

SCIENCE.—SUPPLEMENT.

On the freedom of contract.

FRIDAY, MARCH 5, 1886.

REGULATION OF CONTRACTS.

THE present age is fertile in economical problems, due, in the main, to the great improvements in production and distribution, and to the consequent changes in the organization of business enterprise. Among the questions that have thus arisen, and are now demanding solution, one of the most important is that of the regulation of contracts by state authority. It is held by some that the making of contracts should be free from legal control, and that the state should confine itself to enforcing the due performance of them after they are made. Others maintain that in the present condition of industry, with immense masses of capital concentrated in a single hand, or in a single board of control, the interference of the state is sometimes needed for the protection of the weaker party to the contract, or of the general public. We have witnessed in recent years an example of state interference with contracts on a great scale in the Irish land law. This measure not only released the tenants from some portion of their accumulated debts, after the manner of a bankruptcy law, but it also provided certain tribunals to fix rents for the future. No greater interference with freedom of contract has occurred in modern times, and the example thus set may have important results in the future. We Americans have not as yet any land question of this sort to deal with; but cases are constantly arising in which the question of regulating contracts appears, and the consideration of it, therefore, cannot begin too early. We bespeak our readers' attention to the accompanying essays and to the important subject of which they treat.

HOW FAR HAVE MODERN IMPROVEMENTS IN PRODUCTION AND TRANSPORTATION CHANGED THE PRINCIPLE THAT MEN SHOULD BE LEFT FREE TO MAKE THEIR OWN BARGAINS?

I.

THERE has been a time in the history of almost every civilized race when a man had a right to bargain himself into slavery, if he chose, and

this right was repeatedly exercised. But such bargains were so clearly against public policy that they were done away with long before slavery as an institution was abolished.

Where two parties to a transaction do not meet on equal terms, free contract may be the surest means of destroying freedom. Freedom, as far as it exists, is the right to do as one pleases with himself or certain objects: free contract is the right to limit that right. There are many instances in which more free contract now, means less freedom forever after. Self-enslavement was an extreme case, and belongs to past history; but there are many others which involve the same principles in practical shape to-day.

For instance: common carriers try to make special contracts which shall relieve them from common-law responsibility, and put the shipper at a disadvantage in various ways. The courts refuse to enforce such contracts. The law not only assumes that the parties to the contract meant a great many things which they never thought of: it sometimes insists that they did not mean certain things which they actually said and wrote. The courts are guided by considerations of public policy in interpreting transactions, and enforcing contracts. A right of every man to make his own bargains, apart from and above such considerations, never has existed, and in a highly organized society it is hardly possible to conceive how it ever could exist.

The practical question is, Where shall we draw the line? And the point with which we are immediately concerned is this, Have there been any industrial changes which make it seem desirable to draw the line differently to-day from what we should have done half a century ago?

To this question it is safe to answer, Yes. The growth of large permanent investments under concentrated management has developed a whole system of new conditions affecting liability, discrimination, and pooling. The old laws applied to the new facts produce in many cases an effect quite contrary to that which was designed: hence the demand for new laws, and for new interpretations of existing laws.

The growth of large investments of this kind dates from about 1815. Three causes combined to