CHAPTER XXXVIII

1870

THE IRISH LAND BILL

EARLY in 1870, Mr. Gladstone brought forward an Irish Land Bill, of which the three 'grand provisions,' as defined in his own words, were as follows:

1. The confirmation of Irish customs.
2. The assertion of the principle that improvements made by the tenant were the property of the tenant.
3. That damages for eviction were to be paid to the tenant.

The following correspondence with Mr. Gladstone about this period indicates the Duke's views on the subject of the Bill:

To Mr. Gladstone (*November 26th*, 1869).

'I had to defend ourselves and you last night from the charge of being low and depressed. We shall have to put our foot down firmly soon about Ireland.

'With regard to the Irish Land, I do not think we can or ought to pass any Bill which does not leave a large discretionary power to some cheap and local tribunal. The Act can do no more than lay down general principles. The application of these to each case must depend on a thousand circumstances, which can only be judged of by a local tribunal.

'For example, even in the strongest case of permanent improvements, if these were made under a long lease at a low rent, the improvements have either

been already wholly compensated for, or compensated for in greater part. So, in the case of bad cultivation, the landlord must have opportunities of proving damage to his property.

'I had a letter to-day from Spencer, saying that he does not think that my objections to the "Ulster Custom" as the basis can be answered.

'He says we shall have to give him fresh powers to deal with Fenianism. Let us go with what is right, but at the same time show the teeth of a strong executive.'

From Mr. Gladstone (*November 29th*).

'Give to Irish Land all the thought that India will let you. I go with Lord Spencer if he accords to your argument on the tenant right all the praise of clearness, vigour, and decision. But forgive me if I say that it does not, and cannot, conclude the question, because it does not grapple with the allegation on which the advocates for tenant right found themselves.'

To Mr. Gladstone (*November 29th*, 1869).

'I am all against sitting in perpetual sackcloth and ashes because the Irish are violent and disaffected. It is true, no doubt, that Ireland formerly has been ill-used and ill-governed; and it is true also that the diseased condition of the country is due in some measure to those old sins of England. But for the last two generations at least there has been a general disposition to deal justly with Ireland, and not only a disposition, but a steady progress in legislative reform.

'I feel quite sure that the language of self-reproach and humiliation may very easily be overdone in the present state of Ireland, and that it is entirely thrown away on the spirit of Fenianism, and I think it tends to make men, already highly excited, expect sweeping changes, corresponding in importance to the depths of

the repentance we express. I agree with you in not expecting success from "heroic remedies." But if we cannot save life or property except by exceptional measures, surely it will be right to take them. Spencer writes to me that he thinks he must have fresh powers.

'I feel as anxious as anyone about the state of Ireland. But I am quite as afraid of heroic remedies in the way of legislation as in the way of executive action.'

From Mr. Gladstone (*December 1st*, 1869).

'Your letter would lead by its *terms* to the supposition that you dissent from the proposal to recognise what Dufferin calls anticipated profits, and from the Chancellor's recognition of the same thing in another form; but I believe this is not so.

'The advocates of tenant right in Ireland, as I understand them (I mean such of them as your minute deals with), rest their argument on certain allegations:

'1. That the land of Ireland, when not so governed, is grossly under-cultivated.

'2. That want of confidence and security is the main cause of this under-cultivation.

'3. That there is a treasure in the soil, if brought to a tolerable standard of culture, which will pay the present rents or more, the present tenant's profit and much more, and the charge of the tenant right also.

'4. That this practical confidence and security are given by tenant right.

'The third of these propositions is more fully set out in a paper sent herewith for perusal. I drew it in the course of some long and very satisfactory communications with Halifax.

'I treat them, you will observe, as allegations, not as facts, and I am doing all in my power to get to the bottom of them.

'As far as I understand your arguments, they do not in any way touch the subject-matter of any of them.

'Have you read much on Irish tenure and disturbances? I would recommend it; for the matter is very grave, and, feeling my own inadequate knowledge, I hope all others will get as much as they can.

'I think you will be surprised at the evidence as to the extent of country on which some kind of tenant right is familiarly known, and was practised, though scarcely with consent or knowledge of all parties, in Ireland.'

The Duke wrote to Mr. Cardwell on December 29th, 1869:

'MY DEAR CARDWELL,

'On the day on which I was called away from London I had a long conversation with Gladstone on the Irish Land question.

'I suppose that we are all agreed that some recognition must be given to the Ulster custom where it now exists. Bad as I think the custom is, I do not think we can help giving to it the sanction which would probably have been already accorded to it if it had existed in England.

'I therefore intimated to Gladstone my assent to this proposition.

'But, further, I intimated assent, also, to this second general proposition, that local custom and usage is the safest basis of legislation everywhere. It has the obvious advantage of evading and avoiding to some extent the discussion of abstract principles, and of limiting the proposed legislation to Ireland, by the very fact of professing to be founded on Irish customs.

'The question, then, becomes one of evidence how far beyond the Ulster area customs of tenant right can be proved to prevail with more or less assent and consent, or, at least, connivance.

'I cannot judge on this question with any confidence, but I observe that the Devon Commission

gives rather a strong assertion as to its prevalence in the South and West.

'But now comes the difficulty. What is to be done where there is no evidence of custom at all?

'In reply to this question, I am disposed to take the ground generally indicated by the Chancellor: that, as regards tenants at will *below a certain size of holding*, there should be statutory compensation for eviction.

'Two further questions arise if this be conceded. First, what sort of scale of compensation shall be given? and, second, what should be the upward limit as to the size of holding?

'In reply to the first of these questions, there will be obvious convenience in regulating the scale by that which actually now prevails where tenant right exists. In reply to the second question, Lord Dufferin agrees, I find, that ten acres is much too low a limit. This is a question of degree. I should not be disposed willingly to go above, say, £50 of rent. In Scotland, generally, tenants below £50 are tenants at will, seldom holding under lease. Of course, I do not think it convenient, or otherwise than open to great objection, to give even so high a limit as £50 as the line *up to which* tenants in Ireland are to be considered as so poor and dependent that they require special protection from the State. But there is an immense difficulty in drawing this line, and the great object is to include so large a proportion of the small tenantry as to give general satisfaction to that class.

'If landowners are to have the benefit of loans from the State at a low rate of interest for the payment of these tenant-right burdens, they may practically be gainers, as compared with the present state of things.

'The difficulty of defending statutory compensation for eviction, where no custom can be proved, is a difficulty which must be faced, whether we draw the line at ten-acre holdings or at double that amount.

'Gladstone was inclined, I thought, to make much use of the logical argument derivable from the now

general assent to retrospective compensation for improvements—I mean the argument that this involves the most direct and undeniable violation or invasion of the existing rights of property. If I buy to-day in the Encumbered Estates Court an estate on which a tenant has built a house last year costing £200, I become, by the purchase of the estate, the owner of that house, and can evict the tenant and appropriate the house. Such is the law under which millions have been invested; and yet, as it seems by general consent, we are going to enact that, even retrospectively, this shall not be allowed, and that improvements made by tenants, but now legally belonging to the landlords, shall be given back to the tenants who made them.

'This is an argument which will, no doubt, be of use in debate; but it will not do to say: "You have agreed to this particular invasion of the existing rights of property; you need not, therefore, strain at any further invasion we may propose."

'In the first place, the doctrine of natural justice is so strong and undeniable in this case that the proposed change of the law can hardly be opposed, and the existing state of the law is almost considered as accidental.

'Practically, the condition of society is such that purchasers in the Encumbered Estates Court *cannot* take advantage of the law in the great majority of cases. It is stated that Mr. Pollock paid as much in buying out the tenants as he paid in the purchase of the estate from the owner. He gave £300,000 for the estate, and had then to lay out another equal sum before he could do what he liked with his own.'

To Mr. Gladstone (*January 13th*, 1870).

'I rather agree with George Campbell on one point (at least, I think his suggestion well worth considering)—namely, that the fact of a tenant having executed all the improvements on a farm (unless, of course,

under express stipulation) might be taken as of itself a proof that he has had a *status* requiring damages for eviction. There is a principle in this—a principle which stands in close connection with the great peculiarity of Irish occupation; and I think a far safer and sounder argument could be maintained in favour of this principle than in favour of any arbitrary line of rental, whether it be the "danger of pauperism line" or the "free bargain line."

'Both these lines are in reality purely arbitrary, and have all the aspect of being intended to justify a foregone conclusion.

'Of course, under the term "improvement" I would include the most wretched cabins and the most foolish fences, if these had been the means whereby (at least) the occupant has been able to pay his rent.

'I recognise a principle of justice in this idea, which in practice every just landowner recognises, and it stands very much on the same level, as an argument, with the agreement by which we must defend retrospective compensation for improvement.'

While the Bill was passing through the House the Duke wrote to Mr. Gladstone:

'I hold that none, or very few, of the threatened amendments would have the effect of making the Bill otherwise than efficient in doing justice.

'As long as full compensation is given for all improvements, retrospectively and prospectively, and as long as eviction is of itself to give a claim to compensation, within limits to be judged of by a court with large compensation powers: as long as the Bill gives all this, I hold that it is an ample Bill. The duration of lease which is to exhaust the claim is, no doubt, an important element, and I so far agree with you that a danger would arise out of any strong temptation to landlords to change tenancies at will with leaseholds summarily and, as it were, by compulsion. But unless

the term of lease to be offered under the Bill be shorter than twenty years, no such danger would practically arise, because it would never be the interest of an owner to give such leases to the very small holders, or, indeed, to any holder under the £50 line. It is far more for the interest of an owner to keep them tenants at will subject to increments of rent up to the point at which the tenants would prefer to claim as under an eviction.

'As to any more "efficient"—that is, more violent—measures, they could only be carried after some form of revolution, and very possibly a civil war.

'As regards all new tenants—I mean tenants taking farms after the passing of the Bill—I hold it to be as clear as daylight that every advantage you try to give to them by artificial laws will simply be discounted in the rent, or in other conditions of the bargain.

'The efficiency of the Bill is, therefore, really confined to the existing race of tenants, as, in my opinion, it ought to be.'

To Mr. Gladstone (*January* 31*st*, 1870).

'Discussion often changes and modifies one's opinion; but my own impression is strongly in favour of strengthening the Irish executive by giving to it exceptional powers.

'Just as in the case of evictions it is said with truth that the number of actual evictions is no measure of the insecurity of tenure in Ireland, so in respect to agrarian crime the number of actual murders, or attempts to murder, is no measure of the lawlessness which prevails, and of the insecurity of life.

'The reports of the Irish police tell us that detection was never so utterly frustrated, and the number of threatening letters which come to light are a mere fraction of the number concealed.

'In some counties society seems paralyzed, and the most just rights of property cannot be exercised.

'Under these circumstances, I think we ought to enable the Lord Lieutenant to suspend the Habeas Corpus locally, where, in the opinion of the Government, this course is rendered necessary by the amount and character of crime. I believe this would paralyze the Ribbon conspiracy and all other conspiracies which are connected with it.

'We are stronger to do this than other Governments, when we are about to bring in a measure giving such new and important rights.

'We require in Ireland not merely to intimidate the conspirators, but to encourage the loyal and honest, and for the latter purpose nothing is more needed than that the Government should show determination. Such are my impressions, and I doubt whether even a threat in your speech would be enough for the purpose.'

On the Duke's return to town on February 8th. he found that several members of the Cabinet were ill. In his diary is noted:

'Called on Gladstone at eleven; found him seedy, and heard of the illness of Bright, Clarendon, and Granville.'

The same evening he received the following note from Lord Granville:

'MY DEAR ARGYLL,

'It is impossible to be too much alarmed at the state of health of the most eminent of the Cabinet.

'Poor Bright is gone as far as this session is concerned. Clarendon was only saved from gout in the stomach by strong stimulants to his feet. Gladstone told Bessborough yesterday that he felt sometimes alarmed for his own head.

'Cardwell at the last Cabinet sat close in to the fire,

looking as if he wished to cut his throat, which was probably only the beginning of an influenza.

'I cannot say how sorry I am about Bright.

* * * * *

'Yours,

'G.,

'with head and throat stuffed up by cold.'

A statement of his views on the Irish Land Bill is given in a letter from the Duke to Sir Roundell Palmer (April 23rd, 1870):

'MY DEAR SIR ROUNDELL PALMER,

'I hope you will not think I am taking a great liberty in writing to you about the Land Bill, in consequence of our conversation a short time ago. I intended to do so some time ago, but some heavy business in my own office has hitherto prevented me.

'As you may suppose, I have looked at the question from the beginning from a point of view somewhat different from most of my colleagues—I mean not only from a landowner's point of view, but from the position of a landowner who has had to deal with a tenantry of small holders *exactly like the Irish* in many of the conditions under which they live.

'Free contract is the system established in Scotland, and is far more severely carried into effect than in England. But the very first consideration which I have had to recollect in the Irish question is the fact that, as regards the *small holders*—say below £50—we do not, and we cannot, even in Scotland, deal with them on the same principles. We cannot, and we do not, put up such possessions to competition, and practically we cannot evict them (especially the £10 to £20 people) without giving them compensation.

'Then, I have had to recollect that in Ireland this class have a peculiar claim from the fact that, generally and as a class, they have done far more than in the

Highlands towards the original improvement of the land.

'And yet, considering that these improvements have been of a somewhat indefinite character, effected by labour and not by capital, they are not easily separately valued, and I admit that, in equity, *occupation* under such conditions assumes a peculiar character, and that eviction from it becomes *primâ facie* a case for compensation.

'And thus I have been brought to the conviction that in some form or other the law would do no wrong, and violate no essential principle, in recognising a claim for compensation for mere eviction, under the regulation of a court furnished with large equitable powers.

'I have, however, attached value to some recognition of the principle that length of occupancy for the future should be admitted to satisfy this claim and to exhaust it.

'And here I have been led to modify the opinion which at first I held, and on which you laid stress in your conversation with me, that the length of this term of occupancy, as defined by the Act, is a matter of first importance.

'I hold, indeed, that if we were starting afresh, and if we were legislating without reference to the opinions and feelings which have arisen out of custom, the term of twenty-one years, so common in Scotland, is long enough for any agricultural purpose. But, on the other hand, I never would give leases to the very small holders, and I never do so. They impede the consolidation of small possessions, and they give no greater real security of possession than custom already gives to this class. If I were an Irish proprietor, dealing with my tenantry under this Bill, I should not care whether it indicated twenty years or thirty years as the term which was to exhaust tenant right. To the small holders I would give neither. I would let them sit as tenants at will, keeping myself free to

deal with them in the way of consolidation as opportunities may arise, and keeping myself free also to realize increments of rent, from time to time, up to the point at which the tenant would prefer to go, and to claim as under an eviction.

'Then, also, I admit that it would be a great evil if anything in our Bill were to hold out a strong artificial inducement to owners to insist on all their small tenants at will becoming leaseholders. They hate it, and we must take some account of the general traditional feelings of a country. Even in England the tenants dislike and refuse leases. They feel more secure under the customs of the country. In Ireland this feeling has been intensified to an extraordinary degree.

'I admit, therefore, that it would be a positive evil, almost unbalanced by any practical good, if we were to name a short lease in our Bill as one which is to satisfy, exhaust, and get rid of the claim we give to compensation on eviction.

'I am, therefore, satisfied with the recognition of the principle, almost in any form, that whatever claims Irish occupancy may have given, those claims are capable of being equitably satisfied by a lease of some definite duration.

'Many excellent Irish landlords declare to me that they have no sort of objection to twenty-one years as this term. Lord Bessborough wishes it to be longer. Lord Portsmouth holds the same language, and recognises tenant right even at the expiry of those leases.

'The clause which made twenty-one years the term for £50 farms when the landowner had done all the improvements was one to which I attached great value, and, in fact, I was the author of it. But this has now become superfluous by the *much better* provision which *brings down the free contract line to* £50 *tenancies.*

'This was a great concession on Gladstone's part, and in my opinion one of immense importance.

'The "tender" clause was also in some degree mine. But I don't care much about it, since other concessions have been made, and I admit that in the form in which it stood it might have been used as an instrument of evasion, and of general disturbance to the minds of the Irish tenantry.

'Lastly, I have been influenced—I hope not unduly—by a very strong sense of the political situation, and of the serious danger of an agrarian revolution in Ireland. It is impossible to consider the proposals made by men of position and character in Ireland on this question without being impressed by the fact that the anchors of opinion, on which all rights of property depend, are dragging, and have lost their hold. Our Bill is by far the most moderate proposal that has been made. I do not think it violates any essential principle. It leaves every landowner free to raise his rent to any amount up to the point at which the tenant will prefer to say, "I would rather go." Considering the intensity of their local attachments, we know what a power this is. The *scale* is not immoderate, and it is a maximum—reducible by all equitable considerations applicable to the case. The free contract line has been, or is to be, brought down to £50, and even below that line, down to the smallest class of holding; all tenants taking farms after the Bill is passed will have to discount all artificial advantages, in the form of increased rent or otherwise. Free contract, therefore, is not really interfered with at all. Only the *existing holders* are lifted to a higher level in dealing with their landlords, and all future holders must be free contractors. All this is, to my mind, satisfactory—in substance, although every possible land Bill is open to more or less objection.

'But, on the whole, our Bill is more open to objection on the part of those who claim tenant right than on the part of those who resist it.

'I dread the loss of this Bill more than I can say;

and I, as a landowner, am satisfied with the concessions made. I do not think Gladstone can safely do more.'

In supporting the measure in the House of Lords (June 16th, 1870), the Duke said:

'I have come to the conclusion that this measure is just and necessary in itself, that it interferes unduly with no right of property, and that it is due in justice to the people of Ireland. . . .

'A custom has grown up by means of which tenants have by their landlords been encouraged to look forward to continued occupancy. You must, therefore, in some degree give some security to this expectancy outside, as well as inside, Ulster. Briefly, I would say that the principle of our Bill is this: We legalize the Ulster custom where it can be proved to exist, and where its existence cannot be proved, we supply a new rule of compensation containing all the equities of the Ulster custom without its abuses and extravagances. . . . Can it be said that great social and political questions are not connected with the state of the land question in Ireland? Is not that the whole ground on which we propose to interfere? I am not arguing that Parliament ought to interfere with the freedom of contract. I quite admit that such interferences ought to be exceptional, and that the *onus probandi* rests upon those who propose such measures. But I venture to maintain that if we are to legislate upon the land of Ireland at all, we must admit that there are great social and political considerations connected with the occupation of land in that country which justify and call for exceptional legislation in respect to contract. Now, what is the extent to which we interfere with freedom of contract? There is no compulsion in this Bill compelling Irish landlords to convert tenancies at will into leaseholds.'

The Bill, after some amendment by the House of Lords, was passed, and received the royal assent on August 1st, 1870.

In the midst of important official work, the Duke paid a hurried visit to Oxford, on the 21st of June, to receive the Honorary Degree of D.C.L.

During the spring of this year the Duke, who numbered among his private correspondents men of all ranks and shades of opinion, exchanged some interesting letters with Dr. Newman (afterwards Cardinal Newman), who had sent a copy of one of his recently-published works to the Duke.

To Dr. Newman.

'INDIA OFFICE.

'REV. SIR,

'Your kindness in sending to me a copy of your new work, "The Grammar of Assent," affords me the opportunity, which I have long desired, of expressing the admiration and the large amount of personal sympathy with which I have regarded you, ever since I read your "Apologia" some years ago.

'I have been brought up in a school of opinion more absolutely opposed to your Church than perhaps any other connected with the leading Churches of the Reformation. Your writings have not affected in any degree my opinion on the great issues which lie between Protestantism and Rome. But it has been a pleasant surprise to me to find how often I can agree with you, and how much I can sympathize with the spirit in which you write.

'I have not had time to master the elaborate and difficult, but most interesting, argument which occupies the earlier part of your last book; but I may be allowed to say that I have read the two last chapters with the deepest interest and delight. They seem to me to handle with power and with characteristic charm some of the best arguments for the Christian faith.

'Mr. Gladstone has asked me to say that he also has a letter of thanks to you on hand, but the pressure of his work is such that he has little time to devote to studies in which naturally he takes the most delight.

'I am, Rev. Sir, yours sincerely,

'ARGYLL.'

From Dr. Newman.

'THE ORATORY, BIRMINGHAM,
'*March 30th*, 1870.

'MY LORD DUKE,

'The kindness with which you have received the book which I ventured to offer to your Grace is the best justification to my own feelings of my having intruded myself upon your notice. I was encouraged to do so by some words which you used of me in public some time ago.

'Of course, it has been a real pleasure to me, then and now, to read the favourable criticisms upon me of one who is himself so brave and powerful a champion of revealed religion, and certainly not the less pleasure because in many things he differs from me so much. For it suggests the welcome reflection that, in this unhappy age of division, unity of faith and communion is best promoted by the cultivation, in the first place, of an ethical union among those who differ. This is a levelling-up which may some day make controversy comparatively easy, as laying the ground for strong foundations, which will have no cause to fear dangerous settlements.

'Mr. Gladstone has been so kind as to fulfil the purpose conveyed in the message you gave me from him.

'I am, my Lord Duke, with great respect,

'Your Grace's faithful servant,

'JOHN H. NEWMAN.'