THE IRISH LAND BILLS OF THE LATE GOVERNMENT CONSIDERED WITH REFERENCE TO SOUNDER LEGISLATION FOR ENGLAND AND IRELAND IN A LETTER TO THE MEMBERS OF BOTH HOUSES OF PARLIAMENT

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WILLIAM TIGHE HAMILTON

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Trieste

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THE LATE GOVERNMENT

CONSIDERED WITH REFERENCE TO SOUNDER LEGISLATION FOR ENGLAND AND IRELAND,

IN

A LETTER

TO THE

MEMBERS OF BOTH HOUSES OF PARLIAMENT.

BY

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FOR

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TOGETHER WITH

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THE IRISH LAND BILLS,

&c. &c.

NICE, *January*, 1853.

MY LORDS AND GENTLEMEN,

THE object of this Letter is to call your serious attention to the real nature of the four Bills brought in by the late Irish Government, for the settlement of the Land Question. It is true, that in consequence of political changes, these Bills must now be regarded as dead; but still, their dissection may prove instructive, as it may throw some light upon the general anatomy of a subject which will, no doubt, share a large part of your attention and responsibility during the present Session. When, too, we recollect, with what high-sounding praises these Bills entered upon life, and with what high hopes they may, therefore, have been regarded, this *post-mortem* examination may be consolatory to some, as it will show, that they really contained faults and failings of constitution, which would, under any circumstances, have brought them to an early—though not an untimely—end. Whatever merits they may have possessed as to some particular functions, you cannot examine them closely, without coming to the conclusion, that many of the principles

upon which they were based were calculated to embarrass rather than to facilitate the growth of a sound relation of Landlord and Tenant.

The demonstration of this proposition will be my first object. When, however, I remind you that it was very hastily asserted in one place, and re-echoed in another, that a measure designed by Sir William Somerville and me for the same general purposes—the outlines of which I have already made public—was "prepared upon a Book"—that published by Messrs. Ferguson and Vance, but which is now claimed by Mr. Napier, the author of these Bills, as recording his labours and enunciating his views—you will not think it out of place if, as we go along, I point out some few indications that that measure is not, in any essential feature, conformable to the principles assumed for those Bills, or advocated by that Book—principles which, strange to say, diverge widely from each other. With this, however, I have now nothing to do. I would here only commend a careful perusal of the Book to all who wish to discover the shortcomings of the Bills. I would also, for the same purpose, commend to their notice the very able and enlightened pamphlet of Mr. R. Longfield, upon assimilating the law of Landlord and Tenant to that of commercial contracts,—whose name the Dublin University Magazine with reason regrets that the operators upon these Bills have not connected with the subject—but whose pamphlet preceded the Book, and in which it appears to me, that nearly the same views were expressed, but in a far more bold and practical shape. Along with these, we

have the sensible views—not as to the existing nature but as to the proper objects of the law—occasionally put forth by the Society of Friends, a body ever throwing up signals of its onward progress in opinions of sound policy and in feelings of true benevolence, but whose views would be anything but advanced by a set of Bills which might be fairly entitled—Bills to complicate contracts, and to impede voluntary action.

My object, however, is not to compare the views or the originality of authors, but to vindicate a measure, which I believe to be based upon sound principles, from the charge of being at all like Bills, which I believe to be based upon unsound principles, and to show that it stretches far and away beyond any of the views expressed by any of the publications referred to. I am satisfied that that measure would secure a far larger amount of benefit to the Tenantry class, and a far larger amount of benefit to the Landlord class, without reciprocal wrongs and sacrifices, than would be attained by any plan hitherto proposed; and yet it contains little or nothing original, except that it largely develops and simply applies approved principles of law, and proposes to give to equal justice its fullest measure of efficiency. I do not think that originality of any other kind would be its best recommendation—quite the contrary.

In comparing the two plans, it would, of course, be impossible to do more here than touch upon those primary principles which determine the true character of each. Two machines which have the same general

object and the same subject matter must of course coincide in many of their secondary functions. We can here only consider such of the former as may give a particular effect and application to the latter.

The first general objection which pervades all these Bills is, that they appear to have been conceived in a spirit of blind deference to existing law, rather than to the interests of those for whom the law is required. Everywhere they betray an oversight of that which is really wanted for those who labour beyond the precincts of our Courts of Justice. In this they resemble some of the doings in the days of Swift, which, though "not a bowshot from the College," were still "half the world from sense and knowledge." Not that they are otherwise than very sensible and very knowing in matters of law. They overflow with learning. Their margins are inundated with all the leading cases of the late John Doe *versus* the late Richard Roe —which fixed the intentions of the Legislature in times gone by, and which it is proposed shall guide its course in times to come. You will, of course, with this view, study these cases deeply. But still these Bills are very defective in a knowledge of that which is really required for the practical and beneficial management of landed property. In this respect, their preparation by chamber lawyers, upon old statutes and law-books, in the confident persuasion that the result was what was really wanting, is suggestive of a story told half a century ago of a Vice-Provost of Dublin University, not very celebrated for his knowledge of what passed in the fields, who, having captured a swallow in the Col-

lege Library, came—after much study of Buffon and other naturalists—to the sage conclusion that it was a crow. The present case yields the same moral, though its facts are reversed. "Mutato nomine de illo fabula narratur." The bird of ill omen has been mistaken for the bird of sunshine and hope.

The next general objection which arises to these Bills is, that we have four to do the proper work of one. To say nothing of many other inconveniences of a fourfold scheme, it would seem, in the matter of language alone, to be almost impracticable to adjust the several parts of each, so that they should act in perfect concert. Why we have in these Bills no less than four different glossaries—one for each—giving different significations to the very words upon which the operation of the Bills depend! Take, for example, those which express the parties most concerned—the Landlord and the Tenant—and recollect that it is the persons so designated who are to have the rights and be subject to the obligations which are created not solely by each particular Bill, but by the combined operation of all. Endless confusion must be the result. The word Landlord has actually five distinct meanings, whilst some of the Bills even leave it to the Court of Chancery to determine who really is a Landlord. This arbitrary transmutation of Irish Landlords and Tenants—this knocking them about from Bill to Bill—is really too bad. Much as we have heard of Irish Landlords and Tenants, we shall soon not know what the terms mean. As for the future historian of the Land Question, he will in vain look back for some