will of the Prince."

Fortescue describes England as so fertile, that it produces almost spontaneously, without man's labour. Even uncultivated spots are so luxuriant, that they often bring in more than those that are tilled and manured—though these too bring in plentiful crops of corn. The feeding lands are enclosed with hedgerows and ditches, and planted with trees to fence the herds from bleak winds and sultry heats, and are generally so well watered that they do not need the attendance of the hind day or night. There are no wolves, bears, nor lions; the sheep lie out o' nights without their shepherds.

Throughout the comparison is between the "Common Law" and the "Civil Law." The Common Law is the unwritten Law of the Land, older than any statutes, and based on the simple principles of justice. The Civil Law is the law of Statute Books, framed or modified to suit the convenience of the Prince, who makes abstract justice secondary to the strengthening of his own authority.

But already the forces were at work which were for a long time to deprive this country of the right to say that in England the Common Law, and not the will of the Prince, was supreme. As long as the kings of England had to ask their people for money, knowing that if the people refused it would be very difficult to enforce their demands, we find a great spirit of independence in the English nation, and all classes had well-defined rights and privileges. Even the

villeins did not suffer from starvation. It has been noticed that there were few famines in England in these times, scarcities were of short duration, and we have no record of any terrible distress, or of people dying wholesale of starvation, as has happened in other countries.

In the last quarter of the fourteenth and the first quarter of the fifteenth century, villenage, though not actually abolished, was losing its harsher features; the statutes show that it was impossible to prevent villeins leaving their lords and going elsewhere—usually into some "walled town." Nor could any statutes restore the old rate of wages. In 1425, a man was paid 3½d. for thrashing a quarter of wheat, and 12d. for twelve days' ploughing and harrowing, with wheat at 8s. a quarter, and 1s. 4d. the price of a quarter of an ox for salting down. From 1440 to 1460, wheat was never above 8s. the quarter. The average price was 6s. 8d., and of oats, 2s. In 1441, forty geese sold for 10s.—3d. for a goose. Ale was 1d. a gallon—it was, no doubt, very small. And wages had risen. In the sixth year of Henry VIII. a mower got 4d. a day, "with diet," and 6d. without. A reaper had 3d. or 5d. The lowest wage was 2½d. a day, for men or women working on the land. In 1533, the price of beef and pork was fixed by law at ½d. a lb. veal, and mutton ¾d. Artisans, of course, got much higher wages. The working day was not more than eight hours. With such prices and such wages, Fortescue's picture is quite credible.

But after 1519, the Spanish conquests in South America began to flood Europe with gold and silver, and as soon as money was more plentiful "there appeared more numerous armies, greater magnificence in princes' courts, the dowries of princesses much enlarged, and the price of provisions enhanced" ("Parl. Hist."). And in this greater magnificence and expenditure one of the very foremost was the King of England. The Field of the Cloth of Gold almost emptied Henry VIII.'s treasury of the vast sums (extorted from the nobility) left by Henry VII.; and when kings spend at this rate, their subjects always have to pay.

CHAPTER VIII.—THE GROWTH OF THE POWER OF THE CROWN

THE great struggles of the Roses, which prepared the way for the House of Tudor as a dynasty, also prepared the way for that House as a form of government. The destruction of the old nobility widened the gap between governors and governed, and the essentially modern genius of the Tudors used the situation created by thirty years of civil disorder and unstable authority, to reduce government to an organised system, every part of which system strengthened the Crown, and allied it more and more with that Civil Law, which is the will of the Prince.

The accession, not of Henry VII., but of Edward IV., marks the beginning of that reign of terror which reached its climax under Henry VIII. For three quarters of a century—from the deposition of Richard II. to the battle of Bosworth, circumstances had been preparing the way for absolute monarchy. It may seem strange that the deposition of a king should have strengthened the Crown, but the explanation is simple—the throne now rested on a military foundation. Henry IV. reigned as an arbitrary sovereign—no one can read the history of his reign without seeing this, though circumstances prevented the fact from becoming too glaringly obvious. He was a usurper, who had obtained the Crown by conquest—the first King of England since William the Norman who had done so. Edward IV. declared that he held by the same right (Rymer, xi. 710). Henry VII. appealed to it—it was indeed the least dubious of his titles ; and though Parliament omitted it in the recital of those titles they knew but too well that henceforth all men would hold their lands at the King's pleasure. The question put by the Chancellor to the Judges shows this conclusively.[1] It was the doctrine of that age, that a conqueror could dispossess all men even of their lands.

[1] In the first year of Henry VII.—upon the Act which declared that the Crown should "rest and remain with the King," according to the 7 Henry IV., whose title was known to rest on conquest—the question was put to all the judges, "Whether the liberties and rights

The quarrel of the Roses was a faction fight—no political principle was involved, as was the case in the great Civil War. It is no doubt true that the country at large concerned itself with the quarrel as little as circumstances permitted. But the consequences were none the less deplorable. Besides all the evils of such a disturbance, so long continued, England was ruled for eighty-eight years by kings whose title was more or less openly challenged by a more or less rightful heir—or, worse, by an impostor. For fifty of these years the House of Lancaster maintained itself, in spite of conspiracies and insurrections. Then came sixteen years of civil war, with twelve pitched battles —battles in most of which only a few thousands of each side took part, but which were very fatal to the noble families who cast in their lot with the White or the Red Rose—and in that quarrel it was impossible for any great family to stand aloof. And whatever may be said of the little interest the country took in the business, it was profoundly impressed by the miseries it caused, for Henry VIII. could never have established the despotism he did, but for that dread of a disputed succession, to which he never appealed in vain.

Thus, the Wars of the Roses had destroyed the only class able to resist the pretensions of the Crown. Not until Edward IV. governed by fear were men put to death for words spoken, suggesting a doubt of the King's title, even though the Judges might give their opinion that there was no evidence of treasonable intent. Only the spectre of a renewed civil war could have made Englishmen submit to such a reign of terror. What battle had begun, attainder completed, and Richard III. carried on the work of destroying the men great enough to be formidable.

Then came Henry VII.—the most astute prince of the most astute royal house that ever sat on the throne of England. He was determined there should be no more "king-makers"—great barons who could march against him with 4000 armed retainers. A good many had been killed off in the Wars of the Roses, or had perished on the

of the people would be thereby resumed ?" "And it was said that it would not be so." But no reasons were given, and the brief entry in the Year Book reads as though it was felt that the less said the better. There was none of that setting forth of the rights of Englishmen of which there are so many examples in earlier times.

scaffold, as one or other faction triumphed. The rest he meant to rule by the law, and to rule the law by the lawyers. He had creatures—Empson and Dudley—ready to do his will. He kept within legality. Bacon says it was his plan to rule the people by the laws, and the laws by the lawyers. He elevated the Star Chamber into a legal tribunal, till it became the greatest instrument of arbitrary power that ever sovereign had. He caught men "with slumbering laws"; his ministers were "lawyers, lawyers in science, and privy counsellors in authority," and "turned law and justice into wormwood rapine." No man knew when he had offended. "Their principal working was upon penal laws, wherein they spared none, great nor small; nor considered whether the law were possible or impossible, in use, or obsolete."[1] He obtained the reputation of "a merciful prince"; but "the less blood he drew, the more he took of treasure." And "as some construed it," this was because he dared not take both blood and treasure.

He had reigned nineteen years before he enacted his own Statute of Liveries, but there were many former statutes to be revived—of Richard II., Henry IV., and a very stringent one of Edward IV. These statutes—sometimes called "of Maintenance," forbade, under heavy fines, the putting retainers—not actual servants—into livery. During the French wars of Edward III., it was rather a convenience to the King that great nobles should maintain what was in reality an independent soldiery. But this had ended in every great noble being the leader of a little army. At first these little armies had been composed of tenants, who in times of peace returned to their farms, but in course of time, and especially when the long French War made war chronic, the barons had great companies of retainers whose only trade was fighting. There are statutes of the reign of Edward III. which complain that such companies —clad in some great man's "livery"—ride armed about the country, and commit depredations, even in time of peace. They had degenerated into something not far removed from banditti.

Henry VII. put down this nuisance, but he did so in the worst way possible. By his time, the great lords had

[1] Bacon, "History of King Henry VII."

almost absorbed the "freemen," the *liberi homines*, whose ancient rights the Conqueror had confirmed; and one way or another, had converted soccage into military service. Their tenants held by them by that service, and now that their right to arm their tenants was taken away, they demanded rent in money. Moreover, the tenants, since they could no longer be armed, lost half their value—and sheep-farming had come up, and wool paid well, requiring only a few shepherds to look after thousands of sheep. So landlords began to enclose. "Then commenced a struggle of the most fearful character. The nobles cleared their lands, pulled down the houses, and displaced the people. Vagrancy, on a most unparalleled scale, took place" (Fisher, "History of Landholding in England," p. 54).

Bacon says:

> "Inclosures at that time began to be more frequent, whereby arable land, which could not be manured without people and families, was turned into pasture, which was easily rid [worked] by a few herdsmen; and tenancies for years, lives, and at will, whereupon much of the yeomanry lived, were turned into demesnes. [That is, were now to be held *in capite*.] This bred a decay of people, and, by consequence, a decay of towns, churches, tithes, and the like. The King likewise knew full well, and in no wise forgot, that there ensued withal upon this a decay and diminution of subsidies and taxes; for the more gentlemen, ever the lower books of subsidies." Henry saw he had outwitted himself; so there were enactments for keeping lands in tillage, and keeping up of dwelling-houses. Moreover, the King saw that he would never get a good infantry out of men "bred in a servile or indigent fashion," and that if husbandmen and ploughmen "be but as the workfolke and labourers of the gentlemen, or else mere cottagers, *which are but housed beggars*, you may have a good cavalry, but never good stable bands of foot" ("History of King Henry VII.," 70, 71).

So now the King tried to restore the people to the land. If he had done it by re-establishing the "freemen," by

converting the holdings of the men-at-arms into allodial estates, held direct from the Crown, he would have created a number of small estates, and there need have been no evictions. Bacon, who praises the ordinance that "all houses of husbandry, that were used with 20 acres of ground and upwards," should be kept up for ever, with a competent proportion of land, says that it "did wonderfully concern the might and mannerhood of the kingdom, to have farms . . . sufficient to maintain an able body out of penury . . . yeomanry or middle people, of a condition between gentlemen and cottagers or peasants." The small tenants had not the capital necessary for sheep-farming, but they could have lived off the land. And the lords would have been no worse off, because they were now relieved of the great charges of livery and military service. But Henry relieved the lords from a charge, and at the same time made it possible for them to evict their tenants altogether. This was the second wrench given in getting the people off the land.

The depopulating effect of enclosure is shown by the famous Act, 4 Henry VII. (1487) to forbid the taking of more than one farm by one tenant in the Isle of Wight. The Act says that the safety of the realm depends on the coast towards France being well inhabited. The Isle is lately "decayed of people." "Many towns and villages have been beaten down"; it is "desolate," only inhabited by beasts, laying the kingdom open to the King's enemies. The depopulating effect of enclosure is thus acknowledged by an Act of Parliament. And immediately we have another Act against "vagabonds." The two things go together—Acts complaining of the clearing off of people, and Acts complaining of vagabondage. Where were the people to go, and what were they to do?

The rapacity of Henry VII. greatly affected the tenure of land. Bacon says that towards the end of the reign, Empson and Dudley [1]—the two men who carried out his schemes—ceased "to observe so much as the half-face of

[1] "Dudley was of a good family, eloquent, and one that could put hateful business into good language. But Empson, that was the son of a sieve-maker, triumphed always upon the deed done, putting off all other respects whatsoever. Dudley was the father of John Dudley, Earl of Warwick and Duke of Northumberland, who for a time had supreme power under Edward VI."—Bacon.

justice." They did not even proceed by indictment, but examined men themselves, sometimes at their private houses. And now they began to "enthral and change the subjects' lands with tenures *in capite*, by finding false offices"—that is, feigned and invented duties. So they made them pay for the seven incidents to which tenures *in capite* were liable.[1] The last vestiges of the Saxon system were vanishing.

CHAPTER IX.—HENRY VIII.'S STATUTE OF USES

THE preamble of a statute is often the most illuminating part of it. Like all other human documents, it may contain false statements, and put forth false motives, but none the less, it reveals the intention of the framers, and the general state of things to be altered for better or worse.

The great Statute of Uses of 27 Henry VIII. (1536) was intended to destroy the distinction between legal and "beneficial" ownership of land, and to make the person who benefited the legal tenant, liable for all burdens. This was undoubtedly in accordance with justice. It was also designed to destroy the power which had grown up (through the introduction of uses) of disposing by will of interests in lands. The preamble says that "divers and sundry imaginations, subtle inventions and practices have been used," to evade the Common Law, and to convey lands from one to another "by fraudulent feoffments, fines and recoveries, and other assurances craftily made to secret uses and trusts, and also by will and testaments, sometimes made by bare words (nudeparol), sometimes by signs and

1 Aids, relief, primer seizin, wardship, marriage, fines for alienation, and escheat. Primer seizin was the sum demanded of an heir who inherited when of full age. The orphan heir of a tenant *in capite* while under age became the ward of the feudal lord, who could sell his ward's marriage. (See the "Paston Letters.") Escheat, or "falling in," meant the reversion of lands *in capite* to the feudal lord, when a tenant died without heirs of his blood, or when his blood was "corrupted" by attainder.

tokens, and sometimes by writing, and for the most part made by such persons as be visited with sickness, in their extreme agonies, and pains," or when they had hardly "any good memory." Thus many heirs have been disinherited, lords have lost their wards, marriages, reliefs, heriots, escheats and aids; hardly any person can be sure the land he has bought is his own, or against whom to bring an action to recover his title. Widowers have lost their "tenancy by courtesy," women their dowers; manifest perjuries have been committed; the King has lost the profits and advantages of the lands of persons attainted, and many other inconveniences have happened, and daily increase, "to the utter subversion of the ancient common laws of this realm."

To avoid all these evils, it was now enacted that whoever held lands to the use of another, should be adjudged to be in lawful possession of those lands. "The Statute," says Blackstone, "conveys the possession of the use, and transfers the use into possession." He who uses is "complete owner, as well in law as in equity."

At first, this diminished the power of Chancery, because the Common Law Courts began to look on uses as a mode of conveyance. But the lawyers again found a way to evade the Statute of Uses, and to increase the power of the Chancery. The usual method was this: A conveyed lands to B to the use of C to the use of D. The Statute of Uses decided that only the first use could be executed, and the Common Law Judges laid it down that the powers of the statute were exhausted when once it had been called into operation, and "the limitation of a further use to another person was therefore void." [1]

So the Common Law refused to recognise the right of D to the use. D's only hope was in the Chancellor, to whom he appealed. The Chancellor, "who hath power to moderate and temper the written law and subjecteth himself only to the law of nature and conscience," ruled that, as the obvious intention of A was that D should have the use, this was a trust in equity, though not in law, and ought "in conscience" to be performed. So the old device was revived, and these second uses came to be known

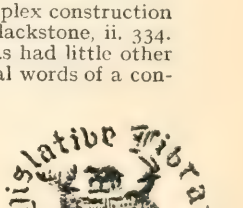
[1] This referred to the famous Tyrrell's case decision: "An use cannot be engendered of an use."

as "trusts," and the Statute of Uses had done little but change a word.[1]

The Statute of Uses enacted that fines for alienation, etc., should be paid to the King. It also tried to ensure that secret conveyances introduced into uses should be destroyed, and conveyances be made only by the "solemn and open livery of seizin." It was certainly a very bad thing that the real ownership of any lands should be doubtful or unknown. But here too the statute was outwitted. One way of creating uses was by "bargain and sale." By this, the legal owner (bargainor) contracts to sell his interest in the land to another (the bargainee), and the bargainee pays, or promises to pay for the land. At Common Law, there must have been a proper legal conveyance; but Chancery laid it down that "a use was thus raised in favour of the bargainee, and that the bargainor was the bare legal owner holding to the use and profit of the bargainee" (Digby). The Statute of Uses made "bargain and sale" valid. Before the statute, B would have got the equitable interest; after it, he got the full legal interest. There was no notoriety about "bargain and sale," and thus the legal interest in lands could be conveyed by strictly private acts, which need not be recorded in writing, and might be incapable of legal proof." So the same year Parliament passed the Statute of Enrolments, to prevent clandestine conveyances. And now no estate, nor any use thereof, could be conveyed by bargain and sale, unless said sale was made by writing indented, sealed and enrolled in one of the King's Courts of Record, or within the county where the land in question was situated.

Once more the lawyers defeated a statute. Estates less than freehold—such as those held for a term of years—were not mentioned. So if A bargained to sell B the land for one year there need not be enrolment. The bargain for one year raised a use for one year to B, and by the statute gave B possession of his term as if he had actually

[1] "The various necessities of mankind induced also the judges very soon to depart from the rigour and simplicity of the rules of the common law, and to allow a more minute and complex construction upon conveyance to uses than upon others."—Blackstone, ii. 334. "A statute made upon great deliberation . . . has had little other effect than to make a slight alteration in the formal words of a conveyance."—*Ibid.* 336.



entered on the land. Once in possession, B could acquire the freehold by a simple deed—a release—from the owner of the reversion. So, in the case above quoted, A, the day after the sale for one year to B, could grant his remaining interest by release to B, who now held the land by virtue of the very Statute of Uses! This method became very popular, freehold lands were transferred by it until 1841. So secret conveyances were actually re-established, instead of being done away.

The disposal of interest in lands had become so popular, and the opposition to its restriction was so strong, that four years after the Statute of Uses power was given to every tenant in fee-simple to dispose by will of all lands held in soccage, and of two-thirds of that held by knight-service. But in the case of soccage lands, primer seizins, reliefs, and fines were to be retained; and over the third part of knight-service lands, the right of wardship, in favour of the King or lord.

By this time the Court of Chancery, which at first professed to exercise that higher kind of justice called equity, was simply complicating land-conveyance, and multiplying the chances of a lawsuit arising out of any transfer of land. The "glorious uncertainty of the law" means the uncertainty of the law of Chancery.

CHAPTER X.—THE TAKING OF THE ABBEY LANDS

I HAVE shown that ever since the deposition of Richard II. circumstances had been favouring absolute government. These circumstances bore their full harvest in the reign of Henry VIII.

The resumption of the Church lands by Henry VIII. produced a total change in the land system—a change all the greater because it was more social than legal. About a fourth part of the lands of England actually changed hands; but this very inadequately describes what was done. And as it has ever since been the interest of the well-to-do classes to justify a resumption which enriched them-

selves, it is necessary to say something here about the persons who instigated the business, the manner in which they carried it out, and the immediate consequences of the change.

Henry VIII. united in his own person all the terrible and dangerous traits of his predecessors on both sides of his house—as unscrupulous and hypocritical as Henry IV., as wasteful and extravagant as Edward IV., as pitiless in sweeping away obstacles from his path as Richard III., as cunning and lawyer-like as Henry VII.; and to these qualities he added a temperament ready at any moment to kindle into fury, and once that fury was kindled, he spared neither man nor woman—neither Sir Thomas More nor the mother of his child. We must go back to the Roman Empire for his parallel. He began as a splendid, ostentatious prince, squandering on shows the vast sums his father had wrung out of the nation; but after Wolsey's fall he reigned by sheer terror. His trembling Parliament resigned into his bloodstained hands their civil as well as their religious liberties. He beggared his people, and then hanged them for being beggars.[1] He made poverty in England a crime. Three hundred years after Magna Charta, an English King passed laws by proclamation! And an English Parliament assented! So much ground was lost in his time, that it was a hundred years before Parliament dared once more assert itself, and it cost us another half-century, civil war, and two revolutions, before constitutional government triumphed.

This is not the place to consider the foul accusations against the religious houses—we are concerned here with the conduct of the new, not of the old owners. It is enough to say that the preambles of the Acts of Suppression, and the King's Speech to the adjourned Parliament of 1525, are enough to throw the gravest suspicion on the good

[1] By the 27 Henry VIII. c. 25 (1535), a sturdy vagabond was to be whipped the first time he was taken begging; "if he continue his roguish life," to have the upper part of the gristle of his right ear cut off. If after that "taken wandering in idleness, or doth not apply to his labour, or is not in service with any master, he shall be adjudged and executed as a felon." From this it would appear that the mere fact of his having been thrice out of work constituted felony. This is the earliest Act for the hanging of vagrants or beggars.—Compare p. 100.

faith of the accusers. At first, it was only the small houses, under the number of twelve persons, which were given to "vicious and abominable practices," and to "consuming and wasting the Church's lands." Burnet says the reasons given were that these small houses being poor, "their poverty set them on to use many ill arts to grow rich." The preamble of the Act of 1536, for suppressing these smaller monasteries, gives another reason . . . "considering also that divers and great solemn monasteries of this realm, wherein, thanks be to God, religion is right well kept and observed, be destitute of such full numbers of religious persons as they ought and may keep," it is suggested that the smaller communities—now called nothing worse than "unthrifty"—may be reformed by entering the larger. The King declared that his information was obtained from the "visitors" he had sent, and "by sundry credible informations," so he knew "the premisses to be true." But next year he had discovered that all were bad alike. He took all, and in two years he had squandered all, was asking for subsidies, and debasing the coinage, until when, in his son's reign, it was necessary to pay the loan borrowed from the Antwerp merchants, a new coinage had to be struck before foreigners would accept our money!

Some historians and others speak as though the great wealth of the monasteries was an extenuation of Henry VIII.'s action. As he had for thirty years been squandering money as no king of England ever did before or has since, they seem to think he had a right to rob the Church and the poor, because it would be so well worth his while. But surely the greater the treasure he seized, the more land and goods he got into his power, the greater the crime if when he had got them he squandered them? What would these apologists say in another case? In 1893, not one-fourth, but half, the agricultural surface of England and Wales was held by 2250 persons. That is, 2250 persons owned between them 6000 of the 12,000 rural parishes of England and Wales. In our time those who say that these 2250 persons hold too much land are called robbers and revolutionaries. But the monks held in trust for the poor; and no one has ever yet had the courage to say that the great landowners hold their estates in

trust for the poor. Far from that, they are allowed to forbid the erecting of houses, and to drive from their land persons objectionable to them. They could, if they pleased, clear them all off—they do effectually prevent villages from increasing.

The political meaning of the "Royal Supremacy" was absolute monarchy. And it is undeniable that Henry made it include a real Spiritual Headship. Rather than acknowledge this Spiritual Headship of a temporal prince Sir Thomas More laid his head on the block. Henry asserted and exercised the right of the King to prescribe both the form of worship and the dogma. He was presently to put forth a new Book of Common Prayer, and to force it upon an unwilling people by the sword. Never was there a more glaring delusion than that which regards Henry as our deliverer from religious tyranny. He only abolished the jurisdiction of the Pope to set up a far worse jurisdiction of the temporal power. His own tyranny was worse than that of any Pope—the Pope was far off, the King was near. His "Supremacy" was the destruction of civil and religious liberty, not its establishment. He himself gave no religious liberty at all; and such liberty as was granted afterwards was only liberty to follow the established religion. There is this sort of religious liberty even in Turkey.

The King could never have plundered the monasteries if he had not first made himself absolute. The murders of Fisher and More struck such terror that none dared to oppose his will. But he did not trust to intimidation alone: he packed his Parliaments, and he took particular pains to pack the Parliament which was to dissolve the religious orders. There are extant letters of Southampton and Sadler to Cromwell, narrating their success in journeys undertaken with this end. Other arguments were used. One of the greatest authorities on English law, in his greatest work gives them:

> "On the King's Behalf, the Members of both Houses were informed in Parliament that no King or Kingdom were safe, but where the King had three Abilities; *First*, To live of his own, and able to defend his Kingdoms upon any sudden Invasion

> or Insurrection. *Secondly*, To aid his Confederates, otherwise they would never assist him. *Thirdly*, To reward his well-deserving Servants. Now the Project was, if the Parliament would give unto him all the Abbies, etc., that for ever, in Time then to come, he would take Order that the same should not be converted to private Use; but, *first*, That his Exchequer, for the Purposes aforesaid, should be enriched. *Secondly*, the Kingdom strengthened by the Maintenance of 40,000 well-trained Soldiers, with skilful Captains and Commanders. *Thirdly*, for the Benefit and Ease of the Subject, who never afterwards (as was pretended) in any Time to come, should be charged with Subsidies, Fifteenths, Loans, or other common Aids. . . . Now observe the Catastrophe. In the same Parliament of 32 Henry VIII., when the great and opulent Priory of *St John's of Jerusalem* was given to the King, he demanded, and had, a Subsidy both of the Laity and Clergy; and the like he had in 34 Henry VIII. and in 37 Henry VIII., he had another Subsidy. And since the Dissolution of the aforesaid Monasteries, he exacted great Loans, and against Law received the same" (Coke's Fourth Institute, folio 44).[1]

An astonishing change came over political opinion. Of course, a king who was Supreme Head of the Church, must be supreme in the State. John Bale, one of the most unscrupulous and violent partisans of the Reformation, wrote a historical play, entitled "Kynge Johan," in which John is represented as a pious and patriotic monarch, and all who withstood his tyranny as resisting God. One

[1] "To make it pass the better, a Prospect of vast Advantage was opened to the Subject. The Nobility were promised large Shares in the Spoils, as one Author (Dugdale) terms it . . . the Gentry were promised a very considerable Rise both in Honour and Estate: nor were they disappointed."

Cromwell "told the King that the parcelling these Lands out to a great many Proprietors, was the only Way to clinch the Business, and make the Settlement irrevocable. And such it has hitherto proved; for it may even now be observed, that most of those Families who are, at present, possessed of the greatest Share of Abbey Lands, show the greatest Aversion to Popery, or any Thing that may in the least tend towards a Restitution of them."—"Parliamentary History of England," vol. iii., 146-147, 1762.

of the characters is called "Verity." "He is a vile traitor," says *Verity*, "that rebelleth against the Crown. In this the scripture is plain." *Clergy* says in excuse, "He speaketh not against the crown, but the man." To which *Verity* replies: "The crown of itself without the man is nothing. In his own realm a king is judge over all, and none may judge him again, but the Lord himself." The play concludes with denunciations of the Anabaptists. "We shall cut them short, if they do hither swarm," says *Civil Order*. After more of this, *Clergy* says to *Imperial Majesty*: "Your Grace shall be the supreme head of the church."

We have only to compare the sentiments of *Verity* with Fortescue's exaltation of the Common Law above the Civil Law, to see how the old English ideas of kingship had been transformed into the "Imperial majesty" of the Tudors.

This carefully packed Parliament met on 28th April 1539, and sat, with a week's interval till 28th June, when Henry prorogued it in person. No Parliament ever had such a record in its first session. It passed the Dissolution Bill, the Bill for giving Royal Proclamations the force of law and the Six Articles. Packed as it was, and despite the fair promises made to it, it was very loth to incur the guilt of sacrilege. Afterwards, when the spoils had been shared, and the heavens had not fallen—except on the Poor Commons—it was otherwise. But now the Bill "stuck long in the Commons, and could get no passage." At last, the King "commanded the Commons to attend him in the forenoon in his gallery, where he let them wait till late in the afternoon, and then coming out of his chamber, walking a turn or two amongst them, and looking angrily on them, first on the one side, then on the other, at last, 'I hear' (saith he) 'that my Bill will not pass; but I will have it pass, or I will have some of your heads': and without other rhetoric or persuasion returned to his chamber" (Spelman).

This Parliament seems to have made a feeble attempt to grant the Church lands conditionally—the King was to have "as ample a title" as the former owners. He received them, therefore, charged with the relief of the poor, and in trust for the poor. This purpose was always expressly stated in donations to the Church.

The Bill for giving Proclamations the authority of Acts of Parliament punished offenders with fine and imprisonment, and made it high treason if they tried to fly the realm. The " Act for abolishing Diversity of Opinion in Religion " was known as the " Bloody Six Articles," " the Lash with Six Strings." Under it, Catholics and Protestants were burned at the same stake, Catholics for denying the Royal Supremacy, Protestants for denying Transubstantiation. It was death by hanging to say that the Communion ought to be in both kinds, or that private Masses are unlawful, or that auricular confession is not expedient and necessary, or that monks and nuns may marry. It was under this Act that religion was changed in the reign of Edward VI. As the sole reason why Henry VIII. has ever been regarded with anything but horror is the idea that he meant to establish Protestantism, it is well that we should understand the Protestant character of the monarch who seized a third of the lands of England, and put them to private uses.

This amazing spoliation did not stop at abbeys and priories. Every kind of charitable foundation — schools, hospitals, colleges, gilds, benefit societies, were swallowed up, till the poor were robbed of all. The spoilers behaved like foreign conquerors looting a city taken by storm. The sequestrators tore the jewels from the shrines, and bundled the rich sacerdotal garments, the jewelled pyxes and chalices, the splendid illuminated Bibles and Psalters, the priceless Manuscripts, into waggons, while the frightened people looked on aghast. In 1541 he took all the monasteries of Ireland. Such rapine had never been seen since the Huns and Goths overran the Roman Empire. It scandalised all Europe. And because Henry burnt in the same fire Catholics who denied his supremacy and reformers who denied Transubstantiation, his enemies declared that he had no religion at all. In the last eleven years of Henry there were six rebellions—one in Lincolnshire, one in Somerset and Devon, and four in Yorkshire. But the King had a goodly number of foreign mercenaries in his pay—Germans, Spaniards, and Italians; and with these he butchered the people who demanded the old Prayer Book and the restoration of the monasteries.

In the last year of Henry, the Act for the Dissolution of Colleges vested all their possessions in the King. He

even intended to suppress the two universities of Oxford and Cambridge—they were given to understand that they were at the King's disposal, but Dr Cox, Prince Edward's tutor, persuaded Henry to spare them. If they had been suppressed, there would not have been a single university in all England and Wales![1] The first Parliament of Edward VI. extended the confiscation to "all moneys devoted by any manner of corporations, gilds, fraternities, companies, or fellowships, or mysteries or crafts" to the support of any religious use now forbidden by law, and also to "*all fraternities, brotherhoods, and gilds*," and in England and Wales, *other* than the corporations, etc., just mentioned. Power was given to commissioners to survey "all lay corporations, gilds, fraternities, companies and fellowships or mysteries or crafts incorporate," and to dispose of their property. The Act of Henry had said this was to pay for the wars. The Act of Edward hinted at grammar schools to be established—or rather, re-established, since so many had been suppressed. In the case of gilds, the keeping of a lamp burning was held to prove "superstitious use," and to authorise confiscation. Every one of these gilds was a benefit society, which looked after its own sick or "decayed" members, and did what it could for the poor outside.

The lesser monasteries, suppressed in 1536, possessed goods to the value of £100,000, and their rents were valued at £32,000; but it is agreed that they were worth ten times as much, even according to the value of money at that time. Ten thousand persons had been turned out into the world "with 40s. and a gown." It was after seeing this that the people rose in insurrection. In 1539-1540 the great monasteries were suppressed. There were in all 645 monasteries and nunneries. The real value of their lands is set by Eachard, a strongly Protestant historian, at "above £1,500,000 per annum." Besides this, there were the rich shrines, to which emperors and kings had made gifts, especially the two great shrines of Alban, first Christian martyr of Britain, and of Thomas of Canterbury, who died for having prevented another king of

[1] The universities were not then what they became later, schools for the rich; they were full of "poor scholars," and had been so throughout the Middle Ages.

England from making himself absolute. There was treasure enough here, one would think, to carry on the government, relieve the people of taxes, and amply endow institutions for the common good. And indeed at the beginning the King had said that if the monastery lands changed hands he would not be obliged to ask his loving subjects for money. But the very next year, he asked and obtained a tenth, a fifteenth, and 4s. in the £ from the clergy. Next year—being by that time at war with France and Scotland—he had a very large subsidy—assessed at 4d. in the £ from everybody worth in goods from £1 to £5; 8d. up to £10; 1s. 4d. up to £20; and 2s. in the £ after that. And on the lands, 8d. in the £ from 20s. to £5; 1s. 4d. from £5 to £10; 2s. from £10 to £20; and 3s. above that on their rents. The clergy gave 6s. in the £. Next year, 1544, having now 30,000 men at Calais, he issued a Commission for raising money by a Benevolence.[1] Henry VIII. must have had a magic purse, the reverse of Fortunatus', which was never empty; his was never full, however much he might put into it. He was in such straits, within four years of getting hold of rents worth £1,500,000 a year, and all the jewels from the shrines, and the embroidered vestments and Bibles in jewelled bindings, that he was compelled to resort to the disagreeable expedient of issuing base coin. He did this once, twice, thrice, until the shilling was only worth threepence. And at the end of the year he sent in a Bill for another subsidy, and next day another for the dissolution of all chantries, hospitals, colleges—in short, of everything. This subsidy was 2s. 8d. in the £ on goods, and 4s. in the £ on land—to be paid in two years. And the clergy gave 6s. in the £. After which he made a beautiful speech to his Parliament, exhorting them to love one another, and not read the Scriptures to get hard names to call each other by, such as heretic, and Anabaptist, and Papist—this, he told them, was not "fraternal love." It was Christmas Eve; and on 28th January he died, having "expedited" the execution of Surrey, whose death-warrant he signed on the 27th.

It must now be obvious that the country was not the

1 "This Benevolence was very 'grudgingly' raised, and only produced £70,723, 18s. 10d. in all An alderman of London, who refused to pay his share, was sent to serve in Scotland, and was slain next spring at the Battle of Ancram."—"Parl. Hist.," etc.

better for the abbey lands ; though the Russells, Seymours, Cavendishes, Pagets, Howards, Wriothesleys, Stanhopes, and the crowd of smaller courtiers and gentry who founded families and fortunes on the abbey lands no doubt were. Let us see what Protestants said all the time. I will take three witnesses—all Reformers.

CHAPTER XI.—THE TESTIMONY OF THE REFORMERS

MY first witness is Henry Brinklow, a bitter partisan of the Reformation ; once a Grey Friar, who left his order, married, and became a furious denouncer of the Pope and all his works. He wrote what he calls the "Complaint of Roderick Mors." [1] It was written about 1542, and is a remonstrance to Parliament. He complains of "the inordinate enhancing of rents and taking of unreasonable fines," by "them to whom the King hath given and sold the lands of those imps of Antichrist, abbeys and nunneries." If the former holders had not "led us in a false faith, it had been more profitable, no doubt, for the commonwealth, that they had remained still in their lands. For why ? They never enhanced their lands, nor took so cruel fines as do our temporal tyrants.[2] For they cannot

[1] In all these quotations I have modernised the spelling, for the convenience of readers not accustomed to the clumsy and uncertain spelling of the time.

[2] In France the difference between secular and ecclesiastical landlords was more marked even than in England. Pierre le Vénérable, Abbot of Cluny, the friend and protector of Abelard, writing in the twelfth century, said : "It is known to all to what an extent the lay lords oppress their peasants, and their male and female serfs. Not content with the obligations imposed by custom, they claim goods with persons, persons with goods. Besides the usual tax, they pillage at their pleasure, three, four times in the year ; they crush the people by innumerable services, and heavy and insupportable charges, till most of them are compelled to abandon the land which belongs to them, and take refuge with strangers. And what is worse still, they are not afraid to sell for vile money those whom Christ redeemed with His precious blood. . . . The monks do not act like this. They demand of the peasants only what is lawfully due ; they do not vex them by exactions, they do not lay on intolerable taxes ; when they are in need, they feed them. As for the serfs, they regard them as their brothers and sisters."

be content to let them at the old price, but raise them up daily, even to the clouds . . . so that the poor man that laboureth and toileth upon it is not able to live." And if another "rich, covetous earl, who hath too much already, will give anything more than he that dwelleth upon it, out he must, be he never so poor; though he should become a beggar, and after that a thief, and so at length be hanged, by his outgoing: so little is the law of love regarded; oh, cruel tyrannies!" Brinklow says it is now a common custom that the landlord, for every trifle, even for his friend's pleasure, in case his tenant have not a lease, "shall put him out of his farm," though he is "an honest man, paying his rent, and other duties well and honestly. I think there be no such wicked laws nor customs in the universal world again. What a shame is this to the whole realm, that we say we have received the Gospel of Christ, and yet it is worse now in this matter than it was over fifty or four-score years ago, when we had the Pope's law, wicked as it was." He says that this enhancing of leases will be the decay of the commonwealth. It must needs make all things dear, both for back and belly—all but landed men will suffer. And even they were richer when their lands went at the old price. When the landlord increases his rent, the farmer must ask more for his wool, cattle, and all the victuals, else he too cannot live. Brinklow has a chapter on "the enclosing of parks, forests, and chases." This is no small burden to the commons; the deer destroy the corn and grass. "And what land is your parks?" What but the most "batel and fruitful" ground in England? And now by wicked laws, if a man kill a deer that bears the mark of a private person, though it came on his own ground, or devour his corn or grass, he is hanged.[1]

It may seem surprising that Brinklow dared to say this in Henry's lifetime, but he was a vehement supporter of the royal supremacy, and so long as a man supported that, he might compassionate the poor with safety.

My second witness is Thomas Lever, Master of St John's, Cambridge. He preached a sermon before Edward VI.,

[1] The Parliament of the Dissolution made it felony to take a fish out of a stew-pond.

on Septuagesima Sunday, 1550. It is a terrible indictment of the manner in which the abbey lands were used by "those in England which did pretend that besides the abolishing of superstition, with the lands of Abbeys, Colleges, and Chantries, the King should be enriched, learning maintained, poverty relieved, and the commonwealth eased, and by this pretence, purposely have enriched themselves, setting abroad [that is, turning out] cloistered papists, to get their livings by giving them pensions." But "it is a common custom with covetous landlords, to let their housing so decay that the farmer shall be fain for a small reward or none at all, to give up his lease; that they taking the ground to their own hands, may turn all to pasture; so now old farmers, poor widows and young children lie begging in the miry streets. O, merciful Lord, what a number of poor, feeble, halt, blind, lame, sickly, yea, with idle vagabonds and dissembling knaves mixed among them, lie and creep, begging in the miry streets of London and Westminster."

He says that in some towns there used to be six, eight, or a dozen cows, "given unto a stock, for the relief of the poor," so that poor cottagers, who could make any provision for fodder, had the milk at a very small cost; "and then the number of the stock reserved, all manner of vails besides, both the hire of the milk and the prices of the young veals and old fat wares, was disposed to the relief of the poor, these also be sold, taken, and made away."

In another sermon, preached at Paul's Cross, and dedicated to the Lords of the Council, he says: "Be we in better case than we have been afore time because papistry among us is kept under, or else worse than ever we were because covetousness reigneth at liberty?. . . And hath not God given unto us . . . by the suppressing of abbeys exceeding abundance of all manner of lands, riches and treasures? And now where is it all become? . . . Here I, naming no man, do mean almost every man; for every man hath some treasure of the lord's to dispose." He is extremely severe on the reforming clergy: "Why do you take and keep some four or five men's livings? . . . Woe be unto you, dumb dogs, choked with benefices," so that you cannot open your mouths against any abuse. At last, he turns to the laity. "You of the laity, when ye see these small

motes in the eyes of the clergy take heed to the great beams that be in your own eyes. But, alas! I fear lest you have no eyes at all. For as hypocrisy and superstitions do blear the eyes: so covetousness and ambition do put the eyes clean out. For if ye were not stark blind ye would see and be ashamed that where fifty tun-bellied monks given to gluttony filled their paunches, kept up their house, and relieved the whole country round about them, there one of your greedy guts devouring the whole house and making great pillage throughout the country, cannot be satisfied. The King is disappointed that both the poor be despoiled, all maintenance of learning decayed, and you only enriched."

He then charges them with direct robbery of the University of Cambridge. There used to be 200 students of divinity in houses belonging to the university—" now all clean gone, house and man, young toward scholars, and old fatherly doctors, not one of them left." Then the many grammar schools in the country, " founded of a godly intent to bring up poor men's sons in learning and virtue, now taken away by the greedy covetousness of you that were put in trust by God and the King. Look into the Acts of Parliament—there ye shall find that the Nobles and Commons give, and the King takes the Abbeys, Colleges, and Chantries for erecting of Grammar Schools. But what is found in your practice? Surely the pulling down of Grammar Schools, the devilish drowning of youth in ignorance, the utter decay of the Universities, and most uncharitable spoil of provision that was made for the poor." Moreover, the laity take the best lands, and leave only " evil impropriations " to the clergy.

Then, perhaps remembering the many risings, he seems to fear he has gone too far, so he tells them " that be of the commonalty " that when they feel that those in authority are plaguing them, they are to know that they do it not of themselves, " but be moved and stirred of God, to work his wrath upon them." For their sins, God has ordained " that England should be spoiled with greedy covetous officers." What spoiled England? This covetousness. What made them covetous? The indignation of God. What kindled God's indignation? The sins of the people. And what was the sin of the people? Blaspheming God's

Word, "calling it new learning and heretical doctrine. Therefore is the wrath of the Lord kindled. And now you cry that you are robbed and spoiled of all you have. Then quench the indignation of God, embrace His Holy Word as set forth by the King's Majesty's gracious proceedings." And if you keep "this great swelling in your heart," there is more "stiff-necked stubbornness, devilish disobedience, and greedy covetousness" in one of you, "than in ten of the worst of them that being in office and authority have many occasions to open and shew themselves what they be. They do it not of themselves, but moved and stirred by God, to work his wrath upon you." It does not seem to occur to him that the poor dispossessed people, when they rise, are perhaps "moved and stirred" by God, to work His wrath on the rich robbers. He returns to "lease-mongers." He has heard of a gentleman near London who used to let his ground by lease to poor honest men, at 2s. 4d. an acre. "Then cometh a leasemonger, a thief, and extortioner, deceiving the tenants, buyeth their leases, turns them out, and makes them that have it back from him pay 9s., or as I heard, 19s., but I am ashamed to name so much."

One passage in his sermon is true for all time.

"Nothing can make a realm wealthy, if the inhabitants thereof be covetous: for if lands and goods could have made a realm happy notwithstanding men's covetousness, then should not this realm so unhappily have decayed, when as by the suppression of Abbeys, Colleges and Chantries, innumerable lands and goods were gotten."

My third witness is Bishop Latimer. He preached before Edward VI. on 8th March 1549, upon the duties of a king, with a special view to the fact that England now had a king of the reformed faith. God, he says, will not allow a king "too much." Nor will He allow a subject too much. "You landlords, you rent-raisers, I may say you steplords, you unnatural lords, you have already too much." For that which heretofore "went for £20 or £40 by the year (which is an honest portion to be had gratis in one Lordship of another man's sweat and labour), now it is let for £50 or £100 by year," so unreasonably are things enhanced. "And I think verily, that if it thus continue, we shall at length be constrained to pay for a pig

a pound." . . . "Then these grasiers, inclosers, and rent-rearers are hinderers of the King's honour. For whereas have been a great many of house-holders and inhabitants, there is now but a shepherd and his dog. . . . My lords and masters, I say also that all such proceedings . . . do intend plainly to make the yeomanry slavery and the clergy slavery. . . . We of the clergy had too much, but that is taken away, and now we have too little." He gives an example of the vicar of a great market town, with divers hamlets, who has only twelve or thirteen marks a year—not enough to buy books, or give his neighbour drink. And then comes the famous passage about his father:

> "My father was a yeoman, and had no lands of his own, only he had a farm of £3 or £4 by year at the uttermost, and hereupon he tilled so much as kept half a dozen men. He had walk for 100 sheep, and my mother milked 30 kine. He was able and did find the King an harness, with himself and his horse, while he came to the place that he should receive the King's wages. I can remember that I buckled his harness, when he went unto Blackheath field.[1] He kept me to school, or else I had not been able to have preached before the King's Majesty now. He married my sisters with £5 or 20 nobles a piece, so that he brought them up in godliness, and fear of God. He kept hospitality for his poor neighbours. And some alms he gave to the poor, and all this did he of the said farm. Where he that now hath it, payeth £16 by year or more, and is not able to do anything for his Prince, for himself, nor for his children, or give a cup of drink to the poor. Thus all the enhancing and rearing goeth to your private commodity and wealth."

He speaks of the "good statutes" made touching enclosures, "but in the end there cometh nothing forth." But this is the devil's work, and I know his intent. It is by destroying the yeomen to destroy the faith of Christ. "For by yeomen's sons the faith of Christ is and hath been maintained chiefly." Two things comfort me, or I should despair of redress in these matters. One is that when the

[1] In 1497, when the Cornish men rebelled against a subsidy, and marched into Kent, as "the freest part of England."

King comes of age he will redress us, "giving example by letting down his own lands first, and then enjoin his subjects to follow him. The second hope I have is, I believe that the general accounting day is at hand, the dreadful day of judgment, I mean, which shall make an end of all these calamities and miseries."

I pass over the accusations against the monasteries. I will only repeat that the Act for dissolving the small houses expressly says that the "great solemn" monasteries are well managed. The great houses were discovered to be sinks of iniquity only when they were to be robbed. The opinion the robber has of his victim must always be suspect—an ancient fable says that the wolf has a very bad opinion of the lamb. My object here is to show how the change affected the English peasantry and landholding in general.

Spoliation did not stop at the religious houses. Every kind of charitable foundation was confiscated, under pretence of "superstitious uses"—the burning of a lamp was enough.[1] The Act for the Dissolution of Colleges (last year of Henry VIII.) was amplified by the first Parliament of Edward VI., and made to include all moneys devoted by "any manner of corporations, gilds, fraternities, companies, or fellowships, or mysteries or crafts," to any religious use now forbidden by law.

The English Gilds were more ancient than the kings of England. They are referred to as institutions by the laws of Ina, King of Mercia, of Alfred and Athelstan, Kings of All England, of Henry I., after the Conquest. They were of two kinds—"Religious" or "Social," and "Craft" or "Mystery" gilds. But of whichever kind they were, they were all lay societies, existing for lay purposes. If a priest belonged to one of them, it was in his private capacity as a man. Women as well as men belonged to the gilds. We can see what sort of persons composed them—Chaucer's

1 "There were nunneries, where the nuns were nurses and midwives; and even now the ruins of these houses contain living record of the ancient practices of their inmates in the rare medicinal herbs which are still found within their precincts. In the universal destruction of these establishments, the hardest instruments of Henry's purposes interceded for the retention of some amongst the most meritorious, useful, and unblemished of them.—"Six Centuries of Work and Wages," II. 17.

Canterbury pilgrims were members of a gild; he calls it "a solempne and grete fraternite." The Gilds were emphatically brotherhoods—the members are spoken of as "brethren and sustern." They were neighbourly unions, benefit societies, sick clubs, all in one. They assisted the outside poor when able. Sometimes they maintained grammar schools. They were eminently social and public-spirited societies, and their rules breathe the very spirit of brotherly kindness. They often had a chaplain—so has the Lord Mayor of London, but this does not make the city companies "superstitious" foundations. They also sometimes founded a chantry if the parish church was too far off; but their composition was always lay, and not "religious." The Craft Gilds were the first trades-unions. The first Parliament of Edward VI. gave to the Crown the possessions of all "Colleges, Free-Chapels, Chantries, Hospitals, Fraternities, Brotherhoods, and Gilds." And the Crown took all, "except what could creep out as being trading Gilds (which saved the London Gilds)."[1] The Merchant Gilds were too powerful to be meddled with. Bishop Burnet, a great apologist of the Reformation, says that this Act was obtained by a direct fraud. The whole House of Commons was "much set against that part of the Bill for the Guild-Lands. Therefore, those who managed that House for the Court, took these off by an assurance that their Guild-Lands should be restored to them." He also says that Somerset made good this promise, but it was not so, as the records prove. Mr Toulmin Smith, who wrote on English Gilds, left a note, in which he says: "For the abolition of monasteries there was some colour. . . . But in case of Gilds (much wider) no pretence of inquiry, or of mischief. . . . A case of pure, wholesale robbery, done by an unscrupulous faction to satisfy their greed, under a cover of law. No more gross case of wanton plunder is to be found in the history of all Europe. No page so black in English history." This indignant note expresses the conviction left on Toulmin Smith's mind, after his laborious researches into a bundle of documents in the Record Office, almost entirely overlooked until the task of overhauling them was committed to him.

[1] Toulmin Smith, "Old Crown House."

The Gild of the Palmers at Ludlow is a fair example of the spirit of these old Fraternities. "Any brother or sister" who bears the name of this gild, and has been brought to want, shall be helped "once, twice, and thrice, but not a fourth time"—a proviso which ought to recommend the gild to those who teach us that help demoralises. This gild drew a distinction in sickness. "If any of our poorer brethren or sisters fall into grievous sickness," they shall be helped till they are well again. And if any become a leper, or blind, or maimed, or incurable, "we wish that the goods of the gild shall be largely bestowed on him."

In the last year of Henry, there was a Commission to report on the possessions of the Gilds, with the direct intention of confiscating as much of their property as possible. So chantries were confused with gilds, and chantry foundations with chapels wherein masses were allowed to be said for the benefit of parishioners who lived too far from the parish church to attend it. The reports of the Commissioners form the chief part of Mr Toulmin Smith's work on English Gilds. Beyond the facts that a light is kept burning, or that mass is said in a chantry, there is no accusation of any kind. The Commissioners report of the School of the Gild of St Nicholas, Worcester, "This is no Schole of any purpose, as is credibly said," and there is another in the town of the King's foundation. But the King's school was for only 40 scholars, the gild school taught more than 100. It was a free school, kept "time out of mind" in the hall of the gild. For four or five years "last past," however, the gild had taken the money paid to the schoolmaster for the repair of the great stone bridge over the Severn, and of the walls, houses, tenements and cottages that "were in great decay." Surely to repair the city bridge was a work of great public utility. And at the time of the report, the school was restored, and "one John Oliver, bachelor of Arte," was teaching above 100 scholars.

CHAPTER XII.—THE STATUTE OF VAGABONDS

"If the impotent creatures perish for lack of necessaries, you are the murderers, for you have their inheritance. . . . If the sturdy fall to stealing, robbing, and revenge, then are you the causers thereof, for you dig in, enclose, and withhold from them the earth out of the which they should dig and plow their living."—*An Informacion and Petition against the Oppressors of the Poor Commons*, Robert Crowley, afterwards Archdeacon of Hertford.

"Oh! what a lamentable thing it is to consider, that there are not at this day ten plows, whereas were wont to be forty or fifty. Whereas your Majesties progenitors had an hundred men to serve them in time of peace and in time of wars, with their strength, policy, goods, and bodies, your Majesty have now scant half so many. And yet a great number of them are so pined and famished by the reason of the great scarcity and dearth of all kind of victuals, that the grete shepemasters have brought into this noble realm, that they are become more like the slavery and paisantry of France than the ancient and goodly yeomanry of England."—Bishop Scory's *Letter to Edward VI.*, printed in Strype's "Ecclesiastical Memoirs," Vol. II. Part ii. 492.

WE thus learn, from the Reformers themselves, that the seizure of the Church lands instantly drove out the smaller holders, or enormously enhanced their rents. Henry had given or sold (more often sold) the abbey lands to his creatures of the new nobility. Most of the lands were granted to be held *in capite*, subject to all the burdens of fines which this implied. The Court of Wards was erected—that most profitable business of trafficking in the marriages of orphan heirs.

The new race of landowners did not want small tenants—they were rather an encumbrance than otherwise; larger holders, of more substance, would pay more rent; and from this time forth landlords thought only of how much rent their land would bring them in. Sheep-farms—large in extent, and requiring few labourers—had been increased in the first place by the dearth of labour after the Black Death. Henry VII., who grew rich by fining great lords for keeping retainers, gave it another impetus—the great landowners became as anxious to get rid of their villeins as a little while before they had been to keep them. And as soon as enclosure increased, we find statutes against vagabondage instead of statutes of labourers. These

causes affected three-fourths of the land; now the fourth part came under the same conditions, in an intensified degree, because this fourth part was now held by new owners, suddenly come into a possession which they regarded as their own, to do as they would with it. Enclosure came in as with a flood. Vagabondage now became a hanging matter.

There is a frightful tradition that Henry VIII. hanged in all 72,000 persons. The tradition is mentioned by Harrison, Canon of Windsor, who wrote in the reign of Elizabeth, and he quotes from Jerome Cardan, the Italian physician who was called in to Edward. Cardan says that the Bishop of Lisieux told him in 1552 that Henry hanged the 72,000 *in the last two years of his reign.* Harrison perhaps thought this incredible, and so only says that Henry hanged this number of "great thieves, petty thieves, and rogues, in his time."[1] But the first statute, ordering the hanging of "a valiant beggar," or "sturdy vagabond," is the twenty-seventh of the reign, when Henry had only twelve years more to live, so that at this rate he must have hanged on an average 6000 a year. That the number of executions was very large is certain, and such a tradition does not arise unless public opinion has been impressed. In the Welsh MSS. of Lord Mostyn, there is a statement, that in one district of North Wales, "over 5000 men were hanged within the space of six years." If to the hanging of vagrants at ordinary times we add the executions after the six rebellions, the number would no doubt be very great, though the tradition is probably an exaggeration. Making every allowance for exaggeration, great numbers must have been put to death before such a tradition could arise, so near the time, and when the governing classes of England would have every motive for not spreading it. Another story says that when "Bluff King Hal" was told of the misdeeds of common folk, he used to cry: "Hang them up! Hang them up!" The statutes, by the way, show that the disorderly portion of the vagrants was recruited chiefly by discharged soldiers, returned from Henry's wars in France.

We shall now see how the nobility and gentry, enriched

[1] Alfred Marks, "Tyburn Tree," pp. 142, 143.

with the spoils of the Church, dealt with the dispossessed people—the people who as every contemporary Protestant writer and preacher confesses were made beggars by their new landlords.

One remarkable and ominous change there was when Edward VI. was crowned. For the first time at the coronation of a king of England—not excepting the coronation of the great Conqueror himself, the people were not asked *if they would have him to be their king*. They were only asked to give their assent and goodwill to his coronation, as they were bound by their duty of allegiance.[1]

The reign of Edward VI. was the reign of a child. The Lords of the Council, the sixteen persons to whom Henry had committed his kingdom and his son, ruled the country, and at first the young King's uncles, the Seymours, had the predominance. They had risen on Anne Boleyn's fall, and many believed they had compassed that fall. The whole conduct of the Duke of Somerset during the life of Henry is worse than dubious, but it cannot be denied that when, for a short time, he was supreme in England as Protector, he espoused the cause of the people. That he did so was one great cause of his ruin, for he offended the new possessors of abbey lands. Somerset had abbey lands himself, and his wanton robbery of Church property scandalises even Strype, the apologist of the Reformation.[2] Somerset even contemplated pulling down Westminster Abbey to build Somerset House. But he was less utterly vile than Warwick (afterwards Northumberland), who overthrew him, and I think we must believe that he really pitied the people. More especially he set himself against the clearing of the people off lands they had held from time immemorial.

The last instalment of these lands—the chantry and gild lands—had been sold at a vast price. But a curse seemed to rest on these gains. In 1549 the debts of the Crown amounted to £1,356,687, reckoning in the cost of the war with Scotland, the fortifications, and King Harry's debts.

1 Eachard.

2 Strype wrote in the early eighteenth century, but he consulted original documents, and in spite of his strong bias in favour of the Reformation, he is very severe on the oppression of the new landlords and the unspeakable misery of the people in the reign of Edward VI.

The rebellions in Norfolk, Cornwall and Devon cost £27,000, and when Somerset fell he too left debts.

The practical result of the change was to increase enormously the evils of "engrossing"—against which statutes had been made by Henry VII. and Henry VIII., because it was found that it decreased the number of men fit to bear arms. "Engrossing" meant throwing a number of small holdings into one large one. "Enclosing" at first meant the enclosing of the common pasture, but it now came to mean the enclosing of the "open fields," or "town lands," belonging to every village. Both processes cleared the people off the land. Indeed, it was the deliberate purpose of the new landlords to get rid of them. We always find statutes against vagabonds and statutes against enclosing and engrossing going together. It was never denied that the people were turned off the land, and suffered misery in consequence. But the more they were turned off, the more ferocious the statutes became. We need not suppose that men must be monsters of depravity if when they lose their work and their living they take to evil ways. To demand of thousands of men and women that they shall meekly lie down and die in the nearest ditch that gentlemen may grow rich by selling wool, may possibly be what they ought to do, but we may be quite sure that they will never do it. The framers of the Act 1 Edward VI. c. 3 speak as though their wickedness were phenomenal.

The first Act of the first Parliament of the Reformation was to pass the Act for uniformity in public worship—under pain of imprisonment for life and forfeiture of goods. Its third was the Act "for the punishment of Vagrants, and the Relief of the Poor." Under this innocent title was put forth the most frightful Act ever framed by any government in the world against its own people. If it had been enacted by William the Norman, 500 years before, after a foreign conquest, it would inspire horror, history would ring with it. But it was framed by Englishmen against Englishmen, by robbers against those they had just ruined; and the Englishmen who framed it boasted that they had newly received the pure light of the Gospel.

The preamble starts by referring to the "godly Statutes" made by the King's "noble progenitors," which statutes have done no good, partly because of "foolish pity and

mercy" on the part of those who ought to have carried them out, partly because there have always been more idle and vicious persons in England than "in other regions," and more "perverse." "If they were punished with death, whipping, and other corporal pain it were no more than they deserve." But on second thoughts the framers reflect that it is better to make them "profitable." So now:

Any person who brings before two Justices of the Peace "any runagate servant, and any other which liveth idle and loitering by the space of three days, shall have him for a slave." The justices shall cause him to be marked "with an hot iron on the breast, with the mark of V.," and adjudge him to be "the slave" of the person who brought him, or of that person's heirs and assigns, for two years; "and he shall take the said slave and give him bread and water, or small drink, and refuse meat, and cause him to work, by beating, chaining, or otherwise, in such work and labour as he shall put him unto, be it never so vile." And if "such slave" absent himself within the two years for fourteen days, then two justices shall adjudge him "to be marked on the forehead or the ball on the cheek with an hot iron with the sign of an S., and further shall be adjudged to be slave to his said master for ever." And if he runs away a second time, he shall be adjudged a felon—that is, shall be hanged. "It shall be lawful for any person, to whom shall be adjudged a slave, to put a ring of iron round his neck, arm, or leg." A Justice of the Peace may bind "a beggar man's child" apprentice up to the age of 14, and a woman-child up to 20 years of age. And "if the said child run away," his master may use him for the said term "as his slave." A "clerk convict or attainted" (perhaps for refusing to admit the supremacy in matters spiritual of the child Edward) was to be "a slave for one year" to any who would become bound for him, and to be used as a vagabond. This, if he could make his purgation. If he could not by law, then to be a slave for five years, and used in all respects except the branding as a slave.

Never before did any civilised government (or any uncivilised?) give its poor subjects to its rich ones, to be slaves without wages, to be branded with "S" for "slave," to be whipped, chained, have a ring round their necks as though they were dogs, and be hanged if they tried to escape.

England must have been a hell for the poor, and for the thousands of evicted and ruined peasant farmers, in the days of Edward VI. The monks were reviled for having fed the poor; the reforming Government made them slaves—not even wincing at the word, and incited their owners to beat them and chain them up. The words "or otherwise" are a direct incitement to actual starvation and torture.

The great soldier and statesman whom we call "the Conqueror" is handed down to execration because he cleared out fifty villages to make the New Forest. But what was that to this? And this Act was passed by the first Parliament of the Reformation—a Parliament which had just passed the Act for uniformity of worship—an Act stuffed with pious expressions and texts of Scripture, and satisfaction at the pure light of the Gospel shining at last upon England, and dispelling the old superstitions. One of those superstitions was that any poor starving beggar might be the Lord Himself, come back to earth to see how His brethren were treated by His disciples.

This Act has not much about the impotent poor. It says vaguely that they are to have convenient houses provided for them, in the places where they were born, or lived three years, "by the willing and charitable dispositions" of the parishioners; and it was evidently thought that these dispositions would chiefly show themselves in licences to beg.[1] To some extent this infamous Act defeated itself. Even the Ministers of Edward VI. saw that it would not do, and it was not put in force, as to its very worst features, for much more than a year.

Nothing was wanting to complete the misery of the people: the coinage was debased, provisions were dear, there was a dearth. The streets and alleys of London were full of poor creatures, some of them positively dying in the streets. Latimer says he cannot "go to his book" for the poor people who come to complain to him. The evidence shows an actual diminution of population. Three years later so much of the Act cited as "tendeth to make vagabonds slaves" was repealed, but all the rest was left. The reason

[1] John Stow, the historian, was kindly granted a licence to beg by James I.

seems to have been that the local authorities shrank from carrying out so atrocious a law. But the spirit of the law-makers remained unchanged; in 1559 Elizabeth contemplated the revival of this slave law "with additions."

"To preach the Gospel to the poor, deliverance to the captives, to set at liberty them that are bruised." What greater contrast could there be between that first Gospel and this? That made the poor its first concern; this gave the poor the statute against vagabonds.

But it was not religion that prompted the 1 Edward VI. c. 3. It was greed. When Henry VIII. and the Government of Edward VI. seized the lands, to distribute them among the rich as their private property, they opened the floodgates of covetousness. It is pitiful to hear Latimer, Lever, and Gilpin uttering their futile denunciations of covetousness and oppression, as though they thought that vultures could be talked into relinquishing their prey. The prize was too great. Such a prize had never been dangled before the eyes of any body of men since the Norman Conquest; and with a few sporadic exceptions (such as the New Forest), the effect of the Conquest itself was not to choke the highways with dispossessed and starving "out-o'-works." The preamble is a wholesale indictment of the English lower orders from time immemorial, but, the admission that "foolish pity and mercy" was felt for vagabonds shows that they were not regarded by the public as public enemies.

When Edward VI. succeeded his father it was ten years since the suppression of the smaller houses, and nearly seven since that of the larger. Many must have died in the interval, and many more must have become "sickly" and diseased from privation. It is certain that the misery was unparalleled. It appalled every man who was not himself an encloser. And, from whatever motive, the Protector Somerset signified his own death-warrant by attempting to relieve it.

CHAPTER XIII.—THE REBELLIONS OF THE POOR COMMONS

"The English labourer, then, in the sixteenth century, was almost simultaneously assailed on two sides. The money which he received for his wages was debased and the assistance which his benefit society gave him in times of difficulty, which allowed him loans without interest, apprenticed his son, or pensioned his widow, was confiscated. All the necessaries of life rose . . . in the proportion generally of 1 to 2, while the wages of labour rose to little more than from 1 to 1. His ordinary means of life were curtailed. . . . He lost his insurance also, the fund destined to support him and his during the period of youth and age, when work is not open . . . or has become impossible."—Rogers, "Six Centuries of Work and Wages."

THE people rebelled. As early as the autumn of 1547 isolated disturbances began—bands of people pulled down fences. The first were "about Northall and Cheshunt." Perhaps, being so near London, they influenced the savage "Bill for Vagabonds and Slaves" (so it is called on the Commons Journals). Doubtless, enclosers would have been glad enough to hang all the vagabonds they had made! In the spring of 1548 small sporadic risings broke out in other places, till it was clear that something must be done. The little band known as Commonwealth's Men—to which Latimer, Lever, and the elder Hales belonged—were protesting on behalf of "the poor Commons." Somerset, whatever we may think of the rest of his conduct, was now the champion of the people. He was moved, by the "Supplications" addressed to him in the name of the commons, to appoint a Commission of Inquiry into Enclosures, and to issue his proclamation of 1st June 1548. It is a terrible document. It speaks of the "insatiable greediness" by which land that was heretofore tilled and occupied with so many men is now in one or two men's hands, "so that the realm is brought to a miraculous desolation, houses decayed, parishes diminished, the force of the realm weakened," and Christian people driven from their houses by sheep and bullocks. But the Commission only went into some of the home counties, and not many on it, besides Hales himself, were in earnest to

do anything. Every obstacle was placed in the way of the Commission by the gentlemen, who were highly offended when the enclosures were examined, "whereby men's commons and livings were taken away." [1] They said that Hales was "stirring the Commonalty against the nobility," and accused him of sedition. When they could not stop the Commission, they hindered it; when they could not entirely hinder it, they made its decisions of no effect. They put their servants on the juries who were to try their cases—and in some parts the dependents and retainers of great men (the chief enclosers) were so numerous that juries could not be procured without them. Witnesses were threatened with eviction if they told the truth—*i.e.* if they said that enclosures were recent, or that land had till then been common. So many "shameful slights were used" that Hales was ashamed to tell of them all.

The cheats Hales was ashamed to tell were of this sort—ploughing up one furrow of land enclosed for pasture, and then returning the whole as land in tillage; keeping one or two oxen among hundreds of sheep, and passing off the whole plot as devoted to the "fatting of beasts."

Such Acts as were passed either fell through after Somerset's disgrace, or were futile. How could it be otherwise, when the party of the enclosures was supreme, and when even Latimer seemed to think the Council could do no wrong? All Hales' own three Bills were rejected, and he says indignantly that whoever had seen "all this" would have said that "the lamb had been committed to the custody of the wolf." He meant that the robbers sat in both Houses of Parliament, and were deciding their own cause. Thinking to lessen the opposition of the great men, he advised the Protector to issue a general pardon to enclosers for what was past. But, as soon as they had got their pardons, they restored the enclosures, "and were more greedy than ever they were before." Among the parks which had been ploughed up were Warwick's and Herbert's.

Early in 1549 an insurrection began in Somerset, spread

[1] In one of his sermons Latimer says of this Inquiry: "I remember my own self a certain giant, and great man who sat in Commission about such matters; and when the townsmen would bring in what had been enclosed, he frowned and chafed, and so near looked and threatened the poor men that they durst not ask their right."

to Gloucester, Worcester, Wilts, Hampshire, Sussex, Surrey, Essex, Herts, and "divers other places." At first the Council made light of these tumults—one excellent reason being that they did not want the French to hear they were in trouble. Somerset's criminal blunder of going to war with Scotland to make her more earnest in the matter of Edward's marriage with the infant Queen Mary, had ended in Mary being sent to France, and the attitude of Henry II. of France was far from friendly. Paget (himself an encloser) was earnest for striking terror. Hang first, pardon afterwards. He sneered at the demands of the commons in his letters of remonstrance to Somerset. "The Commons must have a new price at their pleasure. The Commons must be pleased. You must take pity upon the poor men's children."[1] Paget wanted the Almain Horse sent for from Calais; for since enclosures had begun to diminish the people, and since we had lost so many of our French provinces, great bands of mercenaries had been hired for our wars.

Some of the insurgents "were papists, and required the restoration of the old religion. Some were Anabaptists and Libertines, and would have all things in common. A third sort were men that sought to have their commons again, by force and power taken from them," and "a redress of the great dearth, and abatement of the price of provisions" (Strype). Everywhere the great graziers and sheepmasters (who were also great lords) had ceased tilling the ground and growing corn, and had pulled down houses and destroyed villages, to have more land for grazing, "and less charge of poor tenants," who depended on them as ploughmen and husbandmen. In July the rebellion broke out in the west. Paget was still pressing for the Almain Horse, and "as many horsemen out of Wales as can be trusted." And plenty of hanging and imprisoning, and taking away the freedom of towns (to be restored again "at pleasure"—and leisure). Above all, no promises.[2]

[1] "My good Lord, alas! be no more gentle, for it hath done hurt."—Paget to Somerset, 7th July 1549.

[2] Paget, though he deserted Somerset in the end, was hand and glove with him until his fall. While Henry VIII. lay dying, Paget had tried to get from Somerset (then Hertford) a promise to be always guided by his advice.

The Almain Horse came; 4000 German lansquenets; and Italian arquebusiers under Spinola and Malatesta and Captain Gamboa; and marched with Lord Russell and Lord Grey of Wilton to "pacify" the rebels. They pacified them —after some other engagements—at Sampford Courtenay, where 3000 men of Devon fell "in the summer gloaming, like stout-hearted, valiant men, for their hearths and altars, and Miles Coverdale, translator of the Bible, and future Bishop of Exeter, preached a thanksgiving sermon among the bodies as they lay with stiffening limbs, with their faces to the sky" (Froude).

"The country knuffs, Hob, Dick, and Hick, with clubs and clouted shoon," were no match for the Almain Horse and Spinola's arquebusiers. "They were slain like wild beasts," says Sir John Hayward.[1] The Vicar of St Thomas's, Exeter, was hanged from his own church-tower, and the number of vagabonds in England was reduced.

It was also reduced in Norfolk. There the rising was more serious still. It was led by a man of great ability, Robert Ket, a landowner. The commons of Norfolk took Norwich, and set up a "Commonwealth." The Marquis of Northampton was defeated fighting in the city streets, Lord Sheffield was slain, and Warwick, just ready to invade Scotland, was obliged to march against Ket instead.[2] And France heard of it, and invaded the Boulonnais.

The enclosers triumphed. Four thousand of the Norfolk rebels were computed to have fallen fighting. Ket was hanged.

The party of the Reformation had committed itself irretrievably to the new landlords, and sermons upon the sin of covetousness had no more effect than King Canute's command to the angry waves to come no farther. No power on earth would make the holders of abbey lands disgorge, or cease to exploit those lands to their own best advantage. Somerset's enemies prevailed; Warwick became supreme, and began to mature his grand

[1] The names of fifty-two foreign captains of mercenaries are found in the Acts of Council, with the sums paid them. See "Who killed Sir Edmund Berry Godfrey?" by Alfred Marks, p. 191.

[2] The Journal of Edward VI. gives long accounts of the fighting.

schemes, which ended in the setting up of poor Lady Jane Grey.[1]

When Somerset was safe in the Tower, Parliament passed an Act re-enacting the old Statute of Merton (20 Henry III.). which allowed lords of manors to enclose wastes, *provided their tenants had enough common pasture*—if there was any doubt as to this, an "assize" was to decide. But now there was nothing about an assize—anyone might enclose ground, if it was waste, and not more than 3 acres. Section 5 of 3 & 4 Edward VI. is one of the most extraordinary Acts on record. It even surpasses that for making proclamations law—now repealed. This Act made it treason to attempt to kill or imprison a Privy Councillor—thus extending to the Council of State the sacredness of the King's own person. Two years later Somerset was condemned under this clause, for intending to attempt to imprison Warwick. But the main part of the Act is concerned with rebellions. Twelve or more persons assembled with a view to ALTER THE LAWS, or ABATE THE PRICE OF CORN, or break down enclosures (not a word of whether legal or illegal), or dig up the palings of any park or fish-pond, or take right of common or of way in any such park, or destroy deer or deer-houses, or burn corn-stacks; who, being commanded to disperse, refuse, are guilty of felony. It is also felony to call such assemblies together by ringing of bells, blowing of horns or trumpets, *or by handbills*. Forty persons assembled and continuing for two hours to commit the foregoing or any other traitorous acts, are declared traitors, and are to suffer the penalties of treason.[2] So are their wives and servants if they willingly carry them money, weapons, meat, or drink, while so assembled. Two or more persons "assembled," and attempting to kill a subject, *or pull down an enclosure*, to be imprisoned for a year, and with fine and ransom to the King, "at his pleasure." Sheriffs and justices may assemble

[1] Hales fled to Germany when Somerset fell.

[2] It is worthy of note—and is certainly a strange fact—that there appears to be no evidence of outrages, properly so called, committed by the "poor commons." They are not even accused. The worst offence mentioned in the Act against riots—beyond the initial enormity of assembling and pulling down enclosures—is the burning of ricks. No outrage on persons, or on property in general, is anywhere alleged.

the King's loving subjects, "in manner of war to be arrayed," to apprehend such offenders, and if any of them are killed, no one shall be punished. Copyholders who refuse to aid on such occasions, to lose their holdings for their own lives. Any person not revealing an intended commotion within twenty-four hours, to be imprisoned at the pleasure of the justices. This Act to be read at every Quarter Sessions. This terrible Act did not even require the two witnesses necessary to prove a treason, nor did it set any limit of time for the indictment.

Other Acts were passed—an Act to repeal the cloth tax of 8d. in the £ on all woollen cloth—a tax "so onerous to Clothmakers, and so tedious for the making their accounts," that it discourages them from making cloth. Also the sheep-tax, which is a great charge to the poor, and very "cumbrous to collect." Probably the last was the true reason, for this deficit was made up to the King by granting him the rents of the fee-farms, which he had given to cities, boroughs and corporate towns, to pay for setting the poor to work on repairing walls, bridges, etc. Everything done at this time made the poor poorer, and eased the better-to-do. The richer a man was, the more he was eased. Warwick, who had had his park ploughed up, could now return to his enclosing.

The spirit of the times is exemplified in two dreadful instances which have come down to us in the State Papers. In 1551 a man was hanged merely for presenting a "Supplication" against a person who had destroyed his corn. The same year one Appleyard, accused of stirring up rebellion in Northamptonshire, was twice tried there by different juries, and acquitted, as there was only one witness against him. He was then taken to Leicester, and Griffin, the Solicitor-General (who managed the trial of Somerset), came down and told the jury that if Appleyard was not hanged they should all be summoned before the Council. Appleyard was hanged, and some time after his accuser, moved by conscience, confessed that he had accused him falsely. He was himself under sentence of death, and was promised his life if he would accuse Appleyard.

The "Supplication of Beggars" (written about 1529, when the first rumours of suppression had alarmed the religious houses), puts the contributions given by the people

to the begging friars at £45,333 annually, from 520,000 households. This would be expended on hospitals, infirmaries, etc., as well as for relief of poor travellers, and of the indigent poor. But now that the laity were enriched with these enormous spoils, the sick poor were lying untended in the streets of London, to the positive "inconvenience" of the citizens.

Where did the money go? Not to the poor—they had never been so miserable; not to the State—it was nearly bankrupt. Edward's Government twice again debased the coin. The teston[1] and all coins below it—groats, twopenny pieces, pennies, and halfpennies—were "cried down" to half their value, so that the teston was now worth but sixpence and the halfpenny but a farthing. Superfluous Church-plate was called in to be melted for bullion. The rebellions cost the King £27,000, and he was, besides, overwhelmed with the debts of his father. By Bacon's calculation, Henry VIII. had inherited from his father about £30,000,000 of our money. It was all gone—the subsidies, the fifteenths, the tenths, the subsidies of the clergy, tonnage and poundage, the abbey lands, the enormous riches of the great shrines, the vast sums for the chantry lands, the gilds—all had been cast into that bottomless pit of waste and greed. Even in the Wars of the Roses, even in the shameful reign of John, the currency was never tampered with—the gold and silver coins remained the same. But now the pound of gold, which used to make 20 sovereigns, was alloyed till it made 28, then till it made 30. The first coins of Edward VI. bear King Henry's image because Somerset would not let the boy-king's face appear on this base coin! Base money had now been issued five times within seven years—in 1543, 1545, and 1546 by Henry, and in 1549 and 1551 by the Guardians of Edward.[2] There were to have been no more taxes, and instead of this, even the halfpenny was cried down! By 1552 Edward owed £300,000, or £6,000,000 of our money. He had borrowed everywhere—of the Fuggars, of Jasper Schetz, Van Hall, and Rentleger, Lazarus Tucker,

[1] The teston, first coined in 34 Henry VIII., was then 12d. In 1547 it fell to 9d.

[2] In 1551 the alloy was 9 oz. The nominal shilling was worth less than 3 pence.

and Guolphango Rohlingero, and he could not even pay the interest. Sir Thomas Gresham was in Antwerp, taking up money wherever he could. There were attempts at retrenchment: on the Lord Privy Seal's pensioners, on discharging the Admiralty, giving up certain bulwarks by the sea, now thought "superfluous," discharging men in Ireland, at Berwick, and at Guisnes; taking advantage of the forfeitures of the merchants of the Steelyard, reviving old statutes fallen into desuetude, and enforcing fines from the unwary—as in the good old times of Henry VII. of course the King got a subsidy, "to defend the English robbed by the French"; but in December and January, 1551-1552, money was raised by the old obnoxious and unconstitutional method of Commission—that is, taking it without asking. Tonnage and poundage had been granted to Edward for his life—a thing never done before. The clappers of the church bells had been taken away after the insurrections, that the bells might not be rung to call the people together. The bells themselves were now torn out of the towers and steeples, and sold for bell metal.[1]

And all through the reign prices were high. There was a "dearth," which seems to have meant only a "dearness," for it is not attributed to bad harvests, but to artificial causes, regrating, etc. What wars and civil commotions had not done, the greed of the upper classes had brought about. A great mass of poverty, too vast to cope with, was turned loose on England, and the condition of the poorer classes has not recovered from the effects to this day.

Edward VI.'s Primer of 1552 has some curious prayers —for Rich men, that they may give cheerfully; for "Poor People," that they may "by no means envy, murmur, or grudge" at the rich, but be "like that Lazarus of whom we read," who chose to die patiently rather than get any man's goods "unjustly or by force"; and for Landlords.

[1] In October 1541, 100,000 lbs. of bell metal were sold to John Core, grocer of London, to be exported under licence. For this he paid £900. Soon after he had 44,500 lbs. more. There are many other such entries—one for 120,000 lbs., to be exported. In 1543 there are two entries of 8418 lbs. each of bell metal—one was from York, and was sent to the Tower "to make bombards." The other was for ordnance for the King.

Prayer for Landlords

The earth is Thine, O Lord, and all that is contained therein: notwithstanding, Thou hast given the possession thereof to the children of men, to pass over the short time of their pilgrimage in this vale of misery. We heartily pray Thee to send Thy holy Spirit into the hearts of them that possess the grounds, pastures, and dwelling places of the earth, that they, remembering themselves to be Thy tenants, may not rack and stretch out the rents of their houses and lands, nor yet take unreasonable fines and incomes after the manner of covetous worldlings: but so let them out to others that the inhabitants thereof may be able both to pay the rents, and also honestly to live to nourish their family and relieve the poor: give them grace also to consider that they are but strangers and pilgrims in this world, having no dwelling place, but seeking one to come: that they, remembering the short continuance of their life, may be content with that is sufficient, and not join house to house, nor couple land to land, to the impoverishment of others, but so behave themselves in letting out their lands, tenements and pastures, that after this life they may be received into everlasting dwelling places, through Jesus Christ, our Lord. Amen.

CHAPTER XIV.—THE DEGRADATION OF THE POOR

IN order to understand the period of the Reformation, we must keep in mind that a new reign does not imply a new policy, because it does not imply new men upon the Council of State. Henry's councillors were Edward's. All through Edward's reign the Council was supreme—first under Somerset; then under Warwick as Duke of Northumberland. With the exception of those who committed treason unsuccessfully, the same men were in power under Henry (if any man could be said to have power under Henry VIII.), under Edward, and under Mary. One of these men, asked long afterwards how he had contrived to remain in office under so many Governments, replied:

" Because I was the willow and not the oak." The dread of losing the abbey lands—which every man of them held —was the only principle to which they clave, and from that they never departed. The equal zeal with which they persecuted Catholics under Edward, Protestants under Mary, and Catholics again under Elizabeth, has even been explained by their hope of thus raising a barrier of eternal hatred between Protestant and Catholic. In Elizabeth's reign, and for many a long day afterwards, this motive—the security of the abbey lands—was as strong as ever. The extraordinary docility with which the nobles and gentry changed their religious opinions was due to their determination to keep their new lands. In Queen Mary's reign the clergy renounced all their ancient claims, and the Bull of Pope Julius III. confirmed the renunciation ; but even this could not allay their fears, although the numbers of those who had shared in the spoils made restitution impossible. An examination of the lists of suppressions shows that there was hardly a gentleman of any consequence in the kingdom but had some of the lands. Protestants have shrunk from condemning the robbery of the abbey lands, and have been unwilling to admit the evils which resulted, because they have believed that a religious motive was involved. They think that the suppression was caused by the change of religion ; but that change came long after. It would be nearer the truth to say that the suppression caused the change. It helped it incalculably. The nobility and gentry of England saw a prize offered them such as had never been offered since the Conquest, and has never been offered since. They eagerly embraced the opportunity, and allowed no scruples, one way or the other, to spoil it. We do not find many holders of abbey lands among the martyrs, but we do find them sending the martyrs to the stake.

This is not the occasion to speak of the dreadful deeds of 1555, charged upon " Bloody Mary," except to say that it was the Lords of the Council—all, with one exception, laymen—who instituted the persecutions, and presented persons to Bonner for judgment. Philip's own Spanish chaplain preached a strong sermon against severity, which he declared was contrary to both the spirit and the text of the Gospel. The most bitter and determined persecutor,

the man who hunted out victims with most diligence, was Paulet, Marquis of Winchester, who retained office under every Government. So did William Herbert, Earl of Pembroke ; so did Sir William Petre. It was they who forced the unwilling gentry to witness executions, and thanked those who went unasked. It was not the bishops. "Of 14 bishoprics," says Sir James Mackintosh, "the Catholic prelates used their influence so successfully as to prevent bloodshed in 9, and to reduce it within limits in the remaining 5. Justice to Gardiner requires it to be mentioned that his diocese was of the bloodless class." Gardiner saved Ascham when Sir Francis Inglefield tried to cite him to the Council. Bonner received a sharp reprimand from the Council, on two days of May 1555, for his slackness ; and Foxe has preserved the words in which he complained of the task laid upon him by his "betters"—the Lords of the Council. The motive of his "betters" was not bigotry—they had changed their religion three times, and were ready to change it again ; and they had sent Catholics to the stake in Edward's time as cheerfully as they now sent Protestants. But it must be remembered that the Reformers only opposed the persecution of "the Gospel." Cranmer and Ridley had caused Edward to issue a manifesto in which he was made to declare that as Moses put blasphemers to death, so ought a Christian prince, especially when called "Defender of the Faith," to "eradicate the cockle in the field of God's Church," and "cut out the gangrene that it might not spread." Latimer, justifying the execution of Admiral Seymour, preached that a brave death is no sign whatever of a man's being in the right, or a true man.[1] Did not the Anabaptists that were burnt in divers towns in England go intrepidly to their death ? "Well, let them go."

It is better that we should realise this. We shall be the less tempted to excuse the robbery of the poor, which was the instant result of the suppression of the monasteries, and we shall be less inclined to believe that the English

[1] The fulsome adulation by the Reformers of kings who favoured the reformed doctrines is nothing short of sickening. They forget every principle of civil justice. Latimer has not a word to say of Seymour not being heard in his own defence. He only reviles the fallen man, and expresses his opinion that he is gone to hell.

poor have always been more vicious, idle, and numerous than all others. There cannot be a doubt that the dislike of the poor, the eagerness to blame them for their poverty, which strikes foreigners as so strange in English people, had its birth in the great wrongs done them with respect to the land. Foreigners reproach us with making poverty a crime. We do so because poverty has been increased and perpetuated by a long series of land crimes—we are in possession of the lands of the poor, and we instinctively vilify those whom we have injured.

From this time, we shall find poverty in England becoming more and more unmanageable. For fifty years—until the 43 Elizabeth—no serious efforts were made to overtake it. Each new Act complains that the former has been evaded or disobeyed. The spoils of the monasteries were to provide for the defence of the realm, and there were to be no more subsidies ; the chantry lands and the gild lands were to be devoted to "good uses,"—grammar schools, the augmentation of the universities, the relief of the poor. But the poor were never so miserable, public charity was never so grudging, destitution was never such a positive danger to social order, as when all these funds had been seized by the King for "good uses." Nor was the coinage ever in so disgraceful a state as when the Treasury seemed to be full to overflowing with the confiscation of one quarter of the wealth of the kingdom.

In the old days there was none of this overwhelming chronic misery, impossible to overtake ; though there was no Poor Law, and no laws were passed to threaten the well-to-do with imprisonment if they would not relieve the poor. There were many wars and disturbances in those old days, and under a feeble or favourite-ridden king there were discontents ; but there was no great festering mass of pauperism. The religious houses found it easy to cope with the inevitable misfortunes of sickness, bad years, old age, and helplessness. There were the blind, the lame, the crippled ; but there were not hordes of able-bodied men for whom their country had no use and no place.

We have but to study the Acts of Parliament to see that the destruction of small farms caused a mass of poverty and misery which terrified the rich, and made them first think of hanging the vagrants, and when this proved

impracticable, of trying to cope with the evil by Poor Laws. A few charities and hospitals were refounded after the Reformation, but it is evident that this was done in self-defence, and because the swarm of destitute persons must be got rid of somehow. The citizens of London were persuaded to restore partially St Bartholomew's and St Thomas' hospitals, given them by Edward—the argument used was that "many commodities" (*i.e.* conveniencies) "would ensue to their city, if the poor of divers sorts were taken out of their streets, and bestowed in hospitals." It is appalling to see the diminution of charity coinciding with a great act of robbery. The obligation to relieve the poor was now infinitely greater than it had ever been—for the vast increase of poverty was the direct consequence of the policy which had enriched those who were already well off. The statutes themselves show that the vagrants were in most cases houseless because they had been evicted, and workless because their work had been taken away.

There is no more legislation till the 5 Elizabeth c. 4, and this Act contains nothing worse than whipping and imprisonment for asking more wages "than is limited" by the justices. The law was more cruel than those who lived under it, for there is a re-enactment of the fine on those who pay more. By this time there are constant references to the "decay of agriculture," and many devices are resorted to to restore land to tillage. The 31 Elizabeth enacts that no one may build a cottage without 4 acres of land to it—of his or her own freehold.

The "golden days of good Queen Bess" were anything but golden for the poor. It was only the *word* "slave" which had been taken out of the Statute Book—the thing remained. If a man is a slave when he is compelled, on pain of imprisonment, branding, and finally death, to labour for such wages as his masters choose to fix; if he must conciliate his master's good will to get the "testimonial" without which he must not leave the parish, nor may any other master employ him, then the English labourer of Elizabeth's day was a slave. For the most part, he worked by the year; and if his master dismissed him before that time, or at the end of it, without giving him a quarter's notice, the master was fined 40s. But a master who paid *more* than the statute wage was fined £5. Anyone not

having land "of the clear yearly value of 40s., nor being worth of his own Goods the clear value of ten Pound," and not retained (lawfully) in any other work, could be required to work for anyone who wanted him or her. This applied to all unmarried persons, and to everyone under thirty years of age. There was a £5 fine for a master who took a servant without a "testimonial" under the seal of the city or town, or constable or head officer. The 5 Elizabeth gives the form of this testimonial:

> "Memorandum. That A. B. late Servant to C. D. of E. husbandman, or Taylor, etc., in the County, etc., is licenced to depart from his said Master, and is at his Liberty to serve elsewhere, according to the Statute in that Case made and provided. In Witness whereof, etc. Dated the Day, Month, Year, and Place, etc., of the Making thereof."

Anyone departing without such a testimonial is to be imprisoned till he gets one, and if he cannot do this within twenty-one days next after the first day of his imprisonment, is "to be whipped and used as a Vagrant."

It is but too evident, from the Statute Book itself, that the dispossessed class never held up its head again. It had lost its lands, and with its lands the work it was wickedly accused of not doing. Its wages were rigidly fixed, from year to year, by the justices, in conjunction with the masters who would have to pay. Its gild moneys had been stolen by a Government which dared not rob the rich Corporations of London.[1]

It is dreadful to find that at the very beginning of Elizabeth's reign there was even some thought of reviving the repealed clauses of the 1 Edward VI. c. 3. As it was, the labouring class were more of serfs than they had been since the beginning of the reign of Richard II.—200 years before. By the 14 Elizabeth,[2] a vagabond above the age of

[1] "The gilds which existed in the towns were also found in the country villages. Gilds are traceable to the period before the Conquest, and Hickes long ago printed some of the rules under which they were constructed and governed in the towns of Cambridge and Exeter. Blomefield finds some in the Norfolk villages. Vestiges of their halls remained long in small villages."—Rogers.

[2] The 14 Elizabeth c. 5 was the re-enactment of the 27 Henry VIII. c. 25. See p. 63.

fourteen was to be "grievously whipped," and burned through the gristle of his right ear with a hot iron "of the compass of an inch," unless some "credible person" would take him into service for a year. After eighteen if he fell again into "a roguish life," he could be hanged as a felon, unless a "credible person" would take him for two years. It is evident therefore that the poor wretch was not impossible as a servant. If he were, who would have bound himself to keep him for one, or for two years? It is said that Elizabeth hanged from three to four hundred vagabonds a year. Of course many of them were criminals —the wonder is that all were not. The Poor-Law relief, such as it was, tended to keep down wages. A low wage made it certain that the labourer must come on the parish at last; but a master must pay the wage himself, while all his neighbours shared the burden of keeping the man when he no longer was able to work.[1]

Hours of labour were very long—all fixed by statute. In summer, from "at or before" five in the morning to between seven and eight at night. In winter, "from the spring of the day" till night. Two and a half hours are allowed for "dinner and drinking"—that is, for every drinking, half-an-hour, for dinner, one hour, and for sleep "when he is allowed to sleep" (that is from mid-May to mid-August, hay and corn harvest), half-an-hour at most; and half-an-hour for breakfast. We see that sometimes a master would offer his servant more wages, to keep him. For this offence he was to be fined £5, and imprisoned ten days without bail; and the servant for twenty days without bail.

The 35 Elizabeth c. 4 orders "all wandering persons, able in body, refusing to work for reasonable wages . . . to be deemed rogues, vagabonds, and sturdy beggars." Such an one to be taken by the justice or constable—assisted by the advice of the minister and one other of the parish—stripped naked from the middle upward, and "whipped till he is bloody." Then to be sent from parish to parish till he comes where he was born. A time is set

[1] The 18 Elizabeth c. 3 has this odd clause: "Lands holden in Soccage may, during 20 years, be given towards the maintenance of Houses of Correction and Stocks for the Poor." This seems to have been the new form of charitable bequest.

him to get there, and if he loiters, he is to be whipped again. If he is thought "dangerous," he is to be banished, and if he returns, to be hanged. Poor diseased persons going to Bath or Buxton are exempt from whipping if they have wherewithal to provide themselves, and don't beg, and observe the time set them. Seafaring men who have been shipwrecked may even ask relief to get home. Such were the tender mercies of the rich. All these Acts of Elizabeth show that there was a great mass of "sturdy" misery, besides much "impotence." Also that the rich required much exhortation—sometimes pointed by threat of a fine—before they showed the "willing charitable disposition" demanded by the law. For these Poor Laws, laws though they were, were really only half compulsory. The frequency of licences to beg shows a far more "willing" charitable disposition to give other people the opportunity of relieving distress, than to relieve it oneself.

In spite of the frequent hangings attributed to Elizabeth, the vagabonds can hardly be said to have been kept under; for Strype quotes an "eminent" J.P. of Somersetshire, who says (writing in 1596), that in every county three or four hundred vagabonds lived by theft and rapine—sometimes going about in gangs of sixty. The extraordinary thing is, that this J.P. talks about "the foolish lenity" of the people and the "remissness of magistrates," whereby four-fifths of these felonies escaped punishment. If it were so it could only be because the people pitied the wretched creatures, knowing by what misery they were driven to these dreadful expedients.

The 31 Elizabeth c. 7 shows how the poor were prevented from settling on the land. It forbade the erection of cottages, unless the persons who built them had 4 acres of ground to lay to each, "being his or her freehold." The fine was £10, and 40s. for every month the new cottage was continued. The exceptions were cottages within a mile of the sea, inhabited by a sailor or one engaged in the furnishing of ships; cottages in forests, chases, or parks for deer-keepers; and a shepherd's cottage, or one for "an impotent poor person."

In the latter part of the reign of Elizabeth a class of small landowners began once more to grow up, but they were not the old tenants—they were small tradesmen, who

had made a little money in the towns, and invested it in land, to which they retired to enjoy their fortune.

Towards the close of the reign there were several years when wheat was very dear. It was steadily rising. In 1557 it was £2, 13s. 4d. a quarter—or nearly five times the average price for two hundred and fifty years (1261-1540). After this, a cheap year was about double the old price. In 1574 wheat was at £2, 16s., and after this, a cheap year was three times the old price. In 1587 it was £3, 4s. in London, and as much as £5, 2s. in some other places. The year of the Armada was very abundant. But the five years from 1594-1598 were very dear, and 1597 was a famine. Wheat was £5, 4s.[1]

At last, in the 43 Elizabeth (1601) an Act was passed which was the basis of our old Poor Law. Threats and appeals to "charitable dispositions" having failed, "this Act made the relief of the poor compulsory."

Like the rest, it was evaded. A writer in 1622 says that in some parts no collection has been made for the poor "these seven years," especially in country towns. Even maimed soldiers "that have lost their limbs in our behalf are thus requited"; they are turned out to beg, or steal, "till the law brings them to the fearful end of hanging."

There is a general idea that the people have drifted off the land for one reason or another. But they did not drift—they were wrenched off. I have, perhaps, devoted too much space to the chief of these wrenchings; but it is very important. It was on so large a scale that it was impossible to readjust the social conditions it dislocated. It flooded the country with "out-o'-works," created a vast body of extreme poverty, and, by its cruel treatment of the poverty it had caused, it gave us a large degraded population

[1] The harvest of 1545 must have been very bad, for wheat was higher than since 1316, the great famine year of Edward II. In 1546, 1547, 1548 wheat was decidedly cheap—in 1547, lower than since 1510. Then came three dear years (1549, 1550, 1551) and two comparatively cheap. Mary came to the throne in the last year. Then three more dear years. The next two years were cheap. 1563 and 1573 were dear. The next dear year was 1586, when the price was again beyond all previous experience. The enormous prices of 1597 were not quite paralleled till 1648 and 1649. The high price was reached again in 1661-2, in 1674, and in 1709 and 1710, and not reached again till 1767, 1774, and 1795.

—a hotbed of misery and crime, a curse from generation to generation.

But it was not the only robbery. Since then another system has been pursued—a system of stealthy and gradual enclosure—stealthy and gradual at first, soon growing bolder, as statutes ceased even to affect any care for the rights of small landowners, and went on to authorise land-robbery, under the name of "improvement." Now that armies were mercenary, the Government had no interest in preserving the rights of the Poor Commons—those who long ago had implored King Edward III. "for God's sake to have regard to what his poor people had done for him since the beginning of his wars." [1]

In 1593 the magistrates of the East Riding of York fixed the wages of artisans and labourers in husbandry: for mowing, 10d. a day; for reaping, 8d.; and the same by the acre, so it is evident that a man could reap or mow an acre a day. Winter wages of ordinary labourers: 5d. in summer and 4d. in winter. The price of wheat that year was 18s. 4d.; of meal, 29s. 4d.; malt, 12s. 3d.—so now the work of a whole year would not give a labourer what he could earn in fifteen weeks in 1495. In the famine year of 1597 the extra allowance for the dearness of food was only 10s. more for wages by the year without food than it was this year of 1593.

Amidst all these oppressive enactments—which made an Englishman a slave for being poor—the country at large perhaps came nearer to the danger of absolute monarchy than even in the days of Henry VIII. Burleigh suggested to the Queen the creation of a new Court, with inquisitorial powers over the whole kingdom; this, he told her, would prove a greater acquisition to the royal treasure than her father derived from the monasteries. He was right—every man could have been fleeced at the Sovereign's will. Fortunately, the proposal came to nothing.

1 "Et q lui pleise pur Dieu, avoir regard a ceo q son povere poeple lui ad fait puis le commencement de ses guerres."—Rot. Parl. ii. 227.

CHAPTER XV.—THE LEVELLERS

"The English Poor Law, after all, was the outcome of great crimes committed by Government.

"I can conceive nothing more cruel, I had almost said more insolent, than to condemn a labourer to the lowest possible wages on which life may be sustained, by an act of Parliament, interpreted and enforced by an ubiquitous body of magistrates, whose interest it was to screw the pittance down to the lowest conceivable margin, and to inform the stinted recipient that when he had starved on that pittance during the days of his strength, others must work to maintain him in sickness or old age. Now this was what the Statute of Apprenticeship, supplemented by the Poor Law, did in the days of Elizabeth. And if you go into the streets and alleys of our large towns, and indeed, of many English villages, you may meet the fruit of the wickedness of Henry and the policy of Elizabeth's counsellors in the degradation and helplessness of your countrymen."—Rogers, "Six Centuries of Work and Wages," p. 425 (Edition of 1884).

JUDGING from my own ideas before I closely studied the subject, I believe the general notion is that the English peasant, since the Reformation, has drifted casually off the land, for one reason or other—inability to make a living out of a small allotment being the first cause; next, dislike to the dulness of a country life, compared with the attractions of the town; and the temptation of higher wages. And it is quite true that as time went on the lot of the husbandman became harder, and that when there opened out to him the prospect of good wages in factories, he flocked into the great manufacturing towns. But this was much later. Long before he left the land, the land had left him. He did not drift off—he was first wrenched off, then weeded off. Wrenched off in the great clearing of the sixteenth century, when the great landowners became great sheep-masters, and when the abbey lands changed hands. Weeded off more slowly, but quite as surely, by the gradual process of enclosure, during the seventeenth, eighteenth, and nineteenth centuries.

I will now try to give a slight sketch of this gradual enclosure of public lands.

It proceeded in an irregular fashion. Sometimes, for long periods, we hear little except the stock complaints that tillage and husbandry are declining, to the injury of

the State—because it means depopulation. But along with this complaint we are assured that there are too many people in England. And then, on a sudden, we hear of people assembling to break down enclosures. We get several lurid glimpses of this during the reigns of the first two Stuart Kings.

The most serious was in 1607. The lands of the Gunpowder Plot conspirators had just been confiscated, and as usual the new owners began to enclose the common land—those lands of a manor, which lay around a village, and from time immemorial were cultivated by the villagers in allotments. These lands consisted of tillage and pasture (the tillage being often used as pasture in winter), together with tracts of moor and waste, where every man might turn out a certain number of beasts. In the middle of May 1607 "a great number of common persons suddenly assembled themselves in Northamptonshire, and then others of like nature assembled themselves in Warwickshire and Leicestershire." [1] In Leicestershire "they violently cut and brake down hedges, filled up ditches, and laid open all such enclosures of Commons and other grounds as they found enclosed, which of ancient time had been open and employed to tillage." These "tumultuous persons grew very strong; being in some places of men, women and children a thousand together, and at Hill Norton in Warwickshire a former estate of the Treshams there were 3000, and at Cottesbich there assembled of men, women and children to the number of full 5000." These "riotous persons bent all their strength to level and lay open enclosures, without exercising any manner of violence upon any man's person, goods or cattle, and wheresoever they came they were generally relieved by the near inhabitants, who sent them not only many carts laden with victual, but also good store of spades and shovels for speedy performance of their present enterprise, who until then some of them were fain to use bills, pikes, and such like tools instead of mattock and spade."

These people were called "Levellers," because they levelled enclosures—the first time the word appears as a name.

[1] Stow. (Continued by Howes.)

On 27th May several proclamations ordered them to "surcease their disorder," but "they ceased not, but rather persisted more eagerly, and thereupon the Sheriffs and Justices had authority to suppress them by force." Thereupon the sheriffs "raised an army and scattered them," using all possible means to avoid bloodshed. By this time the levellers had a leader. We are told that "at the first these foresaid multitudes assembled themselves without any particular head or guide. Then starts up a base fellow called John Reynoldes, whom they surnamed Captain Powch, because of a great leather powch which he wore by his side, in which purse he affirmed to his company, that there was sufficient matter to defend them against all comers, but afterward when he was apprehended, his powch was searched, and there was only a piece of green cheese. He told them also that he had authority from his majesty to throw down Enclosures, and that he was sent of God to satisfy all degrees whatsoever, and that in this present worke, he was directed by the Lord of Heaven, and thereupon they generally inclined to his direction, so as he kept them in good order, he commanded them not to swear, nor to offer violence to any person ; but to ply their business and to make fait work."

Poor Pouch thought he was invulnerable—neither bullet nor arrow could hurt him. He told his followers that the spell in his pouch would only work if they abstained from swearing and violence.

When the sheriff's "army" came up, and the levellers were summoned to disperse, Pouch told the magistrates that they were only enforcing the statute against enclosures. To their credit, the yeomanry did not much care about shooting the people, and many country gentlemen were for giving them their old rights of common. It was now that the King sent Lords Huntingdon, Exeter and Zouch, with a considerable force. Sir Antony Mildmay and Sir Edward Montague fell in with the levellers at Newton—another confiscated estate of the Treshams'. They were busy digging and levelling, and were armed "with half-piked staves, long bills, bows and arrows, and stones." There was "great backwardness in the trained bands"—Mildmay and Montague dared not order them to charge. They used "all the horse they could make, and as many foot of their

own servants and followers *as they could trust*, using all the best provisions to them to desist that they could devise—that is, trying to persuade them to disperse; but when nothing could prevail, they charged them throughly, both with their horse and foot. At the first charge they stood, and fought desperately; but at the second charge they ran away; in which they were slain some forty or fifty of them, and a very great number hurt." [1]

This rout was followed by others, till the insurrection was put down; and then the Earls of Huntingdon and Exeter, Lord Zouch, Lord Compton, Lord John Harrington, Lord Robert Spencer, Lord George Carew, and Sir Edward Coke, Chief Justice of the Common Pleas, "with divers other learned Judges," assisted by the Mayor of Coventry, and "the most discreet Justices of Peace of Oyer and Terminer in their several counties," did justice on the levellers, "according to the nature of their offences"; and on the 8th of June King James made proclamation signifying his great unwillingness to have proceeded against them either by martial law or civil justice, if "gentle admonition might any ways have prevailed with them to desist from their turbulent, rebellious and traitorous practice."

Until the levellers were examined, "it was generally bruited throughout the land, that the special cause of their assemblies and discontent was concerning religion, and the same passed current with many according to their several opinions in religion. Some said it was the Puritan faction, because they were the strongest, and thereby sought to enforce their pretended Reformation, others said it was the practice of the papists, thereby to obtain restauration or toleration, all which reports proved false." For the examination of the prisoners showed plainly that it was "for the laying open of Enclosures, the prevention of further depopulation, the increase and continuance of tillage to relieve their wives and children, and chiefly because it had been credibly reported to them by many that of very late years there were three hundred and eighty towns decayed and depopulated." [2]

[1] Letter of the Earl of Shrewsbury to Sir John Manvers. Printed in Lodge's "Illustrations."

[2] Stow's "Annales," continued to 1614 by Howes, pp. 889-890.

Some of them were indicted of high treason for levying war on the King and opposing the King's forces. Pouch was "made exemplary." Others for felony in continuing together by the space of one hour after proclamation to depart, "according to the Statute." The rest for riot, unlawful assembly, and throwing down hedges and filling ditches. But the insurgents were neither traitors nor felons. They were, as they said, enforcing the law of enclosures, and not a single crime is laid to their charge.

James has been given credit for his "anxiety" on behalf of the poor in this affair. He showed his anxiety by desiring the Commission to "take care" that the poor received no injury from the encroachments of the rich, and we may perhaps assume that these new enclosures were not replaced; but "the poor" had been hanged freely for pulling them down. At this time James was alternating the new delight of hunting in a safety saddle and padded garments with lying in bed and desiring his Council to take "the charge and burden of affairs, and not let him be interrupted nor troubled with too much business," for he would sooner go back to Scotland than be for ever chained to the Council table.

During the reign of James I., as during that of his son, Parliament was too much taken up with fighting the royal prerogative to have time for thinking of the condition of the poor. One great struggle was over the intolerable grievance of Purveyance (the taking of provisions for the royal household at the price the purveyors chose to give); another was to get rid of the Court of Wards. The Commons offered £100,000 a year if purveyance might be abolished and all the Crown tenures turned into free common soccage—which meant that the Crown lands would be let at money-rents, and that fines, wardships, custody of lands, primer seizin, and all the other "incidents" of tenure *in capite*, would be done away. James demanded £300,000—then came down to £200,000. It was, "Take it or be dissolved." The Commons hesitated—they distrusted the King's promises, they were appalled at his monstrous extravagance, and they did not know how they were to raise the £200,000 a year. So they were dissolved; the "Great Contract" fell through and the old oppressive feudal charges remained, to be swept away in a fiercer struggle.

Primer seizin—or "first possession"—was only incident to the King's tenants *in capite*, and not to those who held of inferior lords. It was the right of the King to one whole year's profit of the lands of an heir, if of full age, and in immediate possession, or half-a-year's if the lands were in reversion. "Wardship" was the right to the custody of the heir, till the age of twenty-one for males, and sixteen for females. A girl was supposed capable of marriage at fourteen, and then her husband might perform the service. But if she were under fourteen, "and the lord once had her in ward," he could keep her till she was sixteen, by the First Statute of Westminster, "the two additional years being given for no other reason, but merely to benefit the lord." It was said that the original pretext for "premier seizin" was that the superior might prevent intruders taking possession; and in unsettled times an orphan girl needed a guardian. But both customs had degenerated into mere abuses, wardship perhaps most of all.

Petitions often throw much light on the inner history of a period. On the very eve of the Civil War, we find several such illuminating petitions, which show us how the process of what may be called stealthy enclosure was carried on. A petition of Leonard Triefe, gentleman, and others of the tenants of "Lanceston Land," in Cornwall, sets forth that in 1626 the King (Charles), intending to sell, caused proclamation to be made of the sale, to give the tenants the opportunity of buying their holdings; "but Mr Paul Speccott, bearing ill-will to some of the tenants, and seeking his own advantage by underhand ways," prevented the tenants from obtaining a copy of the proclamation, . . . and having bought the land himself, has distrained for rent, and threatens to turn out many of the tenants, who will have no means of livelihood, if they are not allowed to renew their leases . . . upon reasonable terms" (*Historical Manuscripts Commission*, vi. p. 68).

Again, there is a petition to the Lords of William, Earl of Bedford, and Jerome, Earl of Portland, lords of the manors of Whittlesea in the Isle of Ely. The earls say they have for years been in possession of certain marsh grounds by virtue of an agreement with the tenants, since which time most of the tenants have sold their proportions to petitioners, who have laid out large sums on

improvements of lands formerly waste; but now many of the persons who sold have, with their servants, "ousted" petitioners, and tried to destroy enclosures and fences, in spite of five several orders of the House, by which the "riots" have been in some degree prevented for a time. But in May, "Jeffrey Boyce and others, to the number of 100," in defiance of an appeal from a justice, threw down the division dykes, etc., and continued till "the Parliament troops, under Sir John Palgrave," lying at Wisbech, marched and dispersed them. There follows the counter-petition "of some of the poor inhabitants" of Whittlesea, "in the name of themselves and many others." They say that they quietly submitted to the order of the House—that the earls and all claiming under them should quietly hold possession of the manors and divisions of tenants until good cause shown to the contrary; but since this order, "Mr George Glapthorne [1] and others have already enclosed above a thousand acres of ground, which formerly lay open, and which petitioners have time out of mind enjoyed as common, and are proceeding to enclose more, to the great impoverishing of petitioners," who obtain their chief livelihood from commons.

Most of the petitions and counter-petitions are after these patterns—the lords of the manors profess to have come to an agreement with the tenants, and charge the tenants with violating it; and the tenants reply that the lords have enclosed more than was agreed upon. In the case of the Crown lands of Launceston, there was an actual plan to defraud.

It appears that marsh, pasture, waste, coppice, and woods were now the chief objects of enclosers; the enclosure ol woods, in particular, caused much suffering to the small people, by making firewood hard to come by. Probably the enclosure of the "open field" slumbered between 1607 and the middle of the century. But whether of wood, or marsh, or common, enclosure crept on, and there was to be nothing whatever in the great upheaval now close at hand to stay, or even to check it. Rather did it receive a new impetus under the "Free" Commonwealth.

[1] Glapthorne was a J.P.—perhaps the one who "appealed." The rioters destroyed the fences, houses and crops, threatened Glapthorne with a pitchfork, and told him he was no justice, for he was against the King and for the Parliament.

All the sidelights of the history of the Commonwealth show that the misery of the people was frightful. The "gentlemen" of England, and the great middle class immediately below them, gained greatly by their "rebellion"; but the poor were if anything ground down more relentlessly than before. In March 1649 (two months after Charles I. had laid his head upon the block) the misery was so extreme and so widespread that it is appalling to reflect how little account history has made of it. But for the despairing and futile efforts of Lilburne and his friends, historians would never have noticed it at all. Bulstrode Whitelocke, one of the Parliament's three Commissioners for the Great Seal, afterwards First Commissioner under Cromwell, has, among other entries on the state of the people in the summer of 1649: "Letters from Lancashire of their want of bread, so that many families were starved" (30th April). And again, in May: "Letters from Newcastle that many in Cumberland and Westmoreland died in the Highways for want of bread, and divers left their habitations, travelling with their wives and children to other parts to get Relief, but could find none. That the Committees and Justices of the Peace of Cumberland signed a certificate, that there were Thirty Thousand Families that had neither seed nor bread-corn, nor money to buy either, and they desired a Collection for them, which was made, but much too little to relieve so great a multitude." In Lancashire, the "famine was sore among them, after which the plague overspread itself in many parts of the country, taking away whole families together . . . the Levellers got into arms, but were suppressed speedily by the Governor." And once more, in August: "Letters of great complaints of the taxes in Lancashire; and that the meaner sort threaten to leave their habitations, and their wives and children to be maintained by the Gentry; that they can no longer bear the oppression to have the bread taken out of the mouths of their wives and children by the taxes." Never had there been such taxation in England as that of the Commonwealth. The net cast by the Long Parliament had meshes so fine that the smallest fish was taken in it.

CHAPTER XVI.—THE DIGGERS

MISERY was not confined to particular counties. It was universal. The *Moderate Intelligencer* says that "hundreds of thousands" in England have a livelihood which gives them food in the summer but little or none in the winter; that a third part of the people in most of the parishes stand in need of relief; that thousands of families have no work, and those who have can earn bread only. "There are many thousands near to this City [London] who have no other sustenance through the week but beer-meals—neither roots, flesh, drink, or other necessaries are they able to buy, and of meal not sufficient." The *Impartial Intelligencer* speaks of the extraordinary price of provisions (taken into consideration by the House). "Labour is cheaper and food twice dearer than formerly." So acute was the misery that some people began to look into the causes. They were called "Levellers," this time because it was said they wished to "level men's estates." But they did not—nor were they Jesuits, as others averred. The best known of them is Lieutenant-Colonel John Lilburne—the only man of that age who understood representative government. He was thought a madman, a fanatic, a man so captious, that, were he the last man left in the world, Lilburne would quarrel with John and John with Lilburne. Colonel Rainborow, another of the levellers, told his fellow-officers in Council: "The poorest he that is in England hath a life to live as the greatest he." The levellers said: "The most necessary work of mankind is to provide for the poor. The rich can help themselves . . . the wealth and strength of all countries are in the poor, for they do all the great necessary works, and they make up the main body of the strength of armies." And Winstanley the Digger wrote: "England is not a free people till the poor that have no land have a free allowance to dig and labour the commons, and so live as comfortably as the landlords that live in their enclosures."

The Digger movement has been misunderstood. In its main features, it was neither anarchical nor Utopian. It was an attempt to recover the commons. The diggers are often called "levellers," but though all levellers were in sympathy with the diggers, the diggers were more con-

cerned with the social than with the political question, and their aim, explained with passionate earnestness by Gerrard Winstanley, their leader, was to recover the rights to the land of the "younger brother," as he pathetically calls the poor. The diggers, he protests, desire to deprive no man of his enclosure. Let "the elder brothers" remain in their enclosures, but let the common people ("after all their taxes, free-quarter and loss of blood to recover England from the Norman yoke") have freedom to improve the commons and waste lands. That is all he demands. He knows that it is falsely reported that the diggers "have intent to fortify ourselves, and afterwards fight against others, and take away their goods from them, which is a thing we abhor." But why should the elder brother take all? Why should some be "lifted up in the chair of tyranny, and others trod under the footstool of misery, *as if the earth were made for a few, and not for all*?" The poor are driven by misery to steal, and then laws are made to hang them for stealing. "The earth was made by the Lord to be a Common Treasury for all, not a particular treasury for some. Leave off dominion and lordship one over another; *for the whole bulk of mankind are but* one living Earth." Winstanley is not ashamed to be called a leveller, for "Jesus Christ, the Saviour of all Men, is the Greatest, first and truest Leveller that ever was spoken of in the World; and He shall cause men to beat their swords into plough-shares, and their spears into pruning-hooks, and Nations shall learn war no more." Winstanley had written these things in many pamphlets, "yet my mind was not at rest, because nothing was acted." So, on Sunday, 1st April 1649, he and his disciples began to dig on "Little Heath," on St George's Hill, between Cobham and Weybridge. They put forth a manifesto, which says: "The work we are going about is this, To dig up George's Hill and the waste grounds thereabouts, and to sow corn, and to eat our bread together by the sweat of our brows . . . that everyone that is born in the Land may be fed by the Earth his Mother that brought him forth."

Two hundred years after Winstanley, a clergyman of the Church of England, whose writings were long among the text-books of our universities, expressed in one of those very text-books opinions which might have been taken

straight from Winstanley. "The poor," says Archdeacon Paley in his "Moral Philosophy," "have a claim founded in the law of nature, which may be thus explained:—All things were originally common. No one being able to produce a charter from heaven, had any better title to a particular possession than his next neighbour. There are reasons for mankind agreeing upon a separation of this common fund: God, for these reasons, is presumed to have ratified it. But this separation was made and consented to, upon the expectation and condition that everyone should have left a sufficiency for his subsistence, or the means of procuring it . . . and therefore, when the partition of property is rigidly maintained against the claims of indigence and distress, it is maintained in opposition to the intention of those who made it, and to his, who is the supreme Proprietor of everything, and who has filled the world with plenteousness for the sustentation and comfort *of all* whom he sends into it." Paley, indeed, goes farther than Winstanley; for Winstanley was always most careful to disclaim any intention of taking that which belonged to the rich; but Paley says that "a man, in a state of extreme necessity, has a right to use another's property when it is necessary for his own preservation to do so; a right to take, without, or against the owner's leave, the first food, clothes, or shelter, he meets with, when he is in danger of perishing for want of them." And Paley is in accord, not only with all the great civil and religious moralists who went before him, but even with the law of England, which, as Bacon says, "chargeth no man with default where the act is compulsory . . . necessity carrieth a privilege in itself. Necessity is of three sorts: . . . first, of conservation of life; if a man steal viands to satisfy his present hunger, this is no felony nor larceny." [1] And the only authorities who deny this, do so on the ground that since the establishment of a Poor Law, no man can say he is in danger of starvation.

The poor diggers! They soon found that a parliament was much the same as a king, so far as privilege was

[1] Locke, as little a visionary as any man who ever lived, said: "God has not left one man so to the mercy of another, that he may starve him, if he pleases . . . no man could ever have a just power over the life of another by right of property in land or possessions."

concerned, and that the great and glorious Acts lately made to abolish kingly government, and erect this nation into "a Free Commonwealth" meant neither freedom nor commonwealth; but the earth and the fulness thereof was still to be the landlords'. The elder brother had no notion of giving up the commons and wastes to the younger.

When the soldiers went to disperse the diggers, they said they only meant to meddle with what was common and untilled, "waiting till all men should willingly come in and give up lands and estates and willingly submit to this community." They kept on their hats, but said they would submit. Asked why they did not take off their hats, they said: "The Lord-General was but our fellow-creature."

The poor diggers! As they dug, they sang a rude doggerel:

"Stand up now, Diggers all!
The gentry are all round—stand up now! stand up now!
The gentry are all round, on each side they are found,
Their wisdom's so profound, to cheat us of our ground.
Stand up now! stand up now!

The clergy they come in—stand up now! stand up, now!
The clergy they come in, and say it is a sin
That we should now begin our freedom for to win,
Stand up now, Diggers all!

To conquer them by love, come in now, come in now,
To conquer them by love, come in now!
To conquer them by love, as it does you behove,
For He is King above; no power is like to love.
Glory here, Diggers all!"

The poor diggers, trying with their humble spades to make the political revolution a social reformation! The Lords of the manors and "Parson Platt" were all round; the officers of the law promptly summoned Winstanley for trespass, heavy fines were imposed, and as the diggers still persisted, their wooden houses were pulled about their ears, their carts were destroyed, and their spades and hoes taken away, "and we never had them again." They were starved out; and those who at Wellingborough imitated their example fared no better.

There were 1169 persons in one parish in Wellingborough receiving alms. They had made their case known to the justices, who ordered the town to "set them on work; but as yet nothing is done, nor any man that goeth

about to do it. Our lives are a burden to us. . . . Rich men's hearts are hardened; they will not give us if we beg at their doors. If we steal, the law will end our lives. Divers of the poor are starved to death already; and it were better for us that are living to die by the sword than by the famine. And now we consider that the earth is our mother; and that God hath given it to the children of men; and that the common and waste grounds belong to the poor. Therefore we have begun to bestow our righteous [*i.e.* 'honest'] labor upon it. . . . And truly we have great comfort already through the goodness of our God, that some of those rich men amongst us that have had the greatest profit upon the common have freely given us their share in it . . . and the country farmers have proferred divers of them, to give us seed to sow it."[1]

The poor fellows hoped that some who approved "would but spread this Declaration before the great Council of the Land." But when the Council of State read it, they wrote to Mr Justice Pentlow, a J.P. for the county of Northampton, approving his proceedings against "the levellers"; adding that they doubted not that he was sensible "of the mischief those designs tend to, and of the necessity to proceed effectually against them"; and desiring him to let the Council know if any "that ought to be instrumental to bring them to punishment, fail in their duty."

And when Cromwell returned victorious from Ireland, he made short work of the political levellers, shooting them down in Burford churchyard, and at York and Norwich, sending John Lilburne to the Tower, and observing a Day of Thanksgiving as for a great deliverance.

And now enclosure went merrily on, and instead of the poor recovering the commons, they lost much of the "open field"—the arable land, theirs from time immemorial. The following quotation from one of the many contemporary pamphlets gives a complete and intelligible picture of what was done, and how it was done. The pamphlet is entitled "The .Crying Sin of England in not caring for

1 From a Broadsheet declaring "the Grounds or Reasons why we, the poor inhabitants of Wellinborrow have begun . . . to dig up manure and sow corn upon the Commons and Waste Ground called Bareshanks, belonging to the inhabitants of Wellinborrow, by those that have subscribed and hundreds more that give consent."

the Poor," by J. Moore,[1] minister of Knaptoft, in Leicestershire, 16th September 1653.

> "But how great a shame it is for a Gospel Magistracie not to suppresse Make-beggars, which make such swarms of Beggars in Countries, Cities, and Towns. . . . I mean the unsociable, covetous, cruel, broode of those wretches, that by their Inclosure do unpeople Towns and uncorn fields. . . . My whole County of Leicestershire and such wasting of the Inland Counties can witness with me. Question many of our beggars that go from dore to dore, with wife and children after them, where they dwell, and why they go a begging. Alas, Master (say they) we were forced out of such a Town when it was inclosed, and since we have continued a generation of Beggars. When we take a view of the multitude of poor in Market Towns and fielden Towns, we see how these poor wretches were driven out of their hive, their honey taken away. . . . They make four sorts of people Beggars; first, the Tenant; secondly, the Cottier; thirdly, the Children of both; fourthly, all those that shall stand in their way to hinder their uncharitable, yea, unjust designs.
>
> "Truly it would make a charitable heart bleed to come now into our Markets, where we are now so busie upon such Inclosures, in Leicestershire, where the Market is full of injurie and complaint of such Tenants to all they meet. Can you help me to a farm, or a little land, to employ my team? I am discharged, and if I sell my horses and Cattel, I shall never get a team again, or so many milch cows to maintain my family. . . . In some Towns, there is fourteen, sixteen, or twenty Tenants discharged of plowing.
>
> "One of the inhabitants gave this reason why they must do it . . . The poor increase like fleas and lice, and these vermine will eat us up unless we inclose. . . . Depopulation comes by degrees, and the next generation usually knows neither Tenant, nor Cottier in such enclosed places, for Towns we must call them no longer. They usually upon such inclosure treble the price of

[1] Moore was, of course, one of the ministers put in by the Parliament when the Episcopalian clergy were driven out.

their Land, and this they get by flaying the skin off the poor. Seldom the third generation can call these inclosed grounds his own. . . . Every one trembles to set his hand first to them."

The last words refer to the deep-rooted belief that lands unjustly come by cause the dying out of the family of the robber. It seems that these Leicestershire enclosers tried to cheat the vengeance of God by signing their names in a round-robin to the document empowering them to enclose. Thus no man by signing first marked himself out as the leader in the business.

There can be no doubt that the lands these people were enclosing were in great part the "town-lands"—the "open field" which lay around every village from time immemorial, and was assigned in strips by lot each year to the families in that village. In ancient times the villeins had these lands and were called customary tenants; they lived off them, and, by way of rent, performed soccage. All such tenants were at once cleared off the monastery lands at the dissolution; but, in many parts, the "customary tenants" still remained on lands which did not change hands. The enclosers of the first half of the seventeenth century seem to have stopped at taking commons, coppices, etc. Now the town-lands themselves were seized upon.[1]

Enclosure, eviction, destitution, vagabondage. This is the dismal sequence.

CHAPTER XVII.—THE END OF THE FEUDAL SYSTEM

THE feudal system had been slowly dying for a hundred and fifty years. Henry VII. struck at the very life of its life when he forbade tenants to wear their lords' liveries. The new race of landlords, sprung up after the seizure of the Church lands, held their new possessions with none of that saving grace of reciprocal rights—rights balanced and tempered by duties—which was the central idea of feudality. The growing ascendency of the Crown,

1 Villages are called "towns," and the places we call towns were then frequently called "markets" or "corporations," according as they were corporate or only market towns.

in loosening the hold which a feudal lord had over his tenants, had also loosened the hold which a tenant had on a feudal lord. The system survived in name, but the soul had gone out of it, and it was now little more than an excuse for periodical exactions and "fines." And as it had now long been the policy of the Crown to convert as many tenures as possible into *tenures in capite* (held directly of the King himself), the Long Parliament soon turned its attention to this branch of the royal revenues. It chose the moment when the "Treaty of Uxbridge" came to naught—that is, the moment when the moderate party in Parliament was overborne by the more extreme party, soon to be identified with the Army. On 24th February 1645 the Commons voted the abolition of the Court of Wards. The only immediate consequence was, that the Long Parliament received from this time forth, until 1656, all the profits of wardship, fines, and other feudal prerogatives, always supposed hitherto to be inseparably connected with the Crown. These profits (from 1645 to 1656) are set down as £1,400,000.[1] On 22nd November 1656 Cromwell's Third Parliament passed, *nemine contradicente*, "An Act for taking away the Court of Wards and Liveries, and all wardships, liveries, primer-seizins, and Oustre le Mains, and all other charges incident and arising for or by reason of any such tenures, etc., *as from 24th February* 1645." The Act took away "all homage, fines, licences, etc., and all tenures *in capite* and by knight-service, and all tenures by soccage in chief; and turned all tenures into free and common soccage" (Scobell, Part II. 375). But all heriots[2] and other feudal dues payable to intermediate lords or other private persons were retained. Purveyance and compositions for purveyance were taken away by another Act of this Parliament;[3] and both these reforms were re-enacted immediately after the Restoration by 12 Charles II. c. 24.[4] But all feudal charges were not even by this swept away

[1] Sinclair, Stevens, etc.

[2] "Heriots, which I think are agreed to be a Danish custom . . . are a render of the best beast or other good (as the custom may be) to a lord on the death of the tenant."—Blackstone (quoted in Richardson's *Dictionary*).

[3] Scobell, Burton's "Diary." Whitelock's "Memorials."

[4] The reign of Charles II. is always supposed to have begun on 30th January 1649.

entirely. Blackstone says: "The statute of Charles II. reserves the reliefs incident to soccage tenures; and therefore, whenever lands in fee simple are holden by a rent, relief is still due of common right upon the death of a tenant."

It was inevitable that the feudal system should be abolished. It had long been an anachronism, and the more often money-rent took the place of the old personal service, the more the system lost such virtue as it once possessed. But the practical outcome of the abolition was to benefit landlords, not tenants. The "great men" succeeded in shaking off their feudal burdens, but it was at the expense of the little men, just as the Excise Act passed by the Long Parliament in 1642-1643 was a relief to the rich at the expense of the people at large. The landlords got their lands free of all aids and tenures, and their tenants, no longer bound to them by any reciprocal obligations, were compelled to pay whatever rent the landlord demanded, on pain of being turned out; and, after the Rent Act of William III., of having their private goods distrained on.[1]

The feudal was a system of dual ownership, and when first established it implied the fullest responsibility of the tenant of the Crown for the land he held. It was fully recognised that the tenant held the land first of all, with regard to the good of the State, and only secondly to his own benefit. For the good of the State, he was bound to perform certain duties. For the good of the State, he was not allowed to turn his sub-tenants adrift—if he did, he would be preventing them from performing *their* duty to the State. But in proportion as personal service came to be compounded for by money, this grand original idea of mutual duty began to decay, and the way for the new landlords of the Reformation had been preparing long before Henry VIII. seized the Church lands. The idea that the possession of land involves duties has faded more and more into the idea of the "sacredness of property." Formerly, it

[1] In feudal times, if the tenant did not pay his rent, all the lord could do was to seize such movable property (ploughs, etc.) as went with the holding, and really belonged to the lord, who originally provided it. And the officers were so afraid of seizing the property of the wrong man that they often dared not seize at all.

was the rights of the King, as the visible embodiment of the State, that were "sacred." The idea of the State waned more and more, even when changes took place which we have been taught to call victories of "liberty." The poor of England were more completely disinherited by each one of these victories, not because liberty is an illusion, but because in England the rich, since they robbed the poor of their lands, could never afford to acknowledge the rights of the poor. The very worst features of the violent ages were perpetuated in our Poor Laws. Of old, villeins were not allowed to pass freely from one part to another; the same disability was enforced by the Poor Law, which ordered the whipping of a poor man who left his parish without permission. In modern times it became legal to kidnap men for the navy. Could there be a more flagrant denial of personal rights than this? There had been Statutes of Wages in the old time, but the very preambles complain that they were evaded; whereas from the days of Elizabeth onwards, the justices actually did keep wages at the minimum, set long hours, and whipped the poor on the least sign of insubordination. The countrymen of Hampden boasted of liberty, but they were content to live in a nation of slaves—homeless and landless men, whom their own selfish policy had made so numerous that they were alarmed at the great army of destitute unemployed who had been weeded off the lands which the gentry had been stealthily enclosing for a century. These poor creatures had place and work under the feudal system, but none under the Commonwealth. There is not a particle of evidence that there was work waiting to be done—all the evidence shows that they were not wanted. Every now and then some silly scheme was proposed to make work for them, in a brief spasmodic effort which never did or could do any good. It never seems to have occurred to anyone but the diggers and levellers that the balance of social life was destroyed when so many thousands of small yeomen were cast landless upon the world. These unfortunates were the derelicts of the feudal system. Under that system, men had been of more account than money. A new system had come in, under which money was of more account than men.

CHAPTER XVIII.—THE PROBLEM OF POVERTY IN THE SEVENTEENTH AND EIGHTEENTH CENTURIES

"I contend that from 1563 to 1824 a conspiracy, concocted by the law, and carried out by parties interested in its success, was entered into, to cheat the English workman of his wages, to tie him to the soil, to deprive him of hope, and to degrade him into irremediable poverty. . . . I am not deceived by the hypocrisy which the preamble of an Act of Parliament habitually contains. . . . The Act of Elizabeth declares that 'the wages of labourers are too small, and not answerable to these times'; and speaks of the 'grief and burden of the poor labourer and hired man,' and thereupon enacts a law which effectually makes the wages small . . . by allowing those who are interested in keeping him poor to fix the wages on which he shall subsist, and to exact a testimonial from his past employers and the overseers or churchwardens when he quitted a service, which he had to show before he entered another."—Rogers, "Six Centuries of Work and Wages," pp. 398-389.

IN the seventeenth century the wretched state and the increasing numbers of the poor much exercised people's minds.[1] Pamphlets, more than almost any other class of publications in those times, show the inner history of the nation; and the very titles of some of the seventeenth-century pamphlets are instructive. They show the poverty, and they suggest one great cause of that poverty. Here is one of 1649: "A Declaration from the Poor Oppressed People of England, directed to all that call themselves, and are called by other lords of manors through this Nation, that have begun to cut, or that through fear and covetousness (sic) do intend to cut down the woods and trees that grow on the Commons and Waste Lands." Here we have a glimpse of the stealthy way in which enclosure crept on. Again, "Adam Moore, Gentleman," writes in 1653 on the "Enclosure of the Wastes and Common grounds of England." And in the last months of the Commonwealth we have "The Outcryes of the Poor oppressed and imprisoned, or a Safe Way to save the Poor of the Nation from Begging. W. Pryor, 1659." After the Restoration we find no end of schemes proposed, from the "Herring-

[1] At the same time, there was a constant alarm about depopulation.

busses" in which the poor of England were to support themselves and cut out the Dutch, down to Mr Firmin's plans for setting the poor to spin. A pound of flax can be bought for 1s. 6d., and spun so fine that it makes a pound of thread worth 8s. or 10s.; indeed, Mr Firmin had seen a pound of flax spun so fine that it was worth £3 or £4. Another writer goes into causes, thinks that stage-coaches have increased poverty, and seriously advises suppressing them—at least within fifty miles of London. Then people will be obliged to keep their own horses as formerly, and there will be more employment. Some of the proposals are extraordinary: Sir Josiah Child, the great banker, suggests seventy "Fathers of the Poor." They are to wear "some honourable medal, after the manner of the Familiars of the Inquisition in Spain" (!), and to have all the powers of justices, and much more, for they can send to the plantations such of the poor as they think fit. Child was a humane man: his "Fathers" were to take security for the comfort of these unfortunates, and for their "freedom" when their term of service expired. Though by far the most humane, this is very far from the first proposal of the kind. There was surely never a nation so anxious to keep down its numbers as the English! The idea that the poor multiplied "like lice and fleas" seems to have haunted our fathers like a nightmare. Nor did ever a nation inflict such penalties on poverty. It is but literal truth to say that in England poverty is a crime. Yet surely the dishonest rich man was always known to history!

As the numbers of the poor increased, opinions differed more and more as to whether the cause of poverty was too many people or too little work. Mr Locke thought it was not want of employment, but "relaxation of discipline and corruption of manners." Half of those in receipt of relief could earn their living; others might earn something towards it. Yet we do not hear complaints of the lack of workmen. In a vague way, we find the poor charged with idleness—especially if they ever ask for more wages; but we never hear of great works at a standstill for lack of hands. And there was no lack of severe laws against idleness—no one ever said there was; all they said was that people could not find it in their hearts to put the laws in execution. It is inconceivable that there should have been

so much sympathy for paupers, unless it had been felt that the paupers were to be pitied. The wilfully idle are not pitied. And if half of those receiving relief could have earned their living, and there was, as asserted, plenty of work for them, why did not those who had to keep them see that they did this work and kept themselves?

Defoe was very emphatic about there being work if a man chose to work; for if not, "why are gaols rummaged" for recruits for the army? If there was really no work, they would be glad to wear the Queen's cloth, "or anybody's cloth," rather than go naked. Real poverty drives men in crowds into armies. But he that can earn 20s. a week in steady employment "must be drunk or mad to list to be knock'd o' th' head for 3s. 6d. a week" (Address to Parliament, "Giving Alms no Charity," 1704). Defoe says, what is perfectly true, that all our Acts for setting the poor to work in workhouses "are and will be a public nuisance," and will only increase the number of poor. At this time the Poor Rate had risen from £840,000 in 1673 to £1,000,000 in 1700. The whole revenue of the country is given as £3,895,285 in 1701; so that more than a quarter of the revenue raised by taxes was spent on the poor out of the rates! And however much opinion may differ on all other points, it always agrees that poverty and absolute begging are increasing.

Misery had become so chronic and so vast that it was worth being exploited. In 1731 and 1732, the disgraceful affair of the "Charitable Corporation" excited the public to such a degree that people compared it with the South Sea Bubble—with which it had not the remotest resemblance. The Bubble was the result of the public's own speculation; while the Charitable Corporation was a most glaring instance of a benevolent institution captured by swindlers. It was founded to lend money to the poor on pledges. When the exposure came, it was found that for £159,276 there were no vouchers at all. For £44,874 there were vouchers unsigned by the borrowers. By the simple trick of issuing new notes on renewal of the old pledges, which the cashier was unable to pay, the holders of fictitious pledges—"and perhaps some real ones"—would go to the office, pay interest, and get a new note, though the old notes were neither paid nor called in.

Hardly a pledge of considerable value but had duplicate notes. For years the cash books had never been compared with the vouchers. Persons whose names appeared as large borrowers denied all knowledge of the transactions. By concealing the fact that a licence had been granted to increase their capital, the managers bought up shares at £6, to sell them shortly afterwards for £10. Thompson, who engineered this, was thanked *nem. con.* at a General Court of Directors, and leave was asked to put his portrait in their house. Bond, another director, when told that "the coining of notes and bonds was inconsistent with their charter for relieving the poor," said: "Damn the poor: let's go into the city and get money for ourselves."[1] Walpole declared that his conduct in this matter should be the test of the integrity of his life. The affair assumed the proportions of a Jacobite plot. It was asserted that Thompson —who fled the country, and went to Rome—had stolen the money for the Pretender. Finally, a Bill was passed for a lottery to raise £400,000 for the sufferers by this huge swindle. It is a striking proof of the magnitude of the question of poverty that a company should have been formed to relieve it, able to swindle its shareholders to the tune of half-a-million.

It is evident that Elizabeth's Act of Settlement had a considerable share in increasing out-o'-works. Child had called it both cruel and stupid. It sent a man to a parish where there was no work for him—just because he was born there—while he could have found good work elsewhere. Moreover, it sent him off if he was "*likely* to become chargeable." These points were now amended—he was not sent back till he actually *was* chargeable, and he was not to be sent back, as formerly, though he might be so sick that his life was endangered.

The great difference in wages in various parts of the country shows that the Act of Settlement must have worked deplorably. A few years before this time the Justices of Worcester had set a haymaker's wages at 4d. a day, with meat, and 8d. without; a mower's, 6d. or 1s., a reaper's the same. But in 1651 the Chelmsford Justices had fixed 10d. or 18d. for a mower; 12d. or 22d. for a reaper, and 8d.

[1] See Pope's "Moral Essays," 3rd Epistle, for a reference to Bond.

or 14d. for a woman reaper. We find the same discrepancies from generation to generation, showing that the demand for labour must have been much greater in some parts than in others. The Act of Settlement seems expressly framed to prevent labourers gaining any advantage from this.

The whole case for labour is given in those words of the old *Intelligencer* of 1649: "Labour is cheaper and food twice dearer than formerly." Prices rose, but wages did not rise in proportion. They were not allowed to do so. It is literally true that from 1563 to 1824 there was a legal conspiracy to cheat the English workman of his wages. The masters combined to keep wages down, and the law made the offence of "Conspiracy" extend to workmen who combined to raise them.[1]

At the end of the seventeenth century, Gregory King gave the first trustworthy statistics of the state of the country.[2] He was much troubled at the decrease in the revenue[3] (a million less in 1695 than in 1688), and the increase in expenditure, and foresaw that "if the war continues to 1698 inclusive," the national income will have fallen £4,000,000. He gives an elaborate table of statistics. In 1696 the arable land of England was 11,000,000 acres, and the pasture and meadow 19,000,000. "Moor, Mountain, and Barren lands," another 10,000,000; and woods and forests,

[1] "We have no acts of parliament against combining to lower the price of work, but many against combining to raise it. Masters are always and everywhere in a sort of tacit, but constant and uniform combination, not to raise the wages of labour."—"Wealth of Nations," Bk. I. chap. viii.

[2] He was also the first to make a Survey of London on the scale of 100 feet to the inch, which expressed the ground plot of every house and garden. He surveyed many counties of England.

[3] From £42,500,000 to £38,500,000. "The kingdom is yearly decreasing three millions." This was the beginning of a serious National Debt. At this time the population was increasing at the rate of 6000 or 7000 a year. King gave the population as about 5,318,000, and thought that by the year 2300 we should have 11,000,000, and in 3500 years 22,000,000! He was a sagacious observer; but the 600 years of war from the first coming of the Saxons to the reign of the Confessor, the constant revolutions, insurrections, and wars from 1066 to Magna Charta (the Conqueror depopulated the whole country from Humber to Tees), the Hundred Years' War, the Black Death, had made increase of population so very slow that he supposed he was making a very bold forecast. He estimated the population in 1696 at 5,180,000.

parks, and covers, 6,000,000. The rent of the whole he put at £12,000,000; and the value of the annual produce at £22,275,000.

The following figures will show the increase in the poor rate in the eighteenth century as compared with that in the revenue and the National Debt. It must be remembered that the National Debt added a new and heavy item to the estimates—and to the taxes. The revenue increased, partly because there was now the interest on the Debt to pay. William III.'s wars—not undertaken for our benefit—entailed on us an annual burden of £1,310,242—or more than two-thirds of the whole average revenue twenty-two years before. Between 1603 and 1702 population cannot have doubled. At most it was not more than 5,000,000 at the end of Elizabeth's reign; the calculations of Gregory King make it about 5,180,000 in 1696. It is impossible to calculate the numbers of the poor much before 1673, because all accounts agree that during the first half of the century collections for the poor rate were systematically evaded. Probably the decrease in 1776 was due to the fact that every man who could be picked up was pressed for the army in America, the navy, or the East India Company's service.

Year	Poor Rate	Revenue	National Debt
1673	£840,000	Average for Chas. II.'s reign—£1,800,000	
1685	£665,000	1689, £2,001,855	£664,263
1698	£819,000		
1700	£1,000,000	1701, £3,895,285	£16,394,702
Q. Anne	£1,000,000	1710, £5,691,803	1714, £54,145,363
1751	£3,000,000	1759, £8,523,540	1748, £78,293,313
1776	£1,000,000	1776, £10,265,405	1775, £135,943,051
1783-5	£2,167,749	1786, £15,096,112	1784, £257,213,043

This table is given by Eden in his "State of the Poor."

In 1640, "Stanley" says many say there are more than 80,000 "idle vagabonds in this land." At 3d. a day, this is £360,000 a year, and all for no good! In 1677 it was 4d.

The land-tax, as it at present stands, dates from 1692, the fourth year of William and Mary. Immediately after the revolution of 1688 this country was involved in the long and costly war with France which continued till the last year of Queen Anne. It was to carry on this war that in 1690 a land-tax of 4s. in the £ was voted for one year. As it was obvious that the tax must be continued, a valuation of all the lands of the kingdom[1] was taken in 1692. Commissioners were appointed to discover on the spot the annual value of rents, and to assess the respective counties. The rate is called 4s. in the £, but 24s. instead of 20s. are to be paid on every £100, and the lands are to be valued on what they would bring in, "if truly and *bona fide* leased at a rack-rent." The assessment of all the lands, at 4s. in the £, amounted to £2,037,627, but in 1697 4s. was made the limit of the rate, and £2,000,000 was fixed as the limit of the whole annual sum to be thus raised. The Act was still "for one year only," and was described as "for carrying on a vigorous war with France," but it long outlasted that war and many others. It was renewed year by year for a century. In peace time it was m[illegible]nly 3s. or 2s. in the £, and even occasionally 1s., but the bitt[illegible]ment there was war it went up to 4s. again, amidst the selves[illegible]r complaints of the landed gentry, who declared themburdens[illegible]ruined by it. A striking instance of the way in which body of t[illegible]have been shifted from the well-to-do to the great the beginni[illegible]e people is connected with the Land Tax. At in so flouris[illegible]g of the reign of George II. the revenue was thought he co[illegible]ing a condition that Sir Robert Walpole in the reign of [illegible]d do without the Salt Tax,[2] also first imposed of as "burdenso[illegible]William III. It had long been complained fatal to the progr[illegible]e to the poor, bad for manufactures, and repealed the Salt Tax [illegible] British fisheries." So in 1729 he take effect from Christmas, [illegible]me others, the abolition to could do any good he proposed t[illegible]t before the repeal Act that he might please "the landed [illegible] of his own [illegible]" by

[1] It is generally received that, about 1660, the whole rental of England, in land, houses, and mines, was about £6,000,000 and twelve years' purchase. About 1690, the rental was about £14,000,000 and eighteen years' purchase.

[2] This was the excise of salt, not the duty on imported salt.

reducing the Land Tax to 1s. The gentlemen were relieved at the expense of British manufactures and fisheries, and of the poor; and in a few years a senseless commercial war[1] sent up the Land Tax again to 4s., and there was no more talk about the revenue being able to dispense with the Salt Tax.

The seventeenth century saw two other famous Acts, both connected with landholding, both made in the interest of the landholder and at the expense of the interests of the people. One was the Corn Bill of 1670, which for the first time put a duty on imported corn; the other was the Corn Bill of 1688, for which the Land Tax was the price paid. It gave a bounty on the export of corn. Both were intended as remedies against a low price of the chief necessary of life.

CHAPTER XIX.—ENCLOSURE IN THE EIGHTEENTH CENTURY

"By nineteen Enclosure Acts out of twenty, the poor are injured, in some grossly injured. . . . The poor in these parishes may say, and with truth, *Parliament may be tender of property, all I know is, I had a cow, and an Act of Parliament has taken it from me.*"—Arthur Young, "Enquiry into the Propriety of applying Wastes to the better Support and Maintenance of the Poor."

FOR a generation or two now, enclosure had been carried on, as it were, on sufferance—the rich were enclosing,[2] the poor were entering feeble protests, but it was the people who had to show that an enclosure was illegal, not the landlord who had to prove it was legal. And now came another stage. While philanthropists, moralists, and economists were asking why there was so much poverty, and how it could be removed, and were

[1] This was the war of Jenkins' Ear. "It unquestionably arose from the turbulent spirit of the English, who, tired of a long peace, engaged in hostilities with Spain for very frivolous reasons. The trifling sum of one or two hundred thousand pounds was the original subject of contest."—Sinclair, "History of Revenue."

The war cost £31,338,689.

[2] "An ancient surveyor" told John Cowper, author of a pamphlet against Enclosure, that in the eighty years before 1732, one-third of all the land of England had been enclosed. In 1714, the population of England and Wales was 5,750,000.

arguing with each other as to whether there was or was not plenty of work waiting somewhere or other for everybody willing to work, the landlords were preparing to take away still more of the lands which once belonged to the people.

The first Enclosure Act was in 1709. There was a second Act in Queen Anne's reign. In the thirteen years of George I. there were sixteen more Enclosure Acts. In the thirty-three years of George II. there were 226. In the sixty years of George III. there were 3446. Queen Anne's Acts only enclosed 1439 acres. Those of George I. enclosed 17,660. Those of George II., 318,784. Those of George III., 3,500,000. So between 1709 and 1820, 3,837,883 acres were withdrawn from the people, and made private property.[1]

These Enclosure Acts appear as petitions; they are usually in the names of the lord of the manor, the parson of the parish, and a greater or less number of the holders of the lands. For now enclosure concerns the "open fields." It is represented that the "strip system" is very inconvenient—the land being so "scattered." It would be for the benefit of all if the lands were enclosed and divided among the holders—that is, if each holder got his share in one piece. This, it is added, will do away with "the half-year's close, and the rights of common and sheep-walks." It was no doubt inconvenient to have the land in these non-contiguous strips—a man had a strip here and another there. And the six months' "close," or rather throwing open of the land to pasture, though it manured the land, was too long, and prevented the raising of any winter crop, such as turnips. And common pasture was always involved in these enclosures. So we often find counter-petitions, from other holders, who represent that if the lands are enclosed they will lose "the right of pasture."

Where this was the case the "enclosing and dividing" of the open field must have greatly facilitated the buying-out

1 One hundred and twenty-six Enclosure Acts were passed for lands in the four counties of Oxon., Bucks., Northampton, and part of Leicestershire, from 1762 to 1772. This probably meant the sending adrift of 1800 families, about 9000 individuals.—Slater, "The English Peasantry and the Enclosure of Common Fields." (Mr Slater takes the number of families and persons from a calculation made by "A Country Gentleman" in a tract published in 1772—"The Advantages and Disadvantages of enclosing Waste Land and Common Fields.")

of the petty tenants, and the absorption of their lands in larger farms. The loss of pasture would make a man less reluctant to sell. Tillage and pasture worked in with each other; together, they brought the poor man a sufficient reward for his toil. When the pasture was gone, his cow became an expense instead of a source of income. Her milk was too dearly purchased when he could no longer feed her half the year in the open field, and the other half in the common pasture. And so the good wages often to be got in the town attracted him more and more. He sold his few roods or acres, and went to swell the population of cities.

Suffolk and most of Essex were so early enclosed that they are mentioned by Tusser, who highly approved of the better farming, made possible by enclosing the, "champion."[1] But in 1795, in his Survey of Essex, Young found the part next Middlesex, "in about 40 parishes, still very much in open fields." In Kent, no portion "was occupied by a community of persons, as in many other counties." Two-thirds of Hertfordshire were enclosed. "The larger common fields lie towards Cambridgeshire" (Young's Second Survey). In Warwick, rather more than a third was enclosed. About 1754 the south and west parts had been mostly open fields (Marshall, Survey of 1794). Pitt's Survey of 1813 gives two-thirds of Worcester as enclosed (not the S.E. corner). "The greater part of this country is ancient enclosure." Part of the Vale of Evesham and some other "rich common fields are of modern enclosure."

Durham was enclosed from 1658 to soon after the Restoration. In Northamptonshire enclosure was early (it is mentioned in the "Four Supplications," 1530). The old enclosed land was chiefly turned into grazing farms. Shropshire was very early enclosed. In Norfolk, the rebels did not complain of the enclosing of arable land, so probably this had been stopped. One-fourth of the arable land there was in common fields even in 1796. But most of east Norfolk is "a very old enclosed country" (Marshall). The Survey of 1796 says:

[1] Tusser wrote in the reign of Elizabeth. See note at end of chapter.

> "The natural industry of the people is such that wherever a person can get four or five acres together, he plants a whitethorn hedge around it, and sets an oak at every rod distance, which is consented to by a kind of general courtesy from one neighbour to another. . . . In this way many of the common fields of East Norfolk appear to have been enclosed."

But in many counties—Middlesex, Buckinghamshire, Berkshire, the chief part of Bedfordshire, Yorkshire, Lincolnshire, Derbyshire, Nottinghamshire, Huntingdonshire, Cambridgeshire, Oxfordshire, the south of Wiltshire, Gloucestershire, Herefordshire—there were open fields up to about 1794.

Nothing was easier than to get an Act. A pamphlet[1] published in 1786 says that to obtain an Act to enclose a common field, "two witnesses are produced to swear that the lands thereof, in their present state, are not worth occupying, though at the same time they are land of the best soil in the kingdom, and produce corn in the greatest abundance and of the best quality. And by enclosing such lands they are generally prevented from producing any corn at all, as the landowner converts twenty small farms into about four large ones, and at the same time the tenants of those large farms are tied down in their leases not to plough any of the premises so let to farm, by which means, of several hundred villages, that forty years ago contained between four or five hundred inhabitants, very few will now be found to exceed eighty, and some not half that number; nay, some contain only one poor decrepit man or woman, housed by the occupiers of lands who live in another parish, to prevent them being obliged to pay towards the support of the poor who live in the next parish" (p. 2).

An earlier pamphlet[2] makes the result of enclosure bad

[1] "Thoughts on Enclosure, by a Country Farmer." Mr Slater quotes this tract in his admirable work on Enclosure, but I was unable to find it at the British Museum. No locality is named, but Mr Slater thinks it was in that part of the Midlands, where enclosure was attended by the conversion of arable to pasture. The "Country Farmer" gives tables showing that the process resulted in a large reduction in the value of the produce, but in a large rise in rent. See note at end of chapter.

[2] "The Advantages and Disadvantages of enclosing Waste Lands and Common Fields. By a Country Gentleman, 1772." This is quoted with approval by the Board of Agriculture in the report of 1808.

for everybody except the landowner and tithe-owner—that is, it benefits the rich but injures the poor. The great farmer is afraid his rent will be raised, and he himself forced into a more costly way of farming. The small farmer fears his farm will be taken from him, to be "consolidated" with the large one. The cottager not only expects to lose his commons, but his work, and to be obliged to leave his native place. This writer says that a parish which before enclosure could provide employment for thirty families, after enclosure could barely support sixteen. And the "General Report on Enclosure" of 1808 admits the conclusion of both those writers, by saying that "to stock rich grass lands demands a far greater sum than open field arable . . . and if profit be measured by a percentage on the capital employed, *the old system might, at the old rents, exceed the profits of the new*." Thus the system which enriches one class by impoverishing another is admitted to be bad economically.

Marshall, writing in 1805, says[1] that West Devon has no traces of common fields. The cultivated lands are all enclosed; mostly in good-sized enclosures. "They have every appearance of having been formed from a state of common pasture, in which state some considerable part of the District still remains; and, what is observable, the better parts of those open commons have evidently been, heretofore, in a state of aration; lying in obvious ridges and furrows, with generally the remains of hedgebanks, and with faint traces of buildings." They look as though they had been permanently enclosed "and have been thrown up again through a decrease of population." Labourers have 6s. a week, and many, "honestly dishonest," say they cannot bring up a family on 6s. a week and honesty! Wages are too low, and what farmers save in wages they lose by pillage! All ranks EXCEPT farm labourers have had an increase of income with increase in prices;[2] so poor rates are increasing. Marshall points out

1 "Rural Economy of the West of England."

2 "The price of drudging labour in every country where there is plenty of hands is nearly the same. It is mere existence. What are at present the wages of common farm-labourers throughout the kingdom of Great Britain? Say about four pecks of bread-corn per week. And what are they less than this in any other country?

other places which show signs of having been formerly open fields. He thinks it was once the prevailing practice of Devon to CULTIVATE ITS COMMUNABLE LANDS. (The capitals are Marshall's.)

In Leicestershire, Belton, Newton, Austrey, Shuttington, Edinghall, and three or four more townships in the Bosworth quarter, were the only townships "that remain in any degree open. Half-a-century ago, the district was principally open." He says that each township appears to have been laid out originally into three arable fields with grassy "balks and ley lands," a common meadow and a common cow pasture. It is remarkable that neither Young nor Marshall seems aware of the history of those lands, which had "every appearance of having been formed from a state of common pasture," and the "better parts in a state of aration." Nor does Marshall seem to realise the significance of the "decrease of population," which he suspects, without seeming to connect it with any particular event or period.

Young, however, gives a few incidents of his tours which enable us to understand retrospectively many things which happened long before. One concerns enclosure; one the working of the poor law in rural parishes.

Mr Nicholas Styleman was a country gentleman who had been very active in the enclosure of some commons in Snettisham parish (near Sandringham). There were forty-one houses that had a right of commonage over all the open fields, after harvest. This totally prevented the growing of turnips and clover in those fields.

> "This great inconvenience induced Mr Styleman to give his consent to, and promote, an Act for enclosing the commons, and preventing so great an incumbrance on the husbandry of the open fields. But in executing this idea he planned the outline of it in so candid and

There can be no good reason given that the price of corn and grass should be higher now than they were formerly, or than they are in other countries. I have said that the price of common labour does not and cannot increase: but the farmer will say that rent and taxes increase. To which I reply: if they do, they ought not: because everything that tends to raise the price of the first necessaries, *must repeat its effects in all the millions of exchanges afterwards made.*"—S. in the *Gentleman's Magazine*, June 1825.

charitable a manner, that he kept as strict an eye to the interests of the poor people as to his own. In lieu of rights of commonage, the proprietors of a parish inclosed generally divide it amongst themselves, and give the poor no indemnity; but Mr Styleman determined at first that they should have something valuable in exchange for their right. He allotted each of the old common-right houses three acres contiguous to their dwellings, or their other property. Six hundred acres of old grass common were left so for these poor to turn their cattle on in a stinted manner. It maintains 205 cows, 120 mares and foals till 10 months old; 80 yearling calves, and 80 fillies. In their little inclosures they grow turnips, barley, wheat, and a little hemp."

Mr Styleman also assigned to the poor of the whole parish, "100 acres of common in one inclosure for cutting turf; each house under 40s. a year rent has a right to cut 3000 flag (turf), a quantity sufficient for the winter's firing." This was in lieu of the old practice of cutting whins for firing over the whole extent of open fields—a practice "destructive of much land." Young says the scheme succeeded perfectly.

"Their little inclosures are of great use in maintaining their cows on a pinch in winter on turnips or clover hay; and their tillage is executed by their brood-mares. And it is observable that no instance has been known of any inhabitant of these 41 cottages ever being chargeable to the parish. The poor rates are from 9d. to 1s. in the pound; before the inclosure they were 1s. 6d. This fall has been owing to the increase of employment arising from the inclosure and its consequences; and to the poor having been so much favoured in the Act. At the same time that such uncommon attention has been given to the poor, it has not destroyed, through a false idea, the rise of the landlord's income, gener[illegible] expected on such occasions. The rents of the parish are in general raised a third by the inclosure: one farm belonging to the Corporation of Lynn is raised from £160 to £360 a year."

With it all, there was an increase of inhabitants—people were tempted to settle in a parish which offered

> "such superior benefits. There were 500 souls before the inclosure—now there are 600. And if 20 new cottages were built, they would be immediately filled: and Mr Styleman is not clear that, was such an addition made, whether the rates would rise."

He further told Young that there was never any want of hands "for the greatest works; had he miles of banking to do, the procuring hands for the execution would never be the least difficult."

The last words refer to a "great work" which Mr Styleman had actually accomplished some years before—banking out the sea—"which undertaking was by many thought very daring and hazardous." He began it in 1750, and finished it in a year. The bank was a mile long. He recovered 300 acres, and spent £1500. As he got £240 more rent a year, this daring and hazardous undertaking brought him back 16 per cent. for his outlay.

Another illuminating incident took place near Hook in Hampshire. Young tells us how Mr Holroyd, of Sheffield Place, got down a poor rate. When he came to reside in the parish he found "great abuses in matters of poor and rates." The rates ran up "to a most extravagant height, owing to farmers playing into each other's hands. They paid weekly allowances and house rent to labourers in full health and strength, and many children were taught no industry till fifteen or sixteen years old. They agreed among themselves that they should have allowances from the parish, of 1s. 6d. or 2s. a week per lad, for taking them as servants, besides being partly clothed at the parish expense also; while many of the lads were worth near as much wages as they were paid for taking them, and maid-servants were also taken in the same manner. By this ingenious device, the farmers got the parish to pay their servants' wages, and a trifle over! Mr Holroyd, however, changed all this. He made extracts from the poor law, and gave them to the farmers; and he himself took the office of overseer. He apprenticed the smallest boys and girls to the richest, and the "stoutest"

to the poorer farmers, with no allowance but 25s. a year for clothes. Six indignant farmers submitted to the fine of £10 for infringement of the law rather than agree to terms "that so fully proved the tendency of their former transactions—and these forfeitures have clothed the children." Holroyd reduced the rate from 4s. 6d. to 1s. 6d., and "the old people are taken much better care of"; for before this, "no attention was given to anything but great families, which the officers made the sources of plunder." The poor man and his children are exploited in other directions than war. Large families keep down wages.

In 1795 a correspondent, who signs himself "An unwearied Friend to the Poor," gives an account of the parish of Shottesbrook, Berks., in the time of "the all-accomplished, learned and pious Francis Cherry, the generous patron of the learned Thomas Hearn." Mr Cherry died in 1714, so the picture is of Queen Anne's time. He owned many other manors in Berks. and Surrey, and "was landlord of every house but one in Shottesbrook." There were several moderate farms, one very large one, the rest cottages, every one had a good orchard, kept a cow, a sow and poultry. "Now there is a clause in the original Poor Act," that a parish which has no poor of its own shall help its neighbours. A neighbouring parish, Lawrence Waltham, was "a very poor parish, with very rich inhabitants." Waltham called on Shottesbrook for help. The Shottesbrook farmers, alarmed, called a vestry, and ordered all the poor men to attend, when one man was requested to accept 3s. a week, because he had nine children. He replied: "On no account, for thank God, he kept his family very well, and would not on any account be beholden to the parish." Another, "who had a sickly lame wife, begged to be excused." So did they all. At last the farmers bethought them of "old Dame Tooley,"[1] who had 3s. a week "for weeding in his honour's garden and all her victual at the great house, and she was made to accept 3s. a week from the parish, and so deliver them from assisting the poor of Waltham." "Now, Mr Urban, the cause of this riches was the orchards, and the great goodness of Mr Cherry, who constantly ordered his steward

1 "Who died at 106, for the stone is falsely engraved."

to take every man's cow into his park or strawyard according to the season, and to let the grass of the orchards become hay to feed the cows before and at calving time." But this excellent squire died, leaving daughters, who sold the estate to the uncle of the "present worthy possessor, Arthur Vansittart, Esq., a very amiable man, but, bred a Dutch merchant, he entered not into the economy of the poor, took away all their orchards to make a garden of thirty acres, pulled down several of the farmhouses, and many of the cottages. The consequence was that in a few years the poor tax became very high, and the poor of Shottesbrook were *very poor*, though they had very charitable rich neighbours." In 1745 or 1746, when the writer visited a widowed daughter of Mr Cherry's, who had returned to live in the parish, she lamented to her visitor that she had to send her man-servant two miles for milk, if she wanted more than a quart a day, and told him that she paid a twelve-penny rate to the poor three times a year. Yet in Mr Cherry's time there were under thirty houses—"I believe are now pulled down to about a dozen."

This last statement is a striking example of the amount of economic mischief done by depriving cottagers of their bit of land.

The "Friend to the Poor" contrasts the mere helping of the poor with the helping the poor to help themselves.

> "Many plans are laid," he says, "to keep our poor from perishing from want of bread, *but that is the lowest link in the chain of Charity*; indeed, I doubt whether it be *any charity*, except to ourselves—to prevent their rising and knocking us on the head. True charity to the poor, honest labourer is, to enable him to *become rich*: I mean comparatively rich. Let us suppose a labourer with seven children to earn 9s. a week, and my charity leads me to add to it half-a-crown; it will enable him to purchase a little piece of bacon. Suppose I give it every week; at the year's end I shall have given the poor man seven guineas, wanting one shilling, and he will be just in the same state *at the year's end*, still a poor starving cottager in a little hole in a village with two or three alehouses,

the *bane* of the labourer and his family. Now, suppose the poor man in a cottage with a little orchard, on or *near* a common, no vile alehouse near, and of these seven guineas I lay out five in buying him a little Welsh cow; one guinea in buying him a young open sow; the remainder of the seven guineas in two geese and a gander, a few hens and a cock; all of which, if the English had as much acuteness as the Irish and Scotch, would be supported on the common the whole Summer and great part of the Winter; the cow, God sending good luck, will produce a calf, which, if managed as by the excellent farmers and labourers in Kent, will suck the *whole* of the cow's milk *only* the *last* fortnight before it goes off to the butcher; when gone, butter will be made; the skimmed milk will more than half keep the family; the butter-milk will help to keep the sow; the poor woman will be able to raise six shillings to buy a bushel of malt, which, as was lately shown in the *St James's Chronicle*, by some benevolent person, will make *twenty-two* gallons of beer for the poor man, without going to an alehouse; the grains will benefit the sow. Everyone that has lived in the country knows that geese always keep themselves through the whole year, except the hen-geese whilst sitting. I once knew a poor old widow, who, living in a single room up one pair of stairs, supported herself comfortably by keeping geese on an adjacent common, the amiable minister of the parish allowing her to coop the old goose in the churchyard about five days after the young ones were hatched, before they were turned out to provide for themselves on the common.

. . . . . .

"The cottager, thus placed, thus assisted, will in a few years be able to rent 'a little bargain,' as it is called, of about 12s. or 15s. a-year; grow a little wheat, barley, etc., and by degrees rise to a small farm of £60 or £70 a-year. I myself knew two instances, where, beginning originally with only the sow and a few geese, and the man working (shameful to tell!) for only *six* shillings a-week, hay-time and harvest excepted, each rose to good farms; one to a £60 farm,

the other died, about five years ago, in one of £120 a-year."[1]

He concludes with an account of two poor families in different parts of the country, who are rendered comfortable "by my letting two good tidy houses, one with a large orchard and garden at £4, 10s. a year, the other with two fields at £6 a year. In the first, a widow with eight children is supported by the cow, etc.; in the second, a very aged man, with an insane daughter, and a person to take care of them." If dismissed from their "little bargain," they must immediately be "supported at great expense by the parish to which they belong. . . . It is absurd to talk of turning commons into cornfields, that the poor may reap and thrash corn, and so remain wretchedly poor. No . . . let them build, or allow poor labourers, young farm-servants, when they marry, to run up an hut on the common, and enclose as much as they can cultivate. It is the only way to diffuse happiness among the poor."

The newly-established Board of Argriculture, with its founder, Sir John Sinclair, at its head, was very keen on enclosure. "A General View of the County of Salop" was drawn up for the Board in 1794, by J. Bishton of Kilsaal in that county. It gives the landlord's side of enclosure, and shows the alarm caused by the revolt of the French peasantry. The use of common land by labourers "operates upon their minds as a sort of independence," whereby they get "a habit of indolence." When the commons are enclosed, "the labourers will work every day in the year, and their children will be put out to labour *early*." Best of all, "that subordination of the lower ranks of society, which in the present times is so much wanted, would be thereby considerably secured."[2]

"Six inclosure bills were read the first time" on

[1] The writer remarks on "the extreme cruelty of the generality of farmers, in refusing to take in a cottager's cow to straw-yard in winter, that the poor man may not keep his cow on the common in summer." He knows of one such instance, "where a farmer, by this method, raised a fortune of £20,000, but his children have dropped off like rotten sheep."

[2] "A daughter kept at home to milk a half-starved cow, being open to temptations, soon turns —— and becomes an ignorant distressed mother instead of a good useful servant. The surrounding farmers by this means have neither industrious labourers nor servants."

20th February 1795; and in February 1796, Sir John Sinclair made his motion for "improving and inclosing the waste lands." His object was to grow more corn, and not to have to pay more than £1,000,000 sterling for bounties on imported corn (for to that it had come in the late scarcity). The Bill was "to facilitate dividing and inclosure." There was a great outcry from those who understood the importance of commons to small holdings. Sinclair meant well—his Bill was not intended to enrich the larger holders, but this was the almost invariable result. The only effect on the poor was to deprive them of the means of keeping live-stock. Enclosure has always been, as was said at the time, "an annihilation of public right for the advancement of separate property." The writer of a letter in the *Gentleman's Magazine* for 1798, signed "Agricola," says that it has been the custom in open fields of leaving one-third or one-fourth every year as of common right for all persons, "as well those of smaller property, and that not in land, as those of superior property and that in land, to turn their cattle, horses and sheep to feed, in proportion to their several legal holdings, whether land or cottage." "Agricola" does not believe in "the unlimited right of common—it is too absurd to be defended." But an experience of forty years has taught him that enclosure, as practised during that time, "has turned both country gentlemen and their overgrown tenants into arrogant and unfeeling monopolists. For when did you know a man, or combination of men, with exclusive rights and privileges, consider the public in any other light than as *an object of plunder*?" "Agricola" explains that he calls the tenants "overgrown," because they occupy so "vast an extent of land" under such long leases, that they often bid defiance to their landlords! He admits that "the property of individuals" lies most inconveniently scattered in various parts of the open fields, so as to cause daily trespasses on each other's lands, and that commons are overstocked and neglected; but Commissioners could be empowered to allot to each proprietor a fair equivalent of land lying together, instead of being dispersed; it might even be enclosed, leaving one-third or other reasonable portion open every year to a general right of common.

Another writer gives an account of how lands were being stolen from the people. "Throughout England there has been till lately numerous cottagers, many with several acres of land; but as land became more valuable, the lords of manors find means of getting them into their hands." This is the real cause of the failure of enclosure. "I will relate what happened in my own neighbourhood. Many poor families have been served in the following manner, though they have enjoyed uninterrupted possession, time immemorial, by regular descent from father to son. The lord of the manor comes first and tells the cottagers that their houses and lands belong to him; that he will no longer submit to such encroachments; and will take them into his possession. This frightens the poor people, knowing themselves unable to assert their rights. The next step, a country attorney sends them notice to quit. This generally effects all they desire. To prevent immediate ruin they beg hard for leases, and obtain them readily, and at an easy rate; which draws others in to follow the example. However, when the first lease is expired, they are always raised to rack-rent."[1] When of course their acceptance of a lease gave the lord of the manor the title he wanted.

A pamphlet by Thomas Wright of Mark Lane, published in 1797, says that "three wealthy farmers have monopolised within a few years 24 farms in the parishes of Sawbridgeworth, Much Hadham, and Stocken Pelham, in Hertfordshire, on each of which 24 was a house, yard, barns, etc." Mr Wright was last year at a farm of 160 acres, the stock of which was "80 sheep, 5 cows, 2 calves, 17 hogs and pigs, 70 fowls, 23 ducks, in all, 207, besides a number of pigeons." Markets had been supplied from this farm almost weekly during the year. He calculates the loss to the community by clearing off the twenty-four farms at something like 4447 animals. He proposes a society for buying up large estates, and dividing them into small farms.

We may, if we please, consider as fortunate exceptions the cases of the two families which rose to comparative opulence. Far more important are the cases of those who maintained their independence, until deprived of their orchards and of the ability to keep a cow. Those who write on small holdings too often consider them from the

[1] Letter of B. I. B., *Gentleman's Magazine*, 1798.

point of view of the money which can be made out of them, and appear scarcely to take into account that the man may be obtaining more than half his food from his bit of land, and if so, he is getting a great deal more than the money—he is getting money's worth. Until we take into account this money's worth we shall never form a practical idea of the "success" or "failure" of small holdings. Another argument used against small holdings is that the cottages of English labourers are more "comfortable" than those of French or German peasants. I have even seen the flowers in an English cottage window mentioned as though they were a sort of set-off to the independence of the Swiss—who, these persons assure us, never have any flowers in their windows. How much happier is the English agricultural labourer, say these persons. How comfortable is his cottage; how much the squire and the parson do for him in the winter; how rough and unrefined is the life of a French peasant in comparison! But these persons quite forget that the French peasant is independent; he has not to please the squire, or be compelled to leave his village. He can, if he chooses, and has the money, build a house upon his land, to accommodate a grown-up son—there is no squire to say that no new houses shall be built. The French peasant saves money—did he not pay the indemnity demanded by the Prussians?—but first of all, he lives on his land. In years gone by, English peasants did the same, and if they do not do it now, it is because the classes above them have contrived to deprive them of that land.

Occasionally, but very occasionally, in these enclosures, there was some thought of "the poor." In the manor of Barnardcastle (Durham), for instance, "several small tracts of waste land lying on the side of one of the outskirts, and on the skirts of the public roads, together with a narrow slip of moor, which only invited vagabonds, who sought to harbour and maintain their half-starved asses, and were not of any material benefit to the legal settlers, were by the act invested in the commissioners, in trust to be sold, and the product was thereby directed to be applied to the relief of poor persons belonging to Barnardcastle, who do not receive alms. By this means, after paying all expenses, 17 poor persons are relieved . . . they are elected by the select vestrymen and sidesmen for life. The men receive £5

a year each, and the women £4" (Letter in the *Gentleman's Magazine* for 1797). The writer hopes this may be an example to lords of manors on future enclosures, "that the poor may not be wholly shut out, where the rich are increasing their property."

NOTE.—Tusser's views on "Champion" and "Severall" are set forth in a "Comparison," from which it is plain that his preference for "enclosed country," is not because he thinks small holdings unprofitable, but because he objects to the practice of throwing the open fields into common pasture at certain seasons of the year (whence they were called "Lammas Land"), and so went untilled for that time, and produced no winter crops. There is no mistaking his meaning. If you tie your horse to a balk, he "is ready with thief for to walk." What is gotten by summer is eaten clean in winter. There is greater plenty of mutton "and beef, corn, butter and cheese of the best," more people, and handsomer, "there, where enclosure is most"; more work for the labouring man, fewer poor "begging from door unto door."

"In Norfolk behold the despair
Of tillage, too much to be borne,
By drovers, from fair unto fair,
And others destroying the corn.
By custom and covetous pates,
By gaps, and by opening of gates."

The corn is so "noyed" as it lies, that half your labour is lost. Even the larger owners do not respect the champion.

"The flocks of the lords of the soil,
Do yearly the winter corn wrong;
The same in a manner they spoil,
By feeding so low and so long."

In Cambridge, "a town I do know, where many good husbands do dwell," the losels rob the champion by night, and prowl and filch by day. No orchard or hen-roost escapes, and the lord of the manor knows it all, and does nothing. Horses and cattle are driven through every man's corn, and when they drive their sheep to be washed, "How careless such sheep they do drive!" Then what hunting and hawking, when the corn is waiting for the sickle. How much better it is where pasture is in severall. With champion, men eat bread and beans, and go barefoot and ragged; with severall, they have two loaves instead of one, and "of meslin, of rye, or of wheat." In woodland, poor men that have "scarce fully two acres of land" live more merrily than in champion with twenty. But the last verse explains why the poor do not like enclosure—

"The poor at enclosures do grutch,
Because of abuses that fall;
Lest some men should have but too much,
And some again nothing at all."

A comparison between Champion Country and Severall—"Five Hundred Points of Good Husbandry."

The "Country Farmer" gives an instance of a parish enclosed about 40 years before he wrote. Before enclosure, it contained 82 houses, of which 20 were small farms and 42 were cottages with common rights. There were 1800 acres of common field arable, 200 of rich common cow pasture, and 200 of meadow, commonable after hay harvest. The common pasture fed 200 milch cows and 60 dry ones till hay harvest, when they were turned into the meadows, and their place taken by about 100 horses. 1200 sheep were fed on the stubble. He gives the gross produce of the parish before enclosure as:

1100 quarters wheat at 28s. per quarter	£1540	0	0
1200 ,, barley at 16s. ,,	960	0	0
900 ,, beans at 15s. ,,	675	0	0
250 todds wool at 16s. per todd	200	0	0
600 lambs at 10s. each	300	0	0
5000 lb. cheese at 1½d. per lb.	31	5	0
6000 lb. butter at 5d. ,,	125	0	0
100 calves at 20s. each	100	0	0
150 pigs at 12s. each	90	0	0
poultry and eggs	80	0	0
	£4101	5	0

On enclosure, the twenty farms were made into four, the whole area was devoted to grazing, sixty cottages were pulled down or otherwise disappeared, and the necessary work was done by four herds (one for each farm) at £25 a year each, board included, and eight maid-servants at £18 a year each, board included. The gross produce after enclosure was:

Fat beasts	£960	0	0
Sheep and lambs	760	0	0
Calves	165	0	0
Wool	235	0	0
Butter	190	0	0
Cheese	100	0	0
Horses	250	0	0
	£2660	0	0

But while the gross produce was reduced about one-third, the gross rent was raised from £1137, 17s. to £1801, 12s. 2d. Thus sixty families were driven out in one parish of about 2300 acres.

CHAPTER XX.—ENCLOSURE IN THE NINETEENTH CENTURY

"In the period from 1792 to 1820, there were 2287 Enclosure Bills passed, and the number in each session was great in proportion to the dearness of corn at the time."—Letter of Mr John Walter, M.P., to the Electors of Berkshire, 1834.

ENCLOSURE went on at even a more wholesale rate in the nineteenth century. During the ten years of George IV., 192 Enclosure Acts were passed, and 72 in the seven years of William IV., enclosing respectively 250,000 and 120,000 acres. There were about 50 Enclosure Acts a year in the first forty years of the nineteenth century. Fisher says: "These lands belonged to the poor. Had they been allotted in small farms they might have been made the means of support of from 500,000 to 1,000,000 families, and thus rendered compulsory taxation under the poor law system unnecessary; but the landlords seized on them and made the tenants pay the poor rate." [1]

During the forty years of which Mr Fisher here speaks, the Corn Laws were in operation, and enclosure was keeping pace with the price of corn. The dearer the quarter of wheat, the more Enclosure Bills. The subject of the Corn Laws is too important to be treated as part of another question, especially as it cannot be treated to any good purpose except in considerable detail. I will only say that enclosure received a fatal impetus in the days when rents were fixed on the expectation of wheat at 80s. the quarter. There came a time when enclosure went mad, when even the village greens were ploughed up for corn, and when wastes were enclosed which must be tilled at a loss unless corn was at famine prices. In those days, private Bills became too slow, and the process too troublesome. It was necessary to obtain the consent of every person who had land to be enclosed, and although it was in most cases not difficult to persuade them to consent, it was not always easy to find them, or to find persons who could legally act

[1] "History of Landholding in England," Joseph Fisher, of Youghal.

for them. There would be persons under age, there were married women, there were lunatics. To get the legal consent of such persons was troublesome, and sometimes uncertain. So to make short work with them all, the "General Enclosure Act" of 1845 was passed, and a permanent "Enclosure Commission" (now called "the Land Commission") was appointed to submit proposals to Parliament.

Eleven years before this act was passed, Mr Pryme, a member of the first reformed Parliament, tried to get some of the newly-enclosed land allotted to the poor. On the 25th of February 1834, he moved that the Committee on every Enclosure Bill should certify in their report whether a portion of land, as near the village as might be, and not less than in the proportion of one acre to every twenty-five inhabitants, had been directed to be allotted "out of the communable lands or waste grounds." Pryme said the idea was not new. The experiment had been tried. In November 1830, when rick-burning was going on, it was found that labourers having allotments were never concerned in outrages. In a Cambridgeshire parish, half-an-acre of land was given to each labourer, on the understanding that he would be discharged if he did not pay the rent. It had been necessary to discharge only two, the poor rates had diminished, and the habits of the labourers had greatly improved. The motion was rejected by a great majority, on the plea that it would take from the landowner a portion of that which was his by right. Pryme replied, very justly, that the same might be said against taking land for a new road. If roads are a public benefit, so is the diminution of pauperism. The testimony is everywhere and at all times the same—give the poor man a bit of land, and poor rates decrease, and the character of the poor improves. But the House elected rather to build workhouses. This story is an example of the way in which in England property in land is regarded, as compared with other property. To take a few acres of land—sure to be the poorest land in the parish, and as certainly stolen from the poor at some time or other, was "taking from the owner a portion of that which was his by right"; but the alternative, of levying a heavy poor rate on the owner to pay for a workhouse was just as much a taking from him that which was his, only in the latter case he was only deprived of money. The money

was to be spent in making paupers, while the allotments would have diminished the number of paupers, but so sensitive was the House about land (knowing too well by what sort of title much of it was held), that the return to the poor man of what was once his own was represented as taking from the rich man a part of that which was his *by right*. The rejection of Mr Pryme's proposal was a fitting prelude to the New Poor Law.

About 618,000 acres had been enclosed under the Act of 1845, when, in 1869, Mr Fawcett arrested the movement towards enclosure, and inaugurated a movement towards the preservation of open spaces for health and recreation. Next came the Commons Act of 1876, passed by a Conservative Government. Without repealing the Act of 1845, the Act of 1876 laid down new principles; and in 1889 the "Land Commissions" were merged in a "Board of Agriculture," represented in the House of Commons by a responsible Minister.[1] In 1870, the Enclosure Commissioners had estimated that more than one-third of the land enclosed since 1845 was common field or pasture (distinguished from common). The Act must therefore have caused the extinction of many small holdings. The proportion of common field enclosed under earlier Acts was probably much greater, and very little now remains; but up to 1900, in the two manors of Stratton and Grimstone, near Dorchester, the common field system survived. The two sorts of enclosure, common and common field, have the closest relation to each other. When commons are enclosed, small holdings soon disappear.

There are two theories about the origin of commons. One is that they are the survival of the division of the conquered British lands, made by the victorious Saxons. As common-right has had, from the first we know of it, every appearance of remote antiquity, I incline to this view. The other is that they are only "the waste of the Manor"—the land which the lord allowed his villeins to use "in commonage" for pasture. In either case, they evidently represent very ancient rights, for the Statutes of Merton and of Westminster the Second (1246 and 1285) both stipulate that if the lord encloses any part of the

[1] Board of Agriculture Act, 1889.

manorial common he must leave sufficient pasture for his freehold tenants. Anciently, the right of pasture on the common attached to "ancient arable land" only: and as there had to be some rule, when the population increased, the number of cattle which a tenant could depasture on the common was the number he could feed in winter on the produce of his land in summer.

By custom, swine, donkeys, goats, and geese may feed on a common, but, strictly speaking, only oxen, horses, cows, and sheep are "communable cattle"—beasts of the plough, and animals which manure the land. They are described as "levant and couchant" ("up-rising" and "down-lying"—*i.e.* stalled and fed). No doubt, originally, "levant and couchant" meant animals the freehold tenant kept on his land when not upon the common; but levancy and couchancy now mean the number of cattle the land is capable of feeding, whether they are there or not. Only those beasts which helped to plough it could be turned out on the waste land; only the sharers of the common fields could claim a right on the wastes. The ploughing was done by fixed rule, sometimes by large ploughs owned in common and drawn by twelve or sixteen oxen. These oxen would be afterwards turned to feed on the common, and in the winter would pick up what they could on the common fields, which they enriched in return.

I ought to say that the manuring of land by the natural means of cow dung and sheep dung has an importance which is too little realised. For many years now a great deal of manuring has been done by other means—by the importing of "guano" and other fertilising products from other countries. But in the long run this will render barren the soils from which these manures are taken; and if the process is carried on indefinitely the fertility of whole regions will be destroyed. In the course of ages, Nature will repair this by the same means which rendered those regions fertile at first; but the human race cannot afford to wait until the consequences of its own depredations shall be remedied. The substances of which I speak are not to be found everywhere. They can be exhausted.

The absolute necessity for pasturage is shown in the arrangements for the town-lands. In each vill, or township, there were usually three large open fields; in a large

village there would be several sets of such fields. They were divided into small strips—originally of an acre or half-an-acre each—and were separated by narrow strips of turf, known as balks, linches, lanchards, or lanchets. These strips were often distributed by lot. Each family drew one lot at a time, until everyone had one strip, and then the drawing went on again, until all the strips were apportioned. Thus it happened that a man would have several non-contiguous strips. The fact was, that in the common field system the land was held, not by the individual, but by the community; and this is further shown by the practice of throwing the whole field open, when the crops were got in, and using it as common pasture for half the year. The period when the land is thrown open always has reference to the crop the field or meadow is devoted to during the close time. Thus at Hackney, the Downs seem to have been arable land, while the marshes were common meadows. The open time for all was from Old Lammas Day (12th August) to Old Lady Day (6th April). So the open time is from Lammas Day to the then end of the civil year. Hackney Downs and Marshes are still occupied in severalty during a part of the year. In old times, villagers who thus held land in common were called "customary tenants," and a little later, "copy-holders." They paid no rent for the town-lands, but tilled the lord's own demesne in return for their holdings. It was recognised that they should not be disturbed as long as they performed their "soccage"; but they were subject to "fines" on deaths or sales, from which fines freeholders were exempt. The freeholders performed military service.[1]

As late as 1883, when Seebohm wrote on village communities, instances of the system still remained in Lincolnshire. The common fields of Barrowden and North and South Luffenham consisted of 4600 acres. In Barrowden there were 40 owners out of a population of 636. Their buildings were all congregated in the village; and the

1 "Two features distinguish common-field or meadow-land from private land on one hand, and common land on the other. 1. It is owned by several persons in strips or plots, unfenced from each other, but well-ascertained, and marked by small bound-stones, etc. 2. During part of the year, the whole is used in common."—Sir Robert Hunter, "Preservation of Open Spaces," etc., p. 160.

arable land was divided into 2790 strips, each averaging less than half-an-acre—some were only twelve feet wide. In North Luffenham, 1493 acres were held in 1631 strips. When the corn had been cut, the whole of the land was thrown open to be roamed over by animals as common pasturage for the parish. The "three-course husbandry" was followed—a rotation of wheat, barley and fallow for each field. In North and South Luffenham there were also 391 acres of common, "waste of a manor"; and in Barrowden there was also a tract of common land known as the Cow Pasture; and in North Luffenham there were 143 acres of common pasture. The "Cow Pasture" was held in severalty to get a crop of hay, and the cattle only went in when the hay was carried.

It is very easy to see the effect which the abolition of this system must have had on village life, and ultimately on town life. A strong inducement to remain in the village was gone, and the work on larger farms by no means absorbed all the labour formerly expended on the "open field." But parishes like Barrowden and the Luffenhams might have been found everywhere till comparatively recent times. About twenty years ago the traces of the town-lands round a Berkshire village were pointed out to me—the ridges and furrows were still quite visible. The right of common is very tenacious; it has not even been decided whether it is ever lost more than temporarily, even when the land has been built over, or turned into a reservoir, so as to be quite incapable of producing crops on which to feed cattle. But there is no such right in respect of a house which has no land attached to it, and no means of housing cattle.[1] The legal aspects of "common-right" became very practical when Sir Thomas Maryon Wilson tried to enclose Hampstead Heath, but, as the Metropolitan Board of Works bought the Heath, the suit was not fought out.

Theoretically, no enclosure can now be made without the consent of the Board of Agriculture, and the sanction of Parliament. By the Act of 1893, the lord of a manor if he enclosed could be challenged to show that no rights of common existed; or he could plead the Statutes of

[1] Hunter.

Merton and Westminster II., and say that he had left common land enough. It is now held that owners other than lords of manors can enclose under these statutes, but cannot enclose any land over which a right of common is enjoyed for a particular number of beasts, which beasts need not be attached to a tenement. This of course does away with the chief principal of common—land on which those dwelling near can pasture their cattle. Such commonage is "commonage in gross," and is comparatively rare. The lord must leave pasture enough for all, if they exercised their rights, even though they may not do so (this was decided in the great suit of Banstead Commons). The new principle is the reassertion of the old—enclosure must be for the benefit of the neighbourhood. But the extinction of small holdings still goes on almost unnoticed. Mr Slater gives an instance of the enclosure of two villages near Dorchester, without any parliamentary sanction, no longer ago than 1900. "It was brought about, I am told, by the present lord of the two manors, by the refusal of the copyholders, who held by a tenure of lives, to 'relife.' The consequence has been that all the copyholds, except a few cottages, have fallen into the hands of the lord of the manor; all Grimstone has been let to a single farmer, and Stratton divided into three or four farms." In these manors the common field system survived till very late, and so did the manorial system of village government.[1] All the cultivators were copyholders, holding for three lives, and the widow of a holder had the right to continue the holding during her widowhood. The copyholds were "livings," "half-livings," or less. A half-living consisted of four or five "nominal acres" in each of the common fields, with common rights upon the meadow, common fields and common down. A whole living was twice as large. The tenants elected two "viewers" and other officers, and the whole estate was a little picture of the times when landlord and tenant had equally well-defined rights and duties. Now that the tenant is only an agricultural labourer he has no right to anything but a bed in the Union in which to die.

[1] For a full and most interesting account of these village communities, probably almost the last survival of the Wessex type, see Slater's "English Peasantry," pp. 19-35.

A careful analysis of the annual volume of Agricultural Statistics for 1905 shows that in the thirty years from 1875 to 1905, not less than 49% of the area under wheat has gone out of cultivation; that for the whole of the corn crops (including wheat), 26% less land is used than was the case in 1875. Green crops are less by 15% than a generation ago. Yet the area under cultivation is increased by over 1,000,000 acres. "A glance at the table will show in what direction these acres have disappeared. They are now to be found in the permanent grass-land, which has increased by about 4,500,000 acres. In no other country do we find 60% of the cultivable laid land down as permanent pasture." It is often asserted that though we have less cereals, we have more cattle; but the increase in cattle is not at all in proportion to the increase in area. Considered from this point of view, there were 731 cattle to every 1000 acres in 1875, but in 1905, only 589. And if we take into account mountain and heathland used for grazing, there are only 337 cattle in the 1000 acres. "Since 1871 the numbers employed in agriculture have decreased by 31%." Again, it is said that our soil is too poor for corn, and our system too bad. But with the exceptions of Belgium, Holland and New Zealand, we can, even with our system, grow more bushels of wheat to the acre than any country in the world. Then it is said that we are a manufacturing people and that our population is too large; Belgium is also a manufacturing country, and has 972 persons to the 1000 acres, while we have but 558 in the United Kingdom. Yet Belgium feeds herself, and sends us over 1,000,000 cwts of wheat and flour yearly. It is obvious that the excuses put forward for the state of agriculture in this country will not hold water.[1]

CHAPTER XXI.—THE WORKING OF ENTAIL

"The ideal, then, of the English land system in a rural district is that which has been attained in the district of North Dorset, just referred to, and in many other parts of the country. It is that of a large estate where the whole of one, and oftener of several, adjoining parishes are included in it; where there is no other landowner within the ring fence; where the village itself belongs to the same owner as the agricultural land; where all the people of the district—farmers, tradesmen, labourers—are dependent, directly or indirectly, on the one landowner, the farmers holding their land from him, generally on a yearly tenancy, the labourers hiring their cottages weekly or yearly either from the landowner or from the farmer; and where the village tradespeople are also dependent largely for their custom on the squire of the district, and hold their houses from him. It is

[1] See an article by Mr R. Brown in *Land Values* for December 1906.

believed that this ideal has practically been attained in more than half the parishes of England and Wales, in the sense that all land and houses within them substantially belong in each to a single owner."—"Agrarian Tenures," Right Hon. G. Shaw-Lefevre, M.P. (1893).

WE have seen how great estates grew. The law of entail, coupled with the custom of primogeniture, has kept them together. The word "entail" is derived from the French "tailler," to cut. Entail means the cutting off of some heirs-at-law in favour of others. Some form of this existed in Greece and Rome; the nearest approach to modern entail was the practice under the later emperors of settling land on a series of heirs by means of a *fideicommissa*, or trust, and this law, in its latest form, was even more stringent than our own, for it restricted the right of mortgage. The old Common Law of England forbade what were called "perpetuities"—the tying up of property for a time longer than the lives of certain persons still living, and twenty-one years longer. The decision in the famous case of Taltarum turned on this; that decision, in accordance with the Common Law, allowed the heir, on attaining his majority, to disentail the estate if he desired. Since then, it has been impossible to tie up property of any kind for longer than twenty-one years beyond the lives of persons in existence. This is to give time for the latest-born heir to attain his majority.[1]

Long before Taltarum, the Statute of Westminster II.—called the Statute *De Donis Conditionalibus*—of Edward I. had introduced the principle of entails, but there were many means of what was called "barring an entail," and entail as we know it dates from the seventeenth century.

In the early part of that century there was great freedom of sale and bequest, and it again became the boast of England that she had so many more substantial yeomen than were to be found in France. Cromwell's "New Model" armies were recruited chiefly from this class. But

[1] About the year 1800, a Mr Thellusson tried to create an immense fortune by a will directing all his property to accumulate during the lives of his children, and great-grandchildren, and then to go to certain of his descendants. The property would then have amounted to £19,000,000. Although the existing law seemed to be enough, the Thellusson Act was passed, forbidding the accumulation of income for longer than twenty-one years after the death of a testator.

the Civil Wars brought a change. Each side alike treated its adversaries as "traitors," and confiscated their estates, and the lawyers became as anxious to save estates by tying them up to persons yet unborn as they had formerly been the reverse.

The essential feature of the system they devised was the power of settling land on an unborn eldest son, who, as soon as he came of age, could make a fresh settlement with his father in favour of his own unborn eldest son. In failure of a son the land goes to the next male legal representative of the family, in strict line of primogeniture, which thus works with entail to keep an estate intact. Only on the entire failure of heirs male did an estate go to a female. Under entail, the rights of the heir, born or unborn, are everything. His estate can be neither divided nor alienated —it is not even liable for the personal debts of the deceased owner. On attaining the age of twenty-one he can, if he and his father, or the present owner, agree, make a settlement, "cutting off the entail," and restoring to the owner the power of sale or bequest. But it is very seldom that either party desires this; while there is every inducement for the heir to wish to tie up the land to his own heir. It is very easy to see how this has favoured the accumulation of land in a few hands.

Mr Shaw-Lefevre,[1] in his admirable little book, "English and Irish Land Questions," gives a very clear description of the process of "settling" landed property. The main object of entails of land is, he observes, to "preserve landed property intact and undivided, and to make it descend to the furthest point possible in the direct line of succession."[2] English Law has always been very jealous of creating "perpetuities"—but as usual only in name. The extreme legal limit of a "settlement" is for lives in being, and twenty-one years after; but there is every inducement for a landowner to renew the entail, and so create a virtual perpetuity.

> "The position of the father and son with reference to the property is this. The father has only a life-

[1] Afterwards Lord Eversley.

[2] "By the law of entail no man owns his own estate."—R. Hyde Greg.

interest in it; the son is tenant-in-tail. The son cannot sell the estate without the consent of the father, though he can dispose of his own prospective and contingent interest. The father can still less deal with the property without the consent of the son. If the father should die before the son, without having made any fresh arrangement, the property will vest absolutely in the son, and, by executing a simple disentailing deed, he can convert his estate-tail into a fee . . . and deal with the property as he likes. On the other hand, if the son should die before the father, the property will, upon the death of the father, descend to the grandson, if there be any, or to the second son if there be no issue of the eldest son. The eldest son, therefore, is certain to obtain possession of the property if he should survive his father; he is not, however, entitled at law to any provision during his father's lifetime. It ordinarily happens, therefore, that when the eldest son comes of age, the father . . . makes a bargain with him. He promises to make the son an adequate provision during his, the father's lifetime; he also enables his son to make certain provision for marriage, by charging the estate with an annuity for his widow, or with portions for the younger children; in return for this the son agrees to join in re-settling the estate, taking in lieu of his remainder in-tail a reversionary life-interest after that of his father; and the ultimate remainder in-tail is then given to the unborn grandson—in other words, the entail is carried forward to another generation . . . and no further arrangement can be made till a grandson is born and in his turn comes of age" ("English and Irish Land Questions," pp. 83-84).

"By such a process . . . the bulk of the family estates in this country are kept in settlement from one generation to another, the new fetter being added at that epoch at which the power of alienation arises" (Williams, "Principles of Real Property Law," p. 273).

"It is believed," adds Shaw-Lefevre, "that in most cases the heir who has consented to make this arrangement with his father on coming of age lives to regret it; instead of coming into the property . . . with full dominion over it, and with power of disposing of it . . .

he finds that . . . his power . . . is limited and fettered in all directions, and that he is without any power of selling, leasing, devising, or charging it, except in such manner as was provided under the settlement." (p. 85). As an instance of the effect of such a settlement, Mr Shaw-Lefevre gives the following as a case which "recently" came before the Bankruptcy Court.[1] "A property of 16,000 acres, with a rental of as many pounds, was settled upon Lord A for life, with remainder to his son Lord B as tenant in-tail. Upon the coming of age of Lord B, the estate was re-settled. In consideration of an annuity of £1500 per annum, the son agreed to join in the settlement, and to assent to charges which brought up the total encumbrance to £11,500 per annum, leaving a margin of £4500, out of which the son was to receive £1500 per annum, during the father's lifetime. The son gave up his reversion in-tail, and took a life-interest in succession to his father, with remainder in-tail to his own issue. Within a year from the settlement, the son, having run into debt for a few thousands, was made bankrupt; the whole of his reversionary life-interest was then assigned to the creditors; and the result is, that during the lives of the father and son, and perhaps for many years after, this great estate will be in the ostensible possession of men absolutely without means, and without any motive, or perhaps power, to sell" (pp. 87, 88).

We shall probably not feel much pity for the straits to which the noble family in question must have been reduced—a situation as ridiculous as painful. We may be pretty sure that, to put it mildly, their indebtedness did not remain stationary while their estate was thus "sequestrated." Supposing them actuated by the best intentions, living on the produce of the home farm, in the most economical manner possible, they could not have gone on without ready money for the rest of their natural lives—their financial state must have been constantly growing worse and worse, the estate more and more encumbered, and we may be certain that (unless he succeeded in marrying some great heiress) Lord B would leave *his* heir even a heavier load of debt than

[1] Written in 1881.

the estate groaned under at the time of the bankruptcy. It must be remembered that before the bankruptcy the actual income enjoyed by Lord A was only a little over one quarter of the nominal £16,000 a year, so heavily was the estate already encumbered.

It is the effect of such a situation upon the tenants which makes the story worth telling. How would they fare when the rent, instead of being paid to a man who had an owner's interest in the land, went to creditors, whose only interest was to get their money back as quickly as possible? As long as Lord A and his son lived—probably for a whole generation—the land lay at the mercy of men who, already long kept out of their money, would grudge every penny spent on improvements. It was to the interest of the creditors to repay themselves before the son of Lord B should come of age and make a new settlement. We may be sure that the creditors would not spend a farthing more than they could help on improving the estate for Lord B's son. The repair and erection of farmhouses and cottages, the drainage of the land, and everything else which under ordinary circumstances is done by a landlord, would be neglected. Woods would be cut down for timber, with no regard to the future. At the same time, rents would be kept as high as possible. Everyone who knows anything of the condition of a "sequestered" estate knows that a landlord cannot be beggared without his estate being starved. The whole position is a false one. It is bad for all parties—for the A family, whose estate has become a millstone tied to their necks, for the creditors, who must wait through a long term of years to recover their debts, and for the tenants, who see their holdings gradually deteriorating for want of money to be laid out, and have to choose between rubbing on as they can and having their rent raised to make up for any outlay on improvements. The deterioration of land, when a landlord either could not or would not spend money on necessary improvements, was so great and so obvious, that Parliament attempted more than once to give the Land Commissioners power to charge "settled property" with money spent on improvements, such as drainage and the building of farmhouses and cottages; but in practice this involved such expensive proceedings before the Courts of Law and the Enclosure

Commission that only on large estates, managed by agents and lawyers, could these powers be made available. How little was done under them is seen from the late Lord Salisbury's "Report of a Committee of the House of Lords," in 1873. "Speaking not only of drainage, but of all kinds of improvements," only one-fifth had been done of what ought to have been done. In drainage alone, of 20,000,000 acres requiring it, only 3,000,000 had yet been drained. "The improvement of land," says the Report, "in its effect upon the price of food and upon the dwellings of the poor, is a matter of public interest; but as an investment, it is not sufficiently lucrative to offer much attraction to capital, and therefore even slight difficulties have a powerful influence in arresting it."[1]

In the last words we have a strong indictment against a land system which operates to tie up land to owners as often unable as unwilling to "improve." Given a landowner whose affairs are embarrassed, and our land system is a curse to landlord and tenant alike—prolonging the period of the landlord's bankruptcy at the expense of the land itself. It would have been better for Lord A, and infinitely better for his tenants, if he could have paid his debts at once, and got rid of his "encumbrances," by parting with some portion of his 16,000 acres. As it was, he obtained a humiliating relief by crippling himself, and his son after him, for life, with a "remainder" of "encumbrance," and impoverishment to any possible grandson. By this artificial protection of the interest of a given family in the land, one of the most powerful incentives to prudence is removed—a spendthrift knows that at the worst his social position will remain untouched; he will always be the nominal lord of a landed estate. The position of such a spendthrift, or of his luckless heir, always has a fascination for the public—as is shown by the many works of fiction whose plots turn on such a situation. But there is another aspect, less picturesque, but immeasurably more important than the troubles of a man who is at once a great landowner and almost a beggar, and that is the position of his tenants. If

1 The Report says that cottages, without land attached, pay about $2\frac{1}{2}\%$ on their cost. "The replacements of bad cottages by good is an even less remunerative operation." This Report was based upon the Reports of the Enclosure Commissioners.

"even slight difficulties have a powerful influence in arresting the improvement of the land," what must be the effect of a system for securing a man in the possession of property when he cannot improve? And the irony of this is, that whenever small holdings are mentioned, we are told that the peasant is too poor to farm to advantage—he will not get out of his land what could be got out of it by a man able to spend money as well as labour on it; and the very persons who think this a good reason for extinguishing small holdings are the most anxious to prevent the bankrupt owner of half a shire from selling one of the acres, which *he* is too poor to farm to advantage.

But the evils of our land system are not confined to entail. The transfer of land has long been crying out for reform. In the great debates on the Repeal of the Corn Laws, in 1846, Lord Ebrington described the difficulties and uncertainties which surround the transfer of land even when it is not protected by entail. In those days landowners were always talking about the burdens on land, and demanding peculiar privileges on that account. Lord Ebrington said: "There was another burden upon land, which had not been referred to . . . he alluded to the laws of real property, and the expense of transferring or mortgaging land. The consequence of this system was, that small properties could with great difficulty be sold, and it lessened the value in the market of great ones. . . . In England, where all our prejudices and feelings were enlisted in favour of the possession of land, land sold at fewer years' purchase than in any other country" (27 to 30, in England, as against 30 to 35 in France, Belgium, Switzerland, and parts of Germany and Italy). "There was a case where the vendor of some land in Somersetshire paid £4000 purchase-money, and £1000 in law expenses." He told an anecdote: "An eminent lawyer sent a title to a conveyancer for his opinion. The conveyancer pointed out so many defects in the title that the lawyer said: 'Then you advise me to give up the purchase.' 'I beg your pardon,' replied the conveyancer, 'I thought you were for other parties: buy it, by all means: the title is as good a one as you can get.' The state of the law as it at present existed, precluded the possibility of a poor man ever hoping to become a landed proprietor, because the enormous expense of transfer would

deter him from investing his savings in the purchase of land. . . . *The state of the law led also to the absorption of the smaller proprietors . . . it was diminishing the number of small properties.*" [1]

This was the state of the law in 1846. By how much is it better now? Will an assembly of great landowners ever reform it?

Up to 1832 the vast majority of members of the House of Commons were landowners. The few who were not, were, like Burke, the nominees of landowners. The best argument for the retention of rotten and pocket boroughs used to be that they gave a poor but able man a chance of entering Parliament by the favour of the owner of such a borough.

Even the Reform Bill did not much alter this—landowners still formed the majority, and the present House contains more members who are not considerable owners of land than any which ever sat in England. One of the changes made by the Reform Bill was to give an occupier a vote if he was rented or rated at a certain value. This gave political power to the land, but not to the man; for the landlord could deprive his tenant of his vote by turning him out. And so, even after 1832, landlords drove their tenants to the poll like a flock of sheep.

Our land system, in the country districts where it can work unrestrained, is a strange anomaly in "a free country." It is totally inconsistent with the spirit of those political institutions on which we pride ourselves as Englishmen. If an English squire chose to pull down a whole village, and drive out the people to be a charge upon the town into which they must go, he would not violate the law. He can, if he chooses, turn pasture or tillage into a park, and can exclude the public from that park. He can, and frequently does, pull down a house and erect no other in its place. He can, and still more frequently does, refuse to allow a new house to be built. He still, in the twentieth century, regards it as something like petty treason if his tenants do not vote for the candidate he supports. He has even given very strong hints that, notwithstanding the ballot, it leaks out how a man votes. As a rule, the great landlord does not use his full legal rights.

[1] 24th March 1846.

He rarely does more than turn out a tenant who is too "independent," and prevent the increase of cottages. But this is only because he happens not to wish to do more. It is not more than fifteen years ago since a wealthy squire drove out of a certain seaboard parish a number of families, counting one hundred persons in all. The heads of these families had offended him mortally by exercising their legal right of inquiring into the administration of a local charity, founded before his time. These people had to go somewhere. Where did they go? As no landowner would allow the sudden irruption of a hundred persons into a village—where in all probability there would not be a single house to accommodate them—they must have scattered themselves, as in fact they did, in the nearest towns. On a small scale, this sort of thing is constantly happening, and fully accounts for the overcrowding of towns. The exodus is doubtless helped by the fact that in a town a man feels himself more free, and has more amusements; but as the children of villagers grow up, they have little choice—go they must. There is no room in country districts for a surplus population. It does not "pay" the landowner to build cottages for persons not in his service, not to mention that he looks on the estate as his own private preserve, and on strangers as more or less trespassers. Parish Councils have no doubt done something towards greater liberty, but it is a mockery to talk of liberty when every man in the village knows that he can be turned out of his house if he offends the squire, and that this will be in effect an edict of banishment. In the instance to which I have referred the landowner carried his resentment so far as to refuse to renew the lease of a house which had been rented for many years as a summer residence by a gentleman from London, unless that gentleman would give a written promise to take no part in parish affairs. The gentleman had been active in demanding the inquiry. He refused to give the undertaking. In this instance, self-interest failed to act as a restraint. The house stood unlet for years, and the squire must have lost considerably. The story got into the London papers, and the unflattering comments made on the squire had the effect that for years after it was difficult for summer visitors to find any sort of lodgings, except at the house of the steward

of the estate—who of course could be trusted to say nothing against the squire.

Not very long ago, Lord de Ramsay gave notice to 800 holders of allotments, alleging as a reason that they were "discontented." Such a reason assumes that permission to cultivate land (paying a rent) is a favour. But everyone knew that the true reason was that the 800 had voted against Lord de Ramsay's brother at the election. Lord de Ramsay thus had the power of forbidding 800 persons to hold land. And yet we wonder that villages are depopulated, that the young people find them "dull," and that all the most enterprising go off to the towns! A feudal lord of a manor would have had a statute passed against him, setting forth the injury done to the King and kingdom in the person of these tenants. But in modern times, when "profit" means money, the interests of the community are overshadowed by the interests of the individual. This was carried so far, that for fifty years the landowners of England controlled the supply of corn. There can be no more striking instance of the fact that the individual is better able to defend himself than the community. It would have been impossible to force a single individual to pay an artificial price for his bread, but when the whole people suffered, they were tolerably submissive. So tender are we of the "right" of a landlord to do what he will with his "own," that we forget that the "duties" of landholding are greater than the "rights," by so much as land differs from all other possessions.

The power wielded by land is far too great to be concentrated in so few hands. In the rural districts it is omnipotent. Country magistrates are almost invariably landowners, when not parsons; and when they are parsons, it is generally because the parson is also a landowner—or, as he has been called, "a squarson." Until 1831, the Game Laws gave sporting rights exclusively to owners of land of a certain value. Below that a man might not shoot a hare or a rabbit on his own land. The bolder spirits of a village took to poaching, and so came to ruin. Half the convicts sent to Botany Bay in the old days were manufactured by the Game Laws.

A good many years ago, the Rev. A. Barham-Zwincke,

writing of a Swiss valley, said that in England the whole valley would have belonged to one family, and that family and its servants and retainers would have been the sole inhabitants; whereas, under the Swiss system of peasant proprietorship, about 4000 persons live in the valley. At the time he wrote this, Mr Barham-Zwincke much preferred the English way, because the single great family would have so high a standard of cultivation and refinement; while the 4000 peasants lead a life of rude hardship. His remarks made a profound impression on me. I happened to know the valley extremely well—indeed, I had found the book at a mountain hotel in that very valley, and this was the first time I realised the effect of great estates in thinning down rural population. Mr Barham-Zwincke came in after years to a different opinion, as I could not help thinking, in consequence of what he saw in the valley.

Mr Shaw-Lefevre, in his work on "Agrarian Tenures," gives an English example. In a district of Westmoreland a large class of small yeomen survived to comparatively modern times. They owned between them 25,000 acres. They were all gradually bought out, under the direction of the will of a man who two generations before made a fortune in trade, and whose only daughter married a nobleman. There were in all 226 different purchases, nearly all from "statesmen," as these holders are called in the dales. Now, instead of 226 owners, there is but one. This is exactly what Mr Barham-Zwincke saw would happen under the same system in the Val d'Anniviers.

The same sort of thing going on all over England for the last two hundred years has resulted in 2250 persons owing half the total area of agricultural land in England and Wales.[1] Every one of these 2250 persons holds more than 2000 acres —the average is 7300 each. As there are about 12,000 rural parishes in England and Wales, these 2250 persons hold between them on an average two and a half parishes each. This does not include land held in cities and towns, or waste and common land, or woods and plantations, or land devoted to public purposes, such as roads, railways, and

[1] The total agricultural area of England and Wales is 37,320,000 acres, of which 33,031,000 only are accounted for in the Return of Landowners of 1870.

canals, or any land occupied by towns. The 2250 persons hold half the land in tillage; 1750 others (with from 1000 to 2000 acres each) hold between them 2,500,000 acres more; 34,000 persons, with between 100 and 1000 acres each), hold, in all, 8,926,000 acres; 217,000 own from 1 acre to 10—in all 3,931,000. "It would be interesting to know," says Mr Lefevre, "how many of the 34,000, owning from 100 to 1000 acres, are of the yeoman farmer class, and make a living by their land: how many of the 217,000 with one to 100 are present proprietors." He thinks that a very small percentage of those with from 100 to 1000 acres live by cultivating their own land. In the larger class, with from one to ten acres, a vast number are persons owning villas.[1]

In the division of Dorset referred to in the words quoted at the head of this chapter, there are ninety-two parishes, containing 166,200 acres. Of these, sixty-two parishes belong substantially to a single owner, or are divided between two adjoining owners. In twenty-three others more than three-fourths of the land belongs to two or three great owners. In two parishes only can the land be said to be owned by many persons. Four-fifths of all the land in this Parliamentary Division of North Dorset belongs to thirty persons. One great landowner owns substantially the whole of six parishes and half of six others. Four others hold the whole of two or three parishes and the greater part of two or three others. With the rare exception of a house here and there, villages, as well as land, belong to the great owners. In North Dorset, we are told, the landlords are resident, and there is no complaint. But who can pretend that villagers so placed can call their souls their own? Their livelihood and the very roof that shelters them depend on the goodwill of one man—who is usually the great landowner's agent. If there is no complaint, this is the result of the characters of the great man and his agent. There can be no real independence. The fewer owners the more entirely the people are at their mercy.

The whole body of our Land Laws conspires to promote and perpetuate a state of things in which, as in North Dorset, one man can own six parishes and half of six more. No responsible thinker proposes any violent change, any

[1] These figures are for 1893.

forcible confiscation or redivision of the land—he knows that, even if it could by any possibility be done, the same causes which have produced accumulation once would produce it again. What he does ask is that the laws shall cease to promote and perpetuate a tendency to accumulation strong enough to need no artificial help. He asks that the other law shall be given a chance—the law which tends to break up accumulations, sometimes by the advent of a spendthrift, sometimes merely by a large family of co-heirs —whom our present system forbids to be co-heirs. Let land be no longer hedged about with entail and with a costly and complicated system of conveyance. Let it take its chance, as money does. If we could conceive of money being hedged about as land is, in a little while we should have 2250 persons in possession of half the money in the country. We all see that this could never be allowed for a day. But people can subsist without money, and cannot exist except upon land—even the slums are land. To promote the accumulation of land is to hinder the growth of citizenship.

CHAPTER XXII.—LEASEHOLD *VERSUS* FREEHOLD

IT is two hundred years since King William's Assessment, and one hundred years since Pitt's Act. During these two hundred years the value of land in England has increased nearly five-hundred fold. For as the Land Tax was to be, at its highest, 4s. in the £, and realised at this highest £2,037,627, the whole value of the whole land of England in 1792 must have been £10,188,135 (4 being the fifth of 20). Mr Fawcett estimated the capitalised value, in the last third of the nineteenth century, at £4,500,000,000. The freeholder receives and the leaseholder pays enormously more than in 1792, but the ground landlord is still supposed (if he has not redeemed his tax) to possess property no more valuable than in the days of William III. And even so, the rate is very unequal. As the proportions fixed by Pitt's Commissioners were made

invariable, no parish pays the full original rate, and many pay only 1d. in the £, and even the fraction of a penny.[1]

The law regarding leasehold property is conceived almost entirely in the interests of the "ground" landlord, although he has spent less upon the "ground" than anyone else connected with it. Most of the occupied land of England is leasehold; that is, it is not the permanent property of those who build houses, streets, make roads, drains, wharves upon it, or who have cultivated the soil in order to produce the fruits of the earth, or who have sunk mines below the earth, in order to extract the mineral wealth of the earth. Whether land is the site of a town, or of a farm, or of a mine, whether corn and grass grow upon it, or the traffic of a city passes over its streets, or coal and iron mines burrow beneath it, it belongs but as a temporary possession to those who are using it. They are said to have "bought" the property, but this only means that they have bought the right to use it for a certain time. When that time expires they must "buy" it again in the same way. And if, as almost always happens, they have made it more valuable by their exertions, and by the money they have spent on improving it, they will have to pay more for the right to go on using what they have made more valuable. They will have to pay more, not as a contribution to the general purposes of the community (as they do when they pay taxes), but to enrich the individual who owns the ground. This ground landlord receives an increment earned by other men. Each time that the ground returns to the ground landlord it may return more or less enriched, and if so the enhanced value is carefully described in the bills which notify that the lease is once more for "sale," that is, for hire. And the landlord in many cases benefits twice over by these improvements which he has not made; for in a very great many instances he has made the tenant pay for permission to make them, though they were eventually to become his own! He is

[1] In the Poor Rate Returns, presented to the House of Commons in 1818, and reprinted by order of the House in 1826, the rental of real property in England and Wales is given from the Returns to the "Tax Office," for the year ending April 1804, as £38,000,000. The disproportion of rates is mentioned. Nine counties are taxed above 4s., twelve from 3s. to 4s., and eighteen under 3s.

paid for allowing them to be made, and when the lease is transferred to another leaseholder he makes the new leaseholder pay a "premium" (the modern word for "fine") over and above the price of the lease, for permission to buy the lease, and this "premium" is high in proportion to the value of the labours of the outgoing leaseholder. And if the lease is renewed, it is the same. The leaseholder has to pay a higher "premium," as well as a higher price. The leaseholder "improves the property," and the ground landlord makes him pay a heavy fine, not to the community, but to himself.

A recent instance of a "fine" happened in connection with a drapery establishment in Buckingham Palace Road. The tenant entered on a new lease, "which cost £4000 a year ground rent. It was very good of the landlord to have granted a lease at all, for he could have seized the whole business, goodwill, and everything. The landlord was not satisfied with this increased annual rent, but wanted something in advance, a 'sub,' but which he called a fine, amounting to £50,000." That is, as a man "may do what he will with his own," this landlord could, if it had suited him, have refused to renew the lease, and could have granted another lease to another man, who would have come into all the advantages gained by the draper who founded the business.[1] Here the tenant had made the land valuable, and the landlord demanded to benefit by his labour.

The process is usually this. A ground landlord grants a lease for ninety-nine years to a tenant who undertakes to build a house, or houses, on the land. As the houses will become the property of the ground landlord at the end of the lease, a clause is always inserted binding the lessee to build them in a suitable manner, and to hand them over at the end of the term in good repair. It very seldom happens that the original lessee and his representatives hold the lease for the whole ninety-nine years. Far more often, he or his heirs sell the remainder, of course with the landlord's consent, and under the same condition of handing over in good repair at the end.

The ground landlord is protected every way. He can

[1] This case was mentioned by Mr Hyder in a speech at Hendon, reported in *Land and Labour*, December 1906.

distrain on the goods of a sub-tenant, although that tenant may have paid his rent to the tenant-in-chief. An exhibition of pictures was thus seized for ground rent, within the last year or two; and we all remember the disgraceful scene at the close of the dress exhibition, where the same thing happened. In that case, the property seized belonged to foreign exhibitors. What should we say if such a thing happened to English exhibitors in Berlin or Paris?

The ground landlord can force an outgoing tenant to put a house into repair, although it is intended to pull it down. In such a case, however, he sometimes accepts a sum of money for the repairs which are never to be made. Even should the house fall down, the *leaseholder* must put it up again. A very flagrant instance of this occurred some sixteen years ago, and owing to the tenant's resistance, is not yet settled. A lady took over the remainder of a lease of ninety-nine years. The ground landlord, a great nobleman who owns whole districts of the west end, in granting the original lease, inserted the usual clause stipulating that the house to be built upon the land should be constructed "in a suitable and workmanlike manner," and of course the further clause, that at the expiry of the ninety-nine years the house should be handed over "in good and habitable order." It must be obvious that this condition implies that the house is capable of standing at least till the expiration of the lease. The house in question, however, was a bad case of "jerry-building"—a fact which escaped the notice of the duke's surveyors. Only about twenty-seven of the ninety-nine years had expired when the original lessees sold the remainder of the lease to Miss J. M. Scott; and in three years more the house collapsed. The collapse was so serious that the Metropolitan Board of Works condemned the house as "a dangerous structure." The builder sent to examine the damage was astonished that it had stood upright so long, considering the manner in which it had been built—now fully revealed by the collapse. By every rule of equity, the cost of making the house safe and habitable ought to have been shared between the ground landlord and the original lessees; the surveyors of the former had passed the house as well built, and the original

lessees had not fulfilled the condition of "workmanlike" building, contained in the Title Deeds. But it was Miss Scott who was ordered to make the house safe and habitable—in this case it must have been almost rebuilt. This she very excusably refused to do, alleging that she could not afford to pay twice over for the leasehold, and that the damage was caused by the negligence of the ground landlord's surveyors, and of his lessees. An action of eviction was then begun. And this was hardly the worst. Every legal device was employed, and many illegal ones, which need not be particularised here. One instance, however, of a distinct attempt on the part of the law to protect the stronger side must be given, because English law claims for itself not merely a supremacy, but something not far removed from a monopoly of justice. "In the course of my eviction from the 'Dangerous Structure,'" says Miss Scott in a statement published this year, "I was not permitted to say that I had received either loss or damage—or that the house was not built in the manner alleged in the Title Deeds, or that it had always been kept in good repair since it had come into my possession, nor that the ground landlord's agent had called upon them (the original lessees) to repair the house, *according to the terms of their lease*. When I tried to state these simple and undeniable facts I was at once summoned to appear in Court, so that these statements on my part should be 'struck out,' as being 'embarrassing and vexatious' to the lessees, and moreover I was to pay for having dared to make the attempt of vexing and embarrassing them. . . . 'But,' I said, 'they did refuse to put the house in order, and conform to the terms of their lease, when requested to do so by the ground landlord's agent.' 'It may be so,' said the Master of the Court; 'but you cannot be allowed to remind them of that; it is vexatious to them and embarrassing.'"

Thus the law endorsed the dishonest cynicism of *caveat emptor*. It refused to take into account that Miss Scott had paid for an uninhabitable house—the finer feelings of those who sold it to her must be considered, to the extent of not even allowing them to be reminded of the loss caused to herself. It is as though a man who has hired a horse unable to work not merely found himself

obliged to pay for the hire of a useless animal, but was compelled to furnish a good horse to the man who hired him the bad one. In no other transaction is there anything comparable. If Miss Scott's dressmaker had sent home an unwearable dress, Miss Scott could have refused to pay. When a "dangerous" house has been sold, the purchaser is required to rebuild it!

This case was thrown into Chancery, and if the Chancery acted up to its first professions, of being a Court of Equity, to "soften and mollify" the rigour of the Common Law, here was an excellent opportunity of doing so. By every rule of "equity," the expense of making good the damage ought to have been shared between the ground landlord and the original lessees. Both were undoubtedly to blame, and the only doubt could be whether the blame should be equally divided, or whether the original lessees, having actually built the house, ought to be considered more responsible than the duke, who by his agents had accepted the house as well built. The one person who had nothing to do with the erection was, however, the one person elected to make good the damage!

This is, of course, an extreme case; but the system is the same in all cases—the ground landlord, who benefits most at least cost to himself, is the most protected by the law, which ensures that at every expiration and every transfer he shall find himself enriched by other men's labour, and the expenditure of other men's money, and the exercise of other men's abilities. Thirty years ago, Professor Thorold Rogers defined the position of the landlord: "Every permanent improvement of the soil, every railway and road, every bettering of the general condition of society, every facility given for production, every stimulus supplied to consumption, raises rent. The landowner sleeps, but thrives. He alone, among all the recipients in the distribution of products, owes everything to the labour of others, but contributes nothing of his own. He inherits part of the fruits of present industry, and has appropriated the lion's share of accumulated intelligence."

The following letter, signed "Englishwoman," appeared in the London *Echo* some six or seven years ago. It is an instance of the sort of extortion often practised on the renewal of a lease.

"Two years ago," says the writer, "I purchased a house on the Portman Estate (18 years' lease) at £10, 10s. per annum. I spent more than £300 to put it in tenantable repair, thinking that I should get a renewal at a fair ground rent. I applied, and the agent came to inspect the premises, and a few days afterwards sent me the terms as follows:—Lease for 34 years, ground rent to be £80 instead of £10; fine £1000 renewal, to be paid from the day of application, or £5 per cent. interest on the £1000 from that date, which would be principal and interest for eight years, £1400; improvements to be done, as stated in agreement, amounting to about £500, before a new lease is granted; all Viscount Portman's solicitor's fees to be paid by me. For the simple drawing of this agreement I paid £15. The last year of the 34 years' lease the house to be redecorated throughout; property to be insured by me in the Portman Fire Office. Upon remonstrating at the exorbitant terms, I received a letter from the agent that I could accept them or not, but in the event of my not accepting, I should not have any further opportuntity of applying.

"Now, sir, what right can the landlord have to take away my house? He has never spent a 1d. towards its improvement. Of course, the ground had increased in value, but that is through the tradespeople and not through the landlord. The ground rent is increased eight times; then what right has the landlord to demand £1400 for a house that I bought, and what right has he to dictate improvements that I have to pay for, so that after the expiration of a few years he may get larger premises, and another larger premium, without him spending a fraction, not even to pay the solicitor for getting the money."

"Englishwoman," adds: "It seems incredible that people endure such extortion without seeking redress." She hopes the law will be altered—it "beggars tradespeople to enrich the aristocracy."

The meanness of this transaction would do credit to the lowest Jew money-lender. Not only is "Englishwoman" to pay Lord Portman £1000 "fine" for taking his house

for a longer term, but she is to pay him interest on the fine for the eight years already expired! This antedating of interest proves that the Hebrew race has no monopoly of sharp practice.

This is the private side of leasehold. The public side is no better. The law which gives to the ground landlord all the unearned increment created by the community injures the community as much, if less ruinously, as it injures a private person. It is only less ruinous, because a whole community is better able to bear extortion than is any one member of that community. But the same principle is at work, with similar results.[1]

Leasehold property is sometimes let, not for a term of years, but for a term of "lives."[2] Leases for lives are very common in Cornwall. The lessee names three persons of whom he himself may be one—and the lease is to last until the death of the last survivor of the three. The evils of such a custom are obvious, especially in a district which, like West Cornwall, is almost wholly mining, and where, therefore, there are greater risks to life. But even without mining accidents, such leases can fall in at any moment. Mr Dawson, in his "Unearned Increment," gives instances. On an estate in West Cornwall, "five farm leases on sets of lives" fell "in hand" within ten years. An epidemic of typhoid carried off the whole fifteen lives. In another case, "a leaseholder in a Cornish village had spent £260 in building a house on land held for three lives. All the lives expired in fifteen years, and the landlord became the absolute possesser of the building." The system has been well described

[1] "The more numerous the community becomes and the more it thrives, the higher the tribute it must pay to the owners of the soil upon which its dwellings have been placed. In lending or selling land the owner renders now no greater service to the community than he did years ago—when land was cheaper—but he requires far greater remuneration for the service. Where the landlord, by his own labour or expenditure, increases the value of his property this growing tribute is, to some extent, justifiable; but it will generally be found that it is not the owner but society which makes the land more valuable. Nevertheless the law says that society may be rack-rented on its own improvements."—Dawson, "The Unearned Increment," p. 15.

[2] Sometimes also for "years and lives"—that is, for so many years, usually twenty-one, after the death of the last "life."

as "a flesh and blood lottery." Yet it is said that four-fifths of the house property in West Cornwall is held on life leases. The most extraordinary feature of the business is, that mining is the chief industry of West Cornwall, and it inevitably happens that miners are selected for "lives." A miner will put in his own life. A very cruel change in law has transferred the burden of proof of survival from the landowner to the leaseholder; and Mr Broadhurst was informed some years ago that there was then an old lady in Devonport Workhouse, who would have had enough to keep her in comfort, if she could have traced the last "life" on the property, but the person had emigrated, the old lady could not produce evidence of his existence, and under the change of law, the landlord was able to resume possession without proving the death.

At the Royal Commission of 1886, Mr John Vivian, a tradesman of Camborne, was examined. After testifying to overcrowding, caused by pulling down houses, he was asked concerning leases for lives. The usual term is for 3 lives, or for 50, 60, or 80 years. Mr Jesse Collings said: "I was born upon an estate where the life tenure was the custom, and I found that in many cases men put their children's lives on a house, and some day or other they found themselves deprived of both children and property. In other cases the lives of sailors were on, and after a time there was great doubt whether the lives were in existence or not, and generally a great deal of misery was the result of this life tenure. Is that the state of things in Cornwall?" Mr Vivian replied: "There are several instances given in this little pamphlet ('The Bitter Cry of Cornish Leaseholders'), all of which I think I can vouch for." Asked how long 3 lives would give, witness replied: "I should say from 30 to 40 years would be the average; just over 30 years, perhaps, because the lives that are put up are frequently miners, and they are proverbially a short-lived class." "Would you say that the 3 lives system is not popular in that part of England?" Answer: "It has been popular because they have no chance of getting other terms."

Leases for terms of years can contain the most unjust provisions. In a certain village of Carmarthenshire all the land belonged to one or other of two proprietors, and all the houses had therefore necessarily been built by the

occupiers on land belonging to one of them. The leases are mostly for ninety-nine years, but the ground rents had been almost doubled in the last eight or nine, and the leases contain a clause that if any part of this rent is twenty-eight days in arrear, "the lessor may re-enter upon any part of the said premises in the name of the whole, and thereupon the said term of ninety-nine years shall absolutely determine." The gentleman who told this story to Mr Broadhurst added: "A fortnight ago I heard of nine houses of which the ground landlords had entered into possession under this clause owing to the great fall in wages"; and though himself a landlord, he expressed himself as heartily deprecating "the gross injustice of legalised landlordism." "By the leasehold system, the landlord is not content with taking the houses that he did not build; he also takes the goodwill of the trade attached to the house, and, on renewing a lease, extorts a heavy payment for allowing the tenant to continue to enjoy his own business which he has brought to the house. It is all cant to talk about freedom of contract where a tenant would be ruined if he did not submit to his landlord's terms."[1]

The story of this Welsh village recalls the accusations brought by the Reformers against the new landlords of the Church lands—that they deliberately tried to cause the forfeiture or relinquishment of leases, that they might renew on better terms for themselves. And the poorer classes suffer more than even the enhancement of rent; for the system gives an additional motive for lowering wages. A landlord who is also an employer of labour has much to gain from his tenants' "difficulties." If they cannot pay their rent, he can take from them all they have. Those nine houses in the Carmarthenshire village represented to the landlords nine houses to be let on fresh leases. Instead of the suffering of "one member" entailing the suffering of the others, it positively benefits them. The depraving moral effect on the characters of the rich may account for much in the state of political opinion which shocks those who believe that "justice" is something more than a name. What must be the moral condition of the landlords who

[1] Broadhurst and Reid's "Handbook on Leasehold Enfranchisement," to which this gentleman contributed an anonymous chapter, "The Remedy for Landlordism."

took possession of those houses? What are we to say of laws which allow the validity of such a contract? The Jew money-lender who exacts 60 per cent. from the spendthrift heir is an honourable man compared with a landlord who takes a house because a month's rent is owing to him. This trumpery debt gives him the right to cancel a lease, and take possession for himself of a house built with his debtor's money. "Unearned increment" is the increase in the value of a site from external circumstances, and not from the exertions of the ground-owner of that site. Such external circumstances may be said to be almost invariably connected with increase of population, and this increase of population is always due to the exertions, not of the ground-owner, but of the occupier of the site.

Reckoning the "unearned increment" of London as, on an average of 20 years, £304,634,[1] it amounted during the 17 years from 1870 to 1886 (both years included), to £6,092,680. This increase, created by the industry and enterprise of the community, ought to benefit the community. At present it benefits the ground landlord. It takes place in all large towns. We can see what the industry and enterprise of a community means, if we read the evidence of Captain Richard O'Sullivan before the Select Committee on Town Holdings, in 1886.[2] He said: "Queenstown in the course of a century has grown by the sheer industry and enterprise of its inhabitants from a barren rock into a property valued at £21,000 a year, a value for a lump sum equivalent to half-a-million pounds. None of it has been created by the landlord, yet he tries to confiscate it. Nearly eight miles of roads and streets, with their flagged footways, main sewers, private drainage, crossings, channels, etc., costing at least £30,000, have been paid for out of the pockets of the people, and on the expiration of the leases the landlord confiscates them also.

[1] Mr Webb's calculation, based on the returns. The £6,092,680 is the "spontaneous increate" of the rental of London between the valuations of 1870 and 1886, £22,142,706 and £37,027,510.

[2] This was part of a larger Commission on the Housing of the Poor. The Commission sat from 1886 to 1889. Captain O'Sullivan had been Chairman of the Queenstown Commissioners for twenty years. He was sent to give evidence before the Select Committee, by the whole town, "without any distinction of class or creed."—See Reports, 1886, xii. 367 (213, Session 1).

The public quays have been built at the public expense, and even the foreshore upon which they are erected had after great and expensive litigation to be paid for to the uttermost farthing to the landlords, who refused to contribute in the smallest degree to the erection of the quays. The town as it stands has been paid for many times over by the occupiers, and yet the landlords claim it as their own, and except the occupiers are prepared to purchase it over again at a fabulous amount they must clear out and leave the labour of their lives to the landlords, if the Government fails to give them protection."

These words exactly describe the fact—leasehold property, under our present laws, means property which the occupiers must purchase over again at a higher price each time, or "clear out" and leave the labour of their lives to the landlords.[1]

The whole area of London is about 75,000 acres, and the value is about £16,000,000 a year, which gives an average of £200 an acre, but in some parts a square foot is worth from 30s. to 40s. a year, equal to a capital value of from £65,000 to £87,000 the acre. As farmland, it would be worth £4.[2] And this gigantic increase in value is due to the increase of population, and to the industry of that population. No one has yet attempted to show that the ground landlord has by his exertions or abilities caused this increase. The population of London has increased the value of London, and the population pays for that increase. By an ingenious arrangement of rates, the poorer districts pay more in proportion than the richer. Thus Rotherhithe pays 7s. 11d. in the pound, Bow, 8s. 1d., but the district round the Savoy only 4s. 6d. This is the reason why there are

[1] "As a matter of fact, the owner contributes nothing to local taxation. Everything is heaped on the occupier. The land would be worthless without roads, and the occupier has to construct, widen, and repair them. It could not be inhabited without proper drainage, and the occupier is constrained to construct and pay for the works which give an initial value to the ground rent, and, after the outlay, enhance it. It could not be occupied without a proper supply of water, and the cost of this supply is levied on the occupier also. In return for this enormous expenditure, he has his rent raised on his improvements, and his taxes increased by them."—Rogers, "Six Centuries of Work and Wages."

[2] Mr Bilson, M.P., on Land Values.

proposals for the equalisation of rates. Throughout, the occupiers pay more than the ground landlords.

All our public improvements are paid for by the public. It is really singular how little the great landowners of London do for London. In most other countries, a nobleman with the enormous rental of the Duke of Bedford, would have presented to London Covent Garden Market—the state of which at present is a disgrace to the greatest city in the world.

The Thames Embankment was made at a cost to the public of nearly two and a half millions—paid partly out of the now abolished London Coal Duties, and partly out of the inhabited house duty—a duty paid, not by the ground landlord, but by the occupier. In this case, too, the ground landlords received the full price of the land, compensation for "severance," 10 per cent. for "compulsion," and found the value of the unsold half of the land enormously increased by the substitution of a magnificent frontage on the river, for the former unwholesome mudbanks.[1]

The Tower Bridge, which cost the Corporation over three quarters of a million, was also partly paid out of the Coal Dues.

London ground landlords are paid heavily for permitting improvements to be made, and they benefit enormously by those improvements after they are made. But not content with this, they denounce as "robbery" and "confiscation" any proposal to tax them in any sort of proportion to their gains. The ground landlord is the only man whose property increases in value without effort or expenditure on his part, and he is the only man who is protected from bearing his share of the public burdens. As this continual rise in value is solely due to the public, the public and not the ground landlord ought in common justice to reap the chief part of the benefit. The expenditure caused by growth of population ought to be borne by the growing land values. But as it is, "The people of London pay, directly or indirectly, £11,000,000 a year to make and keep the land valuable; and then pay £16,000,000 a year to the landlords because it is valuable."

The story of the making of Charing Cross Road, besides being an excellent example of the way in which ground

[1] "The Great Problem of our Great Towns."

landlords take the lion's share of profits from improvements for which the public pay, has at this moment an additional interest in connection with another burning question of the moment. The story was told by Mr Chamberlain at Birmingham on the 20th October 1885. After describing what the Board of Works proposed to do, Mr Chamberlain continued: "But when the Bill came before the Committee of the Commons, one great landowner along the line of route, by his agents opposed the Bill, and claimed the insertion of a clause for his special protection, which provided that the Board of Works should not take one inch more of his land than was necessary for the formation of the street, and that he should have the frontage along the whole line of his property. Just consider what that meant. It meant that this landowner was to have the fullest possible price for his land—it was to be bought from him at its prospective value; he was to have compensation for severance; then he was to have 10 per cent. for compulsory sale; and heaped up on all this he was to have the enormous advantage and profit which the turning of his property into the front land of a great thoroughfare would add to its value. Well, the Committee of the House of Commons, finding out that this proposal was altogether exceptional, that there was only one single precedent for it, and that in the case of a Tory peer, Lord Cadogan, rejected the clause. But when the Bill got up into the House of Lords, this great landowner was one of their number, a peer of great influence in the Upper Chamber, and the Committee of the Lords inserted this clause . . . Mr Fawcett moved that the House of Commons disagree with the Lords' amendment, and so strong was the feeling in the Commons that the resolution was carried without a division. . . . Who do you think was the landowner? . . . It was the Marquis of Salisbury, the Prime Minister of England."

The weight of evidence taken by the Commission of 1886 and following years (which sat to inquire into the general housing of the poor) went to disprove the assertion that large freeholders necessarily keep property in better condition than small ones. Thus, Mr Dixon, medical officer for Bermondsey, said: "The worst houses are those which are the fag end of a lease." Lord William Compton, a son of the Marquis of Northampton (who owns Clerkenwell), said that

when a lease is nearly run out, the lessee gets rid of it by letting it rather low to a man unable to lay out money on it, but who, as he has nothing, is not afraid of being called on for dilapidations. Mr Boodle, agent of the Duke of Westminster and the Marquis of Northamption, admitted that on the Northampton estate repairs and sanitary improvements required by the leases were not always insisted on, when the lease was renewed. If it was a short lease, on a higher rent, the improvements might be dropped to secure the higher rent. As Mr Boodle frankly put it, "ventilating the soil pipes, and disconnecting all the waste pipes is found to be a very expensive business." This explains the insanitary condition of so many houses in the "slums." Mr Boodle, it should be mentioned, was a hostile witness, and finding that the Supplementary Report stated that his evidence condemned the leasehold system, he sent a public protest to the papers. It should also be said that he asserted that "no well-disposed landlord would attempt such a thing," as resuming possession on any breach of contract whatever, as allowed by the lease. He laid on the middlemen the blame of everything that went amiss; they it was who broke up houses into tenements, and Lord Northampton intended in future to collect the rents directly through a lady visitor. Mr Hunt, surveyor to Lord Portman's London estate, declared that it was easy for a working man to buy a leasehold house, and he would be quite as well off as if it were a freehold. Asked whether an applicant could purchase a freehold, he replied that he had never been applied to for one, and when pressed harder admitted that the reason "probably" was that it was known the application would have been useless. Again asked why, he replied that it would not be to Lord Portman's advantage: "It would be a loss to Lord Portman probably, and no sufficient gain to the purchaser." "But if it is good for Lord Portman to hold freeholds, why is it not good for the tenant of a house?" To this awkward question, Mr Hunt replied: "I am travelling rather outside what I came here to answer."

The evidence is most instructive reading. Not only do many facts come out, illustrating the working of the system, but the opinions of witnesses who represented the great ground landlords show how they understand what they are always calling "the prosperity of the country."

Mr Ryde, past-President of the Surveyors' Institute, began by naively confessing that the Institute was "greatly alarmed" on hearing there was to be legislation. They "all agreed" with him that "the prosperity of the country" required no more legislation in connection with land. Reminded that he had once written a pamphlet advocating the simplifying of land transfer, he admitted that such a simplification would be an advantage. But this did not make him less clear that a ground landlord has "a perfect right" to raise the rent when he sees that the tenant is succeeding in business. If he knows that a certain piece of land has become of increased value to the tenant, he has the perfect right to take the full advantage of this circumstance—as much right as the owner of a Derby winner has to ask a higher price for his horse after he has won the Derby than he would have asked before. Asked whether he thought the cases analogous, Ryde first confessed there was a difference, and then repeated the comparison of "rights." He admitted that in the course of ninety-nine years, properties generally increased in value "three, four, or five times." "You may take it that they do. But that is part of the bargain; it is seen beforehand, and it is known that it is so: *there is nothing else like it; it is nothing like the old copyhold or feudal system, there is nothing to be compared to it.* . . . The freeholder says, I will grant you a lease of this land for ninety-nine years, if at the expiration of the time you will leave me the house upon it." There must be "freedom of contract." "We must be allowed to bring our abilities to bear and work it out unfettered." Here, of course, freedom of contract means the freedom of the freeholder to drive the hardest bargain he possibly can; and the "abilities to be brought to bear" are the abilities which enable one man to exploit the labour of another man. The one-sidedness of the "freedom" never seems to have struck Mr Ryde at all. Where is the tenant's freedom? The landlord is truly "free." He can make a more or less hard bargain with the lessee, but the lessee must submit to the terms, or give up business altogether. It is true that he sees it beforehand, and knows that it is so; he also knows, not that he can take it or leave it, but that he must take it. He agrees, not because he willingly accepts the terms,

but because they are the only terms on which he can obtain something for which there is no substitute. There is certainly "nothing like it," and it is certainly "nothing like the old feudal system, there is nothing to be compared to it"—not even the right of asking what price you please for a horse that has won the Derby, a right also "seen beforehand." In no market but the English land-market is any commodity paid for over and over again; and in no other market is an improvement acknowledged by a "fine."

The plea for "freedom of contract" assumes a still more ironical aspect when we remember that the persons whose interests are to be thus protected are not taxed on these ever-increasing land values. Those to whom the ground landlord lets his land—and in letting it his contribution to the "prosperity of the country" begins and ends—those to whose exertions and sacrifices that increasing value is due, are taxed, but the landlord escapes. If those who are improving the land make more money as the years go on, they pay more and more into the public treasury. A careful inquiry is made into their "profits," but the value of the land itself is not inquired into. The value of the land may have increased three, four, or five times in the course of a century, but the owner of the soil still pays the original rate, and grows rich while he sleeps.

In England, property in land is protected far more effectually than property in money. Yet, of the two, property in money needs more protection, for whereas we are always being reminded that land "cannot run away," we all know that money cannot only "take to itself wings" by our own folly, but that when we are robbed of money it is seldom that we recover it. The worst that can happen to the ground landlord is to lose his rent for a time—his land remains where it was, and possession can be recovered, if his title is clear. But though there may not be the smallest doubt in the world that our money was our lawful property, the law seldom recovers it for us, even when it punishes the robber. This is usually the case even in the more vulgar branches of theft, such as burglary and pocket-picking, but when it comes to the more complicated devices of the swindler, our chances are

poor indeed. An English judge said publicly not long since that the law respecting companies seemed framed to protect fraud. The same has been said of the law of bankruptcy. Sometimes, indeed, the law appears to connive at the escape of the dishonest. In an action to recover money, the jury may find for the plaintiff, and the Court may order the money to be paid at once into court; but the defendant has only to give notice of appeal, to be allowed to leave the court with the money in his pocket. He can then withdraw his appeal, and the successful but unfortunate plaintiff has no redress. How different is the protection which the law affords to the landowner!

CHAPTER XXIII.—CONCLUSION

WE have seen the grand old word "freeman" change its meaning. At first it meant the man whose land was his own, who could not be turned out of his house and his little fields at the will of another man. Then, the "freeman" was a countryman. But, as towns grew, and welcomed more inhabitants, the serfs escaping to the towns became "free"; and now the "freeman" was a townsman. Again in our own time, the meaning changed so much that another old word was used with a new meaning, and we say now that the £6 householder is "enfranchised," because he has a vote. It is an admission that the person without a vote is something less than free.

Now, he is free. The justices no longer fix the maximum of his wage. But neither do they fix a minimum—ironically called "a living wage." The man as low down as the serf of old, the man who does the hard, thankless, "unskilled" labour on which all other labour rests, has now no place to call his own. He has been driven from the fields into the towns, there to hang on the skirts of regular labour and pull it down. He belongs to nobody, and nobody belongs to him, not even his master, who coolly tells him he is too old at forty, and shakes him off like an old shoe. In a high state of civilisation there is hardly anything which is not worth more than a man. A horse is taken care of—he costs money to

buy. So does a machine. It costs money to replace a slave. But a free labourer can be had for nothing—hundreds of him imploring to be taken on. The free labourer herds in slums where no rich man would keep his horse or his dog ; and when he is old he is thrown " on the rates "—the compulsory charity of the State he has served. If it is proposed to give him an Old Age Pension of 5s. a week, a chorus of voices exclaim that he will be demoralised—they mean that he will not work so hard if he thinks he need not die in the workhouse.

We are waking up at last to the fact that an artificial system—which we dignify with the name of civilisation—is producing artificial degenerates, whom lack of good air and good food, and above all of hope, have made degenerate. For two hundred and fifty years we have been trying to account for poverty. Everything has been suggested, from idleness and vice to stage-coaches and tea-drinking. Arthur Young thought that poverty in villages was due in part to the drinking of tea ; he frequently mentions that in a certain village they drink it twice a day. He had not then made his famous tour in France, and seen how sand may be turned into gold, when the sand is a man's own. Now, the poor drink something more fiery than tea—or than the beer which Young probably preferred to tea. Bad air, bad food, and the lack of hope in a man's life, easily lead to the craving for strong drink, and the strong drink completes the degeneration which the bad air and food began. And so we have an army of degenerates, of unemployed, who ought to be called unemployable, for they have been found unfit even for food for powder. This discovery has alarmed us. We see that if it goes on we shall lose our place among the nations. To this has too much civilisation brought us—that is, too much of the life of cities. Consciously and unconsciously, intentionally and unintentionally, we have for generations been doing everything to destroy the wholesome balance of town and country, and we do not like the result.

But we have destroyed more than this. We have destroyed independence of character. How could it be otherwise ? For centuries, the poor Englishman in an agricultural district has been gradually losing his place in the Commonwealth. As a serf, a " customary tenant," tied to the soil, he had a place in which he had a right to be, and a

lord who, if he came near to possessing him, in return secured him from destitution, and had an interest in protecting him from all oppression but his own. If the serf tilled the soil for his lord, he tilled it also for himself. He had deep roots in the soil, whereas the whole tendency of modern social policy is to uproot him from the soil, with the result of leaving him no place, and sometimes a doubtful right to exist; to call him a peasant is to confuse the meaning of words.

The feudal system, with all its faults, was a reciprocal system. If the villein owed much to his lord, the lord owed something to the villein. When that system broke up under the Tudors, money began to rule as it had not done before; and the direct effect was to make money more valuable than men. The English labourer, robbed of his Gild, tuned out of his field and common, literally lost the right to exist, except during such time as he could obtain a master. He was liable to be hanged for no other crime than having no work to do. Twice, he might be spared—if somebody wanted him for a slave. The third time he was out of work, it was hanging. If it was evident that he was too old or too sick to work he was flung back an unwelcome burden on the place of his birth—to be a slave for ever if he had tried to inflict himself on the wrong place. He esteemed himself fortunate if he was allowed to beg. Yet, now and always, he executed the manual part of the " great works " of which the nation took the credit. He did whatever was too hard and too disagreeable for his betters to do. He was cajoled into fighting his country's battles by land, and kidnapped to fight her battles by sea. And there his part in fashioning the country's destinies ended. He had no voice in the quarrels in which he fought, or in the great affairs of the nation—nor even in the little affair of what wage he was to receive for his blood and his toil. It was for long a hanging matter for him even to discuss with his fellows any rise in wages. The justices set his wage just high enough to keep him alive, with heart enough in him to beget children to do the hard work of the next generation. He had been thrust off, weeded off, edged off the lands his fathers tilled—if he still tilled them, it was for the rich farmer who had persuaded him and a score of his fellows to sell their few acres—gaining their consent more easily by

first enclosing the common where they used to feed their cows and their asses.

Things went on in this direction until enlightened men thought that small holdings were the ruin of the nation, and enormous farms its wealth. We all came to look on land as something from which a man got rent. We talked about small farming not "paying," meaning that it did not pay rent—as though rent were the sole end of corn. So towns were more and more overcrowded, and villages made emptier and emptier, and landlords restricted the number of houses in villages, because the man with no land of his own to till, and not needed for other men's lands, was an encumbrance. Then came machinery, and the factories of the days before the Reform Bill, when little children of seven were set to do the work of men, and a man was dismissed if he took his child away; and the children slept as they worked, and spoiled the work, and were beaten; and one in ten of them was crippled or deformed. What fortune amassed by a manufacturer can make up to the State for such a physical ruin of the next generation? We all believe that many terrible abuses existed in the past, and we know that these abuses have long since come to an end. But all that this knowledge does for most of us is to encourage us to believe that all is right now. Unfortunately, it is not so. An abuse may be swept away only for a worse abuse to come in its place. We forget, when we condemn the feudal system, that it was at anyrate a system of reciprocal rights and duties. The feudal lord exacted "aids" from his tenants, but the occasion and the amount of those aids were strictly defined. The modern landlord does not demand "aids"—he raises the rent. The modern landlord's power is practically absolute; the law does not limit it. In most cases, an English landlord treats his larger tenants well. If he did not, he might find his farms standing empty. But he is restrained by his own interest, not by the law. A feudal lord was restrained by the general interest.

The feudal lord was not allowed to play tricks with his tenants, because our ancestors believed that the commonweal would have suffered. But our first thought is not the commonweal, but a man's right to do what he will "with his own." Now land, by its very nature, can never be a man's "own" in the sense in which his hat, his coat, his

chair, are his "own." Other hats, coats and chairs can be made without limit. But more land cannot be made, nor can anything be substituted for it. No human being can say that he exists independently of land. Land is literally the foundation of human life.

Let us try for a moment to suppose it physically possible for a few individuals to accumulate in their own power the greater part of the air we breathe and to let it out on certain conditions. Would not even the "Liberty and Property Defence League" call for the "nationalisation" of the air? And yet if they did, they would be admitting the principle that some things cannot be private property. Land is the foundation of existence; but when anyone says that it ought not to be in the power of individuals he is called a robber. The robber is he who locks up that without which man cannot exist.

But it is not necessary to take so extreme an instance as air. Let us imagine that a few persons had got into their possession all the current coin of a country, and demanded payment for the use of it as "change." Would anyone be found to tolerate such a state of things? In Turkey, something very much like this exists—the right to change money is sold by the Sultan to the money-changers. Such a monopoly would not be endured in England by the most thorough-going monopolist. But it does not stop trade in Turkey. And if there were no money at all in circulation, trade would still go on, by means of exchange and barter. In fact, as it is, no country ever pays in coin if it can pay in goods. Money is a convenient token, but it is not the foundation of commerce. The foundation of commerce is the exchange of commodities, not of coin. There is no real analogy between "private" property in money, and "private" property in land.

Political economists have been a great deal too apt to consider economic problems from the point of view of money profits, to consider them with reference to property rather than to life. And so they talk of profits, without defining *whose* profits. Unless wages rise, or profits are shared, the worker cannot be truly said to "share" in national prosperity. It is true that in good times there are fewer out of work, but when "profits" double, wages do not double. Yet the doubling of profits is set down as the doubling of the general prosperity of the country.

Again, the influx of money into a country is spoken of as "prosperity," although it is quite possible that the prosperity may be the prosperity of a few, and those few already the most prosperous class. It can mean, that as the rich grow richer, the poor grow poorer. The distribution of national wealth is the true test of the "prosperity" of a nation, and not how many hundred millions of money or money's worth constitute the nation's revenue. Fortunes may be becoming more colossal while the bulk of the small people find it harder and harder to live. The terrible cry "Too old at forty" is a modern cry.

Nothing can make up for a too uneven distribution of wealth. This uneven distribution causes pauperism, and not the mere amount of the revenue. It is a terrible fact that the colossal fortunes of modern times make life harder and not easier for the labouring classes. Even the discoveries of science put new weapons into the hands of the inordinately rich. A combination of wealthy men wields a power greater than that of kings in old time. A handful of multi-millionaires can introduce cheap labour, can make wars, and by buying up the press, can command public opinion. In America, the multi-millionaire is almost omnipotent. Universal suffrage does not prevent his acting with a disregard to the public interest which would have been impossible to a feudal baron. If the feudal baron had gone too far with his tenants, he would have found them starting up in little armed bands to resist him. But now it is the multi-millionaire who has the little army—perhaps of Pinkerton's men.

The effect of rating everything at its money value is to make us look upon land as something out of which to make money, and not as something out of which to live—something which produces the actual bread which we eat. We are always talking about whether farming "pays"—whether small holdings "pay." And if we think it can be shown that they do not, we consider the question settled. In the last months of the late government, a deputation of the "Unemployed" waited upon Mr Balfour, to urge him to encourage more labour on the land. Mr Balfour explained to them, that "by the law of production, if you double the number of hands on a farm, the actual productiveness of each man will be diminished, because you have increased the

number of men extracting from the soil produce which it gives perhaps reluctantly and grudgingly. . . . Every economist knows that you cannot increase the amount of labour you put on land, without diminishing the productiveness of that land."

We may disregard the apparently gratuitous assumption that Nature rewards man's labour "reluctantly and grudgingly." But what did Mr Balfour mean by "actual productiveness"? If he meant that land produces less wheat, barley, oats, turnips, the more labour is put into it, this is nonsense. He evidently meant that money profit to the farmer and landowner would be diminished if more money was paid for labour. But those who wish to get the people "back to the land" do not want to increase the number of agricultural labourers paid by the day, week, or year, by a master who himself has to live and pay his rent out of their labour. They want to increase the number of small landowners—men who will literally live on the fruits of their toil, and not merely produce something for their master to sell. At present, the land has to bear three charges—it must "pay" the labourer, the farmer and the landlord. We shall never approach the land question with comprehension until we learn to look upon the cultivation of land as intended in the first place to produce Food. Of course, there will generally be a surplus—and this surplus will be sold. But the more people get their food from the land at first hand, the less pauperism there will be, and the less the towns will be burdened by the crowding into them of labourers whose labour is "diminishing the actual productiveness" of the land. Land will feed a great number of people who have only to live upon it; but only a small number if their labour is to "pay" the landowner and the farmer.

There is nothing extravagant in saying this. Every other country in the world has a peasant class. England alone has none. For to call the English agricultural labourer a "peasant" is to misrepresent his condition. He is not a peasant, but a day-labourer, living in a cottage not his own, and working for a wage as much fixed by his master as it formerly was by the justices. He cannot call his soul his own. His first and last thought is how not to offend those in whose power he is. And there are many who think that

this is compensated for by a cottage with a boarded floor (though he can be turned out of it at any time), and doles in the winter, and who flourish the "hardships" of the French peasant at him, to scare him from attempting to regain the common lands.

The unequal distribution of money and the unequal distribution of population both contribute to increase poverty. That country should be accounted the richest, in which wealth is most equally distributed—that is, in which there is the smallest proportion of paupers. The destruction of small holdings, and of common land, has had a most powerful influence on the unequal distribution of population. Everything has long conspired, and still conspires, to drive the people into the towns. Thus has arisen that vast, unmanageable mass of "casual" labour, which hangs on the skirts of regular labour, and pulls it down.

The class which suffers most from the unequal distribution of population is the class of "unskilled" labour. Not that any labour can be wholly unskilled—every kind of work can be done well or ill. "Unskilled" labour, however, chiefly demands physical strength, and in overcrowded towns physical strength deteriorates, until we get the deplorable processions of the "Unemployable." And it would be good for us to remember that, after all, "unskilled" labour is lightly esteemed only because it is plentiful. It is the sort of labour without which the life and trade of a nation could not go on for a single day. If a State were compelled to abolish half its trades, "skilled" labour would go first, and the more skilled before the less skilled. The more highly skilled any labour is, the more possible it is to dispense with it.

There must be something profoundly amiss when the richest country in the world has been for nearly four centuries complaining that it has so many poor. But if we counted only ten instead of thirty-two and a half millions in England and Wales, there would be pauperism if the land were in the hands of a few and if those few set themselves to keep rural districts thinly populated.

In 1841, when one person in every eleven was a pauper, England and Wales counted under ten million inhabitants. Now, the proportion is about one in every thirty-three. This is disgraceful enough, but it shows that pauperism may

be two-thirds less when the population is two-thirds more. The depopulation of country districts is not accidental. It is intentional and deliberate. This was confessed with cynical frankness by Lord Lansdowne in the debate on last year's Land Bill.

> "What is it that makes ownership of land practicable? It is surely not to be recommended as an investment. Most of the large proprietors, if they now had in their pockets the sums which have been spent from time to time in the improvement of their estates, would be rich beyond the dreams of avarice. Surely what gives reality to ownership, what makes it a valuable and precious thing to many people, is that we have hitherto associated with it the power of guiding the destinies of the estate, of superintending its development and improvement, and, above all things, the right to select the persons to be associated with the proprietor in the cultivation of the soil."—(Hear, hear.[1])

It will be a hard task to restore the people to the soil. Many of them, alas! have lost the taste for that first and most blessed form of human labour, the cultivation of the fruitful earth. But give them a little bit of their own—though but a garden—to till, and the taste will revive. The tie between man and the soil is as old as man himself. The renewal of it in some shape or other is the only way to solve the problems of Work and No-Work. Something must be done: Liberal and Tory, Socialist and Individualist, Jingo and Peace man, Free Trader and Tariff Reformer, big

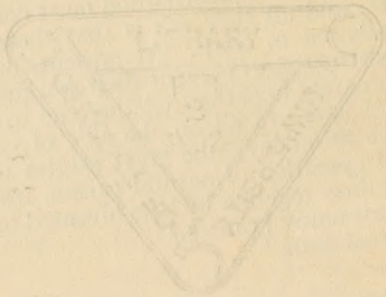
[1] 18th August 1907.—"Some three months ago I was speaking to about 100 men in a village, and could not arouse any enthusiasm or create any interest. Disheartened, I put to them the question: 'Do you want any land?' they replied, 'No.' I thought I had found an agricultural Utopia, where all desires had been satisfied, but the appearance of the men belied this. The meeting closed, and I remained behind talking with one or two. Presently about ten of the men came back, and one approached and said, 'Look 'ere, mister, we do want some land.' 'Well,' I replied, 'why didn't you say so when I asked you?' 'Oh,' said the fellow, 'didn't you know that *he* was there?' There is a touch of comedy in this may be, but also tragedy."—Hubert Beaumont (Secretary of the Central Small Holdings Society), *Daily News*, 15th June 1908.

Empire-builder and Little Englander—all agree that there is physical degeneration, and that such degeneration will, if it goes much further, imperil our place among the nations. We have tried many palliatives (as our manner is), but never a remedy. There is but one remedy—the redressing of the balance, the redistribution of the population. If we fear, as was feared of old, this will increase the population by making the people too comfortable, let us remember that by a perfectly comprehensible law of Nature, the poor increase faster than the rich, increase, as our fathers said, "like lice and flies," while the rich have much ado to prevent their stock from dying out. Let us try comfort.

For generations we have been lamenting the evils of the people herding in towns, but the moment our talk takes a practical turn, the cry of "confiscation" is raised. A few unpractical fanatics may have given some slight excuse for this cry; but the vast majority of land reformers are not fanatics. They know that redistribution must come about by natural causes, and all they ask is that these natural causes shall be allowed to work. At present, our whole land system is constructed to prevent their working. It is Nature's way alternately to gather together and to disperse abroad. Our land laws are all on the side of gathering together. Suppose we allowed the great estates to break up by the natural operation of natural causes, instead of continuing to keep them together by laws invented to defeat the operation of these natural causes?

"Land is Perpetual Man."

THE END



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