THE

LAND QUESTION

CONSIDERED WITH REFERENCE TO

PASTORAL OCCUPATION

IN

VICTORIA.

Melbourne:

GEORGE ROBERTSON, 69 ELIZABETH STREET.

1867.

THE

LAND QUESTION

CONSIDERED WITH REFERENCE TO

PASTORAL OCCUPATION

IN

VICTORIA.

Melbourne:
GEORGE ROBERTSON, 69 ELIZABETH STREET.

1867.

PREFACE.

THE following statement of the case of the Pastoral Tenants of the Crown in connection with the Land System of the colony, has been prepared by the Committee of the Pastoral Association, which, in this, as in all its operations aims at influencing public opinion in a legitimate manner, by diffusing information and bringing forward reasonable arguments.

It is submitted to the people of this colony in the hope that it will assist in clearing up misunderstandings on this subject, which has been hitherto too much mixed up with party questions; and thus tend to restore harmony of action to all classes interested.

A fair consideration of the arguments adduced is also asked for, on the ground that the Pastoral Interest, notwithstanding its important contributions to the public wealth, is almost entirely unrepresented in the Legislature.

THE LAND QUESTION.

When the history of this Colony comes to be written, the system adopted in the settlement of the public lands will have a prominent place as a main point in determining the fortunes of a new colony. This land system, however, has had an aspect peculiar to itself, for in these Australian colonies a great experiment has been tried in carrying on the double operation of providing for the permanent settlement of the country by the sale of land, and at the same time making use of the unsold territory for occupation by pastoral tenants. This was a new idea, for, in New South Wales and Van Diemen's Land a different system had been pursued, in the first place of inducing settlement by free grants, up to 1831, and then of selling land at five shillings an acre up to 1839, a price which of course led to the acquisition of permanent property.

In British North America and at the Cape of Good Hope the settlement of the land was effected in the first place by grants, and afterwards land was sold at a low price, varying according to circumstances, from two shillings to ten shillings an acre, and no provision was made for a secondary pastoral system, so that colonists there obtained a settled property in fee-simple. In Victoria, however, the price of land was raised in 1839 to twelve shillings, and in 1840 to £1 an acre, with auction, a system which continued in force until 1860, when selection was first introduced. For twenty years, therefore, a comparatively high price was maintained, for the express purpose of preventing the premature and unproductive alienation of public lands, while during the same period an organised system of pastoral occupation was carried on as an integral part of a complex land system. It is well to

inquire whether this peculiar form of colonisation, combining permanent alienation with pastoral occupation, was beneficial or injurious, or could we have done better with our lands? If this combined system had not been adopted, the only other alternative would have been to provide for the settlement of the colony by the sale of land either at a high or at a low price. If the high price of £1 an acre had been maintained without a pastoral system, can we suppose that adequate provision could have been made for the progress of the colony, when it would have been manifestly impossible to have provided in this manner for the wants of pastoral settlers, whose means would have been absorbed in the purchase of small properties, while the waste lands of the Crown would have been altogether untenanted? If, on the other hand, a low price, say 5s. per acre, had been maintained, then a large extent of territory would no doubt have been bought up for grazing purposes by the early settlers, who thus would have become proprietors in fee-simple of all the best parts of the country before the discovery of gold in 1851.

It has been urged by our most popular lecturer on public subjects, that the raising of the price from 5s. to £1 an acre in 1840 "annihilated the land fund;" but this statement cannot apply to this colony, for it was in 1840, after the price had been raised to £1 an acre, that the largest amount was realised from land sales, viz., £219,127—a very large sum in those days. This change of system was expressly introduced for the purpose of preventing Crown lands being prematurely alienated, while their appropriate use had been provided for in 1839 by an Act for the regulation of pastoral settlement. Mr. Michie was, therefore, so far right in saying, in his lecture of 1866, that the change of price from 5s. to £1 an acre "secured their runs to the squatters," for this was the collateral object of the arrangement; but they were entitled as early colonists to receive ample facilities for settlement; and if the squatting system had not been available, they must have purchased land in sufficient quantities, at a low price, or else the colony would have died away without its natural resources being developed.

We have seen that in 1840 there was a land mania, which arose from eager speculation in the purchase of land, for the purpose of taking advantage of the brilliant pastoral prospects of the colony; and this, by locking up capital unproductively, did create such a reaction as led to the practical annihilation of the land fund, which had fallen in 1844 to £659; but meanwhile the rental of pastoral Crown lands had risen to £19,347, a revenue which resuscitated the broken fortunes of the State, and provided for the revival of immigration, which led to restored but gradual prosperity, until in 1851, before the discovery of gold, we had a population of 80,000 souls, a revenue of about £400,000 per annum, and exports to the value of above £1,000,000, all aggregated round the pastoral system, which was the main source of trade and of employment. Nor had squatters held their runs "for next to nothing," for while from 1838 to July, 1851 the proceeds of land sales had amounted to £638,613, the sum of £240,405 had accrued from pastoral occupation, without the alienation of a single acre.

If, then, the raising of the price of land led to a system of reservation, applying the lands to a good purpose in the meantime, it was doubly beneficial, and the conclusion is fairly proved that the combination of pastoral occupancy with permanent alienation has been to the advantage of the other inhabitants of this colony, although it has placed the present occupants of Crown lands in a perilous position.

The complex system referred to was the result no doubt of the force of circumstances and the enterprise of pioneers, but it was adopted by the Government, and brought under public regulation and public sanction by proclamations and enactments from time to time. The principle on which it was maintained is very clearly laid down by Lord Grey in his despatch to Sir Charles Fitzroy of 29th November, 1846, in these words:—"There is a universal concurrence of opinion as to its being indispensable that the sheep and cattle farmers of Australia should have the range over far wider tracts of land than they could possibly afford to purchase —not merely at the present price, but at any which could pos-

sibly be named for the fee-simple. I assume, therefore, that it is necessary to provide for the temporary occupation of land for pasturage on much easier terms than those on which its permanent alienation is permitted. Nor is this in any way inconsistent with what I have already said as to the importance of maintaining the present minimum price of land sold in fee-simple; on the contrary, I entirely agree in the opinion I find to have been expressed by Sir George Gipps that the two systems of permanently alienating land only at a high minimum price, and that of permitting it to be occupied only for pasturage, will mutually sustain and support each other. By the combined operation of allowing a temporary right of occupying land to be obtained on easy terms, and of demanding a considerable price for that on which a permanent property is required, the sheep and cattle farmers are enabled to carry on the important branches of industry in which they are engaged to an extent and with advantages they would not otherwise enjoy, while at the same time this does not occasion the loss to the colony of the important source of revenue which will hereafter be afforded by the sale of land, or any risk of depriving future settlers of the means of obtaining land by purchase at a reasonable price. This last consideration is, I think, of extreme importance. It is obvious that if those who now occupy the large runs which are required for the support of considerable flocks and herds, while the country remains in a state of nature, were allowed to acquire a permanent property in these vast tracts of land, there would very soon indeed be no land of moderately easy access available for new settlers." Thus it appears that the English Government, which then had the entire control of our Crown lands, designedly and avowedly adopted the principle of the squatting system as a measure of public policy, and thus the lands have been reserved in the main for settlement under a free constitution, whatever mistakes we ourselves may have made.

Mr. Michie, in his lecture of 1866, contrasted the 1100 squatters who had "monopolised" the Crown lands with the

80,000 diggers who sought its gold, for the purpose of showing that the squatting system had no good effect on population, employment, or general prosperity; but the facts already stated prove that under the pastoral system which prevailed up to the end of 1851, after twelve years of existence, this colony had made unexampled progress; and if 80,000 souls inhabiting Port Phillip at that time were enjoying a comfortable subsistence, it could be owing to nothing else than to the successful exertions of the pastoral tenants of the Crown. As to employing labour, the effect of a producing interest is not to be measured by the number of persons engaged, but by the results produced. In fact, the production of wealth is the source of the employment of labour, and the less money expended in producing it the more wealth will there be for that general expenditure which is the source of the wages fund of the working man.

It remains to be seen what was the position of the squatters themselves during this period.

Their occupation of Crown lands was first legalised in 1839, under a system of licenses administered by Crown Land Commissioners, just in the same way as the goldfields were administered by Commissioners from 1851 to 1854. The only security was the good faith of the Crown, and at a distance from the seat of Government the action of Commissioners was often arbitrary and uncertain. In 1844 Sir George Gipps issued his "Regulations," under which squatters were required to purchase 320 acres for every run for 4000 sheep held by them, on every renewal of a lease, or rather right of occupation for eight years, for no legal title was to be given. This was objected to on the ground that money was not easily obtainable in those days, with wool at one shilling per pound, and a forced investment in the purchase of lands, which were in most cases not considered worth the money, was not appreciated. It is worth observation, however, that in those days the object of Government was to require squatters to become landholders. The opposition to these regulations led to the application to the English Government for a legal tenure, and this eventuated in the issue of the Orders in Council in 1846,

under an Act of the Imperial Parliament. Whether objectionable or not they were not objected to previous to the discovery of gold, but their operation was delayed by preliminary arrangements, which involved correspondence with the Home Government, and the settlement of disputed boundaries for the express purpose of defining such boundaries in the leases to be given. The principle on which they were framed was the division of the country into districts, and in the unsettled districts, to use the words of Lord Grey, "lands were put absolutely out of the power of the Crown, and rendered unavailable for settlement for the long period of fourteen years," while the right of pre-emption was given to the occupant only, during the whole period. The leases were also renewable, except in certain specified cases, and no lease could be given except to "existing occupants." There can be no use in recounting all the difficulties which arose when a great influx of population took place, and the distribution of the population was completely altered. Mr. Latrobe saw the difficulty of reconciling these Orders in Council with the altered condition of the colony, but failed to suggest any definite remedy. Sir Charles Hotham appointed a Royal Commission in 1854, which produced no adequate results. The squatters, in the absence of any definite propositions for compromise, clung to their legal rights. The Duke of Newcastle, in his famous despatch, pointed out how these legal rights might be subverted, but at the same time suggested compensation, which the Government never offered, and the question has actually dragged on until the present time without any satisfactory settlement. The result, therefore, has been that no legal tenure was ever effectually given, and the pastoral tenants of the Crown are still under the original settlement that they should hold Crown lands on condition of beneficial occupation, until required for sale or alienation for superior public purposes.

It may be said that their claims were taken up, and their extinction provided for by Mr. Duffy's Land Act of 1862, but this is not correct, for Mr. Duffy himself describes the transaction in his official pamphlet in these terms—"It is provided that existing runs shall continue to be let for pastoral purposes

on a yearly license, which license, however, shall issue uninterruptedly (unless Parliament otherwise provides) for eight years, from the first of January, 1863;" so that the continuation of the original system was provided for for eight years certain, at a certain fixed rent.

The Act itself provides that the system of yearly licenses shall cease at the end of 1870, and makes it imperative that some new arrangement should be made. The Act also provides for the extinction of the Orders in Council, which was unnecessary, as they had never been put into legal operation.

In these expressions there is no mention of any contract, or of any special consideration given, on which that contract could be founded. A system of occupation had been going on for more than twenty years previous to 1862, and the Duffy Act provided that it should not be disturbed for eight years, with regard especially to the rate of rent, which the Government since then has felt bound not to alter. If it had been intended that all claims of pastoral tenants should be abolished at the end of the period, it would have been expressed in a very different way from the words employed by Mr. Duffy in his own explanation. A statement that certain annual licenses "shall issue uninterruptedly for eight years," is a very different thing from saying that the system of occupation, and all the rights and interests which have accrued under the sanction of the Crown, in the case of a number of individual colonists, should be swept away as if they had no existence, because a certain arrangement of annual licenses, which the squatters themselves had, for more than twenty years, been seeking to exchange for leases of a more independent kind, was to cease at the end of 1870, to be replaced, it may be, by some better system for all parties concerned. The only thing that the Act proves is that it was the intention of the Legislature that the *nature of the tenure* should be changed; but it does not say one word as to the *eviction* of the tenants. Even if it were otherwise, the Legislature of 1862 cannot bind the Legislature for all future years, so as to say that it shall not give any consideration to the claims of Crown tenants after a certain date has

expired, but shall confiscate their property to the public use, especially when there were no parties either in or out of Parliament empowered, or in a position to deal with the private interests of a large number of individual tenants, who had no voice in the transaction. The idea of a terminable lease has itself been derived from the orders in council; for the Duke of Newcastle, in the very act of defeating these orders, suggested that leases should date from 1848, so that they would expire in 1862, and Mr. Duffy's Act had the appearance of prolonging this period for other eight years; but a lease never granted could have no specific termination, nor can the limitations be pleaded where the benefits were not conferred. The right of pre-emption over a great tract of country was given by law; but notwithstanding this, Capt. Clarke, as Surveyor-General, stated, as far back as 1854, that he had met with no practical obstruction to the sale of land all over the colony from any pastoral tenant of the Crown. The Act of 1862, therefore, left things exactly as they had been before under the original system of occupation.

It may be readily admitted that at the expiry of the Act the pastoral tenants of the Crown will be in the hands of the country, and will have nothing to fall back upon except the honour and good faith of the State as landlord; but inasmuch as the whole arrangement from first to last has been one of honour and good faith, it is not to be wondered at that its maintenance is depended upon for the future as it has been for the past.

Under such a tenure some may suppose that squatters were only tenants at convenience, without any specific claims; but the rent for the last ten years has been 8d. for a sheep or a sheep's grass, and the total amount paid for this period has been above two millions sterling. Such a system involves obligations, and is altogether different from what is called "squatting" in the United States, where several millions of sheep are grazed on the borders of the South-west States without paying a farthing. Neither does the agricultural squatter there pay for the use of land previous to its sale, and yet he is entitled to the pre-emption of his location at the upset price. The term "squatting" is therefore applied in other countries

to temporary occupation, without payment and without privileges, whereas here it is applied to an organised system, under which a valuable consideration is given. The position of pastoral tenants has been recognised by the Supreme Court as involving property and rights, and numerous transfers have been made with the indorsement of the Crown. With express reference to their case also the Constitution Act has provided that all previous engagements of Her Majesty should be respected. Is it to be supposed that this contract was to be set aside by an Act providing for the continuance of annual licenses for eight years?

When a specific lease is given in England for the purpose of encouraging improvements, the length of the lease is so calculated as to indemnify the tenant, and the landlord is not permitted to interfere; but is it to be supposed that a squatter could so enrich himself during these eight years as to realise during their currency the capital and labour invested, so as at the end of this period to give up the premises without loss? The case, however, is far stronger than this; for during the currency of the lease the landlord did (by the Act of 1865) interfere by abrogating the price fixed in 1862, of £1 an acre, with the right of taking adjoining allotments at 2s. 6d. over eight years, and by introducing a new system of agricultural tenancy at 2s. per acre per annum. Thus the terms of the contract were completely altered, the protection of a certain price was done away with, and every inducement was held out to indiscriminate selection under the system of agricultural areas. Instead, therefore, of pastoral tenants being enabled to realise the value of their interest in eight years they have been put in a far worse position since 1865 than they were in before, and their property has been immensely depreciated in value by the act of the Government.

The course taken by the British Parliament with regard to Irish tenant-right will best illustrate the principles involved.

In May, 1866, Mr. Fortescue, on behalf of Earl Russell's Government, brought forward a measure for the settlement of tenant-right in Ireland, when he made use of these expressions:—"It was commonly and most truly said that there was the essential distinction between the practice in England and Ireland, that in this coun

try the permanent improvements were provided by the landlord out of his own capital, whereas they were left in Ireland for the most part to the industry and outlay of the tenant." He then proposed to give to landlords the power of giving leases for thirty-one years, on account of agricultural improvements, or of sixty-one years for building or reclamation, so that the tenant in consideration of such long lease should lose his right to compensation at the expiry of the term. The other alternative was that—"If the tenant, after having executed such improvements, and in the absence of any written agreement to the contrary, be dispossessed by his landlord, he should have a right to a lump sum by way of compensation equivalent to the increased letting value such improvements should have given to the land," such compensation to be limited in amount to £5 an acre, with provision for arbitration. Mr. Fortescue adds — "How would the case stand? The tenant would have added to the landlord's property certain requisites for its proper cultivation; the landlord would have by his own act dispossessed the tenant, and the latter would then have a certain claim under that bill to compensation in money. The law under these circumstances implying a contract, would fairly imply the consent of the landlord to improvements which he had allowed to be effected. The landlord would, either by himself or through the incoming tenant, pay the fair amount of compensation to the dispossessed tenant. The evicted tenant would not go forth into the world a starving man, &c." The bill thus introduced, although well received, did not become law, owing to the change of Government, and Lord Derby's Ministry proposed a different system, under which the Government itself would have provided the amount required for compensation, but in both cases the principle of protecting tenants who have effected improvements was recognised. This subject has been for twenty years past before the English Parliament, and the main principle has never been gainsaid, although the reconciliation of the rights of property with those of beneficial tenancy has not yet been effected.

The Duke of Newcastle said, in 1853, with reference to the same subject—"None of their lordships would deny that where

a tenant had expended his money in the improvement of a property, and he was dispossessed by his landlord, he had a moral right to compensation." Mr. Sergeant Shee said in the House of Commons :—"If it can clearly be shown that the relation of landlord and tenant had been established in a district in which the Ulster usage prevailed, the tenant having, with the knowledge of his landlord, laid out money in permanent improvements, or bought them from a former tenant, and that the landlord refused to permit him to sell them to a solvent substitute, without doubt the landlord might be compelled to pay for them." Lord Caledon stated that to enlarge a park he gave £1800 for the tenant-right of 150 acres, and added—"Until about ten years ago the landlord never dreamed of defeating it (tenant-right)—of refusing the substitution of a solvent tenant, or of raising his rent beyond his fairly-ascertained share of the increased value contributed to the fee by the tenant's improvements."

Now, how does the case stand as compared with the pastoral tenancy in Victoria ?

The system in Ireland originated with the plantation of Ulster when certain "undertakers," mostly corporations, engaged to provide for the settlement and improvement of confiscated lands, which they did by inducing Scotch and English settlers to enter upon them at low rents, on conditions of improvement. This has gone on for some two hundred years, the tenants transferring their interests and selling their good will for large sums.

The same state of things was created here by the act of the Government, in order to promote the settlement of this colony, and the same virtual contract was entered into with regard to improvements, but with this difference, that the tenants of the Crown here were left exposed to the risk of resumption for sale or agricultural settlement, and held not an absolute but a subordinate tenancy. This ought to involve more liberal treatment on account of increased risk, for the squatters in Victoria have not only improved their landlord's property to an immense extent, but have held it in reserve for the use of the country. The same principle, however, applies to both cases of a claim to consideration, arising from the fact that the

improvements have been effected by the tenant and not by the landlord, and when such a system is recognised, it matters not whether the usage has been for twenty or two hundred years.

It is also to be observed that under such a state of things the previous occupation of the land by an improving tenant does not abrogate the value of the improvements, unless an express arrangement is made to give a tenure for a certain number of years at a certain moderate rent, on the calculation that within that time the value of the improvements will have been taken out by the tenant. The Ulster tenant-farmers have been in possession for generations at a low rent, but the proposal made in the English Parliament is, either that their tenant-right should be now purchased, or that a lease of at least thirty-one years should be given, as an equivalent, without reference to retrospective occupation. The goodwill of the premises also has been the subject of sale and transfer in Ireland as in Victoria, arising from the fact that where improvements are made for the purpose of carrying on a business more or less profitable, the business itself has a certain value, as in the case of a shop, or a professional or mercantile undertaking. For instance: if a pastoral tenant were entirely dispossessed, even if his working capital were extricated he might be at a great loss before he could invest the same money again in a pursuit where his knowledge and experience would be available, and from which he could derive a like rate of profit. It has, therefore, been fully made out that under the squatting system a mutual contract has been entered into which ought to be either redeemed or fulfilled.

We are now in a position to consider what can be done to effect a fair reconciliation of all interests connected with the public lands, with due regard to the equities of the case, and with a view to the settlement of all future claims. Before suggesting reconstruction, however, it will be well to review the recent changes in our land system with reference not only to pastoral but also to agricultural settlement. The system of sale by auction was in force here for nearly twenty years until 1860, when Mr. Nicholson's Act was passed, under which £1 an acre was paid for certain allotments in proclaimed areas, with the right of renting adjoining allotments, for pastoral

purposes only, at 1s. an acre, and with the right of pre-emption over them at £1 an acre. In the event of two or more applicants applying for the same allotments the decision was to be made by auction limited to the actual applicants.

The principle was at the same time laid down that no one should select more than 640 acres in any one year.

The Land Act of 1862 differed from that of 1860 in proclaiming definite agricultural areas, to be taken up by selection in allotments at £1 an acre, with the privilege of purchasing the adjoining allotments by instalments of 2s. 6d. per annum over eight years. In case of competition, lot was substituted for limited auction. Whatever may have been the intention, its execution was imperfect. The alienation of agricultural areas was stopped in 1863, and an Amending Land Act was brought in in 1865, on a new system of leasing and tenancy without purchase, subject to the fulfilment of certain conditions, and with the right of pre-emption. The effect of this on the correlative system of pastoral tenancy was to interpose nothing but rent at the rate of 2s. per acre per annum, together with the obligation to spend £1 an acre on improvements before the expiration of two years, between the pastoral tenant and indiscriminate selection. The result of this change was immediate and startling, for the facility of entering on the land was so great, and the prospect of realising a profit by obtaining prizes was so attractive, that crowds were gathered from all quarters, and of all classes; and a series of rushes was created which, unnecessarily, destroyed the property of the squatter, while it did not succeed in securing the land to the agriculturist. The property of the State was also in many cases thrown away far below its value.

The cause of this great inroad upon Crown lands was the absence of any sufficient test of *bona fides* at the time of entry to take the place of the £1 an acre, which had been, up to that time, paid either for all lands or for alternate sections; for the requirement to expend £1 an acre on improvements within two years, was too prospective and uncertain to prevent speculation. The only way in which the intentions of the Act of 1865 could have been carried out, would

have been by making the fulfilment of conditions antecedent to the issue of a lease, and to have provided for their absolute fulfilment by some fixed procedure, independent of all political influences, for the experience of Canada and the United States proves that there is great risk of failure in any conditional system, and that the only chance of success is by obtaining the performance of certain things at the time of entry. The most obvious improvement which could be required would be the erection of a substantial fence, and there could not be a more legitimate obligation, for why should the pastoral tenant be ousted by the Crown, unless the incoming agricultural tenant is required to prove his *bona fides* by an expenditure which is at once most beneficial to himself and most necessary to preserve the distinction between *meum* and *tuum*? If it be said, why should the agricultural settler not have time to erect his fences in his own way, and at his own convenience? the answer is, that the State has no right to enter upon lands already let at a rent for pastoral purposes, and confer them upon another party, without requiring some definite proof of *bona fides* and of practical improvement. The enforcement of such a condition as this should be provided for by a reference to some impartial tribunal, so that the Government might be relieved from the suspicion of employing their vast powers as landlord for political purposes.

The property held by all other persons is protected by the law, and their titles to their land are not dependent upon political events; but the property of the pastoral tenants of the Crown is so wrapped up in the occupation of Crown lands, that the administration of these lands vitally affects their interests, and thus at the present juncture there is nothing between them and ruin unless the fulfilment of the conditions of selection is made binding in law upon the Government itself. If this is not done, every change may bring a new policy, and the property of the oldest class of *bona-fide* settlers in the colony will be made the stock-in-trade of political adventurers.

The upset price of £1 sterling which formed one side of the original contract was practically reduced by the Acts of 1860 and 1862; but under the Act of 1865 purchase-money disappears as

a protection to the existing occupant, and there is now but a plank between him and the deep sea, in the fulfilment of conditions.

The 42nd clause of the Act has been accidentally successful, and has worked on the whole as a *bona-fide* arrangement, to which pastoral tenants have offered no obstruction. The conditions attached to that clause are, that the occupant of an allotment shall enclose the same with a proper fence, and cultivate at least one-fifth portion thereof; but such provisions should not be left subject to the decision of political ministers or their subordinate agents.

The general principle of this clause is admitted to be a sound one, provided that the fulfilment of conditions antecedent to any title being given is carried out under legal obligations which can in no case be set aside, so that the dispossessed tenant shall have his remedy against his landlord if he is evicted on false pretences. If this were done, there might be a cordial union of interests between the two classes of agricultural and pastoral settlers, both interested in maintaining the *bona fides* of all holders.

If the premises already stated are correct, the whole history of pastoral settlement in Victoria involves a contract to which the honour of Her Majesty the Queen, as well as that of the Government of the colony, is pledged. It has also been shown that, so long as the facts remain, and the country is reaping the benefit of the enhanced value of Crown lands, arising from improvements made entirely at the cost and risk of the tenant, under a general system, so long will it be incumbent upon the State to provide either for the redemption of the interest of its own tenants in the public property, or else to acknowledge and maintain that interest, so as to leave an adequate return to the holder of Crown lands, while it at the same time secures a fair rental on the public account. It has been shown that this principle is clearly acknowledged by the highest authorities in the English Parliament with reference to Ireland, and it may be added with reference also to England, for Mr. Fortescue, in the same debate, in speaking of tenants-at-will in England, said—"There had prevailed for centuries and generations an amount of hereditary confidence between the landlord andt enant

which did not exist in Ireland, nor he believed in any country in Europe; a confidence amounting, as stated by Adam Smith, 'to the production of a result nowhere else to be found in Europe, that of a tenant holding by a precarious tenure venturing to make improvements on his farm, trusting simply to the honour and generosity of his landlord.'" The squatters of Victoria have entrusted their property and all their prospects in life to the honour of this colony and it cannot surely be doubted that the people, to whom the power of legislation has been so freely given, will act in the same spirit of good faith, although the obligation itself may not be found in the letter of the bond.

There are persons, however, who, under the idea that there is no substantial contract existing between pastoral tenants and the Crown, and that a specific term of years is about to expire, propose that the runs should be exposed to public auction, and let to the highest bidder.

Now, Mr. Haines brought forward a Land Bill in 1857, under which the runs would have been put up to auction, but with a valuation of the stock and improvements to be paid by the incoming tenant; but this bill was rejected by the Council, and the circumstances are now very different, for it is problematical whether the same protection by valuation would be given now, and even if it were, the state of the stock market at present is such as would expose the evicted holder of a run to an immense sacrifice at a forced sale, whereas, in 1857, sheep were worth about three times as much as they are at present. Nor can the true value of sheep be now ascertained by the market rate for surplus stock, for the supply being greater than the demand, they are not marketable; whereas those sheep which can be retained upon a run may be made to produce five shillings' worth of wool each year, and are therefore worth a great deal more to hold than they could be sold for off the run. Sheep without runs are of little value, but in like manner runs without sheep would have been of still less value to the State, so that the two are like right and left hand gloves, neither of which could be fairly disposed of unless paired together. Thus it is that a system of auction for runs, even accompanied with

a valuation of stock and improvements, would, under present circumstances, lead to the confiscation of existing interests, and all the disadvantages of a forced sale.

The great objection, however, to the auction system for pastoral Crown lands would be, that it would place the right of occupation in the hands of a mere monied interest, so that the idea of rights arising from actual occupation and improvement would be entirely banished, and the power of the purse and of the land-jobber would have uninterrupted sway. It is needless to say that such a scheme is utterly inconsistent with the principles of our present land policy which, in claiming for the agricultural settler the right of obtaining land in virtue of occupation and improvement, indorses at the same time the prior claim of the squatter to the same consideration for grazing purposes. If, however, the pastoral tenant be required to give way to the *bona-fide* agriculturist on the one hand, and to the speculator or capitalist who has never done a hand's turn to the ground on the other, he will be consumed at both ends ; and therefore, if he is to give way to the agriculturist, he is entitled to be dealt with on the same principles as are applied to him, or to the miner who obtains a lease or a right of occupation.

It can easily be shown that the interests of the pastoral and agricultural class are essentially the same, for under a system of letting runs by auction there would be a strong inducement to give definite leases under which the Crown lands would assuredly be tied up to a much greater extent than they are at present; whereas the squatter is bound from first to last to make way for the genuine agriculturist, and can only seek a tenure subordinate to the alienation of the land for superior purposes at any time. The original principle of reservation is still of great importance to those in whose favour the land is reserved until required ; if so, why should those existing occupants, who have been, as graziers, practically debarred from the right of purchase, be stripped of their subordinate position as tenants ?

Another mode of settling Crown lands at the expiration of 1870 has, however, been put forward. It is proposed that the pastoral Crown lands should be thrown open for general selection in small

blocks for grazing purposes, on the ground that they will be entirely unoccupied and absolutely at the disposal of the State at the end of 1870.

This position has been already refuted, and so long as the fact remains that the pastoral tenants have a large amount of property engaged in connection with Crown lands on the faith of the Crown, it stands to reason that they are in a different position from the general public, who have no claim individually to the use of these lands, having done nothing to create such an obligation. Wherever property is concerned, individual rights come in, and the whole tenor of agricultural settlement at present is to establish such individual rights on account of certain payments or certain performances. A general assertion that Crown lands belong, or will belong, to the State, is no ground for putting a number of persons who are desirous of obtaining possession of certain lands in posession of them; and if this were done at the sacrifice of previous occupants, the new comers would at once claim individual rights and privileges, and stand on their defence against all others. The foundations, however, of right in equity and justice would have been destroyed, and these new occupants in their turn would be called upon to give way to fresh competitors. The object in such cases always is to obtain a title which will hold good in law, but the line between substantial equity and formal law exists only in the minds of men with whom the respect of the law is a moral obligation; and when once the principles of right and wrong are undermined, there is great danger of a general collapse, such as takes place only in revolutionary times.

The difficulties in the way of the minute subdivision of Crown lands for grazing purposes would be very great, and are well known to practical men; but an important consideration for the State is this:—If Crown lands were thrown open for pastoral selection in something like 5000-acre blocks, would not the selectors claim some permanent title under lease, with probably a right of pre-emption and other privileges, in return, it may be, for a higher rent? One of our ablest extreme land reformers, Mr. Graham Berry, at the South Grant election, stated publicly, on being asked what title he

would give these new squatters, "that he would give them leases for ten or fifteen years," and would keep back such lands as were suitable for the agriculturist; but, of course, this would be locking up the lands with a vengeance, and would at once put a stop to that system of free selection, throughout the length and breadth of the colony, which both squatters and agriculturists are in favour of. This proposal would only, in another form, revive the Orders in Council in favour of a new and much more numerous and powerful body of tenants, who would not be so easily got rid of. In another point of view, the subdivision which seems so plausible would prove a failure; for, beginning with 5000 acres, the process of accumulation, which is now so well understood, would soon roll up properties of twenty or thirty thousand acres in the hands, it may be, of unprincipled speculators. Under any circumstances, the door would be opened for fraud and oppression, and the screw would be put on the remnant of the squatters until they were utterly ruined. It is inconceivable, therefore, that such a system of confiscation and of universal plunder could ever be sanctioned in a colony connected with the British Crown.

The question now arises—What rent can be fairly claimed by the State, and on what terms? The answer is, to use the words of the *Sydney Morning Herald* with reference to the proposed New South Wales Land Act:—"Most moderate persons would say that a fair rent is that which an average tenant can afford to pay, after allowing himself the average industrial rate of profit on his capital, and reward for his skilled superintendence." This principle coincides with that which is laid down by the best writers in England and Scotland on agricultural economy—that in striking the rent of a farm a fair rate of interest should be allowed to the tenant on his capital, and a like rate to the landlord; but it is expressly stated by Mr. Lowe, the Professor of Agriculture in Edinburgh, that such rate of interest should be computed on working capital in the case of the tenant, and on fixed capital in the case of the landlord, "so that if the latter receive 4 per cent. on his investment as owner of an improved farm in fee-simple, the former should receive 16 per cent. on his working capital as a trading investment," subject to

risks, and involving close and constant attention. On the same principle, the capital invested in trade and commerce is entitled to a return of some 25 per cent. on its transactions, repeated perhaps several times within the year; whereas an investment in the public funds or real property will not return here more than from 6 to 8 per cent. To apply this principle to pastoral Crown lands, we must discriminate between the property of the tenant and that of the Crown as landlord, which is not very easily done. It is admitted, however, that the stock and improvements on a station are the private property of the tenant, and it may be fairly contended also that the goodwill of the business which he has created is his also. If these can be estimated, after deducting them from the actual value of the station, the residue will represent the value of the Crown lands in occupation. It is difficult to say what the total value of a station is with fluctuations in the value of stock and great uncertainty as to tenure, so that the value must greatly depend upon the terms of any future contract. It has been already shown that the selling price of surplus stock at a particular time is not a fair criterion of the value of sheep, so that it will be more reasonable to look to the actual returns obtained, with a view to a fair division of profit between landlord and tenant. What is required, then, is a careful examination of the position of both parties as to fair average returns from an ordinary sheep station, and as to the share which each party should have in the proceeds, so that the interest of both may run on the same lines. If the principle of English and Scotch farming is applied, the larger the returns and the better the tenure, the more advantageous will it be for all persons concerned, and they will be mutually interested in each other's prosperity. In England, if the fee-simple of an improved farm is worth £10,000, the proprietor should receive as rent £400 per annum; and if the tenant has a working capital of £2000 invested, he ought to clear as profit £320 per annum. In this colony the State has put neither stick nor stone, nor a head of stock, upon the ground, and the squatter has provided all the outlay, thereby giving greatly increased value to the lands; he will, therefore, have a right to

receive a corresponding rate of interest on a much larger proportionate capital. The fact that it is impossible to give him an absolute lease, with due regard to the interests of general settlement, goes to show that, being subject to this inherent disadvantage, he should be put in as safe a position as the case will admit of. If full security could be given, the State would be entitled to a higher rent, and there would be a *quid pro quo* on either side. Perhaps the only way to gain this object would be to introduce a system of compensation, so that the tenant should be guaranteed a certain amount in value of land on being dispossessed of a run, according to capability. The result of such an arrangement would be the same kind of security as in the case of an insured ship, and the State, as the insurer, might make a profit itself, and confer great stability on any future system of tenancy. For instance: if a run were insured to the value of £5000, a fair premium on this sum would be added to the rent; and if this were done universally by Act of Parliament, the necessary risk would be divided over the whole body of Crown tenants, the value of the public property would be greatly enhanced, the revenue of the country would be considerably increased, and pastoral tenants instead of being considered beyond the pale of settled industry, would become gradually merged in a resident population. This suggestion is thrown out for what it is worth, and if there are too many jealousies to admit of its consideration, the State will lose the additional revenue, and the tenant will lose the advantage of security.

If during the next few months able and intelligent men would grapple with this land question, so as to bring a wise and moderate influence to bear upon its settlement, the inheritance of the people might be saved from reckless waste, and an important element in our prosperity would be firmly established; for an interest producing from three to four millions in value every year cannot be sacrificed without injury to the whole community. But if our public lands are to be made a field for strife, or are to be employed as a vast bribe for political purposes, they will do us more harm than good. In these pages the pastoral pen may be looked on with suspicion, but the idea

sought to be conveyed has been put in far better words by Mr. Michie, a disinterested witness. In his lecture on "Victoria Suffering a Recovery," he thus speaks :—"Apart from faction, jealousy, and wrong-headedness, the *rationale* of the matter seems to be in a nutshell. I presume very few persons who really have any practical acquaintance with this country will dispute that many of these lands are only fit for pastoral purposes. Nature has passed an eternal sentence of sterility upon them. Are these lands not to be turned to the best account ? Can they be turned to the best account, unless you give individuals an exclusive interest in them ? Can you give this interest effectually, unless you say that whatever the squatter lays out on his squattage shall be secured to himself, as you protect any other person in the enjoyment of the fruits of his industry ? Can you thus secure the squatter, unless you say he shall enjoy his lease, or compensation in some shape if he be deprived of it ? No. I say, then, that in the future administration of these merely pastoral lands—whether they be under the State or under rural municipalities —that at the same time that you secure to the public an adequate rental, and the right of re-entry at any time on equitable terms for sale, you must secure to the sheep-farmer the thing or its equivalent for which he has bargained, and thenceforth squatter and anti-squatter heart-burnings will cease."

Looking back on the course of our argument, we believe we are entitled to submit the following propositions as having been fairly proved :—

1. That the squatting system has been beneficial to this colony, by providing for the reservation of Crown lands until required by the demands of population.

2. That this system was created and maintained by the authority of the Crown and of the Government of this colony, and that pastoral tenants were encouraged and required to expend capital and labour on stock and improvements, to the value of many millions sterling.

3. That this has been done under a system of preferable right, expressed in annual licenses to existing occupants, which have been given without intermission from 1839 to the present time.

4. That, while it is provided by the Land Act of 1862 that such annual licenses shall cease to be given at the end of 1870, it does not follow that the substantial claims of pastoral tenants of the Crown should not then be provided for according to the equities of the case.

5. That in other countries, and more especially in the case of tenant-right in Ireland, the claims of tenants who have been induced, or were permitted by their landlords, to make improvements greatly increasing the value of farms, have been always recognised, on the principle that their interest should either be at once redeemed by the landlord, or that a sufficiently long lease should be given to the tenant to enable him to redeem the value of his own improvements.

6. That no such lease was given in 1862, but that, on the contrary, the pastoral tenants of the Crown were put in a worse position during the currency of this presumed lease by the operation of the Land Act of 1865.

7. That, therefore, in 1871 they have a right to expect full consideration of the justice of their case, as resting on the fact that they hold invested upon Crown lands a large amount of working capital, which cannot be disengaged without great loss.

8. That, consequently, the putting up of runs to auction, or the subdivision of grazing lands for selection, would be a confiscation of existing interests such as neither the agricultural nor the mining classes, holding under similar circumstances, would submit to.

9. That the pastoral tenants of the Crown are prepared to hold Crown lands by a tenure subordinate to agricultural settlement, so that the grazing lands of the colony shall be held in reserve for superior purposes; but that new pastoral tenants, obtaining Crown lands by auction or selection, would demand leases of a more absolute kind, and with higher privileges than the present occupants, so that the public lands would be effectually locked up against free selection.

10. That, therefore, the equitable rights of pastoral tenants and the rights of agricultural settlers both alike rest on the maintenance of

the principle of *bona fides*, as against those whose only claim rests on money payments, without regard to existing interests.

11. That pastoral tenants of the Crown are prepared to recognise the justice and expediency of a system under which agricultural settlers should have the right of selecting land in any part of the colony; provided always that at the time of entry such conditions of rent and improvement as will effectually secure the *bona fides* of such occupants are settled by law.

12. That they are prepared to pay for the subordinate use of pastoral lands a fair rent, estimated from time to time on those principles which regulate the transactions of landlords and tenants in the mother country.

MASON, FIRTH AND CO., PRINTERS, FLINDERS LANE WEST, MELBOURNE.