ON

PROPERTY IN LAND

PRINCIPLES

OF

PROPERTY IN LAND

BY

JOHN BOYD KINNEAR

AUTHOR OF 'PRINCIPLES OF REFORM, POLITICAL AND LEGAL' 'A PRACTICAL TREATISE ON THE LAW OF BANKRUPTCY IN SCOTLAND' 'DIGEST OF HOUSE OF LORDS APPEAL CASES' ETC.

LONDON

SMITH, ELDER, & CO., 15 WATERLOO PLACE

1880

INTRODUCTION.

At a time when the Conditions on which Property in Land should be held are being brought under consideration, it seems desirable to examine the Principles on which such Property rests, as well as the practical results of our present laws affecting Land.

The preliminary inquiry into Principles is the more necessary, because very conflicting theories respecting the Institution of Property are put forward by defenders and opponents of the existing system of law. On the one side we have assertions of the sacredness of Property in private hands; on the other we have the doctrine that Property can vest only in the community, and that its appropriation to individuals is a moral wrong and an economic blunder. Between these extremes there is to be

found every variety of view as to the limits of right and of expediency. In this situation a brief exposition of the basis of Right is essential to clear the ground for the investigation of Expediency, and the determination of what is expedient must finally be controlled by consideration of what is practicable.

In the following pages it is therefore attempted to bring Principles to bear on Practical Legislation; to examine the teaching of Political Economy in the light of the facts of modern Agriculture and Science; and to illustrate the conclusions arrived at by a review of the actual operation of different systems of Law in our own and in other countries. After tracing the effects of the erroneous principles embodied in our present Laws affecting Land, the various Reforms which have been proposed in them are discussed; and finally, the leading Amendments which Legislation may usefully introduce are pointed out, and their application and consequences are considered.

LINCOLN'S INN:
July 1880.

CONTENTS.

CHAPTER I.

OF THE MATERIAL OBJECTS OF PROPERTY.

CHAPTER II.

OF RIGHTS OF PROPERTY.

CHAPTER III.

OF THE AIM OF LAW OF PROPERTY.

CHAPTER IV.

OF THE LAND LAWS OF GREAT BRITAIN.

CHAPTER V.

OF THE NATIONAL INTEREST IN CULTIVATION.

CHAPTER VI.

OF THE ECONOMIC AND SOCIAL RESULTS OF LARGE AND SMALL ESTATES.

CHAPTER VII.

OF THE RESULTS OF RESTRICTED POWERS OF OWNERSHIP.

CHAPTER VIII.

OF PROPOSALS FOR RESUMPTION OF LAND BY THE STATE.

CHAPTER IX.

OF PROPOSALS TO LIMIT THE SIZE OF ESTATES.

CHAPTER X.

OF DIRECT INTERFERENCE OF LAW WITH THE USE OF LAND.

CHAPTER XI.

OF LAWS RELATING TO THE LETTING OF LAND.

CHAPTER XII.

OF THE AMENDMENTS REQUIRED IN THE LAND LAWS.

PRINCIPLES

OF

PROPERTY IN LAND.

CHAPTER I.

OF THE MATERIAL OBJECTS OF PROPERTY.

All things which men can use are derived from the earth, being either minerals, of which it is composed, or animals and plants which are nourished by it, or substances derived from these sources. Our food, clothing, dwellings, fuel, utensils, ornaments, all material objects whatsoever, are the produce of the earth, and to become fit for our use they are either simply collected by us, or, more frequently, subjected during growth, or after being collected, to some processes involving human labour.

The only distinctions, therefore, that can be made between these things in regard to their pro-

duction, lies in the comparative amount of labour expended upon them. A dinner of herbs, a coat of sheepskin, a wigwam of branches, vessels made of shells and gourds, rough tools of flints, are obtained with little more exertion than the gathering by human hands. Between these and a loaf of wheaten bread, cotton and woollen and silken clothing, furnished dwellings, glass and pottery ware, implements of steel, ornaments of gold and jewels, railways and steamships, and all the refinements and appliances of civilised life, there seems an infinite difference, yet in all cases the original materials are wholly derived from the earth, and the distinction lies only in the amount of human labour from first to last employed in the transformation of the raw material into higher uses.

Land consequently is the basis of all wealth. But this does not make it different in character from the products obtained from it. These products are merely the land itself, either still in the shape of minerals, as stone, clay, sand, earthenware, glass, iron, gold, and so on; or transformed by the agency of light and air, and in conformity with the laws of nature, into plants, and from plants into animals. So strictly are these last products part of the land that if any ingredient in them is not contained in the land it must be added artificially before we can get the organic compound which we call plant, or the animal

that needs the plant for food. So that when the soil runs short of any such ingredient (be it phosphorus or potassium, or what not) the plants will not grow, and we must supply the missing element to enable the other elements to fulfil their own functions in forming organisms.

This being the case it is evident that land is not a concrete entity, but merely so much of certain articles of more or less value. An acre of land contains some thousands of tons of sand and of clay; if these are of peculiarly fine quality, fitting them for manufacture into pottery or glass, the value of the land is just the value of that number of tons of sand and clay. If these are worthless for manufactures, they are equally worthless to the farmer, except as a mere basis of his operations, but the value of the land to him is expressed by the value of the number of pounds per acre of nitrogen, of phosphorus, of potash, of lime, and of a few other elements which are required by plants. These substances in the soil are just of the same value as if they were imported from foreign countries as merchandise (as in fact they are for manure), and were lying in the merchant's warehouse. In both cases their utility when employed on any particular plot depends on its mechanical condition, its situation, and its climate. But in both cases they are simply so much wealth provided by Nature from the earth, and available to man for the

supply of his requirements by the exercise on them of his labours. The area of the land is nothing more than the factory in which by the labour of man, and with the help of the universal agencies of nature, heat and light, water and air, these raw materials are manufactured into useful products.[1]

There are therefore only two factors involved in the value of land. The one is its situation, which not merely refers to its proximity to towns, markets, or means of conveyance, but also to its climate, altitude, capability of drainage or of other material improvement. The other is its composition, which may affect its value mechanically, as if there is an excess of clay which makes it damp, or of sand which makes it arid; or chemically, if it contains an excess of a hurtful ingredient, as sulphur or iron in certain combinations, or if it is deficient in a substance such as nitrogen or phosphorus which is necessary for organised life. Now as regards the first of these conditions,

[1] If this view of the nature of land differs from what has been commonly taught in books of political economy, it is because the researches of modern chemists and physiologists, commencing with Sir Humphrey Davy, and carried on by Liebig, Boussingault, Lawes, and others, have informed us of the true functions of the soil in the nutrition of plants, which till now were not understood. Much remains to be ascertained, but it is already quite established that a fertile differs from a barren soil only because it contains more of the elements above-named, and the economic value of the soil is therefore simply the value of its contents in these elements, modified by the circumstances of the situation in which they are found.

that of situation, it is obvious that it affects land precisely as it does any other factory. In all cases a factory is of more or less value according to its locality, and in many cases according to its conveniences of air, light, water, and climate. And as regards the second class of considerations, that of composition, land also resembles most of the raw materials of manufacture. For all these vary in value according as they are more or less rich in certain elements, and in very many of them we can, as in the case of land, correct a superfluity or a deficiency of certain elements by processes which enable us to eliminate an excess or supply a defect.

Nor is there any such distinction as that which has been maintained even by some of the most eminent political economists, between land and other forms of material wealth on the ground that land is limited. It is certainly limited by the extent of the earth's surface, and for special purposes it is limited also by the conditions requisite for such purposes, such as fertility and climate. But everything else, being derived from it, is limited in precisely the same extent. We can have no more wheat than there is land capable of producing wheat, no more gold than there is land with gold in it. Nay, in practice, land is much less limited than its products, for besides that they can have no greater extent than the land which contains them, they are further limited by the

amount of labour necessary to obtain them. The land capable of growing wheat or cotton or wool is, in point of fact, very much more extensive than the actual stocks of wheat, cotton, or wool, which the world possesses at any moment, and which form in ordinary language the materials of wealth of the farmer, the cotton spinner, or the cloth merchant. For these stocks are only so much as human labour has been able to amass, whereas there are in the earth the materials for a very much greater quantity, were human labour in sufficient supply to draw them forth.

Indeed, speaking broadly, it may be said that the extent of land capable of supplying the chief necessaries of life is quite unlimited. Every day we discover vast deposits of coal, ironstone, and other ores in various parts of the world. There are millions on millions of acres capable of growing wheat, or feeding cattle, still unoccupied in North and South America, in Northern Asia, in Australia, and in Africa. But if we regard only particular products, within certain specified districts, we may find them very limited indeed. In some countries there are no gold mines, nor copper nor iron ores. Some regions are too hot or too cold for wheat, some too wet or too dry for cattle. Within a single country the same distinctions may be found in different provinces. In such countries or provinces then it may be asserted that mineral

richness or fertile land is of limited extent. But equally so are the products of such mines or land; and possession of the produce is therefore as much a monopoly as possession of such land. Perhaps it is answered that this is not so because we can go to other countries and buy their produce. But if we are to go out of our own country for produce we can equally well go out of it for the land. In fact we can more easily do the latter, for, as has been observed, land itself is more extensive in supply than the produce from it. There are only a certain number of million quarters of wheat for sale at a given moment, or even within a given year; there is in fact hardly more than the population of the globe will eat within the year, and the supply being thus restricted it is easily conceivable that (as was in fact attempted in the United States last winter) so large a proportion might be secured by speculators that it would become a real monopoly in their hands, and might even prevent us from buying enough for subsistence. But the myriads of untilled fields on the globe are beyond the scope of any 'ring' to monopolise; they far exceed the number of hands available to till them. Land, therefore, even fertile land, is in truth the least limited of all commodities on the earth.

Of course when we set up artificial limits of our own erection, such as frontiers of states, we can make out land to be limited. But as there is no natural

rule that confines men to any artificial limit, any reasoning which is based upon those limits is fictitious and unsound. Each district naturally yields only a portion of what the human race needs, but by barter and commerce the produce of each becomes available for all, and thus when we speak of man we must speak of him as inhabiting the world, and not merely the narrow spot, bearing a conventional designation, in which he breathes for the time being.

There was a time, indeed, still not very remote when there was neither a field for, nor the means of, emigration, when Europe was deemed to be fully populated, and when no practical outlet for an increase of the human race was in view. To the writers of the last generation, and even in the youth of many now living, America meant only the settled states on the Atlantic seaboard, and a narrow belt within reach of the Mississippi and the St. Lawrence; Africa was believed to be a desert of burning sand; Siberia a desert of frost; Australia and New Zealand were islands that had been touched by adventurous geographical explorers; and, even if a few settlers might push into the wastes, there were no practical means by which either their productions might be brought to Europe or by which the surplus millions of Europe might be transported to follow in their steps. Even the writings of Mill are therefore coloured with the apprehension that mankind was

rapidly outgrowing its means of subsistence, and that there was a double necessity to check the increase of population, and to husband the use of productive land of which there was so little visible supply. But the triumphs of steam, which have bridged the seas and covered the wildernesses with roads, which have founded colonies embracing regions far larger than the mother country in all quarters of the globe, which have brought at once the wealth of continents to our shores, and stretched the empire of our race over boundless ranges of land as yet unoccupied, compel us to take a very different view of our situation. There is a new world opened up to us, and the arguments and theories which were built on the narrow limits of the old must necessarily be abandoned in the light of actual facts which then were unknown and unimaginable.

It has, however, been suggested that there is still a distinction between land and other species of wealth, in the circumstances of the indestructibility of land. All other articles, it is said, wear out, while land does not. But this rests on a very imperfect view of its nature and condition. It is true that there are a very few tracts of limited extent where the soil is naturally so full of the elements of fertility that it may be cultivated for a long time without sensible deterioration. Such are the 'black earth'

regions in Russia, a small portion of the river bottoms in America, and some pastures in Somerset and Yorkshire. But these areas are far too trifling in extent to be worth reckoning among the elements of supply of human food. With these immaterial exceptions the rule is that land deteriorates with every crop taken from it. A portion of its essential constituents is contained in every crop, and if these are not restored the next crop is smaller. Not even does the manure made from the feeding of animals suffice to maintain fertility. The animals themselves carry off a proportion of nitrogen, of phosphorus, of lime, and of potash, and if these are not restored the land becomes less fertile. To restore the ingredients thus removed by the grain and the meat which is sold (and which we wastefully pour by the sewers of our towns into the sea), farmers are obliged to import from foreign countries oilcakes, nitrate of soda, guano, bones, mineral phosphates, potash salts, ground flesh and fish, &c., &c., besides applying lime and coprolites obtained from certain districts at home. Enormous sums are expended in Great Britain in thus maintaining the fertility of the soil, and the practical fact confirms the truth of chemical research, which has taught that land is very far from being an inexhaustible store, but that it is in truth a store which needs replenishing precisely as it is used. In countries where the land is not replenished, whether

from ignorance or because manure would be too dear, even the virgin soils become in a few years so barren that they must be abandoned.

Land therefore, just as much as any other species of raw material, is destructible, as regards the qualities which give it value. Equally does it demand the like outlay if we regard it merely as a factory. For, as in the case of other factories, it needs constant expenditure in maintaining the buildings, the drains, the roads, the fences, without which it would not yield its returns. In every aspect, therefore, land is not a self-maintaining source of wealth; it needs in substance and, as a rule, in degree, just as much outlay in the supply of fresh materials, and the use of as much labour in working them up, as any branch of what are ordinarily called manufactures.

If again it be argued that the growth of plants and animals is due chiefly to natural laws in which man has no part, while the fabrication of manufactures is due wholly to human labour, it must be answered that this is not the case. The cultivation of the soil does not dispense with human labour. Although the sun and air bring up the plants, and the richness of the soil feeds them, yet man must dig and sow and weed and reap, in order to make these natural powers available for his purpose. But the powers of nature are at the service of man, and are necessary for his purpose, in his other labours

too. It is the law of nature that carbon unites with oxygen, and in the union evolves heat, which furnishes us with fire to cook food or to smelt metals. It is the law of nature that gases expand with heat, which furnishes us with the steam-engine. It is the law of nature, which we call cohesion, that enables us to build houses, to construct ships, to weave cloth, to do almost every necessary daily act. In all that we do we use the various powers of nature as fully as in farming we use the sun's heat. Nature is alike bountiful to every labourer; but to every gift she attaches the one condition, that it shall be utilised by our own labours. This is the law of cultivation in neither a higher nor lower degree than it is also the law of every species of manufacture.[1]

In every view then, which can be taken, land, as a material for profitable use, differs in no respect from all other materials on which labour may be expended. But it must now be noticed that when we do not consider mere utility, we shall find that land may have some points of difference from other forms of wealth. All these are subject to be removed, while land is immoveable. Hence the names used in English law of personal and real, and in other systems of law, of moveables and immoveables, to distinguish portable wealth from what is fixed in or to

[1] See Mill's *Political Economy*, 'Production,' chap. i.

the soil. The distinction will be seen to be very material when we have to consider the use of either as a pledge for loans, since obviously its irremoveability makes land to be preferred as a material guarantee of repayment to any other sort of security. But this circumstance does not make the smallest difference between land and other wealth from the point of view of its use as a means of production, since clearly a mortgagee cannot make more out of land than the mortgagor.

In another respect land has what may be called an artificial value as an element of enjoyment. But this, as well as that which we have just noticed, is due not to its own intrinsic nature, but to the peculiarities of human nature. Men do not in general care for the mere possession, as distinguished from the capacity of use, of material objects, other than land. This is, of course, subject to some exceptions. A miser rejoices in merely counting his gold; a virtuoso in gazing at a rare cup or jewel which belongs to him; and some men love the mere sense of possession, no matter what the article or its use. But, speaking broadly, mankind esteem material objects in proportion as they either can yield direct pleasure, or, by increasing the wealth of their owner, can become the means of procuring pleasure. But the simple possession of land, apart from its utility, is a joy to human nature.

There is an instinctive satisfaction, to which few are insensible, in being the proprietor of the house one lives in, the garden attached to it, the park surrounding it, the farm, or the estate. Other emotions natural to humanity enhance this feeling. Possession of land is a visible and tangible evidence of property, and therefore augments the consideration given to those who have it. It affords scope for the indulgence of the love of beauty, either in its natural state or under the improvements which individual taste may suggest. Chief of all, perhaps, it flatters the sense of exclusiveness, the sense that one's house is one's castle, where one is lord over all, and where no intruder dare claim equality. For all these reasons the mere possession of land is an object of desire, irrespective of its value, and men are peculiarly apt to be satisfied with such mere possession as an ultimate end, instead of viewing land, as the interests of the community require, as a form of productive capital. We shall find hereafter that this tendency to disregard the economic use of land, and to regard only its value as a personal enjoyment, demands some special conditions in the laws affecting it.

In the meantime, however, it is sufficient to recognise that in its material qualities there is no essential distinction between land and every other form of material wealth. Whatever distinction ex-

ists in its use or enjoyment arises from the difference of feeling in the human mind. The distinction, in short, is not objective but subjective.

To some persons it may seem that it is of little consequence in what the distinction lies, if there be a distinction. But we cannot frame wise laws unless we understand the subjects they are to affect, and the sentiments they have to deal with. And undoubtedly some very mischievous legislation has taken place, and has been proposed on the ground that the distinctions exist, which we have seen are unfounded.

CHAPTER II.

OF RIGHTS OF PROPERTY.

IT is sometimes said that to inquire into the foundation of rights is merely pedantic work, proper only for curious antiquarians or for impractical philosophers. Yet it so happens that in the most practical and busy parts of the world these rights are every day being traced to their origin, and rules are established which illustrate the fundamental principles on which the doctrine of property everywhere depends.

When a new grazing tract or gold-digging region is discovered in unoccupied territory, the first occupiers take what they like, because there is enough for all. But when the rush has set in, squatters and miners set up an unwritten code, which very soon becomes the fixed laws of the new community. This code recognises that mere appropriation confers no title unless supported by labour. Within a limited time the squatter must sufficiently stock the run, and the miner must actually work his claim. In default of the fulfilment of these conditions, the law of the

new community declares that no property exists. And even subject to these conditions, the extent of ground which may be appropriated is generally precisely fixed at so many thousand acres or so many square feet.

Here, then, is an illustration, in practical daily application among infant communities of Englishmen, of resort to first principles in establishing rules of property. We may therefore, with very great advantage, inquire the foundation of these principles, with a view to understand the basis on which laws at home as well as in our colonies are built up.

There are two divisions of all Rights: the first consists in principles which commend themselves to reason as obviously at all times and in all places just, so that we feel the violation of them to be unjust; these we may call Natural Rights. If it be said that different persons take different views of justice, it can only be answered that we must be guided by the general feeling of mankind, gathering it as best we can. But the second class of Rights consists in rules framed by communities regulating the rights and obligations of their members on grounds of convenience or other advantage. These vary in different communities, and from time to time even in the same community. These, therefore, we may call Social Rights, and they obviously will in-

clude all which we cannot agree to be natural rights. It is important that we should keep this distinction in our minds, because many persons are apt to deem to be natural rights such laws as they are merely accustomed to, but which are in fact the creation of social convenience; thus assuming that men have a natural right to certain things which are really only allowed to them by the general agreement of the community.

I.—*Natural Rights.*

Among natural rights we need consider, in relation to property, only two, the right to live, and the right to possess the fruits of labour. The first admits of no argument; it is obvious and axiomatic. From it there follows that every man has a right to maintain himself, since otherwise his life would depend on the pleasure of some one else, which clearly would not satisfy his absolute right to live. And since no one can maintain himself otherwise than on the products of the earth, it follows that every one must have a natural right to possess a sufficient part of the earth's surface to suffice for his living, and that of those dependent on him.

But when it is argued from this that every man is entitled to claim a portion of the land in the country he is born in, there is a flaw in the reason-

ing. For countries are not natural but artificial divisions of the earth's surface, made for the social convenience of those who agree to form a community, and it is clear that a natural right does not include a right to participate in the social arrangements of a limited body of persons. This will be apparent if we consider the case of a country where the actual population is as large as the land can nourish. As the right to live obviously does not include a right to take away the living of another person, it is clear that an addition to the population cannot insist on having assigned to them a portion of the land which already only suffices for those in possession. The fact of being born among them can give no title to oust them. So also, even if there be some superfluous land, the community is plainly entitled to divide it among its existing members without giving a share to new members. For in doing so it is not depriving any one of the means of living, but only of the means of living in that particular community. And as natural freedom implies that every man may leave a community if he chooses, the correlative right cannot be denied that every community may exclude or expel such persons as it chooses. To every person who claims a share of lands within its special territory on the ground of natural right to live, it is entitled to answer: 'Your right to live does not include any natural right to live in the precise spot you choose to select.

It is strictly a right to live, and not a right to please yourself, and since you can obtain ample means of living in the parts of the world as yet unappropriated, you are entirely without claim upon us to make our social arrangements suit your pleasure.'

It is obvious that this answer is equally irrefragable by reason or by force. Therefore we must acknowledge that no individual can pretend to assert a natural right to possess land in any special territory already occupied. His natural right to make a livelihood independent of any other man can obtain its satisfaction in the ample ranges of unoccupied lands in other countries, and the power to emigrate deprives him of any reason to complain if the community in which he is born deems that it cannot consistently with the general advantage find him a portion of land at home.

But if now we ask by what right one man may exclude another from possession of a particular piece of ground, and by what just authority the community may maintain one of its members in possession of that particular piece, we shall find it in the second natural right to which we have referred. This is the right which every man has to his own labour and to its results. A man's labour is in the fullest sense his own property by the law of nature, for it is the result, physically, of the waste of muscular tissue in his own body, and

mentally, of the exercise of his volition; so that it may be said to be the direct produce of a man's own body and mind. Consequently, whatever a man does or makes is his property by the highest possible title. From this some have argued that whatever he applies labour to is made his property. But this is an obvious error, for the raw material is the gift of nature, or creation of God, and no human being has ever by labour created one atom of matter. What labour does is to move the atoms of matter so that they assume a new shape, as when wood is cut or metals are hammered or filed; or to move them so that natural laws take effect upon them and transform them into new combinations or forms, as when we bring sand and soda under the influence of heat and make glass, or place fuel under a boiler and generate steam, or dip two metals into an acid and make a galvanic current. In all these cases (and in every other case) the result of a man's labour is palpably his, but the object on which he exercises it does not become his by the act of using it for his purposes. Supposing the original matter had been already appropriated by the law of the country to some one else, it would not in reason pass to a new owner by the mere fact that he chose to use it for his own purposes. Labour then of itself gives a good natural title to its actual results, but no title at all to the

raw material, the original matter, on which it has been expended.

But if no one else had a prior title to such original matter, then the labour spent upon it cannot be justly taken from the labourer by one who has not laboured at all. The labourer may, therefore, hold the manufactured article on the ground that the part of it due to his labour is justly his, and that no one else has a better title than he to the rest. And the more the labour he has given to it, by so much the more does his title to the whole become stronger. So that if, as frequently happens, the total value of an article depends much more on the labour it has received than on the original material, the title of the owner of the labour may become almost complete.

Most systems of law regard occupancy, or the seizure of what had not been previously seized by any one else, as the foundation of property. But it is in its nature only the right of the stronger, for it is impossible to see how the mere act of grasping is in justice to forbid another to grasp the same thing. Convenience, and prevention of disputes, may form motives to induce the community to confirm the claim of him who has first grasped, but it cannot be maintained on the footing of natural justice. Still less can a mere symbolical and fictitious grasping afford a valid natural title. To point to a tree and say, 'That is mine;' or to draw a line round a

wide tract of ground and say, 'All within this is mine,' would never be admitted by the common sense of mankind as enough to exclude all others from possession of these objects. So that occupancy or seizure is really no title at all, since it is only recognised as the right given by actual force.

But if labour be added to occupancy the case becomes quite different. Labour, as we have seen, is in the fullest sense property. So if a man has pruned and dressed the tree, or dug and manured the ground for a crop, the produce is enhanced by his labour, and to that increase of produce his labour spent on it clearly gives him a good title. Generally speaking, the increase is so great in proportion to the natural produce, that it may conveniently be taken to include the natural produce under the same title. This becomes more and more the case, the higher the cultivation. Modern crops, for example, include not only the reclaiming of the soil from waste, but its amelioration by successive generations of labourers, the removal of stones, the drainage, the deepening of the tilth, the fencing, weeding, and manuring, besides all the actual operations connected with the special crop. The seed itself is the product of long-continued labour and skill in selecting and improving varieties; and the machines used are the result of almost equally long intelligence and toil in mechanical improvements. What is raised by all this outlay of labour

is hardly any longer a natural product; it is almost entirely the produce of labour and therefore is property.

There are, indeed, two descriptions of land on which less than the average labour is bestowed. The one consists in very rich alluvial soils, most profitably employed in grazing, the other in mountainous or sterile tracts which would not repay culture. In both these instances the physical labour is mostly attendance upon stock. But even in these cases a great amount of skill, which is a result of mental labour, is devoted to the selection of the proper breeds of cattle or sheep, their management, and their purchase and sale in the manner best adapted to the locality, the climate, and the character of the herbage. Through such labour as this, even these exceptional lands produce a great deal more food than they could possibly do if merely used as common lands open to the first comer, however careless and ignorant. It would be difficult or impossible, therefore, to distinguish these from the lands which owe their fertility in a higher degree to the amount of physical labour that has been bestowed upon them.

We now see what is the true reason why one man cannot assert a natural right to a piece of ground already occupied by another. It is that the other has put his labour into it, has made it something different from (and more valuable than) what it was

naturally, and therefore, having a title of property in his labour, he has a title which is at least better than that of any one else to that which his labour has improved. We shall see hereafter how this natural right is extended by communities, for the joint advantage of their members, to a degree where it becomes more a social than a natural right.

It is obvious, however, that there is no difference between the natural title to property in land, thus originating, and the title to property in anything else. The sole title in all cases is the labour bestowed. Nobody is justified in seizing the result of another man's labour, whether it has been spent on improving soil, in growing crops, in grazing cattle, in feeding and shearing sheep, in spinning yarn, in weaving cloth, in digging mines, in smelting and refining ore, in making machinery, in constructing houses, or in fashioning the highest results of any form of skill. And since no one is justified in appropriating any such results of labour, the expenditure of labour on what has not been previously appropriated gives a reasonable title to the possession of the article as against any other claimant. Such is the foundation of property, viewed as yet merely as a natural right.

But at the same time we must attend to the limits by which this natural right is hedged in. Since property exists because of labour, and labour gives property because it is part of a man's own

body and mind, the title can endure only so long as body and mind exist in the individual. After death there can be no property, for the body and mind that made it property has ceased to exist. And because the owner's title is thus limited to his own life he cannot claim any natural right to give it to another for a period beyond the endurance of his own rights over it. Clearly no one can enlarge his right by assigning that right to some one else. The utmost effect of this operation would be to give the assignee the opportunity of adding his own labour to the article assigned, and so creating in some degree a new title in himself. But this cannot be if the assignment is delayed till the original owner's death, for then before the very moment of transfer his title to transfer has ceased. There is therefore no natural right either of inheritance or of bequest. Whatever rights of this nature are allowed in law, are only the result (like many other rights) of general agreement in a community. These we next proceed to consider.

II.—*Social Rights.*

When men come together, though it be only from selfish motives, they almost immediately discover that if they are not to be perpetually quarrelling they must agree on some conditions defining what each may appropriate. So Abraham in the

plains of Jordan offered Lot the choice of separate grazing grounds for his flocks and herds; so, 3,000 years later, English squatters and gold diggers construct, as we have seen, a rough code of property. They concede the natural right arising from first possession of what has not yet been occupied by another. But they limit the extent of ground which may be thus appropriated, and they declare that the title shall become altogether void unless fortified by actual labour on the 'claim.' Thus far they are only recognising, while they define, the natural rights of labour, as strictly limited to the person of the labourers. But men in communities desire something more. They wish a recognition of their right to transfer the property acquired by their labour, most often by way of exchange with another for a different sort of property he has acquired by his labour. Now if this transfer were only to be valid during the period of natural right, *i.e.* the lifetime of the transferrors, a bargain of this nature would be hardly possible. Again, nearly all persons wish to give, either before or after their own death, to those whom they love, the benefit of what they have acquired by their labour. Natural law limits their title to their own lives, and so renders the donation almost nugatory. Therefore in both of these cases, social agreement comes in to give a title beyond that conferred by the right of labour. The

community agrees to enlarge the natural right of each of its members to a point which shall be beneficial to all. It therefore allows transfer for more than life, and permits donations to continue valid after death. Hence come the rules of sale, of bequest, and of inheritance in default of express will. All these are purely social rules, adopted by each community as its inclination suggests, and maintained in force by the social authority which supports its laws. They vary, therefore, in each community according to its own ideas of what is most advantageous and convenient at the time.

Experience and history confirm the accuracy of this explanation of the nature and growth of what are called rights of property. We find them differing not only in different countries, but in our own country in different districts, and we find they are constantly being altered by the action of the legislature which represents the population in each country. The earliest records tell generally of village communities, where land was deemed the common property of all, and for convenience of cultivation only was appropriated from year to year to certain families. On this system, in Europe, supervened feudalism, which vested all land in the State, as represented by the Sovereign, and conceded its possession during life only to those who could render service to the State. Gradually the right of inheritance was permitted,

and much later the right of bequest to a stranger. But to this day there are parts of England where descent is not to the eldest son, but equally among all, under the name of gavelkind; and there are towns where under the name of 'borough English' the youngest son's right is held superior to that of the rest of the family. The ecclesiastical province of York, comprising all England north of the Humber, had till quite recently rules respecting the succession of personalty different from those of the rest of England; and Scotland, in this respect, is as different from England as France is. So also Parliament has of late greatly shortened the periods of limitation of actions, which means the abolition of all rights of property not asserted within the time fixed by statute. Nor does a year indeed pass without some modification being made in the rules respecting private property, sufficient to establish that in the opinion of all they are not 'sacred,' but are simply arrangements of convenience, which may be justifiably altered whenever the balance of convenience is found to suggest a change.

By the operation of rules thus established, the very great inequality of property in the hands of different persons follows as a natural consequence. Resorting again to the practical illustration of the gold diggers, it may of course happen that one man's 'claim' proves richer than his neighbour's. That

may be mere luck, but it may also be the legitimate result of greater skill in selection. It is, however, nearly certain that while some miners spend all that they make, some will save a portion from consumption, and these naturally and legitimately begin to amass property while the others remain poor. The savings thus made furnish means for investing in provisions or luxuries for sale to the rest, or for buying up the 'claims' of those who are tired of labouring, or for paying wages to men who prefer a steady rate of income to the chances of working on their own account, or whom recklessness may have forced to sell their rights. In these legitimate ways savings become capital, and capital may quickly double itself by continuance of industry, and by paying for more labour. Then the capital acquired by more than one person may on their death descend to a single heir, and if he pursues a like course of prudence and economy, the fortune, whether invested in trade or in land, may speedily become that of a millionaire.

But throughout this process we may observe the maintenance and the development of the distinction between the two rights of property we have examined. There is first the natural right, which is derived from labour, but which is limited to the individual who has laboured, and endures only during his life. There is next the social right, which is the creature of arti-

ficial law, moulded by general agreement, and based on convenience. And this last right is the only one which has any existence in regard to all property not created by the labour of persons now living. It is therefore the sole right attaching to by far the chief portion of property in any country. It is the sole right of the landowner or capitalist, whose property has come to them either by descent or purchase. And as it exists only by agreement, so it is only maintained by the power of the State; for the State performs the duty of protector of property. By its combined strength, of which the instruments are the courts, the army, and the police, it prevents anarchy and maintains such rights as it allows. It is therefore entirely justified in laying down the conditions on which it will recognise and maintain these privileges. If a rich man disputes the authority of the State to interfere with what he calls his rights, let him consider where his rights would be if the State should merely outlaw him. Short work would be made of his rights of property if the State were to deny him access to its courts and the protection of its policemen. But if he claims State help, he must acknowledge the supremacy of those State rules, which prescribe on what terms and to what extent such help shall be given.

There is no need, therefore, to inquire whether the root of property rests in the State or not. We

may admit that everything may become private property by the labour of private individuals. But when private individuals are members of organised communities we must also admit that these communities have an absolute and unqualified right to decide how much property, of any description whatever, any one individual may be allowed to hold, and on what terms he shall be allowed to deal with it, either during life or after his own death.

CHAPTER III.

OF THE AIM OF LAWS OF PROPERTY.

We now come to the inquiry, What are the principles which should guide the State in exercising its powers of establishing or modifying rules respecting the tenure of property by its members?

The one leading principle is obviously the general advantage of the community. For a free State is the organised community; it exists for the sole object of mutual advantage, and therefore it must regard the general advantage as the object of all its legislation. The advantage of certain of its members may be considered when it does not go against the interests of the rest. But where there is conflict between the interests of the few and of the many, and when all have equal authority, it is clear that the interests of the greater number ought to, and ultimately must, prevail. Whether that greater number be poor or rich can make no difference. All are alike members of one body, all are alike both governors and governed, and if, in some

countries, the majority suffer the minority to rule, it is only because they choose not to exert their united strength. But even the rule thus permitted is on condition of sufficiently consulting the welfare of all, and when this condition is violated in a degree which unites the majority in resentment, the minority must speedily succumb.

The principle that the State is instituted for the benefit of all has led some to the conclusion that it ought so to deal with all the results of labour as to equalise their possession, or, as it is usually called, to establish Communism. There is much to be said in favour of this system, if it were possible to carry it out; but there is one objection to it founded on principle, and many founded on practical considerations. The former is, that it interferes with each person's right to his own labour, which, as we have seen, is his right to his own body and mind, the highest right which can be conceived. The practical objections are equally fatal. It cannot be just that all should share equally in the products of labour, unless all labour equally. But each person's powers vary, so that all we can say is, that each should labour equally in proportion to his powers. Then who should decide whether each does so labour? Or who should decide at what work each person should labour? If his own inclination is to be his guide, he may choose what is useless to the community, or what is already over-

stocked. If the community should decide for him, his individual tastes and capacities must be overruled; an artist may be made into a coal hewer, a mechanician appointed to be a poet. But, in any case, the apportioning a suitable task to each individual, and the enforcing its execution would demand an army of officials, superintending and checking one another. On a small scale, the arrangement might be possible; on a large scale, which implies the admixture of men of every variety of character, vast organisations, profound complexity of administration, not merely in production but in distribution, it is hardly possible to conceive that self-interest, negligence, and fraud, would not be destructive of profitable results.

Similar practical objections lie to the modern form of Socialist theory which suggests that all industrial enterprises should be under the management of the State. This cannot be called contrary to principle, and we even have examples of it in the State management of the business of the Post Office, of telegraphs, of railways (in many foreign countries, and partly in India), in arsenal and dockyard and clothing factories. In all these cases, however, the State is able to ensure efficient labour by the fact that it is not the sole employer, that it can check its results against those of private factories, and that it can turn off the men who are inefficient

workmen. All these securities would be lost if the State were to be the sole employer of labour in every department. But further, in proportion as it assumes larger responsibilities, the means of securing due superintendence would diminish. Government offices do not obtain the best work; the officials as a rule (admirable exceptions must always be recognised) work less diligently than in any private firm, and the highest in place are well known to be often the most indifferent. *Quis custodiet ipsos custodes?* If a Secretary of State may make it his chief object to defer everything that ought to be done, who is to ensure efficient activity in all the subordinate departments of his office? One man's negligence may paralyse and impoverish a great section of the nation, and as his own success or ruin is in no respect at stake there is no check possible on his idiosyncrasy. But, apart from individual peculiarities, every one who has had dealings with a government office is too sensible of the disposition to avoid trouble, and therefore to maintain routine and refuse improvement, which characterises it. Until the Socialists show some practicable method by which these tendencies shall be reversed, and the 'how not to do it' spirit exorcised, we cannot deem that their scheme would be a desirable substitute for the energy of private ownership, stimulated by competition, and inspired by the per-

sonal prospect of gain or fear of loss. Our task in the meantime must be so to regulate by law the system of private property as to procure from it the maximum of advantage to all, with as little as may be of evil to any.

Now the advantage to all, which by its very constitution the State must seek in these arrangements, includes benefits of various kinds, moral, intellectual, and material. In so far as these depend on the institution of property, it is tolerably obvious that they will, as a general rule, be the greater the more property is gained and diffused. For this is only another way of saying that, if property is a good, it is well that it should be increased, and that as many as possible should possess it. Hence we have the proposition that the social rules which establish the rights of property should be so framed as

Firstly, to encourage its growth, or production.

Secondly, to encourage its diffusion in as many hands as possible.

Both these objects must, it is true, be qualified by due consideration of other elements. Property is certainly not the highest human good, but only one source of good, and a means towards attaining others. Men may work their lives out in accumulating property, and be only miserable all the time. Operatives may be induced by high wages to work to such a degree that disease and early death follow.

Apart from physical deterioration, moral deterioration may easily attend the too eager pursuit of wealth. It is necessary, therefore, to keep in view that laws which tend to encourage the increase of property must be watched in order to be sure that they do not bring in their train mischiefs which would more than counterbalance their benefits.

In the same way the general proposition that it is for the public advantage that the law should encourage a tolerably equal distribution of property may need to be subjected to limitations. It might, for instance, prove to be the fact that such laws might at the same time have the effect of diminishing the total efficiency of labour, and so of diminishing the amount of property. Now since our first general rule is that property should be increased, this consequence, if demonstrated, might show that an equal distribution is less to the public advantage than an aggregation in few hands only. For it might even happen that such aggregation tended to increase the total results of labour so largely that the poorer classes gained thereby a greater share than would have fallen to them had the tendency of the law been to encourage at first a more equal division. If this were the case, it might be justly argued that laws tending to promote the wealth of the few were defensible on the ground that indirectly they tended to promote, more rapidly at least, the well-being of the many.

Yet even if such an argument were tenable in regard to material prosperity, there would be considerations of a different nature which must be weighed before we admit it to be conclusive. Physical progress may not always be accompanied with moral progress. Say, for instance, that it is quite certain that a single capitalist, as owner of a mill, might make by his peculiar skill and undivided command much greater profits than could be made by a co-operative company consisting of the workmen; say that he might thus be able to pay them higher wages than their shares would bring them; yet it would not necessarily follow that it was better for them to work as his hands than on their own account. In the one case it is possible that they might be treated only as well-fed slaves; that, dependent wholly on their master, there might be no influence tending to raise them above the beershop; in the other it is possible that the nurture of the habits of combination and independence might tend to make them better men and women, and therefore happier, although their actual gains were less. Especially in the pursuits of agriculture must such questions be considered. On the one hand there may be great estates on which the labourers are comfortably housed and well paid, but in which every sense of human dignity and progress is carefully discouraged. On the other hand there may be yeoman cultivators of petty patches,

hardly nurtured and poorly fed, and yet merely because of owing service to no man, living an honest, upright, and sturdy life, and advancing with each succeeding generation in intelligence and worth. And yet again it is quite within possibility that some of the rules of property established by the State may, while encouraging such good influences, bring other evils in their train; may turn thrift into penuriousness; or make the diffusion of property the means of creating filial neglect or family jealousies.

On the whole, then, we can only say that the total effect of any rules of property established by the State must be carefully scrutinised before they can be fully approved. All that we can safely venture to lay down in advance is generally that their primary object must be to promote the true advantage, moral as well as material, of the whole community. In what way this is to be done is a question of judgment ripened by experience.

It is, however, to be remembered that these cautions and provisoes are all of the nature of exceptions to general rules, and therefore that the burden of proving them in each case will lie on those who allege that the general rule should give way in a particular case, for particular reasons.

We may now add to the two primary general principles (stated at page 37) some others which

may be deemed corollaries. It follows from the first principle that, in order to encourage production, social rules should aim at making each person's labour as productive as possible. For the value of labour is not in itself, but in its results. Obviously, then, the less of labour that is spent in obtaining these results, or, in other words, the more results are obtained for a given amount of labour, the better for the labourer and for the community. This rule is especially important when we regard the diversity of human capacity. One man with an aptitude for a special occupation will accomplish a great deal more than one who has not the aptitude. But each person has a different aptitude for different things, and to obtain the best results from the special qualifications of each, no obstacle should be interposed by law in the way of each person adopting the avocation best suited to him.

This principle shows the impolicy of caste, by which all who happen to be born in a particular family are compelled to follow its peculiar pursuits. No doubt the mischief is modified by the effect of custom developed by hereditary transmission, since we know that men may thus acquire a special dexterity in their limited calling. But human nature is only amenable to training to a very small extent, and however long a race may have practised a single art, there will be constant occurrence of cases in which

individuals cannot successfully practise it, but could more skilfully pursue some other art from which the laws of caste debar them.

The same principle illustrates the advantage of division of labour. By this arrangement each person not only works at what he can do best, but avoids working at that in which he would be less expert. By thus producing the largest possible results for his labour he gains personally, and the community gains, because he can dispose of these results more cheaply.

It follows that one general aim of all laws of property should be to permit its easy transfer. For by this means the basis of labour, on which the actual owner would ineffectually spend his time and exertions, passes naturally into the hands of those whose special skill will find in it a field for specially favourable results.

Another means by which the maximum of production may be encouraged is by framing laws of property so as to secure that the products of labour shall be fully completed. For property (as far as we are here treating of it) consists in material objects, on nearly all of which a certain amount of labour has been already spent, but which need some further labour to make them fully valuable to mankind. It is only uncultivated soil, or raw ore in

mines, that has as yet received no labour, and it is only the most highly and completely finished articles that have received enough of labour. Between these two stages every article is imperfect and comparatively useless. Land needs to be ploughed, manured, and sown; the crops need to be harvested, the grain needs to be threshed and then ground, the flour needs to be kneaded and then baked, before the land is fully useful to man. So the ore must be dug, then smelted and refined; the metal must then be fashioned, perhaps into tools, then used to make machines, then the machines to make cloth, or to cut timber, or to form articles needed for our dwellings, or for transport of goods, or so on. Now, if at any of these stages labour is arrested, all that has been previously spent is lost. All the work given to raising and harvesting grain is wasted if it is only locked up in a granary without being ground and made into bread. The toil of the miner and of the smith is wasted, if a machine is left to rust unused; nay, it is half wasted if the machine is run at only half speed, so that it turns out only half its proper products.

Now the total wealth of the community depends, not on the total amount of raw material it possesses, for that is in itself useless, but on the total amount of the most highly finished products it can enjoy. Hence, if any owner of these products at an intermediate stage fails to use them for the further pro-

duction of the completed article, he robs the community of all the labour which up to that stage has been employed upon it.

The law, then, which, for the benefit of the community, secures to each person a right of ownership in what he buys or inherits, carries with it the implied condition that he shall so use these articles as to make them, within the limit of his power, beneficial in the highest degree of which they are capable. The law, in other words, must have for its aim the use of property in such a way as to yield the fullest possible return for the labour that has been already spent upon it.

The second of the general principles which must guide laws of property is to encourage its diffusion, and from this it follows that law ought to discourage its excessive aggregation in the hands of individuals.

What may be excessive is a question of degree, and may vary at different places and in different times. But the truth of the general principle will be apparent if we remember that each person is only capable of a certain degree of happiness, and that certainly the happiness of his life does not augment with the largeness of his possessions. Up to a certain point moderate wealth furnishes increased comfort and gratification of both the senses and the mental faculties. But beyond that point no further

gratification is possible. Therefore, whatever wealth one individual possesses beyond that point does him no service; while, if it were distributed among those who fall short of the point of maximum gratification it would enhance their enjoyments.

We may go further, indeed, and safely say that excessive wealth is noxious to the owner and perilous to the public. It tempts the owner into the indulging of whims, if not of immoral cravings, and it is apt to be spent by him in works which are not reproductive, but which perish with the using. The lives of very many extremely rich men cannot fail to occur to us as examples of this truth. And since great wealth gives the means of buying the services of many, it is easy to see that one individual thus furnished with the most powerful of all weapons might even in modern times become a danger to the liberties of others, or to the institutions of the State. Obviously this peril is as great whether the property be in land or money.

It is sometimes urged that accumulation of wealth in the hands of individuals is necessary to the progress of civilisation and to the encouragement of art. But the fact that the greatest works in modern times are executed by joint stock enterprise shows that a diffused wealth is a much more potent implement of progress than the same wealth concentrated in one person. The same principle applies to art. When a

true understanding of art comes to be diffused, as with the progress of education and of comfort it undoubtedly will be, district and municipal collections will be formed, and the combined means of each locality will form a more trustworthy patronage of artists than that of rare individuals, while the local museums and galleries will better serve to supply a true artistic instruction than the stores which are hidden in a rich man's mansion.

It must also be remembered that the objects suggested in the first general principle of property law are more likely to be attained if wealth is diffused than if it is concentrated. An immensely rich individual is generally indifferent to the creation of further wealth, and careless in using, for the production of further wealth, the fruits of labour. But persons with only small or moderate means are precisely those who are most active and industrious in the effort to increase their stock. The productiveness of wealth of all sorts is therefore unquestionably enhanced by its more general distribution.

It is, of course, impossible to lay down a fixed point as that at which individual wealth becomes so large as to be hurtful, or subject to influences that detract from its benefits. The point varies with different states of society, and even with the dispositions of different men. But since there is undoubtedly a degree of hurtful excess, and practically

there is not any degree of hurtful diffusion, it is clear that the general aim of law should be to promote influences that tend to diffusion instead of aggregation.

Applying to the special form of property which consists in land the general principles above stated, we shall find that they suggest the following doctrines as those which the laws should embody :—

1. Land, as the root of the wealth of the community, should be dealt with so as to evoke its maximum production.

2. To this end there should be nothing tending to preserve it in the hands of a hereditary caste, whether of large or small owners, but every facility should be given for its transfer from those who cannot use it profitably to those who can.

3. Any system which tends to make the labour employed on land not fully productive should be discouraged.

4. The application of capital, which is saved-up labour, should be encouraged.

5. Large estates, implying great wealth, and consequently less inducement to production, should not be an object of legal favour.

6. So far as experience may show that there is no moral or economic objection, the law should rather seek to promote the division than the aggregation of landed property.

CHAPTER IV.

OF THE LAND LAWS OF GREAT BRITAIN.

THE principles laid down in the last chapter as those on which laws of property should be based, have been for a very long time recognised in the action of our own Legislature. Before pointing out in what respects our laws are still defective or unsound, it may be useful to observe how far these principles have formed the motives of reforms which have been already enacted. It has been noticed that within the limits of our own island there is sufficient variety in the legal rules of property to demonstrate that we acknowledge in it no absolute and sacred right. But it is also true that we have, almost from the commencement of our history, been in the process of gradually altering those rules with the avowed object of making property more easily transferable, more free from restraints on its use, more generally diffused, and more productive. The first of these objects has inspired the long series of statutes passed for the simplification of conveyancing. The

power of an owner to entail his lands to all generations was established in England in 1284, and in Scotland in 1616, but it was broken down in the former country by a judgment of the Courts, sanctioned by Parliament in 1542, and in the latter by a statute passed in 1848. Accumulation of either real or personal estate for more than twenty-one years after the death of a testator was forbidden by the Thellusson Act (39 and 40 Geo. III. c. 98), which was extended to Scotland by the 11 and 12 Vic. c. 36, § 41. A number of statutes have been passed both in England and Scotland for increasing the powers of owners of estates limited to their own life, in the hope of promoting the better cultivation of the land. The Bright clauses of the Irish Land Act acknowledged the duty of the State to aid in the acquirement of land by small farmers; and the Agricultural Holdings Act of the last Government was based on the right and interest of the public to promote such conditions of the letting of lands to tenants as might be most favourable to production.

It may also be kept in mind that it is the almost daily task of Parliament, as representing the State, to compel the sale by private individuals of property either required for State purposes, or for works carried on by private individuals for the public benefit. Although in these cases a full price is paid, yet the personal rights of property are entirely set aside by

compelling the owners to surrender the special description of property which they would not have voluntarily parted with.

Nevertheless, while such is the universally admitted power of the State, and while its power has been steadily exercised in amending the laws relating to property, in the direction indicated, there is still much, especially as regards land, that remains undone. Legal rules are still in force which have for their purpose and effect to withdraw land from the ordinary motives of human conduct, to interpose obstacles to its being transferred from negligent to industrious hands, and to hinder its being used so as to yield the maximum benefit to its owners and to the community. The object of these rules is the maintenance of large estates in the hands of individual owners, and the means they employ are the restriction of the powers of each successive owner. We shall consider separately the results of the objects in view, and those of the means employed.

I.—*Extent of Land held by one Owner.*

Notwithstanding the abolition of the laws of entail already referred to, there remain in the system of jurisprudence of the United Kingdom certain rules which serve the purpose of entailing land. The law in all cases of intestacy carries the whole of the land to a single male heir. That this is not a natural

rule of succession is shown by the fact that it does not apply to personalty, nor even to realty if the nearest heirs are females. And although the rule may be altered by express will, yet its existence as a legislative maxim unquestionably exercises a powerful influence in determining testators to adhere to its principles. It need hardly be pointed out that the principle is unjust in itself, and indefensible at the present day, however suitable to feudal times. We have only to think of its cruel operation when there is no estate but land, and when in consequence, if a father dies without making a will, the eldest son takes all, and his brothers and sisters are left without a farthing, to see that in itself it is inexcusable. If such cases often occurred it could not have survived till now. But its rigour is mitigated by the circumstance that any personalty which there may be is equally divided, and that, if the deceased owner has no personalty, he almost always makes a will providing for his younger children by a charge upon the land. But out of this there grows a fresh mischief, which will be more fully examined when we come to deal with other burdens on the estate.

Besides the law of primogeniture there is the law which enables estates in land to be limited to the life only of the holder. Such a holder cannot sell the land except for the purpose of paying off mortgages laid upon it before it came into his possession.

Nor has he any power to devise it by will. He is in the English law language simply a 'tenant for life,' in the Scottish a 'life-renter,' and both terms express that he has no power except to draw the profits during his life. The land, therefore, remains in his hands without being subject to his disposal, and passes at his death to an heir fixed by the deed which gave it to him. There may also be a succession of such life interests. Every full owner of land is permitted to name a succession of heirs who shall all take the estate for life only. The sole condition imposed is that the person so named must be actually living at the date of death of the person naming him. Thus a father may appoint as successive 'tenants for life' not only all his children, but his grandchildren, if they are living at his own death, and while any one of those named survives (which may obviously extend for a period covering a full century), he will take the estate as an inalienable life interest only.

Again, although the principle of entails is abolished, as beyond persons in life when the entail is made, yet the theory survives and gives rise to a practice which effects the same result. For it has never been declared unlawful to make an entail. On the contrary, an entail is perfectly valid, and may be the rule of succession for ever. What the judges (in England) did, and what the Legislature in Eng-

land and Scotland has confined itself to, is to declare that any heir under an entail may, when he comes of full age, execute a deed of which the effect is to annul the entail. Till such deed is executed the entail is the law of the estate. From this rule, and that referred to in the last paragraph, has grown up the common expression that land may be 'tied up' during lives in being and for twenty-one years after. This is not quite accurate. The real fact is that an estate may be 'tied up' during the lives of any number of persons living at the date of the operation, and for an indefinite period afterwards, but that the tie may be loosed by the first successor who was born after that date as soon as he comes into possession, provided he is then, or as soon as he becomes, of full age.

It is by adopting and ingeniously interweaving these principles of English law that land is placed under what lawyers call 'strict settlement.' With this object the full owner, or the several persons whose rights taken together include full ownership, and whom we shall call the settlor, executes a deed in which successive life interests are given to all the heirs who are already living. Each of these will thus on succeeding be limited to the position and powers of a mere 'tenant for life.' But to each in his order, beginning usually with the eldest son, is appointed a series of 'heirs in tail,' consisting of his own male descendants first, and afterwards probably

his female descendants. The first of these 'heirs in tail' who gets the estate, may, when of age, annul the deed and constitute himself the full owner. But till such a power can be and is executed, the original settlement subsists in force, and will bring in the successive life tenants, and their respective heirs in tail, in the order in which they were directed by the settlor to take the estate. Thus a strict settlement may remain in operation for a very long period. But at least it will certainly reduce to zero the powers of one generation of owners, and it usually happens that the next generation, far from being able to exercise their legal power of annulling it, become the instruments by which it is made binding on a generation further on.

For there is another principle in English law which is brought into play for this purpose. It is that one who has no present property, but only a hope of succession, may in advance renounce the rights which would come to him. Thus the son who, being unborn at the date of the settlement, would be entitled on coming into possession to annul it and make himself full owner, is commonly induced in his father's lifetime to sell that birthright. The mess of pottage that is offered to him is a present allowance by his father, and the usual occasion is his marriage. On such an event being arranged, the father, who, having himself only a life interest, has no wish that his son should have more, customarily proposes that

the son, in consideration of an allowance, shall join him in executing a new settlement, the first effect of which is that the son agrees that his own future right shall be limited to a life tenancy. Thus from generation to generation the process goes on, with the result that there never is any owner entitled either to sell or devise the estate as he thinks fit. And every acre which may be purchased is brought successively under the same rule. Thus a continual aggregation proceeds, and the natural influences that lead to subdivision among heirs, or to induce a sale of part or the whole of the estate, to meet the circumstances of the moment, are rendered nugatory.

The law respecting mortgages of land has similar results. The ordinary rule of life is that a man who owes money and has the means of paying should pay. He may borrow for temporary needs, but few persons live under a permanent load of debt. If they wished it, their creditors would not let them. For it soon becomes known that a man is in debt, and each creditor fears that if he delays to exact payment others will be more prompt, and nothing will be left for him. They therefore insist on payment, and if the assets are insufficient the Bankruptcy Court seizes and divides them. The process is hardly staved off by the debtor granting a bill of sale over some part of his personal property to one special creditor

without transfer of possession. Such a security is invalid unless registered and made public; its publicity alone brings down other creditors on the debtor, and as the property is perishable and can be made away with, the favoured creditor is not so safe as to be willing to accord a long delay. Even this form of security is, however, deemed injurious to the public by many persons acquainted with mercantile transactions, and far from being a natural incident of property, under the Code Napoleon and in Scotland it is not permitted at all. But mortgage of real estate has very different consequences. It may in England be secret from all the world, and though this objection might be removed by requiring (as in Scotland) entry in a public register, it would still be of a character totally different in its effects from any security granted over personalty. Land in its nature is stationary, and therefore it is accepted as security for debts intended to be of long endurance. The mortgagor is thus enabled to lay a continuous burden on his property, and neither the secured creditor nor the general creditors have any inducement to compel a sale. At the same time the land is not handed over to the custody of the debtor, as is commonly the case with stocks, goods in a warehouse, or the majority of other personal resources when they are used as a security for advances. It remains in the hands of the debtor, it continues to be his estate,

and yet it is practically not subject to sale for his debts. For even if the creditor desires to call up his money, the debtor can easily obtain an advance for the purpose of paying him by transfer of the security to a fresh mortgagee. Thus the law which permits land to be made security for a special debt operates to impede the ordinary motives and processes which require debt to be paid off by sale of property. The incumbered owner can retain land for an indefinite time, and hence it is obvious that the system of mortgaging tends to maintain estates in land without diminution.

This method of dealing with land as a security has a like operation in regard to family provisions, in so far as the owner has power to make them out of land. Supposing him to leave legacies out of personalty, the estate is either divided, or it is sold and its proceeds are divided. But this is rarely the case with land. The legacies or annuities are merely charged on the income of the land, which itself remains undiminished in the hands of the heir. This is rendered practicable, because of the law which permits valid security to be thus created over land. Manifestly it operates to prevent the natural process which would divide an estate into fractions in nearly each successive generation.

By means of these rules the law of England succeeds in preventing the diminution of estates in land

by the action of natural causes. It thus encourages the aggregation of land in the hands of only a few persons, and correspondingly prevents its diffusion in small portions among a greater number.

II.—*Restriction of the Powers of Owners.*

The law which permits estates to be conferred on a holder for his life only, and keeps the fee simple in abeyance till another generation comes into possession, of course seriously limits the power of the life owner over the management of the land as well as over its devolution. Although most modern settlements give him power to sell part of the estate for debts which had been incurred by the settlor, and the Court of Chancery may supply such powers when defective, yet this relaxation does not apply to any debts contracted by the tenant for life himself. These he can neither charge on the estate, nor pay off by selling it; he must remain subject to a burden which, from its uncertain nature, probably involves a very heavy rate of interest that eats up a far larger share of his income than would be the case if he were at liberty to pay it off by sale.

The late Government (Lord Beaconsfield's) introduced some measures which professed to enlarge the powers of owners of settled estates, but they merely dealt with details of procedure, and left the principles

of the law, and their operation, as above explained, entirely unaffected.

Some Lands Improvement Acts have been passed of which the object is to allow private companies to advance money to owners of settled and encumbered estates in England for the purpose of effecting improvements. The money so advanced forms a first charge on the land. But, before it can be so obtained and invested, a good deal of legal machinery must be put in operation, in order to secure that the owners of subsequent interests are in no way prejudiced. In England the Enclosure Commissioners must certify and superintend the application of the money, and this costs on an average 7 per cent. additional in the shape of costs. In Scotland the application must be made to the Supreme Court, and involves a still heavier expense. In a small case I have known the costs of obtaining the loan amount to 30 per cent. of the advance. But besides this charge falling on the owner, he must pay not merely interest on the advance, but such further sum of annual interest, generally 2 to $2\frac{1}{2}$ per cent., as will suffice to clear off the loan in 20 or 25 years. Practically, therefore, the owner of a settled estate cannot obtain any advance, even for improvement, unless he is prepared to pay 7 or 8 per cent. a year for the loan, or in other words cripple himself for the sake of making a gift to his successors.

It will also be remembered that such an owner has no choice as to who his successor shall be. He may have a limited power to grant portions to his younger or female children, but the bulk of the estate (subject to such charges) must devolve on his eldest son, or on some remoter heir, who has been irrevocably fixed by his ancestors, or by himself at an antecedent period.

The powers of an owner of land which has been converted into security for debt (whether by mortgage or by charge for children) are almost equally limited. He may indeed obtain a further advance if the margin left is considerable, and he may sell, or select his own heirs. But so long as he does not choose to exercise the power of selling he will find it difficult and costly to raise more money even for the purpose of making valuable improvements. His burden is different from that of an owner of a life interest, in that it is optional, but there are many social reasons that induce him to accept it as imperative, and while he so views it, its weight is as oppressive as if it were imposed by a rule of law. How this position affects the culture of the land will be shown in Chapter VII.

It therefore appears that the effect of the peculiar rules applicable to the tenure of land in this country is to favour the maintenance of large estates, by

diminishing the powers of the owners who are for the time being in possession of them. We must next proceed to examine whether either the object or the means are beneficial to the individuals affected or to the community.

CHAPTER V.

OF THE NATIONAL INTEREST IN CULTIVATION.

BEFORE proceeding to examine the results of the English land laws on cultivation, it is requisite to meet a preliminary objection.

Since all wealth comes originally from the earth, and most of it from the produce of its surface, it has hitherto been assumed, as political economists have agreed in maintaining, that it is of high importance to promote the productiveness of the soil in each country. So strongly did this proposition use to be insisted on, especially by the Conservative party, that it was even argued that special laws ought to be enacted, taxing the community for the sake of supporting agriculture. But since this extreme view has been rejected, there have been some writers belonging to the same school who have advanced diametrically opposite views. They have argued that the adoption of Free Trade has made it no longer of any consequence how much food we grow

at home. They urge that the principle of Free Trade is, that labour is most advantageously employed in those industries for which each country is peculiarly adapted, and that whatever cannot be most economically produced in one country should be imported from another. They then assert that grain and meat can be produced more economically (that is, with less labour) in America, Australia, Russia, and other distant countries, than in England, while our special advantage lies in manufacturing. Hence they deduce the proposition that we ought to employ our labour mainly in manufacturing, and buy food from abroad with the price of our exported manufactures.

It would follow from this reasoning that, absorbed in commercial pursuits, we may be indifferent to the management of the soil of this country. The public therefore, these economists tell us, having no interest in securing a maximum of return from the land, is not entitled to interfere with the proceedings of its possessors. If, then, its possessors should prefer to let it lie waste, or to convert it into game preserves, the nation has no right and no motive to object. Or if, for social and political reasons, the State should deem fitting to establish rules which favour accumulation in the hands of individuals, though by processes which discourage agriculture, we should not be justified in demanding their alteration.

This line of argument has the merit of being bold and thorough; but it is open to the double exception that it rests upon inaccuracy of fact and unsoundness of reasoning. First, let us consider the facts. The proposition that the staples of food can be permanently produced more cheaply out of England than within it is not true. Wherever food is grown it demands labour. There are a few exceptionally rich soils in the world where a little labour affords a large return; but these are of so limited extent, that they do not practically affect the question. Over all the great food-producing regions it may be affirmed that nearly equal amounts of labour are involved in raising equal amounts of food. Even if the soil of America or New Zealand be clear of timber and brush, which is only occasionally the case, the leading features of culture are identically the same in both places as in England. The ground must be ploughed, the seed sown and harrowed in, the grain must be cut down, threshed, and sent to market. In all these operations, exactly as much human labour (supposing the machines employed to be similar) is spent in the New as in the Old Continent.[1] And the cost of labour is at least as high in the former as in the latter. In England, additional labour is spent in

[1] On certain soils there is a temporary saving of labour owing to the shallower cultivation necessary. But this advantage ceases generally after the first crops.

manuring and in weeding, and this is not the practice in the newer soils. But in these soils (with very few and limited exceptions) the product, after the first year, barely reaches an average of twelve bushels of wheat an acre; and Mr. Lawes and others have shown that an average English soil will year after year yield an average of sixteen bushels per acre without manure, or labour in manuring. If English farmers give manure it is because, by so doing, they obtain a greatly enhanced return, even after deducting the cost of the materials and of the extra labour. This cannot be done in new countries, because the manure does not exist, and to import it would double its cost. Thus, even in this computation, the fact is that labour in England skilfully applied raises more food in proportion than the same amount of labour expended elsewhere.

But this is not all. The wheat must not only be grown, but it must be brought to the consumer. In England, this employs the labour of the carter, who takes it to the mill, and from the mill to the baker. But if the wheat has been grown in America or New Zealand, it must be carted, not to the miller, but to the railway station. Thence it must be carried to a shipping port, then put on board, carried across the Atlantic, or perhaps the Pacific as well, unloaded in England, again transferred to rail, and at last delivered to the mill. Here, then, is the

labour of railway-men, seamen, dockmen, and the charges of middlemen, all added to the labour of the grower before foreign wheat can be eaten in England. How much this may amount to is a question of distance; but it is under the present average to put it at 10*s.* per quarter, or about 1¼*d.* on every four pound loaf. This represents the extra amount of mere labour required to supply us with food from abroad, instead of growing it at home. And it is because this extra amount of foreign labour is employed that landlords are able to get rent for their wheat-farms in England. The growing of the wheat is in both countries effected at nearly the same cost for labour (a little less, however, in England, because of the advantage of manure on the spot), but the American grower is obliged to add 10*s.* per quarter for extra labour in transporting it to England. But as the English farmer gets the same price in the market as his American rival, he has 10*s.* per quarter extra profit. Out of this, if he grows four quarters per acre, he is able to pay the landlord 40*s.* per acre for rent. The American farmer pays no rent, but he grows only one and a half quarter per acre, and he has to give the produce of half an acre to get the produce of two acres to the English consumer; so that this half acre, and all the labour employed on it, is simply wasted by growing wheat for English mouths in America instead of at home.

The same principles apply to the feeding of cattle. The labour in summer is only superintendence as the animals graze. There is some cost for fencing in settled countries, which is saved on the actual prairie; but it must be incurred as soon as prairie lands are divided into farms. In a few districts where the climate is very favourable, the beasts are left out all winter. But farmers who adopt this course seldom fatten their beasts under four years old; while English farmers who feed under roofs and on roots and cakes, turn them out at two years old, so that the labour employed in making an animal fit for the butcher is not greatly different in the two cases. But when the cattle are fed in America, they cost the labour of transport before they reach England, and this cost is entirely saved when they are bred in England.

It follows that the assertion that it is more economical of human labour to grow the food of Englishmen at 4,000 to 10,000 miles distance from England is false in fact. The system really involves a great waste of human labour.

Secondly, let us examine for a moment the reasoning which is based on this false assertion. The proposition put forward is that since Englishmen can be fed from abroad they have no right of control over what is done with the land at home. It

is argued that the circumstance of landlords drawing rent is no concern of the rest of the population, and that whether much or little food is grown affects only the bargain between the tenant who pays and the landlord who receives the rent. If little is grown we shall import the more, and we shall pay for our imports with the produce of our labour in manufacture.

This proposition would be sound only in one case. If we wasted no labour in defective cultivation, and if we employed usefully all the labour which skilful cultivation demands, so that on the whole the land of England produced food to its utmost economical capacity, then it would be true that we should not have any economical ground for interference with land-owners' proceedings. But this imaginary case is a very long way from being realised. At present we actually waste, even in England, an immense amount of agricultural labour. If land is undrained it produces only half crops, and as the same labour is required on undrained as on drained land, half the labour given to undrained land brings in no return, or is wasted. If there are not proper buildings for carrying on the business of preparing grain for market, or for feeding stock, labour is again uselessly wasted in these stages. If the farmer, from want of capital or proper security, does not manure sufficiently, his crop is deficient, and the labour of raising it is partly wasted. If antiquated rules of cropping are enforced,

again there is a deficiency of returns, equivalent to a waste of labour. If the crops grown are eaten up by game, the labour of growing them is equally wasted. In these and a thousand other ways the present system of cultivation involves conditions of which the effect is to make much of the labour employed in our fields and barns as unproductive to the community as if the labourers were working in prison on the treadmill.

Not only is so much spent uselessly, there ought to be spent usefully a great deal more than there is. Every authority in farming agrees that the great evil of English agriculture at the present day is the insufficiency of the capital employed. Now capital is stored up labour, and the employment of it would be in supporting additional labour. This labour would be engaged in extending cultivation, in draining land that needs it, in erecting buildings, in attending upon more stock, in applying more manure, in manufacturing more artificial manures and more improved implements of husbandry, and finally as a result in carrying more grain to market. All this extra labour would be paid for at a profit by the extra profits which its employment would bring in. These profits would be diffused through the community; first, the farm labourers, being more in demand, would get better wages; next, the labourers of the manure and implement works would benefit; the rise in these wages

would be partly spent in food, returning to the farmer's pocket what he gave, partly in clothing, to the advantage of the manufacturing districts, partly in luxuries, and to some extent in books. With increased profits in one department of industry there would be improved circumstances throughout every class, and every one would in a degree be richer (as well as better fed) if we grew our food at home and paid the home producer for it, instead of paying the producer in another hemisphere. Even the sailors and railway men whose carrying trade in grain and meat would be lessened, would have as much to do in bringing to us the luxuries of other climes, which our saving in the cost of food would enable us to buy.

It may be worth while to estimate (however roughly) what is the yearly loss to the nation caused by the neglect of proper culture of its own soil. It is calculated by Mr. Caird and other statisticians that the average yield of the British islands is worth in animals and their produce about 126,000,000*l.*; in grain and potatoes, 104,000,000*l.* But of the former class we import annually about 38,000,000*l.* worth, and of the latter about 54,000,000*l.* worth. On the whole we grow at home some 230,000,000*l.* worth of food (including grain used for horses and cattle, but not grass, hay, or straw) and we import 102,000,000*l.* worth. Now it has often been said

by very competent authorities that better culture would double the produce of our home fields. But if we only added a half to the present produce we should save the whole that we now pay to foreigners. Yet let us adopt a very much smaller estimate. I suppose there is not any intelligent farmer who will not admit that, taking the country all over, one-fourth might be added to the gross total of produce by the aid of more drainage, buildings, and manure. If this be so it would give us, on merely the items of human food, an increased value of above 50,000,000*l.* a year. This sum, or its value in goods, we at present pay to foreign countries. How much is lost in the process of barter? Clearly at least the cost of transport of the goods we import and all incidental profits of middlemen. Taking these at rates equivalent to 10*s.* per quarter of wheat—about two ninths of a ton—and which, therefore, is a rate of 45*s.* per ton, and taking the value of wheat at 10*l.* per ton, or 45*s.* per quarter, we have a net loss of over 11,000,000*l.* per year on our imports of food. Capitalising this at 3 per cent., it represents a total capital of 360,000,000*l.*, or not far from one-half the National Debt. This is the loss to the nation, in national labour wasted, by its being applied to manufactures instead of agriculture, or to agriculture under conditions that diminish the proper returns it should yield. A loss firstly to those concerned in the production of

food, in their several grades, but ultimately distributed through the whole nation, and equivalent to a poll tax of about 6*s.* 8*d.* per head on every man, woman, and child within the United Kingdom. Or, in other words, the present system of cultivation costs every family of four persons 26*s.* per year, not spent like ordinary taxation on objects of more or less necessity or utility, but as much thrown away as if it were carried into the middle of the Atlantic and there thrown overboard.

This computation, let it be remembered, is studiously moderate. It is restricted to the loss on carriage alone, and its amount would be quadrupled if we were to take as its basis the opinions of such competent judges as Lords Leicester and Derby on the actual deficiency in our returns arising from imperfect cultivation.

The conclusion is forced upon us that the present system of culture of land in Great Britain results in a prodigious annual loss of wealth to the nation. It is a loss so large as to bear an important ratio to the amount of national taxation, and it affects not only the persons immediately interested in land, but indirectly the whole community. The community has, therefore, the strongest possible interest and right to have our home production of food increased. If its increase is impeded by any of the laws now in force, the will and duty of the nation to alter them is incontestable.

CHAPTER VI.

OF THE ECONOMIC AND SOCIAL RESULTS OF LARGE AND SMALL ESTATES.

THE considerations set forth in the last Chapter establish that the present productiveness of the soil of this country is greatly below its possible limits, and that it is of great national concern that it should be increased. We now proceed to enquire whether the deficiency is due to the system of tenure of land maintained by existing laws. The object of that system was shown in Chapter IV. to be the perpetuation of large estates, and the means employed are the restriction of the powers of the present possessors.

The advocates of this system assert that it is in fact the most economically productive. They argue that culture on a large scale admits of a better division and distribution of labour, of the employment of machinery, and of the investment of more capital in improvements and in what is called high farming, than is possible under a system of small estates.

But in using this argument (whether it be sound

or not) there is apt to be a confusion between estates and farms. Whatever its value, it obviously applies only to individual farms, and has no application to estates consisting of several farms. Every large estate is actually broken up into smaller ones for the purposes of cultivation. Very few farms exceed 1,000 acres, and even on the largest estates the great majority of holdings are under 500 acres. But the subdivision for cultivation goes actually much further, and in practice it is found that farms of 300, 200, or even of 100 acres are capable of cultivation with as much economy and success as those of 1,000 acres. Here then is a demonstration that it is not for any cultural facility, or economy, or profit, that the law need care to maintain estates of above a few hundred acres in extent.

Nor does the circumstance that a number of such farms belong to one owner at all make the position of his tenants superior to that of the owner or the tenant of a farm which forms the total extent of the estate. Probably if the property does not consist of more than ten or twelve farms, it may be managed by the landlord in person, but not usually with more liberality to the tenants than if he had only one farm. Above the higher number the probability is that the property is managed by an agent, who is not seldom a lawyer with little practical knowledge, and who, even if he knows what is required, must

obtain authority for his outlays from a landlord who has little personal knowledge of or interest in the tenantry. Supposing, finally, that the estate is exceptionally large, that fact frequently implies that the landlord has an ample fortune, and here one might say is the special opportunity for beneficial application of capital in improvements. But in this case the landlord often does not care to increase his income, or to help his tenants to increase their profits; he prefers to let rents remain low as a condition of keeping the tenantry in a certain position of dependence on himself, so as to vote for his nominee at election times, to make no objection to a large head of game, and in a general way to recognise a fitness of things in the subordination of ranks. Every one who knows rural England must be aware that on the majority of very large estates this is the tacit but well-understood system of tenancy.

It seems obvious, then, that there is no clear advantage to cultivation or productiveness in the existence of estates exceeding in size the extent of a single farm. It is, however, maintained by some that to introduce any legal rules which would favour their division, would be to commence a process which we could not stop; that it would rapidly lead to the subdivision of land into patches too small for useful cultivation, that it would substitute peasant proprietors for large farmers, and the final result would be

to bring the production of the soil of England as low as that of France.

As it will be seen hereafter that I do not advocate any method of compulsory division of land by inheritance or otherwise, I might afford to pass by all objections directed against the results of such methods. But, as even the natural operation of social economy, if left unbiassed by law, would undoubtedly tend to diminish the average size of estates in land, down to a point which cannot be precisely fixed, it will be proper to consider the real nature and value of the objection to such a result as that which has been above suggested.

It would indeed take a volume to answer in full detail the arguments used on this question, and only a few pages can be here devoted to it. Since then, for want of room to cite other authority, I shall be compelled to let a good deal stand on my own, I may be forgiven if I say that at least I have the means of knowing the subject in dispute. I have during all my life been intimately acquainted with, and I have a direct personal interest in, the farming in one of the best managed districts in Scotland; that of England and of parts of France and Germany I know from observation and intercourse, as well as from books; and I have myself during the last ten years lived and farmed in Guernsey, an island in which culture is on the minutest scale. I shall,

therefore, at least not draw on imagination for any facts, nor compare different systems without knowing their practical working.

With regard to the alleged superiority of intelligence and education of the cultivators of large over those of small farms, it is necessary to keep in view the extremely progressive state in which agriculture at present is. It is barely half a century since draining was extensively practised; it is not yet forty years since the first experiments were made with artificial manures; the general use of food for stock, other than that grown on the farm, is of still later introduction. In a single generation these three novelties have revolutionised agriculture. An infinite number of errors have inevitably been fallen into by those who first adopted them, errors sometimes due to the mistakes of scientific men, sometimes to the ignorance of practical men, but errors which have been, and still are being, corrected by experience. But different districts have made very different progress in applying the new and valuable knowledge thus attained, and it is quite impossible to maintain that more progress has been made where farms are large than where they are small. So also, taking any district by itself, it is quite impossible to maintain that the large farmers are, as a rule, more advanced in their methods of cultivation than the smaller. What may be fairly stated is this. In every district the new

systems have been introduced by one or two individuals more enlightened and enterprising than the rest. These have nearly always been cultivators of farms above the size of yeomen's, but beyond this not more often farmers on a large than on a moderate scale. When visible success crowned these first experiments, they have been more or less followed by their neighbours, but at this stage quite as promptly by the yeoman as by the large farmer. It has been, in short, an advance of individuals, not of classes, dependent on personal activity of mind, and not on comparative means.

Agricultural education is, however, making rapid progress. What a few years ago was scouted by farmers of all degrees, is now accepted by all as sound practice. To initiate experiments requires indeed a knowledge so exceptional that it cannot be expected that one farmer in a thousand should possess it. But to observe and adopt results is a process which is within the capacity of all. And the education which is now becoming within the reach of peasants is amply sufficient to guide them in observing and adopting. There are many known to me in only the ranks of peasants in Scotland and Guernsey who are now cultivating their few acres on principles as enlightened, and using scientific results with as much sound judgment and liberal outlay, as the largest tenant farmers or landowners in Great

Britain. They are also as sensible of the progressive nature of science. The Agricultural Association of Aberdeenshire, a county of moderate-sized farms, has recently led the way in a series of practical experiments more carefully devised, and productive of more certain benefit, than any which had previously been instituted by the great and wealthy Royal Agricultural Society of England.

With regard to the proposition that culture on a large scale must be more productive and more economical than on a small, it appears to rest on a superficial acquaintance with the subject. It supposes that machinery can be substituted for manual exertion only where a farm is of large extent. Many machines, however, including those for threshing, grinding, pulping, chaff-cutting, &c., are just as efficient and useful when of a power that needs only one man, one horse, or a small engine, as when they are much larger. Excellent steam engines are now made of from half-horse to five-horse power, which give a duty practically as high as those of five to twenty-horse power. If the same cannot yet be said of ploughing or traction engines, it is because even on a large scale these are yet too imperfect to be generally introduced. The system of combination of small cultivators is also a very efficient means of equalising their position with that of farmers in a more extensive way. Dairy husbandry used to be considered a branch which

could not be profitably conducted except by those who were able to keep a considerable number of cows. But in France a contractor drives his cart through the villages in early morning and evening, and, as the tinkle of his bell is heard, the thrifty housewives bring the milk cans, containing the produce of their one or two cows, and receive from him the same price which the farmer gets who makes his own butter or cheese by the hundred-weight. In America and in England cheese factories have been established which take any quantity of milk which it may be convenient to the cow-keeper to furnish, and with good profit to themselves are able to pay to those who supply them a remunerative price. So also in the processes of the farm, travelling threshing machines, or ploughing machines, are coming into very extensive use, and are available for farms of every variety. Generally as yet they are of large dimensions, but there will be no difficulty whatever in providing them of smaller dimensions to perform the work of small farms as economically as of large.

Those, therefore, who assert that cultivation must be on a large scale to be conducted economically, are simply speaking in ignorance of the facts. Those who assert that farming on a large scale is more efficient, are mistaking facts. It is the small farming, the careful minute diligence which makes every inch of soil do its duty, which brings the proper

manure to the root of every plant, that evokes by far the largest crops. The market garden which pays a rent five times as high as the adjacent farms, is an indisputable testimony of this truth. It is not merely that the market gardener grows crops of greater value, he grows ordinary crops also of greater bulk, and he extracts from the soil a greater weight of annual produce than the farmer who uses half the manure and a fourth of the labour. Would it then pay to spend more labour and manures on the ordinary crops of the farm? That is a question which every agricultural authority without exception will answer in the affirmative. They declare unanimously that more capital, which means more labour and manure, is what British agriculturists most need, and they will agree that there is hardly a farmer in the kingdom who would not make more money if he held half his present acreage. The contrast between our own island and the virgin soils of America and Australia tells the same truth. Labour there, partly because it is dear, and partly because land is cheap, is spread over a large surface, but it does not raise larger produce for the amount employed. One man with a pair of horses will till his 150 acres, but he does not raise such bulk of produce as the one man in England who does not with a pair of horses profess to till above half the extent of land. To farm

on a still smaller scale than is now the rule in England would give a still more profitable return for the labour, besides furnishing a much larger amount of produce. There is some confirmation of these views to be found in the fact that, during the recent depression of agriculture, small farmers have suffered less than large. I do not venture to state this as a universal experience, because my personal knowledge is of course limited, but it is undoubtedly the fact that in several localities where good farming prevails it has been impossible to let a large farm without a considerable reduction of rent, while on a small farm, within the compass of one man's labour, there has been no abatement asked, and no lack of offers, at even a rise of rent, when a vacancy occurred. Yet a poor man is even less able than a rich man to stand actual losses, and the inference therefore is that in times of bad seasons and low prices the small farmer has in England suffered less loss than his wealthier neighbours. In other words, where it has been possible to apply a larger amount of labour to the soil, farming has been more successful, and the injury done by bad seasons has been diminished. This result will not seem surprising if we reflect how much may be gained in adverse circumstances by mere watchfulness and care, and by the ability to do at the right moment what ought to be done. This is precisely what the small farmer can do.

Against this proposition there is usually set th assertion that it is disproved by the results shown by France. We are told that statistics there give the average return of wheat at only 14 bushels per acre, whereas in Great Britain it is 29 bushels. But those who use this argument forget two facts. One is that before the Revolution, when France was a country of large estates, agriculture was in a state so wretched that France in the intervening period has advanced far more rapidly than England in increasing her produce. The other fact is that in France a large area of the best land is taken up with vines and other plants which are more profitable than wheat, and therefore the wheat areas in many departments are confined to inferior lands, which necessarily reduces the average of the whole. But the matter can be tested nearer home. In the Channel Islands a nearly equal division among heirs has been the rule for many centuries, and therefore subdivision has long reached its ultimate limits. Under these circumstances farms vary from 50 acres down to a mere patch, the great majority ranging between the limits of 2 and 10 acres. Neither soil nor climate is particularly adapted for wheat, yet the average produce is considerably above the average of England. The rent of land is four times what the same soil would bring in England, and though this is partly due to the climate, which favours early crops and

gives a longer season of growth, yet it is equally certain that these rents could not be paid if the fact were that the methods of cultivation on so small a scale are in any respect inferior to those which are employed on a large scale in the best-managed districts of England and Scotland.

There are certainly in these islands some practices which, to the English farmer, appear uneconomical. He is startled, for instance, at seeing men on their knees weeding the crops, and he thinks that to fatten cattle on parsnips instead of oilcake is antiquated. But if he enquires before he sneers, he will find that in the well pulverised ground a shower would make weeds root so fast that a horse-hoe would only transplant them, and therefore it saves labour to pull them up by hand. He will find also that by this careful cultivation the parsnip crop pays in beef a handsome profit on the labour (the gross return is 30*l.* to 40*l.* per acre) which is more than can be said by the best English farmers for their root crops supplemented by oilcake. He will find also that the rate of agricultural wages is higher than in the purely agricultural districts in England, and that not an hour of labour is spent by the thrifty peasant on any task that does not yield an ample profit. He will find as a total result that, exposed to the competition of French as well as English importation, and therefore with home markets no higher than in either of these

countries, the Channel islander, by good cultivation, by careful attention, and by keeping a sharp eye on what he can raise that will bring the best price when exported, is able to make his ordinary crops as well as his extra crops bring him in a profit that gives him a comfortable subsistence, from an extent of soil that does not very greatly exceed the proportions where 'every rood of land supports' at least one member of a family.

We see, then, that while under the existing system of large estates, land in England fails to fulfil its primary function, that of being in the highest degree serviceable to the community, there is reason to expect that under a different system, which would tend to its greater subdivision, it would yield far larger returns. But it is alleged by the supporters of the present state of things that land fulfils other functions more valuable to the public, and which would be lost were any serious innovation made in its tenure. It is argued that the maintenance of considerable, and in many cases of immense estates, is essential to the existence of a landed aristocracy, and we are told that such an aristocracy brings with it social advantages so important as to counterbalance any physical losses that may accrue from property being insufficiently productive.

But with regard to the political effect of an aris-

tocracy connected with land, which is a subject too large to be treated here, it may be sufficient for present purposes to observe that in so far as a higher intellectual culture is concerned, there is certainly no advantage nowadays perceptible on the side of the landed over the mere moneyed aristocracy. The culture of towns is higher on the whole than that of the country, and landowners may be said to exhibit culture pretty nearly in proportion as their life is spent in towns instead of on their estates. With regard to the steadiness of political life and object which is supposed to be contributed by a landed aristocracy to the government of the country, it may also be observed that it appears to be contributed quite as much by a peasantry of landowners, as in Germany, France, and the United States, as by an aristocracy of large landowners as in England or Austria.

Turning now to the social benefits arising to the nation from the institution of an aristocracy of landowners, we must here also apply the principle of comparison. No land reformer need wish to deny the charm of much of the rural life of this country. Rich and poor are still knit together by the remains of a warm kindly feeling. The sentiment which honours an old-descended family is, in the majority of instances, justified by the goodness of its intentions and its actions. Refinement, culture, know-

ledge, are insensibly diffused from rank to rank; a civilising and progressive influence, moral and intellectual, is in perpetual silent operation from the intercourse of the wealthy with those whom they feel to be friends as well as dependents. Nor does the power that is exercised by the wealthy often degenerate into tyranny. As a rule, the local government of an old county family is paternal in its best form, and the submission that is expected rather than demanded is the consequence of untiring personal efforts to promote the happiness of tenantry, labourers, and poor.

Nevertheless, even in its best aspect, this is a form of social life that it is well for the country should die out. Paternal government is, in its essence, a despotism; and if, at one stage, it aids, at another it cramps the full development of those subjected to its sway. In some instances, even if they are exceptions, it is abused, and becomes an instrument of cruel injustice. But even in its most favourable operation it is only an education, and when the work of education is effected, the submission of pupils to teachers ought to cease. Reciprocal kindness need not vanish, though the relations of the parties are changed to a footing of greater equality. If the influence of old families dies away, it will be because they have done their work. Their place would be taken by slow degrees by the descendants of those whom they had fostered.

Who does not see how much happier England will be when, instead of one great mansion surrounded by miles beyond miles of one huge property, farmed by the tenants at will of one landlord, tilled by the mere labourers, whose youth and manhood know no relaxation from rough mechanical toil, whose old age sees no home but the chance of charity or the certainty of the workhouse, there shall be a thousand estates of varying size, where each owner shall work for himself and his children, where the sense of independence shall lighten the burden of daily toil, where education shall give resources, and the labour of youth shall suffice for the support of age. Changes like these cannot indeed be created; they must grow. But our business ought at least to be to permit their growth, and the first step towards it must be to abrogate laws which make impossible, or even difficult, the natural processes of disintegration, by which, when free scope is given to them, land is subdivided into such properties as the state of social life at the moment may require.

Furthermore, it ought to be remembered that even such temporary advantages of a social kind, as are claimed for the system of large landed properties, are incompatible with the existence of very large properties. The personal intercourse of the landowner and his family cannot, in the nature of things, reach beyond the radius of their daily walks and

drives. When an estate extends beyond these limits, the inhabitants of its remoter portions are wholly beyond the civilising influence of the great house. This is obviously also the case where there are properties in several different parts of the country, in each of which there can only be a brief temporary residence. Besides, as the landowner becomes more wealthy, the supposed calls upon him to be absent from his estate increase in urgency. He must spend a fourth of the year in London, perhaps another fourth on the Continent or in yachting, a month in the Highlands, a month or two in visiting, so that his home residence is limited to the shooting and hunting season. These absences are very much more frequent and longer now than they used to be in the days of our fathers or grandfathers, and their tendency is still to increase. But with this result there is palpably a most serious diminution in the beneficial influence which can be attributed to a landowner residing on his own estate. He becomes, in fact, every year more of an absentee; if the estate is large, he is wholly an absentee to great part of it, and no one has ever maintained that absentee landlordism is an institution which is good for a country.

On the whole, then, the conclusion to which we must come on a fair investigation of the facts is that, nowadays, and more and more with every year's lapse, the benefit from the maintenance of large estates, is

an inadequate compensation for the loss of happiness which follows from the exclusion of a larger number of persons from the possession of land. When we add to this conclusion the fact that large estates, such as exist in England at present, do not afford the maximum of production, we are forced to the conviction that there is, at least, no presumption in favour of the laws which tend to maintain the existing state of things.

CHAPTER VII.

OF THE RESULTS OF RESTRICTED POWERS OF OWNERSHIP.

HAVING satisfied ourselves that the object aimed at by the restrictive laws applicable to the land, viz., the preservation of great estates, is in no sense advantageous to the public, we are now to examine the operations of the means employed for that object. These means, it will be recollected, are the laws permitting land to be settled and to be mortgaged.

It is a primary condition of good cultivation that a large amount of capital must be invested in the business. Land, as has been shown, is not a perennial fountain of wealth from occult and inexhaustible sources; it is merely the instrument by which the powers of nature work out the task of converting into food the materials which we supply. From all ordinary soils we can gain only what we put in, converted into a useful shape, and therefore to gain much we must spend much. This outlay divides itself into two classes: firstly, that required to fit

the land for cultivation—buildings, drains, roads, fences—and secondly, that required in actual cultivation, labour, machines, and manures. The first class is usually considered the landlord's part, the second the farmer's. But obviously, before the farmer can profitably invest his capital in culture, the landlord must have rendered the land fit for culture. And further, before the farmer, if he is not the owner, can safely invest his capital in labour and manures, the landlord must agree to secure its return, either by a lease or some similar stipulations.

This expenditure—of both classes—is becoming more imperative every year. Scientific agriculture, which only means agriculture founded on knowledge of the natural laws of the growth of plants and nutrition of animals, is the only form of agriculture which is now profitable, or which indeed in the face of foreign competition is now possible. That it is profitable is the testimony of all who have judiciously (that is really scientifically) put it in practice. It has no immutable counsels; it varies in every district with local circumstances, climates, soils, labour, and markets; but it involves one inevitable condition, that money must be invested. It is vain to farm highly on undrained land; it is futile to fatten beasts or keep dairy cows in unsheltered yards; it is impossible to compete with foreign machinery unless provision is made for using machinery at home. Every-

where, therefore, outlay is demanded in the permanent improvement of land. Every year, also, as the farmer's outlay in labour and manure becomes larger, it is necessary that he should obtain more definite assurance that he shall have time to get it returned in produce. So that the essential preliminary condition of successful farming must now be said to lie in the investment of capital by the landlord, and the granting of liberal leases to the tenant, if the landlord does not himself farm.

Now how are these conditions affected by the laws we are considering? Cases may be conceived in which they are unaffected. If a landlord of an estate in which he has only a life interest be a wealthy man, and if his heir be one for whom he is willing to make exertions and sacrifices, all may be well. But the reason will be that in such a case the laws do not come into play at all, for the owner would have dealt with the land and the succession to the land in the same way if he had been under no restriction. Take, however, the cases in which the laws do operate. Suppose that the property is settled upon an heir whom the present possessor dislikes, is it probable that he will spend money for that heir's advantage? Suppose that the present possessor has a family of daughters, is it likely that he will diminish their portions to enhance that of the son, or the more distant male heir? Suppose that the present pos-

sessor is not wealthy, but has only the income of the land, after paying interest on debts, to live upon, is it likely that he will borrow at 7 per cent. to improve the land for a future generation? Suppose that the estate, whether settled or not, is deeply mortgaged, is it likely that the owner will in any way be able to improve it? No answer but one can be given to these questions. Yet they suggest cases which are exceedingly common, if not in some respects the most common which do occur.

It is, in fact, evident that we violate those principles of human action which political economists rely upon as the strongest motives of production and of accumulation when we establish such artificial rules of property. The purpose of permitting inheritance and the right of bequest is to induce men to provide for those whom they love, and to work in order to amass such provision. If the State were to confiscate every man's property at his death, he would have no motive to augment it during his life. But there is no difference in effect between the State confiscating, and the State transferring to an individual whom the owner of the property dislikes. It may even be said that in many cases a man would prefer that his property should be taken by the State, rather than be handed to a detested successor. Certainly, if it is not to benefit a person who is loved, but a person who is hated, the motive will be not to improve but

rather to deteriorate the property. When, then, an estate must pass, by the terms of a deed of settlement, to an individual whom the present possessor regards with disfavour, that is, to whom, if he had the power, he would not leave it, we certainly give him every reason to stop whatever processes might tend to increase its value. No prospect of immediate benefit to himself will outweigh the influence which the prospect of a hated heir reaping the ultimate benefit will exercise upon his mind.

Nor can it be urged that these motives of action are such as, though natural, at least ought not to be indulged. It may happen occasionally that the life-tenant takes an unfounded prejudice against his heir. But it may happen, and probably more frequently, that the disapproval is merited and just. The eldest son may be a spendthrift, or undutiful, or a scoundrel; all the same, he must become the proprietor of the estate. No matter how different the character of the other members of the family may be, they must be excluded. When we take the frequent case of an estate settled on heirs male, it needs not that the nephew or cousin, who takes in default of sons, should be a reprobate, to make him inevitably less a favourite than the daughters whom he is to exclude. In all these events the tenant for life is warranted in preferring those to whom he cannot give the estate to the individual to whom it must go, and he is there-

fore justified in giving as little as he possibly can to the heir whom the will of others has provided to supersede his own better informed judgment and natural affection.

It is, indeed, one of the cruel and impolitic anomalies of the present laws, that even money which in the hands of its possessor is subject in every way to his pleasure, becomes, the moment it is applied to improving a settled estate, subject to the rules of the settlement. And as the essence of such settlements consists in the land passing to an heir selected by the original settlor, every improvement on the estate involves for its consequence that the present possessor must resign some rights of his own, some powers to do what he likes with his own funds, and subject them to the arbitrary pleasure of the owner from whom he has received a mere life interest in the land. To expect, then, that the holder of such a life interest shall often be thus liberal is to expect more from human nature than it can give, more than in many cases ought to be given. It becomes, in frequent instances, an absolute duty in the life owner to abstain from increasing the value of the estate, and rather to devote his private means to making a provision for those to whom the estate will not pass. Can any absurdity be conceived in legislation respecting property greater than this, that the laws should be so framed as to make it wicked to cultivate the soil so as to produce most food?

But the injury is not alone to the land, nor the wrong done only in the pecuniary hardship to its possessor and those whom he loves best. There is another evil, perhaps even greater, in compulsory heirship. Between the son, who knows he must succeed, and the father, who knows his son must succeed him, there is set up the involuntary jealousy of property, which only rare natures can defy to hurt. The dependence of a son upon his father is a legitimate provision of nature which these land laws extirpate. The father's free voluntary love for his son changes its character towards the expectant and inevitable heir, who, with fuller powers, will take his place at his death. Nothing can be conceived more poisonous to family kindness than the setting up of conflicting rights of property within the family circle. This is no mere sentimental apprehension. It was one of the felt evils which Coke and Blackstone declared moved the English Parliament to abolish entails. A generation had passed after Coke wrote when what Parliament had abolished was revived in a changed form by the cunning device of a Chancery lawyer, who first invented the modern method of transmitting estates to persons unborn. But though the device failed to tie up the estate beyond one series of heirs, yet it is precisely in that limited scope that the domestic mischief arises. 'Children,' says the Conservative Blackstone, 'grew disobedient when they knew

they could not be set aside' under the law of entails, but the heirs under a settlement cannot be set aside; and thus the evil work of the entail system is revived and continued.

It is, indeed, not a little extraordinary that Parliament, which, three hundred years ago in England, and thirty years ago in Scotland, pronounced entails a public mischief that could not be endured, should yet permit the very same principle to be established by creating estates for life. What is intolerable for two generations must be contrary to sound principle even for one. When it is declared contrary to public policy that land should be secured to an unborn great grandson, it cannot be right that it should be secured to an unborn grandson. If it were always right that land should be preserved in the family, the Legislature ought to make the rule universal. If it deems this not to be right, it is not justified in permitting an individual to create a law for one estate which is not suitable for all, a law which does not come into operation till his own interest has vanished, and which is incapable of repeal by those who, at the time when it does take effect, have the best means of knowing whether it is fitting or disastrous.

The owner of land over which a mortgage has been granted is, in some respects, as much hampered in his action as if he had only a life interest in it.

By the law of England, the legal estate passes to the mortgagee; the mortgagor has no longer the powers of owner. In the courts of equity, and in Scotland, the mortgagee is, however, regarded only as holding an interest in the land in security for payment of the debt due to him. But viewing the transaction even in this more favourable light, it places the mortgagor, or original owner, in a false position. To the world he appears unencumbered. He is reputed owner of the land, and if his title is subject to heavy drawbacks, he at least prevents anyone else from acquiring a better. But at the same time, he has bound himself to pay a fixed rent charge. While his income is subject to fluctuation, and may be seriously diminished by the occurrence of bad seasons, a fall in prices, or failure of tenants, the interest on the mortgage must be paid without delay or abatement. Hence he has to meet all the risks of property out of a mere margin. He has also to perform all the duties of property with only a fraction of its receipts. And besides these legal and moral obligations, he has to maintain the social position to which the extent of his land entitles him. This, indeed, is an optional burden; but it is like a debt of honour, more likely to be discharged than others which are fortified by legal sanctions.

It is hardly, therefore, to be expected, because it is hardly practicable, that the owner of a mortgaged

estate should improve it. The fact of the mortgage implies the fact of want of means. A further mortgage (even if possible) generally involves a higher rate of interest, an advance from a Land Improvement Company involves repayment of the principal by annual instalments. Neither resource is available to a man whose income is already overburdened and forestalled.

Undoubtedly the situation of such an owner is better than that of the owner of a settled estate in that he has full control over the reversion. He may select his own heir, and therefore he has a motive to improve the estate. But what does this avail when he has not the means of improving?

He may indeed sell. By so doing he would relieve himself from embarrassment, and materially augment his income. But he does not choose. To sell even part of his property would diminish his importance; it would be a wrench to his feelings of pride in his ancestry and in his acreage. The law which sanctions mortgages enables him to keep up false appearances, and human nature prefers the show to the substance. But to keep up the fictitious position it is necessary to spend on himself and his family, on equipages, dress, and living, the small balance remaining to him of his rental, and the land must therefore be starved. The situation is summed up in a few words. There are two owners of the land, the mortgagor and the

mortgagee. Of these the former has possession without means of cultivation, the latter has the means without the possession. Between the two the land is left unimproved and half-cultivated. No tenant with skill and capital will take a farm on a heavily mortgaged estate, for he knows that he must farm under one, who with the best dispositions must, from his situation, be a poor, and therefore a bad, landlord.[1]

Such are the consequences of the twin rules of law which sanction settlement of estates and mortgages. Evil as they are in separate operation it is needless to enter into an examination of their effect when, as so often happens, they are in combined force. For most settled estates are mortgaged, either to external creditors, or to members of the settlor's family by way of family charges.

These facts explain why land in England produces,

[1] If these remarks should appear to anyone too strong, he may be glad to know the opinion of the Marquis of Salisbury, who at least is not a revolutionary reformer. Speaking at Watford on Dec. 9, 1879, Lord Salisbury is reported to have said: 'There is no tenure more destructive to the well-being of a country, more destructive to the relations between landlord and tenant, and fatal to improvements, than the holding of land by a man whose land is so heavily mortgaged that he has no further direct interest in the property.' In this extreme case his lordship recognised an extreme mischief, and it follows that, when the cause is less in degree, the mischief will still occur to a more or less mitigated extent.

as those who best know its capabilities assure us, only half the crops it might grow; and why the best farmers in the realm are now so rapidly transferring their skill and capital to countries where they can farm their own land, and where no landlord interposes to arrest midway the profits of their toil, by forcing them to cultivate under conditions that prohibit the returns which Nature is ready to grant.

It may be convenient here to glance at certain slight modifications of these laws which leave their principle unaffected but which have been suggested with a view to abate their admitted noxious influence.

I.—*Abolition of the rule of primogeniture.*

Undoubtedly this would be a proper step, and it would both have a certain direct and by degrees a much larger indirect influence. But the rule being now, as it still would be, strictly optional, we cannot attribute to it many of the evils we have examined, nor expect from the alteration any material correction of them. The change would strengthen the sentiment of natural justice and equality in families, but it would have no effect at all in increasing the power of an owner over his settled property, nor his means for beneficially managing it if these are deficient.

II.—*Restriction of powers of settling estates to lives in being.*

This also would be an utterly insignificant amendment of the law. It was pointed out (p. 53) that the power of limiting estates to life only is already confined to lives in being, and the infancy of an heir unborn at the date of the settlement, simply because during infancy such an heir cannot exercise his legal right of acquiring and disposing of the fee simple. It would, therefore, be a mere verbal juggling to declare that living persons may still be placed under restriction, but that an unborn person shall at once on succeeding become possessed of the fee simple. Estates would by such a rule be as absolutely tied up from beneficial use by the existing generation as they are at present.

III.—*Powers of sale for settlor's debts.*

It has been already shown that this concession, proposed in the Land Bills of Lord Beaconsfield's Government is entirely illusory. It would only give generally the powers that nearly all settlements give already, and would do nothing at all towards liberating owners of land from the burdens which their own extravagance, or it may sometimes be their own sense of justice and affection, have laid upon them, and which make impossible the due improvement of the land of which they are the life-owners.

IV.—*Simplification of conveyancing.*

Very little can be effected in this direction while the power of creating a variety of interests in land continues. Deeds may be shortened by compelling the use of brief phrases with the statutory sense of long ones; registration may make the title more secure; and law and equity may be reconciled by declaring that mortgages shall be deemed only securities, but when all this (which is all that is proposed by the merely professional reformers) is effected, the law of England will simply have reached the stage at which the law of Scotland already stands. But in Scotland conveyancing is still complex, and therefore expensive, because the law there, as in England, allows each owner to hamper his successor with burdens and restrictions, with trusts and charges on the land. Were these cleared away land might, when the parties are satisfied of its identification, be transferred as easily and cheaply as consols. But while these interests, less than ownership, are allowed to be created, there can be no simplicity of transfer, because the title of the transferror cannot in general be simple.

It is equally clear that, though every one of these reforms were carried, nothing would be done either towards favouring the diminution of excessive estates, or towards fostering the application of capital to their

improvement. Every legal obstacle, and every personal motive, which under the present system stands in the way of transfer of property, of sale for payment of debt, and of investment of capital in good cultivation, would remain as powerful as ever. This being the case, the nibbling at legal reform in the direction which has been referred to need not further occupy our attention.

CHAPTER VIII.

OF PROPOSALS FOR RESUMPTION OF LAND BY THE STATE.

THE obvious evils and anomalies of the present system of land tenure have led to the suggestion of a variety of remedies. Some of these propose to meet the exigency by the direct assertion of the right of the State to resume the land, in whole or in part. In this chapter we shall pass rapidly under review the leading methods which have been recommended to effect this purpose.

I.—*Nationalisation of Land.*

The scheme which commonly receives this name has been advocated by Mr. Herbert Spencer, and in one modification it was recommended by Mr. J. S. Mill for adoption in Ireland. Under the broader form of the proposal the first step is that the State shall purchase the land from its present owners, either compulsorily, or by agreement, but in either

case paying to them its full value. The next step is to divide it into suitable portions and to hand it over to the cultivators, either permanently, for the consideration of a price to be paid by instalments, (which was the method favoured by Mr. Mill), or for a limited period, for the consideration of the best rent that can be got by competition, which is the method insisted on by Mr. Spencer as the only one consistent with the rights of the community.

Mr. Spencer places this proposal on the high ground of abstract justice. He starts from the unquestionably true principle that every man has right to the full exercise of all his faculties, except in so far as such exercise would interfere with the similar rights of others. He argues that private property in land is incompatible with this original right, because it prevents those who are not owners from exercising their faculties in the cultivation or enjoyment of land if they should be so minded. But he considers that if the State should take possession of all land, and should lease it out to the highest bidders, exclusive possession by such bidders would not be unjust to others, because any one else might have obtained possession if he had been willing to pay more to the State for the privilege.

It is difficult, however, to see a sound distinction in principle between a temporary and permanent exclusion. If a man wishes to exercise his faculties in

farming in the year 1880 it is no satisfaction to him to be told that he might have had the opportunity in 1879, or he may have again the opportunity in the year 1900. He may also reasonably say that, though in 1879 he was willing to give only 20*s.* an acre of rent, yet if in 1880 he is willing to give 25*s.* he is, on Mr. Spencer's principle, entitled to exclude from possession the present tenant who only gives 20*s.* This principle, then, would make leases granted by the State valid for only one year, and would require that a fresh opportunity of bidding against each other should every year be afforded to all who desire to farm. Mr. Spencer does not, in point of fact, say what length of endurance the State leases are to have.

But if the State may justly grant a title of exclusive possession for even one year, it may, on the same principle, grant it in perpetuity. For when it is conceded that for the public benefit men may be excluded from the exercise of their faculties during even the shortest period, provided others are willing to pay for the privilege of excluding them, it is clear that a higher payment would justify a longer exclusion. So then, if a purchaser in perpetuity would pay more to the State than a tenant, the State would be justified in selling. From which we come to the conclusion that the principle of abstract justice would be fully satisfied if the State were to buy up all existing properties and then to sell them again to the

highest bidders. It would thus assert its supreme rights; it would make the best bargain for all the community; it would afford to every individual the opportunity for the exercise of his faculties; it would re-distribute the land among the wealthiest in the community; and then things would go on exactly as before. After which the process might be repeated with the same results.

But even if we stop short of the assertion of abstract rights of men to the exercise of their faculties in farming, and consider only the cardinal results of the State becoming the universal landlord, we shall hardly find the system beneficial to the public. There is, of course, no objection in principle to the State taking possession of all the land in the realm, on the understanding, which is always included in the proposal, that it shall compensate the present owners. But how is it to perform the functions of landlord? These, as we have seen, involve very heavy and continuous outlay, and such outlay must be made by the landlord in all cases in which the tenancy is at rack rents and for short terms. A private landlord of the best class, looking very closely after his own affairs, can just make such outlay pay; but it is quite certain that the State, which must manage its property through agents, contractors, and officials at desks, would, between fraud and negligence, do much which it ought

not, and fail in much which it ought to do, and both at a heavy cost to the public. But the interests of the actual cultivators would equally suffer. If it is assumed by the principle that the leases are only to be of short duration, and that the land is again to be exposed to general competition, a tenant would have no inducement to farm well, and every inducement to farm badly. Even if the lease were for his life its duration would be too uncertain to allow him to risk capital. Something at present is risked even by tenants-at-will, because of their confiding in the good feeling of their landlord; but when the landlord becomes a body without feelings, and compelled by the rights of man to give every one a chance of evicting the actual cultivator at frequent intervals, the result could only be that each successive tenant would take all he could out of the land while putting nothing in, and thistles and couchgrass would soon be the main crops produced by the State domains.

This certainty of bad cultivation could only be obviated by the State granting the lands in perpetuity, either for a price, or for a rent, or for a rent which in a certain number of years is calculated to pay up the price, which was the substance of Mr. Mill's proposal in the case of Ireland. In all cases we should have a new set of private owners instead of the old set. The estates might at first be smaller, but as the power of transfer must be included in the

arrangement, if there are any economic laws which tend to the growth of large estates, large estates would again grow up. Let us grant, however, that the immediate object of effecting a subdivision is deemed worth the attempt, and let us see what cost it would involve to the State, and what consequences would follow to the new owners.

Mr. Mill made his proposals in reference to Ireland at a time when the social condition of that country caused land to be very cheap, *i.e.* purchaseable at a rate which was little over twenty-one years' rental, being a return of nearly 5 per cent. on the purchase-money; while the rents were then, as they in general are now, considerably under the annual value of the land. He was, therefore, able to show that the State, borrowing at 3 per cent., might pay the market price to the landlords, while it might reasonably expect that the tenants would be able to pay not only interest on the purchase-money, but a further annual sum towards its redemption, so that in a moderate number of years they would, without any loss to the public, become unencumbered owners of the fee simple.

Bnt none of these conditions apply to land in England and Scotland, and now their application, even in Ireland, owing to the rise in the price of land, is materially altered. Within Great Britain land brings in general a rental fully equal to its

value, and a price far beyond its value. For being, as we have seen, not merely purchased as an investment, but as an element of enjoyment, the price obtained for it is usually above thirty years' net rental, which makes the interest yielded on the purchase money only 3 per cent. But from even this has to be deducted all the landlord's inevitable outlays in maintenance of farm houses and buildings, of watercourses and roads, of fences and drains, quite independently of any further outlay in improvements. These reduce his real returns, on an average of years, to barely 2 per cent. on the purchase money. Hence, if the State were to retain the land in its own hands, while continuing the leases to tenants, the financial result would be that it would have borrowed at 3 per cent. to receive only 2 per cent.

Now, what would be the result if the State, instead of holding the property as landlord, acts merely as the intermediary of transfer to another owner in fee. It will have borrowed the full price at 3 per cent. The tenant (whom we will suppose to be the purchaser from the State) will henceforth have to perform the part of landlord in executing all repairs, and therefore the old rent, subject now to that deduction, will only be net 2 per cent. Either, then, the State, or the tenant purchaser, must find the odd 1 per cent. If the State makes it up, it loses heavily. If the tenant-purchaser makes it up, his rent is at

once raised by 30 per cent. But, besides this, he is expected to pay off the price itself by instalments of 1 or 2 per cent. a year. This is equivalent to nearly or quite doubling the original rent. Hence, if the State is to be merely reimbursed its outlay, the purchaser from it must pay during twenty or thirty years double the present rent—in interest and instalments of price—with 30 per cent. additional, to make up the difference between interest yielded by investments in land and by investments in consols. In the great majority of cases this could not be done. Grant that the stimulus of ownership would promote exertion and improvement, yet it must be remembered that improvement of land is a very slow process, one in which five, ten, twenty years must be allowed before any very material results are attained, and one which demands not merely labour, but money. How is the rack-rented tenant to find money for improvements and for instalments of the price, at the same time that he has to take all the risk of bad seasons, without the smallest hope of indulgence from the inevitably cruel creditor, the State?

The truth is that all these schemes omit to take into account some practical facts. Not only is land (for the reasons already given) at present over-priced; it is in very many cases over-rented. The rents offered by tenants, or fixed by valuation, are too often fixed

on an expected average of fairly good seasons. When bad seasons come, it is tacitly expected that the landlord shall make an abatement. It is almost enforced upon him by the fact that, if he does not, the tenant cannot pay. Private landlords, for the most part, make the concession. But when rent is a financial operation entered into with the State, or as a basis of dividends payable to the national creditor, how is the contingency of bad seasons to be met? We may see the answer in India. The State cannot afford any allowance for bad seasons. To make its calculations come correct it must exact the same rent in all years. The cultivator, therefore, must incur debt to pay the rent in bad seasons. But debt means loss of means to farm well, and bad farming with a fixed rack-rent means bankruptcy of the farmer.

It may be well, however, to recall that what are known as the 'Bright Clauses' in the Irish Land Act have a very much smaller scope than the scheme of purchase and resale by the State which has been now reviewed. They contemplate only the advance by the State to the purchaser, under certain conditions, of a portion of the price, assuming that he has paid the other portion of the price in cash. In cases where the purchaser has really had the cash lying in his hands, this method of granting him an advance by way of mortgage may not cause serious difficulties, for the interest on it will only bear a moderate pro-

portion to the annual returns of the land. But if he has borrowed from a private person the amount which he has paid in cash, his position is no better than if he had borrowed the whole from the State. The result will still be that he will have bound himself to pay more, whether as interest or as rent, than the land can in average seasons produce, and very much more than he can pay when bad seasons occur.

The aid given by the State in Prussia to the peasants, for the purpose of enabling them to free their lands from the services due to the lords of the manor, was of a totally different character, and was not open to the objections which exist to the schemes above considered. The land in Prussia already, in point of fact, belonged to the tenant. His rent in money, if any was due at all, was trifling; the burden to which he was subject was chiefly the performing of certain labour for the lord. The burden was commuted into a cash sum, which was advanced by the land banks, and which the peasant bound himself to repay to the bank in a given number of years. It amounted, on an average, to only a few shillings per acre. It is obvious that this formed a very moderate rent charge, thoroughly within the value of the land, which in all other respects was clear. The principle was, in fact, similar to the redemption of land tax and tithe in this country. No analogy exists between an arrangement for thus clearing off a vexatious, but

really trivial impost on freehold property, and a device for enabling persons to purchase land from others by advancing to them the whole, or nearly the whole price at a rate of interest which is above the net returns the land is capable of yielding.

It is obvious, then, that all hope of advantage to the cultivator from the intervention of the State to establish him either as permanent tenant or as owner, must vanish if the State pays, and charges, the full value for the land. By full value is meant the amount which the original owner could get if he sold or let to a private person. To force a sale at less than this would be confiscation of the difference. But the State, if paying full value would make a ruinously bad bargain for the public, and at the same time it would of necessity be a ruinously hard creditor of the purchaser or the tenant to whom it transferred the possession of the land.

A scheme has been proposed by Mr. Lorimer, Professor of Public Law in the University of Edinburgh, in which the part of the State in these operations of transfer would be taken by private individuals, or companies. His suggestion is that these should buy up large estates as they came into the market, and let them in moderate or small portions in perpetuity, at fixed rents, to the highest bidder. Professor Lorimer thinks that the owners of these estates would

have a security so excellent that they would be satisfied with a low rate of interest, and that the tenants in perpetuity would be so safe in possession that they could afford to give a high rent. But it can at best not be expected that the rent will be higher than the difference between the farmer's total profits and the interest on his own capital, and if the landlord is no longer to execute repairs, the tenant's capital must be so much the larger. Now, as we have seen that the landlord, after executing repairs, receives a net interest on his purchase of only 2 per cent., it is hardly conceivable that a tenant who undertakes repairs should be able to pay to the landlord a certain and perpetual 3 per cent. The experiment might be very well worth trying, at private and philanthropic risk, but it does not seem to offer a prospect of commercial success. It might, however, be very properly put in force in the case of land already owned by existing companies. It would be without loss to them, for they have already made their investment, and any rise of rent obtained by a grant of perpetual leases would be so much rise of interest to the shareholders. And it is not for the public advantage that companies should be the owners of land, since they must be absentees, and must manage by agents.

III.—*Appropriation by the State of the 'unearned increment of value of land.'*

This scheme deserves the more attentive consideration because it is recommended by the authority of Mr. J. S. Mill. Like that last considered it assumes the ultimate right of the community to the land, but it does not involve actual transfer of possession from the present owners. The argument on which it rests is that by the mere increase of population and wealth land rises in value, and that, as this is not gained by any labour on the part of the owner, he is not entitled to it, and the public may fairly claim the benefit of it in the shape of tax or otherwise.

The principle appears to be sound. But being sound it cannot be limited to land. Every other species of property is subject to rise in value without act of the owner, and such rise belongs to the public as much as that of land. For example, the iron and cotton industries have received enormous development through the operation of free trade and the consequent expansion of population. These results are not due to the ironmasters or to the cotton spinners, and the State is therefore entitled to their extra profits. By the growth of population, railway, gas, and water receipts every year augment; the State is entitled to the increase. By the dis-

coveries of science, manufacturers are enabled to make great savings, which represent profits, but as they did not make the discoveries, the extra profits form 'unearned increment' to which the State has right. A single class of investors, those in land, would feel greatly injured if they alone were to be mulcted of profits due to the labour of others than themselves.

But, on the other hand, if the State takes the profits, it is bound to take also the losses. For profits on the whole are only average, and it would clearly be unjust that the State should disturb the average by taking the rise and not sharing in the fall. So that if one coal-mine is ruined by a better seam being discovered near it, the State ought to take the old one off the owner's hands at its original value. Or, if gas-works are ruined by Mr. Edison, the State ought to pay the gas-shareholders. Or if a clay farm is made valueless by importation of grain from America, the State ought to make good to the landlord the fall in rent.

Again, it is obvious that many investments both in land and other things are speculative, and made in the hope of a rise from adventitious circumstances. This is a great encouragement to energy. But if the State destroys the hope of gaining any profit from progress except in so far as each person has contributed to it, one great motive for exertion

is gone. Consequently, the investments would not be made, and the energy which indirectly so much helps progress in production would be discouraged.

Lastly, it would be utterly impossible to distinguish with any approach to fairness how much the increase of profits is due to public causes and how much to private exertion. Speaking roughly, it may be said that a rise in price is due to general causes, while an increase of production is due to personal exertion. Now within (say) the last century the price of wheat has not risen, but the price of meat has. The increase of rental, even on wheat farms, is due therefore to increase of production caused by improved farming, which clearly ought not to be escheated by taxation. The increase in the rental of grazing farms is due partly to the rise in price of meat, but partly also to improvement of pasture by drainage, to the growing of larger crops of roots, and to the earlier maturity of the animals obtained by selection of better races and types, feeding on imported oilcakes, and protected from weather in covered yards. How then, in these circumstances, is it possible to discriminate how much of the rise of rental, even from the rise in price of meat, is due to the landlord, how much to the tenant, how much to the public? Still more, if the farm (as most farms do) partly produces grain and partly meat, is the calculation difficult. The most skilled

of valuers would be the most utterly puzzled if asked to solve such a problem. It could not be in any single instance approached with even a hope of making a fair guess at the truth. But if we remember still further that improvements in culture, which demand more labour, give occasion for higher wages, and that increase of wages reacts in raising prices both of beef and bread, and thus that the very improvements are cause of part of the 'unearned increment in value,' it will be imagined what utter confusion and flagrant injustice would be the result of any practical attempt to abstract from owners of land, alone of all commodities, that 'unearned increment' of their wealth which is due to causes to which they have not themselves contributed. Till, at least, the advocates of this idea offer us some practical scheme by which it can be carried into effect, we are justified in refusing it further consideration, however eminent the authority by which its abstract justice has been commended.

III.—*Increase of the Land Tax.*

In connection with this proposal may be noticed another, resting at least in part on the same general principle, the proposal to increase the land tax very considerably. It is argued that, when first imposed, this tax amounted to 4 per cent. of the rental; but

that, by the increase in the value of land, it is now become insignificant; that it has also been allowed to be redeemed on too favourable terms; and that justice to the public requires that it should again be raised to its original percentage on the value. Now, when a tax has for a time been levied on one principle, a proposal to levy it on a different principle is exactly the same thing as a proposal to levy it for the first time on that principle; and hence we must look at the question as if it were now for the first time proposed to put an *ad valorem* tax on land. To the justice of the proposal no demur could be made if it were to apply to land only on the occasion of its next devolution, by the death of its present owner. For we have seen that the title of his successor is purely a State creation, which at this moment the State permits only on condition of paying an *ad valorem* succession duty, and the State would be justified in making the *ad valorem* duty an annual one. But it would not be justified in imposing an *ad valorem* duty on rental during the life of the present holders, unless it imposed the same rate of duty on income from every other source. For it has permitted land at present to be held as an investment precisely in the same way as any other object of property; people have therefore paid money for it, in faith that the State will continue to treat it like other property; and even those who have suc-

ceeded to it have done so on the same understanding, and have entered into numberless transactions, and undertaken many engagements, on the footing that this form of property would be dealt with on exactly the same terms as any other. If, then, the State were to impose a special tax upon them, it would be virtually mulcting them, while owners of other property were left free, a proceeding manifestly contrary to equity.

The expediency of a heavy land tax, even though deferred to a period when it might with perfect fairness be imposed, appears further open to doubt. The great object of the State must always be to promote increase of production from the land, as from part of the capital of the country. But to lay an *ad valorem* tax on rental would be to tax exceptionally the profits made by improving the land, and increasing production from it, and the effect would undoubtedly be to check the investment of capital in making improvements. Every hundred pounds spent on the land, in the hope of gaining a profit of 5 per cent., would yield only 4 per cent. if the State laid a tax of 20 per cent. on the improved value, and capital would therefore be driven from the land. This would, as we have seen, be really the greatest injury that could be done to the community, whose true interest lies in encouraging investment of capital in improving land.

It is probable that the suggestion has its origin in the spectacle of great estates, of which the owners seem to do nothing for the public good. But a remedy is to be deprecated which would hit most hardly the most energetic and deserving owners, by diminishing their profits from improvements. If through wiser changes in our system of laws, land were more equally shared among its owners, and due encouragement given to its employment in the most profitable way, it would be seen that there is no advantage, but the reverse, in imposing a special tax on that form of property which lies at the basis of all our wealth.

CHAPTER IX.

OF PROPOSALS TO LIMIT THE SIZE OF ESTATES.

SOME suggestions have been made for reform in the land laws which aim, as those discussed in the last chapter do, at the diminution of the size of properties; but which adopt for their means, not any actual resumption by the State, but rules which would either 1stly. Effect gradual division; or 2ndly. Prevent accumulation.

I.—*Compulsory Division on Succession.*

This system has the advantage of being in actual operation in most European States, as well as in our own Channel Islands. It is therefore not a theoretical suggestion, but a practical rule of which we can observe the effects.

The leading argument which is brought against it is that it leads ultimately to an extreme subdivision of property, which is thought to be injurious to good farming. This alleged consequence has been

already dealt with at page 79, where it was shown that the culture on the smallest scale may be no less economical, and is far more productive, than culture on a large scale. But we may here consider certain natural checks which operate to prevent subdivision in excess, and some circumstances which, interfering with their action, lead to mischiefs which are capable of remedy.

These natural checks are best examined in the Channel Islands. As the compulsory division on inheritance is there of far older date than in France (being, in fact, coeval with the earliest records), it has of course long ago reached its ultimate development. The actual result at the present day is that there are some properties which reach to fifty acres in Guernsey and (I understand) 100 acres in Jersey, representing a rental, or net income, of 300*l.* to 500*l.* a year. The average may be said to range from two to ten acres—there are many below one acre.

But in these islands there is a standard of comfort, of which the lowest scale is represented by the wages of an unskilled labourer at 15*s.* per week. No restraint on the growth of population, such as is practised in France, is resorted to; the inhabitants marry early, and have large families, yet the number at each recent census shows hardly any increase. Emigration supplies the outlet for superfluous hands. There is scarce a family to be found which has not some of its

members in the British colonies, or in the United States. These generally do well, and often return with a small fortune to end their days at home.

These habits furnish the natural check to the subdivision of the land. Those who have inherited only a very small portion cultivate it at spare hours, if they can find other employment. It then gives them an addition to their income as labourers. Or perhaps they let it to a neighbour, who thus makes up a little farm, which profitably occupies all his time. Or, lastly, they sell it, and very likely carry away the small capital thus obtained, to give them a better start as emigrants. Having a perfect knowledge of the value of land, they make it produce its value in one or other of these ways, so that as soon as cultivation becomes less remunerative, on account of the minuteness of the extent, the plot is let or sold, and thus added to a larger piece.

Exactly similar arrangements take place in France, only with the distinction that as emigration is not in vogue, those who find their portion of patrimony insufficient generally abandon the country for the towns.

It is true that among many French writers on agriculture there are to be found frequent denunciations of the system of 'morcellement,' as injurious to agriculture; and these are sometimes cited by English writers as proof that compulsory division of in-

heritances is hurtful to agriculture. But this is a misapprehension. The uniform evidence of French agriculturists is to the effect that agriculture is rapidly improving, and that the production from small properties, and the price of small properties, is greater, and is more quickly increasing, than in the case of large properties. But the error in the French law consists in the regulation that every separate description of property, personal and real, and every separate estate in land, must, on succession, be divided into shares. Naturally, this not only makes each portion smaller than it need be, but it may give to each child two or more patches of ground separated at considerable distances from each other. Similar rules, though subject to some modification, exist in Jersey and Guernsey. The remedy is sometimes supplied by the agreement of the members of the family to take their shares, of equal value, wholly in real or wholly in personal property, or to divide the real property into lots that shall be contiguous. The reformers in these countries desire that this form of arrangement may be made in some degree compulsory. But their aim is not to prevent subdivision of the land; it is only to arrange subdivision so that it may not lead to the absurd and hurtful extreme of the necessary subdivision of every separate property.[1]

[1] See this question fully discussed in the *Enquête Agricole de*

With the exception of this artificial evil, there can be no doubt that the system works well in most material respects. The standard of comfort is higher, the pauperism less, the independence greater, in all these countries of peasant properties, than it is in Great Britain. An experience of centuries in islands under our own Crown has shown that there are no invisible dangers to be dreaded in the remote development of the system, but that it is self-acting and self-restraining. And in all this experience there is no local peculiarity to make it inapplicable to Great Britain. If, in France, certain family results are different, it seems to arise from the French peasant not having (as yet) the knowledge, or the aptitude, to resort to emigration when he cannot find a sufficient remuneration for labour at home. But this cause would not operate in Great Britain or Ireland, any more than in the Channel Islands; and therefore I should have no fear of a pauper population as a result of equal division of inheritances. A standard of comfort would establish itself, and anyone

la France, Rapport par le Commissaire Général, p. 132. Paris, Imprimerie Impériale, 1869. It has been stated that the rating returns show that each owner of property in France holds on an average fourteen separate plots. Ville, *Conférences Agricoles*. This seems hardly credible, but it is certain that it is this breaking up of each man's property into patches at a distance from each other that constitutes the mischief complained of under the name of *morcellement*.

whose circumstances fell below this would better himself by emigrating, and transfer his land to those who could work it most profitably.

Why, then, should a system which operates in economic respects so excellently not be recommended? Because it has some evils, which heavily detract from its advantages, and because another system would give the same advantages without the evils.

These evils are both moral and material. The land is entailed upon children, and it must be divided in fixed proportions among them. This, in a small but wide scale, repeats the moral evils of entail upon a single heir. The children think of the land as theirs, filial affection is weakened by jealousy of property, and a father has no power to correct evil habits, or improve faulty dispositions, for his children may laugh at threats which the law renders him powerless to enforce. This is above all the case where (as in France) the law compels an equal division of personal, as well as of real estate, and where every child is entitled to an equal proportion of both. It is not surprising that the strictness of this rule of the Code Napoleon has attracted much attention, and has raised serious objections in that country. In the Channel Islands the principle is greatly limited. Only the land and a third of the personal estate must there be divided; a father may deal with the rest of his personalty as he thinks fit; and thus, by selling the

land, he may, to the extent of two-thirds of his property, disappoint any or all of his children. Yet he is reluctant to resort to this extreme course, and practically he does not. Thus it happens that each child is an equal co-heir, the father cannot favour the one who most deserves it, whether as son or as cultivator; and the ill-consequences of looking to the father as only a life-tenant, and to his death as the moment for coming into possession of what is felt to be their own, show themselves in the family relations, and permanently in the character.

The evil suggests the remedy. If a father had power to divide the inheritance among his heirs as he judged best, the feeling that he keeps them out of their own would have no place. He would then be able to adjust the succession in such shares as circumstances might make most expedient; giving land to him who would till it best, or dividing it in the manner most convenient, and making up the share of each child, as his or her wants and character might require. It is true that fathers are not always the best judges. But the law must always be the worst judge, for it can take no account of any circumstance whatsoever. It might, indeed, be very proper to set some limit to a father's power of absolute disinheritance. The rule already alluded to as prevailing in Guernsey, and which is also in force in Scotland and in Germany (derived from the civil law) by which a

father cannot deprive a child of right to an equal portion of one-third or one-half of his personalty, seems reasonable, and does not in practice introduce the moral mischiefs of entails. Such a portion is a security against parental caprice; but it is not so large as to make in ordinary cases the parent's death an event to be longed for.

With regard to the object of obtaining the investment of capital in the soil, with a view to its improvement, it is quite clear that the rule which would give an owner perfect (or nearly perfect) liberty of devise is far preferable to one which enforces a fixed division. Just as with a single heir, so with many heirs, the deprivation of choice must often involve deprivation of motive to improve. An owner will, in many cases, be withheld from laying out money on a farm which must go in part to a child of whose conduct he has reason to disapprove. Give him power to leave it to whom he prefers, and he will generally try to leave it in the best condition.

Lastly, as to the object of obtaining the gradual breaking up of large estates, it may be observed that the system of entailing in equal portions on children is not always successful, and sometimes may even retard the process. Where there is only one child it takes no effect at all; and where the families are small, which happens so often to be the case among the wealthiest, several generations may pass before

its effect is appreciable. It is calculated that in France the extent of land held in large properties still amounts to one-third of the whole country, and that, at the present rate of reduction, several centuries will pass before it is all broken up into estates of moderate size. But if an owner has free liberty to leave to whom he will, it is very possible that, in some cases, he will divide the estate in a manner which would be impossible if the law fixed his heirs.

If the law of primogeniture were abolished, it is probable that in no long time the custom of primogeniture would also disappear, and that we should see in land, as we now see in personalty, a rule of tolerably equal division adopted. But the rule should be elastic, not cast-iron, applied by the discretion of each succeeding owner, not by the decree of unvarying legislation.

II.—*Limitation of Extent of Land permitted to be held by Individuals.*

It has been proposed that this should be effected either by the law fixing the amount which one owner may hold, or by imposing a heavy ascending scale of taxation on the amount of property beyond a certain limit. Both methods are based on the right of the State to limit the extent of land which one owner may hold (a proposition in itself indisputable), and

both would be attended with the same difficulties in ascertaining the quantity or the value of the land permitted to be held. We may, however, suppose that these could be overcome, and proceed to examine the reasons and practical results of the operation.

The reasons for desiring a limitation of this nature are both positive and negative. It is deemed that very large estates in land are themselves an evil, that they are apt to be badly managed, and that they confer too much local influence on the owner. It is also deemed that permission given to rich men to buy up great tracts of land unduly raises the price, and so prevents the poor from buying in smaller lots.

It is undoubtedly true that very large estates in land, as they must be managed through agents, are objectionable. All delegated authority is apt to be exercised with less care and discrimination than by the superior himself. It further prevents that personal interest between owner and labourer which may form, in certain cases, a useful moral bond of society.

But it is obvious that these objections apply with as much force to manufacturers and to mere capitalists as to landowners. The owner of very large mills or works must necessarily manage them also by overseers; and if, as is so often the case, the owners are a company, they are utter strangers to the business and to the persons employed in it. The cases are in truth identical, for farming is only the

manufacture of grain and meat, and the objection on social grounds to a company which manufactures cotton or steel is as strong as it would be to a company which held land for the mere purpose of making money by it. Most men, however, will admit that even wealthy landowners devote more pains and money to the moral duties of their position than can be rendered by a company which looks mainly to its dividends, and very much more than the mere capitalist, who lends his money to such companies. Therefore, while granting that personal relations and direction are objects which are very desirable in the case of landed estates, it must be conceded that they are, at the least, equally important in regard to every species of investment. That property has its duties as well as its rights is a maxim which has been long (and justly) applied to the owners of land. But it is not less imperative in regard to the owner of wealth invested in consols, in railway shares, in manufactures, or in commerce. There is an obligation incumbent on every one of these holders of property to view it as a trust for the good of those whom they directly or indirectly employ; and if it is of such magnitude that they cannot perform this trust, there is a powerful argument why they should be deprived of it, or not suffered to amass it to such hurtful excess. It follows, then, that landed estates ought not on these grounds to be subjected to exceptional rules;

but that any remedy directed to prevent the growth of too large properties of this nature ought to be equally applied to property of every description.

With regard to the local influence given by land it may be observed that it is every year diminishing, and that it is perhaps not materially greater even now than that given by other forms of wealth. The changes in agriculture have introduced a much greater degree of independence both in farmers and labourers than used to be the case. Both have discovered that they are not tied to the soil; that if their position is not satisfactory they can at any time move elsewhere; both are becoming better educated; and both are therefore claiming (and quite able to enforce) rights of equal bargain with their landlord or employer. And, again, it may be doubted whether the influence of wealth over dependents is not quite as great in the case of owners of other species of property as in the case of owners of land. The mill-owner, ship-builder, coal-owner, the large employers of labour in factories of all sorts, and even in warehouses and retail shops, have a very distinct influence over those who work for them; and even the wealthy inhabitant of a town has a great deal of authority with the tradesmen and workmen whom he employs. Here again, therefore, there seems to be no very clear distinction calling for special restraint of the influence of wealth when invested in land alone.

Turning now to the indirect or negative evils of the accumulation of large estates in preventing their acquisition by small purchasers, it must be kept in view that this can arise only from the fact, if it be the fact, that rich persons will give a higher price for land than poorer men will. It is argued, firstly, that this idea occasions land to be sold in large lots rather than small; and, secondly, that it unduly raises the price of small lots, so as to deprive smaller purchasers of the chance of getting them at a 'fair' price.

Now, the first of these events would not happen if a better price could be got for small lots than for a large estate. But experience very frequently proves that this is the case; and consequently it often occurs that a large estate is divided into several portions for sale. For, obviously, competition tends to be greater the smaller the lot, since this brings it within the reach of a greater number of bidders. The main cause, however, which limits this process is the excessive cost of conveyancing, which in England is just as high absolutely, and therefore very much higher relatively, for small pieces of land as for large. It is the purchaser who pays for the conveyance, and hence a purchaser of 100*l.* worth is often deterred by a very probable expense of 30*l.* for his title, when a purchaser for 1,000*l.* hardly takes the additional 30*l.* into consideration. Now, speaking as a conveyancer both in England and Scotland,

I do not hesitate to express my conviction that the system of land laws in both countries might be rendered so simple that, in cases where there is no dispute as to the identity of the piece of ground, its transfer to a purchaser might be effected for a few shillings. If this were done, there would be an immediate tendency to sell land in smaller lots than at present, because there would be more purchasers of small portions.

The truth of this is illustrated by the fact that both in France, Germany, and the Channel Islands, small purchasers are found to give, as a rule, the highest prices for land. The consequence is that it is sold in small lots, a moderate-sized farm being often divided into portions for the purpose of sale. Nor is it found that there is the least tendency on the part of rich men to build up large estates by outbidding the poorer men.

If, however, this were to be the case, it is obvious that the injury to poor purchasers would be compensated by the advantage to poor sellers. The owner of a small piece of ground who is compelled to sell for debt, or who desires to sell in order to emigrate, or to start in some business, has no reason to thank reformers who wish that he should get a low price in order that some other poor man may get a better bargain. Rather it might be argued that if the poor Naboth can get an excessive price from a

neighbouring Ahab, there is a benefit to the community, since by the operation so much of Ahab's superfluous wealth is transferred to Naboth. But to forbid Ahab from buying at all, because he already has enough of land, would leave him with all his wealth to his own enjoyment, and since Naboth could only offer his vineyard to a restricted number of comparatively poor purchasers, the result would be that one of them would take his place, but that he would have to part with his vineyard for less than its actual value in the market. It seems clear that an expedient is hardly to be recommended in the interest of purchasers of small means which would operate in their favour only by a corresponding injury to sellers whose means are small.

The truth, however, is, that any scheme of this nature would, like all which aim at defeating natural freedom of contract, be easily evaded. A rich man would buy in his son's name; or he would buy in some other person's name, and take a lease, with as ample powers of enjoyment as if he were owner, from the nominal purchaser. These arrangements (and others can easily be imagined) could not be defeated by law, because they would take advantage of general principles of law which cannot be interfered with. It is impossible, for instance, to restrict the freedom of making leases; it is impossible to fix the difference between a substantial and a nominal rent; it is impos-

sible to enquire whether a son buys with his father's money or with his own. If, then, there is a motive inducing a rich man to buy at an exorbitant price, we may be quite certain that we cannot prevent him.

For these reasons it seems to me to be impracticable, while, if it were practicable, it would be inexpedient, to attempt to restrict by any direct enactment the amount of property, whether in land or in any other article which one individual may amass by purchase. To make the attempt indirectly, by a scale of taxation applying more heavily to larger estates, would be equally impossible. There would be the same difficulty in ascertaining where the point of excess may be reached, the same dependence either on the owner's conscience, or on an army of informers, to make the returns, the same facility for fraud by holding the property under different tenures or in different names. Moreover, by taxing more heavily property as it increases in value, we should be crossing one of the most valuable principles of political economy, which urges that it is for the general advantage that property should be increased, and made more productive. Lastly, it seems obvious that if an excess of landed property in one man's hands is an evil to the nation, it ought not to be allowed on condition of paying the nation for the privilege, since this would be to grant to the wealthiest what is refused to those of less wealth.

III.—*Limitation of Amount of Property taken by Bequest or Inheritance.*

At the same time, recognising fully the importance of the diffusion of property in many hands, in place of its accumulation in one, I will venture to point out what seems the only practicable method, if imperative methods should be deemed necessary. The State, we have seen, has the most ample right to regulate the devolution of property after death of its owner. At present, its rights in this way are illustrated by its imposing a heavier succession duty on remoter relatives or on strangers, amounting to no less than one-tenth of the whole. Its right, therefore, to appropriate a larger proportion is incontestable.

But it does not seem advisable that its right should be more largely exercised in this form. For if it were, one of the main reasons leading to exertion in order to increase wealth would be taken away. As soon as any one had made as much as the State would allow him to dispose of by will, he would be apt to cease to care for making more. It might thus happen that a flourishing business, employing profitably many persons, would be brought to a standstill.

But the case would be different if the State were to place a limit, not on how much a man might leave, but on how much he might leave to one individual.

Then he has in his power to select the persons whom he desires to benefit, and to give to each the portion (within legal limits) he may think advisable. His motive to accumulate continues, for he may benefit those whom he wishes, provided only he selects a sufficient number. If to any one he gives more than the law allows, the excess of that share would form a debt due by that individual to the State. It would be ascertained or recovered just as the State at present recovers the amount of taxation charged upon legacies. Intestate succession would follow a like rule; each among the next of kin entitled would take the portion permitted by law; the rest would devolve on the State, or might be allowed to be divided among remoter heirs.

The result of this would no doubt be that one person might conceivably take an immense fortune by an accumulation of bequests from several different individuals. But these would be very exceptional cases, and even in these cases the fortune would necessarily be broken up into portions of legal amount at the death of the lucky legatee.

It does not seem possible that any schemes could be devised for effectually evading such a law. It would, of course, apply to donations as well as bequests; and these, in the case of land, stocks, and generally all property which requires writing for its transfer, are as easily traced, whether the transfer be

during life or after death. What is capable of transfer by mere delivery might be made the subject of undiscovered gift; but the property capable of such transfer is limited. The attempt to effect transfer by interposition of trusts would not be available in the case of land, because, as will be seen in chapter XII., trusts of land would cease to exist under the proposed reforms in the law. Nor could a trust of personalty be depended on to carry to a successor an amount of personal estate which the law declares illegal.

Such a method of limiting the accumulation of property may not be necessary at the present moment. But I refer to it as one which is undoubtedly practicable, and to which no accusation of injustice can apply. Sooner or later the question will have to be considered by the public. The gigantic amount of property which, in London and other towns, will ere long come into the hands of certain persons, through the falling in of building leases, of which they are the ground landlords, will form a public danger similar to that against which the Thellusson Act was passed to provide. But the question must then be regarded as including personal estate, as well as real. The public mischief from inordinate wealth of individuals is obviously quite as great, whether the income be derived from rents of farms, rents of houses, or interest on stocks. The method above proposed would have the advantage of being applicable to value from whatever source.

CHAPTER X.

OF DIRECT INTERFERENCE OF LAW WITH THE USE OF LAND.

We have thus far examined the effect on the culture and management of land which is produced indirectly by the laws that regulate the transmission and powers of ownership. But it is deemed by some persons that laws may be framed which would by direct compulsion, or by enforcing certain forms of agreement, greatly extend cultivation, and lead to enlarged production from the soil.

I. *Compulsory Cultivation.*

It must, however, be first pointed out as a mere axiom that no laws can fix the rules of good husbandry and make their observation by farmers imperative. This effort is made on a small scale by many landlords, when they prescribe certain courses of cropping, the maintenance of old pasture, the application of a certain quantity of manure, and the like. But it has become fully recognised that such

conditions tend to hurt culture by cramping enterprise and progress, and if such be the result of conditions imposed on the management of each single farm, made and agreed to by those who are best acquainted with its special needs and capacities, it will be admitted that an attempt by the State to prescribe general rules would be absolutely destructive to good farming. Equally fatal would be any attempt to regulate such matters by public inspectors. This would make a public officer, with no superior knowledge, and with no interest in results, the arbiter and director of delicate operations, which must be modified to suit the peculiarities of not merely every farm but often every field, which involve the application of ripened skill, experience, and local knowledge, and which turn for success on the nicest calculations of markets, and probabilities of seasons. No trade could survive under such fetters, and, if I refer to the idea at all, it is only to point out by stating it, how impracticable is the notion which is really sometimes advanced that it is the duty of the State to compel proper farming.

The idea is, however, often urged under a slightly modified and much more plausible form. It is said that there is a large extent of land in this country which is uncultivated, being kept in a state of nature out of simple negligence or caprice, or for mere enjoyment, as in parks and pleasure grounds,

or for purposes of sport, as in game preserves and deer forests. Why, it is asked, should not the State take possession of land thus wilfully left waste, and divide it among small cultivators who would develop its resources?

The answer to be given depends on the particular case. First let us consider the question as regards land which is not cultivated properly on account of the indifference of the owners. But although this may be the real motive of a great deal of bad agriculture, it would be exceedingly difficult to found legislation upon the circumstance of supposed motives. It would be scarcely less difficult even to ascertain the facts, because they are facts of opinion. In a very large number of instances an equal number of valuers could be found to assert that a given tract of land was properly farmed as could be brought forward to prove that it was in a state of shameful neglect. For farming is, as has been already stated, always a question of degree and circumstances, incapable of being reduced to rule. It is also a speculative question, in which experience only can prove whether a different system would be more profitable. Hence it would in most cases be felt to be a grievous injustice that an owner should be dispossessed for the reason that a certain number of persons, or a judge, was of opinion that different methods from his would be preferable.

Especially as it must be remembered that on this system no man could feel secure. There must be some one to decide what estates, or portions of estates, were so badly cultivated as to demand transfer to other hands, and the authority thus created must necessarily be applicable to all the land in the kingdom. As its judgments could only rest on opinion, they must necessarily be arbitrary. Hence it would follow that there would be in every district a local authority charged to enforce farming on the principles it deemed correct, and armed with the power of enforcing its decrees by sale of the lands of recusants. It is impossible that such a system could be beneficial, or could even be endured, for every owner of land, small as well as great, would certainly combine against it.

It is safer and sounder to trust to natural laws to remedy the evil. Really bad farming is unprofitable, and what is unprofitable may be followed for one generation, but scarcely for two. Great wealth, derived from other sources, may for a time permit the capital which is locked up in land to rest unused, but if estates are reduced to smaller dimensions, and pecuniary losses are permitted to have their natural effect in compelling sales, we may be certain that the ordinary motives of human conduct will ere long conspire to enforce the proper use of land, or

its voluntary transfer to those who could use it to more advantage.

When there is an actual motive leading the owner of land to withhold it from cultivation, it would be found not less difficult for legislation to deal with the case. For instance, land which is devoted to purposes of pleasure has a very high market value, simply for the reason that it is capable of affording pleasure. As it is always assumed that the State would give the present owners the full market value, it would have to pay very much more than the agricultural value if it were to purchase such land for the purpose of bringing it under cultivation. We have seen, in considering the Nationalisation of land (p. 112), that this involves a heavy loss to the State, that is to the taxpayer, on the total operation.

But next it is to be observed that a very large proportion of the land left uncultivated, particularly of what is used as deer forests and game preserves, consists of rugged mountain ranges, and (in the low country) of heathy and poor soils, or woods, on which cultivation of any sort is barely practicable, and in which the pasturage of sheep would make an inappreciable addition to the national food or wealth. We need hardly trouble ourselves about the destination of such barren and unreclaimable regions to the purposes of the only wild sports our country now

affords. If it is felt to be a hardship that the owner should for his sport exclude the public from the scenery (which in some cases is and in some is not a real grievance) that grievance had better be removed by some other method than by settling cultivators in districts where they can only starve.

There remains the case of parks and pleasure-grounds occupying good land. But it is not proposed to prohibit the retaining by anyone of a certain extent of merely ornamental ground around his house. The question affects, therefore, only the larger parks, and it would be difficult enough to draw the line. But even in regard to those of great extent, it must be remembered that they are retained for beauty of scenery, and this is an enjoyment which the owner cannot keep altogether to himself, and which it may be said the owners of the largest parks are in general the most liberal in sharing with the public by giving free admission to their domains. There are few noblemen's parks to which the neighbouring villagers, and even strangers, have not a practically unlimited access; and the enjoyment which is thus widely shared is one which it is not desirable to extirpate even for the growth of food.

But it is also right to remember that nearly all these large parks consist to a great degree of pasture land which is used for grazing stock, and which in

that way produces substantially in most cases as great a value of food as if it were under the plough. An eminent Liberal writer has indeed argued that grazing is not beneficial to the community, because in that way an acre of land will produce only one-tenth the weight of meat that it would of wheat. But before the Legislature could act on this proposition by enacting that all pasture-land shall be ploughed up, it must first enact that everybody shall eat bread and nobody shall eat beef. For, since we are not at present all vegetarians, there is such a demand for beef that the public willingly pays ten times the price for a pound of it as for a pound of wheat, and the consequence is that it is fully as profitable to grow 200 lbs. of beef on an acre of grass, as it is to grow 2,000 lbs. of wheat on an acre of ploughed land. It would therefore be very bad political economy, as well as bad agriculture, to enact that good grass land should be broken up in order that grain might be sown.

For these reasons, the idea that law can do anything to promote cultivation by the compulsory transfer of any considerable tracts of land from the present owners to new ones must be rejected. It may be fully admitted that the whole of the land now in possession of private owners is not used to the best economical advantage. But the purposes which are uneconomical are not all injurious. And

although many instances may undoubtedly be found in which a change of ownership would be an economical gain, we must remember that law can only deal with facts as a whole, and that it will only do mischief by interposing with compulsory rules, which are only capable of useful application in isolated instances.

II. *The Game Laws.*

In this branch of legislation we find, however, the operation of law with the direct purpose of fostering a use of land which is contrary to beneficial production. For although an argument has been built upon the proposition that rabbits are food, and although it is true that on certain sterile tracts rabbits may be more profitable than sheep, yet it is true in the main that game destroys more food than it eats, that as food it is a luxury rather than a necessity, and that therefore its preservation to any considerable extent diminishes the food supply of the country.

Now the object of the game laws is to make the preservation of game possible. For, by the common law of this and all other civilised countries, game, roaming at large, is not the property of any individual, and hence it may be taken and killed by anyone. Of course, if the law so remained, no owner

of land could help game being taken and killed by others than himself. But the game laws, though they do not make game property nor the taking it theft, yet create its capture, and even the entering another person's property in search of it, special criminal offences. Thus the law puts in the hands of landowners an authority which enables them to protect their wild beasts and birds from any interference by others, and in so doing it encourages them to use their land for the purposes of preserving game to an extent frequently inconsistent with the raising of crops.

If the land is not let, it is only the public that is interested in this result. And undoubtedly the destruction of human food by over-preservation of game is in some districts so considerable as to give the public a very strong interest in these laws. It has also a further interest arising from the fact that over-preservation creates a temptation to poaching, which, though in itself only an artificial offence, leads to many serious crimes, not unfrequently to murder itself, and like every violation of law tends to degrade the law-breaker, and make him in other respects a bad citizen.

But if the land is let to a tenant, his interest is also very greatly affected by the results of the game laws. It is to meet his peculiar grievances that most of the amendments now before the public have been

suggested. The proposal, which at present seems chiefly in favour with the farming class, and which is the subject of a Government measure, is the enactment of a law declaring that the joint right to kill ground game on a farm shall be the inalienable property of the tenant. The word 'inalienable' is important, for it is seen that if it is not inserted the tenant may agree to renounce his right, which would leave the landlord power still to do as he does at present.

But there was nothing in the old law which prevented a tenant from bargaining with the landlord that the right to the game should belong to either one or the other. In fact, the common law, in absence of bargain, makes it in England exclusively the tenant's. The common law of Scotland is the opposite. Nevertheless there is exactly as much preservation of game, and as much outcry by tenants in the one end of the island as in the other. For in both, the tenants, for the sake of getting farms, expressly or tacitly agree that the landlord shall have the sole right to the game, and shall be entitled to preserve it as much as he chooses. The agreement is generally in Scotland express, besides that it would be in law effected by the absence of any contrary stipulation; in England it is frequently tacit, being carried into effect by the circumstance that the lease is usually from year to year, and by the

perfect knowledge of the tenant that if he should exercise his legal right to destroy the game, he would be turned out next year.

With this experience of the powerlessness of law before their eyes it is an extraordinary hallucination on the part of tenants to expect that a declaration by Parliament that game should be the 'inalienable' property of the occupier can make the smallest difference in practice. The tenant from year to year will know as he does now that submission to the landlord's pleasure is the condition of holding his farm. The tenant under a lease will probably find that the ingenuity of the landlord's lawyer can discover some way of virtually transferring, with his own consent, the 'inalienable' right back to the landlord. But if we are to suppose this to be impossible, the only effect will be that any landlord who is bent on holding the game will refuse to let the land except from year to year, and then the tenant will understand that continuance of the tenancy depended on the non-exercise of his inalienable right. Perhaps Scottish farmers may answer that no one will take a farm only from year to year. The practical reply to this is that over the far larger part of England they actually do. An equally decisive reply would be that if we are to suppose that they will have determination enough to refuse a tenancy subject to a condition that the holding shall

be yearly, they may just as well attain their object without any new law by refusing a tenancy subject to a condition that the landlord shall have the right to the game. It ought to be obvious that if they can make their own bargains about rent and period of holding they can quite as easily make it about game, since nobody compels them to make any bargain that does not suit their own ideas.[1]

It may be added that the interests of the public are by no means identical with those of the tenantry on this question. It is quite conceivable that a well-to-do tenant with a taste for sport might become as much of a game preserver, if he had an 'inalienable' right, as a landlord. This has in some instances been found to be the case where landlords have agreed to give the right to the game to their tenants. In this event the mischiefs arising from the destruction of crops and the inducement to crime are just as great as under the misuse of the law by the landlords.

The only effectual method of dealing with the evil is by repeal of the laws which make it crime to kill game, and to trespass in pursuit of it. Were this done, the general public might take game, and thus its excessive preservation would be impossible.

[1] The question of interference of law with contracts between landlord and tenant will be further considered in Chapter XI.

It is sometimes asserted that, if there were to be no penalty for trespass in pursuit of game, the protection of property would be impossible. That argument is absurd on its face. It is the superfluity of game which leads to trespass. On estates where game is not preserved there is no annoyance from trespassers. It might, indeed, be reasonable to allow the owner of land or his servants personally to warn intruders on *enclosed* land to leave it, and on their refusing compliance to subject them to an adequate penalty. This would abundantly secure property from injury, and protect reasonable rights of privacy in ground attached to dwellings. Since no one wishes game to be altogether extirpated, laws as to close time might also be maintained in force for the public advantage. But such regulations would not supply to any landowners the means for raising and maintaining an injurious head of game. As soon as he brought it to a pitch at which the killing it would pay for a man's time, those whom we call poachers would interpose to reduce it. But when it was below the standard at which poaching would be profitable, it would offer little temptation to the poacher. Enough would then remain for fair sport to the owner of the land who could afford time for unremunerative amusement. The operation of natural laws would thus of themselves limit the operation of artificial protection, as soon as we abolish

the special enactments which make artificial protection possible.

III.—*Fixity of Tenure.*

There is still to be considered one other suggestion of interference by the Legislature, by way of compulsion. A considerable party in Ireland, not without sympathisers elsewhere, are persuaded that justice and sound policy both require that the temporary interest of tenants in their holdings should be made a permanent one. They argue that this is required in order to secure to the tenants the improvements they have made, and that it would be the most effectual way of encouraging further improvements. The scheme differs from 'Nationalisation of the Land,' in so far that the State would not become landlord, nor the tenantry owners. The existing landlords would retain their position; the only difference would be that they would have no power to evict their tenants, or to interfere with their transfer of possession to others. The tenants would have a right to their present holdings in perpetuity, paying a rent which it is variously suggested should be the present amount, or one to be fixed for all time by public valuers, or one to be adjusted from time to time by a fresh valuation.

This proposal has not only found much favour

among Irish tenants, but it does not seem to be seriously objected to by many Irish landlords. The reason of the predilection for it by both classes in that country is not difficult to trace. On the one hand, the present tenant would obtain a permanence, at rents which are assumed to be the present rates, if at present low; but which they expect to be reduced by a valuation, if at any time found too high. On the other hand, landlords who at present are charged with exacting rack-rents, and who have difficulty in recovering any rent at all, would feel themselves entitled to the aid of the public force to collect rents which the public had compelled them to accept, without allowing them any choice of the persons who should be liable to pay. But while the two parties might accept this dictation by the State as a boon to both, it may be doubted whether the arrangement would be equally beneficial to the public. A State guarantee of private rents—which would be virtually involved—would not be a desirable undertaking. In bad times the State might be a heavy loser. The tenants might say with truth, 'We cannot pay the stipulated rent;' but the landlords would retort with equal truth, 'We were forced to renounce any selection of tenants, and any option of cultivating our own land, and this in the name of a public advantage; we are certainly entitled to expect that the public will see that we

get the equivalent for our sacrifice.' It is very probable that the result might be either discontent bordering on revolt, on one side or the other, or relief to the tenants at the cost of payment to the landlords out of public funds.

But it may further be pointed out that this immense favour to the tenantry would be conferred in a way very unjust to the rest of the public. It is proposed that the actual tenants at the date of the passing of the Act are to be thus benefited. But what is the particular merit of the actual tenants at that date, to entitle them to such an exceptional and exclusive boon? Some may have been long in possession; but some may have only been a year or two. Some may be excellent farmers; but some may be very bad. Some may have greatly improved their holdings; some may have nearly destroyed them. Some may have capital; others may be bankrupt. Yet this scheme of very 'wild justice' favours alike all actual tenants, and excludes from its favours the men who happened to be evicted the year before, or the farmers, the cottars, the labourers, the artisans who in a year or two more might have had the opportunity of taking a piece of land. It would insure permanence to the actual holder, but at the cost of permanent exclusion of any other holder. It would thus be a gift to the individuals who by accident are the present tenantry, but at the

expense not so much of the landlords as of the public, who would be ousted of any possibility of obtaining a farm, or an allotment, unless by purchase of the right from those whom the State had converted into permanent holders. When this aspect of the question comes to be regarded, it is probable that neither in England nor Ireland will the demand for 'Fixity of Tenure' meet much support from either townsmen or working men who are not already in possession of land.

It has not been distinctly stated by the advocates of 'Fixity of Tenure' whether they mean the principle to be applied only once in favour of the present tenants, or to future as well as present tenants. If the rule were to be limited only to tenants existing at the date of the Act, its injustice would be conspicuous. Future tenants of the newly-made perpetual tenant would have the same grievance against him as he has against his present landlord, and the same agitation would soon be revived. But if this rule were to extend to all future transactions of the nature of letting, its operation might be attended with curious consequences. It would in great measure forbid any of the new permanent tenants from ever sub-letting, because then his sub-tenant would become at once entitled to the same fixity of tenure. This would probably be not altogether to the taste of the Irish supporters of the proposal. But if force

of habit, or of circumstances, should lead to sub-letting even on that condition, it would not stop at the first sub-lease, but would go on as long as any margin of profit could be screwed out of a further degree of sub-tenancy. The final cultivator of the ground would thus be the one who would promise so recklessly that no one else could be found to cap his offer. It need not be said that this is precisely the class which furnishes the most hopelessly bad farmers—the men who run out the land preparatory to running off themselves. Between this ultimate tenant and the original landlord would be interposed an infinite series of middlemen, each a landlord, and also a tenant, bound to pay a fixed sum to his immediate landlord, and trusting to receive a slightly higher fixed sum from his immediate tenant. This would be a singular method of abolishing 'landlordism.' It would, on the contrary, create a vast system of sub-infeudation, which is one of the evils of which, in the course of centuries, English and Scottish land-holding has striven to set itself free. The complications of legal relation to which this result would give rise can hardly be conceived. The land would, in the last resort, be liable to pay all these gradations of rents; but how infinite would be the number of questions to be settled when any one of the middlemen, or the ultimate cultivator, became insolvent, is past the power of imagination to con-

ceive. All this, however, is on the supposition that the Act of Parliament should be *bonâ fide* carried out. But supposing one of the parties, or any number of them, were to try to evade it, by substituting at some stage or other a colourable bargain respecting culture, which should be not quite tenancy? One thing only can be predicted with absolute certainty from such enactments, and that is, that the greater part of the produce of the soil would be converted into lawyers' fees.

It is clear, then, that, for a community with European ideas, the legislative conversion of tenancy into permanency of holding is an impracticable scheme, alike in its legal, social, and political aspects. Whether the Legislature can usefully establish any rules of tenancy short of permanent tenure, will be considered in the following chapter.

With regard to the various forms in which fixity of tenure is illustrated in India, only one remark need be made, that none of them appear to conduce to the prosperity of the actual cultivator. Under native rule, the general system is to extract from him the utmost he can pay, while making allowances in bad seasons which save him from starvation. This system, coupled with the immobility of Eastern civilisation, has the effect of making the practice of agriculture absolutely stationary. When European notions of definite rents and strict principles of

exaction come into operation, we have a variety of results; but all unfavourable. If the land is assigned to permanent tenants of the State, holding at fixed rents, they sublet their holdings, and grind the faces of the ryots, in the old fashion. If the State deals directly with the small cultivators, it finds itself powerless to adapt its positive rules to the infinite variety of detail, and because it cannot consider and allow for each cultivator's occasional difficulties or requirements, it drives each in succession into the grasp of money-lenders, from whose coils there is no escape. If it tries to deal more justly by imposing only a low assessment of rent, but reserving power to raise it at intervals, it impedes improvement, by suggesting that improvement will lead to increased exaction. Thus, even in communities the most docile, and under systems of law the most ancient, we find State management of property a failure. We find ourselves again brought back to the conclusion that the amplest liberty of competition and contract affords the only method by which the value of land can be correctly ascertained, or fully maintained, and that the only real favour that the State can bestow on cultivators is to afford to them opportunity of entering into other pursuits, if the owners of the soil should attempt to impose terms beyond what the mutual interest of all parties may sanction.

CHAPTER XI.

OF LAWS RELATING TO THE LETTING OF LAND.

IT is part of the usual ideas attached to property of every sort that the owner may lend it, or transfer to another its temporary use, for a reciprocal advantage. Applied to land, this idea takes the form of letting and hiring for a certain period, sometimes for a sum down, but far more often for an annual payment by the hirer or tenant. The law of England, and of all other countries, permits the two parties to such an arrangement to settle any terms they think fit, regulating not only the payment of rent, but the manner in which the land shall be used. All that law has hitherto done has been to lay down certain rules, founded on equity, or on the supposed intention of the parties, to take effect in reference to contingencies which their express bargain has not embraced. In England most of these provisional rules rest on the common law, which is an expression of the general understanding of the nation, or on customary law, which grows up in different forms in

different localities, and merely expresses the general understanding of the district. But in all cases either the common or the customary law may be set aside if the two parties expressly agree to make a different bargain.

Such is, in fact, the general principle of law in regard to all contracts. Men are allowed to bargain as they please, and law only interposes to interpret their meaning where they have not expressed it fully. There is only one exception to the perfect liberty of contract; it is where the object of it is contrary to morality or to the public good. In such cases the law is content to say that it will not recognise the contract, nor give aid to enforce it. It is declared void.

Rules as to the manner of proving contracts are indeed laid down by the Legislature, as in requiring writing, or witnesses, or a seal, or in limiting the time within which it will be enforced by the Courts. So also some persons, as minors and married women, are declared incapable of validly contracting on some subjects, though permitted to contract as to other subjects. Again, in these cases, if a contract be entered into contrary to law, it is deemed to be void; it cannot be enforced.

But of late years there has sprung up in relation to land a demand for the introduction of a new and unknown application of law. It is sought that the

law shall compel two persons, if they bargain at all, to bargain only in one way—not merely as regards form, but substance. The penalty also for violation of such a rule is not to be that the contract is void, but that a different contract may be enforced.

One such demand we have already considered (p. 151) in reference to the Game Laws. Another demand is that every tenant shall be entitled to a certain length of notice to quit, to a certain sum if he is required to quit, and to repayment of whatever sums he has expended on the farm. All these are of course most legitimate subjects of demand by a tenant in making his bargain with the landlord. In many instances a wise landlord would agree to them, as being for his own ultimate benefit. But the question now raised is whether they shall be made the inevitable conditions of the contract, so that under no circumstances can a contract be made which does not contain them, and no contract to set them aside shall be valid.

The question arose first in Ireland, under conditions which in truth placed it in a different category. Owing to certain social and political reasons, among which absenteeism and poverty of landlords, and the obstacles formerly placed by the British Parliament in the way of any other field for labour than agriculture, occupy probably the chief place, the usual duties undertaken by landlords have over a great

part of that country fallen upon the tenants. It is they who have fitted the land for cultivation, by reclaiming, fencing, erecting dwelling-houses and other buildings, and executing such drainage as exists. Undoubtedly these operations have for the most part been very imperfectly performed, but the fact is that (in general) whatever has been done has been done by the tenants, without assistance from, but equally without objection by, the landlords. Naturally, therefore, the tenants look upon their labour thus spent as their property, recognised as such as well by equity as by virtual understanding. In some districts this came even to be admitted to be law, and constituted the Ulster tenant-right, in virtue of which the tenant might sell his interest to a new tenant, and the landlord was bound to accept as tenant such a purchaser. In other districts (where probably the labour expended had been less), the claim of the tenant did not amount to a legalised custom, but it was nevertheless a general expectation. In this state of things the Legislature interposed, and in 1870 the Irish Land Act granted to all tenants, below certain amounts of rent, and not holding under written agreement, a valid pecuniary interest in their holdings, which, while they continued to pay the stipulated rent, the landlord was required to allow to them, should he give them notice to quit. A Bill now (July 1880) before Par-

liament preserves this interest even in the case of tenants in certain specified districts who, owing to the bad season of 1879, have failed to pay their rent.

In such enactments, framed under such circumstances, it is obvious that there is no departure from, or even straining of, ordinary legal principle. The new law has not created new contracts; it has only protected implied contracts from violation. In any case in which the parties had deliberately agreed that the tenant should have no interest in his holding, or in his improvements, the law has respected the agreement. It has even recognised an implied agreement to such an effect when there has been a written lease for a sufficient period of time, although it might not expressly refer to the question. But in absence of writing it has only given legal effect to a claim based originally on the landlord's failure to execute proper improvements on the land, and on his acquiescence in their execution by the tenant, in the expectation that he should reap a due reward for his labour.

Precisely similar principles of law have been brought into play in England, not by statute, but by the action of the common law judges. In Lincolnshire, in Surrey, in parts of Yorkshire, and of some other counties, a custom has gradually sprung up that a tenant shall, on leaving, be reimbursed for his outlay on certain ploughings, manures, or feeding stuffs. The landlord may have never expressly agreed

to this; but if he has not expressly declared his dissent before commencement of the tenancy, the judges hold him liable in virtue of mere acquiescence in a general understanding.

But the recognition of these equitable rules, alike in Ireland and in England, is something totally different from imposition by statute of an invariable rule which no agreement can set aside. Landlord and tenant, whether in Ireland or Lincolnshire, may, at the commencement of their relation, agree between themselves that the Land Act, or the custom of the country, shall not apply in their case. Freedom of contract is thus fully respected. But what is now demanded by some agitators is that they shall be positively forbidden to contract on any other terms than such as are to be laid down in an Act of Parliament; nay, more, that if they contract at all, it shall be understood that they do so in terms of that Act. It is required that a tenant shall be paid, at rates to be fixed by statute or by arbitration, for whatever he shall do, that is deemed to be a 'permanent improvement' to the farm. The landlord is to be allowed no power of objection, since to object would annul the statute. So also the tenant is to be paid for the unexhausted value of the manure recently applied, equally without power of objection by the landlord. In some forms of the claim no length of possession under lease is to bar the assertion of these

rights. The result, at all events, is that, for the period specified, the landlord will no longer be owner; he will have merely a rent charge, with a power to repurchase the farm on paying for the improvements. He will have no power to decide whether he desires an improvement or not; if a given proceeding by the tenant is deemed by a third party, under the name of arbiter, to be an improvement, the landlord must take it and pay for it.

The objections to such imperative legislation are palpable. When no question of morals, or of political arrangement is involved, it is quite impossible that one cast-iron rule can be suitable for all situations. Persons who voluntarily contract do it for their own advantage, and the Government cannot tell them what is most for their own advantage. If the State injunction be certainly for their joint advantage, no doubt they will ultimately adopt it. But then they would have done so sooner or later without State dictation. On the other hand, if they do not at the time see that the State injunction is agreeable to themselves, they will defy it by not entering into a contract at all. For though it may be possible for the State to ordain that if a landlord lets his farm it shall be on certain specified conditions, it is entirely beyond State power to compel the landlord to let his farm at all, if he does not choose to do so.

This contingency is one which the advocates of

imperative 'tenant-right' appear never to take into their calculations. Yet it is undoubtedly a contingency quite certain to occur to a greater or less extent. If the legal consequences of letting be such as are distasteful to the landlord, he will, in many cases, take his farms into his own hands rather than subject himself to the bonds of the law. There is no insuperable difficulty in such a course. He would not need to turn farmer; he would lay down his fields to grass, or cultivate them by means of bailiffs. Some of the dispossessed tenants would find employment in that capacity, but not all: for a bailiff could superintend the management of many farms. The grass-land would cost little capital, for stock could be taken in to feed without purchase, or the fields could be let annually. Capital would, however, be forthcoming in many ways, since the local banks, which now readily make advances to the tenants, would be equally willing to make advances to the landlords, on security of each crop, and taking means easily devised for superintending the outlay. If, as is probable, some landowners would lose money on this proceeding, it is also probable that many would gain, for they would conduct the business with the advantages of buying and selling on a large scale; they would be freed from the restrictions they at present impose on their tenants, and, turning their minds to farming as a commercial question, they

would see their advantage in adopting many new systems which are profitable, but which, under the existing relation of landlord and tenant, neither party cares to introduce. It is far from certain, therefore, that the public might not profit by the change. But it is quite certain that the present race of tenants would lose. Compulsory conditions of letting, if of such a nature as are unsatisfactory to landlords, would simply lead to wholesale eviction.

What is more, it would not be possible to establish conditions by law which would not be, in many cases, not merely unsatisfactory, but positively hurtful to cultivation. Take the simplest and most favourable case for legal interference, that of sanctioning outlay by the tenant in drainage. Beyond doubt, a very great proportion of the land in England would be made more valuable by being drained. But there exists also a description of land in which drainage would be hurtful, and the boundary line between the two is matter of opinion. In a number of instances it can only be settled by results. Now, if a tenant is to be entitled to drain whatever land *he* thinks fit, against the judgment of the owner, and to be paid by the owner for doing it whatever sums an arbiter may fix, it is obvious that the landlord will not infrequently have to pay for suffering an injury. Advance to more difficult questions—the accommodation for stock, or the grubbing up of hedges. Here

there is still great dispute as to the best kind of accommodation for stock (*e.g.* whether stalls, boxes, covered or semi-covered yards), and as to the conflicting benefits of shelter from hedgerows, and recovery of the space they occupy. Further, that which is suitable for one method of farming is not suitable for another. Hedgerows are more beneficial to grass than to grain crops; and young stock, and fattening stock, and dairy stock, all need a different sort of shelter. What one tenant does to suit his own ideas may not merely be against his landlord's ideas, but may be against the ideas of the next tenant, and to compel the landlord to pay for it is a manifest wrong.

Much more complex cases will constantly arise. It is sufficient to point these out to show that reason and justice, and public advantage, may very often be on the side of the landlord in resisting proposed outlay by the tenant. He may very often be the more enlightened improver of the two. The proposal to settle the question of useful or useless outlay by final arbitration is really to call in a third person to fix what is the proper method of cultivation. But even a third person is not always the soundest judge. Sometimes the award might mulct the tenant of a heavy outlay on matters which would be really beneficial, though to the arbiter they did not appear so. Sometimes the case would be reversed, and the landlord would have to pay for permanent damage done

to the farm, because to a prejudiced arbiter it seemed at the moment likely to be a benefit.

Not only could landlords not be blamed, but they would deserve commendation if, to escape such risks, they declined to accept a tenant whom the law would arm with such powers of possible mischief, and if they should, in preference, retain the operations of farming their land under their own control.

Of course, if the tenant's claims for compensation are limited to what the landlord has previously agreed that he shall execute, there is not the slightest objection to such an arrangement. But this would be under private contract, and not by a condition imported by Parliament into the contract. So also there cannot be any objection to the adaptation to England of the principle of Ulster tenant-right. If a tenant secures his landlord's consent, or even acquiescence, in making improvements, on the understanding that they shall be his property, no one can demur to the arrangement. It would, however, be necessary that the acquiescence should be proved, and therefore notice would have to be given by the tenant to the landlord before the works are begun.

Thus far we have been considering only what are called permanent improvements. There is another description which consists in acts of culture, and in the application of manures, for which also a claim under the vague name of tenant-right has been set

up. The right to repayment of both is, we have already noticed, recognised, though not always under the wisest conditions, as a custom having the validity of law, in several English counties. There is no reason why it should not be made statutory law applicable to all. But the custom only takes effect in absence of express written agreement on the subject, and so also should the law. For it may suit the parties, and be for the interest of the land, to make some arrangements different from those which a stereotyped law would lay down. Each soil and climate has its peculiarities, which affect both the immediate and the lasting influence of both acts of cultivation and of manures. Nobody so well as the parties can determine what is best in each case, and arbitration on this question, as on the last, subjects their interests to an opinion which cannot be infallible. That in general it is for the advantage of both parties to agree on terms which shall secure to the tenant not only complete reimbursement of his outlay, but sufficient profit upon it, is beyond dispute. What is insisted on is that the terms should be settled by agreement, and not by Act of Parliament in defiance of agreement.

While, however, for these reasons, any positive enactments to supersede contract are to be reprobated, there remains an important sphere for law. Its duty is to establish presumptions, of a fair and

beneficial character, which shall take effect as contracts wherever special contracts do not supersede them. But they ought to have no operation when deliberately set aside by special contract. If a landlord lets a farm already in high condition at a moderate rent, on the express proviso that the tenant shall spend so much in oilcake and bones during the last year of his tenancy without compensation, the presumption is excluded; its place is taken by a contract to which both parties agree, and which is better suited to the arrangements their circumstances require than the presumption of law would be.

But it must be distinctly insisted on that the rational presumptions which custom or statute may set up may properly be deemed imperative, unless a clear and specific contract takes their place. It is quite reasonable to require that general rules, framed to meet the demands of justice in the majority of instances, shall not be set aside by a vague disclaimer on one side, but shall only be annulled by distinct contract entered into on both sides. Herein lay the error committed in the Agricultural Holdings Act of 1875. It declared (§ 57) that its provisions should not apply to any contract of tenancy from year to year or at will (that is to say, to the vast majority of current tenancies in England) 'if within two months after the commencement of this Act the landlord or the tenant gives notice in writing to the other to the

effect that he (the person giving the notice) desires that the existing contract of tenancy shall remain unaffected by this Act.' Thus an opportunity was given to either of the parties to make the Act of no effect without substituting any other contract. The result would have been materially different if to existing yearly tenancies there had been applied the rule established for future tenancies, that the Act could only be set aside by agreement in writing, signed by both parties, declaring that the Act, or any part or provision of the Act, shall not apply to the contract (§ 56). Everything that is possible would have been gained when a tenant's attention was drawn in writing to the fact that what an Act of Parliament declared to be just was not to be deemed in force in his case, and when he signed his renunciation of its securities.

For it must be observed that it is only the dependent and subservient position in which tenant-farmers have so long voluntarily lain, that makes even such an Act at all necessary. There is no compulsion on any one to be a farmer on any terms which he does not think reasonable. Least of all is there any compulsion on a young man to turn farmer if the conditions offered to him are not satisfactory. Were he to decline them, he might not obtain a farm; but every other avocation in life, and, above all, emigration, would be as open to him as to others.

Unjust landlords are, therefore, a direct consequence of submissive tenants. If we ask why tenants should be submissive to such a point, we shall probably find the reason to be because landlords are so seldom unjust. It is a rule so seldom in England departed from that a tenant retains his holding with little change of rent, and passes it from father to son, that the question of compensation on eviction scarcely ever arises. When it does arise it is in general fairly dealt with. Thus tenants get into the way of expecting that all will go well, and they neglect the proper business precaution of a written agreement. There is a further reason. Rents in England have generally been so easy, and in hard times abatements are granted so much as a matter of course, that a tenant has been able as it were to insure himself against loss. That is to say, he has made a comfortable livelihood, and has speculated (or gambled) on the chance that he might not be ruined by being turned out. Generally, he has won; when he loses he is hardly entitled to blame any one but himself.

In Scotland matters have taken a different line. The intercourse with England which grew rapidly after the final extinction of the claims of the House of Stuart, and the augmenting wealth of the mercantile classes, drew the landowners into a competition, in which, weighted with the disadvantage of

inferior soil and climate, they were forced to put forth all their energies. They began to improve their lands, they let their farms by tender to the highest bidder at frequent intervals, and thus they found a rapid increase of income. But tenants who offered high rents demanded in return the security of leases; and obtaining that security, they invested all their energy as well as their capital in developing the capabilities of the soil. After each cycle of 19 or 21 years, its improved value was again recognised by a higher bid from the old or a new tenant. But the landlords were not idle. As they saw that judicious expenditure would be rewarded by higher rents, they met the advance of the times by constant outlay in improvements. Draining, machinery, cottages, cattle-sheds were everywhere provided by the landlord, and the tenants, with the security of a lease, have everywhere responded by immense expenditure in manures and labour. Competition, encouraged by the unjust law of hypothec, has been excessive, and in bad times many have been ruined. There has also been, as in England, too much submission to restrictions on cultivation, and too little insistance on conditions of compensation. But enlightened landlords and independent tenants are beginning to see their mistake, and new arrangements, suited to the times, are being pretty generally introduced.

Similar influences are now at work in England. Foreign competition makes easy-going farming impossible any longer, however low the rent may be. Tenants must have security, and must have the land and buildings made suitable to modern systems. Landlords will be forced to provide these, but they will be rewarded by higher rents. The relation between the two parties will become more strictly commercial; each will stipulate for his rights; dependence, and submission, and reliance on understandings will cease. Exceptional laws in favour of the landlord, such as that of distress, will be abolished. He will become his tenant's partner, or merely his ordinary creditor. The tenant, who must invest so much more money in the business than used to be required, will decline to enter it unless his position as the active partner is acknowledged, and the contingencies of trade fairly provided for. The parties will thus adjust their own relations, and they will ask of law only to leave them to settle their own affairs in their own way.

Thus, in actual farming, as in the principles of ownership, the essential reform is merely the obtaining of full freedom. Every individual is for himself the best judge of his own interests. The law, when interfering with freedom, only does mischief. When it sets up artificial rules and restraints, it stops natural development.

The improvement in cultivation, which is being forced on farmers by competition, and which will ultimately raise their position to one of greater dignity and independence, will be further aided by the changes in the laws relating to the tenure of land demanded by the public. For these changes will by degrees diminish the size of estates to the point of maximum profit, which will be found to be the point at which the owner can give his own close personal attention to their management. At the same time, they will place the owner in the position of being absolutely unfettered and unencumbered, able to make whatever arrangements with tenants may be most advantageous to both parties, and able to apply to the land the capital which is requisite as a preliminary to improved cultivation.

Under such conditions, there is no ground for despair of British agriculture. If it were freed from unnatural restrictions, it has all the advantage on its side against competitors. A fertile soil, a medium climate, supplies of manure which are unapproachable by other countries, because they arise from a density of population, and are the waste products of a variety of arts which nowhere else exist, and proximity to the best markets in the world, are circumstances which cannot fail to give to British farmers and landlords success over all competitors. The one thing still needful is that they should open their eyes to see the things on which their success

depends. There is no uniform rule which they can follow. Every district, every farm, has in its situation and capabilities some special superiority; and it is in seizing this advantage that profit is to be secured. With one it may be milk, with another butter, with a third straw (valueless to the American farmer—here often worth 5*l.* to 8*l.* per acre, in addition to the grain), with a fourth vegetables, with a fifth fruit, with a sixth grass and hay, with a seventh wheat, with an eighth barley, with a ninth roots, with a tenth wool, with others mutton, or lamb, or beef, or veal, or pork, or it may be with a sound and foreseeing combination of a number of these various resources. Nor is every year the same. The sensible and truly practical farmer will alter his supply with the alteration of demand, and with the opening up either of new markets or of new competing districts. But still one point in his favour is invariable, and that is, that it must always cost him less to put his produce in the market than it must cost his more distant competitors, and that, on the whole, his supplies can never be in excess of the demands of a rapidly augmenting population. Amid the vicissitudes of seasons and change of prices which make farming in some respects the most gambling of pursuits, this is the one chance in his favour which gives to the home agriculturist an advantage that must secure him ultimate superiority in the contest.

Because the future of British farming lies in such variety of method and adaptation, it is needless to enter into any examination of either the practical systems or the legal rules which now prevail in different districts. As each locality, each farm, nay, each field, has its peculiar fitness for a special mode of cultivation, and contains in itself resources which the intelligent farmer will develop in the most economical and profitable way, so every county, one might say every estate, suggests some difference in the relations between landlord and tenant which cannot be beneficially transplanted elsewhere. The leases of Scotland and Norfolk, the customs of Lincolnshire, the tenant-right of Ulster, all produce excellent results where they have grown up, but all would be prejudicial to progress if enforced under different conditions. The most convenient duration of leases, the most advantageous notice to be given of their renewal, the nature of the crops to be taken as they approach termination (even supposing no rotation to be prescribed), the valuation of the dung, straw, or roots taken or left, the question of the descent to heirs of the right conferred, are only a few of the points which must be settled by the parties in view of their individual character, circumstances, and opinions, and which cannot be made universal by Act of Parliament. Whether compensation is better than leases; whether, if adopted, it should extend

to specified acts and manures, or include everything; whether it shall be assessed by a fixed rule, or by a sliding scale, or by arbitration, and over how many years each separate application shall be computed to be of value, only suggest some of the difficulties which in each individual case must be adjusted in view of local and personal considerations. What, again, shall be the limits of tenant-right, how far it shall imply fixity of tenure or rent, how far be subject to modification by agreement, are points that even in Ulster are undecided, and which could not be settled for the whole country by the Legislature. Since, then, the profit of both landlord and tenant demands variety of arrangements, it is vain to point to any one system as affording a lesson for general adoption. The circumstances that force both parties to seek their profit in mutual agreement will be the best teachers of what their agreement should be.[1]

Finally, it may be observed that in the fact of this adjustment by the parties we are relieved from

[1] I may illustrate the extreme difficulty of introducing what may be called foreign ideas in the arrangements between landlord and tenant by the fact, that although for thirty years I have urged publicly and privately in Fifeshire the advantage of engrafting on the customary nineteen year leases a claim for compensation for unexhausted manures and feeding stuffs, and on my own property have even insisted on its adoption, I can only boast of having made one convert to my views. Yet this is a matter which primarily is purely for the tenant's advantage, and the Fife tenantry are second to none in intelligence and skill.

any necessity for discussing the nature of Rent. Rent for our purposes is only what the tenant agrees to give and the landlord to take under the circumstances of their case. It varies, therefore, not merely with fertility of soil and prices of crops, but with the skill of the individual tenant and the liberality of the individual landlord. Generally, it may be considered as the share of the profits of cultivation which the tenant can afford to pay after retaining the ordinary rate of interest on his own capital, and an average remuneration for his own knowledge and exertions. It is idle to speak of three or any number of incomes made from the land. The expenses of cultivation must be paid, as in all other processes of manufacture. Capital must obtain its average remuneration, as in every other employment. The balance of receipts forms profit, out of which rent can be afforded for the use of the land. But its amount can neither be fixed by Act of Parliament nor by philosophic definition. It depends on the tenant's estimate of what average years will yield, and if the estimate proves erroneous it must be amended, or the tenant will cease to farm. It represents a fair proportion of the savings he can make over his rivals competing in the same market, and by whose competition prices are fixed, whether the savings be effected in cost of labour in growing the

crops, or in their carriage to market. These elements, again, include an infinity of considerations of climate, fertility, rate of wages, price of manures, but not least of all the factor of personal character and sense in both landlord and tenant.

CHAPTER XII.

OF THE AMENDMENTS REQUIRED IN THE LAND LAWS.

HAVING now reviewed the nature and operation of the laws relating to property in land, and examined the various reforms which have been proposed in them, we are in a position to consider what amendments are really called for to remedy their defects and make them more beneficial to the community.

The great evils which flow from them are, as we have seen, the consequence of the powers of settlement and of mortgage. And these powers, it must be steadily kept in view, are artificial; that is to say, they are neither necessary to the enjoyment of property nor do they commend themselves to reason as offering any peculiar advantages to individuals or to society. For bequest and inheritance, which, as we have seen in Chapter II., are the creation of mere social agreement, imply that the possessor of property shall be able to give it on his death to whom he likes, but not to persons whom, not being then in existence, he cannot like. And the liability of pro-

perty for debt implies its liability for every debt, and not for such only as the debtor may choose to favour with peculiar security. These rules, further, by enlarging the powers of deceased owners, limit the powers of present owners, and convert land, which nature obviously intends for the present sustenance and gratification of mankind, into a commodity that is useless and barren, yielding neither its natural increase, nor capable of serving the purposes which prudence and affection may suggest.

Principles thus hurtful in application are incapable of amendment by modification. The remedy for their mischief is to be found only in their abolition. Let us now proceed to examine what would be the results of this course and by what steps it might be most advantageously adopted.

Such an alteration of the law would include, 1st. Abolition of the rule of primogeniture; 2nd. Abolition of the powers to grant estates in land for life only; 3rd. Abolition of the power to assign land as a security for a special debt. But we may also state the same changes in a positive instead of a negative form. Thus they would be—1st. In case of intestacy all the children would share alike; 2nd. Every owner of land would be entitled to sell or to leave it absolutely to such individuals as he chooses; 3rd. All creditors of an owner of land would be entitled to take the land as part of his general

assets for payment of his debts. Thus it may be said generally that while these changes in the laws would diminish the powers of the past and present generations over the future, they would increase the powers of each generation as regards its own present concerns.

In order to carry such changes into effect it would also be necessary to prohibit the creation of trusts affecting land. This device was originally adopted for the purpose of evading the intentions of the Legislature, and it could still be used to maintain interests for life though their direct creation might be prohibited by Parliament. But both in this indirect action, and in their direct operation, trusts of land are incompatible with good cultivation, for they interpose between the land and its actual owner a person who has powers of control without adequate personal interest in the subject. Speaking generally, it is the case that landed estates which are under trusts are badly managed.

The same objection does not apply to trusts of personal property. These consist generally in investments in the public funds, or in industrial enterprises; the money is thus used by persons who have a direct interest in its application, and the trustees are merely creditors holding a right to interest and repayment. This distinction, therefore, illustrates the proposition that was laid down at page 14, that

it is necessary in some particulars to deal differently with land and with personal property. Men desire for their personal gratification to preserve estates in land undiminished, although they may not fulfil the primary condition of yielding the maximum of produce, and it is for this end that they create partial interests in them. But when they create partial interests in personal property, it is not for the purpose of continuing the same form of investment, but solely to effect some temporary purpose of provision for individuals, quite irrespective of the source from which it is drawn. Between land and moveables, therefore, viewed in this relation, there is the double difference, firstly, that a trust of land is detrimental to its due management, while a trust of money is not; and secondly, that the motive of a family trust of land is to preserve the land specifically from sale and division, while a trust of money authorises such changes of investment as imply its being lent to those who will profitably use it.

But when the purposes become identical, which is the case when land is merely left in trust for sale, the treatment of both will properly be identical. The prohibition of trusts of land will therefore not apply to trusts for its sale, but only to trusts for holding it, or for drawing an income from it.

Thus all the purposes of family provision will be as fully carried out under the proposed changes as

they are at present. If it is advisable, in the opinion of any landowner, to give to a son or daughter or other person an income for life, without power over capital, he will effect the object by authorising the sale of so much of the estate as is necessary, and by directing that the proceeds shall be held by trustees on investments other than land, for application as he may desire.

The security of family provisions, which is deemed to be one advantage of charging them on land, would be quite as fully, and much more cheaply and conveniently attained, by converting them into personalty in the hands of trustees. Consols are at least as safe as land, and the interest which they yield is higher. If it be suggested that land cannot be made away with, but that stock may be sold by a fraudulent trustee, it may be replied that it would be easy to establish in England a system already in force in some countries, under which a public officer is made trustee of all funds of which it is merely desired to assure safety of the capital, and payment of interest to named beneficiaries. An extremely trifling charge would defray all the costs of such an institution, and it is further recommended by the increasing difficulty of finding private persons willing to undertake the annoying and perilous duties of trustees of settlements.

If it should hereafter be deemed fitting by the

Legislature to give to children an absolute right to a portion of the father's estate in land, such as is established by the rule of legitim in the Roman and the Scottish law as regards personalty, it would be effected without difficulty by the process of giving them a right to call for a sale of as much of the land as would be needed to meet the amount, in the event of the father not having made other arrangements for the purpose.

The case of provisions for the husband or wife of a deceased owner of land may be deemed a little different. At present (subject to some intricacies) the widower of an heiress, if there has been a child, takes his deceased wife's landed estate for his life, under the name of courtesy. A widow, if her rights have not been barred, as they may be in England, but not in Scotland without her consent, takes a third of her deceased husband's real estate for her life under the name of dower. Some such provision is proper in both cases, and possibly reason might suggest that a fixed proportion of one-third of the rental to the survivor in all cases would be the most just. But however this may be, there is a difference between the case of such survivor and the case of any other annuitant in relation to the land itself. He or she is in a sense merely continuing possession, and stands in the position of a joint owner with the actual heir who has succeeded to the estate. The

interest thus created is, on an average, for only a few years' endurance, and thus is different from a similar interest given to a child. The public is also in general aware of the existence of jointure, and since the facts are known the owner of the land is not under the same temptation to keep up the appearance of a full income as if he had to pay interest to an unknown mortgagee. In any case he would, under the law as now proposed to be amended, have power to sell the land and invest the proceeds in trust to meet the jointure. But it would perhaps be to carry a sound principle to a needless extreme if he were to be compelled to take this course in reference to a burden which is in several of its incidents so different from those either of an ordinary mortgage or of a settlement upon children.

If again it be argued that the principle of an aristocracy involves the maintenance of hereditary dignities, which need a hereditary income for their due support, it may be pointed out that a trust to hold an adequate fund of consols to attend the succession would be a very suitable and harmless method. I am indebted for this suggestion to a very eminent Conservative solicitor, who has had the management of some of the most extensive estates held by members of the peerage, and whose experience of the practical evils wrought by strict

settlements of land has led him to the conviction that such property ought not to be suffered to be used for the mere purpose of affording a permanent maintenance to families of rank. It is, of course, not suggested that peers should be forbidden to hold land. They might still hold it on the same terms as ordinary persons, that is, subject to their own full power of disposal, and liable for all their debts. But they might be secured in a separate income, just as a married woman, an infant, a lunatic, or a spendthrift, by a trust of money in the funds, if any one of the line of peers should think that course desirable for his descendants.[1]

It must be obvious that the powers proposed to be taken away from a landowner by these changes are not such as can make any appreciable deduction from his real comfort and happiness. Nothing but a vain family pride is hurt by forbidding him to pawn his estate, whether for family provisions or for his debts, instead of selling so much of it as these purposes may require. It is preposterous to argue, as some anonymous writers have gravely done, that the most valuable incident of property is the right to pledge it, and to transmit

[1] It has been suggested that trusts might still be created by leases for years. That, however, is easily prevented. A lease ought to require for its validity the possession by the lessee, and monies derived from land would be equally incapable as the land itself of being affected with trusts, express or implied.

it to a long succession of heirs. The assertion is disproved by facts. Land in France, where it cannot be limited to life estates, brings actually a higher number of years' purchase than land in England. Personal property in Scotland and on the Continent, where it cannot be mortgaged by bill of sale, is found to be equally convenient and valuable as in England.

Far from being injured, landlords would greatly gain by these reforms. The first result would be that each owner in possession, being absolutely unfettered in disposing of the land, would have the strongest motive to improve its value. For all the improvement he could effect in it would be for his own enjoyment during life, for his profit if he sold it, and for the benefit of whatever child or other person he might desire to leave it to. He would have the power to promise it during his life to an heir if he thought good, but no heir would be entitled to expect it, and the knowledge that its disposal rested in his own discretion to the moment of his death would enable him without hesitation to invest money in increasing its value. So also, should he think it advantageous to his family to divide it, he would be able to do so in such shares as might be most convenient for the property, and suitable to his successors. Every owner in short would have the same freedom as a first purchaser

has now, and as it is a known fact that the chief investments of capital in the improvement of land are made by new purchasers, we might expect to see in a short time a great part of the land of England brought under improvement.

Equal advantages would follow from the land becoming liable for the whole of its owner's debts. It would add to his general credit when he needed to borrow for any temporary purpose. But his creditors would not trust to it as a permanent security, and when his circumstances became seriously involved, they would insist on a sale. Practically, therefore, he would obtain cash for permanent purposes only by sale of part of the property. In the same way, as portions for children or other legacies could no longer be charged on land, it would be necessary to sell so much as would pay them off, when personal assets were deficient. By this means a good deal of land would from time to time be brought into the market. But as no purchaser could borrow upon it, it would necessarily be divided into such lots as would bring in the greatest number of bidders able to pay cash down. The consequence would be that in a short time no land would belong to encumbered owners.

This result would be brought about not only without pecuniary loss, but with considerable pecuniary gain to the owners themselves; for they pay

at present $4\frac{1}{2}$ per cent. interest on their mortgages, and they make less than $2\frac{1}{2}$ per cent. on the capital value of the land. This, as we have seen, is the case, because land as a source of enjoyment brings a price beyond its value as an investment. Consequently, to sell so much of the land as will pay the debts would be a saving of nearly half the interest. For example, suppose the owner of an estate of 1,000*l.* a year rental owes 10,000*l.* on mortgage, he has a clear income of only 550*l.* a year, whereas if he were to sell 10,000*l.* worth of land to pay off his mortgage, his gross rental would be diminished by only 250*l.* a year, and his future net income would be 750*l.* Thus the blow to his pride in being the proprietor of a smaller apparent estate would be at least somewhat assuaged by an actual addition of 200*l.* a year to his resources. Nor is it immaterial that on this better income he would be under less temptation to keep up false appearances, and would have a smaller extent of land requiring outlay for improvements.

That the invalidity of all mortgages would affect small owners as well as large, and prevent peasants as well as peers from purchasing land beyond their power to pay cash for it, must be fully admitted; but the circumstance cannot be considered an objection. An incumbered owner is just as helpless to better himself, if his property is small, as if it is

large. The fact in both cases is the same; he holds land which he cannot improve. There is no sadder spectacle than a peasant proprietor struggling to pay interest on a loan, when he can only make the rent. In France and in Germany, those who have been seduced by the love of property into buying beyond their means are well known to be the least prosperous and most careworn of their class. In India, it is the facility of mortgaging which is ruining the ryots. Even in America all careful observers agree in the conclusion that while the man who buys land with his savings is in a position of comfort, he who buys with borrowed money sinks deeper and deeper in penury and misery. By all means let us have peasant proprietors, consisting of those who can honestly pay for their purchases out of their savings; but do not let us encourage men to ruin themselves and injure the public by becoming proprietors in name only, while they are really the hard-wrought and hopeless serfs of a mortgagee, no matter whether he be called the State, a bank, or a private usurer.

At the same time, it may be pointed out that whether or not all borrowing on security should be prohibited is not a question raised here. The arguments adduced apply to land only, and there would be no difficulty in framing provisions which would still permit validity to mortgages on houses or other real property not used for agricultural purposes.

It has been urged that exception should at least be made of a power to borrow for execution of improvements, since this would fulfil the purpose of effecting them. There would, perhaps, be no serious objection to this being permitted. Such improvements must be executed after inspection and under supervision of a Government Board, which alone involves a waste of money. But it is not so material a public loss as to demand prohibition by the State. If there are persons who are anxious to improve, even at this cost, there seems no sufficient reason for preventing them from taking the burden on themselves. As there would be no other encumbrance to be set aside, it would be unnecessary to have, what is now required, a prior inspection, in order to see if the expenditure would be remunerative to the estate. It would suffice to ascertain that it had actually been made, so as to prevent a loan for improvements being converted to other purposes.

In introducing these changes in the law, it need not be said that care would be taken to prevent injury to the value of property, or to any rights already existing in it. This would not be difficult to effect. The further creation of estates for life may be at once prohibited, since no vested interest would be thus interfered with. But it is desirable to afford some immediate relief in cases where such

limited estates are already created. This might be effected by allowing a present tenant for life to convert, if he chooses, his estate into a fee simple, on condition of paying to those who have estates in remainder the present value of their expectancy. Such value an actuary would have no difficulty in computing. The principle has been already sanctioned by the Legislature. In 1848, in abolishing future entails in Scotland, Parliament enacted that existing entails might also be annulled on the three next heirs giving their consent. But in 1875 (38 and 39 Vic. c. 61, § 4) it enacted that the consent of two of these might be dispensed with, provided that the court should ascertain 'the value in money of the expectancy or interest of such heirs,' and should order the amount so ascertained to be paid or secured to them. It is obvious that this principle fully covers the case of all classes of expectant heirs, and does them complete justice, while it would be for the tenant for life to choose whether he would liberate himself from the settlement by such a process. It would, in fact, operate as a division of the property among all who have an actual interest in it, in proportion to the value of each interest respectively.

In a case which has been decided by the House of Lords during the present session, arising out of this statute, it has been laid down (contrary to the opinion of the Court of Session) that the state of

health, as well as the age, of intermediate heirs must be taken into account in computing the value of an expectancy. This seems a refinement which is superfluous, and, as depending on medical opinions, somewhat uncertain. But Parliament may correct it. Another point which might fairly be considered in framing a general Act is the question whether any payment ought to be made to a minor for redemption of his expectancy. One so young cannot have entered into engagements in which his expectancy is an element, and might properly be placed in the same position of dependence on his father which young men on entering life usually and naturally occupy.

With regard to mortgages, their creation for the future may be prohibited at once. It only requires a declaration that land shall not be deemed a security for one debt in preference to others. Evasion of the rule would be provided against by declaring that no conveyance should be effectual which is made upon condition, nor any lease which is not accompanied with transfer of possession. In dealing with existing mortgages, it would be proper to allow a certain period of time for their being paid off, both for the purpose of enabling the mortgagor to draw upon other resources, and to avoid forcing any large quantity of land at once into the market. It might, for example,

be enacted that existing mortgages should retain their present legal effect for a period of two years after the passing of the Act, and thereafter for a period of (say) ten years after their date, if created before the passing of the Act. Thus mortgagees would only by degrees be required to enforce a sale, should payment not be made, and the clearing of the land of the whole kingdom would be effected by means of sale of portions of encumbered estates spread over a period of twelve years. In mentioning such periods, however, it is of course not meant to recommend them absolutely. Parliament would maturely consider the question, and allow a longer or shorter time as in its wisdom it might deem fit. But sooner or later the whole land of the kingdom would thus be freed, and permanently, from encumbrance.[1]

It has only further to be remarked that these changes would suffice of themselves to make conveyancing simple, rapid, and cheap. A title on which there were no encumbrances, no subordinate interests, no remainders, no trusts, could need no investigation, no requisitions, no conditions, no parties to join in the conveyance, beyond the individual vendor and the vendee. The deed could contain nothing more

[1] A fuller discussion of this reform will be found in the *Fortnightly Review* for September 1879.

than the names of the parties, description of the lands, and the verb 'Transfer.' Registration of such a document would complete the transaction, and be notice to all. Cases might occur in which it was necessary to identify the lands, and to settle boundaries between conterminous owners, and in so far only would the proceedings differ from a transfer of stock. But these are exceptional questions, which are not properly matter of conveyancing, and which do not in fact very frequently arise. In all cases in which the parties are satisfied that they know the lands intended to be conveyed (and such cases are by far the majority), a fee of a fractional per cent. to the lawyer, and of a few shillings to the Registry Office, would comprise the whole expense, and a single day would complete the transaction.

From the simplification of conveyancing, a rise in the price of land would at once follow, in spite of the increased quantity of land which would be offered for sale. This would be peculiarly noticeable in the case of small properties, on which present conveyancing charges are prohibitory. There is every reason to believe that, in consequence, properties for sale would generally be broken up into small lots, because the larger number of bidders would raise the price more in proportion than that which large properties would bring. At the same time, the frequent

necessity of sale of small portions of an estate for its owner's debts, or for family purposes, would tend in the direction of diminishing large, and increasing the number of small, properties. The greater energy given to their cultivation would enable the purchasers to outbid wealthier men, who seek only investments on a large scale. There seems no more effectual mode of promoting the acquisition of land by a large number of the population, than by thus making it the interest of owners to sell, and of purchasers to buy, small portions of land rather than large. But the process would be regulated by natural laws; it would proceed just so far as economic experience proved it to be required by, and beneficial to, the community.

Lastly, the law might properly take steps to bring by degrees into the market all land that is at present vested in corporations or companies, not for purposes of immediate public utility, but as an investment. It is not a profitable investment, and it is not a beneficial form of ownership. The owners are absent, and personally unknown; management must be by agents—it is costly, and frequently inefficient. To require such estates to be sold, and in lots of moderate size, would be no infringement on either rights or sentiments of property, and could be made the medium for testing the demand for small

holdings, and their profitable cultivation. The suggestion of Mr. Lorimer to grant leases in perpetuity has been already noticed (page 117) as an alternative which might be considered in dealing with such estates.

Prohibition of the investment in land by joint stock companies would not necessarily interfere with co-operation in the holding of land, because exceptions could easily be made in favour of owners who reside or work on the farm. But it does not seem that there is any advantage in co-operation as applied to land which calls for legislative favour. We have seen that culture by individuals on a small scale may be quite as economical as culture on a large scale, and that individuals may combine for separate purposes, such as purchase and sale, and the use of implements, without loss or inconvenience. It is not probable that the trifling advantage obtained in some operations of farming, through the fields being of large extent (which limits itself to the saving of time in turning of implements), will be so material as to outweigh the advantage which arises from each cultivator having not only the sole interest in his farm, but being able to carry into effect his own views, without the necessity of submitting them to a council of his fellow-workmen. Moreover, the cost of superintendence will form a not inconsiderable deduction from the profits of co-operative farming.

Interesting as the experiment in some instances has been, the utility of the principle is evidently restricted to the artificial circumstances created by the present state of the land laws, which form an impediment to the preferable system in which private ownership would have its full development.

The conclusion to which the examination of the whole questions relating to Property in Land has now brought us is very simple and uniform. It is only that the law which creates private property (and which in our present position appears best for the community) should liberate it as far as possible from restraints. It should give to the owners the fullest power of disposal during their life, and on their death, but for no longer time. It should trust absolutely to the principles of human nature to secure judicious management of the land, and to effect its distribution among the community. But it should refuse to allow land to be used for purposes foreign to its nature, to be locked up as a pledge, or to be accumulated as an instrument of pride or oppression. More than this, however, law cannot do. It will fail if it attempts to prescribe any method of use; it will be defeated if it seeks to dictate invari-

able contracts. It can indeed supply language when men have been silent, and enforce bargains that have been understood, though not expressed. In this task it can carry into effect principles of equity and general convenience. But when, in matters innocent, men come to certain agreements, law can only recognise and permit them. If in aught they do, in exercise of their free volition, they are less wise than others might be, we must remember that to compel wisdom in its subjects is the boast of a paternal government, but a boast of which the second or third generation invariably proves the futility. It is the part of free men to allow freedom to all; an enlightened self-interest then conspires with duty and with affection to establish arrangements which experience will mould and justify. Perfect freedom to buy, to sell, to use, to bequeath, and to lease land, is all that the wisest reformers will ask or suffer.

The forces opposed to such reforms are probably less than is commonly imagined. They will be found to consist not so much in the resistance of the present holders of land as of those who desire to hold it for objects of speculation or vanity. Persons who dabble in land, especially near towns, as they would in stocks, will be seriously interfered with by being required to pay for their speculative purchases. The *nouveaux riches*, whether merchants, manufac-

turers, or professional men, who aspire to found 'county families' by buying and entailing considerable estates, will be hostile equally to the abolition of the power to tie up land by settlements, and to the limitation of the extent of land they can secure, by the abolition of the power of mortgaging. To these classes may be added the main body of lawyers, who are terrified at changes that will destroy the system they have been trained to admire and by which they have their gain. All these are undoubtedly persons of much energy, able to make a vigorous resistance, and a greater show of resistance because of having a large anonymous connection with the press. But the persons really interested in land will not share their views. The heads of old families are in very many instances desirous of relief from burdens which they feel so deeply, and from which the present law makes their own escape impossible, although it sets their children free. It is quite certain that the method suggested (p. 199) for the liberation of the existing owners from the bonds of settlements would receive in England, as its partial adoption has in Scotland, the support of the majority of those who have an actual interest in the question. The prohibition of mortgages is an idea which, because it is comparatively new, may take longer time to make way. But the mischiefs wrought by pledging land for specific debts, and thus becoming liable

to pay interest exceeding the value of the rental, are so numerous, and to a candid observer so manifest, that public opinion will ere long decide the question. Every day accumulates instances which show that under every variety of condition the owning of land subject to such a burden (unless it be in process of rapid extinction out of savings) is so disastrous, whether the estate be large or small, that deprivation of such a resource would be a real boon to the landowners, while of incalculable and multiform benefit to the public.

INDEX.

LONDON: PRINTED BY
SPOTTISWOODE AND CO., NEW-STREET SQUARE
AND PARLIAMENT STREET

SMITH, ELDER, & CO.'S PUBLICATIONS.

WORKS BY RICHARD JEFFERIES.

ROUND ABOUT a GREAT ESTATE. Crown 8vo. 5*s.*

The GAMEKEEPER at HOME; or, Sketches of Natural History, Poaching, and Rural Life. Third Edition. Crown 8vo. 5*s.*

*** *Illustrated Edition. With* 41 *Illustrations specially drawn for the Work by Charles Whymper. Large crown* 8vo. 10*s.* 6*d.*

WILD LIFE in a SOUTHERN COUNTY. Second Edition. Crown 8vo. 7*s.* 6*d.*

The AMATEUR POACHER. Crown 8vo. 5*s.*

HODGE and his MASTERS. 2 vols. Crown 8vo. 12*s.*

GREENE FERNE FARM. Crown 8vo. 7*s.* 6*d.*

LIFE of LIEUT.-GENERAL SIR JAMES OUTRAM. By Major-General Sir FREDERIC J. GOLDSMID, C.B., K.C.S.I. 2 vols. Demy 8vo. 32*s.*

ENGLISH TREES and TREE PLANTING. By WILLIAM H. ABLETT. Demy 8vo. 12*s.* 6*d.*

ALLAOODDEEN: a Tragedy. By the Author of 'Constance:' a Tale. Crown 8vo. 6*s.*

SHAKSPEARE'S KNOWLEDGE and USE of the BIBLE. By CHARLES WORDSWORTH, D.C.L., Bishop of S. Andrews, and Fellow of Winchester College. Third Edition. With Appendix containing additional Illustrations and Tercentenary Sermon preached at Stratford-on-Avon. Crown 8vo. 7*s.* 6*d.*

The LIFE of MAHOMET. From Original Sources. By Sir WILLIAM MUIR, LL.D. New and Cheaper Edition. In 1 vol. with Maps. 8vo. 14*s.*

MOHAMMED and MOHAMMEDANISM: Lectures delivered at the Royal Institution of Great Britain, in February and March 1874. By R. BOSWORTH SMITH, M.A. Second Edition. Crown 8vo. 8*s.* 6*d.*

HISTORY of ART. By Dr. WILHELM LÜBKE. Translated by F. E. BUNNETT. With 415 Illustrations. Third Edition. 2 vols. Imperial 8vo. 42*s.*

HISTORY of SCULPTURE from the EARLIEST PERIOD to the PRESENT TIME. Translated by F. E. BUNNETT. A New Edition. 377 Illustrations. 2 vols. Imperial 8vo. 42*s.*

The CRIMINAL CODE of the JEWS. (According to the Talmud.) Massecheth Synhedrin. Reprinted from the *Pall Mall Gazette*, with Additions. By PHILIP B. BENNY. Crown 8vo. 4*s.* 6*d.*

PHILOSOPHY of CHARLES DICKENS. By the Honourable ALBERT S. G. CANNING, Author of 'Philosophy of the Waverley Novels,' 'Religious Strife in British History,' &c., &c. Crown 8vo. 7*s.* 6*d.*

London: SMITH, ELDER, & CO., 15 Waterloo Place.

SMITH, ELDER, & CO.'S PUBLICATIONS.

REASONABLE SERVICE. By W. PAGE ROBERTS, M.A., Vicar of Eye, Suffolk, Author of 'Law and God.' Fourth Edition. Crown 8vo. 6*s*.

The BORDERLAND of SCIENCE. By R. A. PROCTOR, Author of 'Light Science for Leisure Hours.' With Portrait. Large crown 8vo. 10*s*. 6*d*.

SCIENCE BYWAYS. With Photographic Portrait. Crown 8vo. 10*s*. 6*d*.

ERASMUS: His Life and Character as shown in his Correspondence and Works. By ROBERT B. DRUMMOND. With Portrait. 2 vols. Crown 8vo. 21*s*.

PATCHWORK. By FREDERICK LOCKER. Small crown 8vo. 5*s*.

POEMS BY ELIZABETH BARRETT BROWNING.

POEMS by ELIZABETH BARRETT BROWNING. 5 vols. Tenth Edition. With Portrait. Crown 8vo. 30*s*.

AURORA LEIGH. With Portrait. Eleventh Edition. Crown 8vo. 7*s*. 6*d*. Gilt edges, 8*s*. 6*d*.

A SELECTION from the POETRY of ELIZABETH BARRETT BROWNING. With Portrait and Vignette. First Series. Crown 8vo. 7*s*. 6*d*. Gilt edges, 8*s*. 6*d*.

A SELECTION from the POETRY of ELIZABETH BARRETT BROWNING. With Portrait and Vignette. Second Series. Crown 8vo. 7*s*. 6*d*. Gilt edges, 8*s*. 6*d*.

POEMS BY ROBERT BROWNING.

POETICAL WORKS of ROBERT BROWNING. New and Uniform Edition. 6 vols. Fcp. 8vo. 5*s*. each.

A SELECTION from the POETICAL WORKS of ROBERT BROWNING. First Series. Crown 8vo. 7*s*. 6*d*. Gilt edges, 8*s*. 6*d*.

A SELECTION from the POETICAL WORKS of ROBERT BROWNING. Second Series. Crown 8vo. 7*s*. 6*d*. Gilt edges, 8*s*. 6*d*.

DRAMATIC IDYLS. First Series. Fcp. 8vo. 5*s*.

DRAMATIC IDYLS. Second Series. Fcp. 8vo. 5*s*.

LA SAISIAZ: The Two Poets of Croisic. Fcp. 8vo. 7*s*.

The AGAMEMNON of ÆSCHYLUS. Fcp. 8vo. 5*s*.

ARISTOPHANES' APOLOGY; including a Transcript from Euripides, being the Last Adventure of Balaustion. Fcp. 8vo. 10*s*. 6*d*.

The INN ALBUM. Fcp. 8vo. 7*s*.

PACCHIAROTTO, and How He Worked in Distemper; with other Poems. Fcp. 8vo. 7*s*. 6*d*.

BALAUSTION'S ADVENTURE; including a Transcript from Euripides. Fcp. 8vo. 5*s*.

FIFINE at the FAIR. Fcp. 8vo. 5*s*.

PRINCE HOHENSTIEL-SCHWANGAU, SAVIOUR of SOCIETY. Fcp. 8vo. 5*s*.

RED COTTON NIGHT-CAP COUNTRY; or, Turf and Towers. Fcp. 8vo. 9*s*.

The RING and the BOOK. 4 vols. Fcp. 8vo. 5*s*. each.

London: SMITH, ELDER, & CO., 15 Waterloo Place.