# THE RELATIONS OF LANDLORD AND TENANT IN ENGLAND AND SCOTLAND; PP. 6-131

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BY

WILLIAM E. BEAR.




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collected is only to be interpreted by implication, and few writers have at once the thorough scholarship and the intimate knowledge of agriculture which are necessary qualifications in the interpreter. All that can be attempted in the present essay is a rough outline of such of the chief incidents in the history of the farm tenant as can be collected from the works of some of the writers who have thrown most light upon the subject.

Although the origin of land tenancy is obscure, nothing is easier than to construct theories about it; and many, accordingly, have been constructed. The researches of Sir Henry Maine and Professor Nasse have shown that in many countries, at least, the most ancient form of landholding was communistic. Strangely enough, England was for a long time thought to be an exception; but it is now very generally admitted that the modern Manor is a survival of the ancient Mark, and that our commons are relics of village communities. From communism to feudalism is a wide step, or rather series of steps, and the process is wrapt in obscurity. Feudalism did not come to its complete development until after the Norman Conquest, but as early as the time of Alfred the Great the system of fiefs had attained such ascendency that every man but the king was supposed to have his lord. The frequent wars which had ravaged the country had probably been the principal means of the degradation of the old freemen into various degrees of servitude. Mr. Green, in his "Short History of the English People," traces the rise of the modern farmer-class to the twelfth century. He says:— "The first disturbance of the system of tenure which we have described (the feudal system) sprang from the introduction of leases. The lord of the manor, instead of cultivating the demesne through his own bailiff, often found it more convenient and profitable to let the manor to a tenant at a given rent, payable either in money or in kind. Thus we find the Manor of Sandon leased by the Chapter of St. Paul's, at a very early period, on a

rent which comprised the payment of grain both for bread and ale, of alms to be distributed at the cathedral door, of wood to be used in its bakehouse and brewery, and of money to be spent in wages. It is to this system of leasing, or rather to the usual term for the rent it entailed ('feorm,' from Latin *firma*), that we owe the words 'farm' and 'farmer,' the growing use of which from the twelfth century marks the first step in the rural revolution which we are examining. It was a revolution which made little direct change in the manorial system; but its indirect effect in breaking the tie on which the feudal organisation of the manor rested, that of the tenant's personal dependence on his lord, and in affording an opportunity by which the wealthier among the tenantry could rise to a position of apparent equality with their own masters, was one of the highest importance."* If the change began as early as the twelfth century, its progress was very slow, for servitude still existed in the latter part of the fifteenth century.

The advantages which the tenants gained by their enfranchisement and by having free scope to cultivate their farms for their own benefit, was regarded with jealousy by the landlords, and it is not long before we find the latter placing restrictions upon the inducement to improve the land. Mr. C. Wren Hoskyns, in his "Tenure of Land in England," observes:—"By the statute of Gloucester (6 Edw. I.) the maxim was established, *Quicquid plantator solo, solo cedit*, which took away all claim of the tenant over every addition he had annexed to or incorporated with the land the moment that his interest, whether yearly or by lease, expired. Under the mis-applied name of 'waste,' he was even forbidden to erect any building upon land where there was none before, or to convert one kind of edifice into another, even of improved value to the estate. Exceptions were soon made after the

* *Short History of the English People*, p. 239.

passing of the statute in favour of Trade; and Lord Holt is reported to have said that trade fixtures were even recoverable by common law. But the statute has always operated with full severity against the tenant in agriculture, whose property is thus confiscated in any engine or machine annexed to the soil, though for the express purposes of the farm, and without which it could not be profitably occupied. It would be difficult to conceive a law more injurious to the very party in whose favour it was made; and probably there is none in the whole range of land legislation by which the proprietor has suffered more loss than by this. The temptation to outlay upon land by the occupier, even under short leases, is always disproportionately great—far beyond what the tenure seems to justify; and, generally speaking, no one knows so well as himself what is required. A law the very opposite to that above referred to, and encouraging a regular system of valuation for addition and improvement by the tenant, would be the most salutary for the interests of all parties, and would have added millions sterling to the landed wealth of the country. It would hardly be too much to say of this law that it has lain like a cankerworm at the root of the whole question of landlord and tenant, wherever that question indicates adverse instead of united interests. It is obvious almost to a truism that, next to the occupation of the owner himself, the occupation that most resembles ownership must, by the imperative laws equally of the soil and of human instinct, be the most profitable to both parties by the *uninterrupted* progress of improvement and addition to the land. The expense of keeping up a high state of cultivation is small, compared with that of *restoring* it; and the national loss is almost incalculable which the 'beggaring out' of farms has occasioned under the influence of the motives brought into action by this law."*

* *Systems of Land Tenure: Cobden Club Essays.* 1st Ed., pp. 120, 121.

I need add nothing to remarks so admirably expressed upon this pernicious law, which still remains in force, although somewhat modified by subsequent legislation, and I have quoted at length because there is no question existing between landlord and tenant of half the importance possessed by that to which the quotation refers.

In the Introduction to "the Domesday Book of St. Paul's," a book which throws much light upon the early relations of landlord and tenant, the state of transition is thus referred to:—"The cessation of prædial service was the result not of one, but of several causes. The exact period of its extinction may not be discoverable, and probably remnants of the system existed at a comparatively late period in particular localities; but if the same course of events took place in other manors which took place in the manor of Castle Combe, the commutation of services into rent was effected prior to 1450, the Court Rolls of that manor of the latter period describing all the tenants as payers of rent, and making no mention of the personal labour which in 1340 had been due." But probably servitude survived much longer upon the estates of private proprietors than upon those of corporate bodies, the latter having been the first to avail themselves of a system of commutation which for them was an obvious convenience. According to Sir H. Maine, the exigencies of corporate properties similarly hastened the enfranchisement of tenants amongst the Romans. The passage in which he explains this has no direct bearing upon my subject, but it is interesting as showing the same causes of development operating upon the system of land tenure in the Roman territories as afterwards came into force in this country. He says:—"The first mention in Roman History of estates larger than could be farmed by a Paterfamilias, with his household of sons and slaves, occurs when we come to the holdings of the Roman patricians. These great proprietors appear to have had no idea of any system of farming by free

tenants. Their *latifundia* seem to have been universally cultivated by slave gangs, under bailiffs who were themselves slaves or freed men; and the only organization appears to have consisted in dividing the inferior slaves into small bodies, and making them the *peculium* of a better and trustier sort, who thus acquired a kind of interest in their labour. This system was, however, especially disadvantageous to one class of estate proprietors, the Municipalities. . . . . Accordingly, we are told that, with the Municipalities began the practice of letting out *agri vectigales*, that is, of leasing land for a perpetuity to a free tenant, at a fixed rent, and under certain conditions. The plan was afterwards extensively imitated by individual proprietors, and the tenant, whose relations to the owner had originally been determined by his contract, was subsequently recognised by the Prætor as having himself a qualified proprietorship, which, in time, became known as Emphyteusis."* Unfortunately for British tenants, the transition was much less advantageously carried on here, possibly because it took place under widely different circumstances.

British tenants, however, very generally obtained leases when they emerged from the modified servitude which they had been under. Ultimately a large number of the villains merged into copyholders, but it was long before they were fully secured in their ownership, and freed from the degrading services and the gross wrongs to which they were subject. Dr. Sigerson † notices the fact that in 1381 lords in England had power to sell their serfs, with their families, and that by Act I. Ed. VI. c. 3, it was ordered that all idle vagrants should be seized and made slaves. He also refers to rights, which cannot be plainly described, possessed by lords over the wives and daughters of their tenants, and quotes from Arthur Young to prove that even in the year 1776 "landlords of consequence" in Ireland were not ashamed to boast

* Maine's *Ancient Law*, p. 299. † *History of Irish Land Tenures*, p. 244