

THE HISTORY OF LANDHOLDING IN ENGLAND

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BY

JOSEPH FISHER, F.R.H.S.,

AUTHOR OF "THE FOOD SUPPLIES OF WESTERN EUROPE," "THE TAXATION OF IRELAND," "THE CASE OF IRELAND," ETC., ETC.

"Much food is in the tillage of the poor, but there is that is destroyed for want of judgment."
—PROV. xii. 23.

"Of all arts, tillage or agriculture is doubtless the most useful and necessary, as being the source whence the nation derives its subsistence. The cultivation of the soil causes it to produce an infinite increase. It forms the surest resource and the most solid fund of riches and commerce for a nation that enjoys a happy climate. . . . The cultivation of the soil deserves the attention of the Government, not only on account of the invaluable advantages that flow from it, but from its being an obligation imposed by nature on mankind."—VATTEL.

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INTRODUCTION.

THIS work is an expansion of a paper read at the meeting of the Royal Historical Society in May 1875, and will be published in the volume of the Transactions of that body. But as it is an expensive work, and only accessible to the Fellows of that Society, and as the subject is one which is now engaging a good deal of public consideration, I have thought it desirable to place it within the reach of those who may not have access to the larger and more expensive work.

I am aware that much might be added to the information it contains, and I possess materials which would have more than doubled its size, but I have endeavoured to seize upon the salient points, and to express my views as concisely as possible.

I have also preferred giving the exact words of important Acts of Parliament to any description of their objects.

If this little essay adds any information upon a subject of much public interest, and contributes to the just settlement of a very important question, I shall consider my labour has not been in vain.

JOSEPH FISHER.

WATERFORD, *November 3, 1875.*

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I DO not propose to enter upon the system of landholding in Scotland or Ireland, which appears to me to bear the stamp of the Celtic origin of the people, and which was preserved in Ireland long after it had disappeared in other European countries formerly inhabited by the Celts. That ancient race may be regarded as the original settlers of a large portion of the European continent, and its land system possesses a remarkable affinity to that of the Slavonic, the Hindoo, and even the New Zealand races. It was originally Patriarchal, and then Tribal, and was Communistic in its character.

I do not pretend to great originality in my views. My efforts have been to collect the scattered rays of light, and to bring them to bear upon one interesting topic. The present is the child of the past. The ideas of bygone races affect the practices of living people. We form but parts of a whole; we are influenced by those who preceded us, and we shall influence those who come after us. Men cannot disassociate themselves either from the past or the future.

In looking at this question there is, I think, a vast difference which has not been sufficiently recognised. It is the broad distinction between the system arising out of the original occupation of land, and that proceeding out of the necessities of conquest; perhaps I should add a third—the complex system proceeding from an amalgamation, or from the existence of both systems in the same nation. Some countries have been so repeatedly swept over by the tide of conquest

find authors in a country that but little of the aboriginal ideas or systems have survived the flood. Others have submitted to a change of governors and preserved their customary laws ; while in some there has been such a fusion of the two systems that we cannot decide which of the ingredients was the older, except by a process of analysis, and a comparison of the several products of the *metabolism* alembic with the recognised institutions of the class of original, or of invading peoples.

find a wandering life Efforts have been made, and not with very great success, to define the principle which governed the more ancient races with regard to the possession of land. While unoccupied or unappropriated, it was common to every settler. It existed for the use of the whole human race. The process by which that which was common to all, became the possession of the individual, has not been clearly stated. The earlier settlers were either individuals, families, tribes, or nations. In some cases they were nomadic, and used the natural products without taking possession of the land ; in others they occupied districts differently defined. The individual was the unit of the family, the patriarch of the tribe. The commune was formed to afford mutual protection. Each sept or tribe in the early enjoyment of the products of the district it selected was governed by its own customary laws. The cohesion of these tribes into states was a slow process ; the adoption of a general system of government still slower. The disintegration of the tribal system, and dissolution of the commune, was not evolved out of the original elements of the system itself, but was the effect of conquest ; and, as far as I can discover, the appropriation to individuals of land which was common to all, was mainly brought about by conquest, and was guided by impulse, rather than regulated by principle.

Mr Locke thinks that an individual became sole owner of a part of the common heritage by mixing his labour with the land, in fencing it, making wells, or building ; and he illustrates his position by the appropriation of wild animals, which are common to all sportsmen, but become the property of him who captures or kills them. This acute thinker seems to me

to have fallen into a mistake by confounding *land* with *labour*. The improvements were the property of the man who made them, but it by no means follows that the expenditure of labour on land gave any greater right than to the labour itself or its representative.

It may not be out of place here to allude to the use of the word *property* with reference to land, *property*—from *propria*, my own self—is something pertaining to man. I have a property in myself. I have the right to be free. All that proceeds from myself, my thoughts, my writings, my works, are property; but no man made land, and therefore it is not property. This incorrect application of the word is the more striking in England, where the largest title a man can have is “tenancy in fee,” and a tenant holds but does not own.

Sir William Blackstone places the possession of land upon a different principle. He says that, as society became formed, its instinct was to preserve the peace; and as a man who had taken possession of land could not be disturbed without using force, each man continued to enjoy the use of that which he had taken out of the common stock, but, he adds, that right only lasted as long as the man lived. Death put him out of possession, and he could not give to another that which he ceased to possess himself.

Vattel (book i., chap. vii.) tells us that “the whole earth is destined to feed its inhabitants; but this it would be incapable of doing if it were uncultivated. Every nation is then obliged by the law of nature to cultivate the land that has fallen to its share, and it has no right to enlarge its boundaries or have recourse to the assistance of other nations, but in proportion as the land in its possession is incapable of furnishing it with necessaries.” He adds (chap. xx.), “When a nation in a body takes possession of a country, everything that is not divided among its members remains common to the whole nation, and is called public property.”

An ancient Irish tract, which forms part of the *Senchus Mor*, and is supposed to be a portion of the Brehon code, and traceable to the time of St Patrick, speaks of land in a

poetically symbolic, but actually realistic, manner, and says, "Land is perpetual man." All the ingredients of our physical frame come from the soil. The food we require and enjoy, the clothing which enwraps us, the fire which warms us, all save the vital spark that constitutes life, is of the land, hence it is "*perpetual man*." Selden ("Titles of Honour," p. 27), when treating of the title, "King of Kings," refers to the eastern custom of homage, which consisted not in offering the person, but the elements which composed the person, *earth and water*—"the *perpetual man*" of the Brehons—to the conqueror. He says:

"So that both titles, those of King of Kings and Great King, were common to those emperors of the two first empires; as also (if we believe the story of Judith) that ceremonies of receiving an acknowledgment of regal supremacy (which, by the way, I note here, because it was as homage received by kings in that time from such princes or people as should acknowledge themselves under their subjection) by acceptance upon their demand of *earth and water*. This demand is often spoken of as used by the Persian, and a special example of it is in Darius' letters to Induthyr, King of the Scythians, when he first invites him to the field; but if he would not, then bringing to your sovereign as gifts earth and water, come to a parley. And one of Xerxes' ambassadors that came to demand earth and water from the state of Lacedæmon, to satisfy him, was thrust into a well and earth cast upon him."

The earlier races seem to me, either by reasoning or by instinct, to have arrived at the conclusion that every man was, in right of his being, entitled to food; that food was a product of the land, and therefore every man was entitled to the possession of land, otherwise his life depended upon the will of another. The Romans acted on a different principle, which was "the spoil to the victors." He who could not defend and retain his possessions became the slave of the conqueror, all the rights of the vanquished passed to the victor, who took and enjoyed as ample rights to land as those naturally possessed by the aborigines.

The system of landholding varies in different countries, and