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(1) Report from the Select Committee House
of Lords on the Landlord and
Tenant (Ireland) Act 1870 1872

X9 (1) : (2) . 34 . M 72+

(2) Report of His Majesty's Commissioners
of inquiry into the working of
the Landlord and Tenant (Ireland)
Act 1870 and the Acts amending
the same. 1881

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Brought from the Lords, 8 August 1872.

R E P O R T

FROM THE

SELECT COMMITTEE OF THE HOUSE OF LORDS

ON THE

LANDLORD AND TENANT (IRELAND)
ACT, 1870 ;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

APPENDIX, AND INDEX.

*Ordered, by The House of Commons, to be Printed,
9 August 1872.*

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REPORT	- - - - -	p. iii
PROCEEDINGS OF THE COMMITTEE	- - - - -	p. vi
MINUTES OF EVIDENCE	- - - - -	p. 1
APPENDIX	- - - - -	p. 291
INDEX	- - - - -	p. 293

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R E P O R T.

BY THE SELECT COMMITTEE appointed to inquire into the working of
the LANDLORD AND TENANT (IRELAND) ACT, 1870, and to Report to
the House :—

ORDERED TO REPORT,

THAT the Committee have met and considered the subject-matter referred to them, and, for the purpose of prosecuting their investigation as to the working of the Irish Land Act, have examined witnesses, including several members of the judicial bench of Ireland, several chairmen of quarter sessions in Ireland, several attorneys and solicitors who have been conversant with proceedings under the Act, and others who, from their position as owners, occupiers, land agents, or managers of land, were deemed to have special means of affording information as to the subject of inquiry.

The Committee have also received a summary of returns furnished by the clerks of the peace in the various counties of Ireland, with reference to the number and the nature of cases under the Land Act, and the results of the decisions of the various tribunals before which they have been tried. This summary will be found in the Appendix.

In conducting this inquiry, the Committee has borne in mind that it was appointed, not to inquire and report as to any defects, real or supposed, in the Irish Land Act, 1870, but solely into its working. It has been found, however, impossible altogether to avoid touching on certain alleged obscurities in the Act itself, which are said to have interfered with its satisfactory working.

The principal objections taken to the Courts, as they exist under the Land Act, appear to be as follows :—

First. That the number of Chairmen of Counties, and the diversity of their judgments, render the primary tribunal unsatisfactory :—

Second. That the appeal to the Judge of Assize is, also, unsatisfactory, and that there should be an absolute right of further appeal from his decision to the Court for Land Cases Reserved :

Third. That the constitution of the Court for Land Cases Reserved is itself unsatisfactory, from the number of its judges, and the occasional and irregular character of its sittings.

The Committee have considered these objections, and they are of opinion upon the evidence before them, that it is not expedient to make any change in the constitution of the Tribunal of First Instance.

As to the jurisdiction of the Judge of Assize, objection has been raised to the exercise of his discretion in allowing or disallowing a further appeal, and it has been suggested that the suitor should have an absolute right to proceed to the Supreme Court. The Committee are prepared to recommend this alteration in the law. But if such an alteration were adopted it would be necessary to invest the Judge of Assize with power, at his discretion, to require security for costs.

As to the Court for Land Cases Reserved :--

The Committee think that the time has not arrived for the consideration of the questions which have been mooted in respect to it. It has only ruled a single case. No one has said that that case was not heard properly and decided justly ; and it seems impossible, under such circumstances,—before the Court has effectually begun that working which is the matter for inquiry, and in the absence of all experience justifying change,—to recommend the reform or the extinction of a tribunal so lately established by the Legislature.

Difficulties have arisen on the working of the Act on the following points :

(a.) Whether at the expiration of a lease, the Ulster custom is to prevail over the covenant and surrender in the lease.

(b.) Whether the Ulster usage is to be determined by the practice of the estate, or by that of a larger area.

(c.) Whether under the first section of the Act the outgoing tenant must elect whether he will claim under the Ulster custom, or under any of the other sections of the Act, before the hearing of the case.

(d.) Whether the Sections 9, 10, 14, and the whole of Section 18, apply to holdings affected by the usages of Ulster.

In conclusion, the Committee recommend that the Chairman should be empowered, at his discretion, and on such terms as he may direct, to reserve a case on matter of law directly for the Court of Land Cases Reserved.

And the Committee have directed the Minutes of Evidence taken before them, together with an Appendix, to be laid before your Lordships.

ORDER OF REFERENCE.

Die Lunæ, 3° Junii 1872.

LANDLORD AND TENANT (IRELAND) ACT, 1870.

Moved, That a Select Committee be appointed to inquire into the working of the Landlord and Tenant (Ireland) Act, 1870; objected to; and, after debate, on question, *agreed to*, and Committee appointed accordingly—(The Viscount Lifford).

Die Jovis, 6° Junii 1872.

LANDLORD AND TENANT (IRELAND) ACT, 1870.

The Lords following were named of the Committee: The Committee to meet Tomorrow at half-past Four o'clock, and to appoint their own Chairman:

Marquess of Salisbury.	Lord Brodrick.
Earl of Portsmouth.	Lord Somerhill.
Earl of Belmore.	Lord Wenlock.
Earl of Bandon.	Lord Lurgan.
Earl of Kimberley.	Lord Chelmsford.
Earl of Dartrey.	Lord Meredyth.
Viscount Lifford.	Lord Greville.
Lord Steward.	Lord Kildare.
Lord Digby.	

Die Veneris, 7° Junii 1872.

LANDLORD AND TENANT (IRELAND) ACT, 1870.

The Lord Silchester and the Lord Charlemont added to the Select Committee.

Die Lunæ, 10° Junii 1872.

LANDLORD AND TENANT (IRELAND) ACT, 1870.

The evidence taken before the Select Committee from time to time, to be printed for the use of the Members of this House; but no copies thereof to be delivered, except to Members of the Committee, until further order.

Die Lunæ, 17° Junii 1872.

LANDLORD AND TENANT (IRELAND) ACT, 1870.

The Lord O'Hagan added to the Select Committee.

Die Veneris, 28° Junii 1872.

LANDLORD AND TENANT (IRELAND) ACT, 1870.

The Earl of Stradbroke added to the Select Committee in the place of the Earl of Dartrey.

LORDS PRESENT, AND MINUTES OF PROCEEDINGS AT EACH
SITTING OF THE COMMITTEE.

Die Veneris, 7^o Junii 1872.

LORDS PRESENT :

Earl of Portsmouth.	Lord Brodrick.
Earl of Belmore.	Lord Somerhill.
Earl of Bandon.	Lord Wenlock.
Earl of Kimberley.	Lord Lurgan.
Earl of Dartrey.	Lord Chelmsford.
Viscount Lifford.	Lord Greville.
Lord Steward.	Lord Kildare.
Lord Digby.	

Order of Reference read.

It is proposed that the Lord Chelmsford do take the Chair.

The same is agreed to, and the Lord Chelmsford takes the Chair accordingly.

The course of Proceeding is considered.

Ordered, That the Committee be adjourned till Friday next, Eleven o'clock.

Die Veneris, 14^o Junii 1872.

LORDS PRESENT :

Marquess of Salisbury.	Lord Silchester.
Earl of Belmore.	Lord Charlemont.
Earl of Bandon.	Lord Somerhill.
Earl of Kimberley.	Lord Wenlock.
Earl of Dartrey.	Lord Lurgan.
Viscount Lifford.	Lord Chelmsford.
Lord Steward.	Lord Meredyth.
Lord Digby.	Lord Greville.
Lord Brodrick.	Lord Kildare.

The Lord CHELMSFORD in the Chair.

Order of adjournment read.

Order of the House of Friday last, That the Lord Silchester and the Lord Charlemont be added to the Select Committee, read.

Order of the House of Monday last, That the Evidence taken before the Select Committee from time to time be printed for the use of the Members of this House, but that no copies thereof be delivered, except to Members of the Committee, until further Order, read.

The Proceedings of the Committee of Friday last are read.

The following Witnesses are called in, and examined (*vide* the Evidence), viz., Mr. *Thomas Lefroy*, Q.C., Mr. *Robert Johnston*, Q.C., and Mr. *James Hamilton*, Q.C.

Ordered, That the Committee be adjourned till Tuesday next, Eleven o'clock.

Die Martis, 18^o Junii 1872.

LORDS PRESENT :

Marquess of Salisbury.	Lord Silchester.
Earl of Portsmouth.	Lord Charlemont.
Earl of Bandon.	Lord Somerhill.
Earl of Kimberley.	Lord Wenlock.
Earl of Dartrey.	Lord Lurgan.
Viscount Lifford.	Lord Chelmsford.
Lord Steward.	Lord Meredyth.
Lord Digby.	Lord Greville.
Lord Brodrick.	Lord Kildare.

The Lord CHELMSFORD in the Chair.

Order of adjournment read.

Order of the House of yesterday, That the Lord O'Hagan be added to the Select Committee, read.

The Proceedings of the Committee of Friday last are read.

The following Witnesses are called in, and examined (*vide* the Evidence), viz., Mr. *William Bence Jones*, Mr. *William O'Connor Morris*, Mr. *John Hancock*, Mr. *Hugh Boyle*, and Mr. *Courtenay Newton*.

Ordered, That the Committee be adjourned till Thursday next, Eleven o'clock.

Die Jovis, 20^o Junii 1872.

LORDS PRESENT :

Marquess of Salisbury.	Lord Silchester.
Earl of Portsmouth.	Lord Charlemont.
Earl of Belmore.	Lord Somerhill.
Earl of Bandon.	Lord Lurgan.
Earl of Dartrey.	Lord Chelmsford.
Viscount Lifford.	Lord Meredyth.
Lord Steward.	Lord Greville.
Lord Digby.	Lord Kildare.
Lord Brodrick.	Lord O'Hagan.

The Lord CHELMSFORD in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Tuesday last are read.

The following Witnesses are called in, and examined (*vide* the Evidence), viz., Mr. *Charles Townshend* and Mr. *Samuel Adair*.

Ordered, That the Committee be adjourned till To-morrow, Twelve o'clock.

Die Veneris, 21 Junii 1872.

LORDS PRESENT :

Marquess of Salisbury.	Lord Somerhill.
Earl of Belmore.	Lord Wenlock.
Earl of Kimberley.	Lord Lurgan.
Earl of Dartrey.	Lord Meredyth.
Viscount Lifford.	Lord Greville.
Lord Digby.	Lord Kildare.
Lord Brodrick.	Lord O'Hagan.
Lord Charlemont.	

It is moved that in the absence of the Lord Chelmsford, at any sitting of the Committee, the Lord O'Hagan do take the Chair.

The same is agreed to, and the Lord O'Hagan takes the Chair accordingly.

Order of adjournment read.

The Proceedings of the Committee of yesterday are read.

The following Witnesses are called in, and examined (*vide* the Evidence), viz., Mr. James Murland, Major James Hamilton. The Viscount Lifford being present is also examined.

Ordered, That the Committee be adjourned till Monday next, Twelve o'clock.

Die Lunæ, 24^o Junii 1872.

LORDS PRESENT :

Marquess of Salisbury.	Lord Charlemont.
Earl of Belmore.	Lord Somerhill.
Earl of Bandon.	Lord Wenlock.
Earl of Kimberley.	Lord Lurgan.
Earl of Dartrey.	Lord Chelmsford.
Viscount Lifford.	Lord Meredyth.
Lord Steward.	Lord Greville.
Lord Digby.	Lord Kildare.
Lord Brodrick.	Lord O'Hagan.

The Lord CHELMSFORD in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Friday last are read.

The following Witnesses are called in, and examined (*vide* the Evidence), viz., Mr. Justice Morris, Mr. Justice Fitzgerald, Mr. Justice Barry, Mr. Hugh Lane, and Mr. Robert Donnell.

Ordered, That the Committee be adjourned till Friday next, Twelve o'clock.

Die Veneris, 28^o Junii 1872.

LORDS PRESENT :

Marquess of Salisbury.	Lord Silchester.
Earl of Belmore.	Lord Charlemont.
Earl of Bandon.	Lord Somerhill.
Earl of Kimberley.	Lord Wenlock.
Earl of Dartrey.	Lord Lurgan.
Viscount Lifford.	Lord Meredyth.
Lord Steward.	Lord Greville.
Lord Digby.	Lord Kildare.
Lord Brodrick.	Lord O'Hagan.

The Lord O'HAGAN in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Monday last are read.

The following Witnesses are called in, and examined (*vide* the Evidence), viz., Lord Chief Justice Monahan, Mr. Justice Lawson, Mr. John Dinnen, and Mr. Edward Gardner.

Ordered, That the Committee be adjourned till Wednesday the 10th of July, Twelve o'clock.

Die Mercurii, 10^o Julii 1872.

LORDS PRESENT :

Earl of Portsmouth.	Lord Silchester.
Earl of Belmore.	Lord Charlemont.
Earl of Bandon.	Lord Somerhill.
Earl of Stradbroke.	Lord Wenlock.
Earl of Kimberley.	Lord Lurgan.
Viscount Lifford.	Lord Chelmsford.
Lord Steward.	Lord Meredyth.
Lord Digby.	Lord Greville.
Lord Brodrick.	Lord O'Hagan.

The Lord CHELMSFORD in the Chair.

Order of the House of 28th of June, that the Earl of Stradbroke be added to the Committee in the place of the Earl of Dartrey, read.

Order of adjournment read.

The Proceedings of the Committee of 28th June, read.

The following Witnesses are called in, and examined (*vide* the Evidence), viz., Mr. *Michael Henry*, the Rev. *John Rogers*, Mr. *Thomas De Moleyns*, Q.C. Mr. *James Coffey*, Q.C., and Mr. *Samuel McElroy*.

Ordered, That the Committee be adjourned till Friday next, Twelve o'clock.

Die Veneris, 12^o Julii 1872.

LORDS PRESENT :

Earl of Belmore.	Lord Somerhill.
Viscount Lifford.	Lord Wenlock.
Lord Steward.	Lord Lurgan.
Lord Digby.	Lord Chelmsford.
Lord Brodrick.	Lord Meredyth.
Lord Silchester.	Lord Greville.
Lord Charlemont.	Lord O'Hagan.

The Lord CHELMSFORD in the Chair.

Order of adjournment read.

The Proceedings of the Committee of Wednesday last are read.

The following Witnesses are called in, and examined (*vide* the Evidence), viz., Mr. *Robert Donnell*, Mr. *James Johnston*, and Mr. *Robert Wilson*.

Ordered, That the Committee be adjourned till Wednesday next, Twelve o'clock.

Die Mercurii, 17^o Julii 1872.

LORDS PRESENT :

Marquess of Salisbury.	Lord Charlemont.
Earl of Portsmouth.	Lord Somerhill.
Earl of Belmore.	Lord Wenlock.
Earl of Bandon.	Lord Lurgan.
Earl of Kimberley.	Lord Chelmsford.
Viscount Lifford.	Lord Meredyth.
Lord Steward.	Lord Greville.
Lord Digby.	Lord Kildare.
Lord Brodrick.	Lord O'Hagan.
Lord Silchester.	

The Lord CHELMSFORD in the Chair.

The Proceedings of the Committee of Friday last are read.

The following proposed Draft Reports are laid before the Committee :

Proposed DRAFT REPORT by the Earl of *Belmore* and the Viscount *Lifford* —

“ 1. The Committee has met, and has taken evidence from judges, chairmen of counties, barristers, solicitors, land agents, and other persons interested in the land question.

Mr. J. Hamilton.

“ 2. In conducting this inquiry, the Committee has borne in mind that it was appointed, not to inquire and report as to any defects, real or supposed, in the Irish Land Act, 1870, itself, but solely into its working. In an inquiry into the working of the Act, it has been found, however, impossible altogether to avoid touching on points in the Act itself, which make it so difficult in its operation that it is thus described by one of the witnesses, Mr. J. Hamilton, the Chairman of the County of Sligo, who says, ‘ Well, in the first place, I concur with Mr. Johnston and Mr. Lefroy in saying that it was very much against our wish that this jurisdiction was imposed upon us. We saw the extreme difficulty in the Bill whilst it was passing through the House. There is a studied absence of technical language, so that we are really left to consider an Act of Parliament conceived in the loosest and most popular language. There is an amount of discretion given to us which is very disagreeable to exercise. The Act opens a field, in my opinion, for prejudice and weakness, which makes it a very difficult Act to administer.’

“ 3. We have therefore inquired—

Mr. Justice Morris,
1423, 1458.
Mr. Justice Barry,
1619.
Mr. T. Lefroy, q.c., 85.

“ First, into the administration of the Act.

“ Secondly, into any obscurities and points in which it may have failed to give effect to the known intentions of the Legislature.

“ 4. The administration of the Act being confided to 33 judges of Civil Bill Court, with appeal to each of 12 judges of assize, it is obvious that even granting the ability of those who administer this law, great doubts might arise, and a greater conflict of opinion among them.

“ 5. These have arisen chiefly on the following points:—

Mr. Lefroy, 151-172.
Mr. R. Johnston, 205.
Mr. Newton, 786-802.
Mr. Justice Morris,
1411.
Mr. R. Johnston,
226-249-263.
Mr. O'Connor Morris,
607.
Mr. C. A. Townshend,
973.
Mr. T. Lefroy, q.c.,
Nos 29, 30, 31, 32.
Mr. R. Johnston, 202.
Mr. T. Lefroy, q.c., 27.
Mr. T. Lefroy, q.c.,
169 to 175.
Mr. J. Hamilton, 401
to 429.
Mr. Justice Morris,
1434 to 1440.

“ (a.) Whether at the expiration of a lease, the Ulster custom, or any charges which may be induced hereafter in other parts of Ireland under the 9th Clauses of the Act, dominate over the covenant and surrender in the lease.

“ (b.) As to how Ulster usages are to be ascertained, whether by large areas including many properties, or by the custom of the particular estate.

“ (c.) Whether under the first section of the Act the outgoing tenant must elect whether he will claim under the Ulster custom, or under any of the other sections of the Act, before or after the hearing of the case.

“ (d.) In case of a tenant dying intestate, who is in legal occupation of the farm.

“ (e.) It is in evidence before the Committee that great doubts exist whether the Sections 9, 10, 14, and the whole of 18, apply to holdings afforded by the usages of Ulster, and that the satisfactory working of the Act has been much hindered by this uncertainty, and by the unfounded expectations it has raised.

“ 6. That it was the intention of the Legislature that all these clauses should apply to Ulster as to the rest of Ireland, is in the recollection of your Lordships, even if it were not shown by statements in the House of Commons and in this House, made by the Attorney General, Sir Roundell Palmer, and the Earl Granville.

Mr. J. Hamilton, 404
to 429; Mr. C. Newton,
794, 795; Mr. Justice
Morris, 1458.

“ 7. This doubtful state of the law has encouraged extravagant expectations on the part of the tenants in some parts, especially in the north of Ireland.

“ 8. Two cases have been brought to the notice of the Committee in which appeals from the Civil Bill Judge to the Judge of Assize, although heard more than 15 months ago, are still undecided.

Mr. J. Murland, 1271
to 1277; Mr. U.
Townsend.

“ 9. There seems to be a doubt as to how the sale by the Bankruptcy Court of the interest of a tenant from year to year in his holding affects the rights of the landlord.

Mr. T. Lefroy, q.c., 34 to 54, 195; Mr. J. Hamilton, 336; Mr. Bence Jones, 527, 528, Mr. F. Adair, 1018 to 1021; Mr. O'Connor Morris, 538, 539, 573; Mr. Hugh Boyle, 698, 699, 730; Mr. J. Morland, 1201, 1202; Mr. Justice Morris, 1400 to 1406; Mr. Justice Fitzgerald, 1503.

“ 10. Many of the witnesses, including three out of the five judges, and five out of the six chairmen of quarter sessions examined, concur in the expediency of a change in the administration of the Act, of one kind or other, to meet these difficulties, and various suggestions have been made.

“ 11. As to the constitution of the Court of First Instance, we found a great variety of opinion.

“ 12. Several suggestions have been made to us for an improved court.

Mr. Justice Lawson,
1777-1799; Mr. De
Moleyns, q.c., 2212;
Mr. Coffey, q.c., 2290.

“ (a.) A special circuit court to be created *ad hoc*.

“ (b.) A circuit court of First Instance for the hearing of cases exceeding a certain

tain sum in amount, with an appeal direct to the Court of Land Cases Reserved; being at the same time itself a court of appeal (instead of the going Judge of Assize), from the present chairman's court, in cases of less amount, such new court to consist of Judges of the Landed Estates Court, strengthened by the addition of a third Judge.

“(c.) A court consisting of three chairmen sitting together, and going a circuit in the counties to which they may severally belong.

“ 13. With regard to the appeal, it has been represented that owing to the limited time at the disposal of the Judges of Assize in each town, the appeals are liable to be hurried over. There is also a difference of opinion as to whether an appeal to the Court of Land Cases Reserved, should be at the discretion of a single Judge or of both the Judges of Assize.

“ 14. The question whether appeals should be as of right, or at the discretion of the Judge, has also engaged our attention; an appeal on an important point of law has been refused by the Lord Chief Justice of the Common Pleas.

“ 15. On the one hand, Mr. Justice Lawson, Mr. Justice Morris, Mr. de Moleyns, and Mr. Coffey, would give the power to the Chairman to state a case directly to the Court of Land Cases Reserved, and that either litigant should be entitled to claim the exercise of this power as of right. On the other hand, Mr. Justice Fitzgerald is of opinion that such a privilege would lead to frivolous and vexatious appeals.

“ 16. It has, however, been suggested that this danger might be met by making it imperative on the party appealing to give ample security for costs.

“ 17. All the witnesses examined, with hardly an exception, concurred in an opinion that it will be greatly for the advantage both of landlord and tenant that precedents should be established as rapidly as possible to guide both judges and chairman in this difficult matter. The Committee do not understand how this can be accomplished in cases submitted to the separate jurisdiction of 33 chairmen of quarter sessions, with a separate appeal to 12 judges, except by decisions on appeal to a superior court; the possible expense of this to the tenant has been urged as an objection. To obviate this the Committee suggests not that a rehearing of the case be allowed beyond the court of assize, but that it be the duty of the judge of assize to have the evidence before him taken down verbatim, and to transmit it in case of appeal to the court above.

“ 18. Another course has been suggested, viz., that on questions of law, the chairman should, at the instance of either litigant, state a case for the Court of Land Cases Reserved, without the intervention of an appeal to the going Judge of Assize.

“ 19. Numerous witnesses have expressed the opinion that this Court as at present constituted, consisting as it does of four Judges of the Court of Chancery and 12 Common Law Judges, is much too numerous and cumbersome, and that there is likely to be a want of individual responsibility in such a court. Some witnesses suggest a smaller court, consisting of five or six Judges, whilst others would prefer the Court of Appeal in Chancery, strengthened by the addition for this purpose of a Common Law Judge.

“ 20. In conclusion, the Committee recommends—

“ I. That in all cases either party may appeal, as of right, from the Judge of Assize to the Court above, with the restriction as to evidence above mentioned, on giving substantial security for costs.

“ II. That in all cases of eviction, the eviction and the consequent claim of the tenant, should be heard and decided on simultaneously by the same Court.

“ III. That as regards the Court of First Instance, where the claims do not exceed in amount 400*l.* or 500*l.*, the decision should be left, as at present, to the Chairman, and that all claims for a higher amount should be sent at once to the Judge of Assize.

“ 21. The Committee commend these several matters to the attention of the House in a future Session.”

Proposed DRAFT REPORT by the Lord O'Hagan:—

“ 1. The Committee, for the purpose of prosecuting their investigation as to the working of the Irish Land Act, have examined witnesses, including several members of the Judicial Bench of Ireland, several chairmen of quarter sessions in Ireland, several attorneys and solicitors who have been conversant with proceedings under the Act, and others who, from their position as occupants or managers of land in Ireland, were deemed to have special means of affording information as to the subject of inquiry.

“ 2. The Committee have also received returns furnished by the clerks of the peace in the various counties of Ireland, with reference to the number and the nature of cases under the Land Act, and the results of the decisions of the various tribunals before which they have been tried.

“3. A summary of these returns will be found in the Schedule attached to this Report.

“4. The Committee have not held themselves at liberty, under the terms of the reference to them, to consider, generally, the provisions of the Irish Land Act, with a view to suggestions for their modification or repeal. They have confined their attention to its practical working, and especially to the arrangement and action of the Courts of First Instance and Appeal.

“5. The objections taken to those Courts, as they exist under the Land Act, appear to be substantially as follows:—

“First. That the number of Chairmen of Counties, and the diversity of their judgments, render the primary tribunal unsatisfactory:—

“Second. That the appeal to the Judge of Assize is, also, unsatisfactory, and that there should be an absolute right of further appeal from his decision to the Court for Land Cases Reserved:—

“Third. That the constitution of the Court for Land Cases Reserved is itself unsatisfactory, from the number of its judges, and the occasional and irregular character of its sittings.

“6. The Committee have considered these objections, and they are of opinion that the weight of evidence is in favour of maintaining the present tribunal of First Instance, as being at once cheap and efficient, and securing the convenient trial of cases in the various localities, before judges who possess local knowledge and enjoy the general confidence of the community.

“7. As to the jurisdiction of the Judge of Assize, some objection has been raised to the exercise of his discretion in allowing or disallowing a further appeal, and it has been suggested that the suitor should have an absolute right to proceed to the Supreme Court. The Committee are not prepared to recommend this alteration in the law.

“No case has been made as to any imperfection or inefficiency in the Assize tribunal, and it has not been suggested that the rulings on circuit have not been satisfactory, and should all discretion be taken from the judge, and either party allowed to appeal at his own will, there would be danger, on the one side, of frivolous and vexatious proceedings,—if security for costs were not required;—and, on the other,—if it were—of denial of justice to a suitor unable to supply such security.

“8. As to the Court for Land Cases Reserved:—

“The Committee think that the time has not arrived for the consideration of the questions which have been mooted in respect to it. It has only ruled a single case. No one has said that that case was not heard properly and decided justly; and it seems impossible, under such circumstances,—before the Court has effectually begun that working which is the matter for inquiry, and in the absence of all experience justifying change,—to recommend the reform or the extinction of a tribunal so lately established by the Legislature, after the fullest deliberation.

“9. The only change which, with its present limited experience of the working of the Act, your Committee are in a position to recommend is, that the Chairman should be empowered, at his discretion, to reserve a case on matter of law directly for the Court of Land Cases Reserved.”

It is moved by the Earl of Belmore that the Draft Report proposed by the Earl of Belmore and the Viscount Lifford be now read.

An Amendment is moved by the Lord O'Hagan to leave out the words “the Earl of Belmore and the Viscount Lifford,” for the purpose of inserting the words “the Lord O'Hagan.”—Objected to.

On Question, That the words proposed to be left out stand part of the Resolution—

Contents.
Marquess of Salisbury.
Earl of Belmore.
Earl of Bandon.
Viscount Lifford.
Lord Digby.
Lord Brodrick.
Lord Silchester.
Lord Charlemont.
Lord Somerhill.
Lord Chelmsford.

Not Contents.
Earl of Portsmouth.
Earl of Kimberley.
Lord Steward.
Lord Wenlock.
Lord Lurgan.
Lord Meredyth.
Lord Greville.
Lord Kildare.
Lord O'Hagan.

(The Draft Report proposed by the Earl of Belmore and the Viscount Lifford is hereinafter referred to as Draft Report A, and that proposed by the Lord O'Hagan as Draft Report B.)

Paragraph 1, of Draft Report A., is read, and negatived.

Paragraph

Paragraph 1, of Draft Report B., is read and agreed to, with Amendments, and adopted as part of the Report.

Paragraph 2, of Draft Report A., is read, and postponed.

Paragraphs 2 and 3, of Draft Report B., are read, and agreed to, with Amendments, and the said paragraphs as amended are adopted as paragraph 2 of the Report.

Paragraph 2, of Draft Report A., is further considered, and amended.

It is then moved by the Earl of Kimberley, to leave out from the word "itself," in line 5, to the end of the paragraph. Objected to.

On Question, That the words proposed to be left out stand part of the paragraph :

Contents.	Not Contents.
Marquess of Salisbury	Earl of Portsmouth.
Earl of Belmore.	Earl of Kimberley.
Earl of Bandon.	Lord Steward.
Viscount Lifford.	Lord Charlemont.
Lord Digby.	Lord Wenlock.
Lord Brodrick.	Lord Lurgan.
Lord Silchester.	Lord Chelmsford.
Lord Somerhill.	Lord Meredyth.
	Lord Greville.
	Lord Kildare.
	Lord O'Hagan.

It is then moved by the Marquess of Salisbury, after the word "on," in line 5, to insert the words "certain obscurities."

An Amendment is thereupon moved by the Earl of Kimberley, to insert the word "alleged" after the word "certain," in the proposed Amendment. Objected to.

On Question, That the word "alleged" stand part of the Amendment :

Contents.	Not Contents.
Earl of Portsmouth.	Marquess of Salisbury.
Earl of Kimberley.	Earl of Bandon.
Lord Steward.	Viscount Lifford.
Lord Wenlock.	Lord Digby.
Lord Lurgan.	Lord Brodrick.
Lord Chelmsford.	Lord Silchester.
Lord Meredyth.	Lord Charlemont.
Lord Greville.	Lord Somerhill.
Lord Kildare.	
Lord O'Hagan.	

It is then moved by the Lord Chelmsford to insert after the word "itself," in line 5, the words "which are said to have interfered with its satisfactory working."—Agreed to.

Moved that this paragraph as amended be adopted as part of the Report.—Agreed to.

Paragraphs 3 and 4, Draft Report A., are read, and negatived.

Paragraph 4, Draft Report B., are agreed to, read, and negatived.

Paragraph 5, Draft Report B., is read, and amended, and adopted as part of the Report.

Paragraph 6, Draft Report B., is read, and amended.

It is then moved by the Lord Somerhill, after the words "upon the evidence before them," to insert the words, "and without further experience." The Amendment is negatived.

Paragraph 7, Draft Report B., is read, and amended.

It is then moved by the Marquess of Salisbury to leave out the word "not" from line 4.

Objected to.—On Question, That, the word proposed to be left out stand part of the paragraph :

Contents.	Not Contents
Earl of Portsmouth.	Marquess of Salisbury.
Earl of Kimberley.	Earl of Belmore.
Lord Steward.	Earl of Bandon.
Lord Wenlock.	Viscount Lifford.
Lord Lurgan.	Lord Digby.
Lord Meredyth.	Lord Silchester.
Lord Greville.	Lord Charlemont.
Lord O'Hagan.	Lord Somerhill.

The numbers being equal : Resolved in the negative.

It is then moved by the Marquess of Salisbury to insert after the word "law," in line 5, the following words: "but if such an alteration were adopted, it would be necessary to invest the Judge of Assize with power, at his discretion, to require security for costs."—Agreed to.

On Question, That the paragraph, as amended, stand part of the Report:

Contents.	Not Contents.
Marquess of Salisbury.	Earl of Portsmouth.
Earl of Belmore.	Earl of Kimberley.
Earl of Bandon.	Lord Steward.
Viscount Lifford.	Lord Wenlock.
Lord Digby.	Lord Lurgan.
Lord Silchester.	Lord Meredyth.
Lord Charlemont.	Lord Greville.
Lord Somerhill.	Lord O'Hagan.
Lord Chelmsford.	

Paragraph 8, of Draft Report B., is read, and amended, and adopted as part of the Report.

Paragraph 5, Draft Report A., is read.

It is moved by the Earl of Belmore to leave out the first line, and to insert the following words in lieu thereof: "Difficulties have arisen in the working of the Act on the following points."

Objected to.—On Question, That the words proposed to be inserted stand part of the paragraph:

Contents.	Not Contents.
Marquess of Salisbury.	Earl of Portsmouth.
Earl of Belmore.	Earl of Kimberley.
Earl of Bandon.	Lord Steward.
Viscount Lifford.	Lord Wenlock.
Lord Digby,	Lord Lurgan.
Lord Brodrick.	Lord Meredyth.
Lord Silchester.	Lord Greville.
Lord Charlemont.	Lord O'Hagan.
Lord Somerhill.	
Lord Chelmsford.	

Sub-section (a). It is moved by the Earl of Belmore to omit this Sub-section.

Objected to.—On Question,

Resolved in the negative.

The paragraph is further amended. Moved that the paragraph as amended stand part of the Report:

ted to.—On Question:

Contents.	Not Contents.
Marquess of Salisbury.	Earl of Portsmouth.
Earl of Belmore.	Earl of Kimberley.
Earl of Bandon.	Lord Steward.
Viscount Lifford.	Lord Wenlock.
Lord Digby.	Lord Lurgan.
Lord Brodrick.	Lord Meredyth.
Lord Silchester.	Lord Greville.
Lord Charlemont.	Lord O'Hagan.
Lord Chelmsford.	

Paragraphs 6 and 7, of Draft Report A., are read, and negatived.

Paragraph 8, of Draft Report A., is read.

On Question, That it stand part of the Report:

Contents.	Not Contents.
Marquess of Salisbury.	Earl of Portsmouth.
Earl of Belmore.	Earl of Kimberley.
Earl of Bandon.	Lord Steward.
Viscount Lifford.	Lord Wenlock.
Lord Digby.	Lord Lurgan.
Lord Brodrick.	Lord Chelmsford.
Lord Silchester.	Lord Meredyth.
Lord Charlemont.	Lord Greville.
Lord Somerhill.	Lord O'Hagan.

The numbers being equal: Resolved in the negative.

Paragraphs

Paragraphs 9 to 19 inclusive, of Draft Report A., are read, and negatived.

Paragraph 9, of Draft Report B., is read, and amended.

Paragraph 20, of Draft Report A., is read, and amended.

Sub-section 1 is negatived.

It is moved that Sub-section 2, as amended, stand part of the Report. Objected to. On Question—

Contents.	Not Contents.
Earl of Belmore.	Marquess of Salisbury.
Earl of Bandon.	Earl of Portsmouth.
Viscount Lifford.	Earl of Kimberley.
Lord Digby.	Lord Steward.
Lord Brodrick.	Lord Silchester.
Lord Charlemont.	Lord Wenlock.
Lord Somerhill.	Lord Lurgan.
	Lord Chelmsford.
	Lord Meredyth.
	Lord Greville.
	Lord O'Hagan.

It is moved that Sub-section 3 stand part of the paragraph. Objected to. On Question—

Contents.	Not Contents.
Earl of Belmore.	Marquess of Salisbury.
Earl of Bandon.	Earl of Portsmouth.
Lord Brodrick.	Earl of Kimberley.
	Viscount Lifford.
	Lord Steward.
	Lord Silchester.
	Lord Charlemont.
	Lord Somerhill.
	Lord Wenlock.
	Lord Lurgan.
	Lord Chelmsford.
	Lord Meredyth.
	Lord Greville.
	Lord O'Hagan.

It is moved by the Earl of Belmore to insert the following paragraphs in the Report :

As it is not improbable that the duties and jurisdiction of the chairmen of counties will shortly be necessarily extended, we think that when such a change is made, the objections which have been taken as to the danger of conflicting decisions, arising from the numbers of the chairmen, may be in some measure met by grouping certain counties together, and decreasing the numbers of the chairmen.

Should this be done, we would suggest that chairmen should cease to practise at the Bar, and that their salaries and status should be raised and equalised in a manner commensurate with the increased duties which would be cast upon them.

Objected to.—On Question, Resolved in the negative.

The Report, as agreed to, is read.

Ordered, That the Lord in the Chair do make the said Report to the House.

MINUTES OF EVIDENCE.

LIST OF WITNESSES.

Die Veneris, 14° Junii, 1872.

	PAGE.
Mr. Thomas Lefroy, q.c. - - - - -	3
Mr. Robert Johnston - - - - -	26
Mr. James Hamilton - - - - -	40

Die Martis, 18° Junii, 1872.

Mr. William Bence Jones - - - - -	53
Mr. William O'Connor Morris - - - - -	62
Mr. John Hancock - - - - -	77
Mr. Hugh Boyle - - - - -	83
Mr. Courtenay Newton - - - - -	89

Die Jovis, 20° Junii, 1872.

Mr. Charles Uniacke Townshend - - - - -	101
Mr. Samuel Frederick Adair - - - - -	112

Die Veneris, 21° Junii, 1872.

Mr. James Murland - - - - -	123
Major James Hamilton - - - - -	147
Right Hon. James Viscount Lifford - - - - -	153

Die Lunæ, 24° Junii, 1872.

Mr. Justice Morris - - - - -	155, 184
Mr. Justice Fitzgerald - - - - -	168, 185
Mr. Justice Barry - - - - -	179
Mr. Hugh Lane - - - - -	186
Mr. Robert Donnell - - - - -	189

Die Veneris, 28° Junii, 1872.

The Right Hon. James Henry Monahan - - - - -	193
The Right Hon. James Anthony Lawson - - - - -	208
Mr. John Dinnen - - - - -	215
Mr. Edward Gardner - - - - -	221

Die Mercurii, 10° Julii, 1872.

Mr. Michael Henry - - - - -	229
Rev. John Rogers - - - - -	237, 265
Mr. Thomas De Moleyns, q.c. - - - - -	250
Mr. James Charles Coffey, q.c. - - - - -	256
Mr. Samuel C. McElroy - - - - -	265

Die Veneris, 12° Julii, 1872.

Mr. Robert Donnell - - - - -	269, 290
Mr. James Johnston - - - - -	277, 290
Mr. Robert Wilson - - - - -	286

Die Veneris, 14^o Junii 1872.

P R E S E N T :

Marquess of SALISBURY.	Lord CHARLEMONT.
Earl of PORTSMOUTH.	Lord SILCHESTER.
Earl of BELMORE.	Lord WENLOCK.
Earl of BANDON.	Lord LURGAN.
Earl of KIMBERLEY.	Lord CHELMSFORD.
Earl of DARTREY.	Lord MEREDYTH.
Viscount LIFFORD.	Lord GREVILLE.
LORD STEWARD.	Lord KILDARE.
Lord DIGBY.	Lord SOMERHILL.
Lord BRODRICK.	

THE LORD CHELMSFORD, IN THE CHAIR.

MR. THOMAS LEFROY, q.c., having been called in, is Examined, as follows :

1. *Chairman.*] You are Chairman of Magistrates for the County of Kildare, Mr. T. Lefroy, q.c. are you not ?

Yes.

14th June 1872.

2. And a judge of the Civil Bill Court ?

Yes.

3. How long have you been judge of the Civil Bill Court ?

Nearly 14 years.

4. Under the Irish Land Act the judges of the Civil Bill Court decide all questions that arise between landlord and tenant with regard to compensation, and otherwise, do they not ?

Yes.

5. Has there been any meeting of the judges of the Civil Bill Court to lay down any rules for their guidance before they administer this particular branch of their duty ?

No; the Act of Parliament gave power to the common law judges to make rules, and those rules are made of equal effect with the Act itself; but I presume that your Lordship's question refers to rules governing us in the administration of the Act. There was no meeting of the judges of the Civil Bill Courts for this purpose.

6. Have any rules been laid down by the judges for the guidance of the Civil Bill Court ?

There are rules for their proceedings under the Land Act.

7. I suppose those are merely rules of procedure ?

Yes.

8. But nothing to direct the judgment of the Civil Bill Court on any question of right between landlord and tenant ?

Nothing whatever; we have but one guide in the way of precedent in the decision made by the Court for Land Cases Reserved in the case of *Holt v. Lord Harburton*, which occurred in my county; that was the largest claim in amount, and the case was most important, as involving several points with regard

Mr. T. Lefroy, q.c. to the construction of the Act, which created some difficulty; such as the interpretation of "predecessor in title," and the *terminus a quo*, from which improvements were to be taken into account, and other matters. That case came on at the first Land session after the Act was passed, and the claim was to register improvements amounting to 8,166*l.* The tenant appealed from my decision to the judges of assize, and they affirmed it; it was then taken to the Land Court where 11 judges sat, and they unanimously affirmed the decision; that, therefore, is conclusive, of course, on the several matters that were there decided; but that is the only thing in the way of precedent that we, as yet, have had.

14th June 1872.

9. How did that case get to the Land Court?

It is a court framed under this Act of Parliament as a final court of appeal.

10. For instance, in the county, and in the county of the city of Dublin, the appeal is, in the first place, to the going judges of assize?

It is to one of the going judges of assize, and he has the power of calling in the second judge.

11. It is to the going judges of assize, but one judge may determine it; is that not so?

In point of fact, in the appeal I allude to, one of the judges of assize sat in the first instance, and, on being requested, he called in the other judge with regard to the important matters of law.

12. By the 24th section of the Act of 1870, it is recited that "any person aggrieved by any order of the chairman made under this Act may, within the prescribed time, and in the prescribed manner, appeal therefrom in manner following: (1.) Where such order has been made in the county, or the county of the city of Dublin, to two judges of the superior courts of common law to be from time to time selected by the Court for Land Cases Reserved; (2.) Where such order has been made elsewhere, to the judges of assize of the county in which such order has been made; and every such appeal may be heard and determined by one of the said judges?"

Yes.

13. "But in case any question of law shall arise upon any such appeal, the judge before whom such question arises may, if he thinks fit, require that the same shall be heard and determined by both the said judges, and thereupon such question shall be heard and determined by both the said judges?"

Precisely.

14. Now, has the decision in that case been followed by the chairmen of sessions?

I am not aware of any case upon the 6th section of the Act of Parliament that has since occurred; that was a claim for registration of improvements. I am not aware that any case has arisen, but of course that precedent would be implicitly followed by any of my brethren.

15. What were the questions which you consider were decided in that case, as that might be a guide to other decisions?

I have the report here; it is a very long one. The tenant furnished a schedule of improvements, stating his claim with regard to the value of each item; that schedule amounted to 8,166*l.* One of the questions raised was whether, under the 6th section of the Act of Parliament, the cost or the value of the improvements was to be gone into at that time, or whether the Legislature did not mean it should be a registration of the improvements made, so as afterwards whenever compensation was claimed to settle the question between the parties as to what were the improvements, and who made those improvements. The decision which I came to, and that the Land Court affirmed, was that the improvements should be registered, but not their cost or value inquired into. The expense of a trial of that kind, if you were to go into the value, would be so very great that it is most desirable to avoid it; and it would be utterly useless in ascertaining the amount that would be ultimately given to the tenant, because the value would be modified whenever compensation came to be claimed by the provisions of the 4th and 5th sections of the Act. I may, perhaps, be allowed to give an illustration of what I mean from

from that very case. The witnesses upon a case of that kind must always be of an expensive class, land valuers and architects. The expenses of that case came to 350 *l.* on the one side, and 400 *l.* on the other. The shorthand writer's notes of the evidence alone came to 20 guineas; and if I had been called upon to award costs, according to the rules laid down, I could only give about 5 *l.* It seemed to me, my Lord, that upon a fair construction of the 6th section, all that might be avoided, until the time when ultimately the compensation came to be claimed by the tenant, for the same expense would then have to be incurred again. That was one of the points decided.

Mr. T. Lefroy, *q.c.*
14th June 1872.

16. You say that if you had been called upon to award costs, you could not have given more than 5 *l.* according to the rules laid down; rules laid down by whom?

I refer to the schedule of costs framed by the judges.

17. How was it that that case went at once to the Land Court, and did not go to the going judges of assize?

It did. It went to the judge of assize, and the Lord Chief Justice in the first instance heard it, and then called in Baron Fitzgerald; they expressed their concurrence in the decision, but reserved the case on account of its importance, and the large amount of the claim for the judges of the Land Court.

18. They stated a case for the Land Court, in fact?

Yes. The next question that was decided there was, what the meaning of the words "predecessor in title" was. The land had been held since 1844 under a lease for 21 years, and a life concurrent, and the tenant claimed not only the improvements made under that lease, but the improvements made by an ancestor of his under a former lease, he having in the meantime taken out this new lease, consisting of additional lands, and at a different rent, and the question then was, whether the improvements that were made under the previous lease should be taken into account, or whether the "predecessors in title" did not mean those who preceded him in the title to the holding under the existing lease. I decided that it was the latter, and that the improvements could not be taken into account that were made under the previous lease. In that instance the injustice that would arise from any other decision was remarkably shown, because it appeared that Lord Harburton had, in consequence of the house that was built on the old farm, given the new farm at about, as well as I now recollect, a rent of 318 *l.* 10 *s.*, while Mr. Brassington, one of the most eminent valuers in Ireland, swore that the land alone, irrespective of the house and offices, was worth 525 *l.* a year, so that if that house had been taken into account which was the thing in consideration of which the lease at the lower rent was given, the tenant who had already enjoyed the lease for about 30 years at a very reduced rent, and as the life in being was a young man of about 30, might probably still enjoy it as much longer, he would in the end be getting compensation for the value of the house, although the Act of Parliament, as I dare say your Lordship is aware, expressly states that if improvements were made in consideration of any agreement, compensation should not be given.

19. That was your judgment, and it was affirmed in that respect?

Yes; it was affirmed unanimously by the eleven judges.

20. Now according to your statement, very nice and difficult questions must constantly arise under the administration of this Act, and you have found that out, I dare say.

They must, constantly.

21. Have you had any cases before you in which there has been a claim not under the Ulster tenant-right custom, but under a custom similar to that?

I am not aware of there being any such custom in my county.

22. Not Ulster tenant-right custom, but any custom attaching upon a particular holding?

I never had a case of that kind, and I do not believe the custom prevails; it does in some parts of Ireland, or a somewhat similar custom.

23. You have had claims, of course, for compensation for disturbance of possession,

Mr. T. Lejroy, Q.C. possession, and questions with regard to the number of years' purchase which should be given under the circumstances?

14th June 1872.

Yes.

24. Have you found that the claims in respect of compensation by tenants have been of rather an extravagant description?

I am bound to say exceedingly so, having regard to what, upon the evidence, I felt it my duty afterwards to allow. There have been cases of 250*l.* and 150*l.* claimed, when I have allowed 45*l.* and 20*l.*; but I am bound to say on that, I think our great difficulty arises from the language used in the 3rd section. If your Lordships will turn to that section, you will see that is the section which governs every case of compensation for disturbance, except where it comes within the Ulster tenant-right, or some custom similar to that. Your Lordships will find that when a tenant is disturbed in his holding by the act of his landlord, "he shall be entitled to such compensation for the loss which the court shall find to be sustained by him by reason of quitting his holding, to be paid by the landlord as the court may think just," so that the sum awarded does not exceed the scale fixed.

25. No claim shall exceed the sum of 250*l.*?

Yes. But though there are minor elements by which to measure the loss, which are obvious; such as the cost and expensé to a tenant of moving from one holding to another, or the cost and trouble he is put to in getting another holding in the district that would suit his family; yet I am sure that your Lordships will feel those are very minor considerations by which to estimate what the Legislature means by the loss which the tenants sustain. Looking at it as a lawyer, one would say that the obvious meaning was the value of the interest. But that is so exceedingly prejudicial in its social results that one hesitates to think that that could have been what was intended, because if that was the measure we were to take, the hard landlord, who had kept up his rent to the uttermost, would be the man who would have little or nothing to pay in compensation; and the tenant, who had been holding under a very high rent, would get little or nothing when he was turned out; whereas, in the case of a man who let his land at a moderate rent, and a tenant who had been only paying a moderate rent, he would get a very large sum in compensation. That is one of the great difficulties in administering the Act, and one which makes it impossible to get anything like uniformity of decision. There is such vagueness in the way in which the Legislature in this section have expressed what they meant as a guide to the Court.

26. You have had cases of that kind before you on several occasions, I suppose?

I have had cases of this kind, but I am happy to say that in Kildare disputes between landlord and tenant are very rare, and some cases have been entered in my court, but not brought forward; they have been settled.

27. Now in cases of that kind has the value been estimated according to the valuation of rateable property in Ireland, or has there been evidence given with regard to the actual, or supposed value, according to the opinion of the witnesses called?

Witnesses come forward, and, I am sorry to say, give the most contradictory evidence with regard to value; in some instances the most extravagant value is put on the holdings.

28. Generally speaking, the estimate is not of a very moderate description, I suppose?

No; your Lordships can hardly have any idea of the length to which that goes. There are wretched holdings, a cabin, and two or three acres, on which a value is put which would appear incredible.

29. You are, perhaps, not able to tell us whether in some cases the tenant is allowed to claim under a custom; whether under the Ulster tenant-right, or otherwise, and at the same time to claim compensation for disturbance in the outset?

A tenant may be put to his election; but I cannot conceive that he should be allowed to claim in both ways.

30. No; but what I mean is that he may prefer a double claim at first, and then

then as things may turn out, he may adopt the most favourable, and relinquish the other?

Yes, I believe it has been held that he may prefer a double claim, and then elect.

Mr. T. Lefroy, Q.C.

14th June 1872.

31. In the one case if the party thinks he has a claim under the custom, and also a claim for compensation for disturbance, some of the judges allow him to put a double claim in, and to proceed ultimately on the one or the other of them; is not that so?

Yes, so I believe.

32. But in other cases the Judge of the Civil Bill Court requires the tenant to choose between the two claims at once?

I have heard that; but really the cases that have been decided have been so mis-stated, and mis-reported, that I do not like to speak of what has been done in other counties; but I have heard that different decisions have been come to on this point.

33. Lord *Lurgan*.] But you have had no personal experience yourself on that point?

None whatever.

34. *Chairman*.] I am now going to put a question, which may be considered almost personal; do you think the Judge of the Civil Bill Court the best tribunal for carrying out this Land Act?

I have no hesitation in saying that a number of my brethren would be exceedingly glad to get rid of that jurisdiction. We remonstrated against it before the Act was passed. There was a deputation from our body to London. We expressed to Mr. Chichester Fortescue our opinion that it should not be given to our courts, that it would probably prejudice the very great confidence which, I am happy to say, the public seem to have in the court, and we thought it would be better to give it to the judges of assize. I also feel that if the object is as quickly as possible to secure uniformity, it must be obvious to every one that 33 men deciding such questions as arise upon the Land Act without being in concert is not a plan likely to bring about uniformity as quickly as if there were certain judges appointed who would in the first instance decide in every county; but while I say that, I cannot conceal from your Lordships that there are practical difficulties that appear to me to result from giving this jurisdiction to any other court, unless the ejectments are also taken with it.

35. Will you be kind enough to state your reasons for that opinion?

It appears to me that one of the great defects in the working of the Act, as it now stands, is, that a tenant is allowed to keep in his sleeve those extravagant claims until after the ejectment process is all gone through, and the eviction completed; he then comes forward as a martyr, homeless and houseless, with an extravagant claim, bringing up witnesses who have sympathies with him, to give such an extravagant valuation that it is almost impossible for any court to deal fairly with the case. Now I think that the claim should always be heard with the ejectment; and I would suggest that the tenant, when served with a notice to quit, should within one month, or some reasonable time, serve his claim; it would then be heard as a kind of equitable defence. In one case before me in Kildare, which was the case of a small holder who had bought under the Landed Estates Court, I think he would have been glad to settle the case if it had been heard with the ejectment; and if he had known I was about to allow the sum I there gave, he would rather have kept the tenant than pay the compensation. In that case I could have avoided the heartburning arising from the eviction.

36. That does not touch the constitution of the tribunal, but merely the mode of procedure?

It seems to me to affect the question of the tribunal, for if the land claims be given to another tribunal I think the ejectments should be given to the same tribunal. Your Lordships know that nine-tenths of the ejectments in Ireland now come within the jurisdiction of the chairmen. We have jurisdiction up to 100 *l.*, and the rents are generally small, and of course, therefore, if the land claims only were to be transferred to another jurisdiction, the ejectment would have been heard by a different court; but I do not see any difficulty in trans-

Mr. T. Lefroy, *q.c.* ferring the ejectment jurisdiction to the court that would be constituted for hearing land claims.
14th June 1872.

37. Do you consider that it is desirable that the decision in those cases under the Land Act should be given to another tribunal?

I would either say that, or I may mention a thought which has occurred to me as an alternative, which is this; that if it was thought inadvisable on account of increasing the expense of ejectments to transfer them from our court, then the chairmen might sit in batches of three to hear land claims. It would be a great pleasure and assistance to any one judge to be able to communicate with his brethren on the subject, and that plan would give 11 tribunals instead of 33.

38. That would only make this difference, that the proportion would probably be 11 to 1, instead of 33 to 1, with regard to the discordance of opinion complained of?

Yes; but whatever may be done as to the primary tribunal, it would be a very great improvement, in my opinion, to have the appeal made direct to the Land Court.

39. Lord *Digby*.] That is to say, to the Court of Land Session?
To the Court for Land Cases Reserved.

40. *Chairman*.] You propose that the appeal should go at once to the Land Court?

Yes, to the Land Court.

41. Supposing the present tribunal is continued, and the judge of the Civil Bill Court still had the decision in those questions, do you think it desirable that the appeal should at once go to the Landed Estate Court?

Not to the Landed Estates Court, but to the Court for Land Cases Reserved.

42. Lord *Digby*.] You suggest that for the sake of uniformity, I suppose?

Yes, for the sake of uniformity; of course it is not that I in the least doubt the judges of assize being a most competent tribunal, but I am looking at the time given for hearing Civil Bill Court appeals at the assizes; the time is necessarily short, and the records are considered the most important thing, and altogether I do not think it is a tribunal calculated for having the questions discussed as fully as they might be; and it also causes a delay, because it is only an intermediate appeal which will seldom be accepted as final.

43. *Chairman*.] It introduces another element of disturbance, because there are 12 judges who may decide differently at the same time, are there not?

Yes.

44. Lord *Somerhill*.] Would you propose to limit the amount as to which such an appeal should be granted, or would you grant it as of right?

The appeal is usually on a matter of law, and that would not entail the expenses of witnesses going to Dublin. One of the hardships of the Act of Parliament as it now stands, and the rules, is this: the Legislature says that the proceedings shall be analogous to Civil Bill appeals. Now no man can appeal to a judge of assize if it is only a matter with regard to a 5*l.* note, without entering into a recognisance to prosecute his appeal and pay the costs; but here the tenant can take the landlord from the chairman's court to the judge of assize, and then to the Land Court, and not enter into any recognisance to prosecute the appeal or to pay costs.

45. *Chairman*.] I suppose he cannot take it to the Land Court unless the judge, whoever he may be, states a case?

Just so.

46. And that he may do or withhold at pleasure, may he not?

Yes, but either party can go to the judges of assize as of right; and I think that the discretion in the judges of assize, or in any court, as to allowing an appeal, would be very important to do away with, for it causes great dissatisfaction. A party is always dissatisfied when he feels that there is not a right of appeal; and there is at this moment pending in the Land Court a case in which there is a prevalent opinion that a very important question was not reserved, and the party certainly would have had it reserved if a right of appeal had been given; that always causes dissatisfaction, not only in the tribunal, but in the administration of the law.

47. Lord

47. Lord *Brodrick*.] So that practically the decision of the judges of assize is final, unless in his discretion he gives a case to go elsewhere?

Mr. *T. Lefroy*, *q.c.*

14th June 1872.

Yes.

48. Viscount *Lifford*.] You say, I think, that supposing you retain the present tribunal of the judge of the Civil Bill Court, but give an appeal direct to the Land Court, you would allow that appeal only in cases of law, and not in matters of amount?

Not in matters of fact. Your Lordships see that the amount of compensation is very much mixed up with matters of law. The practical working of the thing would be this, I think; that the question of law upon which the compensation would depend would be referred to the Land Court. The chairman would adjourn the decision of the case until that question of law was decided, and in 99 cases out of 100 there would be no occasion to appeal, nor would the parties care to appeal with regard to matters of fact.

49. But still, with regard to the matter of amount, according to what you propose, the chairman of quarter sessions would be the only judge, and without appeal?

He would in some instances; but, as I say, he would be governed in the amount which he would give by the decisions and the principles of law, as in the case I alluded to. Suppose it was held that the Ulster tenant-right did not apply to the case of a lease, that would be mere matter of law; it would not be the tenant's claim that would be of any consequence; the claim would be nil when the point of law was decided. I do not think that it is on matters of fact that the difference between parties arises.

50. *Chairman*.] I suppose you have had no case before you of the claim of a tenant under a custom?

None.

51. But have you had this case, a case where a tenant held under a lease which was granted before the passing of the Act, and the lease has expired, and he has claimed for disturbance of possession?

No, I do not think I have.

52. Marquess of *Salisbury*.] If you took away the intermediate appeal to the Court of Assize on matters of fact, would you not reserve a power similar to what there is in England, of moving the court above for a new trial, in consequence of the decision being contrary to the evidence?

That might be done, or there might be, on the mere matter of fact, an appeal to the judges of assize, but practically the questions of law arising out of the Land Act will be the important matter of appeal.

53. If you left it to the decision of a single judge cases might arise, though they would be no doubt highly exceptional, in which partiality might be imputed to the judge?

Yes.

54. Therefore it would be desirable, would it not, to have some tribunal behind to whom the claimant could appeal?

No doubt that would be desirable, but practically the difficulty is with regard to the matter of law. The truth is that in the various sections of the Act about improvements and compensation, the inherent difficulty is in the ambiguity of the language used. The result of this is that instead of administering a well-defined law, whatever the tribunal may be, it has to go on making law. As Lord Justice Christian said, in his very able judgment, the chairmen are constituted deputy legislators. Each chairman construes the law according to the best of his judgment, and the ambiguity is such that it is difficult for the Court of Appeal to say which construction contravenes or carries out the intention of the Act of Parliament.

55. Is there any communication between the chairman in difficult cases?

We have had meetings of the body as to questions arising under our civil bill jurisdiction, but I think we have never had a meeting on the Land Act yet.

56. Do you practise?

Yes.

Mr. T. Lefroy, Q.C.
 14th June 1872.

57. Is it commonly the case that the chairmen practise ?

Yes.

58. Do they ever practise in land cases ?

No, I think not. I have never done so.

59. Have you ever heard of its being done ?

There is no rule forbidding it.

60. It would be quite possible, then, that a chairman should appear before his brother chairmen in another court on a land question ?

No.

61. Would it be possible that he should appear before a judge of assize in a land case, not a case that he had heard himself, but on a land case ?

There is no rule against it.

62. He might be arguing one week before a judge of assize a case exactly analogous to that which the week after he would have to decide as a judge himself ?

I do not believe that any chairman would do that, but there is nothing to prevent it.

63. *Chairman.*] A judge of the Civil Bill Court cannot practise in his own county, can he ?

No ; I think it is the invariable rule with the chairmen that they not only would not practise in their own county, but they would not take briefs from any solicitors practising in their courts.

64. But still there is nothing whatever to prevent their practising under the Land Act in any other county with regard to questions which may arise before a judge of assize, and arguing the questions before him ?

I think not.

65. Which questions at some time may come before himself ?

Yes.

66. *Marquess of Salisbury.*] You think that the possibility to some extent diminishes the fitness of the tribunal as it at present exists, though it is in theory rather than in practice ?

In theory.

67. Does not any possibility of that nature lay a tribunal open to a suspicion which, however unjust, must diminish its efficiency ?

The general feeling is that we should be delighted to get rid of the jurisdiction, because it tends to diminish the confidence of the public in the general business of our court, which is exceedingly extensive, and sometimes of great difficulty, and it is important that we should maintain their confidence.

68. *Lord Steward.*] I understand you to say that you have frequently claims put in, amounting to 300 *l.* or 400 *l.*, which you have reduced to sums like 20 *l.* or 40 *l.* ?

Not frequently ; I have had one case, in which the claim, I think, was 250 *l.*, and I gave, I think, 40 *l.* ; another claim was about 160 *l.*, and I think I gave 17 *l.*

69. Is not your decision limited to a certain amount, according to the rent that the tenant pays ?

Yes, according to the value.

70. *Marquess of Salisbury.*] That is not the case in Ulster ?

No.

71. You have had no Ulster cases ?

No.

72. *Lord Steward.*] Then in decisions of that kind, was the diminution caused by the landlord having taken advantage of the equities clause, and claimed for deterioration of the property, or other injury done to it ?

Partly by that and partly by the exaggerated value claimed for disturbance and improvements ; the cases I have referred to were claims for improvements, and for disturbance of possession.

73. The tenant claims for the improvement as well as for the disturbance?
Yes, the tenant claims for the improvements as well as for the disturbance.

Mr. T. Lefroy, Q.C.

14th June 1872.

74. Then the landlord puts in his set-off?

The landlord puts in his set-off for the deterioration of the land:

75. Taking it generally in the cases that come before you, do you think that the landlord has generally put in a fair claim for deterioration of property?

I think so. I wish it to be understood distinctly, that in the county of Kildare there are very few disputes, and the cases which I have had have been chiefly, except that one of Holt and Lord Harburton, cases between middlemen or small proprietors who have bought in the Landed Estates Court, and tenants who have small holdings of a few acres.

76. *Chairman.*] Of course, upon questions of fact it is very difficult to lay down any general rule; but supposing that two or three judges were appointed, instead of the barrister of the Civil Bill Court, to decide originally those questions of fact, would it not be likely that they would have a kind of rule for themselves, which would govern them better, at all events, than is now done by leaving it at large to the different judges of the Civil Bill Court without communication with each other. Take the case where the judges have the power of awarding discretionary punishment; we find that the judges differ very much; but one particular judge has a kind of a rule in his own mind which governs him in each case; and that might be, perhaps, the result of appointing two or three standing judges for the purpose of deciding those questions originally under the Land Act?

Yes, I think so; that would give a tendency to create uniformity more rapidly.

77. *Marquess of Salisbury.*] You would, I suppose, combine with that the question of ejectment, and put both before those three judges?

It is very important that whatever tribunal has the trial of land claims, should also have the trial of ejectments. I am sure that would prevent, in many cases, the heartburning arising from eviction, and it would have a tendency to prevent the extravagant claims that are put in. In many cases, for instance, if the tenant was obliged to serve his claim within a month or three months of the notice to quit, probably the whole thing would be settled before the ejectment came on, and if it was not settled, the chairman, or whatever Court tried the case, could say, "Here is a fair claim for a certain amount, you had better settle it." I believe that would be done in many cases.

78. *Lord Somerhill.*] You allude to ejectments by notice to quit, but not for non-payment of rent?

In the latter case he does not obtain compensation for disturbance.

79. *Lord Steward.*] But he may still put in a claim for improvements, may he not?

Yes; and even in that case it would be important that the matter should be tried with the ejectment, for it saves the costs of a second trial involving the same subject-matter.

80. *Lord Lurgan.*] You say that it is the general opinion of your brother chairmen that they would like to be rid of this jurisdiction?

I know that a good many of our body would.

81. But I do not understand you to convey at all that that is the general wish of the people of Ireland?

No, certainly not. I believe they would rather the thing was left with the chairmen.

82. *Chairman.*] Whom do you mean by "the people;" do you mean the whole of the people, or a particular class of them?

I think the tenantry would prefer it.

83. *Lord Lurgan.*] I meant by "the people," the country generally, landlords and tenants, and all people who are interested in the proper administration of the land law?

I have no means of judging. I have said what we ourselves would like; we would be very glad to get rid of the land claims, and if the suggestion I have

Mr. *T. Lefroy, Q.C.* made as to transferring the ejections be adopted, it would be better to give the jurisdiction to three judges who would go round Ireland, and decide in all cases.
 14th June 1872.

84. Lord *Somerhill.*] Have you reason to think that that is the general opinion of the bar of Ireland; you probably know that it has been talked of a good deal in the hall of the Four Courts; is it your opinion that it is the general view of the bar that a separate court, apart from the chairman, would be better?

I could hardly say that, because I think there is a very great difference of opinion in the profession.

85. Lord *Charlemont.*] Do you wish the Committee distinctly to understand that the working of the Act of Parliament is unsatisfactory at present in certain respects?

I think the working of the Act is unsatisfactory, not from the tribunal, which has the working of it, but from the difficulties which any tribunal would have to encounter until decisions have been made which would settle the construction to be put on the Act. There are difficulties affecting the tenants as well as the landlords. I will take the 4th section, which is the most important in the whole Act, for securing to the tenant compensation for his improvements. In Sub-section E., it says that the tenant shall not have compensation "In respect of any improvement made either before or after the passing of this Act, which the landlord has undertaken to make, except in cases where the landlord has failed to perform his undertaking within a reasonable time." That word "undertaking" is perfectly vague; it does not enable the tenant to bind his landlord; it is not an agreement in writing on which he could have a remedy by action. He may be delayed by a verbal undertaking of the landlord from making improvements, yet if the landlord does not make them the tenant may have no remedy, while if he makes them himself, he would be perfectly uncertain whether under that section he would get compensation.

86. Lord *Bandon.*] There are 33 chairmen in Ireland, the 33rd being made from the County of Cork being divided; are you aware that the County of Cork is very unequally divided; that one chairman has 1,200 *l.* a year, and the other 800 *l.*, and that very great inconvenience is felt from the constant changing of chairmen in the Western Riding of the County?

I am not aware of that.

87. Earl of *Belmore.*] You have stated that in the event of such a court of three judges being appointed, you would allow an appeal to the court on the matter of law reserved?

My reason for this is that an appeal on matters of fact would entail such an expense on the tenantry that it would not be advisable.

88. Is it not the case that now there is an appeal on the questions of fact and amount to the judges of assize, as well as on the questions of law?

Yes, the whole case is open to appeal.

89. You would limit the right of appeal in the event of the creation of a new court, would you?

That does not necessarily follow, because there might be an appeal on matters of fact to the judges of assize, and an appeal on questions of law only to the Landed Court. The appeal on the matter of fact would, perhaps, never be tried. Practically, the case would go on a point of law to the Land Court. The chairman would have adjourned the decision until it came back, and then he would decide without appeal, I think; but if they wished it, it would go to the judges of assize.

90. *Chairman.*] But if there were those two or three primary judges you would never allow an appeal from them to the judges of assize, would you?

I think not.

91. Earl of *Belmore.*] You would take away that intermediate court of appeal?

Yes. At the same time the practical difficulty must not be overlooked, that if you allow from the local tribunal, whatever it is, an appeal only to the Landed Court, and give that appeal on matter of fact, it would be almost a denial of justice

justice to the tenants in some cases, because the expense would be so great that they could not take their witnesses up; but this might be obviated by the evidence before the chairman being sent in writing to the court of appeal.

Mr. T. Lefroy, *q.c.*
14th June 1872.

92. Lord *Somerhill*.] That would amount to a rehearing of the case, would it not?

Yes; that would amount to a rehearing of the case, but I fear it would be so expensive as in small cases to be a denial of justice.

93. Earl of *Belmore*.] Did I understand you to say that in the case of Holt and Lord Harburton, costs to the amount of 300 *l.* and 400 *l.* respectively were actually incurred, or that they would have been incurred had you allowed the question of value to be gone into before you?

I mean the costs were actually incurred; but there, as the parties had incurred the expense of bringing down all the witnesses, I went into the question of value at their request, so as to raise the point on appeal. I had a letter since I came to town from the solicitor of the defendant, and he said his costs were not actually taxed, but he believed that they would amount to 350 *l.*, and the solicitor of the landlord stated that his costs would amount to 400 *l.*; that included the appeal, of course.

94. Lord *Somerhill*.] Will you be kind enough to explain to the Committee in that case what were the points, if any, that were in doubt, and which are now clearly decided?

One of them was what is meant by the words "predecessors in title," in the 6th Section of the Act. The words are, "Any landlord or tenant who may be desirous of preserving evidence of any improvements made by himself or by his predecessors in title before or after the passing of this Act, may at any time (subject to the conditions hereinafter contained) file a schedule in the Landed Estates Court, specifying such improvements, and claiming the same as made by himself or his predecessors in title."

95. You mean whether you could go behind a new lease?

Yes; whether you could go behind the lease under which the tenant holds the land in respect of which the claim is made. Another point, as I have already stated, was whether the Court which was to register the improvements should receive evidence with regard to the cost and value of those improvements, or whether the object was not to register the improvements, so that as a matter of fact, there should be always forthcoming evidence by whom they were made, and what they were; leaving it to the Court that would hereafter have to decide the amount of compensation, to go into the question of value. The importance of that is, that it would render the cost of registering improvements in future very inexpensive; you would merely have a claim setting forth what they were, and by whom made; but if before registering the improvements the Court is to go into the question of value, the costs in cases of that kind must always run up to a very great amount. Valuers and architects are allowed 5*l.* 5*s.* a day.

96. You mean the valuation expenses before the registry?

I mean the expense of bringing witnesses of that class to prove the value.

97. Of course ultimately the condition of the improvements must be the great test for the judges?

Yes; and the term for which the tenant has enjoyed the benefit of the improvements before he is disturbed. In that very case there was 540 *l.* odd claimed for making fences; I am now speaking in round numbers. Yet although that large sum was claimed, if the lease were to last a few years longer, there could not be any compensation given, for the time of enjoyment would, under the earlier sections of the Act, deprive the tenant of his right to compensation, so that all the evidence as to the value of those fences would have been utterly useless; and that was one of the grounds of my decision, namely, that it was putting the parties to an enormous expense for no use.

98. The point was that the improvements were not to be estimated previously to the registry, but that there should be merely a statement of what the improvements were?

Yes, a schedule of the improvements.

Mr. T. Lefroy, Q.C.
14th June 1872.

99. Then there is the other point, and perhaps the most material one, of going behind the lease; there were two points before you in that case, were there not?

There were several points; one was that of improvements by predecessors in title, the other was the *terminus a quo* from which the account of improvements should be taken, and the third was whether the cost and value of the improvements should be gone into before registering the schedule.

100. In considering the point of the predecessors in title, the question being whether the tenant or his family, or any other tenant, before the lease, was to be considered the predecessor in title, did they, in any case, allow that the improvements before the lease were made by the predecessors in title?

The Land Court, affirming my decision, held that all the improvements made by the tenant, or his predecessors in title, from the time of the lease under which he was then holding, were to be taken into account, but not improvements under the old lease.

101. Was that ruled throughout the whole case?

Yes, throughout the whole case; the injustice would be great if it were otherwise. This is, I think, plainly shown in the report of the case which is published in the "Irish Law Times" for April 1871; but it would occupy too much time to enter into the subject now.

102. Did it appear, in the course of the trial, that Lord Harburton, the tenant and the landlord, had had any contention whatever previously to this?

Not that I am aware of. I am bound to say the tenant admitted that his rent was most reasonable; that Lord Harburton's conduct, at all times to him and the other tenants on the estate was most kind and liberal.

103. It was suggested to him to put in this claim, I suppose?

I cannot say, but I fear much litigation will arise out of these claims for improvements, unless the Act be amended so as to give a safeguard against fraudulent claims. I know of a landlord who had agreed with a tenant who paid about 1,500*l.* a year rent to make extensive improvements, and the landlord was to allow five per cent. on the outlay. The improvements were in progress when this Act passed, and when the agent offered to pay the five per cent., the tenant's answer was, "Oh, no; I would rather take my chance of the Land Act." Again, in another instance, where there was a converse case, the landlord had agreed to make some improvements to the amount of about 500*l.* The tenant was to be charged four per cent., and the plans were actually made and much expense incurred by the landlord when the tenant said, "I would rather now make the improvements myself."

104. Lord *Somerhill*.] Did any litigation arise out of those cases?

No; those are only cases I have heard of very lately.

105. I suppose you have got a copy of the judgment in the superior court in Holt and Lord Harburton?

I do not think that it is published yet.

106. The publication called "The Irish Jurist" has ceased to appear, has it not?

Yes; it is the "Irish Law Times" that reports those cases now.

107. That is considered authority, I suppose; does it give those judgments *in extenso*?

Yes; when they are on important cases.

108. Lord *Longford*.] Is there any such record of all the decisions of the law courts, both local courts and courts of appeal, that all the chairmen and judges, and even the public who are concerned in such matters, can easily ascertain the practice?

The "Irish Law Times" reports almost all the cases, at least those of any importance.

109. What is the rule for the appointment of a deputy if the chairman cannot attend?

The Chancellor has the right of appointing a substitute.

110. Does that frequently occur?

No, very seldom: two or three of the chairmen may have been ill.

111. But it may happen that besides the 33 regular chairmen there are others who may be employed in giving decisions?

Mr. T. Lefroy, q.c.

14th June 1872.

Yes, that has happened.

112. How long would a non-effective chairman (if I may use the expression) be allowed to hold office, or one who has been permanently ill; has that occurred?

No.

113. Lord *Somerhill*.] Do you happen to be at all familiar with the case of Austin and Scott?

I think that was a case in which a question arose with regard to the Ulster tenant right applied to a lease. Mr. Scott died, and in consequence of his death the appeal was not heard.

114. Was there not a case arising on evidence of this kind (which I find stated in the "Law Times"): "The evidence of the present tenant on the estate was admitted to prove the custom on which the holding was held; but this evidence may be rebutted by showing the usage of the estate to be different from the usage of the surrounding estates of the district;" now is there any decision ruling the law on that point that you are aware of?

No, I think not.

115. That is to say how far the usage of surrounding estates is to be applied to an estate that has in itself a different usage?

I know that there is not any decision of the final court on the point.

116. Is not that a very important point in some parts of Ireland, though not so much in Kildare?

Very.

117. Lord *Charlemont*.] You said that that case of Austin and Scott fell through in consequence of the death of Mr. Scott?

Yes, it was going to be heard, and it fell through in consequence of the death of Mr. Scott.

118. Are you aware of any other case of that kind which went to a superior court?

No.

119. That was the only case of the kind, and it fell through?

Yes.

120. And it was not decided on account of the death of Scott?

No, I am not aware of any other case, and I may say that there has not been one.

121. Viscount *Lifford*.] You mentioned the increased expense which arose to the tenant principally from the change of tribunal; would there be much increased expense if there were judges appointed to go to each county twice a year, instead of those judges of the Civil Bill Court trying the cases?

There would be no increased expense in that; but it was with regard to giving an appeal from that tribunal to the Land Court with regard to matters of fact, that I spoke.

122. You only mean to say that you would not give an appeal from those three judges appointed to go through Ireland with regard to matters of fact?

I put the difficulty of it; inasmuch as it would look like a denial of justice to the tenants of small holdings.

123. You would still continue an appeal under all circumstances from the first tribunal?

I would have an appeal from the first tribunal, whatever it was, direct to the Land Court.

124. Lord *Somerhill*.] You mean by right?

By right undoubtedly.

125. *Chairman*.] In the case of Holt and Lord Harburton has the registration taken place?

(136.)

Mr. T. Lefroy, Q.C.
14th June 1872.

There have not been rules made with regard to the registering of the schedules in the Landed Estates Court; and I understand from the solicitor it is not actually complete up to this hour; but that cannot affect the decision one way or the other. The solicitor states that he brought the charge to be registered, and the officers of that court found that there were no rules, and they refused to register it at that time.

126. It will be registered?

Yes, certainly.

127. As against Lord Harburton?

Yes, certainly.

128. Was his contention that it should not be registered against him?

Lord Harburton filed a notice disputing the claim as required by the Act, and on the trial the different points which I have mentioned were raised.

129. And he refused to consent to any registration?

It was never put to Lord Harburton in that way; it came on before me as a dispute between landlord and tenant, in which all those matters were put in issue.

130. Lord *Meredyth*.] There was no disturbance in that case?

No, and there probably may not be for 30 years to come, as the *cestui quo vie* in the lease is still a young man.

131. Do you approve of that power given in the Act of Parliament, to make those preliminary claims, or would it be better to wait to make them until the disturbance took place?

One of the greatest defects in the Act is the not giving more facilities for the registry of improvements, and not requiring the tenant to give notice of the improvements. At present the tenants come forward 10 or 15 years after the improvements have been made; the claims are sometimes for improvements made without the landlord having had any previous notice, or any means of testing the mode of executing those improvements, or ascertaining the cost of them. Now it appears to me that, both for the landlord and the tenant, the Act framed by Baron Deasy (who is one of our ablest Judges), I mean 23 & 24 Vict. c. 153, would have afforded a most valuable precedent for the framers of the present Act. There a tenant, if he was about to make improvements, was bound to give notice to the landlord; in that case a landlord would have the opportunity of making the improvements at his own cost, or at all events seeing that the improvements were properly made, and ascertaining at the time the cost of those improvements. If this were provided for, it appears to me that the section for registering improvements would be a most valuable one. If the landlord had the power of calling on the tenant to furnish a schedule of the improvements he was about to make, their value would be probably settled between them, without any dispute in the court, and prevent extravagant claims afterwards; if it was not settled the Chairman would have the power of deciding what was reasonable at a time when all interested would have a knowledge of the facts.

132. Might not that registration take place though the claim need not be brought forward until the disturbance had taken place?

I do not mean that the claim should ever be paid until the disturbance takes place, but I would have the improvements registered when they are made, and while there are means of knowing whether the improvements are well or ill done, and the real cost of them.

133. Lord *Greville*.] Would you propose to make that compulsory on every tenant?

With regard to all past improvements I would give power to the landlord to call on the tenant to furnish a schedule of them at once.

134. That is to say although the claim might not arise?

According to my suggestion, the claim for compensation could not arise until disturbance takes place.

135. You would compel every tenant who had a claim for improvements to register

register it, or else he should be debarred from making any claim when his tenancy terminated? Mr. T. Lefroy, *q.c.*

Yes, certainly; in that very case of Holt and Lord Harburton, conceive the difficulty the Court was put in by the claim being brought forward several years afterwards; 200 *l.* was claimed for a herd's house; one witness swore that 200 *l.* was the value of it, and the tenant himself in cross-examination admitted that the house cost 75 *l.* All that would be put an end to if there was a claim made at the time, when all the parties would have the power of knowing whether it was the real cost of the improvements made or not.

14th June 1872. •

136. Might not it cause a good deal of ill-feeling if it was made compulsory to come forward at once and make those claims, though those claims might never arise?

I cannot see that it would cause ill-feeling; on the contrary, if they were *bonâ fide* improvements, and the tenant was honestly inclined, I should say he would be very glad if his landlord said, "Let me know what improvements you have made, that your claim may be registered, and you may have the benefit of it when put out of your holding." I believe the great mass of landlords in Ireland would be quite willing to pay for *bonâ fide* improvements when taking up a farm; but it is a very different thing when a claim for improvements is put in at the end of, perhaps, 20 years, without the means of knowing anything of their real cost or value.

137. But is the landlord compelled under this Act to pay for any improvements unless he disturbs the tenants?

No; but when the landlord is entitled to resume the possession of his land why is he to be bound to pay three or four times what the improvements cost, or to pay for improvements that were not of any value? I am sorry to say the effect has already been to my own knowledge on some estates where the landlord formerly gave timber and slates for the improvement of the tenants, that the whole thing is at an end now. The landlords feel that the result would be to make a bill against themselves in 15 or 20 years hence, when they will have no means of knowing what has been the real cost; perhaps by roofing an old house at the expense of 10 *l.* or 12 *l.* they would put on themselves a bill of 100 *l.* for a house not worth 20 *l.*

138. Lord Somerhill.] Are the Committee to understand that the information you have now given extends beyond the county of Kildare, or do you confine it to that county?

The amendments I have ventured to suggest in the Act with reference to the registry of improvements have no special relation to the county of Kildare; they apply to other parts of Ireland as well as Kildare. I may add that the working of Baron Deasy's Act by a clause allowing the landlord to refuse the liberty of making improvements was impeded. I think the tenants should have an absolute right to make improvements suitable to the holding.

139. Lord Steward.] I understood you to say that you thought all tenants should be forced to give notice to the landlord previous to making improvements, so that they might be registered?

With regard to all past improvements, I would give the landlord power to require the tenant to furnish a schedule, stating what improvements had been made, and the cost or value; and, with regard to all future improvements, I would require the tenant to serve notice on the landlord, specifying the improvements about to be made, and the estimated cost. If this were done few cases would ever come before the court at all; it would facilitate tenants in making *bonâ fide* improvements, and encourage the landlords to give aid.

140. Looking to the large number of very small tenants there are in Ireland, would it not act very hardly on them to force them to go to the county town to register a small improvement; that would cost two or three pounds perhaps?

What I said was that they should give to the landlord a schedule, specifying what improvements they claim.

141. And for future improvements in the same way?

Yes; for future improvements he would say to the landlord, "I want to build a herd's house; the estimated cost is so much;" or, "I want to drain three acres of

Mr. T. Lefroy, Q.C.
14th June 1872.

of land, and the estimated cost is so much." The landlord and tenant would in most cases agree on the fair cost, and when the improvement is made it would be registered in court. There would be no expense except, perhaps, a fee of 1 s. to the registrar, and it would remain on record when the time for compensation arrives.

142. Supposing the case of an absentee landlord, or an estate under the court, how is a tenant to find his landlord ?

The agent is always at hand, at least on rent-days, and the tenant would have the power of serving the claim on the agent.

143. Suppose the landlord to say that he does not wish to lay out anything on his property ?

Then it is no hardship on the landlord that the tenant should be allowed to make the improvements, and should be able to obtain compensation at the end of his tenure.

144. Lord *Somerhill*.] Would you not give the landlord a prohibitory power as to any proposed "improvement," which he himself thought a nuisance ?

The 70th section of the Act provides that the improvements must be suitable to the holding, and such as will add to its letting value.

145. But you are now proposing to make a register, are you not ?

Yes ; that would, of course, only apply to such improvements as were suitable to the farm.

146. Lord *Steward*.] Then the tenant would be forced to go to the county town to register a small improvement, and the cost of his journey might be greater than the cost of the improvement, might it not ?

The journies cost them next to nothing ; they come with their own farm horse, or they walk in to the sessions.

147. Earl of *Belmore*.] Did I understand you to mean, when you said you would have the tenants serve the landlord with an estimate of the improvement, that you would have the landlord bound to accept that amount, or did you mean to say that at the end of 20 years, or 25 years in case of dispute, the landlord should or should not be at liberty to take into account the probable exhaustion of those improvements ?

In all cases when compensation for improvements is claimed, the time of enjoying those improvements should be taken into account. I think that is one of the matters that requires altering in this Act of Parliament ; the section as at present only applies to the past ; it should apply, in common justice, to all future tenancies, and all future improvements. I refer to the last paragraph of clause 4, "Where a tenant has made any improvements before the passing of this Act on a holding held by him under a tenancy existing at the time of the passing thereof, the Court in awarding compensation to such tenant in respect of such improvements shall in reduction of the claim of the tenant, take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made." There is no reason in justice why that should not apply to future tenancies and future improvements. Why should not a tenant whose tenancy or lease was created after the passing of the Act of Parliament, be liable to deduction from his compensation for the term for which he had enjoyment of the improvements, as well as tenants before the passing of the Act ? In England a tenant considers he has had the benefit of drainage and other improvements, if he is in possession of a farm for 21, or a less number of years : It would be only just to apply this provision to future tenancies and future improvements as well as the past.

148. According to the present law, and in case of future improvements, although at the time the landlord resumes possession, the whole of the improvements may be exhausted, and possibly the house may be pulled down, he would still be liable to the tenant for the amount he might have spent during the period of the lease or tenure, would he not ?

No.

No. I think if there were no improvements in existence at the time it would defeat his title to compensation. The improvements must be such as to increase the letting value of the land when compensation is claimed.

Mr. T. Lefroy, *q.c.*

14th June 1872.

149. Lord *Meredyth*.] Without going back on the question of registering, which is a very difficult one, do you approve of the present provision of the law by which landlord and tenant are brought, so to say, in collision, as in the case of Lord Harburton, before the disturbance takes place?

I think the registry of improvements according to the decision of the Court of Final Appeal will in future be a very inexpensive process, and I think it is most desirable for the landlord and tenant that there should be a registry of them.

150. Yes; it is desirable that there should be that behind, so to speak, but that the two parties should not be brought into collision before the disturbance takes place; that is my point?

I hardly know how to answer that question; it comes to this, if the tenant's be a fair claim for improvements, and the landlord be a fair man, they will not be brought into collision; but if there is not a fair claim, or if the landlord unreasonably refuse to allow the claim to be registered, I think it is right they should be brought into court.

151. Viscount *Lifford*.] In a paragraph of the 2nd section of the Act, there is a passage to this effect: "Where the landlord has purchased or acquired, or shall hereafter purchase or acquire from the tenant the benefit of such usage as aforesaid to which his holding is subject, such holding shall thenceforth cease to be subject to such usage." That was a clause introduced, as most of us know, on account of a Member of this House who had very largely purchased under the Ulster tenant-right. Now is it your opinion that that clause protects the landlord who has purchased a tenant-right.

I think that clause is materially and unjustly affected by another clause in the Act, namely, the 7th clause. Your Lordships are aware that the 3rd section governs compensation for disturbance in all cases that are not subject to the Ulster tenant-right custom; and that section makes it impossible for the chairman to give more than 250 *l.*; but the 7th section is indefinite, and allows the tenant to obtain in another way an unlimited amount, just as the Ulster tenant can get it in the shape of Ulster tenant-right. I think that section not only deprives the Ulster landlord of the protection which it was intended to give him in the 2nd section, but I am very much afraid that after a time it will introduce into the rest of Ireland all the evils of the tenant-right of Ulster, and in this way: in many cases a tenant dying makes his will, and charges the farm with perhaps five times its whole value for his children. One of them is, perhaps, a clever fellow, a cattle dealer, who has got some money together, and he says to his brothers, "I will pay all your portions if you let me have the land." He pays five or ten times the value (there is no limit in the 7th section of the Act); it is money paid by the incoming tenant, and he can claim that afterwards under the 7th section; though that same man could not get, if disturbed, under the 3rd section, anything more than 250 *l.* That is the case with regard to landlords generally throughout Ireland.

152. Lord *Steward*.] Have you noticed these words, "with the express or implied consent of the landlord or his agent"?

In my opinion "implied consent" is utterly worthless. If it were an express consent in writing, it would be reasonable; but the decisions which have been made from time to time as to what is implied consent, render these words utterly worthless as a safeguard to the landlord. The tenant would come forward and say that he had once shown his father's will to the landlord, and that the landlord or the agent knew that he got this farm by giving those portions to his brothers, and that would be taken to be implied consent. That section will, I believe, ultimately introduce an evil as great as the Ulster tenant-right into the rest of Ireland. It also takes away the protection that was intended to be given by the section that Lord Lifford alludes to, because though, when the landlord has purchased the Ulster tenant-right, the holding cannot be again subjected to it, this 7th section would subject the Ulster landlord to an unlimited amount of compensation in a new shape.

Mr. T. Lefroy, q.c.
14th June 1872.

153. Viscount *Lifford*.] Take the case of a man who is a tenant from year to year, with ten children; he dies without making any will, or arrangement of any kind; what becomes of the farm?

That is a matter as to which the Land Act has created most serious difficulty in the management of Irish estates, and it can only be remedied by some power to enforce the raising of a personal representative. Heretofore if a tenant died, and the family agreed among themselves which should be the tenant, if the landlord accepted him he got the farm, and if they would not agree possession of the land could be resumed on notice to quit; but now, when the Legislature have created a saleable right of the interest, it is a very different thing indeed. The tenant dies, and the landlord does not know who to take. If he takes any one of the sons, and afterwards another comes back from America and becomes administrator, the question at once arises who shall get the compensation, and the landlord is involved in litigation. I know it will be said that we have the power of raising an administrator *ad litem*, and so we have, under the 59th section of the Act, but there are great difficulties in construing that section, and for this reason. Your Lordships know that under similar powers in previous Acts it has been held that those powers cannot be exercised against the consent of the party, so that if the party refuses, the Court cannot force upon him this administration. Again, it has been held in other cases that the Court will not exercise that power where money is to be paid to the party. But the chief object here would be to authorise the landlord to pay the party having this limited administration. I believe it is in contemplation to give to county courts the power of administering in cases of small property. That will be most valuable to meet this difficulty, and from the want of this power in Ireland the revenue is defrauded of very large sums. Small farmers will not take out administration or prove the will now on account of the trouble and expense, and therefore a very large sum of money is lost to the revenue; whereas if power was given to the county courts to grant administration, the revenue would obtain a benefit, and the landlord would be safe.

154. *Chairman*.] To grant administration to whom?
To some one to be named by the Court or landlord.

155. That is to say, to be themselves administrators?
No; in general the poor tenants now object, because the expense is very great; but if there was power in the county court of giving the administration, then I do not think they would object.

156. Lord *Somerhill*.] In that case you would set aside the influence, not to say the power, of the landlord in this matter. Would not that lead to a subdivision of the land, contrary to the tenor of the Act, which is to protect the landlord from subdivision?

I think not.

157. In the case of a man now dying intestate, the property, whatever it is, is divided among all his children, and he generally has four or five; when you come to divide a farm of 15 acres, with one house upon it, among four or five, would it not be a terrible thing for the court to administer, or appoint one man to do it? How would you do that with the law settling the devolution of the children's property?

Before this Act of Parliament was passed there was no difficulty, because if the tenant's family did not agree, the landlord had nothing to do but give notice to quit; but now he does this at the peril of an extravagant claim for compensation, and for alleged improvements, of the cost or value of which he knows nothing.

158. No doubt; and in that way also the family come very badly off, because, supposing the compensation, disturbance, and all to amount to 100 *l.*, and this poor family of young people have got 100 *l.* among them, the landlord gets the land, and they are turned out; but I apprehend that no Land Bill could materially alter that. How do you contemplate that any properly-called Land Act could be so devised as to remedy that?

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I am afraid it would be very difficult. A land Act could hardly be framed that would give more than a limited administration; and, with the decisions that have been come to on limited administration, it is difficult to say that such is of any use; but the want of this power to give full administration in Ireland comes before us continually in the county courts.

Mr. T. Lefroy, *q.c.*

14th June 1872.

159. It is practically one of the great difficulties in managing property, is it not?

Yes.

160. Especially where a widow or widower is left without a helpmate, and with a certain number of children in the house, and when they are left dependent on some wretched number of small holdings?

Yes; I have had cases before me in the county court where one strong fellow has got possession of the farm, and induced his brothers to compromise at a very shameful sum compared with what they were entitled to.

161. Viscount *Lifford*.] Will you be kind enough to look at the 8th section of the Act, and tell me what is your opinion on it?

That is about compensation in respect of away-going crops. I think the framers of this section seems to have overlooked the fact that in Ireland, as I believe in England too (but I know in Ireland), the custom was that the outgoing tenant only obtains a proportion of the away-going crops, but not the whole; in some instances he obtains three-fourths, in some cases two-thirds, and in some cases seven-eighths; but in every case the landlord or the incoming tenant has a portion of the away-going crop to compensate him for the rent of the ground which is under crop. This section says, that the outgoing tenant shall "be entitled to all his away-growing crops." The consequence is, that he gets the whole of the crop, while the section makes no provision for his paying the rent or taxes of the ground under drop. There was a striking instance of the injustice of that on Sir Charles Donville's estate, where it was market garden. Sir Charles Donville was forced to put out a tenant whose land had been sown with vegetables, being near Dublin, and the crop was worth some hundred pounds. The tenant insisted on having his whole crop under this section, instead of the portion to which, under the custom he could have been entitled, and yet paid no rent and no taxes for the occupation of the land.

162. *Chairman*.] You think that the section is deficient in not providing for the payment of rent or taxes by the tenant; but there seems nothing unreasonable in saying that he shall have the whole of the away-going crop, which is the custom in England?

Has he the whole?

163. Yes, or at least according to my recollection, that is generally, I believe, the custom of the country in England; it depends, of course, on the terms of the tenancy; it may be excluded by a particular agreement between the parties, but if there is no agreement then he is entitled to the whole of the away-going crops?

Certainly, in Ireland the custom was that he should get only a proportion of the away-going crop. Your Lordships will find that in books on Landlord and Tenant Law, Mr. Furlong's, and others.

164. *Lord Steward*.] Was it not the custom in Ireland that the outgoing tenant obtained two-thirds, and the incoming tenant obtained one-third for the trouble of reaping, and so on?

In some cases; but sometimes he got seven-eighths, and sometimes three-fourths.

165. The proportion given to the incoming tenant was in consideration of the labour and trouble of reaping the crop, and so on, was it not?

I should say it was also in consideration of the rent and taxes which he had to pay the landlord; the law does not recognise the land as in possession of the out-going tenant after the tenancy ends, so as to render him liable for rent, although it gives him the right to hold possession of the crop until the crop comes to maturity; therefore it would be quite reasonable that if he gets the whole crop under this section of the Act, he should pay rent and taxes, and

Mr. T. Lefroy, q.c. not that the incoming tenant should have it to pay, or that the landlord should lose the rent and taxes.

14th June 1872.

166. *Chairman*] Are you aware that in England the time is generally extended to a period to allow the out-going tenant to take away the crop?

Yes.

167. Is that the case in Ireland?

Yes; in fact, there it was reckoned as a continuation of the term, so far as it gave the tenant a right to have the crop in the land, until they came to maturity, but it would not be an extension to bind them to pay rent and taxes.

168. No, of course not; only for that purpose?

Just so.

169. *Viscount Lifford*.] Have you ever heard any doubts thrown on the fact that clauses 9, 10, 14, and 18 of the Act of 1870 applied to the Ulster tenant-right, clause 9 being "Limitation as to disturbance in holding;" clause 10, "Exception in case of lands required for labourers' cottages;" clause 14, "Securing the rights of fishing, shooting, and taking minerals, and so on;" and clause 18, being the equities clause. I say, have you ever heard any doubts thrown upon those applying to Ulster?

Well, my Lord, I hardly like, without more time for consideration, to give an opinion upon that matter; but it does not seem to me at this moment that sections 9, 10, or 14 should be limited in that way. One can conceive the application of section 13 to Ulster being doubted, because it begins, "Where the holding in respect to which compensation is claimed under section 3"——

170. I only want to know about the 14th section?

I do not see why that section should be supposed to be limited in that way.

171. The first clause of the Act says: "The Ulster custom shall be enforced in manner provided by this Act"; could the Ulster custom be enforced without those clauses being considered to apply to Ulster?

That would apply to the clauses regulating the proceedings in respect of claims, but it would appear to me a very unjust thing to shut out the Ulster tenants or landlords from the operation of these clauses; but as your Lordship has alluded to the first clause of the Act, perhaps I may suggest that it would tend greatly to quiet the feeling that has been created as to the operation of it, if there was a proviso introduced there which would confine it to what Lord Mansfield laid down as the law relating to local customs, viz that nothing should render legal——

172. Are you quoting Lord Mansfield's words?

No, I cannot profess to quote them, but I dare say Lord Chelmsford will remember that. Lord Mansfield said no custom which was contrary to, or inconsistent with the express contract, could prevail. It appears to me the great difficulty that has arisen in the working of this Act as to Ulster tenant-right is this, that these extravagant prices that were given by tenants before this Act was passed at all for the goodwill, were to a certain extent under the control of the landlord, but now by this section stepping in and making all these customs legal they become actually binding in law; and whether the contract was inconsistent or not, as for instance in the case of a lease where a tenant gets a lease and covenants to give up that land with all its improvements, and enters into specific covenants for that purpose, still under this section the tenant has been allowed to claim Ulster tenant-right; at least, I hear it has been so held by one chairman, and I have heard that Chief Justice Monahan expressed the same opinion, but it has not yet been decided by the Land Court.

173. *Lord Somerhill*.] Is there an appeal before the Land Court for it?

I think there is; I think that is one of the cases which is under appeal. If this section was regulated by a proviso, that nothing herein contained shall be deemed to render legal any usage or custom contrary to or inconsistent with the terms of the lease or contract under which the holding in respect of which compensation is claimed, has been or shall be taken by the tenant or his predecessors in title, it would seem to do what is just between the landlord and tenant, and it would be only a declaration of what the law really was before.

174. *Viscount*

174. Viscount *Lifford*.] Until this Act, nothing was passed by the Legislature in contravention of the opinion given by Lord Mansfield?

Mr. *T. Lefroy*, *q.c.*

14th June 1872.

I think not; not that I know of. The truth is, that before this Act was passed at all, ridiculous sums were given for the goodwill, but the landlords did not much mind, because the incoming tenant paid it. The tenant-right custom indirectly affected them, because the incoming tenant was impoverished, and had not capital for his farm; but now by this Act it is rendered legal, and the landlord is obliged, out of his own pocket, to pay as compensation a sum, which is at times more than the value of the fee simple. But as your Lordship was asking me about the 14th section, I wish to mention an important matter with respect to it; that section provides that "where the tenant of a holding, held under a tenancy from year to year, existing at the time of the passing of this Act, is evicted by the landlord by reason of the persistent exercise by such tenant of any right not necessary to the due cultivation of his holding, and from which such tenant is debarred by express or implied agreement with his landlord, such eviction shall not be deemed a disturbance of the tenant by the landlord." First, I would observe that in justice that should apply to future as well as to existing tenancies. At present it only relates to a tenancy from year to year existing at the time of the Act. But independent of this objection, there is great difficulty in understanding what is the "persistent exercise" by such tenant of the right. One would say that that ought to be the "exercise by such tenant after being warned in writing;" every one would know what was meant by that. But what is the "persistent exercise"? Is a tenant to go on three or four or five times, or to continue for one year or two years? And again, in the latter clause of the section it says, "such eviction shall not be deemed a disturbance of the tenant by the act of the landlord unless it shall be shown that the landlord is persisting in such eviction after such refusal has been withdrawn by the tenant." Suppose, now, a tenant has persistently refused to allow the landlord to exercise his right as to turbary or game; the landlord serves notice to quit and goes to a considerable expense; he is prepared to try the question at the sessions; the tenant comes up and says, "I will withdraw my refusal;" is the landlord to be left in the position then that if he goes on it is to be a disturbance, or ought it not to be put clearly that it is an exercise by the tenant after warning in writing? Surely that would prevent litigation, which is the paramount object between landlord and tenant. This clause should contain such a provision as there was in Baron Deasey's Act, which provided that all agricultural leases should imply certain covenants; if there was an implied agreement that in every yearly tenancy the landlord should have the exclusive right to the game, which is, in fact, the intention between the parties, then the difficulty would be obviated; but at present the fact is this, that both as to turbary and as to sporting, and in many cases as to timber, the landlord is utterly deprived of his right; for he knows that if he were to serve a notice to quit upon the tenant's refusing to allow him to exercise these rights, he would be subject to extravagant claims for disturbance and improvements.

175. *Chairman*.] You think the difficulty arises on the word "persistent," and also because there is nowhere provision made for proper notice or warning, which would conclude the tenant, or prevent his endeavouring to exercise that right?

Yes, my Lord; and, in fact, this section looks as if the tenant was recognised as having a joint right at all events with the landlord. It is given, as it were, to him to refuse liberty; whereas, it ought to be understood that every yearly tenancy implied an agreement that the landlord should have the exclusive right to the game and turbary, and there is no fair tenant that would not fall in with that; in fact, they have hitherto always acted upon that, and it is only since this Act has been passed, that yearly tenants ever thought of asserting a right to game or turbary, or ever denied the landlords' exclusive right to these privileges.

176. I do not know whether I have collected your opinion correctly, that the Civil Bill Court is not a satisfactory tribunal for the decision of these points, under the Land Act; nor is the mode of appeal provided a desirable one; is that the opinion which you desire to express?

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Mr. T. Lefroy, Q.C.

14th June 1872.

I think 33 different tribunals are not calculated to secure uniformity as quickly as one court constituted for the purpose would; and I think the system of appeal is vicious, in not going direct to the land court.

177. Lord *Salchester*.] You mentioned the 15th section as to town parks, and you mentioned a little while ago the ambiguity of expression in that section, where it says, "ordinarily termed town parks"; ordinarily termed by whom? does that mean that it would be a proper general description of the land, or that it must be actually described, and the spot marked out?

That is a question that may come at the sessions before me.

178. I am aware of a case in which it has been decided that land fulfilling all the other descriptions of a town park was not actually described on the Ordnance map as a town park, and the decision of the Court was that it was not a town park; do you consider that that is a decision that would be followed?

I can only say I should require some time to think before I should follow it.

179. Have you had any opportunity of noticing the demeanor of parties or spectators who attend the land session courts; have they shown noisy sympathy in either one direction or the other?

None whatever. There is nothing of the sort in Kildare.

180. Marquess of *Salisbury*.] May I ask whether in the 14th clause, which provides that no disturbance shall arise where a tenant is evicted for persistent exercise of a right not necessary to the cultivation of his holding, from which he is debarred by express or implied agreement, whether in that clause the words "implied agreement" are construed so as to exclude any agreement that would arise from the presumption created by continuous practice on the landlord's part?

I am not aware of any decision one way or the other, my Lord, upon that, but I am aware that the custom of the landlord to enjoy that right has been disputed by the tenant since this Act, and not before.

181. But there has no decision as yet been given which would exclude that custom from being considered as proving an implied agreement?

No; there has been no decision upon the subject.

182. Do I understand you to give any opinion as to what these words, "implied agreement" would cover?

I do not wish to do it. I am afraid it would be a very ineffectual safeguard, if that is what your Lordship means.

183. I understood you, at an earlier period of your examination, to say, with respect to these words, "implied assent" on the part of the landlord, the case of the Ulster custom would be taken to include an assent in which the landlord's cognisance of the transactions would not necessarily be implied?

I think your Lordship refers to what I said as to the 7th section.

184. It was with respect to the transference of the holding?

I do not mean to go so far as to say that without any knowledge at all, consent could be implied, but I mean that the landlord or the agent might have heard of the will, and never imagined that his having heard of the will, which left portions to the brothers and sisters, implied an assent on his part if he did not object. It would not be absolutely without his cognisance, but his cognisance would not, in his mind, imply any assent, when it might be construed to do so as a matter of law.

185. Then if mere cognisance created implied assent under the 7th section on the part of the landlord, would not mere cognisance create implied assent under the 14th section on the part of the tenant?

I think it might, my Lord; but there is just the difficulty that in either one case or the other it would be altogether subject to the opinion that might happen to be given by one judge or another before whom it came.

186. A great deal would depend upon the construction put on the word "implied" in those sections?

I think "implied" is objectionable in both sections from its vagueness.

187. The

187. The very fact of this vagueness would rather reinforce the considerations you have advanced in favour of transferring the jurisdiction to some uniform tribunal; the fact of its vagueness would, of course, give great facilities for different opinions on the part of 33 different tribunals?

Mr. T. Lefroy, Q.C.

14th June 1872.

Yes, but before any tribunal I think "implied" is vague, and tends to create difficulty.

188. You think the Legislature ought to have defined the word?

I think "express agreement," or "express consent," should be the words used.

189. *Lord Steward.*] Do you mean to convey that supposing a tenant was to leave his farm to his eldest son, and he at the same time left certain fortunes to all his other children, the payment of these fortunes by the eldest son might entitle the tenant on eviction to the repayment of all these fortunes by the landlord?

That is not what usually occurs, but rather this: the farmer dies, and leaves portions for his children, but without leaving the farm directly to one or another; but even in the case which your Lordship puts, I am not sure that the payment of those portions might not be construed by some chairmen as coming within the 7th section.

190. *Lord Somerhill.*] And found a claim afterwards to be recouped by the landlord for monies paid on coming into the farm?

Yes; I think the great difficulty arising from this section is in cases where a farmer has died without a will which would actually convey the legal interest in the farm; we continually find the wish is expressed that one of the sons should have the land, and that the rest should have portions; that is a case that very often arises of death-bed arrangement, without any will; then one of the brothers has made money, and he says, "Now I will pay all your portions, let me have the bit of land." I think that might be construed as money given for getting into his holding.

191. *The Earl of Bandon.*] This evil would be in a great measure remedied if there was an extension of the civil jurisdiction of the Civil Bill Court?

Yes, and that would also obviate the difficulties arising out of the section where there is no legal personal representative.

191.* In case of a vacancy of the chairmanship of a first-class county, is it a usual practice to appoint a barrister direct to that county, or to promote a barrister from a second class county?

I do not think there is any settled practice about it, it is quite uncertain.

192. Has it been the practice?

Latterly I think it has; but in many instances the barristers who have good practice prefer a second or third class county.

193. The practice of promoting has a tendency to take away a chairman from a county when he has just begun to understand his work?

No doubt.

194. *Lord Wenlock.*] You say you think the present tribunal an inefficient one. Have you turned your mind to any tribunal to be substituted for it?

I do not say it is an inefficient one.

195. You say it is not a satisfactory one?

Well, my Lord, I think a tribunal constituted for the purpose of carrying out the Land Act would be more likely to secure uniformity quickly; but whatever tribunal be fixed on as the primary Court, there should be an appeal to the Land Court; and whatever be adopted as the primary tribunal, I think the same tribunal ought to have the ejectments.

196. *Lord Somerhill.*] You do not mean that the tribunal should be fixed in locality, but that it should go on circuit?

Certainly, my Lord, whatever tribunal is constituted ought to be local in that sense, because otherwise it would be an injustice to the tenants, especially to the class of poor tenants that there are in Ireland.

The Witness is ordered to withdraw.

Mr. ROBERT JOHNSTON, is called in ; and Examined.

Mr. R. Johnston, 197. *Chairman.*] You are, I believe, Chairman of the county of Down?
Yes.

14th June 1872.

198. Have you had many cases before you under the Irish Land Act?
Yes ; I have got the return of the Clerk of the Peace, which contains, I think, about 43 or 44 cases.

199. Have you had cases where there has been a claim under the Ulster tenant right ?

I should say three-fourths of these 40 cases were cases under the Ulster tenant right.

200. And besides that, have you had other cases where there have been customs similar to the Ulster tenant right ?

No, none.

201. With regard to the claims of the Ulster tenant right, have you had cases in which a claim has been put forward, not only under the Ulster tenant right, but also for compensation for disturbance ?

Yes.

202. Was it your practice to allow those two claims to be put forward originally together, and then for the tenant to choose, as the proceedings went on, which of them he would rely upon ?

I will tell your Lordship exactly what my practice was. The tenant files the two claims, the one under the Ulster custom, and the other for disturbance under the 3rd section. The landlord then files what is called a dispute, denying generally both claims. Both parties of course are supposed to come prepared with their witnesses in the two cases ; as a matter of convenience, and for saving expense to the parties, I have permitted them in the first instance to go into the fact of whether there exists any and what custom upon the estate, before I oblige them to abandon the other, because the tenants seldom know what is the precise rule upon the estate, so many changes have been made immediately previous to the passing of the Land Act ; and then, having ascertained if there is any custom upon the estate, and what it is, I say, " Now you must choose whether you will proceed under this, or under the other." I understand that other chairmen, in the first instance, oblige them to abandon one and proceed with the other, but then they allow them to come in at subsequent sessions, if they fail upon that one, to file a new claim ; that entails additional expense, and brings the parties with their witnesses again. That is the conflict between us. Some chairmen hold with me, and others with those that I have referred to.

203. Have you had cases under the Ulster Tenant Right in which parties held under lease ?

I had, my Lord, one case.

204. And the lease being silent with regard to the right attaching upon the holding ?

Yes.

205. Have you, in several cases, allowed that tenant right after the expiration of the lease ?

In the case that came before me, I suggested to the parties to go on with the merits, and take a decree *pro forma* with regard to the law, the question having been decided by a superior court. No matter what my opinion might be on the subject, I was bound to follow that decision. They asked me to be allowed to argue the question, which I consented to ; but I, of course, followed the decision of Chief Justice Monahan. I have the case here. He said he was so clear upon the point that he would not reserve it for the Court of land cases. That was at the assizes at Londonderry.

206. Were there any other judges who concurred in that decision ?

I have heard, as a rumour, that the judges do not agree upon the subject.

207. Lord Somerhill.] In Tyrone, I believe, it has been ruled the other way ?
No ; I do not think it has ever been ruled the other way.

208. Not by chairmen ?

I am

I am not aware of any published authority.

209. Earl of *Kimberly*.] Tell us exactly what it is that has been ruled ?

This has been ruled : no matter for what time a lease may have lasted, at the termination of that lease, provided a tenant is willing to pay such increased rent as the landlord thinks proper to put upon that land, he is to get that land at that rent provided that he has not done any act contrary to the regulations of the estate, such as sub-dividing his farm, which is held, I believe, to be an extinguishment of the tenant right. In that he gets the land, and, of course, the moment he becomes a yearly tenant, if the rule of the estate be that he has a right to sell that tenant right, of course it occurs at the end of the lease, as it would at the termination of a yearly tenancy ; but it is accompanied by this, that in all these cases, and it is right to say that in the case decided by Chief Justice Monahan, he had evidence before him, as I had, whether on that estate there was any distinction made in tenants holding under leases, or tenants holding from year to year.

210. The last explanation you gave us was exactly what I wanted to elicit, namely, that regard must be had to the custom in the district or in the estate. When you just now said you were bound to follow the ruling of Chief Justice Monahan, is not that subject to the qualification that you were so bound, provided the circumstances were similar ?

Most undoubtedly.

211. I thought you seemed to say that it was an absolute requirement that in all cases where the lease terminated, the question of payment under the Ulster custom must be decided in the affirmative ?

No, not unless it is the usage. I have never in a very wide experience known an instance where a tenant was disturbed after the termination of the lease, if he was willing to pay the increased rent put upon it by the landlord and had not sub-divided the land. I think if your Lordships bear in mind, an amendment to that effect was proposed in the Committee of the House of Commons, and that amendment was rejected by a large majority. Mr. Fortescue stated that it was a notorious fact that tenant right accompanied a lease as it did a yearly tenancy.

212. The Marquess of *Salisbury*.] Do you allow those circumstances to influence you in coming to a decision as to what the custom is ?

Not unless the usage is proved.

213. You look to see what has been said by the Minister when passing the Bill ?

Oh no ; I only mentioned that in corroboration of what I have stated to be my own experience. In this case I went into evidence to satisfy myself of what the practice was, because landlords of course may have different rules on their own estates.

214. Do you form your decision in any degree from what you, by your previous personal experience, have known ?

Certainly not.

215. Nor what Mr. Fortescue may have stated in the House of Commons ?

Certainly not.

216. Earl of *Kimberley*.] I apprehend the actual effect of Chief Justice Monahan's decision is this, that the existence of a lease does not bar the claim of a tenant to compensation ?

If that be the custom.

217. Marquess of *Salisbury*.] Do you allow yourself to be guided in judging what the custom on the estate is by what is ascertained to be the custom on estates in other parts of the county ?

Certainly not.

218. And in taking evidence as to what is the practice on an estate, do you call the evidence of the landlord as well as the tenant ?

Most undoubtedly.

219. *Chairman*.] As to any other parts of the county, do you consider any custom which prevails in what can be called the district, and not any usage which may attach upon a particular holding ? With reference to this Ulster

Mr. R. Johnston. tenant right, do you consider what is the usage of the district, or do you
 14th June 1872. confine your consideration of the case to what attaches upon the particular holding ?

It is the usage of the estate I look to, where there is one. It sometimes occurs that the witnesses who are produced speak generally of the custom of the adjoining estates. It is often not very easy to get tenants upon the estate to come forward and give evidence against their landlords, particularly in my county. The tenantry and the landlords are on such good terms with each other that the tenantry are not disposed to come forward and prove a case ; but the tenants of an adjoining property come forward sometimes, and state what is the rule on the adjoining properties ; but then the landlord puts his witnesses up to show that that is not his rule, and that his rule is of a particular kind. That occurred on a late occasion in the county of Down, on the estate of Lord De Ros, who showed a distinct rule on his estate ; and the rule, I must say, I wish very much had been the general rule of the county, namely, limiting the tenant-right to 10 *l.* an acre, and confining it to the purchase by a tenant on the estate, if the tenant was willing to purchase.

220. I do not quite understand whether you come to the conclusion with regard to the usage attaching to the particular holding, or whether you consider the usages prevailing upon the estates in the neighbourhood ?

I look to the particular estate, not to the particular holding. That word, I apprehend, means land generally, the custom occurring upon a landlord's estate, that he may admit the tenant-right to exist upon his estate. But it might so happen the particular holding of that particular tenant might have never been sold, and therefore there can be no usage with regard to the particular holding ; but if the practice of the estate generally was to allow tenant right, I would certainly hold that it attached to that particular farm as it did to the others.

221. Marquess of *Salisbury.*] Supposing that the landlord had got rid of it on half his estate ?

If that is so, that would be excluded, as a matter of course.

222. But supposing the landlord had got rid of it on part of his estate, and on a portion of the rest it was shown that he had not, and there was a farm with respect to which no particular transaction had been shown, should you decide with reference to the half of the estate that had been liberated or with reference to the other half ?

That is a very difficult question. I should require that, certainly, to be argued. It would show, manifestly, that the landlord did intend to get rid of the tenant-right upon the estate, and that he had purchased up a good deal of it, and that there was still a portion of it not affected by what he had done. It is a difficult question to answer, and would require argument.

223. Lord *Somerville.*] Have you had your attention called to the case of Lord Ranfurly and Murphy, decided in Tyrone ? The tenant got compensation at the expiration of his term. Lord Ranfurly contended that it was at the expiration of the lease, and he took up the land, and that the tenant had no right to compensation, and he appealed, 45 *l.* having been awarded by the Chairman, and the Chairman's decision was reversed ?

I am not aware of that case.

224. It was the contrary of what was ruled by Chief Justice Monahan ?
 I certainly am not aware of that decision.

225. Lord *Belmore.*] Supposing the landlord converted a portion of his domain into a farm and allowed a tenant to become possessor of it without charging anything for the tenant-right ; supposing, at the end of 20 years, there was a disturbance, and on all the adjoining farms the landlord had recognised a right in the tenant to receive, on disturbance, 10 *l.* an acre, and the tenant of this particular farm which he had received without paying any bonus for it, claimed to be benefited by what he would call the custom of the estate, do you think, in such a case, according to your ordinary rule of practice, you would allow this claim ?

That question has never arisen before me, but I feel so convinced on it, that shall

I shall have no hesitation in giving your Lordships my opinion. I should have had no hesitation in deciding that he was not entitled to it; it was manifest it was not set in the ordinary way in which other land in the estate would be set. I would have no hesitation in holding that he was not entitled to any compensation for it.

Mr. R. Johnston.

14th June 1872.

226. Marquess of *Salisbury*.] Do I understand in ascertaining the value of an occupancy, you inquire what the value of it in the market is, or what the tenant paid for it?

I inquire what the current price is in the neighbourhood.

227. You do not inquire whether the tenant paid much or nothing?

That is not inquired into. The question entirely is what is the current price; it varies; sometimes decreases and sometimes increases, according to the landlord and the mode in which he sets his lands.

228. Do not you see that your decisions and the market must act and react upon each other, until at last the price must rise to a confiscatory level?

In the county of Down, we have not found the price rise at all. I have one of the most difficult counties of Ireland in which to administer this Act, because the price of tenant right goes up to a fabulous amount, but I have had no case from any of the leading proprietors of the county as yet; they appear to deal so liberally with their tenantry, that I do not think there is any controversy between them. I should feel very much embarrassed if such a case came before me. The Act binds me to legalise whatever existed at the time the Act came into force, and we find prices far beyond the value, and in some cases almost amounting to the value of the fee simple, are given on some of these large estates for tenant right; I should certainly feel a great difficulty to know what I was to do. Tenants will come forward and tell you, "It is not only the current price, but I am prepared to give that money for it now if I am accepted as tenant." In one case I refused to give 30 *l.* an acre. I said "I think it is a very hard case to put 30 *l.* an acre upon the land which the landlord wanted to retain himself; I cannot go beyond 20 *l.*, and you can appeal if you think proper." The landlord said he was perfectly satisfied, and that he had offered the tenant 18 *l.* an acre before he came into Court, but the tenant was dissatisfied.

229. You say that it is to be the market price not exceeding a maximum of 20 *l.* per acre?

I do not lay down that as a rule; I had very great doubts as to whether I had a right to limit it. There were tenants in Court at the time actually prepared to give more than I gave.

230. I suppose your decision laid down in one case would bind you for other cases?

That case arose under peculiar circumstances. The landlord had been exceedingly kind to the tenant, and had given him a very great number of privileges, and I thought the demand was a very exorbitant one. I took it on myself to give the decision I did, and I asked them to appeal against my ruling as I feel some doubts on the matter as to how far I was warranted in fixing that limit, knowing that an offer of a larger sum had been made.

231. Do you understand the Ulster tenant right to take cognisance of the kindnesses of the landlord to the tenants?

I think not. I went into all the circumstances of the case. I thought it a case of hardship. I wished to have a decision from a Superior Court, and they did not think proper to appeal.

232. *Chairman*.] Did you lay down your general principle on this subject in the case of Mr. Harrison in these words: "In estimating the value of tenant right on a farm of land, received evidence of what a tenant paid on coming in, or what he laid out in improvements during his occupancy; the only question being what would the farms sell for in the open market"?

I believe I did, but not in those words. I believe that to be the Ulster custom, where the right of sale is unlimited. I have never heard any controversy on that subject. I find by my note-book that in Mr. Harrison's case the mode in which I estimated the value was this: I heard the evidence of several witnesses for both the tenant and the landlord; two of them were land valuers, the one produced by the tenant and the other by the landlord; the former valued the

Mr. R. Johnston. tenant-right at 200 *l.*, the latter at 145 *l.* Looking upon them as independent witnesses who could not agree, I divided the difference between them, and gave a decree for 172 *l.* 10 *s.* The valuation of either was considerably under the valuation of the other witnesses for the tenant.

14th June 1872.

233. Marquess of *Salisbury.*] If you decide that whatever the farm sells for in the open market you will give to the tenant, the market will rise and rise, being certain of your enforcing its decisions?

I have not found that it has risen, because you will not find people ready to give those sums. If a party says, "It is worth so much," I require proof of people who are prepared to give it. I have had in almost every case evidence before me of persons ready to pay the money if they were accepted as tenants.

234. *Chairman.*] In giving compensation for disturbance, what is the greatest number of years' purchase which you will give?

Seven years' rent is the limit of my jurisdiction under that section, and I think I gave seven years.

235. I am speaking generally where there has not been a claim of tenant-right, but a claim for disturbance?

If your Lordship will look at the section, you will see I am limited to seven years' rent under the 3rd section.

236. Lord *Somerhill.*] In what cases have you heard of the good-will selling for 30 years' purchase or very nearly the value of the fee-simple?

Upon the estate of Lord Downshire.

237. Would you give that compensation in any case?

The case has never occurred. It is one of the great difficulties I feel in administering the law under that Act. With very few exceptions the contests have been between the minor, that is, the smaller, landlords and their tenantry. There are very few cases from the large estates. I confess I should be placed in great difficulty if the tenants on one of these large estates came forward, and, with the money in their pocket, offered to pay those sums for the tenant-right if accepted as tenants. My own impression is that I would refuse to go that length, and would leave it to the judge of assize to increase my decree if he thought proper.

238. If a chairman granted that sort of compensation, equal to a fee-simple of the land, would not this case very probably arise; that at the end of two years the tenant would be a ruined man, having borrowed a great deal of the money and worked out the land, and the landlord would be called upon to pay him back the fee-simple of his estate, perhaps more than the fee-simple would be worth, and have the land thrown upon his hands?

The landlord is not bound to pay anything, if he allows the tenant to sell his interest to another. It is only where the landlord resumes the land himself that he is obliged to pay under the Ulster custom.

239. If the land was reduced to this state, it is not probable that the tenant would get anything like the compensation he had given paid back to him. The landlord would have to get the tenant to take back the land?

No. If the tenant came in, having paid 30 *l.* per acre; and upon his going out, he could not get more than 5 *l.*, the landlord is not obliged to reimburse him what he paid.

240. But his estate is injured?

I have no hesitation in saying this exorbitant rate of purchase is very mischievous, and does a great deal of harm to both landlord and tenant. It would have been desirable that a limit had been put to it.

241. Earl of *Kimberley.*] May I ask you if you could tell us how many years' purchase has been paid for tenant-right on Lord Downshire's estate?

I have heard over 30.

242. Assuming that over 30 years' purchase has been paid, have the tenants been ruined.

No, they are very thriving; but they hold the lands at a very moderate rate.

243. Is not the possible explanation that the rent on Lord Downshire's estate is much below the market value?

I think so.

244. Earl of *Belmore*.] In answer to a question I put to you just now, you stated that in the case I put to you, where the tenant had come into possession of a farm from the landlord without any consideration, you would take that circumstance into your consideration, and not allow him, probably, any compensation, although the custom of the estate and the adjoining farms allowed the Ulster tenant right; how would you deal with that case, if you make it your universal rule that you will not receive evidence?

Mr. R. Johnston.

14th June 1872.

I think your Lordship misunderstood me; I spoke in reference to domain land to a farm; a portion of a domain set to a tenant.

245. I do not put the case to you as a portion of a domain set temporarily to a tenant, but as a case of severance of a portion of a domain, say by a railroad, in which the landlord has let this land to a tenant without receiving any consideration in the shape of bonus; in that case, if you allow the tenant, on disturbance, to claim what you call the market value, he will gain a considerable sum; if the landlord wishes to take the letting into his own hands he would have to pay a considerable sum as tenant right, when, on giving up the land to the tenant 20 years before, he received no consideration from the tenant?

No doubt.

246. Would not that be a hard case?

I think it would; there are hardships occurring under the Act, and we are placed in very great difficulties very often, but we must administer the law as we find it. That has been the usage, and if that is proved to be the usage, I do not see how I could get out of allowing it, though I might think it was an unfair claim.

247. Lord *Charlemont*.] I understood from you, at the expiration of a lease the tenant right, to a certain extent, survives in such a way that the landlord may have a power of raising the rent, according to the custom of his estate and the general custom of the country; but supposing the case occurred that the landlord either wishes to resume possession of the land at the expiration of a lease, or that he objects to continue that tenant, would you then give him tenant right?

Yes; if he objected to the tenant selling his interest to another, and the usage was proved. He might have a personal objection to the tenant.

248. No matter what the deviation of the lease was?

I beg to say, under the ruling of Chief Justice Monahan, I should consider myself bound, without expressing any opinion of my own.

249. Marquess of *Salisbury*.] Do you allow only one Ulster tenant right, or do you inquire what the nature of the right has been on each particular estate?

I inquire what the nature of the right has been on each estate.

250. Are there any estates where it is necessary, in order that the claim of the tenant shall be valid, that the price he has paid shall be approved by the landlord or his agent?

That question has not come before me, but I believe that rule exists upon some estates.

251. If you found it existing, you would recognise it?

Most undoubtedly.

252. Viscount *Lifford*.] In the case of a farm in which the tenant comes without paying anything adjoining the landlord's domain, you say that you would not give tenant right?

No; if I considered the landlord had set it having been a part of his domain, I would consider that a mere temporary occupancy until the landlord wished to resume it.

253. Supposing the landlord had many years ago given a lease of a portion of land adjoining the domain, and for which the tenant not only paid no tenant right, but on which he got a very large profit, and on the falling of the lease with a covenant for quiet surrender the landlord wished to take that farm adjoining his own domain into his hands, would you in that case give tenant right against the landlord?

Mr. *R. Johnston*.
14th June 1872.

I should go into the inquiry as to what the usage was on the estate. If the usage generally on the estate was to allow tenant right on the fall of a lease, I should not think that that case ought to be an exception.

254. Is a landlord to be punished because his ancestor gave a long unprofitable lease?

That may be one of the defects of the Act.

255. I am perfectly aware that you act entirely in conformity with the working of the Act?

I know very well the Act has worked mischief in some respects. It has done a great deal of good, and some harm.

256. Lord Downshire's estate is very low set, and as the inevitable result it has a very high tenant right. Now supposing Lord Downshire wants to take a farm into his own hands instead of setting up a tenant at an increased rent you would punish Lord Downshire for having set his land at that low rate, by giving a full amount of tenant right?

I have already said if a case from that estate came before me, I should not go to that length, but I would recommend decidedly an appeal; as I am not at all clear whether the Act does not bind me to give whatever was the usage. As in the case to which your Lordships have referred, I should not give the amount demanded, but I should certainly recommend an appeal.

257. *Chairman.*] "The only question being what would the farmer sell it for in the open market"?

I do not recollect using those words, but all I can say is this; perhaps no person has had the misfortune of being more frequently misrepresented and misreported in that county than I have; and I have frequently had occasion to disclaim sentiments attributed to me in the public papers.

258. I thought you had adopted the words. I put these very words to you, and I understood you to say "that that was what I said, and that was my decision"?

What I mean to say is, I would give the price I found was going in the neighbourhood, and that persons were ready to come forward and to give.

259. Or perhaps, to speak more correctly, to say that they were prepared to give?

Well no, unless they actually offered it, I think I would not receive their evidence; I should also call your Lordship's attention, as you have mentioned Harrison's case, to this fact that no exception was taken to my ruling by way of appeal.

260. We are taking no exception?

But it is a strange thing, if the landlord was dissatisfied with the amount I gave, that he did not appeal.

261. *Viscount Lifford.*] We only want to know how Lord Downshire has been treated, and you say you would not make the same rule that you did in Harrison's case?

The extent to which I have gone as yet is 20 *l.* an acre, and I think if this large demand was made of 30 *l.* or 40 *l.* an acre, I should not give it, but I should recommend an appeal.

262. Which are we now to understand, is your opinion to be abided by the one you have expressed here, the question being what the farm would sell for in the open market, or that you would be guided by considerations, such as the goodness of the landlord?

I do not think you exactly understand me. I say my impression is, the meaning of the Act is, whatever the usage existing upon the estate when the Act passed, and if those sums were given for the land, so much per acre at that time, that I am bound in strict law to carry that out. Now, if I deviated from that I should be doing what I think the Act does not warrant me in doing. I say in Lord Downshire's case, I should be so startled by the enormous amount that I should be disposed to say, I will let you try it by appeal. I will not go so far as 30 *l.* or 40 *l.* an acre.

263. *Lord Claremont.*] How do you find out the usage of particular estates?

Before

Before the passing of the Act I have had it frequently argued before me in the Civil Bill Court, that on the death of a tenant I was to consider the tenant right existing on the estate as assets in his hands; and I have heard that Lord Downshire even allows that. I have invariably refused it. It has been put to me in open court, "When the tenant died, his land was worth so much per acre, and that was assets in the hands of his representatives." I refused, because I said, "I am not bound to assume that the landlord will consent to the sale, and I cannot hold it to be assets." I could mention a particular instance that occurred before me. There was a witness who had come into a farm; it was very bare, and I was urged to consider this farm as worth, I think, 10 *l.* an acre tenant right. I said, "I will not treat that as assets; it is not binding; it is an optional thing." The attorney conducting the case asked the tenant on the table, "Will you take so much; 50 *l.* for the farm?" "No." "Will you take 100 *l.*? I will give you a cheque for 100 *l.* if you will take it, and take the chance of getting the landlord's assent." The tenant declining to do that, I then said, "Now, you have been offered the money, and I think I must consider it assets, and I give a decree against you for the money that you owe."

Mr. R. Johnston.

14th June 1872.

264. Is that since the passing of the Act?

No, before it.

265. *Chairman.*] Allow me to ask you this. In the case of Beauclerk, you stated the principle upon which you decided in these terms: "People have expressed great surprise at the amount I have awarded in other cases. I have already given 15 *l.* an acre. I am now giving 20 *l.* an acre, and I won't say that this is the extent to which I am prepared to go;" is that correct?

I have a copy of the decision that I gave on that occasion before me, and those words are not in it. I determined that I would not trust my memory for every word I might have uttered in giving judgment, for it was not a prepared judgment, but was delivered off-hand on the conclusion of the case, and I did not intend, if I was asked to speak to any particular sentence, to trust to my recollection alone, and so I sent for a copy of the shorthand writer's notes, and those words are not in that copy.

266. Did you say anything as to giving 15 *l.* an acre?

I do not recollect it.

267. *Marquess of Salisbury.*] Perhaps you will allow me to ask another question as to what is reported. Did you make use of these words: "This is the first time I have had the pleasure of meeting the fine, independent, sea-side farmers of the county Down, who have come forward so nobly to give their testimony in this case, utterly irrespective of the odium they will incur from both landlord and agent"?

Those are not the words; I have the words here; some of those words are here, but other words are introduced which I did not utter. So much has been said about this case, that I should be very much obliged if you will permit me to read my judgment. Before I do so, will you allow me to call attention to what occurred immediately before I gave judgment. At the conclusion of the claimant's case, Mr. James Andrews, solicitor for the claimant, stated that there were a number of witnesses who had expressed their unwillingness to give evidence against their landlord, and who, he was informed, avoided service of the summonses of the Court. I then asked the gentlemen on the other side whether they intended to go into evidence to contradict what had been said by the witnesses for the claimant. They said they did not; that they would rely upon the law of no tenant-right existing where there had been a lease. The shorthand writer's note is here; he says, "His Worship, after some observations as to the Ulster custom, said there was no doubt, from the evidence, that the farm had been in a very wretched condition; the claimant must have laid out a great deal of money, and the soil must have been good to make it now worth 2 *l.* or 2 *l.* 2 *s.* per acre. The farm had been shown to them on a map, and was described as being now in a high state of cultivation; in fact, it had been termed a model farm, with suitable buildings, and every accommodation for a good tenant. It had been pressed upon him that the letter written to the landlord was a very audacious letter. He confessed he took a very different view of it from Mr. Muland. He thought it was a very straightforward proceeding on the part of the claimant to go to the landlord, and ask him to fix the

Mr. R. Johnston.
14th June 1872.

rent, at the same time intimating that it was his intention to sell; and it was certainly much more creditable than the course which was sometimes adopted of selling the tenant-right, and then getting the landlord to fix the rent, as if they were intending to remain, keeping him in the meantime in ignorance of the fact that any transaction had been entered into. It was just such a course as he would expect from those manly, straightforward, truth-telling farmers from the sea-shore of the county of Down, who had appeared before him that day for the first time. He had no reason to doubt anything said by those men to-day. They had come forward, many of them tenants on the estate, and thereby perhaps incurring odium with their landlord. Nothing had been drawn from them in their cross-examination to show that they were not telling the truth. He thought they had been very cautious, and not at all disposed to magnify; and most of them accompanied their valuations by actually declaring that they were prepared themselves to give the very money at which they valued the farm.

268. Did the tenants applaud that very much?

I will tell your Lordships what did occur. "He had never heard that a tenant had a tenant right if he remained in occupation, and if he wished to sell that he had no tenant right; he thought if there was any tenant right at all, the tenant was as much entitled to sell it as to remain in possession. As regarded the contention of Mr. Murland, that there was no tenant right custom proved on the expiration of a lease, he could not agree with that statement. It therefore simply remained for him to say what sum he believed the tenant was entitled to; and he did not think that in cases of this kind he was bound to go into any equitable view with regard to whether a tenant should get less because he wanted to sell, instead of remaining in possession himself. On considering the evidence of the men who had been produced as witnesses, and who stated that they themselves would be prepared to give the sum at which they valued the farm, he did not think they had gone beyond the value in estimating it at 1,400 *l.*, and he did not think he would be justified in giving a farthing less than that sum." Mr. Murland then got up and declared that the landlord had used no influence of any kind to prevent his tenants coming forward, and that they had no cause to apprehend his displeasure. I found then with no evidence before me, that had there been any influence used it would have been better if I had not referred to the landlord at all, and I immediately said, "I do not mean to impute anything of the kind to Mr. Beauclerk. The fact of so many of his tenants having appeared would seem to refute the imputation." I felt, perhaps, I was not warranted in going the length of making any reference to him at all, inasmuch as there was not a disparaging word said of him. I felt it so strongly, that even since the case was heard I have written to that effect to Mr. Beauclerk. That is exactly what did occur. With regard to what your Lordship says about the applause, I understand that it was reported in one of the papers that there was loud applause and clapping of hands, which I did not suppress. I have applied to one of Mr. Beauclerk's solicitors, and also to the solicitor for the claimant, and they both concur with me in this, that there was neither loud applause nor clapping of hands. There were very few persons in the court beyond the persons immediately concerned in the case. There was a slight demonstration of applause with feet, which I immediately suppressed by raising my hand; such a thing has occurred not only in the inferior courts but in the superior courts of Ireland, and I believe also sometimes in this country these popular ebullitions will take place. Whenever it occurred in my court (it did on one occasion occur, I believe) I ordered the court instantly to be cleared; and certainly on this occasion had such a scene taken place, I should have directed the sheriff to clear the court.

269. Lord *Brodrick*.] On what principle do you ascertain usage?

The usage of Ulster is simply the price which the tenants have been on the several estates giving for land to the outgoing tenant. The Ulster tenant-right claim appears to be founded partly upon what money the tenant may have expended upon the farm, as he generally makes his own improvements, and also to purchase his good-will, which I think perhaps more important, and to secure the peaceable enjoyment of the farm by his successor. I apprehend if a man went into a farm and refused to pay the outgoing tenant a fair remuneration, he would have a very uncomfortable life of it.

270. Marquess

270. Marquess of *Salisbury*.] You pay it as an immunity from being shot? They do not shoot people in the north; but I think a man in such a case would have a very uncomfortable life. I am satisfied that any interference with the tenant-right in Ulster would make Ulster not as quiet and peaceable a country as it is at present.

Mr. R. Johnston.

14th June 1872.

271. Lord *Charlemont*.] Do you include with the usual tenant-right custom of the north allowing the landlord to raise his rent, and also to object to an incoming tenant?

Certainly.

272. Lord *Greville*.] Do you say that this Act has in some instances done a great deal of harm?

I think that legalising the usage which exists in some parts of the county of allowing these enormous sums to be given, does prove prejudicial to the interest of both landlord and tenant. It would be very desirable indeed if some check could be put upon it. It puts us in a very awkward position, having those large sums pressed upon us, especially when we find people coming forward and offering to give this money.

273. That is what you meant when you made the observation?

Yes.

274. Lord *Lurgan*.] Would not it have been extremely difficult to have defined it?

I do not think it would; all that was wanted would have been simply to have made the usage general, and to have said that in no case shall more than 10*l.* an acre be given to the outgoing tenant. I think if that had been done at the time the tenantry would have been satisfied with it.

275. Lord *Silchester*.] How would that affect those who have already given 20*l.*?

There is no doubt that they would lose so much; at the same time I think some limit ought to be put to it. Some power ought to be given to us; some discretion at all events to limit it, which I do not think we have at present.

276. Earl of *Belmore*.] Is not it the case that a small farm will sell at a greater rate in the market proportionately than a large one; a farm of 20 acres will fetch 200*l.*, and a farm of 200 acres only 400*l.*

Yes; the small farms sell best; there is a great demand for them.

277. Lord *Brodrick*.] How were you guided in ascertaining the value of tenant-right?

We have simply to inquire what is the custom of the estate; what sums they have been in the habit of giving for the purchase of the tenant-right. We do not go into the value beyond that.

278. Marquess of *Salisbury*.] Do you exercise any control over the increased rent a landlord may think fit to ask under the Ulster right?

Do you mean as to whether it is a fair rent or not?

279. Yes?

That is another thing in the Act which I think hard to put upon us. They have put upon us to ascertain if the landlord thinks proper to raise his rent, whether that is a proper and fair increase in the rent. I think that is a very hard thing put upon us who are not supposed to be judges of land.

280. What course is that? There is a clause under the general law outside Ulster but is there one under Ulster?

That applies generally. A case came before me of that kind. I had a case before me where a landlord sought to raise his rent to a certain amount, and the tenant made him an offer; the landlord rejected it. The case came before me to say whether the offer of the tenant was a fair one or not; whether it was a proper rise in the rent. I said, "I think it is a question of extreme difficulty; I do not profess to be a judge of land;" and if I was, I had had no view of the premises. I asked them what evidence they meant to give; they said they had the evidence of some country surveyors upon it. I said I would rather

Mr. R. Johnston.
14th June 1872.

they would give me some other evidence; I have not much confidence in the valuations of country surveyors. They then said they had a member of the eminent firm of Brassington and Gale, who was present. I said that his evidence would very likely relieve me from all difficulty. "Put him on the table, and then we shall see what the value of the land is." Mr. Gale got up and stated that he had been brought down by the landlord, who very fairly said, "I wish to let my tenant have the land at a fair rent." Mr. Gale said he thought the proposition of the tenant was too low, and that of the landlord was too high. He gave me his valuation, and I adopted it, and then the landlord's agent turned round and said, "Very well; if you are willing now to continue at that rent, you can," and the tenant accepted the offer.

281. Lord *Somerhill*.] Had an ejectment been served?
Yes.

282. Marquess of *Salisbury*.] Will you kindly show me the clause of the Act which enables you to control the increase of rent demanded by a landlord under the Ulster custom?

I cannot say which it is at this moment.

283. *Chairman*.] Would it not be under the 18th clause? "And in any case in which compensation shall be claimed under section 3 of this Act, if it shall appear to the court that the landlord has been and is willing to permit the tenant to continue in the occupation of his holding upon just and reasonable terms, and that such terms have been and are unreasonably refused by the tenant, the claim of the tenant under such compensation shall be disallowed?"

Yes, I think that is so.

284. Marquess of *Salisbury*.] That clause is under clause 3. That does not refer to the Ulster custom?

I think the ground upon which that has been held is this: there was no point raised upon it before me. The Ulster custom has been defined to be this, that as long as a tenant is willing to pay such reasonable rent as his landlord may put upon it, he is not to be disturbed.

285. Is that the Ulster custom?

That is what I understand to be the Ulster custom.

286. *Chairman*.] This 18th section applies to the Ulster custom?

I understand it has been held to apply to it. The latter part of the section certainly does not apply to the Ulster custom where the word "compensation" is used, but I have heard that two learned judges have decided the previous words with regard to what constitutes reasonable or unreasonable conduct on the part of the landlord and tenant, does apply. Mr. Justice O'Brien and Mr. Justice Lawson, I think, decided it at Belfast.

287. Marquess of *Salisbury*.] Where there is no disturbance, but where the landlord proposes simply to raise the rent, do you mean to say, under the Ulster custom, that would not be a legitimate proceeding?

If he proceeds to raise the rent, and the tenant objects to it as an unreasonable, rent, it is then to be considered and determined, and it would come before us to say whether the increase the landlord was putting upon the land was a fair one, otherwise the Ulster custom would be worth nothing.

288. Has it not been the practice under the Ulster custom for landlords to raise their rent as they pleased?

Certainly, but they have never done it to any unreasonable extent that I have ever heard of. In Down there is no ground of complaint. The lands are all moderately set.

289. Is there any custom against a high rent?

I think the custom has been defined to be, as the tenant puts it in the claim: The tenant claims his right to continue in possession of his farm as long as he is willing to pay a reasonable rent for the same. Those are the words in which the claims come before us, and I have never heard them objected to on behalf of the landlord. In the case that I have referred your Lordship to, the agent appeared.

290. Earl of *Kimberley*.] Do you hold that this which you say the Court has to take into consideration, whether the rent is reasonable or not, is a power which you exercise under the 18th clause, that is to say, a power under the statute directly given, or is it a power which arises under your general view of the Ulster custom?

Mr. R. Johnston.

14th June 1872.

I myself have exercised that power under my general view of the custom, it having been proved before me that such was the custom.

291. Under the 18th clause, you say no such power is given?

I will not say that, because there has been a decision that a portion of the early part of that section does apply to the Ulster custom; for instance, supposing a landlord made a proposition to a tenant that the Court considered reasonable, I think under that equity section he would be entitled to take that into consideration in giving him compensation, even under the Ulster tenant right custom, according to the decision of those judges.

292. May I ask you to refer to the section, and to explain to me why it is stated in the middle of the section, "And the Court shall have jurisdiction at the hearing of any such dispute to ascertain what sum, if any, shall be deemed due by the tenant to the landlord, under sections 3, 4, and 7 of this Act, or any set-off in respect of unliquidated or liquidated damages of the said sections." There is no mention there of sections 1 and 2, which are the Ulster custom; and I wish to ask you whether the mention which is made of the Ulster custom at the beginning does not refer exclusively to money which may have been paid by the landlord to the tenant to purchase out the Ulster custom?

I concur with your Lordship entirely, but I am bound by the decision of a superior court, and I believe Judge O'Brien and Judge Lawson have decided that the 18th section applies to cases of claims under the Ulster custom.

293. Marquess of *Salisbury*.] The whole section? You do not happen to have the case?

I have not that case with me, but I believe there is such a case.

294. Was it appealed?

Two judges concurred.

295. Was it taken up to the Land Court?

No; I believe they had no doubt about it.

296. Lord *Somerhill*.] It was taken to the judge of assize?

I believe Judge O'Brien went in to Judge Lawson, and they conferred, and they agreed on the subject. I think it appears in some of the numbers of the "Irish Law Times." I have not got it here. I would feel myself of course bound by it, though I confess I cannot see upon what grounds they arrived at that conclusion.

297. Lord *Claremont*.] Was there any appeal?

No.

298. *Chairman*.] They did not state a case?

They did not.

299. Marquess of *Salisbury*.] Did they apply to be allowed to appeal?

I cannot say whether they did or not.

300. Lord *Somerhill*.] Do you consider yourself bound by these decisions, if they are contrary to your own opinion?

Certainly.

301. Although there is a higher court of appeal?

Certainly.

302. If two judges give a conflicting opinion?

In that case I would choose between them.

303. Lord *Brodrick*.] Is it competent to the landlord to set the act in motion, or must it be set in motion at the instance of the tenant, and the tenant only; can the landlord be a plaintiff under the Act?

(136.)

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I think

Mr. R. Johnston.
 14th June 1872.

I think he could in this way. If the landlord consulted me I would certainly advise him to inform the tenant that if he persisted in his course he would not continue him as his tenant; and I think if he came before me and proved the fact that he was treating the land improperly, I should have no hesitation in refusing him any tenant right; but such an occasion has never occurred.

304. I want to know whether this Act in any way aids the landlord, supposing the tenant is doing things which are improper?

I do not think it does.

305. I understand he would have no benefit under this Act?
 Not under the Act.

306. Lord *Somerhill*.] The chairman cannot issue any injunction:
 We have no power of that kind at all.

307. Lord *Silchester*.] Have you had any case where a tenant about to emigrate claimed to retain his tenancy?

I have not.

308. Should you be surprised to hear of any case in which the landlord was obliged to eject the tenant, and to give him the highest rate of compensation?

I must say I never heard of that case.

309. Earl of *Bandon*.] Do not you think it a very hard case that the landlord and tenant should be obliged to appeal to the judge of assize because the assistant barrister does not feel himself competent to decide upon the law, and would not it be much better to substitute a new tribunal, who would be more likely to decide what the law was on the subject?

I do not think the chairmen feel any difficulty that would not be felt by any other lawyer or judge in deciding the law; but your Lordship must bear in mind that that is a very obscurely worded Act, a very difficult Act indeed to construe, and that the judges of the superior court do not take the same view of several clauses of that Act, and I think, no matter what body of lawyers you put to construe that Act, you would find a difference of opinion among them on many sections.

310. Would not it be better that some tribunal should be appointed to decide as quickly as possible what the law really is?

I do not know any other better tribunal, though I confess I would be delighted to be rid of the duties of it, than the present one, or any tribunal in which the public would have more confidence, unless you get the going judges of assize in the first instance; and to get that they should go a land circuit at a certain interval, say, twice a year, and hear all those cases in the first instance.

311. *Chairman*.] You would not secure uniformity of decision in that way if the going judges of assize were the persons to decide these questions primarily, because there would be different persons at different times; would it not be infinitely better to establish a judicial tribunal which would secure, at all events, uniformity of decision, and lay down certain principles which, of course, would guide all future decisions on the subject?

I think in the cause I point out, in a very short time you would have uniformity amongst the judges by compelling them, at the instance of either party, to save a point of law for the Court of Land Cases Reserved. I spoke of the judges, because they are known to the people in Ireland, as well known as we are. They have a certain knowledge of the customs and habits of the people, which would be of very great advantage to them in administering this Act, and therefore I say I do not know any other tribunal that would be so good as two of the judges to investigate these cases in the first instance.

312. Lord *Somerhill*.] Without unduly depreciating judge-made law, would it not be better if the Legislature could so alter the Act as to make it clear and intelligible?

Most undoubtedly, if that can be done.

313. Earl of *Kimberley*.] May I ask you if you think an Act of Parliament could be constructed defining all the various customs which prevail in Ulster?

No, my Lord, I think it would be impossible. There are some counties in
 Ulster

Ulster where on almost every estate there is a different rule. In the county of Fermanagh, Mr. Blake tells me, every estate has its own rule, and he finds great difficulty, therefore, often in arriving at what the rule is on each estate.

Mr. R. Johnston.
14th June 1872.

314. Was not the alternative either to recognise the custom, whatever it might be, or not to recognise it at all?

I do think so. I do not see what else the Government could have done.

315. Lord *Brodrick*.] There are 33 Civil Bill judges in Ireland?

Yes.

316. The salaries of those judges are different throughout, so that actually promotion is going on from one class of county to another class?

I will not say that. There are several chairmen who prefer the third class to the first.

317. I suppose a judge who holds one of the inferior assistant barristerships does not object to moving up?

I know one who did object. As for myself, I should have remained at the bar, and should have had my practice if I had kept to a third class country.

318. We are told that there has been a considerable difference of opinion with respect to certain points among the different judges?

Amongst the chairmen.

319. Is not it a great hardship that after the law has been laid down in one particular district by one Civil Bill judge, that that Civil Bill judge may be promoted, and another judge take his place who may take a different view of the law?

You are assuming that there is a great conflict between them. I do not think there is considering the difficulties of the Act. I do not think there are many questions upon which they differ. I do not know of any important question, not questions of practice, but any important question, upon which the chairmen differ at the present, except that question with regard to whether on the termination of the lease the tenant has a right to claim his tenant right. I do not know of any other important question upon which there is any conflict.

320. Marquess of *Salisbury*.] Is not there a question whether the district or the estate determines the tenancy?

I never heard it.

321. Lord *Somerhill*.] Did you read the debate in the House of Commons upon the subject?

Yes.

322. Was it not clearly laid down by the Attorney General and other great authorities, that the termination of a lease did not entitle the tenant when disturbed to tenant-right?

No, I did not hear that. I may be very wrong, but I had assumed quite the contrary from the motion of Mr. M'Laren having been negatived. Mr. Fortescue's statement was that he opposed the amendment, because he knew it to be notorious that the tenant right was concurrent with the leases in Ireland.

323-24. Viscount *Lifford*.] Allow me to read what the Attorney General did say on the 9th of April 1870. "His right honourable friend (Mr. Headlam) had occupied a great deal of time in proving that, as far as he was aware, no human being ever felt disposed to deny that if persons entered into a contract it was their duty to abide by it; nobody ever questioned the doctrine that if a man took land for a certain number of years under a lease, he was bound to quit at the end of the term without notice." That is what the Attorney General for Ireland said. And then we come to what Sir Roundell Palmer says, "The retrospective part of the clause applicable to present tenancies, left all leases for fixed terms exactly as they stood by law, so that there would be no claim against the landlord upon the termination of any existing lease?"

I do not recollect reading that, but your Lordship will find in the evidence taken before the Devon Committee, which you may recollect, it was rather conceded that the tenant-right did exist.

Mr. R. Johnston. 325. I am merely stating what induced us to pass the Land Act; now we will hear what Lord Granville says in the House of Lords: "The following persons are excluded from any right to compensation for occupation value, existing leases in all cases (*i. e.*) being so at the time of passing the Act?"

14th June 1872.

I do not recollect it.

326. Lord *Somerhill*.] Am I right in my recollection that the Devon Committee recommended that five years should be the extreme limit?

I think that was the limit.

327. Do you know whether Chief Justice Monaghan, in delivering his judgment, referred to that?

I am not aware that he did.

328. Did he not rule five years as a sufficient compensation in the case referred to?

No; it was a question as to whether there was sufficient evidence that that was the rule of the estate. I have the report of the case here. The question was whether he had sufficient evidence before him on which to hold that the landlord had limited the tenant-right to five years.

The Witness is ordered to withdraw.

MR. JAMES HAMILTON, is called in; and Examined:

Mr. J. Hamilton. 329. *Chairman*.] You are Chairman of County Sligo? Yes, my Lord.

330. Have you had many cases before you under this Irish Land Act?

A considerable number. I have a return from my clerk of the peace giving me the number of the various decisions and appeals.

331. Would you just describe that; what does that list contain?

First, there is a return of the cases brought before me, decided and undecided also; there are some of them in the year 1871; there were 13 cases of various character, and I find with respect to six of them the word "nil," which means, that at the request of the parties they were adjourned or remained undecided, and some of them probably settled since; with respect to others my decision is given. To some money is awarded both for disturbance and improvements, and where there were appeals the result is given upon the appeal. [*The Document is handed in, see Appendix*].

332. Does that give the amount of claims as well?

Yes.

333. The amount claimed and the amount awarded?

The amount claimed both for improvement and for disturbance, the amount of the landlords set off, the amount decreed, and the result upon the appeal.

334. Have you had any case in which the Ulster custom has arisen?

Not as yet. My county is a western county, but I am informed there are customs of some estates there which are analogous. My county adjoins Ulster.

335. What is your opinion with regard to the satisfactory character of the Civil Bill Court as a tribunal for the decision of these cases?

Well, in the first place I concur with Mr. Johnstone and Mr. Lefroy, in saying that it was very much against our wish that this jurisdiction was imposed upon us. We saw the extreme difficulty in the Bill whilst it was passing through the House. There is a studied absence of technical language, so that we are really left to consider an Act of Parliament conceived in the loosest and most popular language. There is an amount of discretion given to us which is very disagreeable to exercise. The Act opens a field, in my opinion, for prejudice, and weakness which makes it a very difficult Act to administer. Another strong reason was this: the great value of an Irish chairmanship, and what attracts to it some of the first men in the profession is this (I could mention a list of men leaders on the Circuits in Ireland who are chairmen of counties), but the attraction is simply this, that the chairmanship of a third class county

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or a second-class county in former times interfered scarcely at all with our practice at the bar, and therefore our position was this, that we retained our practice at the bar, and we had this office, which was in former times a pleasant one to exercise. But now because of the disagreeable character of this Act, and because it is very much against our interests to have more of our time occupied than was occupied under the old system, we object to the jurisdiction being conferred upon us. I think Mr. Lefroy stated that 33 minds, set to construe an Act of this sort, must produce in the first instance at all events, a considerable amount of confusion. And I cannot find that the principles upon which we are to act in respect to the northern tenant-right, nor indeed with respect to compensation under the 3rd section, are at all settled. The consequence is, that not only is there a considerable amount of want of confidence felt in the tribunal with regard to the administration of the Land Act, but that will necessarily extend itself to the other portion of our jurisdiction. And I agree with Mr. Lefroy that there were no courts in which the country people felt more confidence than in our courts before the introduction of this Land Act to it. There are two reasons for it; first, the Irish people have very great confidence in the independence of a practising barrister. They hear him contend with the judges in pursuance of his practice. He is removed from all local influence, because he leaves the county the moment his court is over, and his knowledge is kept fresh by his practice. I consider that to be a very great advantage indeed in the administration of the law in Ireland, that we are enabled to retain our practice and to hold these courts.

Mr. J. Hamilton.

14th June 1872.

336. With regard to appeals, do you consider that satisfactory?

Exceeding unsatisfactory; not that I mean in any possible way to disparage the Irish judges. Far from it, but everybody who has attended an Irish assize knows that the appeals are hurried over very rapidly. The judges are compelled to hurry them over. Rather a short time is allowed for the assizes, and the cases are not argued either at that length, or with that care which they deserve, and the decisions are rapid. Then I think it exceedingly unsatisfactory that the ultimate appeal should be left to the discretion of the judges. That is the general opinion I know amongst the body.

337. Do you think it is desirable that a judicial tribunal should be established instead of the Civil Bill Act for the decision of these cases in the first instance?

I do.

338. And then that there should be an appeal at once from them to the Land Court?

Certainly.

339. Lord *Brodrick*.] Do you happen to have heard of a case of *Jephson v. Cayler*, tried in 1871, before Chief Baron Pigott, which has been a great deal discussed at the Irish bar. The Chief Baron reserved judgment in that case; I do not know whether judgment has been delivered yet?

It is a very common thing for the Chief Baron to reserve judgment.

340. You would scarcely think it right that these cases, when they go to a court of appeal, should remain without judgment being delivered 15 months after the case has been tried?

I had pretty much at the same time a similar case to Mr. Lefroy's before me; and without communicating with Mr. Lefroy, I had the good fortune to decide it in the same way that he did. That case came on appeal before the Chief Baron. He, however, went into evidence. He is a most conscientious and admirable lawyer, but he did go into evidence as to the value of the improvements, and he has not given his decision upon the appeal yet.

341. Lord *Meredyth*.] Have the decisions of the different chairmen in your opinion been very conflicting?

Less conflicting than could reasonably be expected considering the difficulty of the Act, and the utter absence of all legal principle in it to guide us, arising very much from the studied absence of all technical language.

342. Earl of *Belmore*.] In the event of a new primary court being constituted, and there being only one appeal to a Court for Land Cases Reserved, would you allow an appeal upon matters of fact, as well as matters of law?

(136.)

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I should.

Mr. J. Hamilton.
 14th June 1872.

I should. I do not think an appeal would be satisfactory under this Land Act, which did not include matters of fact, because the most important question in the Act is the amount decreed. That depends altogether on matters of fact, and what I should propose (I have considered the subject) for the constitution of a satisfactory court of first instance, would be a selection of three or four of the most eminent practising barristers, say four of them, and assign a province to each of them. They should certainly be practising barristers, and at the very top of their profession, and as little as possible connected with politics; an appeal, in my opinion, should lie from them to the present court of ultimate appeal. I do not think there would be the difficulty that my friend Mr. Lefroy suggested to you about sending matters of fact to the court of appeal. What I should propose would be that the judge upon an appeal should state a case; in short, my Lord, that it should be managed something like a motion for a new trial, where a verdict is against the weight of evidence. The judge in that case always states the evidence, and he always states it with the utmost accuracy and fairness. Then the court of appeal could give a very satisfactory decision upon the case as stated by the judge.

343. Lord *Kildare*.] Should you propose that they should sit singly or together?

I propose that they should sit singly, and they would have quite enough to do sitting in that way. Our land sessions are held four times a year; there are 33 chairmen, and on an average I should say three towns in each county, so that there would be 300 or 400 sittings for the judges.

344. *Chairman*.] The difficulty of allowing an appeal upon the matters of fact is this, that every case depends upon its own circumstances; when the courts are applied to for a new trial on the ground of the verdict being against the weight of evidence, they almost invariably say it is quite sufficient for the jury to come to their conclusion; we will not disturb their finding. When, however, it is manifestly against the evidence, they grant a new trial; supposing a new tribunal to be constituted, it might fairly be left to them to decide questions of fact finally upon that ground?

Exactly.

345. As at present, of course, with the conflicting views of the judge of the Civil Bill Court, it is very desirable indeed that there should be some check put upon any extreme compensation they may be disposed to give, with regard to the number of years' purchase, and so on, otherwise it would not be desirable that there should be proper tribunals sitting originally, and that there should be any appeal upon questions of fact?

Your Lordships must see after all, the most important questions which come before us are really questions of fact. In the first place, under the Ulster tenant clause, we must ascertain, as a matter of fact, what the particular usage is to which the holding is subject; that is a matter of fact depending on the evidence. Then, again, we must see how far the general usage claimed by the tenant is modified by usages attached to it by the landlord, also a matter of fact. Then, again, the most important question of all is, what we are to give for the usage when we find that it exists; and unless there was an appeal as to the amount given by us, an appeal would be worth very little.

346. There may be a peculiarity with regard to questions of fact arising in these cases, which may render them exceptional, and you think there ought to be an appeal against the decision?

Yes.

347. Marquess of *Salisbury*.] Have you not relied very much upon the evidence of experts?

Of course we have, as to the value of improvements.

348. Do you think that one person, when that person is probably wholly ignorant of the subject-matter of the dispute, is sufficient to decide between the opinion of conflicting experts?

Well, I think a lawyer accustomed to weigh evidence ought to be, at all events with an appeal from him. The value of having a lawyer is, that he is accustomed to these experts, and he does not place implicit reliance upon them.

349. I suppose you always have them of exactly opposite opinions on the two sides?

Invariably.

Mr. J. Hamilton.

14th June 1872.

350. *Lord Steward.*] Do you propose that these barristers should leave their practice?

It would be impossible for them to continue their practice. I should propose that they be handsomely remunerated, and taken from the leading ranks, the principal members of the bar, and that the Irish custom of appointing a man for political services ought not to apply.

351. *Marquess of Salisbury.*] You would not have them Members of Parliament?

Certainly not.

352. *Earl of Kimberley.*] Do I understand you to say that there is dissatisfaction with the decision of the chairman at present?

Well, where one party is satisfied, the other is always dissatisfied; but I think the public generally are losing confidence in the decisions of the chairman, on account of their great number, and the difficulty they find in interpreting this Act.

353. On account of the great number of the chairmen; is that your reason?

I think that is the main reason, the great number and the various views which necessarily must occur.

354. The first ground upon which the public are dissatisfied is their great number, and the second ground is that they have shown differences of opinion?

Yes, of course.

355. Have these differences of opinion been numerous?

I think you will find scarcely two chairmen to agree, for instance, as to the rule to be applied with regard to this tenant-right of Ulster. For my own part, I do not think the market price of tenant-right, or, as it was formerly called, goodwill, is the test I should apply, and my common sense is shocked at the idea of twice the value of the fee simple being given for the yearly tenants' interest in the land. I should not apply that test at all.

356. To what do you think these differences of opinion, which have thus far been manifested, are ascribable?

To the great difficulty of the Act, and of the subject it deals with.

357. Then if the differences of opinion are ascribable in your opinion to that, why do you anticipate that there should be less difference of opinion under the new system that you propose?

Because I should substitute four judges for the 33, and those judges men of the very highest eminence at the bar, and I should expect a much greater chance of unanimity, or something approaching to it, amongst four, than I should amongst 33.

358. I understand your view to be that differences of opinion being likely to arise under the Act, it is desirable to reduce the chance of such differences much lower, by having a smaller number of judges, and judges of a higher class?

That is what occurs to me.

359. *Chairman.*] Four judges sitting together and deciding?

No, that was not my view; I mentioned the number of four because there happened to be four provinces in the country, and I should think that one for each of the character I mention would be sufficient, with a right of appeal in every case from that judge to so high a court as the present Court for Land Appeals; that would be a guarantee to the public, both that the decisions would be satisfactory and correct.

360. What do you mean by four judges of this kind sitting separately, when you can have them all four sitting together, and deciding as a tribunal these questions of importance?

I think there would be too much business for them to do, if they have to hear every case that we 33 chairmen hear, but that is a question of detail altogether; I mentioned the number four, but a less number might suffice.

Mr. J. Hamilton,
14th June 1872.

361. Lord *Somerhill*.] Have you a great many cases in Sligo?

I have not. The relations between landlord and tenant in the county of Sligo are exceedingly satisfactory. The Sligo landlords are resident, and they take a very active interest in the management of their property. Their lands are let moderately, and, except at elections, when perhaps a powerful stimulant may be applied to the tenant, the relations are exceedingly satisfactory. The landlords are liberal, and I must say the tenants are fair enough in their demands.

362. Earl of *Kimberley*.] Then I understand you to propose that from the Court of First Instance thus constituted there should be an appeal in all cases to the Court of Land Cases Reserved?

Yes, on a case stated by the judge.

363. That it should not be in the discretion of a judge in the first instance to allow an appeal, but that an appeal should be claimable as a matter of right by either party?

I should recommend that, because the superior judges have already differed, and differed in most important matters upon appeal; and in two cases, in which two very eminent judges differed, one of them refused an appeal.

364. It has been said that that would cause very great hardship to the poorer litigant, that is to say, to the tenants; do you think that would be the case?

The only hardship it would impose upon him would be the expense to which he would be put by a second appeal. I should try to obviate that by rendering it unnecessary to have the witnesses examined before the court of appeal, by compelling the judge to state a case; I think that would be a sufficiently satisfactory appeal.

365. Would you by statute prohibit by the Court of Land Cases Reserved from taking any further evidence, or would you allow them a discretion to do so?

I did not consider that before; perhaps it would be better to give the Court a discretion, because I am sure it would be very wisely and sparingly exercised.

366. The point is very important, because it is obvious if further evidence is to be taken, witnesses must be sent up to Dublin for the purpose, and then the objection that it would place the poorer litigant at a great disadvantage would arise. On the other hand, no doubt if no fresh evidence were to be taken, but the judges were to state their opinion upon the evidence already taken, and the case sent up by the Court of First Instance, that would meet, to a great extent, my objection?

If there was a second trial, and the witnesses were sent up to Dublin, of course it would be a hardship on the poorer litigants.

367. Would it not be a serious hardship, amounting, practically, to a denial of justice, in many cases?

It would be a very serious hardship. My desire would be to give him such a court of appeal as would command the respect of the country with as little expense as possible.

368. You admit that there is a great difficulty; that on the one hand everybody would desire to secure the best possible court of appeal and uniformity of decision; but, on the other hand, every one would also desire that for the sake of uniformity of decision, there should not be a practical denial of justice?

I have no doubt the object of the framers of the Act was what your Lordship states.

369. Lord *Somerhill*.] The county of Sligo is a populous county?

It is.

370. *Chairman*.] If a special case is stated, the Court to which the case is sent always take the facts as stated in the case, and never asks for further evidence. If the case is not fully stated, then they would remit to the party who states the case; so it is with other appellate tribunals; but it is a power that is very rarely exercised?

That is exactly what I should expect. I think the tenant and the landlord should come prepared with the entire of their evidence in the first instance, and if that were taken carefully by the judge, there would be no difficulty in presenting it in a perfectly satisfactory shape to the court of appeal, and I should

should say it would be in very rare instances that additional evidence would be required.

Mr. J. Hamilton.

14th June 1872.

371. Viscount *Lifford*.] That would lead to additional expense?
I should think so.

372. Lord *Steward*.] If the judges sit singly, would there not be the same danger of diversity of decision as there is at present among the 33 chairmen?
Not by any means the same danger.

373. It would be 33 to four?
That would be about the difference. You could not secure a perfect uniformity; but when I mention the number four, there is nothing magical in that number; it is a mere question of detail. Your Lordships might think two or three may be sufficient.

374. Would it not be better if they were all three to sit together?
I think there would be a difficulty in their doing the amount of work.

375. Are you aware that in a great many of the counties in Ireland, no cases at all under the Land Act have arisen?

I believe there are counties in which no cases have arisen; but you must consider this, that we have had exceptionally good years for a series of probably seven years in Ireland, and the farmers are exceedingly well off. I have it from bank managers that they have large sums of money in the banks on deposit receipts, and there is hardly any necessity to eject for non-payment of rent; but if an unfavourable series of years came, then, when ejections were brought, we should have, I fancy, a very considerable increase of business.

376. *Chairman*.] What is the number of cases that you have decided?
In 1871 there were 13 cases.

377. Can you tell me how many days you sat to dispose of those cases?
I could not tell your Lordship quite accurately. That would scarcely convey to your Lordship a fair idea of the labour or the difficulty of the case. I will tell your Lordship how some of the most important cases were disposed of. There was one case in which a very respectable tenant claimed against Colonel Cooper a sum of about 1,000 *l.*, and he claimed 246 *l.* as a set-off. The schedule contained a great number of items, and what I did in the first instance was to dispose of the legal question, that is, to decide what items were admissible and what items were not admissible, and having settled some rather difficult questions of law by the assistance of two very able members of the Bar, we then came to the question of value, and I was informed that if I adjourned the Court for a short time it was very likely the landlord and tenant would agree, and so I was saved all the trouble and the long delay which would otherwise have taken place in measuring the value of improvements, and that sort of thing, and they settled the case for a sum of 246 *l.* The same thing occurred in another case.

378. It is very important that we should ascertain the number of days that the judges of the several appeal courts sit on the question, in order to determine whether such a standing tribunal as we suggested would be able to dispose of all the business likely to come before them?

It is; and I believe the clerks of the peace have been directed to furnish these returns.

379. Lord *Steward*.] Would it not be your opinion that after a certain number of authoritative decisions have been given, much fewer cases with respect to the legal construction of the Act would arise?

Certainly.

380. And the labour of the court would diminish to that extent?
To a certain extent; but the important question after all is the amount of money; and that of course would in each case depend upon its own circumstances.

381. *Chairman*.] Did I understand you that there had been a return ordered in the House of Commons of the number of days used in trying these cases?

That is so.

Mr. J. Hamilton.
14th. June 1872.

382. Lord *Somerhill*.] You consider, practically, the Bill would have little effect on Sligo; has it affected at all the relations between landlord and tenant generally?

No; I think not in Sligo.

383. Has it had any effect upon emigration?

I think it would rather have a tendency to encourage emigration than otherwise, the fact of a man getting as compensation a sum of money to enable him to go off to America.

384. A good number have gone since the Act has been passed and published?

I have not had my attention called to that subject.

385. The value of the land and the value of the farm has risen?

I think so.

386. You probably observe that it is the fact that the landlord cannot put this Act in motion in any way except by ejection?

Certainly not.

387. He has no other way of coming upon a tenant for dilapidations under this Act?

No.

388. Then you are aware probably of the public discussion that went on under this Act, and that a certain number of persons qualified it as being very likely to stop emigration, and to what they called, root the people in the soil; you may have heard of that phrase?

I have.

389. You do not think it has had any effect in that way, if I gathered the general purport of your answers rightly?

I have not directed my attention much to it.

390. You have not seen the emigration returns for this year?

I have not; but I have understood, my Lord, that the existence of the Ulster custom has increased emigration from Ulster, although Ulster is certainly more prosperous as far as the tenants are concerned than the other provinces of the country. Still, emigration from Ulster has kept pace with that of the poorest provinces in Ireland. I have always understood that, and I believe you will find that to be a fact.

391. Earl of *Kimberley*.] What is the reason for it?

The price of his tenant-right enables the tenant to emigrate with his family. The Ulster tenant is more independent in his mind as well as in his circumstances, in my opinion, than the other tenants throughout the country; he will not squat down on a small portion of land, he would rather emigrate, and generally does emigrate to Canada; and by the sale of his tenant-right he has the means of going and taking his family with him, whereas in the poorer parts of the country one member of the family emigrates first and then sends money to bring another, and so they bring them out by instalments. The Ulster tenant in consequence of having this price of his tenant-right can emigrate in a favourable way with his family altogether.

392. Marquess of *Salisbury*.] The tendency of this Act is to provide a fund for the payment of emigrants' passages?

I think it is.

393. Lord *Lurgan*.] The Act has not diminished the good feeling that has always existed in Sligo between landlord and tenant?

It has not.

394. Marquess of *Salisbury*.] You have spoken of this Act as being remarkably destitute of technical terms. Does any instance of that occur to your mind?

Yes, in every section, I may say. Take the word "disturbance;" that is not a technical phrase. We are not told what the disturbance is, whether eviction or notice to quit, or any other interference.

395. It is an undefined term?

An utterly undefined term. Then there is a very great difficulty in this third section;

action; there is the use of another phrase which I do not understand: "Where a tenant is disturbed in his holding by the act of the landlord, he shall be entitled to such compensation for the loss which the Court shall find to be sustained by him, by reason of quitting his holding, to be paid by the landlord as the Court may think just." That language appears to me very vague. In the first instance, it is laid down by Mr. Butt, in his very able book on this Act, that the loss which the Court shall find to be sustained by him by reason of quitting his holding, is not the loss of any interest or any right, but that the Court must enter into an inquiry which will take into consideration his difficulty in finding another farm, whether he is obliged to emigrate to America, and the thousand and one circumstances which he will heap up so as to show the hardship he is put to in leaving his holding.

Mr. J. Hamilton.

14th June 1872.

396. That is, personal wants arising under the disturbance?

Exactly. Your Lordship will find that throughout the Act, probably occasioned by the very nature of the subject with which it is dealing; there is an absence of that which is a guide to us in all ordinary Acts of Parliament, namely, the use of technical language, which every lawyer understands. There is scarcely a technical expression in this Act from beginning to end.

397. That of course tends to encourage that difference of opinion, which is further encouraged by the diversity of courts?

Yes. There are also, I think, as your Lordship has mentioned that subject, great doubts whether any of these sections, 8, 9, and 10, and on to 16, apply to the Ulster landlord, and my own opinion is that they do not. I know we differ in opinion about them. I do not think they give the Ulster landlord any protection.

398. Do you coincide with Mr. Lefroy that the word "implied," as applied to assent and agreement, is of an injurious vagueness?

I think so, and I will give you an instance of what I mean as to these sections not applying to protect the Ulster landlord. There is the 14th section, for instance: Where it is proved to the Court that the tenant of any holding held under a tenancy from year to year existing at the time of the passing of this Act is evicted by the landlord by reason of the persistent exercise by such tenant of any right not necessary to the due cultivation of his holding, and from which such tenant is debarred by express or implied agreement with his landlord, such eviction shall not be deemed a disturbance of the tenant by the act of the landlord." And then it enumerates a number of other things; those things which are usually excepted, and reserved to the landlord in all well-drawn leases, mines and minerals, timber, right of shooting and fishing, and so on. It is enacted, if the tenant shall persevere in exercising these rights, such eviction shall not be deemed a disturbance of the tenant by an act of the landlord. If you will consider the first section, you will find that the Ulster tenant claims utterly independent of disturbance. The Ulster tenant is entitled to tenant-right whether he is disturbed by the landlord or whether he quits voluntarily, so that this section, which merely enacts that an eviction consequent on acts of this kind shall not be deemed a disturbance of the tenant, does not apply in the case of the Ulster tenant-right, because the Ulster tenant-right is entirely independent of disturbance.

399. Viscount Lifford.] Do you think any of this (the 18th) clause applies to Ulster?

I do; part of it.

400. All but the last part?

I think that the words, that in deciding on the question of the right to tenant-right, we have a right to take into consideration the reasonable or unreasonable conduct of the tenant or the landlord, apply. I remember, my Lord, drawing a clause when the Bill was passed, which I think would have been fair to both landlord and tenant with reference to these rights, and that was simply to enact, that in every tenancy from year to year not evidenced by writing there should be implied a reservation to the landlord of all those rights which are usually reserved in a 21 years' lease. I think that would be fair, when the tenant had got such substantial advantages, that there should be at least the same reservation implied in a tenancy from year to year that are always put into a lease.

Mr. J. Hamilton.
14th June 1872.

401. Your family is connected with the county of Donegal?

Yes.

402. And you spend a good deal of time there?

Yes.

403. The impression you have just stated is one that has been asserted both in public prints and by solicitors in the county of Donegal?

I am aware that it is.

404. Can you tell me what your experience is of the effect that that has had on the relations of landlord and tenant?

The very worst possible effect. The tenants now, not content with the enormous substantial advantages conferred upon them by this Act, insist upon it that the landlord has no control of any kind over his estate. The turbary, for instance, is an exceedingly important right. The turbary on an estate may be confined to a particular district. Without turf Donegal would be perfectly uninhabitable. The landlord always controlled through the machinery of a notice to quit the disturbance of his turbary; and although it might be all situated on one farm, he kept that under his control, so that he might be able to give to each tenant on his estate turbary for his holding. The tenants are now asserting that, since the passing of this Act, the landlord has no right whatever over the turbary; that it forms part of the farm, and that he cannot interfere, just in the same way, with respect to sporting.

405. Is not the practical effect of that to deprive the greater part of the population in populous parts of Donegal of all fuel?

To a very large extent, of course.

406. Lord *Greville*.] Are you speaking from your own experience as a judge?

From my own experience as a resident in the county, and from the fact that the Liberal newspapers, as they are called, state that such are the rights of the tenants, and advise them to assert them.

407. You do not speak of any case that has been tried before the courts?

No.

408. Earl of *Kimberley*.] You merely base these opinions of yours on what you have seen in the Liberal newspapers?

And what I know to be the fact as being a native of the county.

409. You mentioned the Liberal newspapers; do you ground your views upon what they have stated?

I say that, as a matter of fact, the Liberal newspapers advise the tenants that they have these rights, and they advise them to exercise them, and I know the tenants have, in more than one instance, informed the landlords that they would exercise them.

410. Lord *Somerhill*.] With regard to shooting?

Yes.

411. And shooting that had been let for a considerable sum?

Yes; a gentleman I know very well has been in the habit of letting his mountains, with the assent and concurrence, of course, of his tenants, who had always acted to some extent in preserving the game. They have now informed him that they will not allow his lessee to fire a shot, but that as he is a good sort of fellow he may go and have a day's shooting himself sometimes.

412. Earl of *Kimberley*.] Before the Act passed, what steps could the owner of that property take to enforce his right of shooting, on the assumption that he had no agreement with them to reserve the game?

He would have simply served every one of them with notice to quit, and that would at once have established his right.

413. If he had served them with notice to quit, would they not have been entitled by the custom of the country to their right under the Ulster tenant-right?

I should say a landlord in that case would not at all concede any such custom. He would be very wrong if he did.

414. You

414. You think that under the former practice, supposing the landlord had not reserved the right of game, and the tenant declined to allow him to exercise it, and the Ulster tenant-right prevailed in the county, it would have been wrong on the landlord to have allowed them to sell their farms in the usual way, and they would have been evicted without any such compensation?

Mr. J. Hamilton.

14th June 1872.

I am sure they would, and I should say very justly, because it was as much an incident of the tenancy that the landlord should reserve the right of shooting as that the tenant should obtain the right to sell the tenant-right.

415. Practically, if that had been done, would that have caused any irritation in that part of the country?

I will not answer for that, my Lord, but it appears to me to be so obviously just.

416. I do not ask your opinion whether it is just, but whether such a proceeding would have caused any irritation in that part of the country?

It is very difficult to say what would not cause irritation in Ireland.

417. Do you think that there are many Ulster landlords that would have done it?

I do. I do not know an Ulster landlord that would not have done it.

418. Do I understand you to say you do not know an Ulster landlord, who not having taken care to reserve his right of shooting if he had been compelled to enforce that right by eviction, would not have deprived all his tenants of all the money they might have paid to come into their holdings?

It was quite a matter within his power. I think he would not have allowed the tenants who acted in that manner, the indulgence of selling their tenant-right, I speak of parol tenancies from year to year.

419. In doing so, he would have acted according to the custom of the country?

I never knew an instance in which a tenant did so. He always conceded the right of the landlord.

420. Marquess of *Salisbury*.] A tenant never would have dreamed that he had the power?

He would not until this Act passed. The tenant from year to year, under a parol contract, had the power of excluding everybody from putting his foot on the land if he thought proper, but he never did it to his landlord.

421. And excluding his landlord too?

Certainly as a trespasser if he came there against his will.

422. Earl of *Kimberley*.] You mean as regards game?

Yes.

423. If the right of shooting was not reserved, then the tenant would have that right which could exclude the landlord or any other person?

Clearly.

424. Lord *Somerhill*.] Supposing a tenant to have been in possession and to have always recognised the landlord's right and practice of shooting. If that tenant suffered the landlord to have a sporting trespass, would you have given judgment against the landlord where he had practised that right for a large number of years?

Do you mean to say since the passing of this Act, or before?

425. Before?

Oh no; I would not.

426. Therefore the landlord practically, where the right had come down to him and been established by long custom, would recognise that as a custom, and that would bar the tenant from setting up a new right to stop the landlord?

I never knew an instance of that kind.

427. Viscount *Lifford*.] Has it come to your knowledge, that in Donegal, tenants have actually prohibited the lessee of the landlord from fishing on their lands?

I think in the case of Mr. Stile they threatened to do it.

Mr. J. Hamilton.
14th June 1872.

428. Did you ever hear of a case of Mr. Murray Stuart?
I have heard of the case.

429. Forbidding the lessee of the landlord to walk along the side of the salmon river?

I have heard that, and I have also heard that the tenants have turned the gamekeeper of the Marquis of Conyngham off the mountains.

430. You heard Mr. Johnston's evidence, that there were not any important differences of opinion amongst the chairmen; is that your opinion?

I think there must be important differences, but what I understood Mr. Johnston to say was, that the conflicting decisions were very few.

431. You have heard of the curious case of Lord Leitrim, in which 41 years' purchase was given?

Yes.

432. Will you tell us what effect you suppose such decisions, or even to a much less amount, will have upon entails and settlements?

It will very materially interfere with the value of the thing entailed. 'I think there is a great conflict of opinion as to the measure of compensation with respect to tenant-right.' I know there are a great many chairmen who say they would not, by any means, give what the tenant could get in market overt, and the reason they assign is this: the inordinate value of tenant-right arises very much from the fact that the Irish tenant has no other mode of investment for his money, and if he had 200 *l.* or 300 *l.*, he would almost rather keep it in an old stocking than invest it in any other way than the purchase of tenant-right; accordingly he does not care what price he gives, as otherwise his money is lying idle.

433. What would the effect be in Donegal of tenant-right selling at 20 years' purchase or 40 years' purchase?

It must decrease the value of the landlords' interest enormously.

434. If the life owner of an entailed estate has any ill-will against his heir, he can take away from him almost his entire property by recognising tenant-right to the amount of 20, 30, or 40 years' purchase?

I suppose that would be the necessary result.

435. Earl of *Belmore*.] You understand what is meant by "squaring farms?"
Certainly.

436. Is not it usually the case when a landlord wishes to square farms on his estate, that he serves his tenants with notices to quit with a view of altering the boundaries, and of replacing the tenants in possession of the farms?

Yes, he has no other machinery; and I have known instances which have come before myself, in which one obstinate, ill-conditioned tenant has prevented the wishes of all the rest of the tenantry from being carried out by refusing to concur in the general scheme.

437. Would not the effect of the working of this new land law be to very much discourage landlords from squaring the farms?

Of course it will, because it may bring upon a landlord claims to an enormous amount from a whole district.

438. Lord *Lurgan*.] Is turbary in Donegal subjected to tenant-right?

Practically, the landlord always retained control over the turbary, first to prevent its being exhausted, to prevent the tenant selling it instead of merely retaining as much as he wanted for his own use, and secondly, with the object of distributing it fairly amongst all the tenants of a district, and therefore practically there was no tenant-right in turbary.

439. That is practically the case, I believe, in most of the counties in Ulster where tenant-right is acknowledged, that there is no tenant-right in turbary?

That is my impression.

440. Lord *Greville*.] You say it is in the power of a landlord, by recognising usages as in Ulster, so to damage his entailed estate as to reduce it considerably in value for his heirs; are you aware of the difference in price of estates

estates in districts where the tenant-right prevails, and where it does not prevail; and do you consider that the property fetches more where the tenant-right does not prevail than where it does prevail? Mr. J. Hamilton.
14th June 1872.

I cannot give your Lordship any very accurate information on that subject, but I think it is obvious that if a landlord is subjected to such claims as are made for the Ulster tenant-right, it must materially decrease the value of his share of the property.

441. Is it your opinion that property in Ulster fetches less in the market than property in the other three provinces of Ireland?

I think not. There are other circumstances which maintain the value of property in Ulster. Ulster is a very wealthy province; there are very wealthy manufacturers and merchants who are always anxious to get land. There are always purchasers for land in Ulster, and the very peaceable character of the province is another very great inducement to a capitalist to invest in it.

442. Which may be attributable to the existence of tenant-right?

I think the existence of tenant-right very much contributes to the peace of Ulster, and I, for one, would never think of taking it away, nor of trenching on it to any great degree; but I should keep it within reasonable bounds.

443. Lord *Charlemont*.] Are you able to give an opinion that since the passing of this Act the value of land in Ulster has increased or decreased; is it your opinion that estates now would fetch as much as they did before the passing of that Act?

I do not think they would; I know I should not give as much.

444. Lord *Steward*.] Do you know of any sales since the passing of this Act? I think not.

445. Lord *Charlemont*.] None have been sold; no one will buy them? I do not know.

446. Lord *Lurgan*.] Have you heard of a sale in Londonderry on Lord Waterford's estates?

Yes, of course; everybody has heard of that.

447. That is a sale where the property sold well? I believe it did.

448. Are you aware who bought that property principally? I am not; I believe a number of the tenants.

449. Earl of *Kimberley*.] Upon what do you base your opinion, that land has fallen in value in Ulster since the passing of this Act?

I am basing it upon my own view of what must be the necessary consequence of giving the tenants such an enormous interest by law, which was formerly subject to the control of the landlord, but which is now not subject to his control.

450. You are merely giving us your own opinion of what you think ought to happen, rather than any statement based upon what has happened?

Certainly, because I do not know of any properties that have been sold since the passing of the Act?

451. Practically, your evidence merely amounts to your opinion?

That is all. Your Lordship (Viscount Lifford) asked me something about differences of opinion; I think there is a very great difference of opinion indeed as to whether tenant-right legally exists upon the expiry of a lease.

453. Viscount *Lifford*.] And great difference as to whether the 8th, 9th, 10th, and 14th sections apply to Ulster? There is.

453. Lord *Brodrick*.] There seems to have been a considerable number of what I may call attorneys' actions brought in the courts; I mean actions in which large claims for compensation have been made, which have been reduced to a fraction or disallowed altogether by the judges; does your experience lead you to think that practice prevails extensively?

It does prevail extensively, but I am not surprised that the claims should be large until the principles which govern the Act are settled, because a tenant can hardly

Mr. J. Hamilton. hardly be expected to know whether or not a particular item of his claim is allowable in point of law, and he makes, of course, every possible claim he can, taking his chance that some of them are legal and some not: and that would account to some extent for the inordinate number of the claims. I do not think that is a matter for much surprise under the working of a new Act.

14th June 1872.

454. Lord *Silchester*.] Are you aware of any case in which a tenant emigrating claims to retain his holding in Ireland?

I am not aware of any case of that sort.

455. Does it occur frequently within your knowledge that the chairmen act by deputy?

Very infrequently, and for this reason, that the chairman who acts by deputy is obliged to pay his deputy at the rate of from eight to ten guineas a day, and the deputy is sometimes very slow. However, there have been some instances. I know of three instances at the last sessions, I think, arising from illness.

456. Is there any rule as to how long a chairman may be absent from such duty, either from illness or any other cause?

I think not.

457. Do you know a case in which a chairman has resigned in consequence of incompetency, either from ill health, or any other reason?

I have heard of a resignation the other day; I think it was the chairman of Clare. My predecessor also resigned.

The Witness is ordered to withdraw.

[Adjourned to Tuesday next, at Eleven o'clock.]

Die Martis, 18^o Junii, 1872.

L O R D S P R E S E N T :

Marquess of SALISBURY.	Lord SOMERHILL.
Earl of PORTSMOUTH.	Lord CHARLEMONT.
Earl of BANDON.	Lord SILCHESTER.
Earl of KIMBERLEY.	Lord WENLOCK.
Earl of DARTREY.	Lord LURGAN.
Viscount LIFFORD.	Lord CHELMSFORD.
Lord STEWARD.	Lord MEREDYTH.
Lord DIGBY.	Lord GREVILLE.
Lord BRODRICK.	Lord KILDARE.

THE LORD CHELMSFORD, IN THE CHAIR.

MR. WILLIAM BENCE JONES, is called in ; and Examined, as follows :

458. *Chairman.*] You are, as I perfectly well know, a Barrister, and you used to go the Home Circuit ?

I used to go the Home Circuit and the Hertford and Chelmsford Sessions ?

459. You have been for a very considerable time resident in Ireland, have you not ?

Yes, for the last 30 years ; since I left the Home Circuit.

460. Have you, during that time, attended the Quarter Sessions ?

Regularly, whenever I have been in Ireland, which I am for nine months in the year.

461. Has your attention been called to the working of the Land Act ?

Yes, it has been fully before me, both while it was in Parliament and since ; I am intimately acquainted with it.

462. Would you be kind enough to give the Committee your opinion as to the working of that Act, having reference to the courts which are established for deciding cases arising under it ?

From the very first I have been of opinion that the courts were not fit courts for deciding questions of such great importance. The jurisdiction of the court is limited in Civil Bill cases of contract between man and man to an amount not exceeding 40 *l.*, but as against the landlord it is absolutely unlimited. And instances are known of a claim having been put in for 8,000 *l.*, and, I believe, a decree has actually been given for 1,400 *l.* by a court which, as between man and man, as I say, can only settle a question of 40 *l.* That always appeared to me to be a very grievous anomaly ; and when the Bill was in the House of Commons I urged it as strongly as I could upon every one with whom I had influence, and I printed a paper which I circulated largely amongst Members, pointing out that the court was the worst part of the whole Bill. To make it still worse we have no efficient Court of Appeal whatever. We have no security for uniformity of decision independently of the revision of erroneous decisions. In fact the power of the chairman under the Act is very much more in the nature of a legislative power than of a mere power of decision by a judge and in cases where the chairman is changed, which not unfrequently happens from promotion and death, and so on, positively when a new chairman is

Mr. W.
Bence Jones.
18th June 1872

Mr. W.
Bence Jones.
18th June 1872.

appointed it is like coming under a new law. I speak feelingly about that, because in the West Riding of Cork, with which I am connected, our chairman has just been promoted. No one could have taken greater pains than he did conscientiously to decide the questions which came before him, but a totally unknown and untried barrister who was never heard of before is appointed in his place. Before, under the old chairman, we got a sort of approach to a fair system. Though I cannot say that I thought his decisions by any means always right, yet they were moderate, and we got to know, in a degree, the law under which we were living. We are now entirely at sea again.

463. Has it occurred to you to suggest any remedy for the imperfect constitution of the tribunal according to your judgment?

It has always seemed to me that the courts under the Land Act ought to be put on just the same footing as any other courts; that questions of small amounts (whatever amount Parliament may think fit to entrust to the chairman) might be equally settled in land cases by chairmen of the counties; but that in larger questions there should be an efficient court to which we could resort in the first instance, just as in larger cases between man and man in matters of contract, we resort at once to the superior courts.

464. You suggest a court of primary jurisdiction for cases of importance?

What I suggest, and what I at one time hoped, would have been brought before the House of Commons by your Lordship's friend, Mr. Russell Gurney, was that in all cases beyond the amount that the chairman might settle in ordinary cases, we should have the right of going to the superior courts, as a matter of course, if we pleased. When both parties are agreed to put the chairman in the position of an arbitrator, let them do so, but let either party with a large claim made against him be at once at liberty to resort to a superior court, and a better constituted superior court than we have now. This court to be also the court of appeal from the chairmen of sessions in smaller cases tried before them.

465. When you say that you would have recourse to a superior court, in the first instance, what sort of court does it occur to you to suggest?

It has always seemed to me that questions of this kind involve so much more of farming and agricultural knowledge than other questions do, that you want a special court, probably a branch of the Landed Estates Court, which should hold sessions of appeal and sessions of first instance for large cases periodically throughout the country.

466. Lord *Lifford*.] Do you mean the Landed Estates Court, or the Court of Land Cases Reserved?

I meant the Landed Estates Court. The Landed Estates Court already, under the Land Act, has to lend money to tenants and others, which involves questions of value, and it has to register improvements. Many questions come before the Estates Court in its ordinary duties, as the value of estates, the rights and interests of the tenants on estates sold, which involve much practical knowledge of land. There are officers of the court, analogous to the masters of other courts, to whom many minor details, as value of buildings, &c., could be referred. The judges have often to consult surveyors and land valuers, and know in a measure who to trust. In some cases of dispute, they might send down such a person to report at no serious cost. There would be no fear of a judge of the Landed Estates Court giving nearly the value of the fee simple as compensation for unexhausted manure, or more than double the cost of draining, as chairmen have done. His general knowledge of land will guide him better than that. I thought that two judges might be appointed in connection with the Landed Estates Court for settling questions of this kind, who were not only above suspicion, but who might be chosen in some degree for knowledge of the subject. Many of those cases are pure questions of farming; and neither judge, nor counsel, nor any person concerned really know anything about it, except the witnesses who give evidence. In a case last spring twelvemonth, in an appeal before the Lord Chief Baron (who, as I daresay, your Lordships know, is one of the most conscientious and painstaking judges in Ireland), I was examined as a skilled witness upon a question of unexhausted manures, which is one of the most difficult and most frequent questions which we have. In point of fact, in our district the chairman told me once that out of 17 cases at one sessions 14 turned on the question of

of unexhausted manures. The Lord Chief Baron took the greatest possible pains; all the leaders of the circuit were employed on both sides, but I can safely say that neither judge nor counsel had a single idea of the principles upon which the question was to be decided. I had an opportunity of speaking to one of the counsel afterwards, on the side on which I was called, and they were absolutely in the dark. It was a question of farming, with which scientific English farmers would be familiar.

467. *Chairman.*] I apprehend that where it was an agricultural question, the judges, whoever they might be, would receive the evidence of skilled witnesses, and they must act according to the information that they receive?

It always seemed to me that the judges selected for this court of appeal might be selected with some reference to the knowledge required under the Land Act. Their principal or entire business would be deciding questions under the Land Act, and I would have some reference, in selecting them, to their knowledge of the subject. They might also inform themselves of all questions of knowledge of land upon which many of us have informed ourselves, on questions upon which authentic information can be got, and the judge whose principal business it was to decide such questions would inform himself, so that with an efficient court of appeal of this sort we should get something like uniformity of decision among the chairmen.

468. Then you would have an appeal from that court which you have supposed to be existing as a court of primary jurisdiction to the Court of Land Cases Reserved?

Possibly with some modifications of that Court of Land Cases Reserved. The Court of Land Cases Reserved, as it stands now, decides purely upon questions of law; it does not go at all into those mixed questions of law and fact, such as these really are. There are many questions as to the interpretation of the Act, as to what is meant, for instance, by those words, "unexhausted manures"; that are a mixed question of law and fact.

469. Supposing that you have a court established as a court of primary jurisdiction, with the skilled knowledge which you suggest, would you in that case have an appeal upon questions of fact to the Court of Land Cases Reserved?

I do not at all see why the appeal should not be just as it is in Court of Chancery, and other of our courts, in matters of contract between man and man. Whatever powers of appeal there are in the one case I think there ought to be in the other. I think that this limitation of the appeal to mere questions of law in the way in which it has been limited in the Land Act is not right and fair.

470. You are aware that upon questions of fact, that in courts of common law generally there is no appeal?

No, there is not, but that is because the jury decides facts.

471. Supposing that your judges of primary jurisdiction had the skill which you suggest, is it not possible that the Court of Land Cases Reserved might not have that skill, and might be incompetent to deal with the question of fact?

I said that I thought the Court of Land Cases Reserved would require modification in a degree, and I do think that it requires modification, so as, as far as possible, to get judges on it to know something of the subject. I think also that it would be far better if our chairmen were more assimilated to English county court judges. I think the position in which they are in Ireland is anything but a satisfactory one. A man may be acting as judge of a court to-day, and the attorney who is pleading before him may be the very man who gives him business in court in Dublin the next week. He may give a decision as judge to-day, and next week may be arguing against his own decision in the superior court in Dublin. That is clearly undesirable. Then we do not want anything like the number of chairmen that we have in Ireland. I am told that something like 20 instead of 33, if they were put upon the same footing as the English county court judges, would perfectly supply all the wants.

472. And of course you would prohibit them from practising?

I think so; I think they should be paid more largely, and should be prohibited from practising.

473. *Lord Lifford.*] Do I understand that you would still leave the present tribunal?

Mr. W.
Bence Jones.
18th June 1872.

Mr. W.
Bence Jones.
18th June 1872.

For small cases approaching to the same amount as that to which the chairmen have jurisdiction in civil cases.

474. But those land cases are unlimited, are they not ?

I say that wherever the claim exceeds the limit of amount that exists in a civil case between man and man, there should be the power of going to a superior court. I would not deprive a poor man claiming a small amount of the right of going to the sessions, any more than in an ordinary civil case.

475. May not such a case as this arise. a landlord goes to the court, he supposes for a certain amount, and he suddenly finds that it is 1,400 *l.* ?

I think that if the claim exceeds the limit, just as in the Civil Bill side of the Quarter Sessions Court, if the claim exceeds the limit, he should be barred from going on in that court, except by consent.

476. What limit would you suggest ?

I would put whatever limit you chose to put to the Civil Bill cases.

477. *Chairman.*] Would you make the limit 40 *l.*, for instance ?

I think that is too small in Civil Bill cases. It might possibly be 100 *l.*, or somewhere about that. I do not think that there is any principle involved in the exact amount, but it ought to be a reasonable limit, such as the County courts here would decide.

478. If there was a claim originally made which was apparently within the jurisdiction of the chairman, and it turned out that it was a larger amount which was in issue between the parties, would you withdraw it from the chairman and take it to that court which you think ought to be established as a court of primary jurisdiction ?

That is exactly what happens in Quarter Sessions Court now ; Civil Bill cases. I would put it exactly upon the same footing as ordinary Civil Bill cases. The decree cannot exceed the limit the chairman is authorised to give.

479. *Lord Brodrick.*] I think some such clause was passed in the House of Commons, was it not ?

I am afraid that I cannot carry that in my mind. I know that there was something of the kind. There were many efforts made to amend it.

480. *Lord Somerhill.*] As I understand you, the landlord might get his decree of ejectment in a case that might be supposed to be 10 *l.*, 20 *l.*, or 30 *l.*, or 40 *l.* ; then the tenant might afterwards come before the court, and if he made a claim above a certain sum (say 100 *l.* or 40 *l.*, or whatever amount you chose to fix) he might go to a superior court ; is that your suggestion ?

Either party should have the right of moving the case at once to a superior court, if the claim exceeded the limit the chairman is authorised to give. After all the party is no worse off than if there is no appeal.

481. In a case where the rent was 20 *l.* for an ejectment, the landlord would naturally of course go to the chairman and get his decree if he was entitled to it from the chairman. Then the tenant making his claim would have access to the chairman's court up to a certain sum, but not beyond it ?

Unless with the consent of both parties. Leave either party to remove the case to a superior court if he pleases. That was the suggestion that I made when the Bill was in the House of Commons, that either party should have the right of going to the superior court at once without having the case heard in the inferior court when the claim exceeded 100 *l.* But we did not propose a special court then, as your Lordship knows ; there was such difficulty in getting any amendments carried that we were obliged to cut them as near to what there was a chance of succeeding with as we possibly could.

482 You mentioned just now a diversity of opinion from which you apprehended great mischief, and indeed, I understood you to think that it had arisen already. Will you mention to the Committee any particular points which are still undecided and upon which you apprehend injury to one party or to the other, and great inconvenience from the diversity and uncertainty of opinion of different chairmen ?

There were two cases mentioned to me by a person who is thoroughly up to the subject. One was on the point of unexhausted manures. A tenant was actually giving 8 *l.* per acre for unexhausted manures. Any farmer knows that the unexhausted manures on a farm could not be worth more than from one-third to one fourth of that when it was first applied, and then there ought to

to have been a deduction for the crops grown since the manure was applied. It was perfectly ludicrous. The fee-simple of a good deal of our land does not go above 8 *l.* an acre. There was another case in which the chairman allowed 2 *s.* 6 *d.* a perch for making drains, although the fair value of them when new would hardly be from one-half to one-third of that, and from that again had to be deducted the number of years that the tenant had enjoyed the benefit of those drains. Those are points which are entirely in the discretion of the chairman.

Mr. W.
Bence Jones.
18th June 1871

483. Is there any difference, that you are aware of, or that you apprehend, between the opinion of chairmen as to the consideration to be given to the rent which the tenant has hitherto paid, and the amount of profit which he may fairly be considered to have gained at the termination of the tenancy?

No decision of that kind has been brought under my notice, though it is very possible that there have been such discussions; but the whole thing is so entirely vague, that unless you are present in court, and hear the whole case, you cannot form a proper opinion upon the decision. It is wholly in the discretion of the chairman in almost all those cases, not only as to the amount of compensation on eviction to which a tenant is fairly entitled, but also those other indirect claims of compensation for buildings, compensation for unexhausted improvements of all kinds, and the reclamation of waste lands. What is waste land is a most uncertain question. A good deal of land is really waste, because the tenant has let it get overgrown with furze. Perhaps the man has himself done it, and there is nothing in the world to prevent his putting in a claim for compensation if he again clears off the furze and brings the land into cultivation.

484. *Lord Steward.*] In those cases, where such sums were given as compensation for unexhausted manures, is there any appeal?

Yes; the judge of assize. But my point is, that the decision of the chairman was so extreme and absurd that it was a wrong that any one should have to appeal against it.

485. Were the cases tried before the judge of assize?

I cannot tell that; I wrote to Dublin for the papers, and my informant has not been able to lay his hand upon them.

486. Did that occur in the county of Cork?

No, I believe that occurred in the county Tipperary; it did not come under my notice, except through a friend in Dublin, who is very well up in the Act, and with whom I have in fact acted.

487. Then it is not within your own personal knowledge?

No, it is not; I said that at the commencement.

488. *Lord Somerhill.*] Have you any knowledge of any case in which a tenant making a preposterous claim of a large amount, the claim has been either disallowed *in toto*, or in a very large proportion, and in which the tenant has also been called upon to pay costs?

I am not aware of that; I do not think that the costs in Quarter Sessions cases are generally very considerable. It would not make a very large item.

489. If a man makes a claim of, say, 1,000 *l.* (and we have been told that such cases occur), and if the chairman has decreed that he is to have 100 *l.*, is it not hard that the landlord should be obliged to pay his own costs?

It would be very unfair anywhere but in Ireland, but nobody limits their claims on any subject in Ireland.

490. When the landlord is condemned to pay the claim, has he to pay the costs?

Yes. Exorbitant claims are very wrong. I have discussed it with a chairman myself, and pointed out to him how much mischief was being done in allowing exorbitant claims to be brought without showing displeasure by giving costs. Such claims make the whole thing a toss-up where the chairman does not thoroughly understand the question, it is practically reduced, in a great measure, to dividing the difference between the parties; and those exorbitant claims are put in to try and make the utmost penny in splitting the difference, without reference to the evidence which may be produced.

491. *Chairman.*] Is there not a limit to the power of the chairman to give costs?

Yes; I believe there is, but a chairman might very easily, if he set himself to do it, check those absurd claims. A great many claims are utterly ridiculous

Mr. W.
Bence Jones.
18th June 1872.

in amount and quite childish; and chairmen ought to discourage them by showing they prejudice the party making them.

492. Every claim for compensation for disturbance must necessarily be, to a certain extent, vague and indefinite, but if a standing court of primary jurisdiction were established, you would probably think that certain rules and principles might be laid down by that court which, without being very precise, might, to a general extent, guide future decisions upon the subject?

I have never thought exactly what principles could be laid down; I have always looked at it more as a question for a judge of common sense and strong judgment, looking to the whole circumstances of the case, because, as your Lordship knows, the Equities Clause inserted in this Act gives the most enormous power to the judge to do almost anything. If the judge bases his decision upon the Equities Clause, he may really do almost anything. The power is unlimited under that clause. I suppose there never was such clause inserted in any Act of Parliament since the world began as that Equities Clause.

493. When I said that such rules might guide future decisions, I meant that the judges would have in their own minds a certain standard?

I have no doubt with a strong court of that kind, a good system would gradually be established; but now everything is vague, and everything may be upset. The discretion of one day may not be the discretion of the next, or the discretion of one court need not be the discretion of the other. I think that it is of immense importance to bring about something like uniformity, so that people may know upon what principles their estates may be managed; and I also believe, that it is greatly to the interest of the tenant that it should be so; because as the thing is the instinct of self-preservation obliges landlords to be as stiff again as they would have ever dreamed of being under the old state of things. Nobody can now do a thing without consulting his attorney. I am told that in some large offices the attorney is never out of the office. It is not that people have any ill-will against their tenants, but it is simply the necessity of self-preservation, of guarding themselves against the penalties of the Act and future litigation in a court with unlimited powers. Men do not know what enormous charges may be accumulating against the estate, unless they take great precaution.

494. Lord *Somerhill*.] Is it your opinion that the operation of the Act has any effect upon the general relations between landlord and tenant?

I do not think that it has been long enough in operation to do that as yet, but I think that it is in the way to do it, and I think that men will be obliged in the interest of self-preservation to be far stricter than they were before.

495. Lord *Lurgan*.] Have you heard any expression of feeling on the part of the tenantry that they wish the tribunal to be altered?

Some farmer's club, I think, said that they did not consider the tribunal a good one, but with what views they said it, I do not know. I do not think that any persons of intelligence, who look into the thing, could be satisfied with the tribunal.

496. That was a farmer's club in Cork, was it not?

That was a farmer's club in Cork; there was some such expression of opinion.

497. Lord *Steward*.] I think you said there were some large estates offices in Dublin, where the attorney was never out of the office?

I did not say in Dublin; I think it is so everywhere.

498. Have you watched whether in the counties of Ireland a very large number of cases have been tried under the Land Act?

I do not think there have been.

499. Would not that militate against your argument that an immense amount of litigation is growing between landlord and tenant?

I do not think there is litigation; yet it is in the view of taking precautions. In every case of arrangements between landlord and tenant you have to consult an attorney with a view to guard yourself against the penalties of the Act.

500. Lord *Kildare*.] Do you not think that that would have happened, no matter what Act might have been passed, from its being a new Act?

No

No doubt that would have been so to a certain extent, but I believe that every extreme decision has the effect of driving landlords and agents, in self-preservation, to look more closely into every minute point. With regard to those extreme decisions, although they may be a gain to individual tenants, I believe they are a very serious loss to the mass of the tenants. We have not the power of doing the good natured things which we should have done formerly; you absolutely cannot do that. I had a case myself just before I came to London. There was a very good little tenant, and I happened to have some reclaimed land near his farm. The farm was a dry high-lying farm, and he asked me to give him a newly drained seven-acre field, in order that he might have water. I should have said, under the old state of things, "You may have the field, but when I want it, you must give it back to me;" but I found there was no way of escaping the penalties of the Act. I could not give him a lease of the field, because he had not a lease of the rest of the land, and it would not have done with so small a farm. There was no way in which I could give him the field without rendering my son liable to pay him seven years' compensation.

Mr. W.
Bence Jones.
18th June 1871

501. *Lord Steward.*] Is there not a clause in the Act which enables persons to let lands for certain temporary purposes?

Yes; but it is very doubtful what those words, "temporary purposes," mean. It passed through my mind whether I could not do it under that, but I found it so uncertain that it quite overbalanced the motive of kindness which I had towards the man.

502. Do you not think that previously to the passing of the Land Act there was a great deal of looseness in the dealings between the landlord and tenant which very often created much of the bad feeling which existed between landlords and tenants?

In some cases that was so, but looseness was almost always turned in the tenant's favour, sooner or later.

503. Would you not consider it rather an advantage that the relation between landlord and tenant should be reduced to a more regular footing?

I do think it of advantage to the whole community, but I am sure that it cuts very hardly against the existing tenants. They lose privileges which they had before. Without any question, I think it is desirable, but you cause great dissatisfaction amongst the tenants by doing it.

504. Have you found that very great dissatisfaction exists among the tenants as to the working of the Land Act generally?

I do not think that there is any dissatisfaction yet; the existing tenants gain.

505. I thought that you stated that you had considered the effect of the necessity of very great legal regularity between landlord and tenant was very hard indeed upon the tenants, and that it would cause very great dissatisfaction amongst them?

Ultimately it will, but at present the thing has not been long enough in operation, and everybody is in the dark about it. All are only feeling their way about it. Neither landlord nor tenant has really got yet to understand the bearing of the Act.

506. *Lord Somerhill.*] Has it come to your knowledge at all that any landlords in any part of Ireland have in consequence of the Land Acts stopped improvements which they were in the habit of doing at their own expense?

I have heard rumours of the kind, but I have not known it of my own knowledge.

507. Has it had any effect upon emigration, in your opinion?

I do not believe that it has had the slightest effect upon that. In our district it has not had the least effect.

508. You do not think that it has tended to retain people in the country who were inclined to go away?

Not in the least. In the county of Cork we have always been on very good terms with our tenants, and there has never been anything like hardship.

509. Under the old system, I suppose, you rarely, if at all, heard of a man who gave up a farm for the sake of emigrating?

That has begun of late years, but that is in consequence of the great rise of wages amongst the labourers. The small tenants are gradually finding themselves at a disadvantage as compared with well-paid labourers, and they

Mr. W.
Bence Jones.
18th June 1872.

are just beginning to feel that they would be better off by emigrating, and they do emigrate sometimes, and will do so, I believe, more and more.

510. So that, in fact, the Act, as far as your observation goes, has tended to diminish the number of tenants in Ireland, and not to root them in the soil?

At present I do not think that it has produced any appreciable effects; it has not been long enough at work; but in all cases of justifiable ejectment for non-payment of rent and sub-division of land, and so on, when once a landlord has got possession of his land for a justifiable cause he never can let it again so as to come under the Act; he must either let it to a large tenant or with a heavy fine, or in some way or other protect himself against the Act.

511. Lord *Brodrick*.] Has it not been the practice in the county of Cork usually, on well-managed properties, to give allowances of slate and timber, the tenant doing the rest of the buildings?

All kinds of allowances are given.

512. Do you think that that practice has in any way been discontinued in consequence of the Land Act?

I have heard rumours of the kind, but I have not known any circumstance in which I could definitely say that it was the case.

513. With regard to the courts in the county of Cork; there are two Ridings in the county, each of which has its own civil bill judges, is not that so?

Yes.

514. And the salary of the one is different from the salary of the other, is it not?

It is; and that very fact is a great advantage to us in the West Riding. A less good man gets the chairmanship because the salary is worse and the labour is greater. We have each sessions held at two or three different places without railroads, involving considerable cross country journeys of 40 miles, and that sort of thing, and consequently the expense and trouble to a chairman are considerable, and the salary is worse. I may also mention as a proof of the inferiority of the courts, that during much the larger portion of the 30 years that I have been attending that court we had an old and inefficient chairman, and such a burlesque of justice as his court was during the greater part of that time I never saw in my whole life. I have represented it over and over again to the Government of the day; I have protested against it in court, and, having some little knowledge of the law, whenever I could I did my utmost to resist it. Often some of the magistrates in criminal cases would lay their heads together behind the chairman's back and overrule him. It was the most disgraceful thing I ever saw in my life. I have often said that a generation would not remove the mischief that poor old man did. It was utter inefficiency. Two clever attorneys twisted him round their fingers, and often the worst fingers. It was the worst possible abuse. It was mentioned in the House of Commons when the Bill was before the House, and a great row was made about it, but it was put aside, saying that that was 10 or 12 years ago. That was so in my own county, and I have reason to believe that it has been so in other counties to a much later date.

515. Earl of *Bandon*.] Since that gentleman died, I think the present is the fourth barrister who has been in the West Riding of the county of Cork?

It is, which shows how frequent the changes are.

516. I believe that the barrister in the East Riding has 1,200 *l.*, and the other other in the West Riding only 800 *l.*?

I do not know what the sums are, but there is considerably more work and less pay in the West Riding, and consequently the chairman gets promoted, and goes away as fast as he can. Every one whom we have had since the old gentleman left has been promoted to another county. It is far from Dublin, and interferes with their practice.

517. *Chairman*.] Are any chairmen prohibited from practice?

None of them. Any of them may practice who can get practice.

518. Lord *Brodrick*.] With regard to unexhausted manures, you were examined as a skilled witness, were you not, in that case of Jackson and Releker, which was tried at the Cork Assizes about 15 months ago?

I was.

519. Did

519. Did you find that the Court was guided by any clear principle as to the value of unexhausted manures ?

As I have said, the Court knew nothing at all about it. The Lord Chief Baron was most attentive to what I told him, but it evidently made but small impression. It is really a question involving very nice knowledge, and a certain quantity of scientific knowledge. In England unexhausted manure is perfectly understood. It is in principle the Lincolnshire custom ; it is what the tenant's money or labour have added in value to the farm ; but in Ireland they claim for all the manure which is made from the roots and straw, and hay grown in the ordinary course of farming, and that has been allowed.

Mr. W.
Bence Jones.
18th June 1871

520. Lord *Greville*.] Are you aware that there is a clause in this Bill which gives the landlord or the tenant the power to register improvements of which he desires to preserve the evidence ?

Yes.

521. Are you of opinion that it is desirable to make that compulsory, and to compel every tenant to act upon that clause ?

I suppose that would be thought too severe on tenants. It was a good deal through my urging that very clause on Sir Roundell Palmer, that it was inserted in the House of Commons. There was a good deal of discussion over it, but it has not told to the extent which we anticipated. The way that some of us have taken has been to establish an estate record, in which once a year you enter down against every farm what has been done upon it according to the tenant's own statement. Take his facts exactly as he gives them to you, and when they are incorrect or exaggerated, put the opposing evidence against them, so that you are able to swear afterwards that that is the man's claim at the time, and then from your other sources of knowledge you can disprove so much of it as is necessary. I think that that is likely to answer better practically ; I have adopted that course myself, and I think that it will be adopted largely by people of intelligence whose estates are carefully managed.

522. Would you not think it is desirable by enactment to compel every tenant in Ireland to register the improvements of which he desires to preserve the evidence ?

I am afraid that it would be thought too stiff ; I should like to see it done because one of our great difficulties is to get at the facts. If we could get at the truth under the Act, I do not believe that the Act would be much to be blamed, but it is the extraordinary difficulty of getting proof of any fact of this kind. A man puts in a statement that a little trumpery building has cost three times as much as it did cost, and there is the utmost difficulty to disprove it when it comes to a question of swearing.

523. Lord *Kildare*.] Is it your opinion that such a record as you mention would be admitted as evidence before the Land Court, supposing the agent was dead, or was not there to support it by his testimony ?

It is doubtful, but I think that the entry of the agent in his handwriting might be admitted after his death ; it is open to doubt, but at any rate it would be a guide in cross-examination, which would be very valuable. All those claims after a certain number of years grow very much fainter in themselves. When it was proved that a small building was put up thirty years ago, the tenant could not put in a very large claim for it ; it would show of itself that it had been worked out in a great measure, so that I think the register will be a great help, although it is not absolutely conclusive proof. As long as the man who made the entry lives he can swear that was the tenant's own statement, which at least limits his claim, and is a great check.

524. Lord *Charlemont*.] Without any reference to your opinion upon the Act itself, I understand you to complain of the machinery for carrying it out ?
Very strongly.

525. In reference to those suggestions which you have made, with regard to allowing claims of a certain amount to be settled by a barrister's court, the higher claims to go to another court, you do not wish the Committee to understand that that is your entire opinion or wish, but you would rather have that than leave things as they are now ?

I think that is the fair solution, looking at it from the side of the tenant and from the side of the landlord, though it might not be quite that which, as a
(136.) H 3 landlord,

Mr. W.
Bence Jones.
18th June 1872.

landlord, I should choose; the fair principle seems to be that small amounts should be settled by a court near home, but that if a man claims a larger amount, he is able to pay more expenses in going to a court at a greater distance.

526. You think that it is quite compatible for yourself or anybody, without objecting to an Act of Parliament at all, to object totally to the machinery by which that Act is carried into effect?

Quite so; that was the first point which I put forward in the papers, which I printed and circulated in the Houses of Lords and Commons, that the machinery was the weakest point in the Act.

527. Lord *Wenlock*.] You do not think it is an error which will correct itself by time?

I do not see any chance of it, for each barrister is unshackled by the decisions of his predecessors.

528. Are not those decisions recorded?

Yes; but they are not binding upon the successors, and the Judges know no more about many parts of the subject than the chairmen. The thing is entirely at sea.

529. Would it not be better, in your opinion, to have a court of primary appeal in the first instance, without having anything at all to do with these chairmen, who, as you say, give those conflicting decisions?

The only objection to that is, that you would be told that it is hard to take poor people in cases of small amount, upon which probably there would be no appeal, to a great distance, when they can go with their witnesses the same morning and get them tried at quarter sessions.

530. Supposing that this court of appeal went circuits in different districts where the plaintiffs and defendants would have easy access to it, would not that be better, in your opinion?

The court would have to travel very much in detail to do that; for instance, the West Riding of Cork is something like 60 or 80 miles long, and 40 or 50 miles wide. They would have to go to a great many places in each riding to do it. I think that it would be fairer on the whole that cases of the same kind as would be tried in a Civil Bill Court should be tried under the Land Act there too; I think it would be freer from complaint.

531. Lord *Kildare*.] In how many places, and at how many times is each quarter sessions held in the West Riding of the County of Cork?

Each session is held in three places, but the places are varied; one session is at Bandon, and adjourns to Skibbereen and Macroon, the next at Clonakilty, adjourning to Bantry and Macroon, and so on. Each session is now held in three places. If the court were held often, that would give a good deal of travelling to any Court of Appeal. With large cases, I think you might very well have the Court of Appeal only held in the county town. People might go up to the county town, just as in civil cases, where they claim large sums.

532. In point of fact, each chairman holds sessions at more than one place?

Yes, in our county. I believe that in some small counties the sessions are only held in one place.

The Witness is directed to withdraw.

MR. WILLIAM O'CONNOR MORRIS, is called in; and Examined,
as follows:

Mr. W.
O'Connor Morris.

533. *Chairman*.] I BELIEVE that you have recently been appointed Chairman of Sessions?

Last week I was appointed Chairman of Louth.

534. You had acted before, had you not, as deputy chairman?

I sat once for Mr. Blake, who was ill at Fermanagh, and twice for Mr. O'Donnell, who was ill at Westmeath; but I may say that I had hardly any opportunity of trying land cases. In Fermanagh there was no land case ripe for hearing, and in Westmeath there were two. One was the granting of a lease for

for 35 years by a limited owner, under the statute, and the other was not altogether fit for hearing, and I adjourned it. I did grant a lease by the limited owner under the statute, and it was a rather peculiar lease; it was a lease, as I found out, to the agent of the estate.

Mr. W.
O'Connor Morris.
18th June 1872.

535. Was that, or any other case appealed?

No, there was no appeal. I took good care that the proofs should be *strictissimi juris* in that case. In fact, I refused it point blank at first; but after serving notices on every human being, dry trustees and remainder-men of all kinds, as I found they insisted upon its being granted, I granted it at last.

536. Has your attention been called to the working of the Land Act?

My attention has been called, in what I may call a cursory way, to the working of the Land Act, but in a purely professional way; it is very difficult to form an opinion upon the working of the Act, because there is only one case of authority reported; that is the case of Holt and Lord Harberton. The other cases are the reports of chairmen of quarter sessions in the "Law Times," which is a very good publication, but not a publication of authority, which would bind the judges.

537. When I spoke of the working of the Act, I should rather have said the machinery by which the Act is worked; has your attention been called to that point?

Of course in what I say upon that subject I speak with a certain amount of *esprit de corps*, so that my evidence must be taken with that qualification. My own opinion is, that having regard to the fact that this Act is a great and sweeping reform, and having regard to the fact that there has been extraordinary excitement in Ireland about this Act, and the decisions under it during the last 18 months, as far as I can judge, the conduct of the chairmen has been moderate, prudent, and temperate. That is my decided opinion.

538. I was not inquiring at all, or desirous to inquire, into the conduct of the judges, but merely with regard to the general effect upon the minds of the people, as to the machinery by which this Act has been worked?

There are disadvantages and advantages in the chairman's court. There are 33 districts in Ireland, and the advantage of a small area presided over by a judge whom you must assume to be competent is, in my opinion, very great. I think that the difficulty of working this Act is not so much in the law as in the facts and the evidence which comes before the court. I think that there is a great advantage in having a competent judge presiding over those cases in a circumscribed area, but on the other hand, there is the obvious, and I fear to a great extent the almost insuperable, objection of a number of tribunals, and a decentralised kind of jurisprudence, which must necessarily, from the nature of the case, lead to a conflict of decisions and to uncertainty. We all know, as a historical fact, from the history of the old French Parliaments, that wherever you have a decentralised system of jurisprudence working in a great number of centres, it is almost inevitable that you should have a great conflict, and a great difference of opinion. The fact is, a great number of cases will not bear appeals, and that leads to the springing up of uncertainty and conflict in decisions. That, I think, almost necessarily follows from there being 33 judges. There is that objection, but it is a balance of difficulties to my mind. On the other hand, I look upon the advantage of there being a single judge in a circumscribed area as being of much value in the working of this Act.

539. *Chairman.*] It has been suggested by Mr. Bence Jones that there ought to be, or might be, some limit to the jurisdiction of the chairman in respect to those cases under the Land Act; is that your opinion?

No; my opinion is rather the other way on that point. We all have our own little nostrums in these matters, and my own view, I may tell your Lordships, is a matter of notoriety. I considered this matter before the passing of the Act for the "Times" newspaper. I wrote about it at the time the Bill was passing through Parliament, and I have seen nothing to change my opinion. I thought at the time that it would be advisable that three chairmen should sit together in those cases, so that you would have instead of 33 separate courts 11 separate courts. I would take the three chairmen of three conterminous counties, separate the Land Sessions from the Court of Quarter Sessions, and make different periods for their sittings; and I would have the

Mr. W.
O'Connor Morris.
18th June 1872.

chairmen of the three conterminous counties go in circuits to work out the Act. I think that would reconcile the advantages of local knowledge, and of a circumscribed area, and to a great extent get rid of the disadvantage of conflicting and different decisions, which I fear almost necessarily must arise. I am bound to say that I am not aware that they have arisen to any great extent as yet, but I think that, judging *a priori*, and looking at the historical evolution of law, as we all know, it almost necessarily follows that there would be conflicting decisions from the number of tribunals; and I do not think the Court of Land Cases Reserved will remove the mischief.

540. Lord *Somerhill*.] Do not the changes that take place in the promoting (as it may be called) of chairmen from one county to another a good deal nullify the advantage which you think is gained by local knowledge?

To a certain extent it must be so, but that is in the nature of things. That applies to every tribunal whatever. You may take the average service of a chairman as being probably about 10 or 15 years, and of course there will be changes; but I should hope that in the course of 10 or 15 years this law will be tolerably stiffened into precedent. It may take longer, but I think perhaps that in 10 or 15 years we shall pretty well know how the Act will work.

541. Are there not such obscurities in the Act at this present moment, that hardly any lawyer will venture to say positively how to interpret it?

There are certainly obscurities in the Act. The Act is one not I think of very great difficulty, but it is one of difficulty. However, I think the difficulty in the practical working of the Act is more in the facts and in the evidence than in the law. The law is difficult, but I do not think it is as difficult as the Act of 1860, and certainly it is not as difficult as many great Statutes which every lawyer is bound to know, such as the Fines and Recoveries Act and the Statute of Limitation.

542. You have mentioned one case as having been laid down, in which the law has been positively decided by a superior court; is there any correct report of that judgment?

I do not think there is an authentic report. We have our Irish reports managed just in the same way as the English reports, and I believe that the judges revise their judgments under our reports, just as I believe they do under the English reports. I am pretty sure that the number containing the case of Holt and Lord Harberton has not come out yet, but there is a tolerably accurate report of it in the "Law Times." We look upon the law reports as our standard.

543. Is it not commonly understood, or reported, that one judge of great experience and high position in the court stated that the circumstances in that case were so peculiar that the judgment ought not to be considered as a precedent to be followed?

If the report be accurate, the Lord Chief Baron said that he only decided that case upon its special circumstances, and I can quite understand why his Lordship said so. The case of Holt and Lord Harberton was a peculiar one. I think that your Lordships have had it before you. I think that it established this great principle, that where there had been a contract long ago, that a lease was to be given in consideration of improvements, then that lease having been once given, that was a terminus behind which the tenant should not go and claim for improvements. I can quite understand what was running in the Lord Chief Baron's mind.

544. Will you be good enough to state to the Committee some points upon which you consider that the law is more obscure than it ought to be?

The law is obscure on some points, and certainly the Act has gone somewhat further in some respects than I could have wished. I do not know whether your Lordships would wish me to go through those points.

545. *Chairman*.] We only wish to enter into the working of the Act. Will you state your opinion upon that subject?

The first section relates to the Ulster custom. As regards the difficulty of the

the working of the Act, there is, I know, a great difference of opinion between the chairmen on matters of procedure which are really of vital importance.

Mr. W.
O'Connor Morris.

546. Lord Somerhill.] Do you refer to the chairmen who have their courts in Ulster?

18th June 1872.

Yes; I am sure there is a difference of opinion between two of the chairmen, the chairman of Down and the chairman of Antrim; and I think that there is a difference of opinion, so far as I know, among the body of chairmen. The Statute provides that a tenant of a holding in Ulster, subject to the custom, but not claiming under the same shall not be barred from making a claim for compensation under any of the other sections of the Act. The Statute gives a right to the tenant to claim the Ulster custom, or to claim under the subsequent sections of the statute which create what I may call new statutable rights. It gives a right to compensation for disturbance, and a right to compensation for improvements. That was meant to meet the case where the tenant-right had been worked down by estate rules; it gives the tenant the alternative of claiming either. There have been three different views as far as I can judge, taken by chairmen in point of procedure upon that section. One chairman holds that the tenant is bound to elect in pleading; in other words, that he must put forward a claim, either under the Ulster custom or the subsequent sections. Another chairman holds that he must elect in proof; that he may plead either claim like two counts in a declaration; but that at the trial he must elect to stand on either count. Then there is a third view, which in my humble judgment is on the whole the right one. It is this, that he may first try a claim at one sessions under the Ulster custom, and if he is defeated in that, he may bring forward another claim under the new sections. Those three views are, I am almost certain, held by different chairmen. I have not at all made up my mind upon the subject, but I am inclined to think, that under the peculiar wording of the section, which is rather curious, the words "shall not be barred" point to giving this second right at a subsequent sessions; that is the impression on my own mind, but it is certainly a matter of great doubt.

547. Is not this a possible case under the Act as it now stands, and as it has been administered: that a landlord may let a farm to a tenant, and at the end of four or five years or more, that tenant may have failed to pay rent; that the landlord may bring an ejection for rent, and the tenant thereupon may bring such a counter claim upon it, that the landlord would have to buy back the land from the tenant, and not recover any arrears of rent whatever, and, in short, have to buy his own land, having forfeited a certain number of years' rent?

That is the enactment of the Statute, and not the fault of the administration of it. A tenant evicted for non-payment of rent under this Act of Parliament has a title against his landlord for compensation for improvements.

548. Unlimited in amount?

In certain instances unlimited in amount. It is unlimited in point of duration and amount as regards buildings and the reclamation of waste lands. As regards all other claims, it extends to 20 years, and may be unlimited in amount.

549. Lord Steward.] But only with regard to improvements?

If your Lordship looks at the 9th section, it is very difficult to understand, but, as regards certain classes of small tenants, up to 15*l.* or so, where the rents are very high, those small tenants who are evicted for non-payment of rent may claim for disturbance and also for improvements. It is an obscure section, and difficult to understand, but that is the practical result of the 9th section.

550. Lord Somerhill.] Would it not be still more the custom if the rents were low?

No; the way in which the matter stands is this: all tenants may claim for improvements when their term is put an end to by reason of non-payment of rent; and certain classes of tenants may claim compensation for disturbance and improvements too. The words of the Act are, "if in case of any such tenancy of a holding held at an annual rent not exceeding 15*l.*, the court shall certify that the non-payment of rent causing the eviction has arisen from the rent being an exorbitant rent."

Mr. W.
O'Connor Morris.
18th June 1872.

551. And upon that there has been no decision?

Upon that there has been no decision. In good times it is not at all likely to happen.

552. Do you consider that the operation of this Act in its present state is likely to work as smoothly as it has hitherto done in times of great agricultural prosperity and high profits from farming?

It is hard to speculate upon that; the Act has had a slight trial as yet. If I were at liberty to speculate on it, I should say that I believed the Act as yet, setting aside some hard cases which must arise when a change takes place, has had, on the whole, a beneficial tendency; but, on the other hand, I fear that, if bad times come, certain sections of the Act may operate rather harshly upon landlords. That 9th section is one of the sections which may give what I call a sword to the tenant against the landlord, and not operate as a shield in favour of the tenant. The term being put an end to by eviction for non-payment of rent, these claims for compensation immediately arise on the cesser of the term, and by that means the term for the payment of the compensation, which is ordinarily at the end of the term, becomes accelerated, and the landlord may have to pay an enormous amount of compensation as against the claim for rent. Of course it may be said, and justly said, that the landlord may distrain, or the landlord may sue, but distress in Ireland is extremely different, by an Act passed in 1846, from anything which you have here. Distress is almost obsolete, and suing a man of straw is of very little use.

553. Will you shortly state the difference between the law of distraint in England and that in Ireland?

That would involve a long legal argument. There was an Act passed in 1846 which surrounds distraint in Ireland with very intricate conditions. I have been going circuit for 18 years, and I never saw a replevin suit, and distraining for rent is almost unknown. A landlord does it at such perils and difficulties of all kinds that he never resorts to it. By the Act of 1860 the right of distress is limited to one year's rent, whereas in England it is six years, under Lord Campbell's Act.

554. You are yourself a landlord, and conversant with agriculture, are you not?

I am. Of course what I say must be taken with that qualification too.

555. Did you hear the evidence which was given by Mr. Bence Jones with respect to unexhausted improvements?

I heard that evidence, and as far as I know there was a case in the county of Limerick. I only know of it from a newspaper report, and I should say, with submission, that there was great doubt about that decision. I agree with Mr. Bence Jones that the words "tillages and manures" in this Act of Parliament refer to English agricultural customs. As I understand those customs, they are these: the customs were made for the benefit of husbandry, so that there should be a regular rotation of crops notwithstanding a change of possession in the tenant; and, as I understand, the custom was that a tenant having put in arable land a certain amount of manure when he was going out, either the in-coming tenant or the landlord was to pay him for that. So, in the same way with regard to tillages, if the tenant left what we call a clean fallow, then either the landlord or the in-coming tenant was to pay for that. But I think it is very doubtful whether it could mean that mere loose manure lying about a farm was to be paid for at all. I do not think that is the meaning of the Act of Parliament.

556. You mean, by "manures," what are commonly called artificial manures. You are aware, perhaps, that compensation has been claimed (and I believe that it has been given) for the mere droppings of the cattle on the land?

So I am told, but I do not think that is the meaning of the Act of Parliament. I think that the whole policy and object of this Act of Parliament was as far as it could do so, to assimilate Irish usages to English usages. That, I think, is the guiding principle which should lead a judge under this Act with respect to the Ulster custom, and everything else. The same kind of evidence which

which would prove an usage in England, would prove the Ulster custom and nothing else. That is my view.

Mr. W.
O'Connor Morris.

18th June 1872.

557. Do you consider that the Act sufficiently points out to the chairmen how to decide upon the question of town-parks?

The 15th section is one of the sections on which I think there has been great difference of opinions at the bar, and, to a certain extent, on the bench, as to its meaning. I will state, in legal language, for the noble Lord in the Chair, how the matter stands: When this section was first passing through the House of Commons there were several exceptions, taking certain classes of subjects entirely out of the section, so that there should be no claim for compensation at all. These were, first, demesne lands; secondly, town-parks; and thirdly, two classes of what may be called pasture lands. Then there come these holdings for hired labour, conacre; and land for a temporary purpose, and so on. Those were in the House of Commons intended to be entirely excepted, just as much as land in England, or land in Kamtschatka, or anywhere else. Then some unfortunate person in the House of Commons put in this proviso: "Provided that nothing herein contained shall prevent the tenant of any such holding making any claim which he otherwise would be entitled to make under sections 4, 5, and 7 of this Act;" therefore, annexing certain kinds of compensation to those lands which hitherto had been entirely taken out of the Statute. This passed somehow; and it passed your Lordships' House. At all events it was not noticed. As I, and as a great number of people I know, read that proviso, it applies only to the immediate antecedent. I believe that is the true construction of it. The words are these: "Provided that nothing herein contained shall prevent the tenant of any such holding." That is, referring only to the last antecedent, so that it is only the tenant of that holding who would be entitled to compensation under this proviso. But I am bound to say that several of the chairmen hold, and I believe Mr. Justice Fitzgerald, a most able and painstaking judge, has thrown out an opinion, that that proviso extends the compensation to every preceding antecedent; so that the tenant of demesne lands, of town-parks, and of those two classes of pasture lands should be entitled to compensation. That is the way in which the law stands. I have written an opinion upon the subject to say that I think it refers only to the last antecedent, but at all events that matter is in doubt in the opinion of the profession, and the ultimate result of that, if it be ruled by the Court above, as Mr. Justice Fitzgerald is inclined to think it ought to be, would be, that the tenants of demesne lands, including country gentlemen's places, and small demesnes near towns, and all that class of holdings, and the tenants of demesnes let even, we will say, during a minority or during a lunacy, would be entitled to compensation. Now, I think that that would be an absurd result.

558. *Chairman.*] The words are quite large enough to admit of that construction, are they not?

That is the reason why I would suggest that the words "last mentioned" should be put in. When Mr. Justice Fitzgerald expresses an opinion, any opinion which a lawyer may have must be taken with very great doubt. He did not decide the point of law; he decided it upon a question of fact, but he threw out an opinion that the proviso extended to every preceding antecedent, but I think that the whole policy and object of this Act of Parliament were to apply the law to holdings, which usually, in commerce, pass from tenant to tenant. The object and policy of the Act of Parliament were not to apply the law to holdings exceptionally let, for exceptional reasons, and for exceptional terms.

559. *Lord Somerhill.*] It is obvious that many improvements which might be considered good agricultural improvements would be almost nuisances in a gentleman's demesne.

Of course: If I were to go into a legal argument, which I do not want to do, I think that I could demonstrate upon this Act of Parliament that it was intended that, at all events, demesnes should be excluded. One obvious thing is, that under the 28th section, a limited owner is enabled to make leases for 35 years, so as to get out of the Act of Parliament; but the limited owner of a demesne is disabled from making 35 years leases. That would tend to show that demesne land could not be included in the Act of Parliament, because, of course, if a 35 years' lease is to get rid of the obligations of the Statute, it would

Mr W.
O'Connor Morris.
18th June 1872.

follow that every owner of a holding within the Statute should be able to make 35 years' leases, but the owner of demesne lands cannot make a lease of 35 years under the Statute. However, I will not trouble your Lordships with a long legal argument which is not necessary.

560. Do you not think it rather hard that as it has, I believe, been ruled in fact, a tenant who makes an extravagant claim is not called upon to pay costs in whatever degree, if not entirely, the judgment of the Court goes against him?

On the question of costs it was left to the judges to make rules. They made rules about 18 months ago, and I have very strong reason for believing that they are altering those rules now. The fees for counsel going to argue those heavy cases were really ridiculously small, and, I think that the question of costs may be very well left to the judges. There is no doubt that the tenants do very often put in most extravagant and ridiculous claims, but I do not see why those ridiculous claims should have the slightest effect upon a judge who is fit for his business. On the contrary, I know that if I saw a man putting in extravagant claims, I should be disposed to presume everything against him.

561. You would probably be of opinion that in any part of Ireland, whatever claims a man might make for compensation, he would have to give pretty good evidence that the farm he was giving up would fetch that amount in the market?

There is no doubt that what I may call a tenant-right test to judge the compensation, is, I think, the object of this Act of Parliament. I think the true meaning and purport of this Act of Parliament was to apply indirectly something like the tenant-right of the north over the whole of Ireland; and the way to work that out is to take as a test for compensation what the market value of the farm would be. That, in my opinion, is one of the cardinal principles running through this Act of Parliament. It would again be taking your Lordships into a legal argument to show that, but I think that is the meaning of it. Of course, if that be so, a chairman has to exercise very great discretion and very great resolution in dealing with the evidence that he has to meet, because probably there will be 20, 30, or 40 witnesses who will swear a farm is worth anything (we all know Ireland), and the landlord will not have so many witnesses. But witnesses are sometimes *non numerandi sed ponderandi*, and you must act according to your discretion upon those matters.

562. In the case of a claim for 41 years' rent as the compensation for giving up land, the fee simple of which would not fetch 25 years' rent, would you not give costs?

I never went circuit in the north, and I know very little about it, but I was in the north investigating this question of tenant-right for the "Times" newspaper for three months, and I also read, from cover to cover, the whole of the evidence before the Devon Commission on that subject of tenant-right. That decision of 41 years' purchase startled me, for I never heard of its going beyond 30 years. Assuming that that case of Lord Leitrim's was rightly decided on the facts, as I have no doubt it was, it certainly is a startling case.

563. The first appeal is, of course, as we all know, from the quarter sessions to the judge of assize; do you think the defeated party before the judge of assize ought to have an appeal of right, or would you think it right to leave that to the discretion of the judge?

Having regard to the difficulty of working the Statute, I think, *ex debito justitiæ*, the suitor ought to have, in every case, a right of appeal to the Court above. On my circuit the Chief Justices generally go circuit. I can conscientiously say, without the slightest hesitation (though my opinion of those gentlemen would be of no value), that greater attention was never paid by man than was paid by Lord Chief Justice Whiteside and Lord Chief Justice Monahan, to the few appeals of land cases which they have had on the home circuit since the Act was passed. But I do not think the appeal was altogether satisfactory. The appeal comes in at the beginning of a quantity of civil and criminal business for which there is a limited time. The judges very often take it without having the possibility of consulting a law library, and I do not think a *Nisi Prius* appeal of that kind (which it is) is satisfactory for those cases. What I would suggest on that point would be this: taking the limit of 100 £., which is the highest limit of the Civil Bill jurisdiction, in cases of rent, I would

would suggest that the appeal in cases above 100*l.*, should go direct to the Court of Land Cases Reserved, upon a report made by the chairman, or, as I would suggest, by a tribunal of chairmen, as upon a new trial motion.

Mr. W.
O'Connor Morris.
18th June 1872.

564. Would you allow that court to inquire into fact as well as into law?

I would entrust the chairman with the duty of making a report, as upon a new trial motion, which is made upon a judge's report. The chairman would no doubt report fairly.

565. Then you would not give a re-hearing to any amount?

I have thought over that point, and certainly a re-hearing would be more satisfactory, and perhaps in cases of very large amount, a re-hearing with all the witnesses before the court, might be advisable; but your Lordships will see at once the great expense that it would entail upon suitors to have a re-hearing from distant parts of the country, such as Donegal or Cork; it is very expensive.

566. *Chairman.*] The Appellate Court is under very great difficulty with regard to appeals upon questions of fact; the Court of Primary Jurisdiction has the witnesses before it, and sees their demeanour, and so on; we know perfectly well from experience that valuers never agree; of course it is a law of nature that they should not agree, and on the one side or the other there is the greatest possible difference between them, and the reason being that they do not come to speak to questions of fact, but merely to opinions; and according to the side for which they are engaged, their opinion attach either upon the higher or upon the lower value. You are aware that the Appellate Court is deprived, upon an appeal upon a question of fact, of an opportunity of seeing those witnesses, and that it merely gets their evidence, having nothing else to judge from?

No doubt there is that great inherent difficulty in the case; the skilled witnesses of course speak only to opinions, and they always differ; the other day I was arguing a case, and the opinions were at right angles.

567. *Lord Charlemont.*] Did you say that in all cases you would allow an appeal from the barristers' court, no matter how constituted, to the Court of Land Cases Reserved?

I think not; the chairman now may try cases of rent up to 100*l.*, and give a decree. Where the amount of compensation awarded was only 100*l.*, I would have the appeal go to the judge of assize; and where above that sum, to the Court of Land Cases Reserved. But every suitor should have the power of appealing from the judge of assize to the Court of Land Cases Reserved, as a matter of right. You must consider the rights of both parties, and the expense to a poor man is terrible of taking a case to the court above; in fact it would be a denial of justice.

568. Still you gave the Committee to understand that you wished three barristers to sit, and that you would not leave it to one individual assistant judge?

Of course I speak, as I say, with a certain amount of *esprit de corps*. I conscientiously think the chairmen, as a body, are perfectly competent to do their duty; I differ entirely from the notion that they have administered this law badly, and I wish it to be distinctly understood that, in my opinion, they have administered this law temperately and moderately. I have a strong impression in my mind, that the judges would have decreed larger sums than the chairmen have decreed, and I am confident that the ordinary *Nisi Prius* judges going circuit, would not have administered this law so well, for this reason, that they have not the all-important local knowledge which, in my opinion, is the great point in administering this Act of Parliament. Of course the judges are eminent lawyers, but they sit at *Nisi Prius* on circuit, to try these heavy questions on the evidence before them; they know nothing about the witnesses, and how can they always arrive at safe conclusions?

569. *Chairman.*] But local knowledge must have a beginning, and you yourself have been only with the last week appointed chairman of a particular county; I do not know whether you have any local knowledge of that county?

None whatever; of course there must be a break of succession in chairmen, as there must be in every court; but I have thought over this matter carefully;

Mr. W.
O'Connor Morris.
18th June 1872.

I thought two years ago, and think still, that to reconcile, if possible, the great advantages of local knowledge and also to secure at the same time more uniformity of decision, three chairmen should go circuit together; we all have our panaceas for these things.

570. Viscount *Lifford*.] You say you assume that as a body the chairmen are competent; we all know that some of the ablest men in Ireland are chairmen, but is it not a fact that many of those gentlemen have been appointed chairmen from political motives, having hardly ever held a brief?

I think the chairmen as a body are competent.

571. I am sure of that if we balance one against the other, but are there not men in that body, whom you must confess, however unwillingly, are not competent to try such important cases as these?

My attention has not been directed to any case of the kind.

572. Lord *Steward*.] You have not been consulted as to the nomination of chairmen?

No.

573. Viscount *Lifford*.] Though you have not been consulted as to the nomination of chairmen, still you may be acquainted with those gentlemen; I have no doubt that they have acted temperately and moderately; but supposing that three chairmen, who were not the most able men, happened to be in three adjoining counties, would not that be rather an unfortunate court?

I think not; I think the three chairmen of adjoining counties would be as good a court as you could select, and in my opinion it would be the best court that you could select.

574. Do you think that would be a better court than two judges appointed to go through Ireland?

Infinitely; beyond comparison.

575. Why do you hold that opinion?

For this very plain reason; I think judges going through Ireland, in the first place, could not do the work in a year; they could not do the work at all; it is quite beyond the capacity of two judges to do the work that would arise under the Land Act before them during a year, particularly when hard times came. I am speaking of two of the judges of the superior courts, and our judges have quite enough to do without starting them on an ambulatory circuit of this kind. In the next place, if you took those two judges on a kind of rota, taking them in succession, those two judges would be entirely without the local knowledge, which I look upon as the most important part in this question.

576. But I am assuming the creation of two offices for the express purpose of this work; would your objection still apply in that case?

If you appointed them *ad hoc*, I think you could not have less than four.

577. Then would you prefer the three barristers of adjoining counties to the four judges appointed simply for this office to travel together, or two to take one half of Ireland, and two for the other half?

Two would not do it at all; but, as I say, I speak with an *esprit de corps*, and my own humble judgment would be that the chairmen would do the work at least as well.

578. *Chairman*.] Why do you say that two judges would not do the work at all?

I think that two would not at all get through the work.

579. That depends entirely, does it not, upon the number of days (which ought to be ascertained) that the different chairmen have sat upon those cases?

I think not; the Act is only in its beginning; I think there have been only five or six sessions during which it has been in operation. The Act is not tested by severe years. I rather think that in severe years there will be a great deal of business to do under this Act of Parliament.

580. Marquess of *Salisbury*.] In consequence of the increase of ejectments?

Perhaps

Perhaps to a certain extent, on account of the increase of ejectments; and there will also be tenants giving up holdings, and claiming compensation.

Mr. W.
O'Connor Morris.

18th June 1872.

581. Is it not the case that this Act, forbidding to evict for rent due more than three years, would in cases of distress rather force the landlord to evict, lest he should lose his claim?

That ninth section refers to a certain class of miserable small landlords in Ireland, who have been notoriously very tyrannical to tenants: wretched middlemen, who have really brought most unjust discredit on the order of landlords. That part of the ninth section was practically framed to meet those cases. They extort enormous rents, and have kept arrears hanging over the heads of their tenants very often since the time of the famine. I know such cases in the south.

582. But would not the necessary effect be that every landlord would be frightened to let his arrears run for more than three years?

Clearly.

583. Lord Somerhill.] And so it was intended?

Clearly.

584. Lord Greville.] Is it not the case that by the Act no tenant who is ejected for non-payment of rent can claim compensation for disturbance except where, if the Court think fit, they may treat such ejectment as a disturbance?

Yes.

585. I understood you to say that you were apprehensive that in bad times tenants would in many cases where the rent was exorbitant, if ejected for non-payment of rent, anticipate the period at which they might have claimed compensation?

Not where the rent was exorbitant only, but in all cases.

586. With regard to that part of the section which states that if the Court shall certify that the non-payment of rent causing the eviction has arisen from the rent being exorbitant, then that ejectment is to be treated as a disturbance, what means are there for the chairmen to ascertain what is an exorbitant rent?

That is one of the great difficulties of the Act of Parliament. It arises throughout the Act. It arises in the first place under the Ulster custom, because under the Ulster custom, in my opinion, the landlord has the right to raise the rent. He must not raise it so as to interfere with the tenant's margin; but I deny altogether that the Ulster custom is unilateral. The chairman must ascertain the rent under the Ulster custom, and under the equities clause; and under the 9th section I would decide that question in this way: I would have first of all before me Griffiths's Valuation and I would make that one standard, and judging roughly, I would add, I think, about 15 per cent. for corn lands, and from 30 to 40 or 50 per cent. for grass lands; I would make that a rough standard. Then I would also take, of course, the evidence of witnesses and arrive at the best opinion I could form upon the subject. You must administer a rough measure of justice under this Act of Parliament. I do not care if you had Solomon deciding these cases, you would not get mathematical accuracy of decision. That is hopeless, but you can arrive at a rough measure of justice which I think will work well.

587. Would it not be possible without such a provision as this for those small tyrannical landlords whom you describe, to evade the provisions of this Bill by putting such an exorbitant rent upon the tenant that he could not afford to pay it, and would then lose all claim for disturbance?

Not at all. The Act would exactly meet that case. In the case of those small tenants where the rent does not exceed 15 *l.*, if one of those tyrannical landlords put an exorbitant rent, say 4 *l.* an acre, when it ought to be only 2 *l.*, the chairman when this man came to turn out the tenant could decree compensation for disturbance, and compensation for improvements.

588. Was it not necessary to have a provision of this sort to protect these small tenants?

I think that that is quite a right provision; but the only thing that I fear is, that

Mr. W.
O'Connor Morris.
18th June 1872.

that it extends the claim for compensation for improvements to all cases. Take the case of a large farmer holding 500 acres. He pays 500 *l.* or 600 *l.* a year, and he holds by a lease made before the passing of the Act. This statute annexes to that lease a claim for compensation for improvements, which may be unlimited in amount, and which as to some improvements may be unlimited in point of time. That refers to leases made before the passing of the Act. This man from his own extravagance, or his own folly, or anything you like, fails to pay his rent. He is evicted by his landlord; he comes before the chairman with this claim for compensation for improvements; the law gives the period for the accrual of the claim for compensation for improvements at the cesser of the term; the ejection accelerates the determination of that term, and the landlord may have brought against him a claim for compensation for improvements which may be tenfold the amount of the rent, and that in the case of leases made before the passing of the statute I think the Legislature there went a little far.

589. Earl of *Portsmouth*.] Does it not arise as one of the difficulties in arriving at the real value of compensation in cases of eviction on the part of the landlord, that the tenant has great facilities for obtaining evidence; that he can get local evidence to any amount as to the value of the injury; while the landlord has a difficulty in getting evidence on the spot, and has generally to import evidence?

There is that difficulty. All who know Ireland know perfectly well that tenants will in these cases all swear *en masse*. You must assume that.

590. Would it be any advantage to the Court if it was strengthened by a valuator acting as an assessor?

That was originally inserted in the Bill. If you could get that class of man in Ireland, I daresay he might be very useful; but I understand the Irish Members, on both sides of politics, objected altogether to that class of man being appointed. I do not exactly know why. It was originally understood in the Bill that there should be an assessor, but I believe that all the Irish Members for once agreed upon not having such a functionary.

591. Lord *Steward*.] I think you said that there were some of the sections of the Act which might cause some difference of opinion among the chairmen from the difficulty of legal construction?

Of course; that is inherent in every Act of Parliament.

592. Is clause 7, in your opinion, one of those sections?

Yes; I have written an opinion upon that section.

593. It has been stated, though I do not think that there is any authoritative statement on the subject, that a case, such as the following, would come under the operation of that section, with a view of claiming great damages against the landlord. We will suppose the case of a tenant dying and making as regular legal will; a quarrel ensues amongst the children, but in the end one of the children settles to take the farm, and to pay whatever is not legally left, but left by this document, by the father to the other children. The landlord is cognizant of this, and accepts this man who pays the money as the tenant. After a certain number of years that tenant is to be ejected. Would the landlord be therefore liable for all the fortunes which the tenant had paid to his brothers and sisters?

I do not think that is the meaning of that section. The section excludes all leases made at the time of the passing of the Act. The section is not meant to apply, and cannot properly apply to that case at all. In the case which your Lordship puts, there is a descent, and the descent is regulated by the rules of law. If it is a freehold interest, it goes to the heir or devisee; if it is a chattel interest, it goes to the personal representative for the next of kin. Any sums that have been paid by an incoming tenant in that way, that tenant, upon leaving the farm, is entitled to be paid; but it does not apply to the case of descent any more than to any other case.

594. You would not apply it to any case of family arrangement?

Certainly not. That is not the meaning of that section. The history and meaning of that section is this: we all know that in a great number of cases in the south of Ireland, there is no tenant right and there is no usage; but

but tenants with the consent or mere acquiescence of their landlords (which does not constitute a custom), have paid sums to each other, upon obtaining possession. Those fines paid by tenant to tenant were entirely, before the passing of the Act, at the mercy of the landlord. If an unfortunate tenant had paid a man 500 *l.* for 20 acres, the landlord could turn him out by notice to quit, and perhaps occasionally did so. The object and the policy of the seventh section were to enable an outgoing tenant in a case like that to recover from the landlord that fine which was paid, provided the landlord did not accept the incoming tenant. It was, in point of fact, to create constructively a kind of tenant right. That is the policy and object of that section, and it is, on the whole, a very just one.

Mr. W.
O'Connor Morris
18th June 1872.

595. Marquess of *Salisbury*.] Have you had any occasion to interpret the words "implied consent," in the third line of the clause?

"Implied consent" is what you may fairly term constructive consent, and the constructive consent would mean lying by with acquiescence.

596. Does that mean that, if the landlord knows nothing about it, he consents?

Silence implies consent very often.

597. Silence that is the result of ignorance?

That is a different thing.

598. *Chairman*.] When a proposition is put to a person, and when there is no answer given to it, assent may be implied, but assent can never be implied which arises out of ignorance?

I think, with respect, that it means what in a court of equity would be called constructive notice.

599. Marquess of *Salisbury*.] Would you put that into lay language for the benefit of the majority of laymen on the Committee?

Notice is of two kinds: first, actual notice where the party has positive distinct knowledge of the fact brought home to him; constructive notice is where by his lying by and wilfully choosing not to know the fact, he is fixed with notice.

600. But there must be distinct evidence of the landlord having known of the tenant's coming into the holding?

Yes, I think so. Supposing a landlord were living in England, and knew nothing at all about it, I think it would be very hard to say that that section applied.

601. Are you aware whether there has been any difference of decision upon that subject?

I think there has been no case at all upon that point.

602. Lord *Meredyth*.] That case which was mentioned to you has been brought before the Committee as an exemplification of the general spreading of a custom similar to the Ulster tenant right throughout Ireland. In a case of that kind, in which money had been paid with the consent, or the implied consent, of the landlord, would you consider that the tenant had a claim to compensation, as under the Ulster tenant right?

My opinion is that even where there is a break in the tenancy the section does not apply at all as to dealings within a particular family. The section applies in the case of a break of the tenancy where one tenant is going out, and another is coming in. If a tenant has paid a kind of fine to his predecessor, with the express or implied consent of the landlord, then the landlord may be made liable under the section for that fine, but I do not think it applies at all to the case of what we call privies in interest.

603. Supposing the person had died intestate, and one of the sons bought up the family interest of the others, and then became a tenant, that being, so to speak, a new tenancy, would he afterwards have any claim against the landlord for the sum of money which he had paid to his brother in purchasing that right?

That is a question which I could not answer without serious consideration.

Mr. W. It would depend upon the question, in my opinion, as to whether a new tenancy
O' Connor Morris. had been created.

18th June 1872.

604. Viscount Lifford.] Do you not think it possible that under the 7th clause, something like tenant right would be established throughout the whole of Ireland?

I think, as I said before, that this section was meant to apply to cases in the south, where there was no custom; and, in my opinion, the whole policy and object of this Act of Parliament, viewed *en grand*, was to extend tenant right all over Ireland; or, instead of that, to give an equivalent of 31 years' leases. Those two objects seem to have been paramount in the minds of the framers of the Act of Parliament.

605. Lord Somerhill.] Practically, you do not think the clause an unfair one if the landlord has knowledge of the sum to be given?

I do not think the clause is an unfair one if knowledge is fairly brought home to the landlord.

606. Viscount Lifford.] You said just now, that you considered tenant right to be something like the English custom; is it not the fact that in England, tenant right applies to large districts, such as Kent, and so on?

I am very glad your Lordship has asked me that question. The customs of gavelkind and borough-English are of course applicable to descent.

607. I do not refer to the customs of gavelkind and borough-English; but taking the Midland counties, where it is the custom of the country that grass should not be ploughed up by the tenant (which is the custom in England over a large extent of country) is it your opinion that the custom of Ireland is a custom of estates, or a custom of districts?

I am much obliged to your Lordship for asking me that question. That enables me to give my view of the first section. I think, as I said, that the true meaning of this Act of Parliament was, as far as possible, *mutatis mutandis*, to assimilate the law with respect to the Irish custom of Ulster to agricultural usages, properly speaking, in England, with which we are all very familiar; for they have been now in force for more than a century, and there is a long string of authorities upon them which every lawyer knows. In order to take that view, and to work it out with respect to the Ulster custom, the very first question which a chairman, or a judge, or a counsel, has to ask himself is this: Is there a legal usage affecting the holding under consideration? That usage is to be determined by showing a reasonably uniform course of practice over a considerable district. I do not think that a uniform practice existing on a single estate will do; I do not think a uniform practice existing on a single holding will do at all; I am quite convinced of that. There is authority in the Court of Exchequer in this country, in Dalby's case, to show that a usage existing on a single estate will not create a custom. I think the usage must be so extensive as, in the words of Mr. Baron Parke, "to create a reasonable presumption that it is the law of the district." When once that usage is created it is a local law by which *prima facie* every dealing between landlord and tenant in that district is governed. If there is a contract or a lease that is contradictory or repugnant to that usage *cadet quæstio*, but if the contract be consistent with the custom, then the usage applies. That, I think, is the guiding principle that should direct a court or a counsel in deciding or adjudicating upon this question of the custom of Ulster.

608. Do you know any single district of the north of Ireland to which what you have just said applies?

I am not so familiar with the north of Ireland as to be able to answer that question, but I may say this; I think there are many districts in the north of Ireland where the usage in its essence, putting mere varieties and accidents out of the question, is so uniform and so general over wide districts, that it fairly applies.

609. Would you kindly inform the Committee what the essence means, and what the accidents mean?

I will. I have thought over that question a good deal. If you look at it in its naked and abstract idea, the custom of Ulster is nothing more than a *jus disponendi* in a tenant for a valuable consideration. As the land passes to successive

successive alienees or purchasers by virtue of that disposition a certain interest in equity and conscience is acquired by those holders who are entitled to have it. That fastens a charge on the fee previously existing only by connivance, by acquiescence, or by a *quasi* custom. Now it exists by law. That charge is fastened on the fee by law, and you cannot disturb it; but, subject to that charge, the landlord, in my opinion, retains every right of property, and, in my opinion, he retains, incident to those rights, the right of raising his rent, provided always that he does not interfere with the peculiar right which the tenant has acquired. In fact, there is a kind of mortgage attached on the land by virtue of the custom. The law has now clothed what previously was a *quasi* equitable charge with a legal title, and subject to that the landlord has every right of property whatever.

Mr. W.
O'Connor Morris.
18th June 1872.

610. In your inquiries as "Times" Commissioner (which I had the great pleasure of reading very carefully), did it not come to your knowledge that there were 30,000 or 40,000 acres of land, or even more, which had been well managed, and on which the tenant-right had been limited to five years, and even less; and did it not also come to your knowledge that there were large estates of 50,000 or even 100,000 acres in which there was no limit of tenant-right?

Quite so.

611. Is it fair, in your opinion, that the owner of the well-managed estate should suffer by the *lapsus* of the owner of the ill-managed estate, the owner of the well-managed estate having, as I believe is almost always the case, limited the tenant-right entirely in the interest of the tenant?

I am quite aware of that distinction, and I do not see any great difficulty in working it out. I am clearly of opinion, and I may say that I have no doubt, so far as a thing unsettled by judicial authority goes, that where the good owner, as you call him, has limited the tenant-right, and brought that home to the notice of the tenant by a properly constituted set of estate rules, and where that has been the course of dealing on the estate for a reasonable number of years, he will never be made liable for more than the regulation price. I remember my Lord Erne asking me that question, and I told him to make his mind perfectly easy; that I was quite sure the Legislature had no intention of robbing him, and no Court in Ireland would do it. But, on the other hand, where the owner has allowed the tenant-right to run wild; where he has, in point of fact, created such a state of things that the tenant is very nearly a copyholder; where really his right eats up the fee, and where the landlord has only a rent-charge, I say the law has only given a legal title to what was before an equitable right, and he has to take the thing as it stands.

612. Then those two estates would be put in entirely different categories?

Those estates, in working out the Act in the view I take, would be put in quite different categories.

613. Does that entirely agree with what you told us just now?

Entirely, in my view. The essence of the custom is nothing but a right of disposition. The amount obtained, though in a practical point of view the essence so far as the landlord and the tenant are concerned, is not in a legal point of view the essence at all. It is like different heriots. I am not very familiar with that kind of law, but it is perfectly conceivable that a heriot in one case may be a pair of gilt spurs, and in another case it may be the best horse in the whole manor. The amount, greater or less, has nothing to do with the question of tenure. The freehold landlord of 50 *l.* a year, and the great freeholder of 50,000 *l.* a year, in point of law have the same legal *status*. That is the distinction which I would draw between the essence and the accidents of the custom.

614. In one case you would allow the tenant-right to be tested by what it could be bought for in the market, and in the other case you would take it according to the custom of the estate?

Certainly, assuming that the rule had been acted upon. There is a case before Lord Chief Justice Monahan, which I think is standing for appeal upon that very point. Really I have not a shadow of doubt in my mind that that point will be decided as I say. It would be perfectly intolerable to hold it otherwise I think. It is just like the regulation in the army.

Mr. W.
O'Connor Morris.
18th June 1872.

615. Is it your opinion that the 9th, 10th, and 14th clauses apply to the Ulster custom?

That point I have not very carefully considered, but the inclination of my own mind would be rather that they do not. I think that, on the whole, the Ulster custom is left almost alone in this Act of Parliament, except under the 1st, 16th, and, in my opinion, the 18th section. I think that the 18th section (that is the equities clause) applies to the Ulster custom, and it would be intolerable if it were not so. The 16th section seems to govern every case, and then the 17th and 18th sections seem to hang upon the 16th section.

616. Lord *Somerhill*.] Has it come under your observation that there is considerable difficulty in administering this Act, and the general law of the land also, upon the devolution of the tenancy by the death of a tenant leaving a numerous family? Supposing that the tenant is under notice to quit at the time, that the landlord in a short time evicts the tenant, either for non-payment of rent or upon notice to quit, and that the court decrees to the tenant a certain amount of damages, how does the landlord know exactly to whom those damages ought to be paid; is there no difficulty as to that uncertainty?

There may be very great difficulty; I am not aware that difficulty has arisen at all under the Act of Parliament as yet; but in a Bill brought in by your Lordship some years ago, there was a proposal that every yearly tenancy should be presumed to be a freeholder, in order to get rid of that very difficulty, and I think that was an excellent way of dealing with those small tenancies. I am aware that there is sometimes great difficulty in ascertaining who are to be the defendants in bringing those claims. I understand (though I do not know) that there was a case in which a minor and a remainder-man and trustees were all made parties, as respondents, in one of those Civil Bill proceedings against a landlord. Those claims are generally framed by an attorney, and very frequently there is great difficulty in knowing who is to be the defendant. I am aware that in practice that has arisen; I am not aware that that the difficulty which your Lordship suggests has arisen yet, but it obviously will arise over and over again. Of course on the devolution of a tenancy, if it be a freehold interest it will go to the heir or the devisee; if it be a chattel interest, it will go to the executor or administrator to be divided afterwards amongst the parties interested.

617. Supposing a landlord to eject a tenant, or to eject the family of a tenant lately deceased, when the landlord is decreed to pay, say 20 *l.* or 40 *l.* to the family, has he not some difficulty in ascertaining from whom he is to get a receipt?

Such a difficulty of course may arise, but, as a general rule, when a tenant dies, one of the family is taken in and treated as tenant by the landlord, and he becomes the yearly tenant in the place of the original man. The fact of his paying yearly rent would constitute him a yearly tenant.

618. And without precluding his brother and sisters from claiming their share as against the landlord?

It ought to do so in a properly constituted case; but as we all know in Ireland, it very often happens that a tenant dies, and the whole of his representatives are treated *en masse* as the succeeding tenants, and receipts are given to the representatives, and nobody knows who the tenant is.

619. It has often happened, and the Act does not deal with that difficulty, I believe?

It has happened, and the Act, I think, does not deal with that case at all. It defines who the landlord is to be.

620. Earl of *Portsmouth*.] Is there not this curious point in the Act; that with regard to a tenant under a middleman, in the case of the landlord evicting, the middleman, and not the actual occupying tenant, would get the compensation, unless the middleman allowed the tenant to receive the compensation?

I do not think that is so. I think the 20th section provides for that kind of case.

621. Lord *Somerhill*.] In its operation, the Act has not remedied those difficulties to which you have alluded in your last answer?

I do

I do not think the case has arisen. The Act cannot be held to operate until the case arises.

Mr. W.
O'Connor Morris.
18th June 1872.

622. Marquess of *Salisbury*.] Is there in existence any return showing the number of cases that have arisen?

I think there is. Mr. Hancock, whom your Lordship may know by reputation as a very eminent collector of statistics, I think has collected in the judicial statistics of Ireland, the cases up to December last.

623. Are your judicial statistics published yet?

I think so.

624. Earl of *Brandon*.] Have you seen the Paper read before the Statistical Society by Mr. Heron, the honourable Member for Tipperary, in which he gives all the cases which have occurred?

I have not seen that Paper; but I may say that my knowledge of the chairmen's decisions is principally drawn from reading cursorily the newspaper reports, and I have also read those reports in "The Law Times of Ireland," which is the only thing like an authentic report which exists. You will find them all in "The Law Times of Ireland," as far as they are reported.

625. Lord *Silchester*.] You stated that the judges contemplated some revision of their scale of fees; do you happen to know whether they contemplate also any alteration of their rule with regard to the serving of notices?

I do not.

626. Are you aware that under the 16th clause the notice must be served within the prescribed time, whereas, under present circumstances, I understand that according to the rules a notice may be so served that the tenant's claim for compensation is not heard until after he has quitted his farm?

It may be so.

627. In that case the landlord would be deprived, would he not, of the option which he has of allowing the tenant to continue in occupation on reasonable terms?

Yes.

628. Would you see any difficulty in so altering the rule that the trial may in all cases take place before the tenant has quitted his farm?

It would be very fair and reasonable that such an alteration should be made. There was a good deal of doubt at the time amongst the Bar whether it was competent to the judges to make that rule. Of course, as we all know, the affairs of agriculture are such that it is sometimes a matter of the most vital importance to have the land up in proper time. In fact everything should be done to have the thing quickly disposed of.

The Witness is directed to withdraw.

Mr. JOHN HANCOCK, is called in; and Examined, as follows:

629. *Chairman*.] WHAT are you?

I am a Land Agent, and I have been a Magistrate and a Grand Juror for 34 years.

Mr. J. Hancock.

630. Has your attention been called at all to the working of the Land Act?

It has.

631. What is your opinion as to the working of that Act?

I think that it is working extremely satisfactory.

632. Viscount *Lifford*.] Does that apply to your own county or to others?

I apply it especially to the counties of Armagh and Down, and generally from public knowledge to other parts of Ulster.

633. *Chairman*.] Have any complaints, or has any dissatisfaction, been expressed with regard to differences of opinion among the chairmen?

I think not. I think that the differences of opinion have been extremely few considering the short time that the Act has been in operation, and the number (136.)

Mr. J. Hancock. of assistant barristers. Our chairman is administering the law to our entire satisfaction.
 18th June 1872.

634. Lord *Somerhill*.] Have not other chairmen differed from him upon points which he has decided as to the construction of the Act?

Not materially. One difference has been the question of the double notice; but I do not think that when that is analysed it will be seen to be a very important difference, for this reason, that I believe all the chairmen admit the right of the double claim, but only differ as to the time of its being put forward, some chairmen holding that you must first go in on the custom, and that if you fail on the custom, you are not barred from making a subsequent claim; whilst other chairmen think that, for the interest of both landlord and tenant, it is better to dispose of both claims at the same time.

635. Have you heard that the chairman of the county of Derry differed from the chairman of the county of Down on an important point, which was referred to Lord Chief Justice Monahan, and that (according to what was stated in the papers) although the chairman of the county of Down dissented from the chairman of the county of Derry, and appealed to Lord Chief Justice Monahan's opinion, the chairman of the county of Derry adheres to his own opinion still, and has since so decided?

I have not seen it mentioned, but I do not at all deny that there may be those differences of opinion at first, until the law gets into a more settled state, by which there will be a more uniform practice.

636. That is to say, the chairman will create the law, but the law by the Act is not clear?

It will make up for the deficiencies in the Act of Parliament.

637. Lord *Charlemont*.] You were examined at great length before the Devon Commission, were you not?

I was.

638. And your evidence before that Commission has been received hitherto as of the greatest value, I believe?

I do not know about that; but there it is for what it is worth.

639. With regard to the Ulster tenant-right custom, you heard what was said by Mr. Morris?

I did.

640. Mr. Morris at one moment preferred to act upon the district custom rather than upon the estate custom; he instanced cases where the estate custom running over a very large tract of land he would act upon it; and, as I assume from what he said, in small estates he would act upon the district custom. In the case of your county, the county of Armagh, where Dr. Hamilton is the chairman, and of the neighbouring county of Down where Mr. Johnstone is the chairman, are you able to tell the Committee that there is any similarity between the opinions or decisions of the two chairmen, or have you not found that there is a very great difference between them?

We have not found any great difference as to the decisions of the chairmen in point of law; of course, the decision of the chairmen upon each individual case must depend very much upon the evidence given before the judge, and I am sorry to say that, as a rule, the newspaper reports which we get of the evidence in those cases are extremely incorrect and defective, and therefore it is not easy for persons who have not been themselves in the court itself to ascertain or to judge how far those assistant barristers have given reasonable decisions; but, in point of law, I am not aware that there has been any material difference between the decisions of the two barristers.

641. Lord *Somerhill*.] You mentioned that you had given evidence before the Devon Commission; I suppose that you are more or less familiar with the result of that Commission, and with the evidence given before it?

Yes.

642. Is it a fact that the Devon Commission recommended, or that the witnesses who gave evidence before that Commission, recommended, that the Ulster custom or tenant-right should be limited to five years?

I believe

I believe that was one of the resolutions of that Commission; the evidence given by the Ulster witnesses was very much the other way.

Mr. J. Hancock.

18th June 1872.

643. But that limit was mentioned, was it not?

My recollection is that that limit was mentioned by the Commission itself.

644. Have you heard that it was generally supposed, or do you know at all that in the decision of a late case that opinion affected the judgment given by a chairman, and subsequently by the Lord Chief Justice upon appeal, and that five years was given in the case, as it was supposed, because the Devon Commission had recommended that as the limit?

I really cannot say that I have read of that, nor do I think that an assistant barrister would take the recommendation of a Commission which sat in 1844, as a ground for a decision in open court in 1872.

645. Do you think the tenant-right has become more valuable since then?

No; but I do not think that the evidence given before that Commission, under the circumstances, would be receivable as evidence before a judge in a case where he is hearing witnesses *vivâ voce*. It may be the opinion of a Commission or of anybody, but it is not evidence upon which now a judgment should be founded, as judgment in court should be founded upon the evidence tendered in the court.

646. Has the value of tenant-right risen in Ulster since the passing of this Act?

I cannot say that there is any material difference in it since the passing of this Act, the Act having been so recently in operation, viz., only about 18 months.

647. Marquess of *Salisbury*.] Has the value of land risen or fallen?

The value of land is increasing and has been so for years.

648. Has it increased in a greater or smaller ratio since the passing of the Act?

I think that the time since the Act passed has not been sufficient to give us opportunity and means of judging as to the permanent increase.

649. Lord *Brodrick*.] The difference between the value of the land and Griffith's valuation is on the increase, is it not, in consequence of the rise in prices?

That depends upon whether your Lordship refers to Griffith's valuation or upon the tenement valuation, on which the present taxation is framed in Ireland. Griffith's valuation was of a much earlier date and was founded upon a scale of prices.

650. Lord *Wentlock*.] Have there been any appeals to the Land Court upon the estate with which you are more immediately connected?

Only one; and if your Lordships will permit me, I will explain the circumstances of it: The case was a case in which I as agent had served notice to quit previous to the introduction of the Land Act. The tenant had a sister and had not paid, and had declined to pay, his sister her fortune on leaving the farm, and in consequence of his disobeying the rules of the estate in that respect, and dealing inequitably with his own family, I served him with a notice to quit. In answer to that he served a notice of claim under the Land Act. My ejection came on for hearing as one of the first cases under the Act. We put in an answer to the claim, and he proceeded no further with it. He paid the entire costs of the proceeding and paid his sister her fortune, and he remains a tenant on the estate.

651. Lord *Somerhill*.] Do you consider that the letting value of the land in Ulster, practically, since the passing of the Act, has undergone any alteration?

I cannot perceive any very great difference since the passing of the Act; but your Lordship is aware that the passing of the Act is merely confirming by law that which has been the custom in Ulster, so that it is not likely that it would have any effect upon the increase or decrease of rents. The law now merely makes that a legal qualification which before was in an uncertain state.

Mr. J. Hancock.
18th June 1872.

652. But the landlord was not liable before to be called upon for compensation, was he?

But practically he gave it, if he took the land into his hands.

653. Was it not practically the incoming tenant who paid it?

It was practically the incoming tenant who paid it; but if the landlord resumed possession himself, he stepped into the same position as an incoming tenant, and paid the money himself, which an incoming tenant would have paid. There is no difference in the system, because the law makes that legal which before was uncertain.

654. *Chairman.*] You say that, according to your judgment, the working of the Act has been satisfactory?

Yes.

655. Is that in respect only to the Chairman of Sessions having a primary jurisdiction to decide cases of this kind; or does it apply also to the appeal to the going judge of assize, and to there being no appeal beyond the going judge of assize, except upon a question reserved by him at his discretion?

I think so, decidedly; and for this reason, that I think that, though there have been very few cases as yet going to the judge of assize, it is of great importance that those appeals should be done at a moderate expense, and done quickly; and that, therefore, by having the appeal from one judge, who might make a mistake, to the next judge, you guard against the error of the primary judge, and at the same time do not entail heavy costs. I do believe that the judge of assize is as good a judge of appeal as you can possibly have in those cases.

656. *Viscount Lifford.*] You stated, did you not, that there have been very small differences in point of law amongst the judges of the Civil Bill Courts?

So far as I am aware, that is so.

657. Are you aware that there is a considerable difference amongst them as to whether tenant-right extends to leases?

I have heard that there has been a considerable difference.

658. Are you aware that there is considerable difference amongst them as to the area of tenant-right, whether it is to be judged by estates or by districts?

Yes.

659. Are you aware also that there is considerable difference of opinion between them as to the amount of tenant-right?

I am not aware. I take it that that would be a question of evidence in each case.

660. Is there any one point connected with tenant-right upon which the chairmen have not had differences of opinion?

Not that I am aware of.

661. *Lord Somerhill.*] Do you mean that you are not aware of the differences?

I am not aware of the differences which are referred to by the noble Lord.

662. *Viscount Lifford.*] Is there any one point connected with tenant-right upon which the judges of the Civil Bill Courts are agreed?

I do not exactly understand your Lordship's question. What I understand you to mean is this: There are three points to which you have referred in which there is a difference of opinion among assistant barristers. That may be the fact as regards those three points. As regards tenant-right underlying leases, that is a point upon which there may be a difference of opinion; but as regards any other points, I believe that the chairmen are agreed.

663. I want to know what those points are?

I do not know. I cannot see that the barristers make any difference in their decisions; but as to some of the points, I have no knowledge one way or the other.

664. *Earl of Kimberley.*] You said that there was a difference of opinion as regards

regards the tenant-right being claimable on the expiration of the lease. Has that difference of opinion, to your knowledge, been expressed in many cases. *Mr. J. Hancock.*

I do not know.

18th June 1872

665. Upon what do you base your knowledge that there are differences of opinion?

As far as I have been able to judge of it, my opinion is that the tenant right does underlie the lease.

666. As regards the question of whether the chairmen have differed, you said you were aware that there were differences of opinion. What cases do you know of in which a difference of opinion has been expressed?

I cannot mention any.

667. Will you explain why you think that differences of opinion do exist?

Merely because I have heard from common conversation that assistant barristers have given different views with regard to those questions. I take it that the conversation of a barrister sitting as a judge is different from conversation at other times.

668. Then I understand your answer to be this. That you have heard it commonly reported that there exists a difference of opinion among the assistant barristers; but that you do not base your knowledge that differences of opinion exist between them upon official statements which they have made?

Certainly not.

669. That being the case, would not you be of opinion that an inquiry upon this point is premature, when we do not yet know, except from common rumour, what the opinions of the assistant barristers are?

I think so.

670. Viscount *Lifford*.] Will you tell me upon what your opinion as to the working of the Land Act is based?

It is based upon my own experience of my own county, and upon the ordinary channels of communication in which one reads of such cases in other counties.

671. Notwithstanding that you have heard that in every other northern county there have been differences of opinion between the judges of the Civil Bill Courts?

I do not think that any conflicting opinions which one has heard of are of such a nature as to lead one to declare that the working of the system is not satisfactory.

672. Marquess of *Salisbury*.] Are you satisfied, for instance, with that decision which gave 41 years' purchase as compensation?

That is the case of Lord Leitrim and Freele. To call it 41 years' compensation is rather an unfortunate way of putting the case; because that case is simply this, as far as I read it; that Lord Leitrim leased some 40 acres of ground, at a rent of 6 *l.* a year, to this tenant, and for some reason or other his Lordship wished to recover possession of this farm at a subsequent date. This case came before the assistant barrister, but I believe that it appeared on the trial that the letting value, under the tenement valuation of that same ground was at least 19 *l.* a year; and the assistant barrister on that state of facts awarded compensation to the extent of some 250 *l.* Of course, 250 *l.* may be looked upon as 41 years' rental at 6 *l.* a year; but it is only the third part of that if you will take the real rental of 19 *l.*; and it is quite clear that the sum being in the nature of compensation for improvements, Lord Leitrim, by gaining possession of that farm, is able to let it at 19 *l.* a year instead of 6 *l.*

673. It was 14 years' rack rent which was really awarded, was it not?

Fourteen years; not the rack rent, but the ordinary compensation under the Ulster tenant right of 250 *l.* The letting of land in Ulster generally is done by valuation, and not by competition, and the valuation is always made upon the understanding that there is provision for the custom of the country in the exchange of farms, by the payment of cash from one tenant to the other.

674. Lord *Charlemont*.] How are we to understand your answer, that the letting of land is not by competition, but by valuation?

Mr. J. Hancock
18th June 1872.

In the north of Ireland the estates are valued by competent valuers, and the valuers do not take the buildings into account. The buildings having been made by the tenant, and not the landlord, the valuers in all the large estates have valued the properties upon the understanding that the buildings are the property of the tenant.

675. Marquess of *Salisbury*.] Is that universal in the north of Ireland?
It is, so far as I am able to tell.

676. Does your experience extend beyond your own county?
It does; to the county of Down, and also to portions of Antrim.

677. Earl of *Bandon*.] Do you mean that Lord Leitrim's tenant had trebled the value by what he had himself done on the farm?

I mean that by the valuation put on by an independent Government valuator this particular piece of ground is now worth 19 *l.* a year; that it was let originally by Lord Leitrim at 6 *l.* a year; and that it is alleged that the increased value was put on by the tenant's improvements?

678. Viscount *Lifford*.] Was that the evidence of the tenant, or was that the Government valuation?

I understood that it was the evidence of the Government valuator.

679. Lord *Steward*.] You have no personal knowledge of this case?
None but what I have read in the newspaper. It was in answer to the 41 years' claim.

680. Lord *Charlemont*.] Your own practical knowledge of the working of this Act does not extend beyond Armagh, does it?

It extends to Down and to portions of Antrim.

681. Earl of *Bandon*.] Do you know the nature of the improvements which Lord Leitrim's tenant made there?

No, I do not.

682. Lord *Lurgan*.] In your experience as a land agent, have you heard any wish expressed by the tenantry to alter the tribunal as it at present stands?

No, quite the contrary; I think the tenantry have every confidence in the assistant barristers' tribunal.

683. Marquess of *Salisbury*.] Have you heard any such wish expressed by the landlord?

No, I have not.

684. Earl of *Kimberley*.] Have there been many cases in the county of Armagh which have been decided under this Act?

There have been a number of cases; I have myself attended at a great number of them. They have been tried by the assistant barristers, and they have all given satisfaction, and there has been no appeal from them.

685. So far as the Act has been put into operation, you think that in the county of Armagh its working has been satisfactory?

I do.

686. Would you not, however, add to that, that the time during which the Act has been in operation is very short, and that it is premature to express, either one way or the other, a decided opinion as to its working?

I think it is; I quite agree with your Lordship in that.

687. Do you not think that it is quite possible that some points which now may seem to be unsatisfactory may turn out to work well; while, on the other hand, some things which now appear satisfactory, may turn out not to be quite so good as is supposed?

Quite so.

688. Viscount *Lifford*.] You are very fortunate in your chairman, I believe, in the county of Armagh?

We like him very much.

689. Lord *Lurgan*.] He enjoys the confidence of both landlords and tenants, does he not?

Of both.

The Witness is directed to withdraw.

Mr. HUGH BOYLE, is called in; and Examined, as follows:

690. *Chairman.*] WHAT are you?

I am an estate agent, residing in the city of Armagh, and have agencies in the counties of Armagh, Tyrone, and Down.

Mr. H. Boyle.

18th June 1872.

691. Have you had experience with regard to the working of the Land Act?
I have had a good deal.

692. What is your opinion with regard to the satisfactory working of that Act, or otherwise?

I should say that it is highly satisfactory, as far as the tenants are concerned.

693. With regard to the landlords is it, in your opinion, satisfactory?

I cannot agree with my friend Mr. Hancock as regards the landlords being satisfied with it, according to my experience.

694. What are the grounds for the opinion which you entertain that the working of the Act is not satisfactory?

I consider that the chairmen of counties have been led away by such evidence as has been given on the part of the tenants, so that exorbitant claims have been preferred before, and entertained by, them.

695. Does any reason occur to you for that influence upon the minds of the chairmen inducing them to yield to exorbitant claims?

I impute no wrong motive to them; I think, perhaps, it was done by the weight of evidence which was adduced on the tenant's side.

696. Is it within your experience that the landlords have found a difficulty in getting local evidence on their side?

I have not had experience of that; but I should apprehend that they had great difficulty in it, because the tenants naturally stand shoulder to shoulder and hand to hand in the matter, and I do not think they have so strong a feeling in favour of the landlords.

697. Are you aware whether there has or has not been a great difference of opinion as to the construction of the Act by the different chairmen?

I am aware of it.

698. Do you consider that the appeal to the going judge of assize is a satisfactory mode of reviewing the decisions of the chairmen?

I think it would be a satisfactory appeal; but there ought to be a further appeal in a doubtful case.

699. Do you think it satisfactory that the going judge of assize may finally decide the matter, if he pleases, without sending it on to another court by stating a case?

No; I would allow the case to go *de novo* before the Court of Appeal, all the evidence being produced; I would not have faith in a written statement.

700. Marquess of *Salisbury.*] Has it occurred to you in any way to think of any remedy for the predominance of local evidence in favour of the tenant, and the disadvantage at which the landlord is placed?

I do not consider that I can suggest a remedy for that altogether; a paid valuator has been mentioned here and a good deal can be said in favour of that suggestion.

701. Would you approve of that suggestion?

I would; I think that he would be above local influences.

702. It is, I suppose, almost impossible for a local valuator to give evidence against the interests of the tenants?

I would not say that it would be impossible.

703. Would he not be incurring considerable disadvantage by doing so?

He would, and I think that the landlords are placed at a disadvantage by the Land Court as the law is at present administered.

Mr. H. Boyle.
18th June 1872.

704. Viscount *Lifford*.] Are you aware of any conflicting decisions having been given in the counties adjoining you?

I am aware of one case in which Mr. James Hamilton, chairman of the county Sligo, who, I believe, was before your Lordships on Friday last, appeared for me as counsel at Omagh assizes for the county of Tyrone, and his opinion on the case which he had on hand, was at utter variance with the decision which had been given by the chairman of the county Tyrone, as well as the affirmation of that decision by Lord Chief Justice Monahan at the hearing of the appeal at the assizes referred to.

705. Are you aware of a case in the county of Tyrone of a property in which a decision given by Mr. Justice Keogh was not ruled as a precedent by the barrister on the next occasion?

I am not sufficiently aware of that case to give an opinion upon the subject.

706. Taking the different points from which you can look at tenant-right, can you name one single point connected with tenant-right on which the judges of the Civil Bill Courts of the North of Ireland are agreed?

I do not know, except the instance which I have given, where Mr. Hamilton thought one thing, while the chairman of the county and the judge on the hearing of the appeal ruled differently.

707. Marquess of *Salisbury*.] In what cases do you think that the landlord has been at a disadvantage in those courts; have you any cases on which you found that opinion?

I knew before the passing of the Act what was given for land by the landlords for surrender to themselves, and I know how difficult it is to deal with tenants since; but perhaps that is the fault of the Act, and not of the administration of the law.

708. Lord *Greville*.] As between tenant and tenant, has there been any difference with regard to the prices which have been paid since the passing of the Act?

I should say that the prices have been higher since the passing of the Act.

709. Has there been any difficulty in ascertaining what has been the usual custom of the estates which you manage as to the amount of tenant-right paid?

I should say that there was great difficulty in doing it, and I do not think that tenants would keep faith with you in telling you the exact sums.

710. Have you put a limit upon the amount of tenant right on your estate?

I have not; I have dealt with each case as it came before me.

711. Do you think it impossible to ascertain the exact amount?

I will not say that it is impossible, but I think that it would be very difficult to arrive at any certain conclusion. Say that 10 *l.* an acre is the price put on by the Estate Office, I do not see anything to prevent a tenant saying that he had given 10 *l.*, when he had given 15 *l.*

712. I suppose that in your own neighbourhood you are aware for how much the tenant-right generally sells?

I have heard very frequently.

713. And, judging from that, you think it impossible for the Court to arrive at the knowledge of what the custom has been as to the payment which has been made by the incoming to the outgoing tenant?

Except there is evidence of it, I do not see how the Court can come to a correct conclusion.

714. But you think that the Assistant Barrister's Court has great difficulty in arriving at the truth?

Not in a case of that sort; the witnesses would be all on their oath.

715. Then in that case the landlord is not at a disadvantage, so far as this Act is concerned?

No, not as regards one tenant buying from another.

716. Therefore, in the working of the tenant-right, the landlord is not at a disadvantage since the passing of this Act?

Except that the tenant-right sells at such an exorbitant price, that it would affect his interest as landlord.

717. Do you mean that the price of the tenant-right has increased since the passing of the Act?

Mr. H. Boyle.

I should say so; it is calculated to increase, at any rate.

18th June 1872.

718. Will you tell the Committee how much it has increased?

I used to give 10 *l.* an acre for taking up possession of the land from the tenants, but recently I have reluctantly been obliged to pay 20 *l.*

719. Do you know any case in which a landlord taking up land from a tenant has been obliged to pay more than an outgoing tenant would have been able to obtain from an incoming tenant?

I do not know positively; he might or he might not.

720. But you do not of your own knowledge know any case in which the landlord has been called upon to pay the outgoing tenant more than the incoming tenant would have had to pay?

I think I may safely say that I know a case in which a landlord had to give more than an outgoing tenant would have got from a solvent incoming tenant.

721. Was that by a decision of the Court?

No, without going into court.

722. Lord *Kildare*.] Was it not the case before the passing of the Act, that a landlord taking up land was expected to pay more for it than an ordinary tenant?

No; I should expect the contrary.

723. Earl of *Kimberley*.] I understood you to say that exorbitant claims have been allowed under this Act; is that so?

I should say so.

724. Can you quote an instance of it?

There have been some cases in the county of Down.

725. Do you know of your own knowledge any cases, since the Act has passed, where a claim which you would consider to be exorbitant has been allowed by a judge?

Of my own personal knowledge I do not know such a case, but I have read of Mr. Johnston, in the county of Down having allowed claims which I look upon as exorbitant.

726. Do you think that those claims which you look upon as exorbitant are beyond what the tenant could have claimed under the custom before the passing of the Act?

Yes, and I think tenants have received higher compensation since the passing of the Act.

727. I understand you to say that you think that the claim which has been allowed on the part of the tenant, in certain cases, is a claim which is beyond what would have been allowed under the custom before the passing of the Act?

I do.

728. But you know of no such case, I understand, of your own knowledge?

I do not think that I know of any case of my own knowledge.

729. You speak of the differences of opinion between the chairmen; do you know any other such case, except the one which you have heard mentioned, of Mr. James Hamilton?

It is the only case which I know practically myself.

730. Do you think that it would be wise to form a judgment as to the working of the Act upon one or two cases of differences of opinion?

If it is not presumption for me to give an opinion, I think that it would be better to have a higher tribunal than the chairmen of counties.

731. Do you think that there is a sufficient body of evidence attainable as to differences of opinion between the chairmen, to enable us to form a correct judgment at present as to whether the Act works well or not?

I do not know what evidence is before your Lordships on that head.

732. Do you yourself think that there is sufficient difference of opinion between

Mr. H. Boyle.
18th June 1872.

tween assistant barristers to enable you to judge whether the Assistant Barristers' Court works well?

I do not consider that the Assistant Barristers' Court works well as regards the fair interest of a landlord.

733. It has been alleged that there are differences of opinion between assistant barristers, and that the existence of those differences of opinion renders it expedient to consider whether the tribunal is a good one; do you know of a sufficient number of differences of opinion to enable you to form a judgment with reference to the point whether the tribunal is a good one or a bad one?

I do not know many differences of opinion of my own knowledge.

734. Lord *Lurgan*.] When you speak of the opinion of Mr. Hamilton, the chairman of the county of Sligo, differing from a decision of Lord Chief Justice Monahan's, was that opinion of Mr. Hamilton's a judicial opinion given in his position as chairman?

Not at all. It was given as an advocate, as counsel in a case where he positively assured me that the Lord Chief Justice could not go into the case.

735. Where was this opinion of Mr. Hamilton's given?

At Omagh Assizes, last July.

736. *Chairman*.] In what way was that opinion given?

He was retained as counsel for one of my employers; and he assured me that Lord Chief Justice Monahan could not go into the merits of the case on a point of law; I should say, perhaps, that Mr. James Hamilton is the leading counsel on his own circuit.

737. I understand that this was a case in which Mr. Hamilton, who was a judge in one county, was acting as advocate in another county, and he was denying the opinion of Lord Chief Justice Monahan, stating that his Lordship's opinion was not, in his judgment, correct?

Yes; it differed also from the opinion of the assistant barrister of the county Tyrone, Mr. Loftus Bland.

738. Is there not rather an inconvenience in allowing a judge in one county to be an advocate in another county, before a similar court?

It is not usual; but the chairmen of counties generally go circuit and practise before judges at assizes.

739. In your judgment is it a desirable thing that they should be allowed to practise before other assistant barristers under the Land Act?

I am scarcely in a position to answer that question.

740. *Lord Steward*.] Does a barrister ever practise before an assistant barrister?

Yes.

741. Lord *Somerhill*.] I believe that in the county of Cork they have a regular bar?

I should say that for land cases it is most desirable that there should be counsel engaged, as chairmen of counties have nearly unlimited jurisdiction. If I had a heavy case for any of my employers, I should have counsel in it; I am not aware that there is any limit to a chairman's jurisdiction.

742. Was the case which you mentioned, one in which the chairman of the county of Down differed from Lord Chief Justice Monahan, and from that the chairman of the county of Tyrone?

The chairman of the county, Mr. Loftus Bland, gave a decree against which I appealed to the Judge of Assize, Lord Chief Justice Monahan. I instructed Counsel, Mr. Hugh Holmes and Mr. James Hamilton, to appear before Lord Chief Justice Monahan at the assizes; no person could have been firmer in opinion than Mr. Hamilton, that the chairman of county Tyrone was wrong, and that the judge could not possibly entertain the case. Notwithstanding, I am sorry to say that the Lord Chief Justice ruled the case against us, and refused us an appeal.

743. Was there any question of the amount of compensation?

It

It was not a very large sum, but I conceived that there was a principle involved in it. The amount of compensation was about 69 *l.* or 70 *l.*

Mr. H. Boyle.
18th June 1872.

744. Is there any rule laid down limiting the number of years for which compensation ought to be granted?

I never heard of any; I think that is entirely discretionary with the Chairman.

745. Lord *Charlemont*.] With a view of correcting some wrong impression which may have been produced, I wish to ask whether those replies which you have given the Earl Kimberley and other noble Lords have been about conflicting evidence, your instance of conflicting evidence being that the assistant barrister of one county and the assistant barrister of another county, and the going judge of assize, all differed upon the same case?

It was not conflicting evidence at all: it was upon a point of law.

746. Lord *Somerhill*.] Have you had any rule laid down, or doubts arising as to the definition of land to be held as town park:

I have heard it discussed and have paid considerable attention to it. I think the Act of Parliament is very vague upon the subject, but I do not presume to give an opinion upon that.

747. Is there any clear definition by which you can always decide what is or is not a town park?

I question it very much.

748. Marquess of *Salisbury*.] I gather from your evidence, that the Act as yet works much more hardly upon landlords, by indisposing tenants to moderate arrangements than by the actual decisions of the courts?

I should say so.

749. Therefore it is a matter of great importance, is it not, that whatever are the principles upon which the Act of Parliament is to be worked they should be decided by competent authority at the earliest possible periods, so that there may be no doubt and no exaggerated expectations in the tenants' minds?

It is most desirable.

750. Viscount *Lifford*.] With that view is it not of great importance that there should be appeals to the Superior Court of Land Cases Reserved?

I consider so.

751. Have there been many appeals?

I cannot say; but think not many.

752. Do you know of any cases in which appeals have been refused?

Lord Chief Justice Monahan refused the only case which I brought before him.

753. Will you tell us something about that case?

I served a tenant-at-will with notice to quit, previous to May 1869. I brought an ejectment against him at the January Sessions 1870. The ejectment was held over, expecting a desirable arrangement to be carried out, until after the passing of the Land Bill, which I think received the Royal Assent on the 1st August 1870. This arrangement, which I considered so desirable, fell through, and did not take place, and the ejectment was executed. The tenant brought his action for 69 *l.* or 70 *l.* to the Land Court before Mr. Loftus Bland, the chairman of Tyrone, who gave a decree for the entire amount without going into the merits of the case.

754. Marquess of *Salisbury*.] Do you mean without hearing any evidence?

Without going into the merits of the case. We rested our case upon a point of law that he had no jurisdiction, the tenant being, as we believed, a trespasser on the land before the passing of the Act. An appeal was lodged, and it went before Lord Chief Justice Monahan, at the July assizes last year, and it was in that case that Mr. Hamilton was retained on the part of the landlord, with Mr. Holmes. Lord Chief Justice Monahan was pressed to reserve the case for the Court above, and he refused to do so.

Mr. H. Boyle.

18th June 1872.

755. That was a pure point of law?
That was a pure point of law. The merits of the case were not before him.

756. Earl of *Kimberley*.] What are the grounds upon which Lord Chief Justice Monahan refused to reserve the case?

He felt that he had no doubt on the matter, and was quite satisfied with the ruling of the Court below.

757. Did he give no reason?
He gave the reason that he had no doubt about the case.

758. Did he give no reasons why he had no doubt about the case?
I think he gave rather a lengthened judgment, but I was not present.

759. If you do not know what Lord Chief Justice Monahan's reasons were, how have you been able to form a competent opinion that he ought to have granted this appeal; you said you were not present at the hearing of the case?

Not when he delivered his judgment; but I heard him discussing the case when it was on trial.

760. Did you read the judgment afterwards?
I did.

761. Do you remember anything about it?
His judgment was that the man was entitled to tenant right, on the ground that his tenancy was expiring and not expired, and that the ejection was not executed before the passing of the Land Act.

762. Did he give any reasons why he would not reserve the case?
The entire reasons which he gave when I was present were that he had no doubt in the world of his own judgment in the matter.

763. What reasons did he give when you were not present which you read afterwards?

I do not think that he gave any other reasons. He was pressed very much when I was present, but he refused peremptorily.

764. Lord *Kildare*.] In what county was this?
In the county of Tyrone.

765. Was any application made to the Lord Chief Justice to reserve this case?

He was pressed emphatically to do so.

766. In a Return which has been made to the House, it says that Lord Chief Justice Monahan anticipated an application about to be made for the appellant, stating that he had no doubt upon the point raised, and that he could not reserve it if asked, so that there appears to have been no actual application?

He refused.

767. Marquess of *Salisbury*.] That comes to very much the same thing as refusing it, does it not?

We pressed it, and he refused it peremptorily.

768. Lord *Steward*.] Was the case thoroughly argued out before Mr. Loftus Bland?

It was exhaustively argued.

769. I suppose that a full report of that case was forwarded to Lord Chief Justice Monahan?

I should say that there was a full newspaper report of it. I have not access to the "Law Times," and I never see it.

770. Upon consideration of all the arguments which were brought before him he refused the appeal?

He did, and I am quite sure that he thought it was right; but I thought it was very hard.

771. Earl of *Kimberley*.] It comes to this: you were dissatisfied that you did not win the suit?

I was,

I was, after being informed by the chairman of the county Sligo that the case would be reserved.

Mr. H. Boyle.

18th June 1872.

772. Marquess of *Salisbury*] You were dissatisfied that you did not get justice, was not that the case?

It would be a hard thing to say, that from a judge of the land I should not get justice; but I thought that I should have had the case reserved.

773. Earl of *Dartrey*.] Do you consider it possible, since the passing of the Land Act, for the landlord to put any limit upon the amount of tenant-right to be paid upon his estate?

I could not see my way to doing it.

774. Do you consider that when a farm is vacant, the landlord is able to exercise the slightest influence in selecting the new tenant?

I think he is able to exercise a certain amount of influence.

775. Whereas before he had the absolute right of selecting his tenants according to the custom of the country?

Yes.

776. Lord *Lurgan*.] Is not the selection of the tenant by the landlord a part of the custom?

It is, on any estate which I manage, or with which I am conversant; but at the same time, since the passing of the Act, I see great difficulty in carrying it out.

777. Lord *Charlemont*.] Do you think that the decisions of the chairman have any effect in producing amongst the tenantry the opinion that they may do as they like about their occupations of land?

I think that they have had such an effect.

778. Lord *Lurgan*.] Have any of that large number of tenantry over whom you so ably and kindly act as agent, expressed a wish to you that the present tribunal should be altered?

I am convinced that the tenants are more than satisfied with it, and I think it would be extraordinary if they were not.

779. Marquess of *Salisbury*.] You are not so sure that the landlords are satisfied?

I am sure, as a rule, that they are not.

780. Therein you entirely differ from the last witness?

On some points I differ from my friend, Mr. Hancock.

The Witness is directed to withdraw.

Mr. COURTENAY NEWTON is called in; and Examined, as follows:

781. *Chairman*.] WHAT are you?

I am a land agent and I am a landlord.

Mr. C. Newton.

782. Have you had any experience with regard to the working of the Land Act?

As much as possible in the time, and I take a great interest in it both in the counties of Tyrone and Donegal.

783. What is your opinion with regard to the satisfactory working of that Act, or otherwise?

I believe that the result of it is a growing alienation between the landlord and the tenant, destroying the good feeling which formerly existed between them in Ulster.

784. To what do you consider that attributable in the working of the Act?

To three or four different causes; one cause is the uncertainty, and I think

Mr. C. Newton.
18th June 1872.

a confounding of terms; I am only speaking of Ulster. With regard to the rest of Ireland (I am only speaking from theory) it appears to me to be an admirable code of law, with the exception of the clauses affecting future improvements; but perhaps it is not right for me to enter upon that question, and therefore I need not do it. With regard to the clauses of the Act which legalise the Ulster custom, they legalise tenant-right and do not legalise landlord rights which were secured solely by the fact of the tenant-right having been at the option of the landlord.

785. My question had reference to the working of the Act, and not to the Act itself; will you confine your answers to that point?

I was speaking simply of the difficulty of construing the Act, because it is quite possible that, as I have heard said by a barrister, a large contemplation of that section would secure, for instance, the right to game, the right, where the holding was an agricultural holding, to reserve the bogs upon the property, the right to enter upon it to quarry, and so forth. Those things were formerly enforced on account of the tenant-right having been principally in the power of the landlords, so that they could refuse it. Now the tenants think that the landlords cannot refuse the tenant right and that they may resist the landlords' rights to the other. Then there are also the conflicting decisions of the chairmen, not only conflicting with those of other chairmen, but differing from those of the judges and declining to accept the decisions of the judges. In my opinion, taking the amount of tenant-right which has been decreed the chairmen do not found their decisions as to amount upon a proper or a fair basis at all, as regards the landlords; for instance, I take that disputed case of Lord Leitrim's. It was stated here by one of the witnesses in my hearing that it was proved (and, in fact, I read it myself) before the Chairman that the farm was worth 19 *l.* a year, though the rent was 6 *l.* a year. That left a profit rent of about 13 *l.* a year, the value of which, as it seems, the Chairman estimated at 240 *l.* It appears to me that that is a most extreme value and is not founded upon any principle at all. There is clearly a want of confidence existing, and you cannot get a tenant now to take a lease. You cannot get a tenant to enter into a treaty with you about giving up a very small portion of the ground. I will give you an instance on one large estate which I manage in the county of Tyrone. A lease fell out, a strip of about two roods of ground interfered between another tenant's holding and the road; I said, "You shall hold this farm on, it is a very small thing and you are a very good tenant; it shall be added to your other farm." We were both satisfied about the rent and there was no dispute about that, but I said, "I must take away those two roods of ground." The tenant refused to give up the two roods of ground which was a mere useless strip, unless he might dispose of it on the terms which he thought best to the next tenant. I told him a case of which he had heard, which determined the point and which I fought out before the Court, and I told him that I did not want to take the farm from him, but I would if he would not give up the little plot. He has consented to do so, but whether he will fulfil his promise in November, when the time comes, I do not know. Then there are three or four conflicting decisions which I am prepared to state to your Lordships.

786. Will you proceed to do so?

Of one case I will give your Lordships a short history. A lease was held by a tenant who a few years before assigned over a small portion of 4½ acres of ground to another man who lived off the estate; on the lease expiring I demanded possession from this stranger who had got into this property. I had to bring an ejectment for the recovery of the ground. The last life of the lease died in December and I brought the ejectment at the next January sessions. The point was raised that by the Act of Parliament (I do not know whether it is so in England or not) in lieu of emblements the tenant can continue in possession until the last gale day of the current year, and that, therefore, this gave the tenant a right to hold from December 1870 to the 1st November 1871. The attorney for the landlord stated that there were no growing crops upon the ground; that there was not a particle of crop in it, and that, therefore, there could be no right of emblements in respect of it. The decision of the chairman (which I have in print with me) was that it was not for him to inquire whether there was a Jerusalem artichoke or a stalk of cabbage growing on the ground, that

that it was quite sufficient that the law gave him to the end of the current year, and he dismissed the ejectment. I ordered an appeal to be made; it came before Lord Chief Justice Monahan, and there was no one to argue in support of the chairman's decision, and the landlord got his decree. The man who got the $4\frac{1}{2}$ acres of ground put in a claim for 70 *l.* for being dispossessed of this holding which he got as assignee from another. It was relied upon before the chairman that it having been assigned during the existence of a lease, and particularly as that lease contained stringent clauses against sub-dividing, but that the lease was in existence when the Act passed, and therefore the holding was not subject to tenant-right besides; that the execution of the lease some 30 or 40 years before was a surrender of all claims of the tenant up to the period of the execution of the lease, and that, therefore, the barrister had not jurisdiction. The barrister gave a decree for 45 *l.*; that was appealed from, and it came before Mr. Justice Keogh at the last assizes. There was a great deal of evidence given that it was the habit of the country that tenants living on farms where their leases expired generally entered into a new contract and remained on the farms. It was argued on the part of the landlord that that was not a legal custom, but a usage or practice, or whatever it may be called, which existed in England and in the north or south of Ireland, and that it was no part of what is called the Ulster tenant-right custom. The judge decided, after hearing this, that it was not evidence of a custom at all and dismissed the claim of the tenant; I may say that at the very same assizes Mr. Justice Lawson gave the same decision in the county of Donegal in the case of Mansfield, the report of which I have in town. So far that is the difference between the chairmen and the judge. Another case arose on the very same estate at the last sessions, about three months ago, where a lease expired, the lease having been granted under these circumstances: a man had a chattel lease, renewable in perpetuity at a very low rent, a nominal rent; he would not renew the lease, and he would not pay the rent; in the year 1850 he was evicted from the premises by the then landlord of the property; he having been evicted from the holding, the landlord was obliged to take it into his own hands for 12 months. Two parties came forward and said they had assisted the previous tenant with money, which had been expended in building a house upon the place, and that this man's bad conduct and negligence deprived them of all chance of getting any money out of it: by my advice, the landlord of the place said that he would give them a lease for 20 years, to enable them, either by the sale of their interest in that lease, or by the occupation of the ground, to repay themselves at any rate some part of the debt. The next year the two tenants who took this lease sold the farm to another tenant altogether, a man of the name of Burns; the lease expired in November 1871. In the meantime the land was purchased under the Landed Estates Court by another landlord; that landlord was advised that this having been a perpetuity lease from beyond a hundred years ago, the holding could not be subject to the tenant-right, and concluded that the tenant-right usage should not be allowed to apply, and he offered to allow the man to continue in possession if he took a lease for 35 years, at a rent of 39 *l.* 10 *s.*, with a stipulation that no tenant-right was to affect that holding; the man refused this offer, and made a claim of 700 *l.* for disturbance. The case came on before the chairman, another barrister having been appointed chairman. The previous case was submitted to him, with Mr. Justice Keogh's decision in the same county, and another decision of Mr. Justice Lawson's; but in the face of it all, he gave a decree for 300 *l.* against the landlord. On the expiration of this lease, which was given through kindness, and to assist the people to get the money owing by the previous defaulting tenant, he decreed the landlord to pay 300 *l.* I, of course, directed an appeal, and that will be tried at the coming assizes. I have set the farm to a good and solvent tenant on the same terms I offered Burns, at a rent of 39 *l.* per annum. The next case is this; a landlord for whom I am agent brought an ejectment for non-payment of rent, on a little holding of 7 *l.* a-year. There was an eviction, the six months for redemption expired, prior to which the occupying tenant continued to live on in the place, and afterwards still held on against the will of the landlord; but she having signed one of those acknowledgments by which, under the Statute, occupiers are allowed to remain on in possession of the place until the end of six months. She would not go out, and another ejectment had to be brought on that acknowledgment. That was heard before the chairman at, I think, the last January

Mr. C. Newton.

18th June 1872,

Mr. C. Newton.
18th June 1872.

sessions. He gave a decree in the ejectment case, but gave a certain time for the landlord to endeavour to get another tenant to purchase, the landlord consenting, although all idea of tenant-right sale had lapsed, as he thought. He allowed her to sell within the month; the chairman gave the month. The woman did not do anything, and she was put out. She made her claim for 70*l.*, and it was tried before the chairman. Although the six months had expired for redemption, and although she got this month's time, the chairman gave her a decree for 63*l.*, and made it up in this way: the landlord, after execution of the ejectment, took pity on this woman, and actually himself sold the tenant-right to another tenant on the place for 55*l.* He offered the woman the difference between the rent in arrear and the money which he got. The chairman held, that because he had added 1*l.* per annum to the rent of the new tenant to cover the county cess, and other things the landlord should pay 12*l.* 10*s.* more for that.

787. Is that appealed?

That is appealed, That was in the county of Tyrone.

788. *Chairman.*] In the former cases, the error of the chairman was corrected by the judge on appeal, was it not?

Yes.

789. *Viscount Lifford.*] Was not that chairman appointed since the passing of the Land Act?

He was.

790. *Earl of Kimberley.*] What was the name of the chairman?

Sir Francis W. Brady, son of the late Lord Chancellor Brady.

791. *Chairman.*] Upon the cases which you have mentioned, there seems to have been no ground for objecting to the appeal to the going judge of assize?

No.

792. It has been stated that there is a great deal of civil and criminal business in the assizes, and that these cases are heard before they enter upon that business, and that they have only a limited time for getting rid of the usual business of the assize. In your judgment is there any inconvenience or objection to the appeal being to the going judge of assize, under those circumstances?

Not if there was a right of appeal given to both parties to go to the Court of Land Cases Reserved; but the only case which I remember to have observed in the paper, where the judge refused the appeal (the one which the last witness spoke to, I do not remember), was a case in which Lord Chief Justice Monahan refused an appeal upon one branch of the case, and allowed an appeal upon another; but I apprehend from rumour that he would not do so again in that case, so far as he was concerned, but that he would give it on both points. The general opinion is that he himself saw, that he should have done it in both cases, but of course I have not that from the judge; I only speak of it from rumour.

793. *Lord Somerhill.*] But do not those rumours affect the relations between landlord and tenant, whether they be true or not?

Most seriously: that is the thing which I am most alarmed about for myself; I would rather that the land law was anything, so that it was settled and strict. I scarcely care almost what they make of it, only let us have good feeling if we can; and that never can be so long as there are uncertainties.

794. *Marquess of Salisbury.*] Exaggerated expectations are entertained by the tenant, are they not?

Yes, I think they are driven on by people in towns, generally engaged in trade, and who like to take a little recreation in agitation.

795. There is a class of attorneys I suppose who make a great deal of money out of those land cases, and who stimulate them?

I was an attorney myself, and therefore I say, that in my experience there is no body of men in the world more belied than they are.

796. Are you prepared to extend that to the whole class; do you not admit any difference between attorney and attorneys?

As

As a class, my opinion is, that they do their duty most zealously. I think they are sometimes too zealous; but that is the only fault I ever saw in them.

Mr. C. Newton.
18th June 1872.

797. Do you not think that there have been some attorneys who have been too zealous in forwarding the interests of the tenants?

I am only speaking of my own experience.

798. Lord *Brodrick*.] Is it not notorious that in some of the country towns there are attorneys who do very little else than trump up those claims?

I would say, "No," to that.

799. Viscount *Lifford*.] Would you say, "No," to that as to Derry?

As to Derry, I know little, except that the decisions of the able chairman there are quite different from those of some of the other chairmen.

800. Lord *Lurgan*.] While we are on the question of attorneys, is it not the case that the attorneys practising at those courts consider themselves at present very much under-paid for the duty which they have to perform?

I think that they consider it to be so; but I do not concur with them in that opinion.

801. Earl of *Kimberley*.] I understood you to mention a case of appeal, in which the decisions of the assistant barrister was reserved; has it not, in your experience, been the fact that in the greater number of instances where there have been appeals, the decision of the assistant barrister has been affirmed, with regard to land cases alone?

I cannot answer that question; the cases which I speak of were those with which I was personally acquainted and intimately connected.

802. Have you an opinion that the Ulster tenant-right does not exist at the close of a lease?

Yes; that is my opinion. I have brought here Mr. Butt's book, which is a very able book upon that subject, and he clearly shows that the execution of a lease puts an end to tenant-right.

803. Did you ever hear of the evidence given on that subject before the Devon Commission?

Yes.

804. Did you ever hear that that evidence was very strong; that tenant-right did exist at the end of a lease in Ulster?

I believe that the phrase "tenant-right" was applied to it just by the same mistake that led the chairman to give the decision against me in this way. No doubt, tenants have been allowed to remain on with a new valuation by the landlords. That is a practice which exists north, and south, and east, and west; but I deny that it is any portion, or ever was deemed or thought to be a part, of the Ulster tenant-right custom, and I have had as much experience as most people who gave evidence before that Commission.

805. Are you aware that evidence was given before the Devon Commission many years ago, that the Ulster tenant-right existed at the close of a lease?

Yes; I have heard so; but I think that reason will set that at rest, because, who is to settle the term of the new tenancy. A tenant will not take a lease now; he will take a tenancy from year to year. Then who is to settle the terms of this new contract? Is it to be under the terms of the old lease, which generally contains a clause against alienation, without the consent of the landlord under hand and seal; or is it to be a new tenancy altogether, where they can sell the tenant-right, or do what they like with the place?

806. Lord *Silchester*.] On any estate with which you are connected, does any tenant who is about to migrate to America or Australia claim to continue a tenant unless he is bought out on his own terms?

I never knew it done where the tenant had not some anticipation of returning, and left it in the care of some person; but that is done.

Mr. C. Newton.
18th June 1872.

807. Viscount *Lifford*.] Are you acquainted with the Powerscourt estate in Tyrone?

I am; it is a beautiful estate.

808. Have you heard anything of a recent claim of the tenants on that estate?

Yes; I forget whether it is 20 or 22 years' purchase which they would be willing to give the landlord for his estate. I dare say that it would have been sold before the passing of the Act for 30 years' purchase. The tenants would not hesitate to buy it themselves for 20 or 22 years' purchase.

809. Do you think it is likely that Lord Powerscourt will find another purchaser than the tenants?

I doubt it very much. I doubt very much whether there is not a fall of 33 per cent. upon the ownership of land in Ireland by reason of the Land Bill, but that we cannot complain of.

810. You yourself have purchased considerable property in Donegal, I believe?

I have purchased over 50,000 *l.* worth in Ulster.

811. May I ask whether you are quite satisfied with your purchase?

One part of it would have satisfied me extremely, only that I cannot help the tenants to improve the land under the new law. I formerly did so. It is a small, poor tenantry, in a mountainous district, and I have the satisfaction that there has been a great deal of improvement made by a very small outlay on my part. Of course I had to stop improvements, because a man does not improve where he has no interest in the property. That is not the Letterkenny property, which was Colonel Pratt's. It is principally occupied by very good tenants, wealthy men, who would not like to be disturbed, even for the sake of the tenant-right that they would get, or the liberty to sell, which I think I could give them leave to do in lieu of paying them compensation. Therefore, I have not the slightest doubt that I shall come to an agreement with them whenever I revalue the property. It is let under its value, as would have been thought in former times; but now I do not know as to that. It is a very good purchase; the tenants pay punctually, and generally are a very nice set of men.

812. Are you aware of any particular effects which the decision in Lord Leitrim's Case has had in the county of Donegal?

They are serious, but that I can only speak of from report, because of my own knowledge I know only one case. A tenant, a man upon that property, to which I was giving such a good character, has 100 acres of ground, and pays a rent of 7 *l.* 10 *s.* per annum. Of those 100 acres of ground, I suppose, there are about 15 acres reclaimed. This tenant had formerly been evicted for some reason, but he came back and put up a wretched building against what we call a ditch or a mound; and there he and his family, and I think the cattle too, lived. There is a large portion of it deep bog, which he could gradually reclaim if it was cut out; and if it was reclaimed it would be for his advantage. He now says, "You shall not put a foot upon this ground unless you pay me for it," to let to tenants to cut turf; although he could not cut turf. I could get an injunction if he did so, by going to the Court of Chancery; but I have no other means of stopping it. I am deprived of the means which I before had. He refuses to let me set the bog, although I did so before.

813. He has laid claim to your turbary?

Yes; those obligations which were binding upon the tenant, have not been legalised under the words "Tenant-Right Custom," the tenant's part of the bargain has been legalised, and the landlord's was not. The respectable tenants do not object to it at all, but it is not legalised.

814. Lord *Greville*.] Is this bog of which you speak, in part of a holding?

It is part of a holding, but in former times when there was no special bargain, the landlord used to cut the deep bog, leaving the tenant the grazing in the interim.

815. Marquess of *Salisbury*.] If there had been a custom for you to cut, would not that have been an implied agreement under the section of this Act?

It is said that that does not apply to the tenant-right custom at all.

816. Lord

816. *Lord Steward.*] Have you tried a case under section 14 of this Act?

That is the section about game; I do not think that comes under the tenant right custom at all.

Mr. C. Newton.

18th June 1878.

817. It comes under the right of a landlord, does it not?

It comes under the right of a landlord if the proceeding is under other clauses of the Act.

818. You have not tried that case?

I have not.

819. It is only your own opinion of what possibly may happen?

I am so much afraid of the result that I must bear my loss or run the risk of being victimised.

820. *Lord Lurgan.*] Under what plea does the tenant make the claim for bog?

That to cut turf is a trespass upon his holding which he holds from me, and it is so.

821. Does he advance his claim under the Ulster custom?

Not; but before the law legalised the tenant part of the Ulster custom, I could have served him with notice to quit, which would have at once brought him to terms; now I cannot do that even under the clause referred to, but I would suggest that if there was anything going to be done, the equities clauses should be declared to apply not only to the Ulster tenant-right custom, but also that in the estimate of the amount of compensation payable for landlord's disturbance; the chairman should be bound to contemplate landlord's rights as well as the tenant's rights, because it clearly cannot be fair in a case, for instance, such as that of Lord Leitrim's, where it would be his interest to make a present of the land to the man and to give him some money for taking it his hands; that could never be contemplated as a matter of principle.

822. *Lord Steward.*] Has there been ever any decision that clause 14 does not apply to Ulster tenant-right?

I do not know that there has been a decision, but it is generally held that clause 1 hangs by itself, and is disjoined from all the rest. Even in the case of non-payment of rent, that was considered a disturbance, for which the landlord was, in the case I mentioned before, bound to pay even more money than he got for it himself.

823. Looking at the Act from a common sense point of view, should you not say that the Legislature meant that the landlords should never be prevented from mining or taking minerals, quarrying stone, slate, &c., cutting or taking timber or turf, opening or making roads or drains, where he had always been in the habit of exercising those rights?

Most assuredly; and if this Act was to be taken as a whole by non-professional men, and thought of in that way, it is perfectly plain that those who prepared the Act never intended to do the things that have been done by it.

824. But in the absence of any decision to the contrary, should you not consider the Act in the common sense ordinarily point of view in which a man would consider it?

If I had not a little tinge of a lawyer in me from old times, I should agree with your Lordship.

825. *Viscount Lifford*] Have you heard anything about game in your neighbourhood; in Donegal?

Indeed I have; I heard that a gentleman of large estate there had been in the habit of using the game himself, and having his friends to use it; and that the tenants on the estate (holders I believe from year to year), joined together and refused to allow him to set the game, or allow any other person to shoot over the land, although they say, as he is a good landlord, they will permit him to do so. I have heard since, but not so authoritatively, that the tenants have themselves absolutely entered into a treaty with some one to let the shooting to him, but that could be stopped by injunction.

Mr. C. Newton.
18th June 1872.

826. Lord *Greville*.] You stated, did you not, that for a property in Tyrone, the tenants had offered 22 years' purchase?

I think so.

827. Did I correctly understand you to state, that before the Land Act, they would have offered 30 years' purchase?

The tenants could not have bought it at all, but for those valuable provisions in the Land Act; but it would have been sold to a capitalist in England, who desired to invest money in a handsome property, nicely circumstanced in every respect, for 30 years' purchase.

828. Upon what do you ground that opinion?

My own estimates of the selling value of the land in that neighbourhood, is that 25 and 26 years' purchase was a very usual price to pay.

829. Do you consider that since the passing of the Act that the value of land has fallen to the extent of eight years' purchase?

Twenty-six years, I said, was the price; and 30 years' purchase on that particular estate, because it was in a state that we should say an Englishman with a large capital, if he saw it, would take a very great fancy to. It is a fancy estate.

830. Lord *Digby*.] Is it particularly low land?

It is not extremely low-rented land, but it is under the regular value of the lands in the neighbourhood?

831. Lord *Steward*.] Do I understand you that it is now in the market for sale?

It is, I believe.

832. And that no offer has been made for it?

I do not know anything about that.

833. You stated, did you not, it would sell for 22 years' purchase?

I said that I heard the tenants proposed to give 20 or 22 years' purchase for land for which I am certain the landlord, before the Land Act, could have got 30 years' purchase; but if the landlord sold it by auction, I cannot tell what would be the effect of the Land Act upon the sale of this estate.

834. Lord *Greville*.] Do you mean to say that this Act has caused the land in Tyrone to fall in value?

I am satisfied that it has.

835. Earl of *Kimberley*.] I understood you to say that the tenants had offered 20 or 22 years' purchase for this estate?

Yes.

836. But I also understood you to say that you did not know but that if the estate was put up to auction it might fetch a good deal more?

I said so.

837. What inference do you draw, then?

The inference which I draw is that the value of that property, in the tenants' opinion, is 22 years' purchase. My estimate, as a man of business and an agent is that it was worth 30 years' purchase before the Land Act, but that since the Land Act it is considerably reduced in value, though to what extent I do not know.

838. Supposing that you had an estate which you thought was worth 30 years' purchase, and I offered 25 years' purchase for it, would that be conclusive proof that the estate was worth 25 years' purchase only?

Certainly not; but if your Lordship was a tenant on that estate, having ideas of your own rights, and so on, I should think the value which you would put upon it would be that it was only worth the amount of rent payable to the landlord, and that, taking it at 20 or 21 years' purchase, as 4 per cent. was ample to allow a landlord for his money which that rate of purchase would not realise after deductions.

839. Is not the market value the test?

The market value can be reduced by legislation.

840. But

840. But I understand you to say that in this case you have no idea of what the market value is?

Except as a man of great experience in buying and selling land, I have none.

Mr. C. Newton:

18th June 1872.

841. I understand you to say that you think that this land would not fetch more than what the tenants offered?

No, I guarded myself particularly against that; I said that the tenants estimated the value, as I heard, at 20 or 22 years' purchase, whereas, Lord Powerscourt would have got in the open market, before the Act, 30 years' purchase; that I thought between those two points (I did not before use the words between those points), I could not give an opinion, and I have not given any opinion yet.

842. Then would not the fair way of putting it be this: that you think that the fact of the tenants having offered no more than 22 years' purchase, is an indication that the estate would probably not fetch so much in the open market as you think it would otherwise fetch?

Certainly, it is more than an indication, it is an exclusion, because to buy against the tenants is not comfortable.

843. Then I understand you to base your opinion upon this, that competitors would not dare to appear in the market against the tenant?

I did not say that. In Tyrone, I am happy to say, we could not say that.

844. Then the fact of a tenant having put this value upon the land is no indication, in your opinion, that that is the value; and further, I understand that you are not prepared to give the opinion that competitors would be deterred from coming into the market by the fact that the tenant had made the offer?

They would not be deterred, but they would not go as willingly; and, therefore, a person going to buy land not having the full amount of willingness that he would have otherwise, would not, of course, give so much money.

845. Does not it come to this, that it is all mere conjecture?

It is opinion, whatever its value may be.

846. I understood you to say that the landlords have been defined by the action of this Act of Parliament, of the means and opportunity of enforcing their rights by evictions, which they had before the passing of the Act?

There were certain rights: first, the right to game; secondly, the right to cut turf; thirdly, the right to go in and mine, and the right to cut timber. Those rights were universally admitted in cases of tenancies from year to year, and they were never disputed by the tenant. The reason why they were not disputed by the tenants was this, I think, that although there was no special reservation of those things in the parole lettings, still they knew they would lose their tenant-right, which was of considerable value, if they refused to allow the landlord those things which were generally esteemed as reasonable. The legislation of tenant-right deprived the landlord of that hold which he had over the tenants to secure their recognition of those rights which he was in the habit of exercising.

847. Before the Act passed, would it not have been the case that if any of those rights, as they are now called, on the part of the landlord had been disputed by the tenant, the landlord could, consistently with the Ulster custom, have evicted the tenant without allowing him to sell his interest to another tenant?

He had it absolutely in his own power. I will tell you what would have been done; the landlord would have served the tenant with a notice to quit; he would have said to him, "Now, I am going to put you out because you prevented my going over your farm, either to see how it was cultivated or to shoot; you have deprived me of that right; I have now served you with a notice to quit; but I am an Ulster landlord, and you have the liberty of selling, subject to the rules of the estate" (if there were limitation rules), "to such tenant as I shall approve of." The moment that new tenant came to me, I would have told him the ground upon which I was going to put out the old one, and if he was not satisfied, and raised any objection, I would not accept him.

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848. I do

Mr. C. Newton.
18th June 1872.

848. I do not quite understand even then the mode of procedure; supposing that no new tenant had been found who had accepted the terms which you had imposed on him, could you, consistently with the custom, have evicted the new tenant without his having an opportunity to sell?

I never knew a case where it was necessary to put that in force, because the tenant had no appreciable value in these things that I think the landlord had a right to. He valued them at nothing, whereas the tenant right was a thoroughly valuable interest, which he had by our custom the right to dispose of. Therefore he would not risk that, and the case never arose, and, therefore, I cannot say

849. Am I to understand you that you think the right of turbary or of minerals is worth nothing?

The tenants did not claim the right; they now even claim the shooting.

850. The landlord not having made any written agreement to reserve his rights, it appears that some tenants think that they are in a position to refuse to the landlord the exercise of those rights unless he pays them a compensation under the Ulster custom. What I want to arrive at is, why under the Ulster custom, as it existed before the Act, the landlord had the power of getting rid of the tenant, and so enforcing those rights which he had not reserved in writing, without paying the compensation under the Ulster custom?

Because it was no part of the Ulster custom. The Ulster custom was nothing but the right to sell. If a landlord dispossessed a man for the purpose of taking the land over himself, he must do the same as if the man had sold subject to these estate regulations of which I am speaking, but the point never arose. The right of shooting, and the right of taking bog, were admitted as a matter of course. I never heard anybody raise the question until lately.

851. Practically, I understand you to say, that no such dispute ever did arise before the Land Act?

Yes.

852. And, consequently, you are unable to say what would have happened because no case ever came under your notice; is that a fair way of putting it?

It is; I cannot speak of what would have taken place under the circumstances.

853. *Lord Charlemont.*] When you spoke about the value of Lord Powerscourt's property, you said the tenants had now offered or proposed to offer, 20 or 22 years' purchase, while previously to the passing of this Act you would have put the value of the property in the open market to sell at 30 years' purchase, but that you could not say what price it might fetch if it went to auction; by that am I to understand that, in addition to that 20 years' purchase, if it went to auction with competition, the tenants would probably give more money?

No. I do not believe the tenants could buy to any extent (although they are a highly respectable tenantry) unless they got it at such a low figure as I have mentioned; when by the process of borrowing from the Board of Works and other people, the thing might be managed. But what I say is, that that offer having been made by the tenants; and the tenants holding under the Land Act, I am satisfied that the selling value of that property is very considerably reduced; the amount of that reduction I could not say, because I have not made a personal survey with a view of thinking of a purchase for myself, or for anybody else.

854. What do you mean by saying, that you could not undertake to say what the property would fetch if it went to auction?

I am sure it would not fetch 30 years' purchase.

855. Do you mean sold in the Land Court?

Either way.

856. *Lord Steward.*] Do you know of any sales in the Landed Estates Court since the passing of the Land Act?

I cannot call to mind any; I think I do know one or two of a few townlands, about

about five, or six, or seven miles, from where I live; and there may be more, but they are not in my mind at present.

Mr. C. Newton.

18th June 1872.

857. Do you mean to convey to the Committee that the price of land has fallen since the passing of the Land Act?

Most clearly, and it will be found so.

858. Do you back that opinion upon actual sales that have taken place?

I do not. That is not only my own opinion, but it is the opinion of a great many people with whom I have conversed on the subject.

859. Supposing you saw, by any actual verified data, that the price of land has not fallen, but on the contrary, has in some cases rather increased, would that in any way change your opinion as to the value of the Land Act?

Yes, if it was a late sale. There is one exceptional sale which is always pushed up as a very great case; and that is the Marquis of Waterford's property, but that is no guide for anything.

860. Have you taken pains to watch the sales under the Landed Estates Court in various parts of Ireland?

I have not.

861. Then, in point of fact, you only base this opinion of yours as to the fall in the value of land upon general conversation?

I base it upon this: that landlords cannot raise their rent even to a reasonable sum. Take the case of a large landed proprietor, whose land is only let at about half the value. The tenants have a perpetual interest in that because, if the tenant-right is not to be interfered with, of course the lower the rent is, the higher tenant-right sells. Therefore it is plain that men who have, perhaps, estates worth a million of money, would lose, at any rate, a quarter of a million by that, if not a great deal more. All that can be sold is the perpetual rent as it is at present with fixity of tenure and fixity of rent. It is really so. They may talk about it. They may say the landlord has the right to raise the rent provided it does not affect the value of the tenant-right; but the meaning of that is, that it cannot be raised at all.

862. Lord *Meredyth*.] Do you speak of Lord Powerscourt's estates from your own knowledge?

Yes, as to the respectability of the tenants, and as to the land being fairly let.

863. Of course you know that 30 years' purchase is very much above the average of other properties?

Certainly.

864. Can you tell us how it is that the price of land in Ulster is so much higher than in other parts of Ireland?

Heretofore there has been in the Saxon districts of Ulster the best feeling between the landlords and the tenants, and I may say also to a great extent in the Celtic districts of Ulster, for instance, the Donegal district. There I think they were very much attached to their landlords. Although there were there some agrarian outrages, still as a general rule a good landlord was as safe there as anywhere else, but as to the Saxon districts they deal upon very equal terms with each other, and they were very fond of each other. The landlords lived on their estates, and they were liked. That was one reason, but I do not attribute it altogether to the prevalence of the Ulster custom. I could not account for it; but one thing I am certain of, that the origin very often given by theorists for the Ulster custom is all wrong, because I know myself that the Ulster custom when I was young, was not one seventh part of the value that it is now on several estates about me; it has grown up gradually.

865. As to the increased number of years' purchase which is required for land in Ulster, as compared with other districts in Ireland; do you attribute that entirely to the good and kind feeling which existed between the landlords and the tenants?

Certainly, I do entirely; and they also let the lands at a live-and-let-live rent; the lands were generally let at a fair value.

Mr. C. Newton.
18th June 1872.

866 Viscount *Lifford*] With regard to the Powerscourt estate, has it come to your hearing that there is a great indisposition on the part of the tenants to allow anybody to buy ?

Yes, I have heard that statement.

867. I am sorry to say it against Tyrone, because I am partly a Tyrone man myself, but was not that the reason why you supposed that an Englishman would not be likely to buy it.

Yes ; but that was because the tenants, perhaps, think they will get it at their own value.

868. And they are objecting to anybody else buying it ?

They object to anybody else buying it.

869. And the mode they take to prevent anybody else buying is by claiming a greater extent of tenant-right ?

Yes ; I observed a notice in the paper purporting to come from them, stating that the estimate of the value of the lands, as put out in Lord Powerscourt's advertisements for sale, was quite erroneous, and that the lands were set at their full value.

870. Lord Powerscourt's property has always had the character of being set cheap, has it not ?

Yes ; not remarkably cheap. The Duke of Abercorn's, and the Marquess of Downshire's, and the Marquess of Londonderry's properties are set a great deal lower than that

871. And you do not think that anybody, under the present Land Act, who purchased Lord Powerscourt's property would be on a bed of roses ?

Not unless he was satisfied of one thing, and that is to take the present rents as the rental of the estate. If he was satisfied with that no purchaser would have a nicer set of tenantry.

872. So that he would have no power of doing anything with the estate ?
Precisely.

The Witness is directed to withdraw.

Ordered, That this Committee be Adjourned to Thursday next, Eleven o'clock.

Die Jovis, 20^o Junii 1872.

LORDS PRESENT:

Marquess of SALISBURY.
Earl of PORTSMOUTH.
Earl of BELMORE.
Earl of BANDON.
Earl of DARTREY.
Viscount LIFFORD.
LORD STEWARD.
Lord DIGBY.
Lord BRODRICK.

Lord SOMERHILL.
Lord CHARLEMONT.
Lord SILCHESTER.
Lord LURGAN.
Lord CHELMSFORD.
Lord MEREDYTH.
Lord GREVILLE.
Lord KILDARE.
Lord O'HAGAN.

THE LORD CHELMSFORD IN THE CHAIR.

MR. CHARLES UNIACKE TOWNSHEND, called in; and Examined,
as follows:

873. *Chairman.*] WHERE do you live?
In Dublin.

874. What are you?
A land agent.

875. Have you had any experience with regard to the working of the Land Act in your capacity of agent?
I have.

876. Will you be good enough to give the Committee your opinion as to the efficient, proper, and satisfactory working of the Land Act?

I have found difficulties in various ways cropping up, as to matters which were probably not contemplated at all as regards the working of the Act; one occurs to me more particularly at this moment with respect to the sale by the Bankruptcy Court, of the interest of a tenant from year to year in his holding, without any power of intervention by the landlord of any sort or kind as to the choice of the tenant or otherwise.

877. That is rather with regard to the Act itself; but the matter which the Committee have to inquire into is, as to the working of the Act; in the first place, with regard to there being 33 judges acting independently of each other, which would possibly, or most probably, lead to conflicting decisions, have you in the course of your experience found that that has been the case?

I have avoided all proceedings which I possibly could avoid before the chairmen with respect to the Land Act. Personally, I have had no case before them, because there are so many difficulties, that each is waiting for another to act to see how the thing works. I have heard of the difficulties which are referred to by your Lordship; I have not practically experienced them, but I am aware that there is a general feeling as regards the 33 chairmen in Ireland giving decisions, that there are not 33 opinions agreeing, but 33 separate and divergent views generally.

Mr.
C. U. Townshend.
20th June 1872.

Mr.
C. U. Townshend.
20th June 1872.

878. It is merely from your having heard that there is a feeling of dissatisfaction arising from the conflicting decisions which have taken place amongst the chairmen?

Merely from that; I have avoided putting myself in a position, for the present, to test the question as far as possible.

879. Then what does your experience enable you to give in the way of information to the Committee, upon the subject of the machinery by which the Act is worked, without considering any objections to the Act itself?

I referred in what I stated at first to a result of the Act as regards the Bankruptcy Court interfering in the management of the property and selling, without any power on the part of the landlord to intervene.

880. That arises from the Act itself; this Committee have merely to consider whether the Act is working satisfactorily or not, and they desire to obtain information upon the subject?

I can only mention the result.

881. Lord *Somerhill.*] If I understand you aright, the operation of the Act is practically such in the case of a tenant who may be honestly or fraudulently a bankrupt, that it debars the power of the landlord as regards an incoming tenant or the sale of the tenure which the landlord formerly enjoyed?

Quite so; I have before me a correspondence with the official assignee of the Court of Bankruptcy with respect to a case in which a tenant became insolvent. I was informed that the court had gone into possession and were about to sell the interest in the holding; I protested against the proceeding, and received a letter from the official assignee, which I hold in my hand, telling me that they had no choice but to sell. That was a case of a tenancy from year to year. The hardship which I particularly felt was this; that the landlord had in no way disturbed the tenant; that his improvements were valued by himself at 35*l.* (towards which I contributed 5*l.*), and that when the Bankruptcy Court proceeded to sell they realised (I have the handbill here that was circulated) a much larger sum.

882. *Chairman*] Does not all this arise out of the provisions of the Act itself, not being dependant upon the decision of the chairmen, but being in accordance with the provisions of the Act. The landlord has not the opportunity which you think he ought to have?

Quite so; I was answering the question of the noble Lord.

883. Lord *Somerhill.*] But still it is the operation of the Act, is it not, which now affects the relation of landlord and tenant in this case of the tenant's insolvency?

Certainly.

884. That is clearly a part of the operation of this Act?

Such would not have been the case prior to the passing of the Act. I could have prevented the court from selling, and such a sale was never permitted in my experience.

885. Could the assignee overrule the provisions of this Act, and subdivide the land by dividing it among the heirs, or dividing it among the creditors?

I was advised, when I took an opinion upon the case, that they could sell the interest field by field, if they deemed it wise on behalf of the creditors, to do so, and that so they might create different tenancies, as I understood.

886. Lord *O'Hagan.*] Where are your operations mainly carried on as an agent?

This case to which I was referring is in the county of Tipperary, but I have agencies in perhaps 12 counties.

887. In what counties?

They are from the north to the south—Cork, Waterford, Wexford, Kilkenny, Wicklow, Dublin, Kildare, Carlow, and, in fact, I might name twenty counties. If I had a list of the counties I could pick them out.

888. Are you conversant with any Ulster county?

I am. I have been agent in the County Down. I am agent in Monaghan, Cavan, and to a very small extent in Tyrone.

889. Lord

889. Lord *Digby*.] Are you not also an agent in King's County?

I am. My experience commenced on the Marquess of Bath's estate, in the county of Monaghan.

Mr.
C. U. Townshend,
20th June 1872.

890. Lord *O'Hagan*.] You say that you give evidence as to the opinion on the working of this Act; how have you formed that opinion?

From general opinion and conversation amongst agents.

891. Can you specify any particular persons who have given that opinion of which you speak as to the working of the Act, especially in Ulster?

I do not remember any at this moment, but they have been many.

892. With reference to this one point of bankruptcy and insolvency under the law as it existed before the passing of this Act of Parliament, the tenant's interest, whatever it was, whether leasehold from year to year, or what you please, became vested in the assignees, did it not?

I believe so.

893. The tenancy from year to year would have vested in the insolvent's assignee before, as it does now, would it not?

I believe so.

894. And if the tenant's interest from year to year in Ulster had been worth anything, would not that have been realised for the benefit of the creditors before this Act?

I apprehend it would, if it had been permitted by the landlord.

895. That is another question. Supposing there was a substantial interest attached to a tenancy from year to year, according to the practice in Ulster, that would have gone for the benefit of the creditors, would it not?

If the landlord had permitted it, but he did not do so as a rule, and I never knew it done.

896. Supposing that he did consent, would not that have been sold in open market for the benefit of the creditors?

Yes.

897. Lord *Charlemont*.] You spoke just now of its being sold in open market for the benefit of the creditors; how would it be sold?

By the Bankruptcy Court. That is merely a conclusion; I never knew the Bankruptcy Court to sell an interest by auction until the Act had passed.

898. Lord *O'Hagan*.] It never came within your special knowledge?

I should have heard of it if it had been done.

899. Lord *Greville*.] Did you say that in this particular case the court sold the interest in the holding, field by field?

They sold it in *globo*, but they had power to sell it field by field, as I am informed and believe.

900. Upon what do you ground that opinion?

I took advice upon the point when this question arose, and I was informed that they had that power.

901. Has it ever been acted upon to your knowledge?

Not to my knowledge. The Act is too recent.

902. Therefore it is only a matter of opinion?

I am aware that in the north, where a lease existed, and the tenant got into difficulties, the sheriff entered and sold field by field. That was before the passing of the Act, but since the passing of the Act there has not been time for sale field by field to develop itself.

903. Lord *O'Hagan*.] Did your counsel advise that there was any change through the operation of this Act, as to selling field by field, from the state of things which existed before it?

The advice was to this effect, that if the court chose to do it they could do it, and that my only remedy was to give a notice to quit, and to disturb them under the Act.

904. Did the opinion go to this, that the very same thing which you apprehended

Mr.
C. U. Townshend.
20th June 1872.

hended in the case since the passing of the Act, might not have been done before the passing of the Act ?

It could have been done before the passing of the Act if it had been permitted by the proprietor ; that is the only difference.

905. Who was the counsel who gave that opinion ?

It was a Mr. Thomas Macready, a solicitor.

906. It was not counsel's opinion which you had ?

No.

907. Earl of Belmore.] Then in fact your answer goes to this, that the law has made no difference in that respect, and that if the landlord gave notice to quit he could enforce it ?

He must be prepared to put his hand in his pocket and spend a certain sum, whatever is awarded by the court.

908. But still he could not have a tenant forced upon him, whether he liked it or not ?

No ; if he is prepared to pay the compensation, he need not. But in this case the official assignees, writing to me, intimated to me that they did not think themselves bound to consider the consent of the landlord at all.

909. But would not the intending purchaser be very likely to consider whether he would be put to the expense of litigation or not, just as much as he would have considered that point beforehand ?

In this case he did not do so, and he gave more, purchasing in the Bankruptcy Court, than as far as I can form any opinion, he would have been given in the Chairman's Court. The grounds which I have for that opinion are, that the tenant only claimed from me 35 *l.* for all his improvements, and he was entitled only to 150 *l.* for the disturbance compensation, those two sums making together 180 *l.* The interest sold for about 225 *l.*, and the hardship which I feel in that case is this ; that there was no disturbance by the landlord. As I understand the Act, it was intended that if the landlord disturbed the tenant, there should be a penalty upon him ; but in this case the landlord did not act, and there was a sum given, where no tenant-right prevailed, larger than the Act would have awarded. If the tenant quitted voluntarily, he was only entitled to the 35 *l.* which he claimed from me ; by sale it realised 225 *l.* ; so that if a tenant now desired to quit voluntarily, and to get disturbance compensation, all he would have to do would be to borrow from a friend 100 *l.*, 200 *l.*, or 300 *l.* ; pass a bond for the amount, refuse to pay, be proceeded against, be made insolvent, have his interest put into the court, and sold. His friend gets the money, and he has thereby obtained his end, which I look upon as a hardship upon the landlord.

910. Do you think that if the land was sold field by field, and in fact a number of tenants were introduced instead of one, the landlord would not have his remedy against those tenants under the third section, and be able to evict them without compensation ?

The sale by the court is not the act of the tenant.

911. It is indirectly the act of the tenant, is it not, if he makes himself what you may call fraudulently insolvent, not using the word in any offensive sense ?

It is not easy to prove that ; I mention what is the practical working of it.

912. Chairman.] You say that in the cases which you have mentioned the tenant, if he had quitted voluntarily, would of course have had no claim for disturbance, that he would only have had his claim for the 35 *l.* for improvements ; but that by means of having been made a bankrupt (and a man might easily get himself made a bankrupt), he is then treated as a person who is disturbed in his possession, and he obtains compensation in that way ; is that so ?

The court sells his interest, and realises a larger sum than the Quarter Sessions Court as in this case would have given.

913. So that there may be a contrivance by which a voluntary quitting may be turned into an actual disturbance ?

Precisely.

914. Lord *Somerhill*.] Without any action on the part of the landlord ?
Quite so ; and in this case if there is any sort of assent on the part of the landlord to this proceeding he cannot evict the incoming tenant without recouping him the full amount which he has paid ; and so it appears to me that the tenant-right of the north in that way would be imported into the south, and that sums far beyond what is calculated in the scale under the third section, would be paid.

Mr.
C. U. Townshend.
20th June 1872.

915. Marquess of *Salisbury*.] Has this actually happened in any other case except the one which you state ?

It has only happened in this one case to me.

916. *Chairman*.] Have you heard of other cases ?

I have. The official assignee told me that they were realising a great deal more money in this way than they have done before, and he seemed to think that it was very satisfactory for the court, and that they would realise much more.

917. Marquess of *Salisbury*.] I suppose the advisers of the tenants are fully alive to this ingenious process ?

I have very little doubt about it.

918. Lord *O'Hagan*.] Can you mention the names of any persons in any other cases ?

I cannot ; I can only speak of my own case. It was by favour to me that private tenders were taken in this case ; that is to say, the assignee put it as a favour. I protested against the whole proceeding, not being willing, by implication, to be taken as approving of it. But for that there would have been a sale by auction, and such a thing in my experience on any estate to which I have been agent was never allowed, and was never heard of.

919. Marquess of *Salisbury*.] Do you imagine that the law, as you have stated it, is undisputed, or has it been settled by any decisions of the courts ?

This was sold.

920. Was the procedure impeached in any way by any person ?

I have given notice to quit to the tenant which, if I go on with it, has still to be tried.

921. And that will bring the whole question as to whether this procedure is valid under judicial decision ?

There is no question as to the validity of it ; I have never heard any doubt upon that point.

922. You do not raise that doubt ?

Certainly not. I admit the validity of the sale, from all the opinions which I have heard, and I have consulted with many persons on the subject.

923. Then there is no chance of it being submitted to a court of law ?

Not that question. It is clear that the court has the right. If I may be permitted I will read the letter of the official assignee, as it states very clearly what rights are claimed :—“ Court of Bankruptcy and Insolvency, Ireland. Official Assignees' Office, 33, Upper Ormond Quay, Dublin, 5th August 1871. *In re* John M'Grath, insolvent, Holycross, No. 5446. C. W. Townshend, Esq., Molesworth-street, Dublin. Dear Sir, I beg to state that it is the duty of the assignees to cause to be sold all the insolvent's estate which by law vests in them ; and it appearing from insolvent's schedule that he holds, as tenant from year to year, 24 acres of the lands of Cormackstown, at the yearly rent of 29*l.* 10*s.*, it will be their duty to cause the interest of the insolvent to be offered for sale. I am not aware that the assignees in bankruptcy or insolvency require the assent of the landlord to a sale by them of a yearly tenancy, but it may be for the interest of the creditors that the sale be had by tender or by private contract instead of by public auction, and if you have any reason on the part of the landlord for desiring that course to be adopted in this instance, I will thank you to inform me. The assignees cannot avoid selling whatever interest he has in the lands.”

924. But they appear to be selling something more ; they sell without the consent

Mr.
C. U. Townshend.
20th June 1872.

consent of the landlord, so that they sell something which the tenant has not possessed?

Precisely, they claim that right.

925. And you admit that that is undoubted law?

I am not a legal man. I am neither a barrister nor an attorney.

926. Lord *O'Hagan*.] Do you know, as a matter of fact, whether, before this Act passed, in the case of a tenancy from year to year which was sold by the bankrupt and insolvent assignee, the landlord was consulted?

I have never known an instance in my 20 years' experience of a sale by the Bankrupt or Insolvent Court of a tenancy from year to year prior to the passing of the Act: It was always stopped, it would not be allowed.

927. Lord *Somerhill*.] No title could be made?

No title could be made; a notice to quit at once stopped it. I remember on the Marquess of Bath's estate, in one case the Master in Chancery, Master Litton, had handbills circulated offering to take tenders for a yearly tenancy for letting. Mr. Stewart Trench, a connexion of mine, for whom I was the resident agent at that time, immediately served a notice to quit, and put a stop to the proceedings. I mention that as a case in point, where any dealing with a yearly tenancy by sub-letting, was immediately stopped by notice to quit.

928. *Chairman*.] If a person becomes a tenant from year to year without any restriction against assignment without the consent of the landlord, he has, in fact, an interest independent of the landlord, and therefore a sale of that interest may take place without the landlord's consent?

He has now, but he had not prior to the passing of the Act.

929. Where the landlord has no control over an assignment by the tenant, and where there is no prohibition against assignment without the consent of the landlord, even a tenant from year to year holds independently of his landlord, and if he becomes bankrupt or insolvent that property, which he has independently of the landlord, may be sold without the consent of the landlord?

There was always a power of prohibition in the landlord in the shape of a notice to quit, which was always exercised.

930. Lord *O'Hagan*.] But until the notice to quit determined the tenancy the tenant continued to have his legal right, of which he could dispose as he pleased?

Of course he could, subject to notice by the landlord.

931. *Chairman*.] And the notice to quit must be six months before the time of the commencement of the tenancy?

Yes.

932. Still he has an interest even when he is under notice, that interest being of very little value?

Of no value. In the working of it it was considered of no value when terminated by notice to quit.

933. Lord *Somerhill*.] When you say that it was of no value, was it not a fact that in many parts of Ireland one tenant frequently sold to another without the consent or knowledge of the landlord, and that the tenant who sold received from the purchaser a sum of money, although the landlord had given no consent at all, and probably did not discover the transaction for some years?

That was done frequently.

934. Therefore, what you mean is that they have no legal title to transfer, but that they used to transfer possession very frequently, and that was certainly of some value to the tenant who sold, and also it may be supposed to the tenant who bought?

Yes.

935. Lord *O'Hagan*.] This interest, whether little or great, remained in the tenant prior to the notice to quit; of course the Insolvent and Bankrupt Court sold without reference to anybody?

I never knew any court to proceed with a sale where a notice was given.

936. What

936. What the tenant had he could sell, whether it were little or great?
Yes.

937. *Chairman.*] Then, as I understand you, an interest which before the passing of the Act might be considered valueless, that is to say, where a tenant had notice to quit, might or would under this Act become of value, because he would be disturbed by the notice to quit which was given, and he would be entitled to compensation for that disturbance?

No; what I complain of in this is that it occurred without any act of disturbance by the landlord; I gave no notice to quit when this sale occurred.

938. I do not think you understand my question; what I meant to say was, that the very notice to quit by a tenant under the Land Act would be a disturbance by the landlord, and the tenant would be entitled to compensation, whatever the value of that might be, for the injury arising from the disturbance; therefore, as you were saying, the interest of a tenant who was under notice to quit, which before the Act was of no value at all, and for which, if it were put up to auction, nobody would give anything, has, under this Act, become a matter of value in some degree, because it gives a compensation for disturbance, and therefore he gets in that way compensation for the disturbance of that interest which he has?

I do not think it is disturbance, it is the proceeding or act of the Bankrupt Court, who stand in one sense in the position of the tenant.

939. *Lord Somerhill.*] If I understand you rightly, your complaint is, that although the landlord is not a party to any disturbance whatever, he is suddenly called upon to pay as if he had disturbed the tenant?

Precisely; he must either permit a tenant who is not approved of by him to reside there, that tenant having paid a given sum for the place, or else he must give the tenant notice to quit, and must be prepared to pay him a certain sum.

940. *Marquess of Salisbury.*] Does not the Act provide in most distinct terms that ejectment for bankruptcy shall not be deemed disturbance, the words being, "For the purposes of this Act, ejectment for non-payment of rent, or for breach of any condition against assignment, sub-letting, bankruptcy, or insolvency, shall not be deemed disturbance of the tenant by act of the landlord"?

That refers to a "breach" of covenant.

941. Then you hold that the preposition "against" governs the substantive "bankruptcy"?

What I mean to say is this: that in Ireland, possibly 90 per cent. of the holdings are yearly tenancies. In those cases the tenants hold without any agreement of any sort or kind. There is no agreement against bankruptcy or insolvency. In all new lettings which are now made, those clauses are put in, and what I complain of would not apply; but what I refer to is tenancies existing at the time of the passing of the Act, in which there is no written agreement of any sort or kind, as has been the rule in Ireland. New lettings I do not refer to. I speak of existing tenancies.

942. *Earl of Belmore.*] Do you go as far to say, that by taking advantage of the machinery of the Bankruptcy Court, a landlord is bound, the land having been subdivided, to admit a number of tenants, or to pay them compensation, which he would not have been bound to pay if the tenant himself had subdivided the land, and he had ejected him for such subdivision?

That I believe is the working of the Act.

943. Then, in point of fact, the Bankruptcy Court has by its own mere notion the power of repealing as against the landlord the second sub-section of the 3rd clause of the Act?

So I am informed; but they have the power of selling as a whole, undoubtedly. I speak of that positively.

944. *Lord O'Hagan.*] Before this Act was passed, there was no compensation for disturbance, and therefore the landlord at that time had no particular value. After the passing of the Act, in certain contingencies compensation for disturbance would be given, and that would necessarily increase the value of the land upon a future contingency; and when the Bankruptcy Court come to see

Mr.
C. U. Townshend.
20th June 1872.

the land, they sell it with the added interest communicated to it by this Act of Parliament. Is not that the effect of the whole thing; that the land is more valuable under this Act than it was before, inasmuch as there is a contingent interest in the sums which will be got for disturbance?

The tenant has a positive interest now which he never had before.

945. Then when the assignee of the insolvent, or of the bankrupt, came to sell the old estate without this Act, he would have got a less sum for it than he got for it now, because there is an added value through the Act. Is not that the whole difference?

Yes; but what I complain of is this: that the intervention of the Bankrupt Court gets a larger sum for the creditors than the tenant could have got for himself. If we take the case of this tenant in possession; he was anxious to emigrate; he was only entitled to 35 *l.* for his improvements; he borrows a couple of hundred pounds from a neighbour and gives a bond and refuses to pay; he is made a bankrupt, and his interest is sold. The neighbour gets whatever that right produces, which in this case was 225 *l.* There is the arrangement amongst themselves. An objectionable tenant may be put in. The landlord has no control, and the tenant walks away with his 225 *l.* in his pocket.

946. Has not the landlord precisely the same control which we had before, with reference to the tenancy from year to year, with the added burthen of the price for disturbance?

Precisely.

947. Marquess of *Salisbury*.] Would not the landlord have the power of checking assignment just as much as he had before the bankruptcy, supposing it were an estate on which an assignment, in the words of the Act, was not warranted by the practice of the estate?

If the landlord is prepared to put his hand in his pocket, he can put out the tenant, but it is a very unpleasant position for a landlord to be put into, to be compelled to have an equity suit with an incomer, and put him out, and give him a considerable sum of money.

948. But the landlord would not do more than if the tenant had gone off of his own accord?

I am not so sure of that. It is a question how the chairman would deal with the case.

949. Then the matter is still undecided by the courts, and is capable of future legal revision?

No; not so far as the Bankruptcy Court is concerned. The deed is done; the money is paid, and the new tenant is in possession.

950. But the effect of the landlord's interest in the Bankruptcy Court is still problematical, and cannot be known until some court has decided upon it?

The amount which the chairman will award is problematical.

951. Lord *O'Hagan*.] But so far as the landlord's intervention is concerned (which is the ground of your present complaint), would not the Bankruptcy Court, before this Act passed at all, have sold the interest of the tenant, great or small, as they always did before, and would not that have been done quite independently of the landlord?

No; I never knew such a thing to be done. If they went on with it and put it up for sale, there was nothing to prevent it; but I never knew of a sale.

952. Lord *Somerhill*.] In that case I apprehend that before the Act the landlord would not have been obliged to put his hand in his pocket; is that so?

Precisely.

953. Under the present Act he is obliged to put his hand in his pocket, and produce the money if he can?

He is.

954. If he chanced to be a poor man or a distressed man, it might happen that he might himself be made a bankrupt under those circumstances, might it not?

It might happen, and poor proprietors may be frequently prevented in that way from raising their rents.

955. *Lord Steward.*] Supposing that you had served a notice that the tenant purchasing under the Bankruptcy Court would not be accepted by the landlord, and that you had then served a notice to quit the farm, what damages do you expect the chairman would award, considering that the 7th clause only gives compensation for money paid upon the tenant's coming into a holding with the express or implied consent of the landlord on account of his so coming into his holding?

Upon giving notice to quit when the case was tried, the chairman would award, under Section 3, a certain number of years.

956. Would he not award under Section 7?

That is if money had been paid; but if no money had been paid, he would award under Section 3.

957. He might have the power of awarding under Section 3; but would it not follow that if the tenant came in against the express wish of the landlord, the chairman would award the full amount of compensation?

It is in the power of the chairman to consider whether that objection of the landlord's is an equitable one, and I am aware of my own knowledge, from one of the chairmen in Ireland, that he considers that he is bound to give the full number of years mentioned in the scale, and that he has no option.

958. That is only the opinion of one of the chairmen, I think?

That is the only one with whom I had a conversation on the subject.

959. Have you found practically that the chairmen have always given the full amount of compensation which can be awarded under this Act?

No, some do so, and others do not; that is one of the things which has been complained of, and, I believe, brought before the Committee; I think that they act upon different principles; we cannot reckon upon anything certain as regards the dealings of the chairmen at all.

960. Practically, in this case, you are not certain that the effect of this sale in bankruptcy would be to oblige the landlord to put his hand in his pocket?

I have no doubt whatever that we shall be obliged to put our hands into our pockets if we go on with the notice to quit.

961. That is only your opinion, and is not grounded upon any decision which has been given?

I have never known the question tried, but I am prepared to pay; I have no doubt about it.

962. *Earl of Belmore.*] Are you of opinion that the action of the Bankruptcy Court in selling the tenant's interest, so far as the landlord's remedy for subdivision is concerned, is or is not the act of the tenant?

It is not the act of the tenant.

963. And, therefore, persons taking advantage of the Bankruptcy Court can evade the provisions of the second sub-section at the end of Clause 3?

So I am informed.

964. *Chairman.*] As I understand you, this case may probably arise under the working of the Act; that a tenant who would have been, before the passing of the Act, willing voluntarily to abandon his tenancy may now under the Act, desiring to get money from his landlord, create a virtual disturbance by causing himself to be made a bankrupt, and then in the Bankruptcy Court getting compensation as for disturbance?

That is the effect of the working of the Act.

965. *Lord O'Hagan.*] Is there any difference between the case now and the case as it was, save this; that the landlords are in the same position, burdened with responsibilities under this Act?

That is the difference, but there is this great difference which I have endeavoured to impress on the Committee; that the tenant in this case would be only entitled to 35 *l.*, whereas by making himself an insolvent he would get 230 *l.*

966. That is to say, if the land were brought into the market, people are found to bid more than you think the tenant ought to get?

More than he would have got before the Act.

Mr.
C. U. Townshend.
20th June 1872.

967. Lord *Somerhill*.] In the case which you cite, I understand that the goodwill or tenant-right or compensation has not been brought into the market, but that upwards of 200 *l.* being claimed, the landlord was ordered to pay that sum ?

No ; private tenders were taken by the Bankruptcy Court and accepted, and the new tenant was put in without consulting me.

968. Lord *O'Hagan*.] The option being given to you, under that letter which you have read, either to have the sale in open market or to have private tenders ?

That is the effect of the letter which I have read, and the official assignees made it a private sale on that account

969. Earl of *Bandon*.] Do I understand you aright that, before the passing of the Act, the same power of sale would have been given, but that the practical effect was that, because there was a power of giving notice to quit, no purchaser would have been found, because he could not be sure that he would be accepted as tenant ?

I believe from the statement of my Lord Chancellor of Ireland that such a right existed. Never having known it acted upon, and not being a legal man, I yet assume that such was the case.

970. In consequence of there being the power of notice to quit, which would have prevented the new tenant from knowing that he was secure in his holding ?

Precisely. Before the Act passed, the new tenant came to the landlord and said, "This man is badly off ; I am prepared to give him 50 *l.* or 100 *l.* if you will take me as tenant." The landlord then considered the question, and either accepted him or not ; if he accepted the offer, the tenant came in, and if he did not, the tenant walked away knowing that the notice to quit put an end to any money value in the place, and the landlord had a power then. For instance, this holding was purchased by a person living away from it ; had it been a case before the Act was passed I would have given a preference to an adjoining holder, whereas now I have not that power.

971. Viscount *Lifford*.] I should like to carry my Lord Steward's question a little further. Supposing that the Court of Bankruptcy put an assignee into a farm in Ulster, and that the landlord, on whose estate the custom was that the tenant should be named by the landlord, should say "I will not have you as a tenant," and should proceed to evict him, do you think that the judge of the Civil Bill Court would give very high compensation in the way of tenant-right in such a case as that, the tenant never having been accepted by the landlord ?

My impression is that the chairman would probably award the full amount which he considered to be in accordance with the rule of the district.

972. Lord *Somerhill*.] Because the tenant was accepted by the assignees who stood as *in loco* of the landlord ?

Because he was accepted by the assignees ; my impression as regards the north would be that they would sell the tenant-right by public auction, and I conclude that the landlord would have no more power to object to a tenant there than he would have in the south.

973. Viscount *Lifford*.] We know from the evidence before us that some of the chairmen go upon the principle of the custom of the estate, while others go upon the principle of the custom of the district, and a third set simply allow the tenant to sell in the open market ; we cannot suppose that they would all give the utmost amount of compensation which could be reached ?

The chairmen differ so much in their views that I cannot say what they would do ; but my impression is that the leaning on the part of the chairmen is towards the tenants.

974. Lord *O'Hagan*.] You state that your opinion about the chairmen of Ireland acting as judges, is that they have a leaning towards the tenant, and you give that evidence never having yourself had any acquaintance with their proceedings and decisions ?

I do not say that ; I say the tendency is in favour of the tenant.

975. May I respectfully ask what right you have to say that, knowing nothing of the case?

It is my impression from reading the papers.

Mr.
C. U. Townshend
20th June 1872.

976. Marquess of *Salisbury*.] Is that the impression among the agents with whom you converse?

It is.

977. *Lord Steward*.] Have you not observed several cases in which enormous claims for compensation have been put in by the tenants, which claims have sometimes been reduced to a very small sum by the chairmen?

I have seen very large claims put in, and then very largely reduced by the chairmen.

978. Would not that give you the impression that the chairmen were disposed to deal fairly between landlord and tenant?

I think they are.

979. Marquess of *Salisbury*.] Or that the tenants were inclined to make exorbitant demands?

I think the tenants are sometimes inclined to make exorbitant demands, and that the chairmen cut them down, and if there be a doubt they lean towards the tenant; that is my meaning.

980. *Lord Steward*.] Without reading the evidence, should you be able to form an opinion whether they cut down those claims with a leaning to the tenant or with a leaning to the landlord?

From discussion amongst agents, and from hearing the thing generally canvassed amongst them, I have derived the opinion which I have stated.

981. Do you not think that the opinion of the agents in general would be that the claims ought to be reduced to the lowest possible amount?

I really do not think so.

982. *Lord Somerhill*.] In the case which you have mentioned, in which, though you were not concerned, you know that a large claim was put forward and was very much reduced by the chairmen, was that done in consequence of the evidence adduced by the landlord to show that the claim was too large?

I was not present at such a case; I merely state it from conversations, and reading the reports in the newspapers.

983. You do not know whether in that case the landlord was put to any costs or not?

I am aware that in such investigations costs are incurred.

984. Do you know any case in which a chairman has given a landlord any costs where the compensation asked for has been excessive, and has been reduced?

I do not remember any such case, but my impression is that there have been such cases.

985. *Lord Broderick*.] Supposing that in a county where the Ulster custom does not prevail, a tenant from year to year becomes bankrupt, that his goods are sold at the suit of his creditors by the sheriff, and that the sheriff then proceeds to sell what he would call his interest in the land, would not the purchaser of that interest, notwithstanding that he entered upon the land without the landlord's consent, and against his express wish, if served with notice to quit, be in the same position before the Civil Bill Judge as the original tenant, and would he not be held to be disturbed?

Such is my belief.

986. The purchaser of the interest, whether he came in with the consent of the landlord or not, if notice to quit were served upon him, would be on precisely the same footing with the original tenant, and would have his claim for damages for disturbance?

I firmly believe that he is entitled to his claim for damages for disturbance.

987. *Earl of Belmore*.] If instead of there being one purchaser there were three purchasers, would they not be in the position of persons who had purchased, not from the Bankruptcy Court, but from the original tenant, and would

Mr.
C. U. Townshend.
20th June 1872.

they not, therefore, be debarred by the provisions of the sub-section of the 3rd clause of the Act from any compensation?

I believe not.

988. Has there been any judicial decision to that effect, or is it merely the opinion of Mr. Macready?

They have not sold, so far as my information goes, field by field, but I am informed that if they proceeded to sell field by field it is not an act on the part of the tenant.

989. Is not that supposition rather inconsistent with the supposition which you mentioned in answer to Lord Broderick, that the assignee is in the same position as the original tenant?

The assignee has vested in him the possession which the tenant had, but the sale by the assignee is not a transfer by the tenant.

990. Then your opinion is this, if the bankrupt sells to one purchaser, that purchaser stands in the tenant's shoes exactly; but if he sells to three persons through the instrumentality of the court, those three purchasers do not stand in the same position in which three purchasers would have stood if they had bought directly from the tenant, he not being an insolvent or a bankrupt?

No, I think not.

991. Lord Broderick.] Have you had any experience with regard to the appeals from the land sessions to the judges of assize?

I have had no case tried myself.

992. Do you know whether those appeals have been heard within a reasonable time?

I am aware that they have been heard.

993. Are you aware that there are two cases of appeals from the land sessions to the judge of assize, that judge being the Lord Chief Baron Pigot, on which judgment was reserved, 15 months ago; and in neither of which cases judgment has yet been delivered?

I am not aware of that fact, but I am not surprised at it.

The Witness is directed to withdraw.

Mr. SAMUEL FREDERICK ADAIR, is called in; and Examined, as follows:

Mr. S. F. Adair.

994. Chairman.] You reside in Fitzwilliam-square, Dublin, I believe?
I do.

995. What are you?

I have been for 30 years and upwards a Land Agent and Solicitor. I retired from the latter profession two years ago, and now I am entirely a land agent. I found that the burthen of both occupations was more than I was equal to continuing.

996. Are you able to give the Committee, from your own knowledge, any information with reference to the working of the Irish Land Act?

Both as an adviser and in the course of my experience, several matters have presented themselves to me with a view of facilitating the working of that Act, both for the benefit of the landlord and for the benefit of the tenant, as being deserving of very serious alteration or amendment.

997. Do you mean that the Act itself ought to be amended, or that the working of the Act requires amendment; for instance, with regard to the judges?

I took down the observations of my Lord Lifford, as to the nature of your inquiry, namely, "to consider the operation or working, or administration of the Act," and the matters to which I refer would peculiarly come, I think, under that inquiry. For instance, in every yearly tenancy, or tenancy from year to year, which is now determined by the death of a tenant, be the holding
ever

ever so innnitesimally small, the landlord does not know whom to recognise on the death of that tenant as his successor; and so far as I can form an opinion, the receipts are being given by landlords and by the agents under those circumstances, not in the name of an individual tenant, but in the name of an administrator of a deceased tenant, there being in point of fact no recognised name as tenant until something is settled upon that subject; because, to vest the tenant's interest in law, would require an administration to be raised. The landlord has no power to enforce the administration, and the tenant will not take it.

Mr. S. F. Adair.

20th June 1872.

998. Then what is the effect of that upon the working of the Act?

The effect of that upon the working of the Act is, that the landlord really does not know with whom to deal as his tenant occupying his land.

999. Has any case of that kind arisen within your experience, and, if so, will you state what was done under those circumstances?

Several such cases have arisen to my knowledge, and the rent receipt is given merely as from the representative of the deceased man; because, supposing that his eldest, second, or third child, were recognised by the landlord as the tenant and so entered in his book, if a legal administration was raised to the deceased tenant within some years, the administrator would oust anybody who had been recognised as the tenant.

1000. Viscount *Lifford*.] Surely the landlord can compel administration? I apprehend not.

1001. Lord *O'Hagan*.] How does this Act of Parliament make any difference in that respect whatever? Formerly the landlord adopted an individual, the family agreeing among themselves who was to be the tenant, and he was usually recognised as tenant; was it not very generally the case that those receipts were given from time to time to the representatives of the tenant?

That only occurred for six or twelve months after a death, until the family amongst themselves arranged the individual member of the family who was to be recognised as the tenant.

1002. Could they not do that now if they chose? I apprehend not.

1003. Viscount *Lifford*.] If they do not do so, the landlord can call upon them to do so, and in the case of their not doing so, he can himself name an administrator, can he not?

If he does, he takes all the consequence attendant thereon, and of dividing that tenant's assets amongst his family.

1004. Lord *O'Hagan*.] Are you not aware that, in the working of the Civil Bill Courts, this difficulty was perpetually occurring; that there was no legal representative to be dealt with by the court?

I am speaking now of a class of tenancies which are very large indeed in Ireland, where there never was administration raised at all before to a deceased tenant.

1005. Has not that always been found to be an enormous difficulty in the working of the Civil Bill Courts?

Not in the working of the property by the landlord. I may tell your Lordships that in practice, speaking of my own experience some of the largest agents are entirely at a loss to know whom to recognise as the successor of a deceased tenant. I merely suggest the matter, as it appears to me to be deserving of consideration. It is not with a view of obstruction, but with a view of suggestion for improvement, that I refer to it. Supposing that the landlord does not choose to incur the inconvenience and expense of administering to his tenant, and supposing that the tenant's family shrinks from doing it, and from the expense which will be attendant thereon; somebody ought to be recognised by the landlord as his tenant, and it occurred to me that the man who paid the rent for a year might be recognised by the law and by the landlord as the tenant.

1006. The matter has been very much considered, and the suggestion was that the best thing would be to give the chairmen power to appoint a representative *pro re nata* or *pro hac vice*. Have you any suggestion to offer upon that point?

The occupying tenant and the ratepayer for a year might be acknowledged as the tenant. I know one case where this difficulty arose: a yearly tenant died

Mr. S. F. Adair.
20th June 1872.

and there was only sufficient property left to pay a year's rent. At the end of 12 months, I think, the sister administered and called upon the tenant for the assets (which were not more than sufficient to pay the rent due), and to sell the goodwill of the holding. The landlord, by the law as it stands, is very much obstructed in the management of his property, and the tenant's family are equally obstructed.

1007. *Chairman.*] You mentioned that as being, in your judgment, one defect with regard to the working of the Act; is there anything else which occurs to you?

I think it would be a great boon if that were remedied. The next matter which occurred to me was that the notice to quit is not absolutely determined by the Act at the last gale day of the current year; if that were made law, I think it would be a great boon.

1008. That is not the working of the Act, but that is the Act itself, which we are not considering?

It is merely as to the undefined character of that notice to quit; in the Act there is an alternative provision; unless it can be shown to the contrary, an alternative notice to quit is ruled by one of the chairmen to be bad; and where the landlord is not perfectly certain when the tenancy commenced, there is enormous difficulty found in working the Act, because it is not certain that the tenancy is to determine on the last current gale day; that is greatly to the detriment of the landlord, and equally to the detriment of the tenant, and it would be for the benefit of the tenant that all notices to quit should determine on the last current gale day because he then gets rid of paying the winter gale of rent, from which he gets no benefit.

1009. You say that it has been held by one of the chairmen that the alternative notice is not good?

I believe so; that was in the county of Kerry.

1010. *Earl of Belmore.*] What do you mean by "the last current gale day"?

The last current gale day would be as it is the rule, and as it is, I believe, understood, the last gale of his tenancy in the year.

1011. Of the particular tenant's tenancy?

Of the particular tenant's tenancy.

1012. *Lord Somerhill.*] A half-year is commonly called a gale, is it not?

Yes; it would be the last of the half-years in the year, either September or November. The Act provides that you shall not give a notice to quit in May or March, because thereby you deprive the tenant of the crop of the year; but there is an alternative provision, which is very much embarrassing landlords in acting upon it.

1013. *Chairman.*] Have you had any experience as to whether the decisions of the different chairmen have been conflicting on many of the points which have been raised before them?

Not personally.

1014. Have you had any case before a chairman?

Not personally. I should not bring a case myself before a chairman. I have very liberal views as regards the tenants, and I would compensate a tenant reasonably, in case of disturbance, in every way I could. I think that it is very unfortunate that landlords are deprived now of the power which they exercised largely in some cases, and which I myself have exercised as an agent of improving estates, owing to the undefined claims which a tenant may have, and some landlords have ceased to improve in consequence of them, though they have the greatest anxiety to improve.

1015. *Viscount Lifford.*] Then would you not think it advisable, that as quickly as possible, precedents should be established which should define the different rights of landlords and tenants?

So serious a matter do I think it, that I find investors are discouraged or disinclined to invest money in land now from the very undefined character of the property which they would be buying.

1016. And therefore you would be glad that as soon as possible precedents should be established by uniformity of decisions, so that one might know what were

were the exact rights of the landlords, and what were the exact rights of the tenants?

I think it would be the greatest boon to landlords, tenants, investors, and proprietors.

1017. For that purpose, would you suggest any tribunal other than the present tribunal of 33 judges in the first instance, and 12 judges to whom appeal may be made?

With the greatest possible respect to the chairman, I think I could not suggest a worse tribunal than that which exists, so unsatisfactory are the various conflicting opinions.

1018. That being the case, can you offer any suggestions for a change of tribunal?

It has more than once occurred to me that the Landed Estates Court judges might consider the matter of claims in preference to itinerant judges going through Ireland.

1019. Would not that be expensive to the tenants?

I think, perhaps, it would not be more expensive than the present system, because the contested cases would be very few, I apprehend, so soon as the rights are really defined as between landlord and tenant.

1020. You would suggest the Landed Estates Court in the first instance; to what court would you give an appeal?

In all sales of property in the Landed Estates Court, I would define the tenant's rights; that is to say, when a man purchased an estate, he would know what he is buying, whereas at present he does not know what he is buying. In all sales in the Landed Estates Court I would require in the rental that it should be defined what the rights of the tenants were as against the purchaser, and that is the reason that I would make the Landed Estates Court the tribunal for inquiry upon all those subjects. But I have not sufficiently considered that matter to pledge myself to any positive opinion upon the subject of a tribunal.

1021. But you are strongly in favour of a change from the present tribunal of the chairmen of quarter sessions to some other tribunal?

I am strongly of opinion that it would be desirable.

1022. Lord *Somerhill*.] Are you conversant with the north of Ireland?

I have been pretty conversant with the management of property in all parts of Ireland for the last 30 years.

1023. Will you have the goodness to read this advertisement (*handing a newspaper to the Witness*)?

“Benburb Estate, County Tyrone: Inasmuch as Lord Powerscourt has advertised Benburb Estate for sale, and intimated that the present rents are below a recent valuation, according to which it is proposed to estimate the value of the property, a public meeting of the tenantry was convened, and held on the 25th of March last, at which the following resolutions were unanimously adopted: First, that the tenantry, considering that their present rents are not below but in many instances above the fair letting value of the land, pledge themselves individually and collectively to protect by all practical means not only the full measure of tenant-right heretofore accorded to them, but all further rights now by law conferred upon them without infringing upon the legal interest of the landlord. Secondly, that an association be formed, and funds raised for the purpose of carrying the foregoing resolution into effect.” My suggestion about the Landed Estates Court judges defining the relative rights of proprietor and tenant is in order to settle such cases before sale as that referred to in that notice. I would also think it desirable that something should be done as regards the grand jury cess. There is a very grave doubt existing whether a tenant can contract himself out of the operation of the Act, and I think it would be very desirable to have that defined with certainty.

1024. Lord *O'Hagan*.] You say that landlords have ceased to improve?

I did not say so generally of the landlords; I say that many of them have done so.

Mr. *S. F. Adair*.
20th June 1872.

1025. That is what you did say ; but I want you to be more accurate, and to tell me the names of the landlords who have ceased to improve by reason of this Act of Parliament ?

In the counties of Wexford and Limerick there are estates to which for 13 or 14 years I have been agent. The tenants always got slate, timber, and drainage. That was done to improve the estates ; no rent was ever added in consequence of it ; and it was all done with the view of ultimately getting some benefit from it. I have been instructed to cease making those improvements, because it appeared to us that if we dealt with a tenant afterwards, the existing rights of the tenants being undefined, it would be impossible to say but that we might have to pay for those improvements a second time.

1026. And that is what you mean by ceasing to improve ?
That is what I mean by ceasing to improve.

1027. That is to say, ceasing to give the tenants those advantages ?
It is a money advantage ; I may tell the Committee that I know several other estates in Ireland where the same disinclination exists to make improvements which would go on if the rights of landlord and tenant were defined.

1028. That is the same disinclination to give assistance to improve ?
Yes.

1029. Are you aware that the tenants in Ireland, on the other hand, have improved under the present Act to a very much larger extent than they ever did before ?

I am not aware of that, and I do not think that in several parts of Ireland it is so. I believe that in the north they have done so, but I know that the tenants are complaining in many cases, where improvements were going on, of the cessation consequent on the apprehension of the landlord that he would get no return for his expenditure if he continued to make it.

1030. You take the landlord class on the one side, as ceasing to give this assistance, and I take the tenant class on the other side, and ask you whether you have not understood (I see that the evidence is very general) that since this Act passed there have been more improvements made by tenants upon their own responsibility, and for their own advantage, than ever occurred before, and especially in the north of Ireland ?

I said that I thought that that was so in the north.

1031. Lord *Somerhill*.] Have not the wealth of the tenant, and the prosperity, within the time to which you allude, which have enabled them to make improvements, greatly increased by a rise in the price of agricultural produce which is totally disproportioned to any rise in rents ?

The tenants have very much improved in their condition, owing to the rise in the value of stock and crops, and in the poorer ground more especially than in the rich ground.

1032. Lord *Steward*.] You say that the landlords are afraid that any assistance which they give to their tenants might be brought against them hereafter ; what do you mean by that ?

I say that their rights are so undefined and so unsettled, and the previous claims which the tenants may have are so unsettled, that the landlords are at present disinclined to make cash advances for improvements, which I think unfortunate for the tenant.

1033. If you took pains to preserve legal evidence of any assistance which you gave to the tenant, would it be possible for those claims ever to be brought against the landlord ?

I think landlords would begin to improve and continue to improve even more largely if there was any machinery which could fix a particular period from which landlord and tenant were to start making improvements.

1034. You have not answered my question : supposing that a landlord preserved legal evidence of any advances, either of money or of materials, to a tenant, would there be any possible danger to a landlord of those improvements being

being brought against him hereafter, that being, as I understood you to say, the fear of the landlords, and leading them to stop improvements ?

Mr. S. F. Adair.

20th June 1872.

As regards drainage, if a landlord continued to make the expenditure which we had been doing without charging anything for it heretofore, when there came to be a rise in rent, I think it would be a pure litigation between both as to who made the improvements, unless the period were defined from which they were to start.

1035. But supposing that you preserved legal evidence of the amount and of the time at which those advances were made, how would it be possible for that to be brought against the landlord in the event of any litigation ?

I do not think it would be possible.

1036. I thought I understood you to say that on one or two estates with which you are connected, you had stopped making those advances for fear of those advances being hereafter brought against the landlord ?

My observation. I think, was that we were disinclined to go on because the rights were undefined, or that the period we were starting from was undefined.

1037. Earl of *Portsmouth*.] May I ask you whether there is not under the Act a power for the landlord as well as the tenant to register improvements, and whether under that clause, you would not have the power to register those advances for slates, timber, and drainage ?

Yes; but the expense of that machinery, when dealing for the tenant's sole benefit, is not one that a landlord would incur.

1038. Lord *Somerhill*.] I understand your apprehension to be, that after the lapse of a few years it would be very difficult to define the amount of assistance that a landlord had given, although it might have been very considerable either in making buildings or in drainage, or otherwise; and that that apprehension debars the landlord from assisting his tenants to make improvements, he being, as he thinks, very liable to be obliged to pay the tenant again for improvements which he, the landlord, had made, or in respect of which he had incurred expense in assisting the tenant to make ?

There would be no difficulty if you would define the period that both parties are to start from. As to a claim which a tenant may make upon an estate for past improvements, I cannot say what it would be; but for the future, I see no difficulty about it.

1039. Is it not exactly that difficulty and trouble of keeping accounts which would especially deter an agent, and also a landlord, from an inclination to give that assistance which he had given with much less trouble and more freely heretofore ?

Yes; landlords do not seem inclined now to make a cash payment for improvements, without seeing some means of ultimately getting some benefit from it.

1040. Lord *O'Hagan*.] But the ground of the objection you say is, lest the landlord should afterwards be made to pay for their own improvements; is not that completely answered as to the future if they keep accounts and make records ?

Yes, if they do so, and if those were agreed upon by a memoranda between both parties; but the difficulty I feel is as to the starting point.

1041. Earl of *Belmore*.] With regard to the past; on a well-managed estate would not the agent's accounts show what expenditure had been incurred in improvements ?

Yes, and the tenants would say that they had improved considerably beyond that.

1042. Lord *O'Hagan*.] Are you not aware that this Act itself provides the means of recording improvements for the past ?

Yes; for landlords that do not mean to disturb or inconvenience their tenants.

1043. Do you not know that this Act enables anybody to come to the Landed Estate Court and record improvements heretofore made ?

No doubt.

Mr. S. F. Adair.
20th June 1872.

1044. Are you not aware that the only case, I may say substantially, that the Court for Land Cases Reserved has had was with reference to a record of that kind, which was actually made in the county of Wexford ?

I thought that was Mr. Lefroy's case, in Kildare, but that was a leasehold.

1045. I do not care what it was ; but there has actually been a proceeding under that section of the Act with reference to the past, has there not ?

Yes ; but that is a very large case, such as fully to justify the expense attendant on setting that machinery at work.

1046. Lord *Silchester*.] Is not that a case in which a claim, rejected by all the courts, was made against a landlord, but in which the landlord was left to pay very heavy costs in addition to the costs allowed him ?

It is not within my knowledge, but merely know of it by rumour, and I cannot speak personally on the subject.

1047. Lord *Somerhill*.] Is not the joint assistance for improvement, to which you have alluded, and which is notorious to all noble Lords who know Ireland, generally given to the poor tenants of small holdings, say from 10 up to 50 or 60 acres, much more frequently than to the tenants of large farms, as to which there could be little doubt, and upon which it would be easy to keep a record ; and would it not be troublesome and difficult to keep these records on the small farms, and hereafter to prove them ?

Yes, and it is the smaller tenants that one would desire to encourage.

1048. Earl of *Belmore*.] Supposing that a money-advance was made by a landlord to a tenant, and that the tenant passed a receipt for that at the time when the advance was made, and that that receipt was kept in the office, would that entail great trouble either upon the landlord or upon the tenant ?

I should not know what the effect would be if the landlord came to sell his estate. He should hand that over to the purchaser, I suppose.

1049. Lord *Somerhill*.] I apprehend that where it is a question of money, it is very easy to keep a record ; but practically speaking, among those small holdings, is not the assistance to tenants given by the landlord either in the shape of labour and carts and horses, or in the shape of timber if it is a question of building, or by other facilities which are not so easily recorded ?

The way in which I was in the habit of doing it was, that a tenant slated and timbered his roof, or made drainage, and the allowance was made to him of the whole amount by three annual payments out of the rent, whereby the landlord did not suffer much inconvenience, and the tenant got the whole of his expenditure.

1050. And your regular books would show that ?

My books would regularly show that as an allowance.

1051. Are you not aware that it is very common to give assistance, not in money (which many people think is not so certain to be spent in the way you wish), but in kind. For instance, a landlord very often has forest timber, which will do for a good deal of work for out-door buildings, which he may supply to his tenant. Is it not common to your knowledge that on many estates that is done ?

Certainly.

1052. To keep a record of that assistance would be rather difficult, would it not ?

I apprehend that it would not be so difficult if you once formed a starting point, it being arranged that there should be no past claims.

1053. Earl of *Bandon*.] Where a tenant requires a house of about the value of 150 *l.*, supposing that the landlord pays 75 *l.* of that, does not the house become the tenant's property, and might he not the next year sell it to any one he pleases, take the 150 *l.*, and go to America ; and might not the landlord receive a tenant in his place who is so much poorer, and has so much less money with which to till the land properly ?

Yes, it becomes an appurtenant to the tenant's holding.

1054. Is not that naturally one of the causes which may have deterred landlords in the instances in which you mention from wishing money to be laid out on their property?

I do not undertake to state the various reasons which have deterred landlords, but that is one of many reasons.

1055. Earl of *Belmore*.] With reference to entries in books, is it or is it not the case that an agent's books, if they bear his signature at the end, are legal evidence?

I should suggest to your Lordship to ask my Lord Chelmsford that question.

1056. *Chairman*.] If the agent is living, his books are certainly not evidence; but if the agent is dead, and entered the charges himself, then they are evidence?

But the books are the property of the agent.

1057. Earl of *Belmore*.] But then the agent gives a duplicate of his books to his landlord; does he not?

Not generally, I believe, of all dealings with the tenants.

1058. If I told you that I could prove any payments that I ever made by the books bearing the agent's signature, and my signature, with all the dates, would you not consider that such a record would be efficient?

Yes; and having it, I can only say that your Lordship is very fortunate.

1059. Lord *Somerhill*.] Upon this very point; to prove a tenancy for other reasons, are there not disputes, and is there not very hard swearing very frequently going on in quarter sessions courts in dispute between tenants and landlords, and between tenants and tenants; have you not observed that the records on very small estates are very often so confused that there is much litigation going on?

If that exists, I think the agents must be very much to blame, because the agent's books ought to be so kept as to not admit of disputes.

1060. Is it not a fact that there are many small estates throughout Ireland, where there are agents of very loose character, who, in some cases, keep no books at all?

Your Lordship must not ask me to declare that the agents in Ireland are loose characters.

1061. I do not mean the slightest reflection upon agents of large estates; but I thought from your observations that on different occasions when you may have been in quarter sessions, you must have seen litigation going on as to small properties, where there was very conflicting evidence, because the records were loosely kept by small agents and small proprietors who have no agent, except perhaps some local quarter sessions attorney?

I have rarely been in a quarter sessions court, and I have never been there when a case of this kind was being tried.

1062. Lord *O'Hagan*.] You stated, did you not, that investors in Ireland have been deterred by this Act of Parliament from purchasing?

I did.

1063. Has the value of property in Ireland in your opinion diminished; are there as many years' purchase now to be had for land in the province of Ulster as there were before this Act passed?

I shall not express any opinion upon the province of Ulster.

1064. In the county of Dublin do you get as many years' purchase now as you got before the Act passed?

I am perfectly satisfied that there is not now the same desire on the part of investors to invest in land as there was before.

1065. I cannot judge as to that; I do not know what will be your answer to the question which I am about to put to you, but it is a fair thing to ask, and it will be the best test. Has the market price of land fallen?

That depends upon the character of the land. The market value of some property has fallen; the market value of other property has risen. For instance,

(136.)

P 4

I have

Mr. S. F. Adair.

20th June 1872.

Mr. S. F. Adair.
20th June 1872.

I have no hesitation in stating that perpetuity rents that never can rise have fallen.

1066. Lord *Belmore*.] How does the Land Act affect them?

I am not speaking in reference to that. His Lordship was asking a general question extending to the last 20 years.

1067. Lord *O'Hagan*.] Do you know whether upon the average in the Landed Estates Court generally, the value of land has fallen? As regards the number of years' purchase for which land can be bought at this moment; is land less valuable in the Landed Estates Court than it was before the Act was passed?

I do not understand the meaning of "years' purchase," unless you present to me the value upon which you are to calculate the purchase. Land in possession has risen in value; I do not think land tenanted, where you have no means of ascertaining the respective positions of the purchaser and of the tenant, has risen in value. My impression judging from the results is the reverse.

1068. Can you tell me whether, upon the average, without reference to particular properties, the land in the Landed Estates Court sold at a higher price before this Act of Parliament passed than it sells at now?

I think the sales have been, comparatively, so small since the Act passed, having reference to those that occurred before that time, that perhaps there has not been a fair opportunity of judging, so as to give an answer to that question.

1069. Am I to understand the meaning of that to be that you are not prepared to say that there has been a diminution of sales in the Landed Estates Court since this Act was passed?

I did not say that it was consequent upon the passing of the Act, but I believe there has been a diminution.

1070. To what extent is that diminution; it is a matter of statistics?

It is because it is a matter of statistics that I say so. It is not 10 days since I asked the question of the Accountant General of that court myself, and I am giving you the result of his answer to me.

1071. Can you communicate to the Committee to what extent the sales have diminished, if they have diminished at all?

I should not like to state anything of which I am not certain; but my opinion upon the question of a disinclination to invest is founded upon my knowing those who have bought, desiring to sell largely, and knowing those prepared to invest being deterred from investing.

1072. Can you tell me how many people who were prepared to invest were deterred from investing within your own personal experience?

I certainly can speak of one, myself, because I had gone the length of actually selecting an estate.

1073. That is your own case; can you tell me any other man's case in that position?

I will not undertake to give names.

1074. Without naming names, how many in number can you tell the Committee who, having been anxious to invest money in Ireland, have been deterred by this Land Act?

Without naming names, there is a noble Lord for whom I bought very largely in Ireland, to whom I spoke within two hours, who has ceased to have any inclination to go on buying, and who would rather get rid of what he has, in consequence of the difficulty of dealing with his estates owing to the Land Act.

1075. Can you mention anybody else?

It is scarcely fair for me to disclose confidence.

1076. I withdraw my question about names, and I only ask now for numbers; how many more do you know of besides yourself and this noble Lord?

I know there is a general feeling upon the subject.

1077. Lord

1077. *Lord Steward.*] Have you happened to see in an Irish paper, within the last few days, an advertisement of a gentleman who wished to invest 120,000*l.* in the purchase of an estate in Ireland?

I have not.

1078. *Lord O'Hagan.*] Do you know of Mr. Valentine O'Connor's buying Lord Derby's estate, in the county of Tipperary?

I do.

1079. For what price?

I know all the circumstances of that estate.

1080. What did he give for it?

He gave 160,000 *l.* for part of it.

1081. Are you aware that he has been offered 20,000 *l.* or 30,000 *l.* advance upon it since he purchased it?

I am aware that he stated to me that he was offered 20,000 *l.* I was consulted by Lord Derby as to the sale of his estates, but not as to the sale to Mr. O'Connor.

1082. *Lord Somerhill.*] In fact is not the occupation of land becoming very valuable, and much more valuable than heretofore, in Ireland during the last two or three years, the price given for stock and grain having greatly increased?

Very much; and the poorer land has become more valuable, because from the richer land you do not get the same return for your capital. On better land you are obliged to expend a much larger amount of capital to make it productive. It is the poor land that has become the more valuable.

1083. *Earl of Belmore.*] That was always the case, was it not; have not mountain farms risen much more in the last hundred years in proportion than good arable land?

Yes, that is because of drainage.

1084. *Viscount Lifford*] Is it not your opinion that any man purchasing land in Ireland, and buying at 20 years' purchase, if he never went near the property, and neither performed its duties nor enjoyed its pleasures, would be very safe in getting 5 per cent. on his money in the gross, and that his rent would be as secure as ever?

He would not get 5 per cent. in the net, but he would in the gross.

1085. And as regards his rents, would they not be as safe as they ever were, provided that he did not meddle with the tenants?

I think more so, but he would lose the interest that heretofore existed in possessing landed property.

1086. But supposing that he improved his property in the way that the late Lord Palmerston did, or exercised his various other rights of turbary, game, and so forth, he would then be in an awkward position; is that the fact?

It is.

1087. So that a man may safely buy property in Ireland who will neither enjoy it, nor perform his duties in relation to it; but if he either intends to discharge the duties of a landlord, or to enjoy his property, he would be unwise in having anything to do with Irish land?

I think the feeling is growing that it is better to have income without territory than territory without corresponding income.

1088. *Lord Greville.*] Do you speak of Irish property when you say that?

Without the same amount of inconvenience, I think it is pleasanter to get more money out of capital from interest without property, than to have property, getting less income from it.

1089. Do you speak of Irish property, when you say that?

Of course; I am not speaking at all of English land.

1090. *Lord Charlemont.*] You mentioned the increase or fall in the value of estates; by that, I suppose, you mean estated property with tenants upon it. You said you considered that there was not an increase of value on the sale of land. Supposing, for instance, that I have 4,000 acres of grass land without tenants, that would have risen in value, whereas if I had 4,000 acres with

M^r. S. P. Adair.
20th June, 1872.

tenants upon it, it would perhaps, according to you, have fallen in value; do you consider that the occupation-value of land has increased?

I would not undertake to say that the one had risen, but it has not fallen, whereas I think the inclination of the other is to fall, that is to say, the occupation; land I think as valuable as it was before, but I think the inclination now is, rather to consider rented land as not so likely to rise in value.

1091. Lord *Somerhill*] Have you ever met with or heard of any man who desired to purchase land in Ireland, which he did not mean himself to occupy, in whom that desire has been created or increased by the passing of this Act?

If, as I gather, your Lordship's question to be, whether the passing of the Act has lessened the desire to purchase tenanted estates, I entertain no doubt that there are various cases where the passing of this Act has disinclined people from investing their money in land.

1092. But have you heard of anyone, or have you met with anyone, in whom the desire to purchase was created or increased by this Act?

I have not met with anybody who had an increased desire to possess land consequent on this Act.

1093. Lord *Steward*.] Comparing the selling value of land now sold by auction with the value of land 20 years' ago, should you say that it had risen or fallen? It has risen, most certainly.

1094. With what period do you compare that, when you state that the value of land has fallen within the last few years?

I stated that the value of land in possession, I thought, had not fallen; I stated that the value of rented land, I thought, had not risen. The tendency, I thought, was rather the reverse.

1095. Over what period do you make the comparison?

It has gone very fluctuatingly. I suppose, as nearly as I can calculate, from the year 1850 to the year 1870, about 2,000,000 *l.* worth of property passed through my charge, either by sale or purchase. For the first five years some men got 6, 7, or 8 per cent. for their money, and it then varied, and I think the last five years perhaps, there has been no fluctuation; indeed I rather think there has been a depreciation, but I would not undertake to pledge myself from the results of the sales for the last two years, that it has diminished, because the estates sold have been very few.

1095*. What about Lord Derby's estate?

Lord Derby's estate is no test, because Lord Derby is himself aware that he sold his estate considerably under the value. He got rid of his estate by one sale instead of selling it in detail. He got rid of his tenants desiring to take the cream of the estate, and leaving the bad part. Lord Derby's estate was an exceptional one.

1096. Viscount *Lifford*.] And Lord Waterford's estate in the county of Derry was an exceptional case too, was it not?

I think Lord Waterford's was an exceptional estate; I was consulted as to several lots upon that estate. It was bought with a view to raising the rents to the value; it was greatly underlet.

1097*. *Chairman*.] Was the Connemara property an exceptional case?

That was in the earlier period of the Landed Estates Court.

1097. Do you know that it has been lately sold?

I do not know, nor can I state what it produced. I could not express an opinion whether it sold cheap or dear, unless I had the rental and the circumstances before me.

1098. Lord *O'Hagan*.] You gave a very strong opinion that no worse tribunal than the chairmen of Ireland could possibly be imagined for these land cases; to test therefore, the ground of that opinion, are you aware that for common purposes, not speaking of land, the chairmen of Ireland constitute about the most popular judicial tribunal in Ireland, so far as the people are concerned?

I am, and they are deservedly popular.

1099. Are they not men, who do their duty faithfully and well?

I think they do, to the best of their abilities.

1100-1. Do not the people trust them?

Yes.

1102. And are they not satisfied with their action as judges?
But they are not, I think, judges of land questions in general.

Mr. S. F. Adair.

20th June 1872.

1103. Abstracting that for the present, are they not a popular and effective tribunal, and have they not been so for the last half century?

I think, to the best of my judgment, they do their utmost to do justice.

1104. And there is not the slightest doubt, that the people of Ireland are satisfied with the efficiency of that tribunal for common purposes?

Certainly.

1105. Coming away from common purposes and looking to the land, the ground of your opinion must be considered; you have not had any case connected with land, before anyone of the chairmen, have you?

I have not, but I have been spoken to about many cases.

1106. But of your own personal knowledge, you know of no case that has been tried by a chairman, and you have never been in his court for that purpose?

I have not.

1107. Have you ever been in a court of appeal with reference to any decisions of a chairman?

I have not.

1108. You were asked about conflicting decisions of the chairmen, as to your opinion of their efficiency for this purpose; can you state to the Committee what are the conflicting decisions of chairmen upon which you found your opinion?

I think I expressed my opinion *in globo*, and not upon individual cases.

1109. You were asked that question, and I understood you to say that that was one of the grounds of your opinion about their incapacity to do this duty; can you tell the Committee what are the conflicting decisions upon which you found the depreciatory opinion of the character of the chairmen as judges?

I do not think I stated that the chairmen were incapacitated, for if you take them individually, a great many of them are capable of performing the most onerous duties.

1110. Will you tell the Committee what are the conflicting decisions upon which you found that opinion?

What I meant to convey was, that the means by which they arrive at the facts——.

1111. My present question is, what are the conflicting decisions upon which you found your notion that this is a bad tribunal?

I did not state that any individual tribunal was a bad tribunal; I said that taking it *in globo* it is unsatisfactory.

1112. But what are the conflicting decisions upon which you found your opinion that it is an unsatisfactory tribunal?

I informed your Lordships before that I have not been present at any case before any chairmen.

1113. Then you are not aware of any conflict of decision which would justify your opinion that this is an unsatisfactory tribunal?

I know the means by which they arrive at facts.

1114. I am speaking of decisions; can you, or can you not, specify any conflict of decision which would justify that opinion?

I have stated that I cannot.

1115. Then, not being aware what the conflict of decision is upon which this opinion is grounded, and never having had a case of your own before a chairman, and never having been before a judge upon appeal from a chairman, you still continue to be of opinion that no worse tribunal could be imagined?

If I did use the words, "no worse tribunal," I should be glad to withdraw them and to substitute the word "unsatisfactory." It was in answer, I think, to a question of my Lord Lifford's, in which he asked me to suggest, if I could, any improvement, and I was not prepared to suggest any.

Mr. S. F. Adair. 1116. You suggested the Landed Estates Court as fitted to do this business, did you not?
20th June 1872.

I think what I stated was, that I had not really considered it, and that I should not like to pledge an opinion upon that subject without consideration.

1117. I have a great regard for your opinion?

If you have any regard for it, I should not like to pledge my opinion upon that point without consideration.

1118. Then I understand that you do not pledge yourself to the opinion that the Landed Estates Court would be the best tribunal?

I have not considered it sufficiently to give an opinion that would be of any value upon the subject.

1119. Viscount *Lifford*.] As I understood, the whole tenour of your evidence was that you thought the chairmen of quarter sessions a most unsatisfactory tribunal, because a tribunal composed of 33 persons, each of them probably having various opinions conflicting with one another at different times, could not establish precedents for the working of the Land Act?

That is exactly the meaning of my observation. It was not upon an individual case; it was that a tribunal, consisting of 33 minds, all differently constituted, in my opinion, cannot be a satisfactory tribunal.

1120. With an appeal to 12 other minds?

Yes.

1121. That is the only ground upon which you considered it to be unsatisfactory?

I so stated.

1122. Then thinking so, are you aware that three or four, or more systems of law are gradually growing up under the decisions of these gentlemen?

It was foreseeing that, and hearing that that was the effect, that induced me to form the opinion that I expressed to my Lord Chancellor.

1123. For the purpose of acquiring precedents to guide whoever may administer the law, is it not absolutely necessary that there should be a change of tribunal which would promote uniformity of decisions?

I should not like to venture to say what was absolutely necessary, but I think it would be desirable.

1124. You think that there should be such a change of tribunal as would promote as soon as possible uniformity of decisions?

I was not finding fault with any law, or with the existing law; it was merely with a view of remedying evils which appear to exist.

1125. Lord *O'Hagan*.] Those 33 gentleman do other work, with the supervision of the 12 judges; do they not, in fact, do the substantial business of Ireland?

Yes; and they perform it very satisfactorily in general.

1126. And though there are 33 men with different opinions subject to the supervision of the 12 judges, they do their work well?

Yes.

1127. Lord *Somerhill*.] They probably find the law upon those other matters more clear than the law upon the one which we are considering; is that your opinion?

I will take the liberty of stating, that if the scenes are correctly represented to me, of the way in which evidence in land cases is generally presented to those gentlemen, my Lord Chancellor *O'Hagan*, if he was present, would possibly come to the same conclusion at which I have arrived.

1128. But that is not from your own knowledge?

No; the evidence presented to the chairmen is the evidence of locally interested tenants, which I think is not satisfactory.

1129. Lord *O'Hagan*.] Has not the landlord the opportunity of giving evidence for himself?

Yes, he has.

1130. Do you mean to convey to this Committee that *ex parte* evidence is received by the chairman?

I never meant to convey to this Committee that any injustice is intended by any chairman; but the chairman is not generally an agriculturist himself, and it appears to me very important that he should possess some knowledge on these subjects.

Mr. S. F. Adair,

20th June 1872.

1131. Earl of *Brandon*.] Are you aware that great inconvenience has arisen in some counties in Ireland from the constant change of the chairmen?

I cannot speak as to that.

1132. Are you acquainted with the county of Cork?

I am acquainted with it, but not so as to corroborate anything as to that.

1133. Are you aware that there is a very general feeling among all classes in the south of Ireland in favour of a change in the tribunal; that not merely are the landlords anxious for it, but that the farmers' clubs have mentioned very strongly that they object to their being 33 chairmen, and suggest that judges should be appointed for that purpose?

I never heard such a suggestion.

1134. Earl of *Portsmouth*.] I think I gather from your evidence that you are of opinion that land has been depreciated in value. Since the passing of the Act, are rents more difficult to collect now than they were before the passing of the Act?

I think I said that during the last 20 years perpetuity rents had fallen. I stated that I thought that land in possession, and sold in possession, had not depreciated in value. Perpetuity rents which used to realise 25, 26, and 27 years' purchase are now worth only 21 years' purchase.

1135. Lord *Brodrick*.] It has been suggested by one witness that uniformity of decision might possibly be secured by having three assistant barristers instead of one, to sit on every case; is that your opinion, or would you prefer in such cases going to a judge or judges of the superior courts, in the first instance?

I would rather have a case of my own determined by one superior intelligent judge than by any three county chairmen. Before I answer that question, I should wish to be informed where the chairmen should sit, and under what circumstances, and whether the voice of two should prevail, and all the details.

1136. Are you aware that during the progress of the Bill through the House, an amendment was proposed which would have given the judges an original jurisdiction?

Most of the amendments were before me at the time, but I should not like from memory to state what they were, and I have not sufficient recollection of the circumstances as to justify me in giving an answer to your Lordship's question.

1137. Lord *Steward*.] Do you not think that it is of great consequence that the trial should take place as near as possible to the spot where the parties interested reside?

I should consider so, provided that the judge was able to form an opinion himself upon the matter at issue.

1138. Would any difficulty as to that be obviated by having the case tried by the Landed Estates Court in Dublin?

The evidence there would be sworn evidence confined to matters of fact, upon which they would differ. That would be matters of record, and not evidence given in a heterogeneous way, and very often unconsidered.

1139. But in arriving at a just conclusion between landlord and tenant, do you not think it absolutely necessary that there should be a considerable amount of local knowledge of the particular county evidence, as to which you say the Landed Estates Court would not go into?

I did not say that they would not go into it; I said that they would go into it upon matters of record.

Mr. S. F. Adair.
20th June 1872.

1140. But are there not a variety of small points between landlord and tenant in cases of eviction, or in cases of improvement, upon which local knowledge would be of great consequence?

In a case of eviction for non-payment of rent the question does not arise; because if you evict a tenant for non-payment of rent he cannot before the chairman claim any compensation for disturbance.

1141. But may he not claim for improvements?

His improvements generally, where he is an ejected tenant, are not very large.

1142. But still that does not affect the principle that local knowledge, and the case being tried as near as possible to the scene upon which those transactions have taken place, would make the decision much more satisfactory both to the landlord and to the tenant?

That is to say, that you think that that would be more satisfactory than the present existing state of things.

1143-4. All I ask is whether you do not consider that all those points which arise between landlord and tenant, are much more likely to be fairly decided and full evidence to be given upon them if the trial takes place, as near as possible to the estate upon which the case has occurred?

I do not; I myself think that if you have a superior judge with the facts knit by affidavits before him, he would probably arrive at a more satisfactory conclusion than if he had a number of local witnesses who are prejudiced and interested.

1145. Do you not consider that it would be a case of hardship upon the small tenant if he were obliged to go to Dublin to produce his evidence there?

I do not, because if he was successful the landlord would have to pay his expenses.

1146. But supposing that he was unsuccessful, would it not be a hardship? If he was unsuccessful, I think that he ought to bear his own expenses.

1147. But the witnesses would have to be taken to Dublin, would they not?

No; I propose that the witnesses evidence should be in writing and not *viva voce*.

1148. *Chairman.*] It has been suggested that if we have one tribunal, whether local or itinerant, it would hardly be able to get through the quantity of business which would be brought before it; have you formed any opinion upon that subject?

If you had one tribunal to fix principles, I think that the demands then would be very much diminished in number. I think that if the principles were once fixed by a tribunal, both landlords and tenants would be able exactly to understand what their respective rights were, and the amount of litigation would probably be very much diminished.

1149. It would be reduced to a question of fact, each question of law being established?

Questions of fact would not arise very often; they would be settled without having reference to a legal tribunal, if the points arising were determined, not by 33 conflicting opinions, but by one fixed tribunal, whose decisions would be conclusive.

1150. *Viscount Lifford.*] If on appeal no fresh evidence was admitted, the evidence in the first instance, having been taken down by a shorthand writer and sent up to Dublin, that would be no great expense upon the tenant?

No; supposing there was a final appeal to the Court of Land Cases Reserved.

1151. *Chairman.*] Whether the Court is to be a local Landed Estates Court in Dublin or an itinerant Court?

I said that I had not considered the question of the Landed Estates Court so as to feel myself justified in giving an opinion which would be of any value.

1152. *Viscount Lifford.*] But supposing a final appeal were given to the Court of Land Cases Reserved, and no fresh evidence were given, the evidence being

being taken is shorthand in the first instance, there would be no great expense to the tenant, would there ?

There would be no great increased expense.

1153. The appeal would cost the tenant very little, would it not ?

I think if once you fixed the principles, in small matters, it would not, probably never, or rarely, be a matter of litigation. On large matters the expense is proportionably very small.

1154. Supposing that the first tribunal is either left as it is, or is perhaps altered ; but supposing that there is a final appeal permitted to the Court of Land Cases Reserved, so as to establish precedents by uniformity of decision, the question which I ask is whether, if no fresh evidence were permitted in the Court of Land Cases Reserved, the evidence having been taken down at the original trial in shorthand, and that evidence alone being made use of, that would entail any great expense upon the tenant ?

There would be no more additional expense, because the expense would be merely his counsel's fees I apprehend ; it would be no more additional expense whether he went to the Court of Land Appeal in Dublin, or before any other court.

1155. Lord *Brodrick*.] What would you think of a power to either party to take the case before the judge of assize in the first instance, after giving due notice, instead of going before the Land Sessions ?

May I be permitted to inquire whether your Lordship would make that the final tribunal to determine the question, because that is going another stage.

1156. There would be the same power, of course, of appeal to the Court of Land Cases Reserved, but that would get rid of one stage, would it not ?

Your Lordship's view would be, I presume, to allow either the claimant or the defendant to go to the Court of Assize, and then to go up again.

1157. *Chairman*.] I suppose that it would be almost impossible to give the judge of assize original jurisdiction in these cases, because he would have his own circuit civil and criminal business, and there would be such a multitude of those cases brought before him that it would be impossible for him to decide them ?

I should hope that they would diminish very much when the principles were fixed.

1158. Lord *O'Hagan*.] But if they did not diminish, the Court of Assize would be at a dead lock forthwith, would it not ?

I have no doubt the judges of assize could not do it.

1159. Lord *Somerhill*.] Although the number of cases may be diminished from points of law having been decided, must not so much variety exist in the application of the circumstances in every instance that the cases must always be numerous ?

I think that a judge of assize could easily do it if you limited it so that he should not hear more than two or three cases at every assize.

1160. I suppose you anticipate the diminution from two causes ; less obscurity in the Act, and fewer law points to argue ; and also from the fact that when those points are determined, there would be more cases of arbitration and compromise ?

If landlords and tenants understood each other they would settle these matters without litigation.

1161. Viscount *Lifford*.] But they are not likely to diminish under the present system, are they ?

I fear not.

1161*. Lord *Digby*.] Will you state the simple machinery whereby any tenant may now have transferred to any other person, without consulting or having the concurrence or approval of his landlord, his tenancy ?

By becoming indebted by simple promissory note, bond, or otherwise, to any person, whereby a judgment could be easily obtained by that person against the tenant, and which judgment could be registered as a mortgage in the Registry of Deeds Office against the tenant's holding, and an ejectment brought on foot

Mr. *S. F. Adair*.
20th June 1872.

of the mortgage thus acquired, will entitle the mortgagee to the possession of the holding without such being the act of the tenant, so as to disentitle his successor in possession to the compensation provisions under the Act of 1870. I see nothing to justify a proprietor or agent refusing to adopt the mortgagee of a tenant's interest thus acquired as the future tenant of that holding, and that without the tenant being either bankrupt or insolvent, and it would appear to me that it never was intended by the framers of the Act that its provisions could be so evaded.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to To-morrow, Twelve o'clock.

The following Letter was addressed to Lord Digby by Mr. Adair, 24th June 1872, and ordered to be printed by their Lordships :—

My Lord,

National Club, 1, Whitehall Gardens, S. W.

MAY I beg of you to bring under the notice of the Lords' Landlord and Tenant Committee, a class of property much affected (although certainly not intended to be affected) by the Irish Land Act of 1870, and which property should peculiarly be preserved from litigation; that is, ecclesiastical or glebe land; the question affects all religious denominations; for instance, there are 950 glebes to be let by the Irish Church representative body alone. As one of the assessors of the glebes committee of that body, the difficulties have presented themselves to me. The only way such holdings can ever be expected to be brought from under the operation of the Land Act is, by their being considered as lettings for temporary purposes, and I am supported by several of the county chairmen of Ireland in my opinion, that a letting of land during a clergyman's incumbency, which might be for 50 years, cannot be considered a letting for temporary purposes; and if so, there may be no end of litigation and trouble connected with the matter, having regard to and consequent on the provisions of the Land Act of 1870, and which timely simple legislation would prevent; and which, I apprehend, would be wholly unobjectionable and agreeable to all parties.

Lord Digby.

I have, &c.
(signed) *Sam. Fred. Aair*.

Die Veneris, 21^o Junii 1872.

LORDS PRESENT:

The Marquess of SALISBURY.	Lord CHARLEMONT.
Earl of BELMORE.	Lord WENLOCK.
Earl of KIMBERLEY.	Lord LURGAN.
Earl of DARTREY.	Lord CHELMSFORD.
Viscount LIFFORD.	Lord MEREDYTH.
Lord DIGBY.	Lord GREVILLE.
Lord BRODRICK.	Lord KILDARE.
Lord SOMERHILL.	Lord O'HAGAN.

THE LORD O'HAGAN IN THE CHAIR.

Mr. JAMES MURLAND, is called in ; and Examined, as follows :

1162. *Chairman.*] You are a Solicitor, are you not ?
I am.

Mr. J. Murland.

21st June 1872.

1163. Do you reside in the county of Down ?
I do, at Downpatrick.

1164. Are you a solicitor in very large practice at quarter sessions, and otherwise ?

I had a very large practice at quarter sessions until recently ; but I do not practice at quarter sessions now except in special cases.

1165. But your experience has been very great in that regard, has it not ?
Very great ; perhaps greater than that of any man in Ireland during the same time.

1166. Has your profession made you acquainted with the working of the Land Act which has been lately passed ?

It has.

1167. Have you observed the working of it within your own sphere of observation ?

I have.

1168. Will you be kind enough to communicate to the Committee any views which you may have formed with reference to the working of the Land Act ; the distinction taken here being that the Committee are not sitting to decide upon the principles of the Act, but as to its administration and working in the country, and especially with reference to the tribunal ?

So far as the county in which I reside is concerned, the Ulster custom is more frequently brought under the notice of the chairman than any other claim under the Act of Parliament ; and so far as the working of the Act goes, I think it acts very prejudicially towards the landlords in Ulster ; and with your Lordships' permission I will state the reason. As your Lordships are aware, there are various customs and usages in Ulster ; in point of fact, almost every estate has its own usage, and even in the same estates, perhaps within 20 years, there have been different usages. When a landlord is applied to by a tenant on quitting his holding to sell, he claims perhaps a certain usage which the land-

Mr. J. Murland.

21st June 1872.

lord may think he is not entitled to, and which is not one of the usages to which his holding is subject. The result of the landlord at all interfering with the tenant exercising what he claims, is what has been decided to be a disturbance, and a claim is filed against the landlord to seek to compensate the tenant, provided the landlord is wrong in his view of what the custom is as regards the holding; that may be very ruinous to a landlord, because after his merely wishing to have his right or the usage as regards that particular holding ascertained, he may find himself compelled to pay for that holding very likely the value of the fee simple. That is a very great hardship upon the landlord, and in some degree it might be also considered a hardship too upon the tenant. As a remedy for that, perhaps your Lordships would allow me to suggest what I conceive would be fair and equitable, namely, that if any disturbance of that kind occurs on the part of the landlord the tenant should at once and forthwith state what he claims as the usage of the holding; thereupon the landlord either disputes or admits that right to that usage; if he disputes it, then I think it would be quite fair that it should be tried at the Land Court, and in the first instance that the usage should be ascertained, and a decree issued to declare that usage to be the usage of the holding, and to be thereafter enforced as regards that holding. In that way the landlord would not in the first instance be mulcted in perhaps the fee simple of his estate for simply ascertaining what were the rights as regards the holding. I need not tell your Lordships that very few people can really tell, under this Act of Parliament, under the first section, what is the usage to which a holding is subject. Some barristers may hold that it is the usage of the estate itself, but we will take it that it is half of a town land and that there is no usage at all proved upon it, and that there never has been a usage. Then where is the landlord to look for a usage pertaining to the holding situated within that half town land? Perhaps on the next estate there is a limited tenant-right of 5 *l.* or 10 *l.* an acre, perhaps on an adjoining estate there will be no tenant-right at all allowed, on some other estate there may be an unlimited tenant-right. Under such circumstances I think it would be very difficult for a man to understand what the usage in that half town land is. Perhaps your Lordships will allow me to give an instance of a peculiar case which occurred in the county of Down; it is not a supposititious case. There was a holding consisting of nine acres, which was the entire estate of four co-heiresses. I forget whether their predecessor in title was their father or their uncle, but they succeeded to it, and the predecessor in title, whoever he was, had granted a lease of those nine acres. The lease terminated when those four girls were very young, and the tenant was permitted to hold on at the rent reserved by the lease, which, I think, was about 13 *l.* a year. The poor girls had no other property, and they went to service, I think, and at last one of those co-heiresses got married. I should tell you that the land was held under a fee farm grant, subject to a payment of about 2 *l.* a year, so that they were the landlords under this fee-farm grant. They thought it would be more advantageous for them that the husband of one of those co-heiresses should have the land and pay to the other three a certain sum of money, so that they might go away or better themselves, but it was necessary to get rid of this tenant who held the lands. Immediately, when notice to quit was served, and after the ejectment decree was obtained, a claim was put in for Ulster tenant-right, and the court spent nearly half a day to ascertain what was the custom of Lord Downshire's estate and other estates in the neighbourhood, to affect the holding of those co-heiresses. In some cases the rule was 20 *l.* and in others 25 *l.* per acre. I do not think there were any so little as 15 *l.*, because all the people who were produced as witnesses proved that the tenant-right there was very large. To my surprise I found that a decree was made for 12 *l.* an acre, that is 108 *l.* on nine acres of land. There would have been no injustice whatever in that case, if the chairman had decided that it was not proved to him that this holding was subject to any usage; but that the tenant should have the right to elect and to go for disturbance, and by disturbance very ample justice might have been done to the man. I told the parties that I would have given, under the circumstances, for disturbance, about 60 *l.* or 70 *l.*, which would have been very ample for the tenant. It was not proved that there was any tenant-right at all as regards the holding, or that the man paid a shilling for going into it. He might have been decreed the 20 *l.* or 25 *l.* an acre, but upon what

what principle it came to 12 *l.* an acre, I confess I cannot at all understand. I wanted the man to appeal upon two grounds; first of all that there was a lease, and that after the expiration of the lease there had been no usage proved; that the landlord was not subject in that way at all to the Ulster custom. Secondly, that it was not proved upon the trial that the particular holding was subject to any custom, and that therefore I thought he ought to appeal. However the man said that as I thought he would be entitled to some compensation, he would prefer not going into further litigation, and he paid the money and got possession of the land.

Mr. J. Murland.

21st June 1872.

1169. Viscount *Lifford*.] Who was the chairman?
The chairman of the county of Down, Mr. Johnstone.

1170. *Chairman*.] Do you think that the decree should have been for disturbance, but not for this tenant-right?

I think so, and so I strongly pressed it.

1171. Did the chairman announce that it was on the score of tenant-right?

Yes; the claim was in the stereotyped form for tenant-right. In point of fact there was no claim for disturbance, but I would at once have consented that it should have been turned into a claim for disturbance.

1172. Lord *Greville*.] You mention this as an instance of hardship upon the landlords under the new Act, do you not?

I do.

1173. I think you said that in order that the landlord might ascertain the value of the holding it was necessary to get rid of the tenant?

Your Lordship misunderstood me; it was not in order to ascertain the value of the holding, but to resume the occupation of the holding, for the benefit of the husband of one of the co-heiresses, and in order to portion off the others.

1174. Then I misunderstood you, I am afraid, for I thought that you said that this was a joint property between four co-heiresses?

Yes.

1175. That one of them was married, and that they desired that one should take the property and pay the other three their respective shares of the value of the property?

Yes.

1176. Then in order to ascertain that, I think you said that it was necessary to eject the tenant?

No; it was necessary to eject the tenant to carry out the agreement, because unless the man got into possession, he would pay nothing, and those poor creatures would have got very little for a simple rentcharge of 10 *l.* a year.

1177. But whatever they got it would have been the value of the property at the time, would it not; they were not the occupiers of the farm, their interests not being those of an occupier?

They were not those of an occupier at that time.

1178. In order to ascertain the value of their shares, was it necessary to eject the tenant?

It was perfectly necessary, in order to carry out the agreement, because the value of their shares with the tenant out of it would be more than with the tenant in it.

1179. You speak of an agreement between the parties; but that has nothing whatever to do with the working of this Act, has it?

No; I am giving that simply as a reason for the eviction; for their wishing to resume possession of the land.

1180. But the landlord there was not placed in a worse position, was he, than he would have been in before the passing of this Act?

A great deal worse. Before the passing of the Act, he would have served notice to quit, and got possession without paying anything; but here, since the passing of the Act, his property is shared with the tenant to a large extent.

Mr. J. Murland.
21st June 1872.

1181. But he could not ascertain his right without ejecting the tenant?

He could not, because his object was to get possession. It was leased to a tenant; the tenant gave nothing for getting into occupation; he was a tenant from year to year. Those poor creatures had a right to get back that small holding if they liked for the purpose of occupying it themselves without their property being taken from them by a decree, giving to the tenant property in which the tenant really had no interest at all.

1182. Then, as I understand it, those ladies wished to obtain not only their share as co-heiresses, but also their share of the value of the holding as conferred by this Act upon the tenant, is not that so?

I would not say that it was conferred by this Act upon the tenant, because I do not think it was conferred by this Act upon the tenant at all. If the Act conferred it, I would say nothing whatever about it, because I must be satisfied with that. But supposing that those people (what I was going to show was the unfairness of it) had been decreed to pay 40 *l.* an acre for that, which is not at all uncommon, and which might have been done, they would have been ruined, and must have given up their land.

1183. But they were not obliged to eject the tenant, surely?

But if they try that experiment they may find themselves mulcted in what will ruin them, and what they could never get back again.

1184. *Chairman.*] Is there anything further which you desire to mention to the Committee with reference to the working of this Act?

I said that it would be for the interest of, and would, in my humble judgment, be but fair to an Ulster landlord, and I think it would also, I must confess, be beneficial to an Ulster tenant, that in the first instance the usage of the holding should be ascertained and decreed. Then an incoming tenant or a purchaser, having the certainty of that decree, and knowing that he is purchasing under such usage, would, to my mind, save litigation, and very likely it would enhance the value of the holding; but certainly it would save a great deal of litigation, and confer a feeling afterwards that the man had a perfect security for what he had bought by the usage to which that holding was subject.

1185. How do you propose that that should be ascertained in a different way from the ordinary mode now in use?

That the landlord, in any case in the first instance, should not be made to pay compensation; that the first step should be to ascertain the right, and that the right should be decreed, and I would have rules that that should be done speedily, so as not to interfere with the sale of the land. Supposing, for instance, a twelvemonth's notice to quit; that would give the tenant ample time for the purpose of having his rights ascertained; it would not interfere at all with the sale, and it would not interfere with the cropping of the lands one way or the other. First of all, I think it is unfair; there never was a custom in Ulster that the landlord himself was to pay compensation; he was only to allow certain things to be done, and the tenant was to get compensation; but here the landlord may be made to pay compensation under that custom before the right is ascertained which he has violated, and a right as to which hardly any lawyer can tell what it is until it is tried.

1186. When a claim is made for compensation, either upon the ground of tenant-right or for disturbance, or at all events on the ground of tenant-right, before the court comes to ascertain the amount of compensation, must not the court be satisfied as to the nature of the tenant-right and of the custom?

Clearly.

1187. Then would you have an ascertainment of the nature of the tenant-right and of the custom, independently of and apart from the ascertainment of the value?

That is what I wish, and that I think should be the first step in the proceeding. The landlord might then be compelled by attachment, if he did not allow of the tenant, to sell under the so ascertained usage or custom. That ought to be the simple process in the first instance, so as not to mulct the landlord until he has violated some ascertained right or usage.

1188. Earl

1188. Earl of *Belmore*.] Who would you propose should put the process into motion, the landlord or the tenant?

Either party, as is the case now.

Mr. J. Murland.

21st June 1872.

1189. At present it is only the tenant who can put the Act into operation, is it not?

Either party can do it, because the landlord does it by disturbance, and the tenant may file his claim, or the tenant may do it by voluntarily getting his holding.

1190. Viscount *Lifford*.] But would you not wish the landlord to know how he stands, and what will be the consequence of the disturbance, before he ventures on disturbing the tenant?

Precisely.

1101. Do you not think that in many cases, if the landlord ascertained that, he might not disturb the tenant at all?

Very likely he would not.

1192. And on the other hand, if the tenant knew what he was to get, he might never resist the landlord?

Just so. There is another thing which appears to me to press very hardly upon the Ulster landlord. Under the prescribed rules, a tenant can lie by until a month after he is evicted before filing his claim at all. Now, what is the position then of an unfortunate Ulster landlord? Upon that claim men come forward and say, "Oh, if this had been so-and-so, I could have got so-and-so," while the Ulster landlord would be very likely to have set his land to another. You have no means of checking it, and most exaggerated statements would be then made as to the tenant's interest

1193. *Chairman*.] I know the value of your practical suggestions. I want merely to understand whether your notion is this; that when this notice to quit is served, and before the notice to quit has expired, and while the man is still in possession, before the time comes for his eviction, there should be an ascertainment of the tenant-right in the particular district, and on the particular property?

On the particular holding.

1194. Before the termination of the notice to quit?

Yes; immediately after the disturbance. I would even extend the notice to quit to a year, so as to get that done.

1195. You would count as a disturbance the service of the notice to quit?

Of course.

1196. And you would say that before the actual eviction the circumstances should be ascertained?

Yes. To be perfectly fair to the tenant, I would say that if the tenant came to the landlord and said, "Next summer I intend to sell my interest in this farm," and the landlord said, "I will not let you do that; I do not think that you have a right to do that," I am quite sure that the landlord would in perfectly good humour have this ascertained, and would say, "File your claim, and I will go with you and see what your right is, and I will not deprive you of that right." That, I think, would be just.

1197. Earl of *Belmore*.] If the landlord thinks that he is decreed to pay too much, has he the power to allow to elect to stay the tenant, or can the tenant say "I will not stay on?"

If there is a decree, the landlord must pay. It is a personal decree against the landlord, and he is liable both in goods and person to make good that money.

1198. Marquess of *Salisbury*.] Then the landlord cannot do anything towards settling what this Ulster right is, or towards arranging any alteration which he wishes to be made in the tenure without risking the payment of this very large sum?

Mr. J. Murland.
 21st June 1872.

He cannot; and perhaps I should mention another very hard thing. The Ulster tenant-right custom, as advocated by all the people, does not deny the right of the landlord to have a re-valuation of the lands from time to time. A landlord may, perhaps, commence to re-value his estate, which has not been valued for 40 years, and the tenant says, "That is too much. I am paying 30*s.* an acre; you want 35*s.* an acre; I will not give it to you." Then the landlord has to go to the chairman, and the chairman is the man who is to settle the rent; and if the chairman says to the landlord, "You are asking too much," the landlord has to buy his estate again, and is mulcted in a very large sum. The same principle, I would say, should apply in that case. That ought to be ascertained; and the tenant ought to be permitted to stay on at such ascertained rent as is found to be just and reasonable by the chairman, so that landlords should not, in the first instance, be mulcted, and that it should not be at the option of the tenant to get from the landlord whatever may be ascertained to be the compensation.

1199. Earl of *Belmore*.] In practice, could not the landlord recoup himself, either by an increased rent, or by receiving from the incoming tenant a sum equivalent to that which he had been decreed to pay?

Certainly not; because if a landlord is mulcted in that large sum for damages, you will find that for a very long time he will keep that farm in his hands and never get that sum for it, and he will never get an additional rent to secure him for it. That is my experience.

1200. Is that your experience in the county of Down?

I am quite sure that he would not be recouped. The tenants may buy from each other, but when it comes into the hands of the landlord I would not give much for the chance which a landlord would have of being recouped what he would be decreed to pay.

1201. *Chairman*.] Have you any other suggestions to make to the Committee, confining yourself as much as possible to the working of the Act, and not going into the detail of the principles of it. With reference to the tribunal this Committee is very anxious to be informed as to the opinions of gentlemen of experience?

I have formed a very strong opinion upon that subject. The chairmen of counties were gentlemen appointed with limited jurisdiction of 40 *l.* Now a jurisdiction to any amount is given, and there are cases coming before the chairmen at land sessions which involve more money value than perhaps will be tried in all the cases at a whole circuit. Therefore, I think, that to inspire confidence in the people, both landlord and tenant, those cases ought to be tried before such persons as are selected for filling the office of judges in the superior courts of Dublin. Those judges are well known to the whole public; they are men, in great practice, and men who have acquired the confidence of every one; there is scarcely a farmer in the whole country who does not know them by name before they come there, and the people have great confidence in them. I would then suggest that that judge should hear the case; that he should take a note of the evidence, and of course take a note of any questions of law which might be raised on either side, in precisely the same way as a judge does now at *Nisi Prius* upon an action of contract that comes before him: that the appeal should not be then to the judge of assize, but that it should be given to either party, upon notice, to the Court for Land Cases Reserved; that upon that notice being given the judge who tried the case should be required (as at present, as your Lordship knows) to send a report of the evidence to the Court of Land Cases Reserved, with his report of the case, and also a report of the points raised either for the tenant or for the landlord; then that goes direct to the Court of Land Cases Reserved, giving liberty for either party in case of surprise at the first hearing, upon an affidavit to have a new trial, upon payment of costs, or anything of that kind. If that were the case, then we should have a most satisfactory report of the evidence and points raised from that judge, which would go to the Court of Land Cases Reserved. There would be no bringing witnesses at great expense; the only thing would be to have it argued by counsel before the Court of Land Cases Reserved, which would be very cheap, and would give general satisfaction.

1202. Would

1202. Would you suggest the removal of all the cases from the jurisdiction of the chairmen?

I would.

1203. Would those judges of whom you speak be appointed *ad hoc*, or would they be the ordinary judges of the land?

All that I suggest is that they should be judges of as high standing as those of the superior courts; I must leave that entirely for whatever may be thought of it by the Government; if they adopt the tribunal they must carry it out as they think best.

1204. Marquess of *Salisbury*.] Would you have any limit as to the value in cases of appeal?

I think there ought to be no limit because the number of cases would not be very great, and the party does it at the risk of costs.

1205. Earl of *Belmore*.] It has been suggested by former witnesses that it would be desirable that three chairmen of adjoining counties should sit together to decide land cases; what is your view as to that suggestion?

I should certainly not concur in that suggestion.

1206. *Chairman*.] You would, as I understand, take the jurisdiction in those cases entirely from the chairmen, and give it a judge of a superior class?

I would.

1207. Earl of *Belmore*.] Could you inform the Committee in what respect the procedure of the chairman in the county of Down, in the case of dual claims, differs from the procedure of the chairmen of Armagh and Antrim, the adjoining counties?

I will first explain what dual claims are. Under the first section of the Act of Parliament a tenant in Ulster, in case he does not claim under the custom, has the right, with the leave of the Court, to claim under any other section of the Act save section 7. The mode which is now adopted in the county of Down is certainly, in my mind, a very embarrassing one; first of all they file a claim under the Ulster custom, and then they put forward an alternative claim under the 3rd section of the Act for disturbance. The chairman in our county does not require a party to elect which of those courses he will take. He says, "You may take which you like first, and if you fail in that go to the other. Of course, thinking that they would get more under the Ulster custom than under any other, they always elect that. If they succeed in it then there is an end of the other; if they do not succeed upon that they are allowed to go into the other. When that was the practice in the county of Down, I urged very strongly that if you do that you subject the landlord to this, that he must be prepared with a double set of witnesses to meet both claims; for instance, in a case which is within my own experience, there was a claim for 2,000 *l.* under the Ulster custom, and there was a claim for 1,260 *l.* (I will not pledge myself exactly to the figures, but it was 1,200 *l.* or 1,300 *l.*) for improvements. The claim for improvements occupied a schedule of several sheets, and I had to employ skilled people to examine those, and make out what truth there was in them; and I paid 19 guineas for that to the men who did it, in order to be prepared with that alternative claim; I had other witnesses. In the case which I am describing, the chairman decided in favour of the Ulster tenant-right claim, and I thought it would be but equitable that I should get the costs of defending the other claim; but he would give no costs, so that the landlord had to pay 25 *l.* for a claim which was never heard at all, and there it remains hanging up. I said, "If people are allowed to elect upon which claim they will proceed, it would be but justice to allow the costs of the one which they do not go on with, but which they must of necessity be prepared to meet"; but he would not do it; and I think it extremely hard in any one to be brought into a court in that way. I will just direct your Lordships' attention to the Act of Parliament. The Act of Parliament says this: "A tenant of a holding subject to the Ulster tenant-right custom, and who claims the benefit of such custom, shall not be entitled to compensation under any other section of the Act; but a tenant of a holding subject to such custom, but not claiming under the same, shall not be barred from making a claim for compensation, with the consent of the court, under any of the other sections of this Act"; but here he

Mr. J. Murland.
21st June 1872.

claims, and instead of being barred he is allowed to go into the other if he misses the first.

1208. Viscount *Lifford*.] What you contend against in this instance is not the Act, but the way in which the Act is administered by that particular chairman?

I would rather not say that particular chairman. I am only talking of the practice in the court. I am not going to cast any imputations upon any chairman.

1209. *Chairman*.] You say that the practice in the county of Down is hard in that respect?

In that respect it is; but whether it be according to the law or not, I will not venture to decide.

1210. You were asked whether this practice in the county of Down is consistent with the practice in the other adjoining counties; what is your answer to that question?

I can only state that it is quite notorious. I believe, in Antrim and Armagh, that the tenant is compelled to elect before he goes in at all. It seems to be reasonable that men are not to be allowed to go into a court to grope for a case.

1211. Viscount *Lifford*.] So that there is one law for Down, and another for Antrim and Armagh?

I know it is so.

1212. Lord *Lurgan*.] Can you state that it is positively the case in Armagh that the tenant is obliged to select?

I have said that it has been always quoted in the county of Down as the decision of the chairman of Armagh, that he compelled them to elect; but I think I said I did not personally know the facts, and guarded myself in that way.

1213. Earl of *Belmore*.] Do you consider it a hardship that a landlord or a tenant cannot appeal to the Court for Land Cases Reserved without the consent of the judge of assize, and if so, what right of appeal would you suggest?

I think I have answered that question in suggesting the tribunal, because in the tribunal which I suggest the right would follow as a matter of course when the judge heard the case. But if that tribunal be not adopted, I would say that either party ought to have a right to have an appeal in all cases, if counsel certify that they are proper cases to be reserved. If counsel, at the hearing, certified that in his opinion it was a proper case to be reserved for the consideration of the Court of Land Cases Reserved, then it should be done as a matter of course, and it should not be left to the will or pleasure of a judge to say, "you shall not have that tried there." I think that if we had those cases decided by the Court of Land Cases Reserved, we should very soon have this Act of Parliament much better defined.

1214. Marquess of *Salisbury*.] Is it your experience that there is considerable uncertainty among the tenants as to what the provisions of the Act are, and that they consequently entertain exaggerated expectations?

I have not the slightest doubt about that; and if your Lordships would allow me to show what expectattons they do entertain, I will mention a case in which I was concerned for the landlord, and which was before the court when I left to come here upon Tuesday evening. The tenant advertised his farm to be sold, with the permission of his landlord. It was in September, in the autumn, I believe, when it was sold. The landlord had himself made a road through another tenant's land which he had never dedicated to the tenants, or to anyone else. It was his own private road, made by his own private money. In addition to that he was a mill owner, and he had a right at all seasons of the year to keep up the breastwork of his dam at a certain height, so that the water would overflow four or five acres of the lands of the tenants. He saw this advertisement without any reference whatever to the rights of the landlord as regarded the road, or as to the flooding of the lands. He knew that there were tenants coming from a great distance, who naturally would never think anything at all of it, seeing that the lands were not flooded then, and were perfectly dry. He took

took the liberty of going to the auction room, and saying, "You ought in the terms of sale to inform the purchaser of any rights in respect to this. I can close that road when I like. I can flood those meadows when I like, and the man who purchases ought to know what he is buying." That was thought a most impertinent thing on the part of the landlord, and immediately a claim for 1,000 *l.* compensation was served upon him, because the tenant did that as a disturbance; and if the chairman had not found that he had the right to flood the lands, he might have had to pay the 1,000 *l.*

Mr. J. Muirland.

21st June 1872.

1215. *Chairman.*] But you defeated that effort did you not?
I did, and the claim was disallowed without costs. I only saw the report of it this morning.

1216. *Viscount Lifford.*] In what court was that?
In the Lands Sessions Court.

1217. *Marquess of Salisbury.*] You have no other instances of exaggerated expectations on the part of the tenants to give the Committee have you?

I can hardly tell. There is another case which was tried where the landlord escaped. I thought it was a very modest notice which he served. A man that had no earthly right to sell his interest at all set up his tenant-right interest; and the simple notice that he served upon the purchaser was that there was no permission to sell given. The first thing which the landlord found was that it was sought to mulct him in a very large sum for it. That was actually held to be a disturbance.

1218. It was held to be a disturbance if the tenant served a notice on the landlord?

The notice was to this effect, "An advertisement having been published of the intended sale by auction, on Saturday, 18th November 1871, of the tenant's interest in that part of the lands of Strangford, now in the occupation of so-and-so, the public are hereby informed that no permission for such sale has been given by the owner of the estate;" that is all that was said. I may say that in that very able work of Mr. Butt's, Mr. Butt did not consider that that was a disturbance.

1219. *Lord Digby.*] Who treated it as a disturbance?

The chairman of the county of Down held that it was a disturbance. Of course we succeeded in getting it shown that it was not subject to any tenant-right, and that it was a part of the estate which was subject to no tenant-right whatever. It was accommodation land, which was held near a town, without tenant-right of any kind, and with respect to the rest of the estate it was a qualified tenant-right of 10 *l.* an acre, and the adjoining tenant had a right of pre-emption. Both those things were decided in favour of the landlord, but it was considered a disturbance, and you may judge how little a tenant thinks will disturb him in the possession of a holding.

1220. *Marquess of Salisbury.*] Who got the costs on that occasion?

I got the costs in that case.

1221. *Chairman.*] Do you mean to say that the chairman formerly adjudicated that to be a disturbance?

I assure your Lordship that it is a reported case. Mr. Butt was against me upon it, and I quoted strongly Mr. Butt's arguments (of course I did not name him except as a very able writer) as most conclusive arguments that that should not be considered as a disturbance, but notwithstanding that, it was considered a disturbance.

1222. *Marquess of Salisbury.*] Has there been any doubt as to the question of what is and what is not town park, and as to what provisions town parks are subject under the Act?

There have been decisions relative to that in the county of Down, and that is a matter of fact under the section itself. It must always come to a matter of fact as to what town parks are and as to what they are not. It is defined what they are.

Mr. J. Murland.
 1st June 1872.

1223. Is there not some doubt, assuming the thing to be a town park, as to what the Act does with it ?

There may be this: the chairmen may take different views as to how near it ought to be to a town, or what is a town, or all those things; but there could be no difference, for nothing could be clearer than what is defined to be a town park in the Act of Parliament itself. They take different views, and I have seen very different decisions upon that point, but I have no reason to complain of the decisions in the county from which I come as to town parks.

1224. *Chairman.*] Was there not an appeal raised before Mr. Justice Fitzgerald as to that question ?

I rather think there was.

1225. *Earl of Belmore.*] Was there not a question as to what should constitute demesne lands ?

Yes; that was a question, I think, which was brought before Mr. Justice Fitzgerald. That was Lord Antrim's case, which was an important case.

1226. *Lord Somerhill.*] Are you able now to define for the Committee what is a town park ?

I must go to the Act of Parliament; the Act of Parliament itself defines it, and it is then for any judge to say whether, upon the evidence, it comes within the Act of Parliament or not.

1227. But is it any fixed distance from a town, or does it depend upon the tenure, or upon the mode of cultivation, or upon anything else ?

Certainly not upon the mode of cultivation. If your Lordship will allow me to look at the Act of Parliament, I will tell you at once what it is. "No compensation shall be payable under the preceding provisions of this Act in respect of (1) any demesne land or any holding ordinarily termed town parks adjoining or near to any city or town which shall bear an increased value as accommodation land over and above the ordinary letting value of land occupied as a farm, and shall be in the occupation of a person living in such city or town, or the suburbs thereof." That is what a town park is exempt from; it is exempt from disturbance.

1228. Have there not arisen doubts as to what constituted a town, and as to what constituted land adjoining a town, and as to how far the region of town park extended; and have not lands held by a person not actually residing in the town been very justly held to be town parks, and land held by persons residing in the town not to be town parks; have there not been conflicts of opinion upon that subject ?

I have read in the newspapers some decisions upon that, but I am not personally aware of them. You cannot very well depend upon newspaper reports, but I cannot understand how a judge, with that definition of town parks, can or ought to make any mistake, for that seems to be as clear a provision as ever I read in my life.

1229. Tranmore is situated, not in the north, but in the extreme south of Ireland, as you well know; but was there not a case where very strong conflicting evidence was given as to whether Tranmore was to be considered a town or a watering-place ?

I do not know Tranmore, except to know what size it is, and to know that the town parks there are town parks under the Act of Parliament. I should mention one thing which is very important upon the Disturbance Clause. I think that the maximum is generally given for disturbance, and I do not think it was ever the intention that it should be given, except in cases of capricious evictions. Mr. Butt, in his very able work, has described exactly what ought to be given with respect to that, viz., that it should be in proportion to any inconvenience that a man is put to by reason of his quitting his holding, but I believe that it has been held that they are to ascertain the loss; that is to say, the loss of profit by reason of leaving this holding. That was never, I think, intended by the Legislature at all. It was not the loss of profit or anything of that kind, but simply the inconvenience to which a man is put by fitting from his holding. I can very well understand that if there were a house upon the land, or if there were very peculiar circumstances attending the eviction, the whole amount might be given; but I know a case where the entire amount was given. A man took

took four acres of land; he had only had it a very short time, I think four or five years; the landlord sold his interest by auction. Some adjoining person bought the interest in the land at an enormous price. He sought to evict this man who had no house at all upon those lands, to get possession, and he was mulcted in the entire maximum under the third section. I could see no loss; he had a perfect right to every shilling for any improvements which he had made upon the land; but I think there is not that distinction taken which ought to be taken, as far as I can see, in administering the Land Act, in cases where there is really no inconvenience whatever about it; but I would certainly deal with such a case as if I were a jury in an assault case, if there was a capricious eviction, and there was no reason whatever for it, I would not at all object to the very last penny being given.

Mr. J. Murland.

21st June 1872.

1230. Lord *Digby*.] May I ask whether those four acres, which you were mentioning, were grass-land?

They were tillage land.

1231. Viscount *Lifford*.] Before leaving the question of town parks, I should like to ask, independently of what my Lord Somerbill has said about there being doubts as to its being a town or a watering-place or not a town, whether you are aware that great difference of opinion exists not only among the chairmen of quarter sessions, but also among the judges, as to whether Ulster tenant-right refers to town parks at all, or whether the clause about town parks refers to the Ulster tenant-right?

I am not aware, but I never doubted, that Ulster tenant-right could attach to a town park. I have no doubt in the world that if there is a usage to pay for town parks, the Ulster tenant-right would attach to that as well as to any other land.

1232. Earl of *Belmore*.] That would depend upon the custom of the particular estate, would it not?

Of course. It is a most unusual thing to have custom on the town parks, but there is nothing in the Act of Parliament, I think, to prevent a man coming under the Ulster custom for a town park, provided there is such a usage for town parks about the town.

1233. Viscount *Lifford*.] Are you aware that not only the chairmen, but also the judges are divided in opinion on that point?

I am not aware of that, and I should be surprised at it; I am not aware that it ever came before the judges.

1234. You think that the clause about town parks does not exempt the landlord from the Ulster custom?

There is nothing, in my opinion, in the Act of Parliament to exempt the landlord under the Ulster custom for town parks provided that the usage is proved, and that the town park is proved to be subject to such custom.

1235. Do you think then, that the 9th, 10th, and 14th clauses of the Act, which speak of "Limitation as to disturbance in holding," "Exception in case of lands required for labourers' cottages," and the clause which reserves to the landlord the rights of minerals, turf, game, and so forth, apply to the Ulster custom?

So far as the 9th clause goes, it clearly applies to all the Act, so far as I can see, because there is an ejection for non-payment of rent, and if the rent is not got for three years it is considered a disturbance, and that allows of any of the claims under that enactment.

1236. Does the 10th clause apply?

I think it does, because that Act of Parliament says that if you do anything of that kind, it shall not be deemed a disturbance, if you only do that. He has no right to claim until he is disturbed.

1237. The word "disturbance" is used for the first time in the 3rd clause, I think, but it is not used in any case with reference to Ulster?

I know it is not; but I think in the 18th clause what gives rise to the proceedings under this Act of Parliament is a disturbance, and if it is declared not to be a disturbance, if a man does an act as to which the Act of Parliament

Mr. J. Murland.
21st June 1872.

says that his doing it is not to be disturbance, I cannot very well see how a man could claim under any section of the Act for a disturbance.

1238. Are you aware that the chairmen whom we have examined, have declared that a landlord who has purchased under the Ulster tenant-right, is not protected by any of those clauses?

I may be very wrong in that; for instance, I find this in the Act: "For the purpose of this Act, ejection for non-payment of rent or for breach of any condition against assignment, sub-letting, bankruptcy, or insolvency, shall not be deemed disturbance of the tenant by act of the landlord; and for the purposes of this Act a person who is ejected for non-payment of rent," and so on. I do not see anything there which would not bring the Ulster tenant-right under it.

1239. What is your opinion as to the rise or fall of the value of land since the passing of the Act, or rather since the Act was expected to pass, with especial reference to one particular estate which was sold just before the passing of the Act?

I would say that in the unsettled state of the law, land is not so valuable as it was prior to the passing of the Act.

1240. Could you give the Committee any instance of that?

I could not give any instance of it.

1241. Was there not a case of Mr. Meredith's property near Downpatrick?

No doubt it sold very cheaply, but I could not say that that was in reference to the Act of Parliament.

1242. What did it sell for just before the passing of the Act?

It sold very cheaply.

1243. Did it not sell at from 19 to 21 years' purchase?

It did; and it is fair to say why I think it sold at that price. Whoever put up that estate, seeing the great price which was got for small bits of land, with immediate possession to be given, thought he was doing a fine thing by parceling out the estate, with tenants upon it in small holdings. That was the very thing which they ought not to have done, because that would prevent people from bidding over the heads of the tenants themselves. I do not think it was owing to the Act at all that that estate sold at that price.

1244. Lord *Somerhill*.] In one case, I apprehend that your answer about the small lots, applies to persons purchasing for occupation, and in the other case to persons purchasing a tenanted estate. Was there that difference in the two cases which you mentioned?

Precisely. If a landlord had in his own possession a whole town land, and he chose to offer it in lots of farms of 20 acres, he would get an enormous sum for it; but if a landlord chooses to split up his land and to sell it in lots, each with one or two tenants upon it, I am quite sure that he would get a great deal less for it than if he tried to sell it in whole town lands in bulk. I always thought it was a mistake. Before it was sold, I said myself that it would not sell at all well.

1245. Viscount *Lifford*.] Upon what principle does the chairman of your county arrive at the value of a farm in deciding land cases?

That is a question which I am not able to answer.

1246. You did not hear Mr. Johnstone's statement, did you?

I was in the case, if you refer to Mr. Beauclerk's case.

1247. Did he not state then upon what principle he acted?

It was the expiration of a lease. There was a lease made by Lord Edward Fitzgerald in the year 1795, and we all know that lands then were not of very high value. It was 70 Irish acres of very good land though certainly a few acres of it were not very good; but I am quite sure that it was a very good value at that time when Lord Edward Fitzgerald leased it for the sum which he charged, which was 58 *l.* Irish, or 53 *l.* or 54 *l.* a year. That lease lasted 75 years. The land adjoined the residence of the landlord. The landlord had only himself some very few acres about his house, and upon the expiration of the lease he found a tenant upon it who from his habits was totally unable to cultivate

cultivate the farm. He was an old man, and I believe that he was not quite in his mind. He had no person dependent upon him; he had neither wife, child, brother, nor sister living with him, and he lived there by himself. It would have been hopeless for him to continue in the possession of it. He was pretty well off. When that lease expired the landlord wished to resume possession. Upon the hearing of this case this appeared according to their own showing. This was a fine farm, worth two guineas an acre for at least 25 or 30 acres. Upon their own showing there was a profit of rent of about 100 *l.* a-year. Capitalising that, it would over and over again purchase the fee, and the tenant had a fine bargain of it. The chairman announced at a very early period of the case that he would give whatever any man would say he would give for the tenant-right upon a fair rent, which would not encroach upon his tenant-right. It was proved that on Mr. Beauclerk's estate tenant-right was recognised in all tenancies from year to year. They never attempted to prove any custom on the expiration of the lease; I took objection to that, and at the expiration of the case the chairman said, "Whatever a man would give at a fair rent, I will give."

Mr. J. Murland.

21st June 1872.

1248. Lord *Lurgan.*] You have appealed against the chairman's decision in this case, have you not?

I have.

1249. *Chairman.* Is the appeal pending now?

The appeal is pending now; I will say no more about it.

1250. Lord *Somerhill.*] Am I right in thinking your opinion to be, that while the possession in occupation of land has risen in value, the fee simple, without occupation, or power of immediate occupation, has fallen in value within the last two years?

That is my impression at present, that if you were selling an estate in the occupation of tenants at present, you would not get so much for it as you would have got prior to the Land Bill, from the unsettled state of things and those decisions. I am only now speaking of Ulster, because I am not acquainted with the other provinces at all.

1251. *Chairman.*] You state that very fairly as being your impression; are you able to give any facts to sustain your impression?

That is simply my impression; I have no case to give.

1252. Lord *Somerhill.*] I apprehend that that impression is a good deal founded upon the fact, that the profits of farming have largely increased of late years?

The profits of farming certainly have in my opinion largely increased; and furthermore, agricultural implements are so improved that the need of labour has lessened very much. I think that labour has been lessened much more than even the price of it has increased.

1253. But the profits of farming having increased in your opinion, the rents have not increased in proportion?

Certainly not. On the estates of old landlords they have not been increased. I am not speaking of landlords who have purchased under the Incumbered Estates Court prior to the passing of the Act.

1254. Viscount *Lifford.*] With regard to the principle upon which Mr. Johnstone decides these cases (which you answered exactly as he is reported to have himself said), are you aware that other chairmen hold entirely different opinions as to the mode of ascertaining the amount of tenant-right?

The reports are so imperfect that I really cannot well answer the question. There is the case that was reported in the papers this morning, that occurred in the Land Court in Downpatrick, and any person who had been present would not know that it was the same case.

1255. Marquess of *Salisbury.*] I think you said that your chairman decided as to the validity of a tenant-right from the practice of the estate, and not from the practice of the district?

The chairman of the county of Down does this. If you prove clearly what

Mr. J. Murland.
21st June 1872.

the custom or usage of an estate was a reasonable time prior to the passing of the Act, he holds that to be the legalised usage.

1256. Then I want to know how any usage was discovered on the nine acres of those four co-heiresses?

That I never could understand myself, and I cannot answer that question. I always thought at the time that the Act of Parliament was passing, that in order to entitle an Ulster tenant to compensation, he would have to give some proof that the holding was subject to some of the usages in Ulster. If that be not the law, I cannot see what usage will attach to a holding by going to a district, because if you go into the district you will have so many usages. To my mind it is quite impossible for a judge to say which of the usages he will attach to the holding. He may do justice, or he may do great injustice. If it was the construction of the Act of Parliament that the holding should be proved to be subject to a usage, it really would do no injustice, because in the case of every man who has bought his holding, with the assent or cognisance of his landlord, I think that that usage ought to be secured to him in his holding. But one man upon an estate may have paid 5 *l.* an acre for his holding under one rule; his next neighbour may have paid 20 *l.* an acre for his holding; and another may have paid 10 *l.*, under the different rules of the estate. If you go away and do not make them prove the usage to which the holding is subject, you may do a great injustice to the man who paid 20 *l.*, and you may do greatly more than justice to the man who only paid 5 *l.* Therefore, if the Act was construed that same proof must be given as to the usage relative to the particular holding, no possible wrong could be done to anyone, because if a man has paid so much for his holding, he is to be entitled under this Act of Parliament to have an opportunity of getting that amount again, and if he likes, he may elect to go upon Clause 3.

1257. Viscount *Lifford*.] Here is your chairman's answer upon this very point. (The Marquess of *Salisbury*.) Do I understand in ascertaining the value of an occupancy you inquire what the value of it in the market is, or what the tenant paid for it?—*A.* I inquire what the value in the market is. *Q.* You do not inquire whether the tenant paid much or nothing? *A.* That is not inquired into. The question entirely is, what is the current price; it varies, sometimes decreases, and sometimes increases, according to the landlord, and the mode in which he lets his land?

That is the answer.

1258. Marquess of *Salisbury*] In this case of the four co-heiresses, all that was established was, that a usage existed on somebody else's holding, on somebody else's estate?

Precisely; on the surrounding estates.

1259. And on that the landlord was condemned to pay?

Yes.

1260. Have you had brought to your knowledge any disputes on the Ulster custom, on the question of turbary?

I have not.

1261. Lord *Lurgan*.] Is it not the case that, as a rule, the Ulster tenant-right does not apply to turbary?

I cannot say that, because what Ulster tenant-right applies to is a very difficult question; I would say myself, that no man has a right to turbary unless the landlord gives him permission to take turf. A landlord could file a bill against him for taking it.

1262. But have you ever known land used for cutting turf in Ireland to be sold under the Ulster custom?

Never. I never heard of a tenancy from year to year of a bog (because they let it for the season) being sold under the Ulster custom.

1263. Earl of *Belmore*.] But a bog is very often included in a farm that is sold, is it not?

Never, in my experience. If it is used as a bog it is in the hands of the landlord,

lord, and he lets it to his tenants in small plots for the purpose of taking out the turf, and they have it for the season.

Mr. J. Murland.

21st June 1872.

1264. I am afraid that is not the case all over Ulster?

I am only speaking of the county of Down, the county with which I am acquainted.

1265. Marquess of *Salisbury*.] Have you heard of a tenant, under the Ulster custom, forbidding his landlord to take turf?

I would not be at all surprised at anything they would forbid the landlords to do now; I have heard of so many cases, that nothing would surprise me as regards that.

1266. You think that one of the things most desirable under the present circumstances is, that the law should be settled as rapidly as possible by some competent authority?

I think that is most desirable.

1267. And your opinion is, that this tribunal, with its limited right of appeal, is not the fittest one to arrive at a rapid settlement of the law?

I think that it is not.

1268. Earl of *Belmore*.] With regard to disturbance, the 9th section of the Act begins by stating, "That for the purposes of this Act, ejection for non-payment of rent, or for breach of any condition against assignment, sub-letting, bankruptcy or insolvency, shall not be deemed disturbance of the tenant by the act of the landlord;" has it ever come under your notice that in a case where the tenant has not himself assigned or sub-let, but has surrendered his estate, or has been made a bankrupt, and the Court of Bankruptcy have ordered a sale of the tenant's interest, if the landlord proceeded to evict he would be deprived of his remedy under the 9th clause, it being held that the act of the Court of Bankruptcy was not in point of fact the act of the tenant?

That is to say, an assignment in law is not a voluntary assignment, such as to come within that provision. I have known no such case, but I can very well understand that such a case may arise. For instance, an assignment by operation of law has been held not to violate a covenant against assignment, because that is not the act of the party. It is what is called an assignment by operation of law, but I think there is something put into this Act of Parliament relative to that. In all well-prepared leases, and in almost all the leases that I am familiar with, the case which your Lordship suggests is always provided for.

1269. The evidence given by a gentleman yesterday was that in the case in which he had been concerned as an agent of an estate such a thing had happened, and that the only advantage that the Court of Bankruptcy gave him was by saying, "We will not sell this interest of the tenant by public auction, but we will refer to the agent to ask whether he would prefer a sale by private tender;" to which he was forced to submit, there being no lease, but a tenancy at will; what have you to say as to that?

I myself think that under that section of the Act of Parliament, unless it was an express covenant —

1270. Lord *Somerhill*.] But are not a great many of the tenancies-at-will in your part of the country held without any written instrument or agreement?

Almost all; a written instrument is the exception. They are almost all held from year to year without any written instrument.

1271. That I take to be the case in the instance that has been referred to; and there being no written instrument or covenant respecting bankruptcy, the sale was forced by the creditor (be he *bonâ fide*, or be he one set up for the nonce), and the landlord was called upon to pay compensation, so that the tenant got compensation from the landlord nominally for his creditors, but really into his own hand, and the landlord got no rent, the tenant being a nominal bankrupt. Has any such case as that come under your observation?

If the landlord had been satisfied to get the rent, all he had to do was to bring his ejection, and the Bankruptcy Court could say nothing to him. In the case that his Lordship supposes, the landlord wanted to get possession on a

Mr. J. Murland. breach of covenant, where no rent was due. Bankruptcy does not prevent a landlord getting his rent.

21st June 1872.

1272. Not if there are goods upon the farm upon which he can distrain, or if the tenant has property which he can come upon; but in this case the tenant is supposed to be bankrupt and destitute, and the landlord has to pay the destitute man the compensation for the farm and get no rent; that was the case as it was presented to us?

That could not be; I think there must be some mistake, because the landlord would have got his land and there would be no disturbance; and he could have had to pay no compensation, because it was an ejectment for non-payment of rent.

1273. The landlord did not commence any proceedings for non-payment of rent; it was the creditor that commenced the proceedings, and the landlord could not therefore get this land until a certain notice and time had elapsed?

That is the landlord's own fault; he ought to have proceeded by ejectment for non-payment of rent and to have been vigilant.

1274. The landlord did not eject at all; there was no ejectment for non-payment of rent, but the creditor came in?

Then what the landlord ought to have done was to have ejected creditor and all for non-payment of his rent, and then he would have got them all out of his land, and there would have been no disturbance.

1275. *Chairman.*] Was not the landlord before the Act and after Act *quoad* bankruptcy, exactly in the same position, having power to evict in both cases but in a worse position after the Act, because the tenant having got this tenant-right interest and the power of disturbance, more would be got for the land, and therefore the landlord would ultimately have to pay more, although the power of eviction remains the same subject to the additional burthen?

Just the same, but this is for non-payment of rent, and this Act of Parliament made not the slightest difference as regards that, unless there was more than three years rent due.

1276. *Earl of Belmore.*] The question put yesterday was simply this: that whereas the landlord would not have been forced to admit of the alienation against his will, if the tenant had proceeded himself to sell, the tenant having become a bankrupt, and the creditor having forced the sale, the landlord was advised that he must submit to the tenant so forced upon him, and the only advantage he got was that the Court of Bankruptcy ruled that they would not sell in the open market, but that they would allow the landlord to say whether he would have the sale by private tender, and the landlord submitted, being advised that he must submit, whether he liked or not, that being a case of tenancy from year to year?

I really cannot imagine how that had occurred; every man had a right to assign his tenancy from year to year, before the passing of this Act. If a man became a bankrupt, the interest in the tenancy, from year to year, became vested in his assignees, and this Act of Parliament made no difference whatever in such a case.

1277. *Lord Somerhill.*] But in this case the assignees came in, and the assignees became the tenants against the landlord's will?

The assignees could have claimed before that; all that they would claim would be the interest in the tenancy from year to year. They were invested with no further rights by the Land Act, except the right of disturbance, but the same law applied before this Act as applies now. Every person has a right to assign his tenancy from year to year.

1278. *Lord Greville.*] With regard to the dual claims, I think you stated that the practice in the county of Down is for the chairman to allow parties to put in those dual claims; that is to say, to put in their claims in two shapes under the first clause of this Act; is it not so?

It is.

1279. I understood

1279. I understood you to say that you objected to that; do you consider that a man should be bound to make his claim under the custom or else under the third clause, and that he should elect before he goes into court to stand or fall by the decision upon one of those claims?

Mr. J. Murland.

21st June 1872.

Clearly; and I think so the Act of Parliament contemplated.

1280. Reverting, for one instant, to the case of the four co-heiresses, it was considered advantageous that the husband of one of those ladies should eject the tenant, and the tenant then set up a claim upon the custom and got a tenant-right awarded?

Yes.

1281. But supposing that this being the only farm upon that estate, it had not been possible to prove usage (which you gave the Committee rather to understand, in your opinion, ought not to have been established), then would it not have followed, that this tenant who was ejected, not for non-payment of rent, or for any breach of covenant, or for any act which would place him under a disadvantage, would get nothing whatever, and would have been turned out of his farm without one farthing of compensation?

Certainly not, it would not have been the case.

1282. If the usage could not have been proved?

Certainly not, because he could have gone under Clause 3, and got ample compensation.

1283. I thought you said that he must elect beforehand, either to go under the custom or to go under Section 3, and if he was not allowed to go under the third clause, surely he would get no compensation?

If that be the law it would be so; but I do not see any objection to his putting in his other claim for disturbance if the first claim is disallowed. I would certainly allow him to do that, but the question is, whether the Acts of Parliament would allow him to do it, though the practice is to allow it to be done.

1284. I thought you had an objection to that practice?

I do not object at all to any practice which will give the tenant compensation under Clause 3; I do not object at all to any Ulster tenant having a right to go under Clause 3; and I believe that where there is no usage as regards the holding the tenant is well protected by other clauses, because, if he is disturbed he can get all his improvements right well paid for.

1285. Lord *Wenlock*.] In the county of Down is it the custom to have yearly tenancies at will?

Latterly, a great portion of the county is held from year to year. Formerly the land was almost all under leases, but, from some reason or other latterly, the tenants are very unwilling to take leases.

1286. Earl of *Belmore*.] Is it not a fact that tenants do not like to pay the stamp duty?

I believe they were not very willing at the expiration of the lease to have a new lease, because there was a revision of the rents then, and easy, good landlords never thought of changing the rents of tenants from year to year.

1287. Lord *Wenlock*.] Does your long experience go to show that since the passing of the Act there has been great difficulty in making written agreements as to yearly tenancies, or do they not exist?

In Ulster, so far as making any agreements in yearly tenancies goes, I do not think you would get any Ulster tenant to sign any agreement; I should not like to present one to any of them, lest they might think that I wanted to deprive them of the Ulster custom.

1288. Neither before nor since the passing of this Act?

It was not the practice before for tenants, from year to year, to hold under written contracts; they hold from year to year without any written contracts.

1289. Marquess of *Salisbury*.] Before the passing of the Land Act were the landlords in the county of Down at all in the habit of making improvements of themselves?

In some cases they were, or they would allow out of their rents certain sums for improvements. If a man wanted a barn, or if he wanted some other matter,

Mr. J. Murland.
21st June 1872

he would come to the landlord, and the landlord would say, "I will give you the slates," or, "I will give you the timber," and no record was kept of that, or very seldom, and when a tenant was going out, in a great number of cases, the landlord forgave him the arrears of the rent, and the incoming tenant had not to pay a penny of the arrear of rent.

1290. Earl of *Belmore*.] Would not the agent in preparing his accounts for the landlord have a creditor and debtor side, and charge himself, and discharge himself of the rent, and then charge, as against the landlord, the amount allowed to the tenant?

On the rent account the whole rent would be credited, and then a receipt would be very likely given for those allowances, but the vouchers might not be preserved.

1291. But the landlord would have the power of preserving his vouchers if he chose?

That could easily be done.

1292. Those vouchers would be a sort of evidence, would they not, that money had been paid for a particular purpose?

Yes.

1293. Marquess of *Salisbury*.] Has there been any change in that respect since the passing of the Act; do you think landlords are as willing, or less willing, or more willing, to make improvements?

I would say that the landlords themselves, as far as they have gone, will now be very careless about making any improvements. They will just see they get their rents; I do not think it at all likely that there will be many improvements made by landlords now.

1294. Since the passing of the Act, do you think that landlords have felt themselves more compelled to eject for non-payment of rent than they did before?

I think so; I think that now they take very good care to get the rent at once paid up. If the three years pass, it may be considered a disturbance, and therefore they do not allow arrears of rent to run now.

1295. Therefore, as far as your experience has gone, the Act has had a tendency to make the landlords less lenient than they were formerly?

There is no doubt about that; and I may tell your Lordships that I have frequently had conversations with tenants upon large estates in the county of Down, who have told me they sincerely wished the Land Bill had never been passed.

1296. On that account?

On that account, because they formerly got very frequent indulgences that really cannot be given now.

1297. Relations between landlord and tenant have become harder and more business-like?

There is not the slightest doubt about that, whether that be an advantage or not.

1298. Lord *Lurgan*.] The improvements generally effected in the county of Down have been made by the tenants, have they not, more frequently than by the landlords?

I would say so.

1299. Viscount *Lifford*.] Have not those improvements been, generally speaking, made in the course of the last century, and in the beginning of this century, under very old leases?

A great number of them; indeed, almost all of them have been made under old leases, because, when you talk of improvements made by tenants, tillages and drainages, and all those things, a very short time amply pays the tenant for anything of that kind. An improving tenant can very soon get the price of his improvements, and it is very seldom that an improving tenant gets into the Land Court.

1300. Were not those leases upon large estates given for long terms and at low rents, on condition of those improvements being made ?

I would not say that ; it has not come within my knowledge. About the latter end of the last century, so far as I can hear, people were very cautious about taking long leases. I have heard that they were given then a great deal more generally than they are now. Of course since that time they have held under leases, but there was nothing about improvements in any of the clauses. There is one estate particularly where in some old leases there was a covenant that the tenant should build a house and offices. That is one estate ; there may have been some others, but I think that, generally speaking, in the very old leases there was not a covenant of that kind.

1301. Do you know much of the counties of Tyrone and Armagh ?
I am not at all acquainted with them.

The Witness is directed to withdraw.

Major JAMES HAMILTON, is called in ; and Examined as follows :

1302. *Chairman.*] WHAT is your profession ?

I am at present a Receiver under the Court of Chancery to Mr. Conolly, in the county of Donegal.

Major J. Hamilton

1303. Have you had much experience in the management of land ?

I have in my own property ; I have been managing my own property for the last 25 years in the county of Donegal, alongside of Mr. Conolly's.

1304. Mr. Conolly's estate in the county of Donegal is a very large one, is it not ?

It was a very large estate. It was about 150,000 acres, and was worth 15,000 *l.* a-year, with 3,000 tenants upon it.

1305. Have you a knowledge of land in other counties besides Donegal ?
I have not ; merely in Donegal itself.

1306. So far as Donegal is concerned, have you observed the working of this Land Act there in relation to landlord and tenant, and the operation of the quarter sessions ?

Not much as regards the quarter sessions, because I have not had any ejectment under the quarter sessions and have had no case of disturbance ; I have had no land cases as yet under the Land Act ; I have avoided them as much as possible, because I am afraid of the difficulty of them.

1307. Have you formed any opinion of the nature and character of the working of the Land Act in that county with reference to the effect which it has produced as between landlord and tenant, or otherwise ?

I think it practically, in many cases, puts the landlord entirely out of the possession of his estate.

1308. Would you kindly communicate to the Committee whatever occurs to you upon that point ?

As an instance of how that occurs, I may state that at this moment I have a case with a tenant where there is a dispute. The principle on the estate is that if a man dies the widow is kept in the rent book as the tenant on the estate, but it is always understood that the tenancy goes to the son. In general, the son takes a portion of the farm, and the mother remains upon the other portion of the farm, but that is a mere matter between themselves. In this case of which I speak there was a dispute between the widow and the son, and the widow, without my knowledge, gave notice for an auction of her half, as she called it, of the farm. The moment I heard it I sent to the auctioneer a letter to tell him that I would refuse my permission to divide the farm, and that he could not sell, and I went on the farm a few days afterwards, and told the woman that I would on no account allow a division of the farm. A few days afterwards she came to me again, and said, "I have been to an attorney, and he tells me that I am the tenant : I will sell the whole farm, and I will give my son nothing." I said, "You cannot

Major J. Hamilton. do that." "Oh," said she, "I will bring you a tenant that you cannot disapprove of." I said, "What do you want for your half of the farm?" "About 100 l.," was her answer; "I think I might take 100 l. for it; I think I could get 120 l." The rent of this half of the farm was, I may state, 1 l. 17 s. a year, and, what is more, it had been bought about 15 years ago for a sum of 30 l. The two farms had been added together. Now, if I eject that woman, I shall be obliged to pay her the 200 l. to put her son into possession of the land.

1309. *Chairman.*] How does the case stand now?

She threatened to sell the land a few days ago, and I said, "You shall not sell it," but she has not taken any step yet.

1310. Lord *Somerhill.*] Did you ever receive any rent from her?

Yes, always.

1311. Did you acknowledge her as the tenant?

She has always been the tenant since the division. She pays rent for the whole.

1312. You do not receive it from her son too?

The son pays no rent; she pays the rent for the whole.

1313. And you have never acknowledged the son as tenant of any part of the holding?

I have never acknowledged the son as tenant of any part.

1314. Would not that be a case of sub-division?

It would be a case of sub-division, but if she sells the whole farm, she being the recognised tenant of the whole farm, I suspect that it would not be a case of sub-division.

1315. Viscount *Lifford.*] You want to protect the son's interest?

I want to protect the son's interest.

1316. Marquess of *Salisbury.*] Can she sell without your consent?

I should think that under the Act, if she brings me a good tenant, I cannot well refuse him.

1317. It is in Ulster, is it not?

It is.

1318. Is it the custom in Ulster that the tenant can sell without asking the landlord's consent?

Not without asking the landlord's consent, but if she brings me a good tenant, I should conceive that under the Act I should be obliged to take him.

1319. Would you be obliged to take him under the custom, because the Act simply indorses the custom?

Under the custom, if a good tenant was brought for a farm, I do not think he would be refused.

1320. *Chairman.*] Before the Act passed, supposing that this woman had brought you a solvent person, would you have considered yourself bound to accept him?

I should have considered the price far too high for the land, and I would not have allowed that price to go upon the land.

1321. But supposing the price to have been reasonable, would you have been compelled according to the custom anterior to the Act to accept it?

Or to have got another tenant at the same money. If it were a reasonable price the son would buy the mother's half of the land.

1322. Marquess of *Salisbury.*] Then you would be forced to accept the tenant under the custom, or to find a substitute?

Yes.

1323. Viscount *Lifford.*] You say that you are receiver for the Conolly estate?

Yes.

1324. Were you receiver at the time it was sold?

I was.

1325. And how did that estate sell?

It sold at a very large price indeed, up to 32 or 33 years' purchase. The last estate, of about 2,000 l. a year, averaged 33 years' purchase.

1326. Do

1326. Do you think it would sell at as high a price now ?

I am quite sure that the man who bought it would not have given the same money for it again after the passing of the Act ; it was sold about four years ago, in 1868.

Major J. Hamilton

21st June 1872.

1327. To what extent does tenant-right now go on the properties with which you are acquainted ?

As I tell you, there was a rental of 1 l. 17 s., for which the woman wants 100 l., and she could get it ; there was a farm just beside that, a little strip of mountain land of about six acres, which has been let for about 21 s., and was let about the year 1827, or 1828, or 1830 ; I cannot state the exact year.

1328. *Chairman.*] Is it your opinion that this woman could have got 100 l. from a tenant whom you would have considered yourself bound to accept ?

She could.

1329. *Marquess of Salisbury.*] Would you be forbidden, under the custom, to raise the rent ?

The only way in which I can do it is by ejectment, and that would be treated as a disturbance.

1330. Do you mean to say that under the Ulster custom you cannot raise rent without ejectment ?

You cannot raise rent without ejectment ; the Ulster custom always was that you served a tenant with notice to quit before you raised the rent.

1331. *Earl of Belmore.*] But it is not so all over Ulster generally, is it ? In that part of Donegal it is so.

1332. Even if the tenant did not dispute the propriety of it ?

In an individual case you would not serve him with a notice to quit if he would accept the increased rent.

1333. *Chairman.*] If you demanded an increased rent, and he was willing to pay, you would not serve notice to quit ?

Of course not.

1334. *Marquess of Salisbury.*] Would that raise a claim for compensation if you were acting within the four corners of the custom ?

I should conceive that it would.

1335. Under what clause ?

The only way in which I could enforce my increase of rent would be by ejectment, and if I eject the tenant for any other cause except those defined in the Act (and raising the rent is not one of the exceptions), I should be liable for disturbance.

1336. Under the second portion of the Act, there would be nothing to prevent your raising the rent to a reasonable point. I want to know what there is in the custom of Ulster (which is the only other portion of the Act) which would prevent your raising the rent to a reasonable amount ?

There is nothing in the custom of Ulster to prevent the rent being raised to a reasonable amount.

1337. What is there to prevent it ?

It would depend upon the chairmen of quarter sessions, I should think, to say whether it was a reasonable amount.

1338. *Chairman.*] But you have never seen a chairman sitting as a judge, and you have never had any cases of this kind ?

None whatever ; I have had no cases before the chairmen.

1339. *Viscount Lifford.*] I gather from you that what you mean is, that this farm was let at 1 l. 1 s., and that if you wished to raise the rent, whether reasonably or unreasonably, the widow would refuse to pay more rent, because she would prefer to get the 100 l. that somebody else had offered, and that she had a right to get it ?

Yes. The farm that I was talking of, of which the rent is 1 l. 1 s., has been sold, and two tenants were fighting for it, who were neighbours, and

Major J. Hamilton,
21st June 1872.

both good tenants. They gave 125 *l.* for it. The farm was valued about eight or nine years ago, by a surveyor, at 3 *l.* 8 *s.*, and I said to the purchasing tenant, "You are giving such a price that I must tell you that the new valuation is 3 *l.* 8 *s.*, and whenever the estate is re-valued, you will have to pay that sum or take your chance of it."

1340. Marquess of *Salisbury*.] Is it the Ulster custom that the tenant has a right to receive the value of his holding if he disputes the raising of his rent, even where the raising is reasonable?

No; you would put the rise on the tenant. He would have been in your power before the Act.

1341. How can any different state of things possibly arise under an Act which absolutely does nothing else but endorse the custom?

I do not exactly understand the question. If I raise the tenant to 3 *l.* 8 *s.*, and the chairman thinks that that is an unreasonable rise, I run the risk of having to pay the tenant 125 *l.* for disturbance.

1342. Then what you do not like is to bet 125 *l.* in favour of the reasonableness of the chairman?

The interest on 125 *l.* is 6 *l.* 5 *s.*, which is double what I am asking.

1343 Viscount *Lifford*.] Are you aware of the Leitrim case?
I know of the Leitrim case.

1344. In that case, did not the chairman take the evidence of what was given in the market by the highest bidder, and assume that as the tenant-right?
He did.

1345. *Chairman*.] Were you present?
I was not present.

1346. Did you hear the chairman give his opinion?

I did not hear the chairman give his opinion, but I heard some of the case when it was brought before Mr. Justice Lawson afterwards; it was the same case.

1347. But you did not hear the chairman of Donegal give his judgment?

I believe he gave judgment strictly according to the law, and I think I should have given exactly the same judgment under the Act?

1348. And that judgment was that the person who bid the highest price named the tenant-right, and got the land?

Exactly. I never thought that Lord Leitrim had a chance in that appeal.

1349. Nor did anybody else. That being the case, what has been the effect upon the county of Donegal, as regards the relations of landlord and tenant?

The landlord does as little for the tenant as he can do at present, which is very little. He dare not do much for him.

1350. But is there the same friendly feeling as there used to be between landlord and tenant?

In many cases there is not.

1351. Have landlords' rights been attacked at all?

In the cases of game and turf, they have been attacked. They have not been attacked absolutely, in my own case; but my shooting is let, and I have been told that the tenants will not allow the person who has the shooting to shoot over the land; and I know that the same man holds shooting adjoining mine, and he was threatened, or his keeper was at least; for I got the informations, for he thought it was on my land, and he sent me up the informations.

1352. What about the turf?

As to the turf, they have not interfered with me as yet.

1353. But what is your knowledge of the county Donegal generally, as to turf?

I know that in many cases they have stopped the tenants who were placed upon the turf bogs by the landlords from cutting the turf. I know that on this very day the Marquess of Conyngham has a case for stopping the cutting of turf near Ardara before the chairman in Donegal.

1354. Supposing

1354. Supposing that that goes on to any extent in Donegal, will not the effect of it be that the lowland tenants who have no turf on their farms will be deprived of turf altogether?

Major J. Hamilton

21st June 1872.

They will; I met a man as I left home; he stopped me in the street of Ballyshannon, and he said to me, "I have been down at Ardara, and if that spirit comes here the lowland people will have no turf whatever."

1355. Are you aware that the lessees of the landlords have been prevented from shooting and fishing?

I am quite aware of that.

1356. Lord Greville.] Are the bogs of which you speak, where they cut the turf, in the occupation of tenants?

They are in the occupation of a tenant; they are large mountain farms, and sometimes it is a divided grazing, and sometimes an undivided grazing; but it is always understood that the landlord has the right to put the tenants, who have no bog, out to cut turf where there is bog.

1357. Even in the case where it is attached to a holding?

Even in the case where it is attached to a holding; that has been always the case.

1358. When it is measured in the man's farm?

When it is measured in the man's farm; but it is measured to him at a very low rent.

1359. Still it is part of his holding?

It is part of his holding, but he always took it with the knowledge that that was the custom of the estate.

1360. Earl of Kimberley.] I understand you to say that it has always been the custom to allow the cutting of turf upon certain terms upon this estate?

Yes, always.

1361. Are you aware of the 14th clause of this Act?

Perfectly.

1362. Would you not be disposed to think, until it is decided otherwise, that that would come under the provisions of the clause which says that where there is an implied agreement with the landlord that the landlord should enjoy his rights: eviction on the refusal of the tenant to allow him to exercise those rights is not to be held to be a disturbance?

I agree with that perfectly; I think that the clause affects Ulster as much as any other part of Ireland, but I am not a lawyer, and the opinions are the other way.

1363. Marquess of Salisbury.] It all depends upon what the chairman may say, does it not?

It all depends upon what the chairman may say; but I cannot see anything in that which keeps Ulster out of it at all.

1364. Earl of Kimberley.] I understand you to express a doubt whether this clause applies to the Ulster custom?

Exactly.

1365. If it does apply to the Ulster custom, it would meet the point?

Decidedly.

1366. Chairman.] Had there ever been any disputes of this kind before the passing of the Land Act?

No. Sometimes in the division of a very large estate, as in the case of Mr. Conolly's estate, where there are hundreds of tenants cutting turf on a mountain, the custom is to divide a bog about every 10 years. The man would come to me and say they were dividing the bog on him; that it was too good grazing, and ought not to be cut for bog, and if it was too good for bog, I would stop it, and not allow it.

1367. Chairman.] In Ireland there was always fighting about those pieces of bog before there was any land Act at all, was there not?

Yes; but I never had much fighting about it. We have a good deal of bog, and the people are very quiet.

(136.)

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1368. Marquess

Major Hamilton.
21st June 1872.

1368. Marquess of *Salisbury.*] If you are under the Ulster custom, the custom is in your favour; if you are not under the Ulster custom, the 14th clause clearly protects you; what therefore is your difficulty?

The question is, whether the chairmen hold that the custom will protect us.

1369. But you testify in the strongest manner that the custom has been in your favour?

The question is, whether those things would be considered as under the denomination of the Ulster tenant-right custom. The game certainly has always been held by the landlord, and the turf has always been held by the landlord. But that should not be called tenant-right, it should be called landlord-right.

1370. You must be either in one boat or the other; you must be either in the Ulster custom or in the 14th clause, there being no other possible alternative in the Bill?

If the Ulster tenant-right will protect us we are all right.

1371. Viscount *Lifford.*] Were game and turf ever considered part of the Ulster custom?

They were not.

1372. Lord *Somerhill.*] I understand your objection to be that the Act gives tenant-rights but omits to give landlord-rights?

Exactly so; it gives the right that the tenant had as to the sale of his farm, but it does not give any right as to what the landlord had reserved out of it.

1373. Therefore if the tenant warned off a person who was sent by the landlord to shoot, or if there was a dispute about the turbary, the landlord could not, in your opinion, summon the tenant before the chairman in the same manner, and with the same advantage, that the tenant could summon the landlord?

No; in summoning for game you have always to summon in the name of the tenant; it was the tenant who had to summon and not the landlord.

1374. Earl of *Belmore.*] Because he summoned for trespass?

Because he summoned for trespass, and that is what the tenant says now that he will do.

1375. The property in game was neither in the landlord nor in the tenant, but in the Crown, was it not?

I do not know, and I will not answer that.

1376. Lord *Wenlock.*] You say that if the landlord held the right of turf or of game under the Ulster custom, he had the right formerly?

He had the right in Ulster to do it, but I do not think he exactly had the right under the Ulster tenant-right custom.

1377. How would the landlord prove that right?

The landlord would simply prove it, and if a tenant objected he would eject him. In leases the game is always reserved, but in the case of tenants-at-will it was never reserved, and if there was a trespass by a poacher or anybody else on the land, then it was in the tenant's name that the action was brought, and I do not see anything to prevent the tenant from bringing an action for trespass against his landlord.

1378. There are very few leases in the county?

Very few; there are some old leases; there are no written agreements for yearly tenancy.

1379. Earl of *Kimberley.*] I suppose that you are aware that by the general law in Ireland, as in England, the game rests in the occupier?

Yes.

1380. Therefore, in point of fact, the landlord has no legal right to the game?

None whatever; I believe he could have been warned off the land as a trespasser too.

1381. His power consisted in this, that if the tenant did what he considered an unreasonable and unfair act he could have ejected him?

Exactly.

1382. Viscount

1382. Viscount *Lifford*.] And then the 14th clause was introduced to give the same to the landlord? Major *Hamilton*.

Yes, if the 14th clause applies to the game in Ulster, it is all clear. 21st June 1872.

1383. Do you know the case of a gentleman in your county who made a considerable income by letting his game?

I do; the gentleman, whose property adjoins mine, lets his shooting for nearly 400 *l.* a-year. The tenants, not long since, gave him notice that they could not allow him to let the shooting any longer; that he was a very good landlord, and a very good judge on the petty sessions, and all that sort of thing, and that if he asked their leave they would allow him to shoot on an occasional day upon the land, having given notice to the keepers, provided that they had not let the shooting.

1384. Lord *Meredith*.] But could they not have done that before the passing of this Act?

If they had he would have power to eject them.

1385. What would have happened if he had ejected them?

I think that if he had done that, the probability is the grouse would have gone to the wall; but I never knew a case of the kind.

The Witness is directed to withdraw.

The RIGHT HONOURABLE JAMES VISCOUNT LIFFORD, a Member of the Committee; Examined, as follows:

1386. Marquess of *Salisbury*.] How long have you been an Irish landlord? The Right Hon. *J.*
Viscount Lifford.

Since the year 1838.

1387. Had you, previously to the passing of the Irish Land Act, had much litigation with your tenants?

No, I do not recollect a single instance at this moment.

1388. Since the passing of the Land Act, what has been your condition in that respect?

A most unfortunate one.

1389. Will you state how you stand at present with regard to that?

I have before the petty sessions 12 cases of trespass upon my turbary, and refusing to allow tenants who have no turbary to cut upon the bogs of others who have turbary; I have, I think, 28 cases before the quarter sessions; I have two cases of prosecution for libel against papers which have denounced me as a swindler because I did not allow my tenants to cut in the way they pleased, and I yesterday sent to Dublin instructions to apply for eight injunctions in Chancery to restrain tenants from cutting in direct opposition to the rules of my estate.

1390. Do you attribute this state of things to the uncertainty of the law?

Entirely to the uncertainty of the law; not so much to any actual defect in the law itself as to the uncertainty of the law as administered by 33 judges in the first instance.

1391. Then you think that the uncertainty arises more from the nature of the tribunal than from the drawing of the Act?

I am very certain that it arises from decisions in the county of Donegal.

1392. What has been your outlay upon your property during the period you have been a landlord?

I cannot name the exact sum, but between making roads, and opening new farms, on which I placed tenants for 10 or 12 years without their paying any rent, I had for many years laid out upon my property double its rental.

1393. Do you anticipate the possibility of your having, in consequence of that expenditure,
(136.) U

The Right Hon. J. expenditure, to pay compensation to the tenants for the improvements which you
Viscount *Lifford*. have made?

21st June 1872.

No, because I will not meddle or make with them any longer. I will simply protect my turbary for the sake of the tenants who have no turf, but I will not trouble my head about either improvements or anything else.

1394. You do not imagine that it is henceforth the interest of an Irish landlord to make improvements on his estate?

I propose on the 2nd of July, notwithstanding what I have said, to bid for a considerable estate in the county of Tyrone. If I can get it at 20 years' purchase I shall buy it, and think it a good investment, provided I never see the place, and never do anything to it.

1395. You will treat yourself simply as a mortgagee upon the property?
Simply as a mortgagee at five per cent.

1396. Lord *Lurgan*.] You stated that before the passing of the Land Act you never had any litigation of any kind with your tenants?

I do not recollect any.

1397. Are we to understand that you were in the happy position of never having had to serve a notice to quit?

I served a very great number of notices to quit, and I was rather annoyed that they were all returned on Lord Belmore's motion. Those notices were all for the interests of the tenants, in order to square the farms, as nobody knows better than Lord Lurgan. I only evicted one man, and that was simply because he was a very bad farmer, and I thought it would stimulate a better system of farming if I evicted him, but I have no recollection of ever evicting a single person excepting that one man, though others have voluntarily given up their farms. I never distrained for rent in my life.

1398. Earl of *Kimberley*.] Do you think that the position of a landlord who can get 5 per cent. for his money is very unenviable as compared with the position of a landlord in England, who probably does not get more than 2½ or 3 per cent.?

Certainly, but I think that your Lordship would be the last man in the world to affirm that landed property is an enviable thing if it is entirely deprived of its duties and of its pleasures.

[*Ordered*, That this Committee be adjourned to Monday next, at Twelve o'clock.

Die Lunæ, 24° Junii 1872.

LORDS PRESENT:

Marquess of SALISBURY.	Lord CHARLEMONT.
Earl of BELMORE.	Lord WENLOCK.
Earl of BANDON.	Lord LURGAN.
Earl of KIMBERLEY.	Lord CHELMSFORD.
Earl of DARTREY.	Lord MEREDYTH.
Viscount LIFFORD.	Lord GREVILLE.
LORD STEWARD.	Lord KILDARE.
Lord DIGBY.	Lord SOMERHILL.
Lord BRODRICK.	Lord O'HAGAN.

LORD CHELMSFORD IN THE CHAIR.

Mr. JUSTICE MORRIS, called in; and Examined, as follows:

1399. *Chairman.*] You are aware the Committee is assembled for the purpose of inquiring into the working of the Land Act of 1870, and they thought you might be able to furnish them with information on the subject as to its satisfactory working or otherwise; will you be kind enough to express your views on the subject without my troubling you with any questions?

Well, I have not come prepared, my Lord, with any regular *résumé* of my views, and should be better satisfied if noble Lords who have devoted their attention to the subject will ask me questions upon it.

1400. In the first place, the Committee would desire to know whether, in your opinion, the primary tribunal, the chairman of sessions, and the appeal to the going judge of assize, with a final appeal only upon a case reserved by the judge, has proved to be a satisfactory tribunal?

I do not think it has had sufficient opportunity as yet to prove whether it is satisfactory. Certainly, dissatisfaction has arisen in some quarters against each branch of the tribunal, both against the tribunal of first instance, the chairmen, the appellate tribunal, the judges of assize, and also the ultimate tribunal called the Court for Land Cases Reserved. As to the tribunal of the chairmen, I think dissatisfaction has arisen more in the province of Ulster than in any other portion of Ireland, in consequence of what some persons, at all events, thought were very extravagant views taken by certain of the chairmen in that province as to what tenants were entitled to under the very vague description, for I cannot call it a definition, given of tenant-right in the first section of the Land Act. I believe that dissatisfaction was confined to some three counties of the province of Ulster, and certainly there is a notion abroad that in these counties more extensive views were taken of the rights of tenants than other persons thought proper. Then, as regards the court of appeal of the judges of assize, I think that is an eminently unsatisfactory tribunal. The chief business of the judges of assize is the trial of criminals, and I conceive that the trial of subject-matters of this sort should not be imposed upon them. I think that many of our most eminent judges, probably I am justified in saying the most eminent, for learning and for legal acquirements of the highest order, are at the same time eminently unsuited for the decision of matters of this sort, which would come before them upon appeal: and, without mentioning names, I have

Mr.
Justice Morris.
24th June 1872.

Mr.
Justice Morris.
24th June 1872.

eminent judges in my view who stand pre-eminent for their legal attainments, but who, I do not think, are the most satisfactory tribunal for the investigation of matters of this sort, which are more matters fit for persons of a more ordinary capacity, but who would be practically acquainted with the country and its usages, and the dealings of landlord and tenant, and the value to be attached to the evidence of different witnesses, independently merely of what they swore. There is also the fact that there is no mode by which the judges can estimate what time these land cases will take at the assizes. The assizes are generally fixed in contemplation of the criminal business, and also of the civil business; there is no machinery. The judge's registrar, who is the same as the judge's associate in England, knows nothing of this sort of business, it is quite new to him; his business was to swear witnesses, to make up postea's, to fill up issue papers and records, and a great deal of the detail of this business is thrown upon him, and in my opinion he, as a general rule, is either unsuited for it, or, at all events, is not very suited; and as I have said before, I think that a great number of the judges are unsuited to try these cases. Then I think the opportunity is an unsuitable one. The assizes are held with prisoners standing for trial. The jail ought to be discharged in the first instance, and prisoners should be either tried or released or dealt with as soon as possible; but instead of that, if these land cases were to be tried at the assizes, they would cause a great block in the whole business.

1401. Is there any notice given of appeal to the assizes?

The judge knows nothing of it, unless he chooses to go out of his way and get his registrar to write, or write himself to the clerk of the peace, and make indirect inquiries of that sort. By so doing, of course, he can fish out information.

1402. Are they entered into the list when the judge comes into the assize town?

They are then entered in the same way that the civil cases are, but the civil cases are known of in Dublin, they must originate in Dublin, and if they are cases of any moment they are talked about and known, and the judge, either through himself or through his registrar, finds out from the junior bar, who generally have the management of these cases, what they are likely to be, and then he can fix the assize with some reasonable approximation to the time likely to be occupied. But the land cases are all done in the country, and a great number of them may tumble in or there may not be any at all, so that he never knows what is coming.

1403. Then in arranging the business for the assizes are these appeal cases taken before the ordinary civil and criminal business or after?

They are taken, as a general rule, by the judge who sits for civil business, and taken with other appeals from the chairmen. I was going on to add that, I think, the ultimate Court of Appeal is not a good court. It consists of sixteen judges, if they all attend, and upon the only sitting which we had thirteen did attend. That, in my opinion, is a bad tribunal from its numbers. There is an absence of responsibility, and where there are so many sitting there is great facility for interruption. Thirteen persons, as a general rule, talk more than three or four, and I do not think that the tribunal from its numbers is a good one; the decision becomes a poll, and not a conference. On this branch of the subject I have put a few ideas shortly together as to the sort of tribunal that should be instituted from my knowledge of the country, which was considerable before I became a barrister at all. I think that three tribunals should still exist, analogous to the three tribunals which now do exist, and that they should be employed in this way or something like it. I think the chairman's court ought to remain as the court to deal with claims of a limited amount, such as it would be practically impossible to bring before a higher tribunal on the ground of expense. The chairman as a court of first instance should hear all claims up to a certain amount, say 400 *l.* or 500 *l.* As a general rule, what would be realised would never reach half the claim, so that in reality it would only be dealing with perhaps 200 *l.* Then there should be a Court of Appeal from them, answering to the judges of assize, and that court should be a Court of Appeal for cases heard by the chairmen on claims amounting, say to 400 *l.* or

400*l.* or 500*l.*, and should be a Court of First Instance for all claims of a larger amount. I would suggest for that court, the court which bears the name of this very Act of Parliament, namely, the Landed Estates Court. It appears to me, both from its name and from its entire pursuits, which are, dealing with land in one aspect or another, and nothing else, that it is the court that one would say ought to deal with matters of this sort. I would suggest that that court might be strengthened in this way. It consists now of two members, Judge Lynch and Judge Flanagan, both of whom, I may take the liberty of saying, are exceedingly well suited for the discharge of this business. And then, if necessary, there should be an additional judge. Two judges from that court should go circuit twice a year to hear appeals from the chairmen, in cases which the chairmen have jurisdiction to deal with, namely, up to 400*l.* or 500*l.*, and to hear, as a court of original jurisdiction, all claims over that amount. I suggest then, for the final Appellate Court, not the Land Court, which is an anomalous court; it appears to be a collection of all the judges that could be got together of every sort and kind in Ireland, equity judges, Vice Chancellor, Master of the Rolls, and so on; but the appeal ought to be to that which is the real appeal court, namely, the Court of Chancery Appeal. That Court at present hears appeals from the Insolvent Court, from the Bankrupt Court, Probate and Divorce Court, and from the Landed Estates Court, the very court which I put now in place of the judges of assize; and that court of ultimate appeal should consist, as it does now, of the Chancellor and the Lord Justice of Appeal, with the addition of a common law judge, that common law judge to be selected by rotation. That should be the final court of appeal, consisting of three members, two of them the judges at the head of the legal profession in Ireland; the final court of appeal now, and the one to which naturally persons look as the final court of resort, at all events in Ireland, with the addition of a common law judge. The reason for my suggesting that addition is principally in the event of any difference of opinion. This scheme appears to me to meet the defects which at present exist, also the complaints and the dissatisfaction which are to some extent prevalent.

Mr.
Justice Morris.
24th June 1872.

1404. Would you leave it to the option of the judge to say whether there should be that ultimate appeal or not?

I propose that two judges of Landed Estates Court should go circuit, and I would suggest that there should be an appeal from them in all cases in which they heard a claim as a court of original jurisdiction as a matter of course, but that in all cases in which they were merely hearing appeals from the chairman, they being of a small character, there should be no appeal further unless they reserved the right.

1405. As it is now?

As it is now from the judges of assize; but that in all cases in which they heard the case as a court of original jurisdiction, there should be an appeal as a matter of right.

1406. Lord *O'Hagan*.] An appeal on questions of fact as well as of law?

An appeal generally. I think there would be very few appeals; with two judges who would devote their attention to it, and who are so peculiarly suited for it, I think the appeals would be very few.

1407. *Chairman*.] At present one of the going judges of assize may hear these appeals from the chairmen?

One of the judges of assize may hear the appeal from the chairmen, but if the case is to be reserved for the Landed Estates Court, in my opinion, on the true construction of the Act of Parliament, it should be in the first instance brought before the two judges and reserved for the Land Court by the two judges. That is my opinion, and a very distinct opinion, unless I hear some person whose opinion I have a great respect for, taking a different view.

1408. Lord *O'Hagan*.] That has been kept open before?

We had only two cases before the Land Court, both of which I have with me here; only two cases have reached this court of 16 members, and, as I have said, on that occasion 13 judges were present.

1409. *Chairman*.] Only two cases out of all that have occurred?

Only two cases: one was the case of Lord Harberton. A tenant of his

Mr.
Justice *Morris*.
24th June 1872.

sought to register improvements to the value of 8,165 *l.*, all which improvements had been made previous to that tenant's father's getting a lease in 1844, and the Court held that the lease having been given to him, and other land, in addition to that which his father had improved, and also for other reasons, he was not entitled to register those improvements, they being improvements which were contemplated when the lease was given. The other was the case of *Austin v. Scott*, which became abortive in consequence of the death of the respondent. That case was only reserved by one of the judges, and I made the objection at the time. I happened to be the other judge who went on the circuit, and I never heard anything about it. The reason why I attributed importance to that is, that that case embraced one of the most important points that has ever arisen with regard to this Ulster tenant-right, namely, whether the Ulster tenant custom is to apply on the expiration of a lease, no matter how old the lease is. That was a lease that had existed nearly 76 years; it was made in 1794, and expired some time in 1871. The tenant claimed 25 years' purchase tenant-right, having held the land for 75 years under the old Irish rent. The Chief Justice of the Common Pleas was of opinion that he was only entitled to five years, because the proof on the trial showed that that was the custom on that particular estate for a certain number of years; but there was no reservation of the point whether he was entitled to anything in consequence of his having held under a lease which had lasted for 75 years, and had expired, and in which there were the usual covenants that he should surrender. The chairman, Mr. Coffey, at Londonderry, who originally heard the case, was of opinion that he was barred by his lease. Never having heard it argued myself, I of course do not wish to bind myself by what I am saying, but so far as I have been able to consider it, I am of the same opinion, that he would be entitled to nothing. That point was not reserved, however, and the only point reserved was whether he was to get five years or 25 years.

1410. In that case, as I understand, the Chief Justice considered what was the custom applicable to the particular estate, and not the custom prevailing in the district?

Not the custom, I believe, prevailing in the district; I believe both were in reality considered, but I do not know the details sufficiently; the point that struck me was that this question, which I know to be a question upon which there is a very great difference of opinion amongst the chairmen, was not reserved for our Land Court, namely, whether the tenant could get anything; he having contracted himself out of it by taking a lease 75 years ago; and, of course, if the custom existed then, so much the worse for him, because with his eyes open he preferred to take a lease. These were the only two cases that have occurred; that case has never come to any ultimate decision, because the gentleman died, and there was a difficulty in reviving the suit. I have already urged my opinion strongly that the Landed Estates Court is not a good tribunal, and that the tribunal should be the High Court of Chancery Appeal, consisting of the two eminent judges who preside there, and a common law judge to be called in to assist.

1411. I believe there is a great difference of opinion amongst the judges, I mean both the chairman and the other judges of appeal, as to whether the custom attaches at the expiration of a long lease?

There is a very considerable difference; I heard that Mr. Justice Lawson decided that the custom does not attach on the expiration of the lease. I have already said my own opinion is so, subject to hearing it argued: never having heard the case argued, I need not say I do not attach the same importance to a pre-judgment of it on my part, as if I had heard it argued out. The chairman of Derry has so decided, and the chairman of Down has decided the reverse. Chief Justice Monaghan must have decided the reverse in *Austin v. Scott*, because that point directly arose there.

1412. Marquess of *Salisbury*.] Was that the case where the Chief Justice refused to allow an appeal?

I am not aware of it; I know nothing of the case except as it came before our court.

1413. Lord *O'Hagan*.] I think that was the case; I think that appeared upon

upon the papers before us; the question as to the lease was not brought before us?

In answer to the noble Lord, Lord Salisbury, he did reserve the case as to whether the tenant was to be entitled to more than five years, but he did not reserve for us the point whether he was entitled to anything; the chairman having decided that he was not entitled to anything, and it is exactly where I say the point ought to have been reserved, for it is a point upon which judges and chairmen do differ, and upon which, as I have said, my own opinion is one way, and his the other.

1414. Marquess of *Salisbury*.] I wanted to ask, not whether he had not reserved it, but whether, being applied to, he had refused to reserve it?

That would be at the trial, and I know nothing of it.

1415. Lord *Somerhill*.] Are you of opinion that any court of appeal could decide that so satisfactorily to the people of Ireland as an amendment of the Act would be, which would make the matter clear?

I do not know whether it would be satisfactory to the party against whom it was decided, for it never is satisfactory in that sense; but it would be obeyed and known to be the law. I need not say that in Ireland, no more than in any other country, the unsuccessful litigant is never very well satisfied, as a general rule.

1416. Not satisfactory between party and party, but satisfactory that people might know what the law was?

I think it would be satisfactory to that extent, but it would not be satisfactory to the individual litigants. I may say it would not be satisfactory to the tenants in the north of Ireland if it was decided that the custom did not exist, and it would not be satisfactory to the landlords if it was decided that the custom did exist.

1417. *Chairman*.] Is there a difference of opinion as to whether the existence of a custom is to be established by reference to the particular estate, or to the custom of the surrounding district?

I think there is practically; at all events, some judges would look more to the custom on the particular estate, others would look to the surrounding estates; the point has not arisen before me, but I am aware it has arisen in other places where, in tenant-right counties notoriously, individual landlords have been, with a sort of prescience of what was coming on, for some years not allowing the tenant-right custom. I understand that Lord Leitrim's estate was one of those, and I believe it was held that, although for some years he would not allow the tenant-right custom to prevail, still that it being the custom of the surrounding neighbourhood, and it having been the custom upon his estate at some antecedent period it was a good custom, that is, a good custom as declared by the Act of Parliament, for I need scarcely say in the presence of learned Lords, that the custom would not be a good custom at all at common law.

1418. Viscount *Lifford*.] If in Lord Leitrim's case the tenant-right had not been allowed for 22 years, do not you think that that would extinguish it?

That is a question I should like to hear well argued before me.

1419. The Marquess of *Salisbury*.] That was a case in which the appeal was refused?

I do not know; I have no mode of knowing.

1420. Would a decision, in your judgment, bind any judge of assize, or would he merely follow his own view of it until it was decided by the court above?

I can only say what I would be likely to do myself if I found I had rather a strong opinion opposite to what had been decided by another judge of assize; I should then certainly reserve the case for the court of ultimate appeal, and have a decision which would be binding both upon that other judge and upon me; I would not give up my own strong opinion, particularly on a matter of this sort, which is a mingled question of law and of fact, and as to which there is a real difficulty very often in making out anything at all about it.

Mr.
Justice Morris.
24th June 1872.

1421. Lord *Somerhill*.] You mentioned that you thought the common law judges should be chosen by rotation?

I do; I object to a selection.

1422. Do you mean by rotation of that person during his appointment, or rotation every year?

Rotation for a term, one of the legal terms; a rotation for such a short period as might be fixed upon by the Lord Chancellor; I think it would be better that there should be a rotation amongst the common law judges than that one in particular should be called in to assist, or at all events to purport to assist, the permanent court. I take it it will be better that it should be the general body of judges, of course excluding from the duty (if they so wished it) the chief judges of each court; they having generally rather more business to attend to, I would exclude them on the ground that their time is more fully occupied.

1423. *Chairman*.] I suppose that very difficult and perplexing questions arise upon the construction of this Land Act?

They must necessarily arise, because one cannot shut one's eyes to the history of it, that it was deliberately left vague in order to be only a sort of sketch of an Act of Parliament, an outline, if you may apply painters' epithet to it, to be filled up by the judges' decisions, which I think is very unfortunate for the judges, at all events, to be called upon to become semi-legislators.

1424. I suppose it would be a very desirable thing if you could have a fixed tribunal which would put a construction once for all upon the Act, which would be followed in subsequent decisions?

Of course that is obvious.

1425. I do not put it to you as a thing doubtful at all?

I think in my idea one of the most difficult questions is in dealing with this Ulster tenant-right custom, which is left most at sea. There are some points of the compass pointed out as regards the sections upon disturbance applicable to other parts of Ireland, such as the question of the increase of his rent by the landlord; but how this tenant-right custom is to be exactly estimated, without taking into consideration that which, so far as I have ever read or understood, was an ingredient in the tenant-right custom, that a landlord had a right to, at all events, reasonably increase his rent, is a matter of difficulty, for it would appear to me it is very often dealt with on the principle of what some other tenant would give for it at the present rent, forgetting the landlord's right to raise his rent.

1426. Evidence of what another person would give for it may be very easily obtained in this way, by getting witnesses to say, "I should be willing to give such-and-such a sum," without any check upon it as to whether they had offered that sum before, or in any way except the mere statement that they were willing to give it?

Independent of that, I think, even supposing there was the most specific evidence, the landlord would have almost an insuperable difficulty in afterwards raising the rent at all, although he might reasonably and legitimately have a right to do so; in fact, it would appear to me, in that view of it, to have been a great penalty on good landlords, and to be no great penalty at all on very bad landlords; when I say "bad landlords," I use an expression which has become so popularised now, that one uses it probably when you ought not; I mean landlords who are rather exacting in their rights. With the landlord who had raised his rent to the highest penny very little would be given for the tenant-right, because of the high rent; but in the case of a landlord who had not raised the rent, an immense sum is given for the tenant-right; that formerly was given under the expectation that the landlord, being a good sort of man, would not raise his rent, and the incoming tenant bought his chance of dealing with the benevolent landlord; but now he buys a rigid right which is, in my opinion, altogether against the interest of the good landlord.

1427. Viscount *Lifford*.] Even if the good landlord wishes to take the power into his own hands, he has to pay the penalty of having a largely increased tenant-right for having let his land at so low a rate?

Distinctly;

Distinctly ; whereas the man who was exacting is under no great penalty at all, and that ingredient of the right to increase the rent by the landlord does not appear to me to be prominently brought into notice in any of the cases which I alluded to. It appears to me to be almost taken for granted, as if he had not the right to increase the rent at all.

Mr.
Justice Morris.
24th June 1872.

1428. Lord *Charlemont*.] Taking the tenant-right custom of the north, do you not understand that there are rights pertaining to the landlord as well as to the tenant. We have had cases before us about tenants refusing, since the passing of this Act, to admit the usual rights of shooting, and so forth ; but do you not believe it was an understood thing that the rights of the tenant and the landlord are a matter of mutual understanding over the estate, or country, or district ?

I do distinctly, and that is one of the difficulties which have arisen from the change of that which was only an allowance, at the will of the landlord, into a rigid right. Accordingly, now the landlord appears to me to be in a very practical difficulty about those rights of shooting, and of sporting, &c., on what used to be considered his own property.

1429. Then there are the questions of the turbary, and all the others things of which we have heard ?

The turbary and all those other matters as to which the landlord practically had a right, as was well known and understood between him and his tenants.

1430. Lord *Somerhill*.] Those rights that you allude to were, according to the custom of the country, not disputed until the passing of this Act ?

I do not go the length of a dispute, but I never heard of any tenant, even in the most excited times, when there might be some angry feeling existing, challenging the right, much less disputing it.

1431. It appears that the custom of the landlord is not invoked in favour of the landlord on this point, although it is against the landlord in some other points ?

That may be so, but that is a custom. You cannot enforce two inconsistent customs. There can be but one custom in point of law. It must be a custom shown to be only existing to a certain extent, but you cannot have a cross custom.

1432. You stated the custom of the country is considered good in making the landlord pay compensation either for disturbance or improvements. It is enforced in that respect, but although it has been an undisputed custom from time immemorial as to sporting and such rights, it is not held good at law to enforce such rights ?

That should be by legislation, in my opinion.

1433. That is the effect of legislation ?

It should be cured by legislation, if it be right to cure it, and the landlord's usual rights of sporting and gaming, such as exist in other parts of Ireland, should be reserved by one of the sections of this Act of Parliament ; the section purporting to protect the landlord's rights in these respects is curious legislation, it makes a landlord and his tenant get into a sort of partnership.

1434. Earl of *Belmore*.] You are of opinion that the 14th section does not apply to Ulster ?

I should say not as at present advised. I know there is a controversy as to what is called the equity section, the 18th section, which leaves everything to the court below to take a sort of general view of it. It has been discussed whether that section does apply to Ulster. I see no reason why it should not, and I see no reason why a chairman, or the court, in dealing with a tenant in Ulster ought not to hold that he was acting unreasonably by preventing his landlord going in to exercise any of those ordinary rights, but I do not at all say that I might not turn out to be very singular in that opinion.

1435. What is the reason why you think the 14th section does not apply ?
It does not appear to me to have any connection with the Ulster right.

1436. Viscount *Lifford*.] You think the 9th section applies to the Ulster right : "Limitation as to disturbance in holding" ?

I would say also not. It appears to me that neither of those sections have.

Mr.
Justice Morris.
24th June 1872.

1437. Nor the one empowering landlords to build labourers' cottages, the 10th section?

I think there is an inconsistency in applying it, when under the first section, without any proviso of any sort or kind, the usages prevalent in the province of Ulster are declared to be legal and to be binding, and that is not one of the usages, I presume; at least, I suppose it was not a usage, that of building labourers' cottages.

1438. Earl of Belmore.] If it could be shown on any particular estate that the landlord had exercised from time immemorial these rights of shooting and fishing in question, then you would hold the same opinion that the 14th section did not apply?

I do not see how it could apply as regards the chairman or court giving compensation to a man who was evicted. He has a right apparently under that first section, a sort of *prima facie* right, at once to get whatever would be the amount of his tenant-right independently of any contingency.

1439. Your reason is founded upon this, that evictions in such cases are not affected by "disturbance" merely?

I think the "disturbance" is a word which was coined (for it is not a legal phrase, I believe) for the purpose of this Act of Parliament, as regards the south portion of Ireland.

1440. Viscount Lifford.] Are you aware what a flame has been lighted up in some part of the north of Ireland by finding out all these matters upon which you now express so doubtful an opinion?

I am aware of it only as a citizen, and not in any judicial capacity.

1441. Do not you think there is an urgent necessity for declaring whether by amending the Act of Parliament, or by obtaining indisputable uniformity of decisions, how the law actually stands?

That is obviously so, my Lord.

1442. I think I heard you just now say it was necessary that two judges should give an appeal to the Court of Land Cases Reserved?

That is distinctly my opinion.

1443. Are you aware that there has not been a single case as yet in which the two judges have given it, but that it has always been given by one judge?

There were but two cases that came before the Land Court, and in the one (Lord Harburton's case) the appeal is by both the judges; in the other case it is only by the one judge.

1444. Are you aware that in Lord Charlemont's and Lord Leitrim's cases an appeal was refused in the one case by Chief Justice Monahan, and in the other by Judge Lawson sitting alone?

I am not aware of it.

1445. Lord Brodrick.] Do you not think it is very important that in appeals from the civil bill judges to judges of assize the cases so appealed should be decided at the earliest possible moment?

Of course speedy judgment is always best.

1446. I mean that the law should be settled in the case of that appeal, as far as it could be settled, by the judges of assize?

I think so, of course.

1447. Would it surprise you to hear that in more than one instance, cases which have come before the judge of assize have been left fifteen months without any judgment having been delivered?

Well, it is not easy to surprise me.

1448. Supposing such to be the case would it not be a very serious evil in the working of the Act?

Most distinctly, and that is one of the reasons why I have taken the liberty of suggesting that we judges of assize are not, in my opinion, an efficient tribunal for the investigation of these cases, and that there ought to be a distinct tribunal for the purpose. The habits and education and the greater attainments of many judges very often incapacitate them from really being able to attend to the drudgery of these details

1449. Viscount

1449. Viscount *Lifford*.] Are you aware of any cases in which the chairmen of quarter sessions have not considered themselves bound by the decision of a judge in similar cases?

I am not aware of any case, and I should say it would be quite contrary to the usage of the profession, for an inferior court not always to consider itself bound by the decision of the superior court. The court of inferior jurisdiction must at once submit to the court of superior jurisdiction. I can hardly conceive such a case, and therefore need scarcely add that I am not aware of it.

1450. I hold in my hand a judgment of Lord Chancellor O'Hagan, which expressly excepts town parks in tenant-right. I have also a report in the Irish "Law Times," in which Mr. Gibson, the Chairman of Donegal, is reported to have decided on the 3rd November 1871, in Lord Leitrim's case, that town parks are subject to Ulster custom?

If the fact be so, I do not withdraw any observation that I made, but very often, particularly to uninitiated persons, a decision might appear to be on a point where there may be really some distinction in the case. Mr. Gibson may not have been aware of the previous decision; he may not have considered this a town park for aught I know; there may have been a variety of reasons.

1451. You are aware of the conflicting decisions, not only between chairmen but also between judges, and again between chairmen and judges?

I am not aware of any conflicting opinions between the chairmen and the judges. I consider that any chairman should at once defer to the opinion of a judge.

1452. Lord *O'Hagan*.] Do you rely up the newspaper report of a legal decision in Ireland. We know they are often considered as being very unsafe things?

I do not like, particularly in the present times, to throw myself into a controversy with newspapers.

1453. Lord *Somerhill*.] Is not the inconvenience felt in Ireland both by the profession and by the public from their not having good and authentic reports of cases and judgments?

My Lord, we have most excellent reports of the cases in the superior courts; but of course there are no reports of the chairmen's courts; they would not, in fact, afford it.

1454. What are the reports to which you allude?

The authorised reports, analogous to the reports issued by the English Council; we have an Irish Council of Law Reports, which is analogous in every respect, except in price, to the English ones. Our reports are only three guineas, and the English are five guineas; we have also two gentlemen of the bar in each court; but of course the cases are not as numerous.

1455. *Chairman*.] They are exceedingly good reports?

They have a very efficient staff of reporters; in fact, I do not think money could procure better reporters than there are in attendance at the courts in Dublin.

1456. The judgments are revised by the judges in cases of difficulty, I presume?

Generally speaking; at all events, a judge is afforded the opportunity of revising his judgment if he so chooses; I cannot speak for every judge; but for the great majority I am aware that they do revise the reports of their judgments.

1457. Has the judgment in the case of *Holt v. Harburton* been published in the authorised reports?

I think so, but I am not quite certain.

1458. Lord *Somerhill*.] I presume any suggestions that you have made regarding tribunals of primary instance and of appeal, you would apply to all parts of Ireland, the north and the south, and in short the whole country?

Oh yes; I think it would be impossible to make different tribunals for different parts of the country, but I am quite satisfied that for a number of

Mr.
Justice *Morris*.
24th June 1872.

years the principal litigation will be in the province of Ulster; because the tenant-right custom is so vague. The chairmen are without any compass at all, to a certain extent, to know where they are going; there are very vague ideas about the rights of parties. I brought over a paper connected with what I thought a very curious case in Tipperary. It was an appeal to the last assizes, in which a man who held under a lease at 10*l.* a year rent, the lease having expired, claimed 1,030*l.* compensation. I was struck with his accuracy in making it 103 years' purchase, instead of his being satisfied with the round numbers of 100 years' purchase, which would appear to ordinary people to be quite sufficient. It was investigated before the chairman, who was a gentleman second to none, in my opinion, for ability, in these matters at all events, Mr. Rolston, who awarded 15*l.* 9*s.* I could not make it up to more than 15*l.* 7*s.*, but I did not think it worth while altering the decree for 2*s.*; that was on a question of alleged reclamations and tillages, and expressions which were apparently introduced from the English books, because they were expressions with which we are not much acquainted with in Ireland; "tillages" is a phrase which is not in use in Ireland. Then there was "unexhausted manures"; the unexhausted manure consisted of his having put some guano, which is a most exhaustive manure. He had taken as many crops as he could out of the land, and having levelled some ditches and so on, the chairman made it out in all 15*l.* 7*s.* or 15*l.* 9*s.*, I am not sure which; there was no matter of law reserved. When I got to Waterford the claimant sent me a memorial signed by two parish priests, begging that I would reserve this case for the Land Court. Of course it was altogether out of my jurisdiction, having once signed the decree in Tipperary, and being at that time three or four towns off; then in the next place there was no point of law in it at all; there was nothing but the mere question as to what you would allow. It appeared that he owed 16*l.* rent, and it struck me that the chairman was just leaving a sort of balance of a few shillings one way or the other. It was certainly a most extraordinary case, a man claiming 1,030*l.*, and after two investigations turning it into 15*l.* 9*s.* or 15*l.* 7*s.* It shows that they have rather wild ideas about their rights.

1459. Marquess of *Salisbury*.] Was that a case of eviction or notice to quit? No; I presume it was on the expiration of the lease.

1460. How did the costs go in that case?

I suppose the costs went with the tenant to the amount of the 15*l.* 9*s.*, but they would be very trifling, because the scale of costs would be very small.

1461. Has the landlord any power of paying into court so as to avoid paying costs if the judgment falls below the amount paid into court?

I think he has a power of offering out of court; but I do not know that he has a power of lodging money in court

1462. Would that save him from being mulcted in costs?

That would, as an ordinary rule. In the ordinary Civil Bill Court jurisdiction there is power to lodge money in court; and if a man does lodge money it saves him from cost analogous to the practice in the Superior Courts; but, in reality, the tenant in this case owed the landlord more rent than this amount, so that he could pay himself, for he never could have had any chance of getting either rent or costs otherwise.

1463. *Chairman*.] Who had to pay the costs?

The landlord would have had to pay the costs upon the 15*l.* 9*s.*, which would have been very small.

1464. There was rent due from the tenant to the amount of 16*l.*?

Yes, and he would have set off the one against the other.

1465. Lord *Somerhill*.] The case of Lord Harburton was in Kildare? It was in Kildare, but that was a case of registering 8,135*l.*

1466. Then it would appear the tenants out of Ulster are claiming larger compensations than the tenants in Ulster who are claiming under tenant-right?

This man in Tipperary, claimed 103 years' purchase; his rent was 10*l.* a year, and he claimed 1,030*l.* I have already called your Lordship's attention to the fact that he would not claim the round sum of 100 years' purchase.

1467. Have

1467. Have you any reason to suppose that a tenant in Ulster, under the Ulster claim, would make any such claim as that ?

Under the old custom he was obliged to deal with the landlord, and I suppose he was obliged to put it very much at what the landlord would permit.

1468. But converting the custom into law, as it has been converted by this Act, do you suppose that really in Ulster such extravagant claims are put forward ?

I have not had them put forward before myself, but I have a general idea that I have seen what struck me, from the reading of them, to be very extravagant claims. I do not know whether they were or not, and of course could not tell until they were investigated; they struck me, however, at first sight, as extravagant in proportion to the value of the land; because if a tenant is to get 30 or 40 years' purchase, and as the whole thing cannot be considered worth more than 30 or 40 years' purchase at the outside, the landlord would apparently get nothing out of it.

1469. Marquess of *Salisbury*.] I do not quite understand the question of costs; does the tenant pay any part of the landlord's costs if he has made an exaggerated claim ?

No.

1470. Do you not think, if there were some provision of the kind, tenants might make less wild claims ?

I do not know, because, generally speaking, the tenants who make these very wild claims are quite indifferent as to whether the costs are given against them or not.

1471. You mean they will not pay ?

At all events, they are of that class of life, and very often circumstances that nobody would be foolish enough to throw good money after bad, and the landlord would be satisfied in getting rid of a bad tenant at the first cost.

1472. It would, of course, be possible to stop that portion of the compensation that was adjudged for costs ?

It would be possible, but I do not think that, practically, that would much matter one way or the other. I think it would exist, but in a very few cases, and in those cases there would be nothing probably coming to the tenant.

1473. That 15 *l.* might have been detained ?

But it was detained to meet 16 *l.* of rent already due, so that you could not make more of it; he was already 11 *s.* in debt.

1474. Lord *Charlemont*.] I think we ought to know, in your allusion to the new Land Act which you have suggested, and the two judges to your circuit, how would you provide for two judges being able to do the business of all Ireland ?

I think they would, acting only as a court of original jurisdiction in all claims, say over 400 *l.* or 500 *l.*, and only hearing appeals in cases of that amount. I think they would be quite able to do it, and, nay more, I think, as a general rule, they would do it in a month each time, or a couple of months at the outside.

1475. Over all Ireland ?

Yes, distinctly; because I am sure a month of the time of the judges at the assizes at this moment is not occupied.

1476. Lord *O'Hagan*.] If they could not do it in something like that time they could not do the business of the Landed Estates Court ?

I would strengthen the Landed Estates Court by having an additional judge; there are two of them at present. Two of them could go on circuit, and one judge would remain in town and do the ordinary business while the other two judges went on circuit. They are the judges dealing with the land, and why they were overlooked in this Act of Parliament is to me incomprehensible, for they were both, from their name, from their dealing, and from their eminence, eminently suited for it; in addition to that, their very position called for it, and I should have thought, instead of putting it in persons, many of whom were not at all either suited for it or whose business it was not intended to be,

Mr.
Justice Morris.
24th June 1872.

it should have been given to that court which was so eminently qualified to deal with it.

1477. Earl of *Belmore*.] Do you think the alarm which appears to have arisen in some quarters amongst owners of land with regard to the working of this Act will have any tendency to diminish the business of the Landed Estates Court, pending further legislation?

I have heard remarks that sales are not now as readily had from the north of Ireland in the Landed Estates Court, in consequence of persons not knowing very well what they are buying; because if you buy an estate, you at all events do not know what the claims will be, if you attempt either to meddle with the rent or to resume possession of it; they may be something enormous. I have said there were 40 or 50 years' purchase claimed; that would be double the ordinary selling price, 25 years, or at all events 28 years.

1478. *Lord Steward*.] In fixing the cases to go in the first instance to the Landed Estates Judges, you would limit them to the amount of rent or the amount of the claim?

The amount of the claim, because that is the matter which would create the greatest litigation.

1479. Then this 10 *l.* rent with the 1,000 *l.* damages, would be tried by the Landed Estates Court?

It would have been tried, if the party had bought it under the circumstances, but he might find more difficulty in his attorney going to the additional expense, if he found he could only get in the Chairman's Court by a claim for 400 *l.* or 500 *l.* At present the Chairman's Court is confined for ordinary business to 40 *l.*, and many persons give up portions of their claims, in order to get cheap and ready justice. I think it would work very well, it would prevent grossly fictitious claims.

1480. Marquess of *Salisbury*.] Is not the ordinary compensation for disturbance in the south of Ireland limited to 250 *l.*?

£. 250: for disturbance; but the amount for all alleged improvements or for those tillages and unexhausted manures, &c., &c., is indefinite; and in the case which I mentioned, this claimant had no claim for disturbance, because the whole 1,030 *l.* was, I might call it, a manufactured claim out of these elements which were found in the Act of Parliament, and he thought he might as well put in a bit from every section that he saw.

1481. *Lord Steward*.] Do not you think that it is likely if a good many of these extravagant claims are met and are decided against the tenant, as this one was, that it will have the effect of diminishing the number of these claims?

That is a question of opinion. I would not form any opinion about it. Of course the fact of not yielding to extravagant claims is a better way of meeting them than yielding to them; they always become more extravagant every day, and I think the time will arrive when you will have a claim that the land should be held by the tenant at a fixed rent, and that all that the landlord is to have out of his land is just a fixed rent.

1482. Does that arise out of this Act, the Irish Land Act?

I think it gives a great incentive to it; not that I should be at all disposed to say I do not think there was a great deal of legislation necessary to the advantage of the tenant about improvements and otherwise, but I have no doubt, seeing that this was got by pressure, that they would think that there could be a little more to be obtained by a little more pressure.

1483. Those views have not in any way arisen in consequence of any decisions given under this Land Act?

I do not attribute them to any decisions; the views existed before the Land Act passed. It is a matter of history that there was a considerable agitation in Ireland for the very object, namely, that the tenant should hold at a valuation, the rent not to be altered. That was largely supported, of course, by those whom it would benefit, and was largely opposed by those whom it would not benefit.

1484. Viscount

1484. Viscount *Lifford*.] Do not you think it would be a matter of economy to adopt such a plan as you have suggested, increasing the number of judges, and making unnecessary a mooted increase of the salaries of the chairmen of quarter sessions to the amount of 10,000*l.*?

Mr.
Justice *Morris*.
24th June 1872.

I never like offering opinions upon the salaries of any other individuals.

1485. It would be cheaper to pay another judge 4,000 *l.* a year, than to increase the salaries of these gentlemen 10,000*l.*?

The salary of the judge would not be so much as 4,000*l.*; the salary of the judges of the Landed Estates Court is only 3,000*l.*

1486. The 3,000*l.* would be cheaper than 10,000*l.*?

I think there ought to be some increase to the chairmen, even for the limited business that I would leave to them. I think the whole system of the chairmen ought to be altered. I am very much opposed to their being allowed to practise at the Bar; I think it is inconsistent that the very gentlemen who have been arguing this case before me should be deciding it the week after, which is the very fact in the case that I have mentioned, where the claim of 1,030*l.* was made. My recollection is that a most eminent and valuable chairman was counsel in the case. Now, it is a most unpleasant position to place any one in, to have to advocate extreme doctrines as an advocate one day, and to decide them the next as a judge. I therefore think they ought not to be allowed to practise at all. I think they ought to be put on a new footing. And the gradations they have of first and second and third class are very arbitrary ones in many instances. The promotions in these different classes open a good deal of heart-burning amongst themselves, very naturally. A man that is fit to be a third-class chairman is fit to be a first-class chairman, for it only means that he has just to do the same thing, but a little more of it. He does not know, therefore, why he is not made a first-class chairman. It is always considered a matter of political influence, the promotion from 600*l.* a year to 1,000*l.*, which is a very substantial increase.

1487. Earl of *Kimberley*.] Would it be desirable to re-divide Ireland, to have a smaller number of chairmen, with higher pay, and not allowed to practise?

I have not made up my mind as to whether that would be the better way, or whether it would be best to leave it as it is with some increase of pay. I think certainly some of the smaller counties might be consolidated.

1488. Of course you would be of opinion that if the pay and position is to be equalised as far as possible, the amount of the work should be equalised too?

Distinctly I am not opposed to this gradation, but I am opposed to the principle upon which it works, which is no principle at all, and that I say without any fear of contradiction. It is not the principle of seniority. It is not any principle except the principle of interest.

1489. I think we understood you to say that you were not opposed in principle to the gradation, but you were opposed to the manner in which that gradation was settled?

I am.

1490. In short, I suppose I should rightly express your opinion by saying you were opposed to a system of arbitrary selection of the persons to be promoted from one chairmanship to another?

Your Lordship quite expresses my view.

1491. Marquess of *Salisbury*.] Do you wish to substitute any other principle for that of selection?

I should substitute the principle of seniority.

1492. Then would not you get the oldest man to do the hardest work?

If he was unable to do the work, he could not hold the office. He must be fit to remain as one of the chairmen, or he ought to retire.

1493. Lord *Somerhill*.] Have you heard that they anticipate considerable additions to their business, from changes anticipated in the bankruptcy and insolvency law?

(136.)

x 4

I have

Mr.
Justice *Morris*.
24th June 1872.

I have not heard that. There are always changes contemplated, but they are very far off from realisation very often. Parliament has been contemplating great changes in the law in general for the last five or six years; the whole system of judicial judicature has been under discussion, but the change does not appear to be any nearer.

1494. You do not apprehend that there would be any alteration throwing such duties upon them as to prevent their attending to these land cases?

I do not, because my project would be that they should not practise. I think the effect of practising, particularly now that the land business is put upon them, is putting them in rather an invidious position. There is so much of general policy mixed up with this Land Act, that, in a country in which suspicions attach so much to everybody and everything, it leaves them more open to unjustifiable suspicions, if I might be allowed to give my opinion.

Mr. JUSTICE FITZGERALD, called in; and Examined.

Mr.
Justice *Fitzgerald*.

1495. *Chairman.*] You would gather from the inquiries that have been made of Mr. Justice Morris what is the nature of the information that we desire to have from you as to the working of the Land Act?

I came into the room as Judge Morris was making his statement about the Court of Appeal, overturning the present Court, and transferring the jurisdiction to the Court of Appeal in Chancery. I did not hear the earlier part of Mr. Justice Morris's statement.

1496. Our inquiry was directed, first of all, to the consideration of the primary tribunal for the determination of these cases, consisting of the chairmen. The question is, first of all, in your judgment, has that proved to be a satisfactory tribunal?

I hope your Lordship will excuse me for answering anything upon this Act with great hesitation, from the absence of any peculiar knowledge or experience. I am quite willing, as far as my experience has gone, to give the Committee the benefit of it. My general impression is, that the present system, as far as you can judge from the very limited trial it has had, has worked fairly and moderately. Your Lordship now alludes to the primary tribunal, the chairmen. I have heard that there have been in some cases conflicting and unsatisfactory decisions; but, taking it as a whole, the general impression conveyed to my mind has been it has worked fairly, moderately, and satisfactorily. There was a good deal of excitement and considerable alarm when this Act of Parliament became law. We are little more than a year and a half from the time, and only a year and a half since this Act came into actual operation. My general impression now is, that that alarm and excitement is subsiding, that the tenantry are beginning to feel satisfied and secure, notwithstanding the advice they got to the contrary. They were advised originally to treat the Act as a sham, and that no real benefits were conferred upon them, and that it would work not for but against them. On the other hand, I think that a great deal of the alarm amongst landlords, I am not now speaking particularly of Ulster, but throughout the country at large, which did exist, has subsided, and is daily subsiding. My experience as to the provinces of Ulster has been very limited; my practice at the bar was on the Munster circuit, and my experience of Ulster has been almost entirely since I became a judge, twelve years ago. I have been, perhaps, eight or nine times, a judge of assize on either the north-west or the north-east, and any little experience I have had of the Ulster tenant-right arises in that way; I had some before, and I have had some since the Act.

1497. Of course, your attention has been turned to the Act. You will be able to tell us whether there are not difficult and perplexing questions that arise upon its construction?

Very difficult questions upon its construction as matter of law, and still more difficult questions in fact, requiring a good deal of common sense to determine. I lock upon it that the great difficulties in the administration of the Act are the questions of fact.

1498. Of course there are very likely to be conflicting decisions amongst so many judges who are sitting independently of each other, with no certain principles of law laid down for their guidance?

Mr.
Justice Fitzgerald.
24th June 1872.

I confess I expected a good deal more conflict of decision on matters of fact and on matters of law than have reached my ears; and as to the working of the system generally, I may illustrate it in this way. If your Lordships look to the Act, and the rules laid down by the judges, you will find there is no restriction on the right of appeal from the primary tribunal to the judges of assize. Either party appealing has to give a notice of appeal. He has to lodge that notice with the clerk of the peace, and then his appeal is perfect. There have been comparatively few appeals to the judges of assize, and I regard that as a test. I have gone three circuits since; the Munster circuit, which is our largest, the Connaught circuit, and the north-east; these are the three circuits that I have been since the Act has been in force. In Munster there was but one land appeal, and that to a very small amount. On the last Connaught circuit there was but one land appeal. I reversed the decision. The chairman had dismissed the case. I differed with him in point of law, and gave the tenant a decree, but I think the sum was only 8*l.* In the north-east circuit I had four or five cases, one of considerable magnitude. It was a case in which Lord Antrim was the appellant, with reference to a farm of something like 1,000 acres altogether; the sum claimed was considerable. I heard that appeal, and it occupied one day and a half. I differed on some questions of law with the chairman, and the course I adopted, which I think is the course a judge ought to adopt, is this: I consulted with my colleague, Mr. Baron Deasy, and he agreed with me in point of law; but we both agreed that as the Act was new, and it was desirable to fix a certain rule as to any questions that were likely to arise, that a case should be reserved, and accordingly I reserved the case for the Land Court. But about 10 days afterwards I received an intimation from Lord Antrim's solicitor that he abandoned the right, and would not go further. The other cases I had were of a small amount. In one only was there an application to reserve, which I refused, on two grounds; first, that I was perfectly clear upon the question of law I was deciding; and secondly, the amount was so small, the whole would have been about 10*l.*, and I think it would be a great hardship upon the landlord to bring him by a reserved case to the Superior Court, where the costs might be some 50*l.* or 60*l.*, with a pauper tenant, upon a question which would ultimately not involve 10*l.* or 20*l.*, especially as it was avowed in court that there was standing at the tenant's back a tenant club to provide him with the means of fighting, but not with the means of paying; that is, he was not able to pay costs, but if he had succeeded, he would have mulcted the landlord in very large costs.

1499. Is Lord Antrim's case the only case in which you were asked to reserve?

I refused in one, but I reserved it in Lord Antrim's.

1500. It is suggested that it is not desirable that there should be an appeal to the going justices of assize, that it is inconvenient, because they have their work to do on circuit, and they cannot provide for this land business, they cannot arrange their circuit in the way that is necessary beforehand?

I should say, in reference to that, that the judges of assize ought to make some inquiry beforehand what the land appeals are to be; they have an opportunity of knowing; they can cause inquiry to be made, and they ought to inquire beforehand, and allocate the time accordingly in every case. I think there is such a disposition amongst the judges; and certainly when we met to arrange the rules for carrying this Land Act into operation, there was an understanding amongst the judges that a time should be allotted for the hearing of the land appeals, and that they should not be hurried.

1501. We have heard that there is no notice given of the intention to appeal, but when the judge goes into the town then the land case is put into the list, and that the first intimation to him of their being any of these appeals is when he goes into the assize town?

That would not be quite accurate; for instance, we have just now settled our circuits. We can easily, by inquiry from the clerk of the peace, and through

Mr.
Justice Fitzgerald.
24th June 1872.

members of the bar, ascertain whether there are any land cases. Some may of course come in afterwards, but such cases are very rare.

1502. Then you would not know whether they were appeal cases or not?

You would know the number of land cases. Notice of appeal must be given to the clerk of the peace within a week after hearing, under the judges' rules. Of course there is no notice given to the judge himself, but he can get full information from the clerk of the peace.

1503. Now, upon these difficult questions which arise, is it your opinion that the 33 chairmen of sessions are a good and satisfactory tribunal for deciding them? It must give rise to conflicting decisions?

It would be desirable that the number of judges should be less than 33, but dealing with them generally, I think the procedure supplies the remedy. I have pointed out that there is an appeal without any difficulty, as to giving security or otherwise, and the expense of the appeal is not considerable. I have brought with me a new schedule of fees. We originally settled a schedule of fees to be recovered either by the landlord or the tenant, and we found it too low. We have now settled an enlarged scale, which has just come into operation, and the whole cost of an appeal, if the sum recovered by the tenant does not exceed 50 *l.*, would be about three guineas and a half: we will suppose it to be a very large claim, 10,000 *l.*, and that he recovers anything above 300 *l.*, the costs cannot exceed 12 guineas, so that the expense of the appeal is very moderate. It is not proper to call the appeal from the primary tribunal an "appeal;" it is a rehearing of the case; and supposing upon a rehearing that the landlord or tenant is dissatisfied with the judge's view, he applies to reserve a case for the Land Court; when there is an application to reserve a case the judge should consult his colleague. I quite agree that it ought to be the act of the two. The judge ought to consult his colleague. The judge may reserve any question he pleases for the Land Court, and I do not think that is confined to questions of law. If the Committee will be good enough to look at the Act, my recollection is that any question may be reserved, and not merely a question of law. I am far from thinking that the final court of appeal is unsatisfactory, that is what is called the Land Court, the court constituted by the Act of Parliament; I should much prefer it to the Court of Appeal in Chancery, even with the addition of a common law judge. First of all, all the members of the Court of Appeal in Chancery are members of the Land Court. The quorum ought to be five, with either the Chief Justice or one of the judges of the Court of Equity. You have there judges of great general experience, and of some experience in the peculiar questions which would arise. I do not see the advantage of transferring it to the Court of Appeal in Chancery, where you might have three judges who may be wholly inexperienced in the very questions which might arise. This Land Act involves very largely the administration of the whole law of landlord and tenant. There is not a question that may arise on an ejectment on the title, or for non-payment of rent, which is not interwoven with the administration of this one Act of Parliament.

1504. Lord Somerhill.] Would you give a right of appeal upon points of law?

Generally speaking that would be the sound rule, that is, to allow an appeal without the discretion of a judge; but I confess I would be averse to allowing it under this Act; parties would not litigate on equal terms. The tenant in almost every case would appeal; in the majority of cases he would not be able to pay costs, he would very likely have some one behind who would supply him with the means of fighting the landlord "on velvet," as it is termed, that is, if he is beaten he does not pay costs, but if he succeeds he gets damages and costs. I think it would be an unequal conflict between the two to give the appeal without a limit. I think when you go to the third court, that is, reserving a case for the Land Court, which is an expensive process, for you have then to take it to Dublin, and the expense of a reserved case may be very considerable, I should be very unwilling to give the tenant an unfettered right to embarrass his landlord by appealing, in every case in which he was beaten, to the Land Court. There is no restriction on the right of appeal to the judges of assize.

1505. As the law now stands, the landlord is debarred, as well as the tenant?

He is debarred from a reserved case if the two judges think there is nothing to reserve.

Mr.
Justice Fitzgerald.
24th June 1872.

1506. Viscount *Lifford*.] Has not it been usually one judge who has decided that matter?

No. Judge Morris has mentioned one case, and quite correctly, when the point was reserved by one judge. And but for the death of the party, in consequence of which the case was not heard, we should have had to consider whether that case had been properly reserved, and we might have come to the opinion that it was not properly reserved.

1507. In the cases mentioned by Lord Lifford and Lord Charlemont, the Judge Lawson in one case, and Chief Justice Monaghan in the other, refused to allow the appeal, though sitting alone?

I am not at all aware of any particulars of either of these cases, I could only say it would not be my practice. If I was asked to reserve a case I would consult my colleague.

1508. Earl of *Kimberley*.] If the judges differ upon the question whether it should be reserved or not, what would be the course adopted?

I should apprehend, as a matter of course, they would reserve it.

1509. Lord *Somerhill*.] In the case of Lord Antrim, was there a case of definition of domain?

There was.

1510. Therefore there was no question of law reserved; it was a question of fact?

It was a mixed question of law and fact as to what was domain, and what was domain within the meaning of the Act of Parliament. The chairman thought it should be domain from time immemorial. I adopted the contrary opinion. I thought even a new man might create a domain.

1511. Do you consider there is now a satisfactory definition of the rules by a large majority of the chairmen?

I paid the greatest attention to the case, and with the entire concurrence of my colleague ruled the points, and I gave a reserved case, and Lord Antrim declined it. We can do no more than that.

1512. Earl of *Belmore*.] Did the question in that case turn upon whether the tenant had broken up the land?

There was almost every question in Lord Antrim's case, questions of manures, of rotation of crops; almost every question arose in it. I do not recollect whether there was one as to the improper breaking up of the lands.

1513. You settled it against Lord Antrim?

The decree was against Lord Antrim; the claim was a large one; I think it eventuated in a decree against him for 170 *l.*; but you must bear in mind, in that particular case the tenant had become a tenant of Lord Antrim, paying, with his assent, the sum of 400 *l.* or 500 *l.* to the outgoing tenant, on a long lease subject to be determined every seven years. Lord Antrim determined the lease by his own act; he wanted to take the property again into his own hands.

1514. There were peculiar circumstances attending that case which could not attend an ordinary temporary letting of domain lands, even though the letting might have lasted over 10 or 20 years?

The letting had only lasted seven years.

1515. Money had been paid?

I think it was something under 200 *l.*, possibly 170 *l.* against Lord Antrim.

1516. Earl of *Bandon*.] Did the question of tenant-right come into that decision?

No, not in that case.

1517. I suppose you have come across some very extravagant claims that have been made by tenants?

(136.)

Mr.
Justice Fitzgerald.
24th June 1872.

I fully expected under this Act to find a great number of extravagant claims, and there have been, I believe, a number of extravagant claims; it is the province of the judges of the primary Courts, or the judges of Courts of Appeal, or of the Land Court afterwards, to keep these within proper limits, and my own impression is they have been successful in doing so.

1518. Lord *Charlemont*.] How would it be possible for any proprietor to make a domain for himself under the construction of this Act. There is the question of the Harberton estates now pending; there is no domain upon it; how would it be possible for the owner of an estate to form that domain without, as you say, building a wall all round it?

In reference to that the same difficulty would occur, whether there was a tenant-right or not.

1519. How are you to constitute and make legal a domain?

Again, upon that, save so far as I have decided the question in Lord Antrim's case, I decline, respectfully, to answer, because it may come before me to be adjudicated upon. My decision in that case is in print.

1520. Lord *Brodrick*.] In respect to the effect of the Act in cases of insolvency, I have a case before my mind, not a suppositious one. Supposing an eviction for non-payment of rent to be pending, and the sheriff at the suit of the creditors of the tenant to seize his goods, and to proceed to sell his interests in a farm let from year to year in the open market. The landlord at the same time announced that the sale took place without his consent. The purchaser at that auction would stand under the Act precisely in the same shoes as the previous tenant?

That may be so; the landlord could not interfere. The sheriff has the right under the *feri facias* to sell whatever interest the tenant has, and as he had it.

1521. Prior, I presume, to the passing of the Act the landlord would at once have served the purchaser with notice to quit?

And he can do so still.

1522. Supposing the purchaser to be a bad character, do you think he would serve him with notice to quit provided he could scrape together the money to pay the rent. He can only serve him with notice to quit, with a penalty of compensation for disturbance hanging over him?

The landlord's position in that case is not in the slightest degree altered by the Act of Parliament, save so far as it may give, I offer no opinion upon that, the purchaser under the sheriff a claim to compensation if he is put out. That is a question that may arise; but the rights of the landlord to turn out the tenant are in no way interfered with.

1523. Practically, the landlord would have no means of preventing this farm being occupied by this disreputable tenant by serving him with notice to quit, and incurring all the penalties of the Act?

He had none before, he had no way of preventing the sheriff selling to an improper person, save that when that person got into possession he might serve a notice to quit.

1524. *Chairman*.] Where there is no provision against alienation he might sell whatever the value of the interest he had might be?

Yes; and I apprehend the ordinary provision against alienation would not prevent a sale by a sheriff; it would be an alienation by an act of law.

1525. Lord *Brodrick*.] What would be the result, supposing it was a partial sale, and the property was sold field by field; is there anything to prevent that?

I do not think the sheriff could do that, sell field by field. The only course he can adopt is, he puts up for sale the tenant's interest in the thing, whatever it is, and he leaves the purchaser to get into possession as best he can. He does not guarantee anything, but only says, I put up for sale the tenant's interest, if any.

1526. *Chairman*.] The sheriff is to sell the interest of the tenant. He cannot

not sell it by piecemeal; the interest of the tenant is in the whole of the land?

And he leaves the purchaser to get in as best he can.

1527. Lord *Charlemont*.] So that there is no difference now from what there was previous to the passing of the Act?

This Act makes no difference in the particular instance at all, subject to the question whether the sheriff's purchaser may claim compensation if afterwards put out.

1528. It appears that the difference is, the objectionable tenant having come into possession cannot be removed by the landlord, except by the landlord paying for the disturbance or compensation, or whatever it is called; but that did not obtain before?

All I can say as to that is that when a claim for compensation under such circumstances arises we will decide it.

1529. Lord *Steward*.] You do not mean to say he could only get out of payment of a claim for disturbance by having it submitted to the decision of the chairman as to whether he was entitled to compensation or not?

If the landlord disputes the claim, and does not choose to yield to it, the only mode of ascertaining it is by going before the chairman.

1530. Lord *Charlemont* put the case that the landlord would be bound to pay the claim for disturbance; but he would only be bound to pay the claim for disturbance if the chairman decided that the purchaser had a fair claim for disturbance?

And then subject to the landlord's appeal.

1531. Lord *O'Hagan*.] I should like to ask your opinion on two or three suggestions which have been made. As I understand, you think the existing system of the primary court as a whole satisfactory; that the chairmen are a fair tribunal, and have worked satisfactorily. As I understand, there have been three alternatives suggested. One suggested by Mr. Justice Morris is the Landed Estates Court; another suggestion is that there should be new judges appointed of the same rank as the judges of the superior courts, but *ad hoc* for this purpose, and that they should go through Ireland, and as judges of first instance hear these cases; and the third suggestion is that the chairmen should continue to be the tribunal; but that instead of having each chairman to constitute a court, there should be three chairmen, and co-terminous counties should meet together, and so help each other. Can you tell us what you think of these suggestions, beginning with the Landed Estates Court?

That is as to the court of appeal.

1532. What Mr. Justice Morris suggested to-day in your hearing, that there should be an additional judge in the Landed Estates Court, that it should constitute a court of three, and that two of those judges should go through Ireland and hear the cases in one capacity as judges of appeal, and in another capacity as judges of first instance; do you think that would work satisfactorily?

Such a proposition as that, would not meet with my approval for many reasons; first of all, I think that there is great danger in creating now a special tribunal. Our experience of those has not been very satisfactory of special tribunals constituted to carry out a particular Act of Parliament. There is always more or less a doubt or suspicion about the appointment. Now, for instance, we all recollect that in the Encumbered Estates Act, passed in 1849, a special tribunal was appointed to carry that into operation. No doubt you had judges of the highest eminence; but yet they seemed to consider that they were to carry out with an iron hand the policy of the Act of Parliament; and they did so we know, with how much injury to individuals, when a little delay might have been the means of saving encumbered proprietors and saving their estates; they were very sold out. That was supposed to be the policy of the Act of Parliament, and that policy was carried into effect for many years. I am not speaking of the Landed Estates Court, which is now an established and settled tribunal. We have had other experiences of special tribunals, that I confess I am not very much inclined to adopt them. For instance, the Fishery Commission; that carried out the policy of an Act of

Mr.
Justice Fitzgerald.
24th June 1872.

Parliament with a very strong hand, and there was an additional consideration in appointing a new tribunal which is not unimportant. This Act is one of great difficulty to administer in law, and in fact. If you create this new tribunal, I think one judge would by no means answer; you should have two or three, or perhaps four, additional judges, ambulatory judges, going round to hear the appeals in particular instances, and as primary judges in others; but where are they to go? Are they to go, like the chairmen, to every quarter sessions town to sit in the neighbourhood. What legal assistance will landlord and tenant have? In the Quarter Sessions Court they have assistance, for there are a number of professional men, attorneys, men of great intelligence, and sometimes members of the Bar, who make it their business to attend quarter sessions, and are there to be found for any ordinary case, and are ready to conduct a land case upon ordinary payment; but, if you create a special tribunal, you will have neither a local bar of attorneys or members of the Bar, and you must employ them specially and at a very considerable cost. There is another reason that strikes me as adverse to this special tribunal. I made an observation before, that the administration of the general law of landlord and tenant is inseparably interwoven with every part of this Land Act. For instance, the administration of the Landlord and Tenant Act of 1860, which did a great deal for the landlords in saving them expense, in simplifying procedure, and in simplifying the relations between landlord and tenant; a great part of that is interwoven with this Act; and as between the landlord and tenant, in 19 cases out of 20, the administration of the law is with the chairmen. I will show you how it acts at once by a particular provision of this Act. If there is a claim for compensation which the tenant is in a position to establish, and the landlord is proceeding to evict him, he ought to be protected until his compensation is paid; and the mode in which it is practically done now by a prudent chairman is, that he has the two cases before him, the claim for compensation and the landlord's ejectment. The tenant may or may not have a good defence, but the chairman so manages that, if the ejectment is tried, he stays execution until the claim for compensation is determined. If the tenant has a claim to compensation, he is entitled to be paid before he can be turned out; if he has not, then at once the landlord is entitled to a decree for possession. But it certainly would appear to me to be a great disadvantage if you had in the chairman's court an administration of the general law of landlord and tenant on the one hand, and the administration of this Land Act in another and a different tribunal. It is one of those advantages that I see in having it in the hands of the chairmen, that they are judges who are very experienced in the administration of the general law of landlord and tenant, and who have a much wider jurisdiction than is supposed. I have heard it stated that their jurisdiction is limited to 40*l.* It is no such thing. They have jurisdiction between landlord and tenant where the rent does not exceed 100*l.*, and in cases of overholding tenants and deserted tenements. They have an equitable jurisdiction too; that is, the tenant is entitled to set up any case in equity in answer to an ejectment. They have also jurisdiction in a legacy to the extent of 200*l.* But, applying myself simply to the law of landlord and tenant, I repeat that, in 19 cases out of 20, a dispute between landlord and tenant goes into the court of the chairman of the county, and not into the superior courts, before whom the questions are generally questions of title.

1533. As to special judges appointed for this purpose?

I have already partially answered that. Putting them irrespective of the Landed Estates Court, I think you should have at least four special judges, and possibly the number should be increased hereafter; my objection to the special tribunal would apply with greater force to the appointment of special judges for the purpose.

1534. With reference to the suggestion as to three chairmen combining to make a court, what do you say to that?

That I do not think it can be entertained at all; you take the chairmen from their ordinary and proper duties. You must necessarily enlarge the area very considerably where they are to act, and possibly take the parties very far away from their homes; I do not see the advantage of that; I should be entirely in favour of a suggestion by Mr. Justice Morris, that if there was an opportunity it would be advantageous to reduce the number of chairmen, by consolidating some

some of the lesser counties. That might to some extent reduce the evil pointed out; I should go further and say that it would be an improvement too if with the increased ambit of their jurisdiction they were also prohibited from practising. There are advantages in having them practising barristers; you get a better class; they do not practise in their own counties, or in anything connected with them; and the advantage of having them practising barristers is that it keeps them well up in all the law of the day, both in reading and in practising. They keep up their legal knowledge, and are more efficient; but on the whole, I quite go in favour of having somewhat the system adopted in England, that is, that the county court judge should cease to practise.

Mr.
Justice Fitzgerald.
24th June 1872.

1535. Viscount *Lifford*.] Do I understand you right that you would not make any change in the existing system except preventing the chairman from practising and giving the appeal to two judges instead of one?

If there is any change to take place in reference to the chairman, I intended to express my concurrence with Mr. Justice Morris's suggestion that you might with advantage consolidate some of the smaller counties, and that putting the chairman in a better position in reference to salary than he is at present, he might be well prohibited from practising.

1536. You would still leave the jurisdiction with the chairman?
Yes.

1537. Are you aware of the state in which the county of Donegal is now; I think you know a great deal about it?
Only as a judge of assize.

1538. You have means of very large information, I think; are you aware of the state in which that county is at present?

I have no special information on the subject.

1539. Do you know that the tenants generally refuse to allow their landlord to shoot his own game?

I have read something to that effect in one of their morning papers, but nothing more.

1540. And that the rights of turbary are attacked too?

I did not hear that until to-day, but as to the interference, I saw that in the paper. The tenants, yearly tenants, not tenants by lease but by parol, whose landlords have been from time immemorial in the habit of considering the game as theirs, and exercising the exclusive right of shooting, have refused to allow them to exercise that right. My own impression would be that the tenant would have no right whatever to interfere. I should look upon it as an implied portion of the contract of parol tenancy that the landlord had reserved to himself the right to game.

1541. Being encouraged by one or two extravagant decisions, that is the present state of the county of Donegal?

I am sorry to hear it.

1542. I think you will allow under those circumstances, it is a great object to us to get as soon as possible uniformity of decision, so as to let the tenants know what the law is?

Undoubtedly.

1543. And can we get that by 33 chairmen?

I think you will as readily in the mode I have pointed out. If your Lordship, as a landlord, complains of anything the chairman does, the appeal is open to you to the judges of assize, and from those judges upon a reserved case to the Land Court comprising all the judges. I do not know that the alteration of the tribunal would create more speed and certainty.

1544. Lord *Somerhill*.] Do you think it would be better to have a speedier alteration or explanation, or legislative decision of the law on that point before these cases of disputes regarding game come before the tribunals, for this reason, that if they are given against the landlord, and in accordance with the opinion you have expressed, if the law should be altered in that equitable sense, it may be thought it is altered simply to favour the landlords; would it not be,

Mr.
Justice *Fitzgerald*.
24th June 1872.

In your opinion, desirable, that the point should be legislated upon as speedily as possible, if it is in doubt?

I really do not see anything to legislate upon in reference to that. We are always glad when we have any declaratory legislation which saves us from the trouble of solving difficult questions, but I should apprehend, if it has been the unvarying and settled habit that the landlord should be entitled to the game, and exercised that right, and nothing was said to the contrary, it would be an implied part of the parol contract between the landlord and tenant that he should have the game just as much as if in the lease it was expressly reserved for the landlord.

1545. I hope I am correct in gathering that your opinion is that, practically, the point is not in doubt?

I am afraid I have transgressed my own rule in giving an opinion. I have not been able to protect myself.

1546. Marquess of *Salisbury*.] Do you think that there would be any danger in allowing an universal appeal to the Land Court, if you enacted that the person appealing should always find security for costs?

I think that would be a very wholesome check, but I should rather have it as it is. A tenant in a very poor case would be unable to find the securities that are necessary. I think that the present check of the discretion of the judge is a wholesome check.

1547. Has not it the effect of leaving the law still in doubt until it is taken up to the higher tribunal, and do you not think there is great evil in leaving the law in doubt longer than it is necessary, and that as soon as a legal point is seriously disputed, it had better be decided by the Supreme Court as speedily as possible?

We should agree in that. The sooner it is decided the better for the public as well as for the parties.

1548. Do you not think this veto might have the effect of impeding that wholesome process?

In my opinion it ought not. I should reserve any question I thought fairly capable of being argued.

1549. In dealing with legislation you must expect the possibility of an occasionally misguided conclusion on the part of a judge?

Certainly. A judge may refuse where there is a proper question to be argued.

1550. And the public evil would be very great if they did so?
Very considerable.

1551. Which do you think is of the greater consequence, that a public evil might be inflicted on the one hand, or that a slightly increased cost might be inflicted on either litigant on the other?

There may arise many cases in which the tenant, if he was the party seeking the appeal, would not be in a position to give the security, and therefore he would be denied his appeal, because of his poverty.

1552. But practically, are there not organisations which take care that the tenant shall be at no such disadvantage?

I have heard so. I heard so in Antrim, and I have heard so elsewhere, that there are organisations to assist the tenant.

1553. Lord *Somerhill*.] Have you heard it with reference to the county of Cork?

No.

1554. Viscount *Lifford*.] Is it not practically the case, and the condition of the landlord under the working of the Act. His tenant refuses him permission to search for minerals, and the landlord proceeds to his only remedy, the eviction of the tenant. The tenant puts in his claim under the Ulster tenant-right, and then the landlord is in this position, that he may be obliged to pay, by the first decision in that primary court, 40 years' purchase of his land, and that that may possibly be affirmed by the judge. On the other hand, that he may

may have to pay nothing, looking at the matter under the 18th clause, and having some reference to the 14th clause; but does not the landlord run the risk in taking any procedure for the purpose of protecting his game, his minerals, or his turbary before the Chairman of Quarter Sessions before whom it may first come, or the court whoever the judge may be in the second case; does not he run risk of paying as much as 40 years' purchase?

Mr.
Justice *Fitzgerald*
24th June 1872.

As to the amount of purchase, he runs the risk of having a decree against him, but that is a defect in the Act itself, and not its administration. The tenant-right had been allowed to gain so much strength before the passing of this Act in the north of Ireland, that we, coming from the south, were amazed at it. I give you my own experience of one case before the passing of this Act. I was judge of assize in County Down about eight years ago. A railway was being then formed, and the promoters took land for its formation. They had settled with the landlord for his fee-simple right, some 23 or 25 years' purchase, but the occupier's claim for compensation came before me on what we call a railway traverse, which is tried by jury in the presence of the judge, and on the opening of that case it was announced, or I otherwise should not have allowed, that the tenant's compensation was to be assessed upon the basis of tenant-right, and evidence was given accordingly, and I had the most respectable evidence given of 35 and 37 years, going as high as 37 years' purchase for the occupation, that is for the difference between the landlord's rent and what the tenant's occupation was worth. This had nothing to do with the Act. In the case in question, my recollection is that the jury gave as much as 35 years' purchase. I confess it excited my surprise, but it did not seem to excite the surprise of people in court, who were accustomed to it.

1555. My question was to refer to the different decisions given by the tribunals under the Act, whereas one gentleman will give 41 years' purchase, another one will give five, and the unfortunate landlord runs the risk, if he attempts to attack, of being mulcted according to the character and opinions of the person before whom the question comes?

No doubt that may be so; but I should assume not under exactly similar circumstances.

1556: Is it not of great importance that, as soon as possible, you should have precedents by which all these gentlemen may abide?

I think it is a great misfortune if an appeal to the Land Court has been refused in any instance in a proper case, but I must confess the cases are very few in which it has been demanded, and I have been myself surprised at the very small number of appeals from the judges of the primary courts. We expected that there would have been a great deal of business, but we have had very little. I draw from that the reasonable inference that the country is not generally dissatisfied with the working of the primary tribunals.

1557. Marquess of *Salisbury*.] Would it be possible for you to state what the case was in which you refused an appeal?

It was this: the question upon which it was asked was as to whether the occupier was the successor in title of his predecessor in occupation, and I thought he was not, and that there was no question. The facts were these: The father of the occupier had held by lease for his own life, and he died. His lease determined with his life. The landlord entered into a new contract with the son and two others on altered terms and at an increased rent. He entered into a contract with him for a year certain, and afterwards he renewed it for another year certain. He wanted the land for building ground, and he had told them so; and when he demanded and enforced possession, they made a claim for compensation, and they claimed in respect of alleged improvements on the land by the father. I held that the son was not successor as title to the father. That was a question of law, and I thought it clear, and a case that could rule no other case, that I ought not to expose the landlord where the sum in question was so very small (for it was not over 20 *l.*) to being taken to the Land Court, where the costs would very likely run up to 50 *l.*

1558.- Earl of *Belmore*.] Do you think there should be some declaratory legislation to show whether the 14th section for one does or does not apply to Ulster. Evidence has been given, differing rather from yours, as to its applicability or non-applicability to Ulster?

Mr.
Justice *Fitzgerald*.
24th June 1872.

Your Lordship puts a question which I have not considered, but if there is any strong doubt upon the Act of Parliament, that is a question in which a declaratory Act would be advisable.

1559. I believe it was given in evidence by Mr. Justice Morris this morning, that he believed it did not apply to Ulster ?

I do not offer any opinion upon that.

1560. I think your evidence is rather the other way ; assuming there is a difference of opinion, I simply ask whether you do not think it would be advisable that there should be some declaratory legislation to remove all doubt ?

I will answer that question generally, that wherever there is a solid doubt upon an Act of Parliament, it is very desirable that it should be removed by a declaratory Act.

1561. Lord *Lurgan*.] Mr. Justice Morris has said he expected there would be a great amount of litigation in future in Ulster ; I want to know whether from your experience of Ulster, you come to the same conclusion ?

I am hardly in a position to answer that ; I would expect a considerable amount, but not a great deal ; in fact, we have not had time to test this Act or its administration ; we have only had it in force a year and a half. We are considering this Act, and its administration, at a great deal too early a period. Before you proceed to alter anything so deliberately done, a much longer time ought to be given to test it by experience.

1562. Viscount *Lifford*.] It is too early to alter the Act in its principles in any way ; but you do not think it is too early to declare the intention of the Legislature ?

I do not imply that at all.

1563. Lord *Somerhill*.] Supposing in the county of Monaghan these tenants that are refusing the right to shoot to their landlords should make leases, so far as they can be called such, to other gentlemen for the right of shooting over their land, would it not be an extraordinary complication that while the Legislature was waiting to decide those cases these tenants should be giving these rights to other persons which would be entirely destroyed by legislation. If your opinion, which, I trust, is the correct one, should be followed by a declaratory Act, is there not a danger of delay in such a matter as that ?

I apprehend your Lordship's question points to the 14th section.

1564. I referred to the right of shooting as one where it appears that under the obscurity of the Act (I will so call it, if it meets with your permission, although I agree, perhaps, that it is not obscure) the tenants have taken possession of the rights of shooting, and if they are allowed to continue in possession, will there not be as great difficulty afterwards by an amendment of the law in removing the grievance created ?

It would be very difficult to remove that evil, if it exists, by any amendment of law. It is a contract between landlord and tenant.

1565. Hitherto the custom of the country implies that he has it himself ?

I venture to suggest, if it has been a continued immemorial system, letting by parol, and the landlord has always enjoyed that right, the parol letting would be construed as containing by implication the term that the landlord was to have the right.

1566. It appears that now, in spite of that custom, and that implication, which no doubt is quite correct, the tenants are forcibly and practically taking possession of the estate, depriving the landlord of the right, and giving that right to other persons ?

The course would be to eject the tenant, and have the question determined.

1567. Viscount *Lifford*.] He might come in for 41 years' purchase ?

I hope that is only in Donegal.

1568. Perhaps you have heard that they are actually letting the game in Donegal ?

I saw it casually in one of the papers ; that is the only information I have on the subject.

1569. Lord *Brodrick*.] Can the landlord get rid of a tenant of bad character, forced

forced upon him as the highest bidder at a public sale by a sheriff of an insolvent's interests in a tenancy from year to year, without disturbing him under the Act?

My reply falls short of a full answer; he can only get rid of him by notice to quit, and ejection founded upon it.

Mr.
Justice Fitzgerald.
24th June 1872.

Mr. JUSTICE BARRY, called in; and Examined.

1570. *Chairman.*] HAVE you had experience of the working of the Land Act so as to be able to express any opinion to the Committee, whether it works satisfactorily under the machinery which is provided under the Act?

Mr. Justice Barry.

Well, my Lord, personally, I have not had much experience, because I was only appointed a judge of the Queen's Bench in last January, and I have gone but one circuit, the Munster circuit, and there were but two land cases upon it. I may state what occurred with reference to those; in one case I tried it myself; I was of opinion that there was a very serious difficulty, in point of law, in the way of the tenant, and the parties withdrew, with the view of making some arrangement between themselves; I believe that ultimately the case fell through.

1571. Will you be kind enough to give us the particulars of the case?

It was a claim for disturbance, and I was of opinion that, having regard to the time the notice to quit had expired, it was not a case at all within the meaning of the Act. That question had not been raised before the assistant barrister, and I was for some time trying the case before I discovered it. The other case was tried before my colleague, Mr. Justice O'Brien, at Limerick, the question principally involving improvements. It had taken a long time before the chairman, and Judge O'Brien devoted two days and a half to it; it was a very important case; there were several questions raised, and he consulted me; we sat down together and went over the questions as best we could; I gave him my opinion, and he announced our opinion as the joint opinion of both. The parties were satisfied, and did not press to have an appeal.

1572. *Lord Somerhill.*] Were large claims put forward?

I think very considerable; it was between substantial parties; the tenant was a very substantial man, and the improvements were very considerable. So far as I can ascertain myself, I think the present machinery is working very fairly; at least I have seen no reason to induce me to come to the conclusion that it ought to be changed. I think in the main the chairmen are perfectly competent to do the work; they are perhaps quite as competent as any men who could be selected.

1573. As competent, in your judgment, to decide the nice and difficult questions that arise under this Act?

In my opinion, the questions are rather questions of fact, requiring careful consideration, patience, endurance, and common sense. I think the questions of legal difficulty arising can, and ought to be, readily and speedily adjusted by an appeal, first, to the judges of assize, and secondly, to the present Court of Land Cases Reserved. I think there ought to be no difficulty thrown in the way of the reservation of a case for the Superior Court in Dublin.

1574. *Lord O'Hagan.*] You mean that there should not be a discretion in the judge of appeal?

I think there ought to be that discretion left to the judges; but, I think, that in administering it there ought to be no difficulty in proper cases, and I am sure there would be none.

1575. You would retain the power of refusal as it exists at present in proper cases?

I would; I think the great advantages of the present system are the tribunal being local, being cheap, and there being professional assistance on the spot.

1576. *Chairman.*] You say the questions which arise have been principally questions

Mr. Justice *Barry*. questions of fact, but surely the construction of the Act of Parliament is not a question of fact, but of law ?
 24th June 1872. Certainly.

1577. And we hear that there are difficult questions arising upon the construction of the Act ?

But I added that I thought those questions could and would be speedily adjusted, and by the present machinery. Bearing upon this subject, there is a matter perhaps worth mentioning. The assistant barristers, the chairmen of the counties, are practising barristers; they meet after their sessions, and they discuss very much amongst themselves the various questions which have arisen. They sometimes reserve the questions until they have consulted their brethren, and it is very well known to the profession at large, including the judges of the Superior Courts, if there is an important question upon which a diversity of opinion arises, and that is dealt with accordingly, with proper deference to the opinion of those who may differ from the decision of the chairman.

1578. We very early obtained information from one of the chairman that the chairmen of the sessions had not communicated with one another as to the principles of the construction of the Act ?

I do not know whether they did so with reference to this particular Act, but I believe it was the practice; I always understood it to be the practice of the chairmen; of course it is not a matter that can be relied upon, because it is voluntary.

1579. Lord *O'Hagan*.] You have heard the suggestions I mentioned to Mr. Justice Fitzgerald as the alternative suggestions, with reference to the Landed Estates Court, the special judges to be appointed, or a tribunal of three chairmen; will you kindly inform the Committee what you think of those suggestions ?

As regards the Landed Estates Court judges, I confess, without in the faintest degree attempting to take one word from what I heard said in their favour, as being men of great learning, ability, and eminence, I do not think they would be at all better adapted to the discharge of this particular duty than the vast majority of the chairmen of the counties. They are very learned lawyers; they administer the law of real property, but except that land is involved in both, I do not see any very great analogy. And then the fact that the laws of ejectment between landlord and tenant, which are so much intermixed with this Act, are administered mainly by the chairmen, is most deserving of consideration. With reference to the special tribunal and special judges to be appointed, I confess I am averse to special tribunals in general. I had considerable experience of one special tribunal, the Fishery Commission. That Act of Parliament was, in my opinion, from my own observation, worked as carefully, as honestly, as ably, as any Act of Parliament ever carried into force. The judges were masters of the subject, and I thought they acted with the strictest impartiality, and desired to do justice. On the other hand, there is no denying that they were utterly distrusted. It is impossible to conceive greater dissatisfaction given by any tribunal than was given by the decisions of that tribunal.

1580. What would you say about the tribunals of three chairmen of coterminous counties meeting together, and determining these questions within a certain area ?

I do not think the advantage of it would be commensurate with the difficulty of having a bar, and I think the people of the country have a greater confidence in established tribunals, and anything special I think they do not like. I do not think the advantages of it would be sufficient to counterbalance the disadvantages.

1581. *Chairman*.] You would not have the same tribunal only; you would have three chairmen sitting upon these questions instead of one. Supposing you were to combine three of the adjoining counties, and have the three chairmen of those counties sitting to decide these questions ?

I do not see that the advantages would render it worth while to make such a change.

1582. Three would be better than one?
It will come still to the Appeal Court, consisting of a single judge.

Mr. Justice Barry.
24th June 1872.

1583. Lord *Kimberley*.] Is not it desirable in such a case as that, that it should come to the Appeal Court?

It is; therefore it is only perhaps embarrassing the Appeal Court to deal with the decision of three rather than one.

1584. Would that in your opinion embarrass the court above more than if it was from a single judge?

I think it would, even supposing that of three judges two are one way and there is one dissentient. But there is a suggestion made that would possibly meet the difficulty. I understand the great objection is as to the number of these judges lest there should be a multiplicity of conflicting decisions. That may be avoided by hereafter reducing the number of chairmen, and consolidating the number of smaller districts.

1585. Lord *Somerhill*.] Would not it be better to make the law more clear?

I quite agree in that; you will hardly get a judge who will object to having things made clear.

1586. Practically, I understand you to say that the chairmen have met and considered some points that were really very doubtful, and had come more or less to conclusions upon them?

I was under the impression that it was their practice, and that they had done it in reference to some points which had arisen under this particular Act of Parliament.

1587. *Chairman*] I understood your answer related to the general practice of the chairmen to meet together to determine questions which arise in this court, not upon this Act?

Certainly.

1588. Lord *O'Hagan*.] The ordinary practice before the Land Act was passed?

The ordinary practice; and I am aware that they did so with reference to one point that arose under this Act of Parliament, the question about the form of a notice to quit. The case came before me, and I was aware there was a difference of opinion amongst the chairmen, for whose opinion I had a very high esteem, and I accordingly reserved my decision until the matter was brought before the superior court after the assizes.

1589. *Chairman*.] Was that a question as to the alternative notice?

Yes; and the form of the alternative.

1590. Earl of *Belmore*.] I think you said just now there would be a difficulty in a court constituted of three chairmen, with regard to obtaining professional assistance; would not the solicitors who appear before a single chairman be able to appear also before three?

I am not so sure they are in attendance at the ordinary sessions.

1591. Would it not be a branch of their regular business?

I do not know; I would be very much apprehensive that it would add very much to the expense if anything is done, taking cases out of the area, so to speak, of the ordinary sessions and assizes.

1592. Lord *O'Hagan*.] Is it the fact that the jurisdiction of the county chairmen in Ireland is different as to area from the county courts' jurisdiction in England; here there are large districts including counties; there everything goes upon the county, and therefore the professional men are attached to the county, and do not go out of the county; you would alter the general system altogether by an arrangement of that description?

Yes.

1593. Earl *Kimberley*.] Are you of opinion that chairmen of counties should be prohibited from private practice?

I have thought of that, and I confess I had not arrived at a satisfactory conclusion in my own mind upon it. The advantages of having them practising
(136.) z 3 barristers

Mr. Justice Barry. barristers are very very great, in my opinion. Of course I see large advantages the other way.

24th June 1872.

1594. Lord *Somerhill*.] Is it not a serious inconvenience that a chairman may appear in one county in a land cause as an advocate, and a similar case may come before him in another county as a chairman?

That has occurred since the time the county courts were first introduced into Ireland. With reference to cases that come before them ordinarily the same thing arises; there have been cases under the Civil Bill Act, in which men have been deciding them in one county and arguing them in another.

1595. Lord *Somerhill*.] Does not that show that not only with reference to this Act, but also the other Acts, that that practice should be put down?

I am not prepared to say that any practical mischief ever arose.

1596. Earl *Kimberley*.] You have to balance between the difficulty of obtaining men of sufficient eminence and sufficiently conversant with the existing law, if you prohibit them from practice, and the advantage of having a judge separate from practice; and you have considerable difficulty in deciding between the two?

Just so.

1597. Lord *O'Hagan*.] Do not you think it rather dangerous to delegate a man to a country district where he might rust without contact with his professional brethren?

I do indeed; more than that, the fact that they are not localised in any particular district, but are like judges of assize, visiting the districts occasionally, is a great source of the confidence reposed in them by the people, of course that may be worn out afterwards.

1598. Lord *Somerhill*.] Is it not a fact that there are some chairmen in Ireland who get little or, I might say, no private practice in the Superior Courts?

That is so, but there are a large number of them in very large practice.

1599. Lord *O'Hagan*.] Are not some of the most eminent men of the Irish Bar, chairmen of counties at this moment?

Yes.

1600. Viscount *Lifford*.] Are these the most important counties?

Without having a list before me I could not very well answer that question. I am a very young judge of assize, and, therefore, I am not so familiar with the distribution of the chairmen.

1601. Is not it a fact that a lawyer of high eminence would prefer a third rate district to a first rate district, in order that he might have time to practise?

That would be very much my own view of it, but I knew an instance the other day where a very foremost member of the Bar selected a first class county.

1602. Lord *O'Hagan*.] Is not it the fact that this body of chairmen, who have existed 100 years in Ireland, have commanded, and do command, the confidence of the people as a most efficient and honourable body of men?

Most certainly.

1603. Earl of *Bandon*.] Do not you think the constant changes in some counties are very injurious; take, for instance, the West Riding of Cork, where there have been three different chairmen in six, seven, or eight years?

The West Riding of Cork is not a favourite Riding, and, therefore, every man who gets into it is as anxious as possible to get out of it.

1604. Is not the county of Cork an instance where two Ridings might be very fairly consolidated, and one judge be appointed?

I have not considered that, but I think it would be very desirable to have something done to relieve the West Riding from the disadvantages under which it labours.

1605. Viscount

1605. Viscount *Lifford*.] We have had evidence given before us that two or three different systems of law are in practice in two or three adjoining counties, owing to different decisions of judges of Civil Bill Courts; are you aware that the chairmen of the north of Ireland hold different opinions as to the area from which tenant-right should be ascertained?

Mr. Justice Barry.

24th June 1872.

I was not aware that there was a diversity of opinion upon that subject.

1606. Perhaps you are not aware that there was a difference of opinion as to the mode of ascertaining the tenant-right, whether by the custom of the estate, or by the open markets?

I was not aware of any conflict of decision on the subject. I can perfectly well understand that being a proper matter for discussion.

1607. Are you aware of different opinions amongst the chairmen at quarter sessions, as to the tenant-right upon leases?

I only heard that there was a question raised as to whether the tenant-right does attach after the expiration of a lease, which has lasted a considerable time. I never heard that there was a conflict of decision about it amongst the chairmen. In fact, I did make some inquiries as to whether there was this conflict of decisions that has been mentioned amongst the chairmen, and I confess I failed to ascertain it.

1608. Can you tell us how uniform decisions are to be attained for the purpose of informing the tenants of the landlords of the nature of their respective rights; what mode would you adopt?

I cannot fancy any tribunal that will carry it on more rapidly than the present. You have the chairman of quarter sessions, you have then an immediate uncontrolled appeal to the judge of assizes; either the landlord or the tenant can bring it before the judge of assize at the ensuing assizes at a very small expense, where the best legal assistance can be obtained on both sides. If an important question arises, I cannot fancy there being the slightest hesitation on the part of the judge or judges to reserve it for the Court of Land Cases Reserved. I cannot imagine any difficulty about it.

1609. But the whole tenor of the evidence before us until Judge Fitzgerald gave his evidence, has been that the result of the present system has been conflicting decisions?

I am aware of a conflict on one point; that was on that section that gives the Ulster tenant-right man an option of claiming in the alternative, under the general provisions of the Act, as to whether that can be done, and how it can be done; I heard of a conflict upon that subject. I understand that there is a gentleman, a member of the Bar, about publishing a number of the decisions. He has published some of them. I read all the decisions in print, and I certainly did not find anything to lead me to suppose that there was any serious conflict of decision.

1610. Earl of *Kimberley*.] I suppose you would anticipate that under an Act of this kind there would at first be a number of conflicting decisions?

Certainly.

1611. The occurrence of those conflicting decisions would by no means convince you that the court of primary jurisdiction was a bad one?

Certainly not.

1612. You would look to the appeals to correct those decisions, and to establish a proper body of precedents?

Yes.

1613. You said, some time ago, as a judge, you would of course be very glad to have the law made more clear?

Certainly.

1614. Are you of opinion that it would be possible by a statutory enactment to make the Ulster custom clear?

That is a very large question to answer; I know my impression up to this was, that it was an undertaking that was given up by everybody in despair.

Mr.
Justice Barry.
24th June 1872.

1615. Of course you are aware that the effect of the Act is to make statutory the custom, whatever it is?

Whatever it is.

1616. And do you think that anything has occurred since the passing of the Act which shows that it would be possible to have made the custom clear in the statute itself?

Nothing, within my knowledge or experience.

1617. Then do you not think that it is premature condemning tribunals because they experience the very difficulty foreseen when the Act was passed?

I confess I do, and in this sense I think a vast number of the objections that have been urged appear to be rather to the Act than to the tribunal. I do not well see that any tribunal could get over some of the, no doubt, very great difficulties connected with the Ulster tenant custom.

1618. Are not many of the objections urged rather against the Ulster custom itself, than against either the Act, or the working of it?

So far as I understand, yes; but, as I said before, having had no experience as yet of the northern circuits, and not having had the advantage of having this question discussed before me, of course I reserve my opinion very much upon that point.

1619. Viscount *Lifford*.] Do not you think the objections are more to legalising that which nobody can define?

There was great difficulty; and I am sure no person ever gave any consideration to the Act of Parliament who did not see great difficulty about it. I may say, with reference to the large sums that have been given at all times, that we in the south of Ireland have been perfectly amazed at them. We never had any conception of it at all. I remember being very much astonished when Justice Fitzgerald mentioned that case in the railway traverse. I really believed that the system of valuation, when examined, would have been found to rest upon some more tangible basis than I find it does.

Mr. JUSTICE MORRIS, re-called.

Mr.
Justice Morris.

1620. *Chairman*.] Mr. Justice Morris wishes to supplement the evidence that he has already given?

Witness.] I had intended to allude to the right of appeal as a matter that ought to be given to any party dissatisfied with the decision, and that in my opinion he ought to have that right of appeal. I omitted to allude to that as an attendant of that, that the party appealing should give security for costs, as he does in every other matter of law with which I am acquainted. In an appeal from the Civil Bill Court in an ordinary case to the judge of assize, he must give security for costs; in an appeal in civil actions in going to the Exchequer Chamber, or to the House of Lords, he must give security for costs; and I think that the party ought to have the right of appeal, but that he ought to be obliged to give security for costs, which would altogether preclude the landlord from the danger of an insolvent tenant bringing him through all the different courts without being able to pay for it. I would leave him in the hands of the first court that decided it, unless he was able to go further. I do not see why, in this matter connected with this land law, he should be placed in any better condition than he is if he has an action about goods sold or delivered, or about any other matter. I therefore think that that would guard the landlord quite sufficiently from an insolvent tenant taking him through the different courts, because he could not do it without giving security for costs, whereas, on the other hand, it would enable the landlord in his case when he wished to appeal, and was obliged to give security also, it would enable him to appeal without leaving it merely to the permission of the judge, and raising these unpleasant questions; and I know no more unpleasant question than that a judge should be asked to decide that a party

party ought not to appeal from his own decision. I think, and thought, that under the Act of Parliament, that that was open already, and when the general rules were affirmed by the judges, I was one of a minority of the judges (some of the judges agreed with me) that any party appealing should give security for costs; and the chairmen who, in the first instance, drafted the rules, were of the same opinion, for they sent in their draft of the rules for the approval of the judges, enacting that any person appealing should give security similar to that which they must give in ordinary cases. However, the majority of the judges thought otherwise, and struck it out. I felt so strongly upon that point, that I declined to sign the general orders, though I attended the meeting and took part in the debate. I think it would relieve us from all these troubles as to whether a judge allowed an appeal, or whether anybody allowed an appeal, if the appeal could be taken upon the terms of giving security for costs as in an ordinary action.

Mr.
Justice Morris.
24th June 1872.

1621. You would require something more than personal security?

Of course; I should require solvent security. His own person might be no security.

1622. Not quite that, because upon an appeal to the House of Lords there is only personal security required?

I was not aware of that, but to the Exchequer Chamber; and from the Civil Bill Court at present to the judges of assize in ordinary actions, they are obliged to enter into security for costs, and I think that would avoid any difficulty, and at the same time not allow fictitious appeals to be brought, for they would not get persons to be security for them.

1623. It was said, in the case of appeal to the House of Lords, that it ought to be a real security to prevent frivolous appeals, but there is nothing to check them now?

I suggested that it should be a real security; the committee of chairmen thought the same, but the majority of the judges, in their wisdom, thought otherwise, and it was struck out; and now everybody can appeal if he is allowed by the judge, and bring it through all the courts, and then pay you nothing if he is not a mark for it.

1624. On the other side it would frequently happen that a poor tenant would not be able to give security?

He would have the decision of the one court before which he was standing, and the same thing would arise in every other case; if he has an action for rent or ejectment against him he cannot appeal unless he gives security.

1625. Earl of Kimberley.] Would there not be some difference in this case, because it would be of peculiar importance that the question of appeal should be fairly brought before the Court of Land Cases Reserved in order to establish the precedent, and if the tenants were precluded by the question of costs from bringing their cases before the Court, it might so happen that the body of precedents would become unduly on the side of the landlord?

I do not think that would arise, because I think all solvent tenants would get security. In the next place, if it was a case of public interest it is quite clear that a number of other persons who were in common cause with the tenant would of course give security in order to carry out that which would rule a number of cases. If there was one tenant of an estate who raised a question, and there were 20 other cases raising the same question also, of course they would all come forward and give security. My great object would be that there should be an appeal without the judge having jurisdiction to stop it. And then, to meet the evil that that might lead to frivolous appeals, I would preclude them by obliging the parties to give substantial security.

1626. Viscount Lifford.] The cost might be made very small by not allowing fresh evidence on appeal, but by using the notes of the shorthand writer?

That would be a matter of detail.

Mr. JUSTICE FITZGERALD, re-called.

1627. Chairman.] Mr. Justice Fitzgerald desires to add a few words to his evidence.

(136.)

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Witness.]

Mr.
Justice Fitzgerald.
24th June 1872.

Witness.] My impression is, if this Act was to be amended at all, it would be a wise amendment to give the primary court, whatever it might be, the right in their discretion to reserve a case directly for the Land Courts, without putting it through any intermediate appeal to the judge of assize. When a difficult question arises, it would enable them more readily to have a determination of difficult questions of law. At present it must go by the rehearing to the judge of assize, and then it is the judge of assize who may reserve it for the Land Court. I think it would be wise to give the chairmen the authority, and they have it in some cognate cases; for instance, in cases of valuation, to reserve the question directly for the Court of Queen's Bench, without putting it to appeal to another tribunal.

1628. Viscount *Lifford.*] You do not object to either of the parties having the power to appeal at once?

I am very much impressed with what I heard from Mr. Justice Morris as to giving security for costs, but I see considerable difficulty in the way of the tenant, and my impression is, and it is the impression of the judges, for I was one of the majority, and a considerable majority, that they ought not to add a condition to the appeal which the Act of Parliament did not at all impose; and, in reference to analogous cases in the other courts, security is only there required for the purpose of staying execution. Any one may appeal; he only gives security when he wishes to stay execution.

1629. *Chairman.*] If he appeal directly from the chairman to the Court of Land Cases Reserved, I suppose you would not allow the appeal to take place merely upon the discretion of the chairman?

That is what I propose, to arm them with a discretion in proper cases to reserve difficult questions direct for the Land Court.

1630. Lord *O'Hagan.*] Do you apply that to questions of fact as well as of law?

In reserving the questions by the inferior tribunal, they must state the evidence. I do not contemplate a re-hearing.

Mr. HUGH LANE, called in; and Examined.

Mr. H. Lane.

1631. *Chairman.*] You are Master of the Queen's Bench?

I am, my Lord, but before I took that office I was a solicitor for many years in the county of Londonderry in large practice, and also a land agent, and had considerable knowledge of the country.

1632. Had you much experience of the working of the Land Act?

Not by myself, but I have observed it, and know its working in the county of Londonderry in particular.

1633. Are you a landlord?

I am, and a grand juror to the county, in right of my own landed property.

1634. Can you give the Committee any information with regard to the working of the Act. Does it work satisfactorily or not with regard to the machinery?

So far as the county of Londonderry is concerned, I think it has acted satisfactorily. Of course there are objections to all new tribunals, but it has acted upon the whole, I think, satisfactorily. Some questions with regard to the Ulster tenant-right have been raised and decided, and though it appears from statements here to be difficult to define what the Ulster tenant-right is, in that county we have been able to deal with it and define it, I think, without much difficulty.

1635. Has there been no difference of opinion in Londonderry, with regard to the Ulster tenant-right?

Oh yes; the case of *Austin v. Scott* referred to here, to-day, arose in the county of Londonderry. The questions in that case were as to whether the
tenant-

tenant-right applied to cases where leases were in existence, and whether, at the expiration of the lease, the tenant-right still remained in the tenant, which has been the universal practice in the county of Londonderry, and also whether a tenant entitled to absolute right of sale, unlimited as to price or restricted to a scale, acted upon on that estate for a number of years. I was, for 30 years, largely connected with property, and in every case, whether there was a lease or no, it was all the same, the tenant-right always applied to it.

Mr. H. Lane.
24th June 1872.

1636. I suppose you are not able to say, of your own knowledge, whether there has been a difference of opinion on the subject of the Ulster tenant-right in other counties?

Not with regard to particular instances, nor with regard to the stated difference of opinion of chairmen, or where questions of law; but, I apprehend, with regard to the value of the Ulster tenant-right, that depends very much upon matters of fact. With regard to the county of Londonderry, the Ulster tenant-right has been that a tenant was allowed to sell to the best advantage, the landlord having a fair and reasonable veto of getting a solvent tenant and a man of good character. That has been curtailed in some cases, and that curtailment has been acted upon, where proved to having been in existence for upwards of 20 years. The chairman held, that inasmuch as that had been the usage for upwards of 20 years, it was binding on the tenant.

1637. Lord *Brodrick*.] You are confining your remarks to Ulster? To Ulster, Londonderry particularly, and part of Donegal.

1638. Viscount *Lifford*.] Does the chairman of Donegal agree with the chairman of Londonderry?

I have no means of knowing. I hear by report that he gives large sums for tenant-right, and if the tenant-right for Donegal is the same as in Londonderry, that will depend, I assume, on the evidence given before the chairman.

1639. Does he go upon different principles for ascertaining the tenant-right? In Londonderry the chairman ascertains value of tenant-right by the evidence produced on each side.

1640. Lord *O'Hagan*.] You have said that you have experience of these matters?

I have 30 years, having known it very largely in all its phases, as a practising solicitor and land agent.

1641. Viscount *Lifford*.] You are not aware of the difference of principle on which the chairmen of Derry, of Down, and Donegal, ascertain the amount of tenant-right, and the area on which they are to judge whether tenant-right exists?

I am not aware of any such difference of principle, and I cannot conceive how there can be any great difference between them; they are not to deal with the question upon any primary knowledge of their own, but upon the evidence brought before them, and the language of the Act.

1642. You agree with the chairman at Derry as to the effect of the Ulster tenant-right in leases?

Not with his decision on that point in *Austin v. Scott*. When the question was first raised in *Austin v. Scott*, Mr. Coffey, and there can be no abler or better chairman than he is, was of opinion that the covenant in the lease overruled the tenant-right, but I think he has changed his then opinion on that point, and has come to the conclusion that his first object is to ascertain what the usage was, and if the usage was, previous to the passing of the Act, to permit the tenant-right to be sold at the expiration of the lease, he assumes now, latterly, I think, that the Act of Parliament made that usage legal, and overruled the covenant.

1643. Lord *O'Hagan*.] Were you examined before Chief Justice Monahan?

I was; and I stated then that from an experience of nearly 35 years in Londonderry, the tenant-right attached to the lands, whether there was a lease or no lease.

1644. Were there many persons examined?

Mr. H. Lane.
24th June, 1872.

There was a good deal of evidence. Mr. John Barre Beresford, vice-lieutenant of the county of Londonderry, was examined, and several other proprietors and agents and tenants.

1645. With reference to this point of tenant-right?
 Yes.

1646. Were they all examined on that point?
 They were all examined on that point before Lord Chief Justice Monahan, and he was so satisfied the usage was so, that he held it did exist.

1647. Was there any evidence offered adverse to yours on that occasion on that point?
 No.

1648. All the rest sustained the evidence you had given?
 They all agreed with me; we were all of one opinion.

1649. Lord *Lurgan*.] Would you kindly tell me your ground for thinking the chairman of the county of Derry has come to a different conclusion?
 I think he has so decided himself; acting on the decision on appeal in *Austin v. Scott*.

1650. Lord *Charlemont*.] You are yourself a landlord?
 A small one.

1651. After that decision of Mr. Coffey's, which you have now mentioned to us, what inducement would it be to a landlord to give a lease at all to a tenant. What is the object of a lease?

I cannot say what the object now is; I am applying myself to questions before the passing of this Act. In *Austin v. Scott* the chairman decided the lease question one way, Chief Justice Monahan decided the other way, and I think the judge of an inferior court considers himself bound by the decision of a superior court.

1652. Lord *O'Hagan*.] Have you considered the question about this tribunal, the Civil Bill Court, whether it is a fit tribunal to try land cases?

I say with the utmost confidence, so far as the county of Londonderry is concerned, no cases can be tried more satisfactorily or better than they are by the chairman there; and if sufficient time is given for the proper working of the Act, all these differences and difficulties will, I think, be satisfactorily adjusted.

1653. Viscount *Lifford*.] Do you say that of the north of Ireland generally?
 If they are governed by legal principles, and take the evidence produced before them and give it its proper meaning, they must give satisfactory decisions.

1654. But supposing they are not governed by legal principles?
 I do not assume that.

1655. Lord *O'Hagan*.] As a matter of fact, have you formed an opinion whether that tribunal in the north of Ireland is a satisfactory tribunal?

Generally it is satisfactory. There are people that will grumble and find fault with decisions that are unfavourable to them, no matter how sound the principles are on which the decisions are founded.

1656. *Chairman*.] There is a difference between a tribunal being satisfactory and being satisfied. They are two distinct things?

Quite so. There was a question mentioned here about turbary. That question was raised in Londonderry in Lord Waterford's case; the tenants there alleged that the user they had had gave them a right to this turbary, and they called upon the judges of the Landed Estates Court to put upon the face of the rental an easement for them of turbary upon the lands that were to be sold. That is, the turbary or other denominations than they held in. They raised that question before the Landed Estates Court. The judge decided that they had no such easement, but that Lord Waterford had a right to sell the bog, independent of any such easement. It was taken to the Court of Appeal in Chancery, and the Court of Appeal affirmed the decision of the judge below, and Lord Waterford accordingly sold at much higher prices the town lands in which turbary was, inasmuch as the purchaser was able to turn that to profit and sell the turbary.

1657. Viscount

1657. Viscount *Lifford*.] You are asked whether the decisions are satisfactory to the people. I suppose landed proprietors are people as well as anybody else. Are they satisfactory to that portion of the people calling themselves landlords in the counties adjoining Londonderry?

I am not able to say so of my own personal knowledge beyond Londonderry, nor do I say all these are satisfied; there are people there who find fault without good cause, as elsewhere.

1658. I thought you knew a little of Donegal?
With regard to tenant-right, I said in Donegal.

1659. I only wanted to know whether it is satisfactory to all parties?

I am not aware that there have been any questions raised in the part of Donegal I speak of; I was merely prepared to speak with regard to the sums for which the tenants' interest in the land there sold; your Lordship knows the district of Burt, Lord Templemore's estate; I am not aware of any question being raised there under this Act of Parliament. I am also prepared to give numbers of cases where unrestricted right to sell, lease or no lease, and upon expiration of lease, all governed by the same principle, and the prices paid.

Mr. ROBERT DONNELL, called in; and Examined, as follows:

1660. *Chairman*.] WHAT are you?

I am a Barrister-at-Law; I am also Professor of Political Economy in the University of Dublin.

Mr. R. Donnell

1661. Have you any experience with regard to the working of the Land Act?

I think I may say, without any exaggeration, that I have had probably ten times as much experience as any other practitioner of the Bar in the land courts. I have been engaged professionally in more than 100 cases certainly, in six different counties of Ulster, the counties of Armagh, Antrim, Down, Tyrone, Londonderry, and Donegal, the heart of the tenant-right country.

1662. Have you found in the course of your experience on the question of the Ulster tenant-right, that any difficulties have arisen by reason of conflicting opinions on the part of chairmen?

It is necessarily a difficult question; that is sufficiently evident from the way in which the first section of the Act was passed; all questions of custom are exceedingly difficult. There are difficult questions of evidence; but every question of custom is perhaps one of the most difficult, especially of ancient custom, that can come before a court; but I must say this, that in my opinion the differences are of fact not of law; they are differences which arise from the differences in the usages of different districts. There are difficulties also arising from the way in which cases are brought into court; for instance, sometimes the landlord is very badly prepared with evidence to establish his case, and sometimes the tenant is very badly prepared; sometimes even the landlord interferes with his professional man, and will have his own way, and the consequence is that sometimes very extraordinary decisions are given, because the chairman and judge of appeal are bound to decide according to the evidence before them.

1663. Will you be good enough to explain to us what you mean by "extraordinary decisions"?

What seem extraordinary decisions I should have said; I mean to say the 41 years' purchase referred to does seem an extraordinary decision. I was engaged in that case before the chairman, and I beg to say this, that Lord Leitrim, the respondent in that case, produced no evidence to contradict the evidence of amount given by the claimant. I am also told that in the Appeal Court he produced no contradictory evidence of value there. I heard that his attorney was bound by very strict instructions of his Lordship, and had scarcely any legal discretion in the conduct of the case; at all events I may state this fact, that no contradictory evidence of value was given in my presence in the case

Mr. B. Donnell.
24th June 1872.

before the chairman, and I understand and believe that no contradictory evidence of value was given in the Appellate Court. I may say I never saw such a thing occur in any other case in which I was engaged.

1664. In the six different counties in which you have been in the habit of practising, have you found there have been conflicting decisions of the chairmen upon any questions arising under the Act, and if so, what are they?

I cannot say that there is any serious difference. There is first of all an apparent conflict in the form of claim, what is called the dual claim. That is really a distinction without a difference. It amounts to this, that Mr. Johnston hears, as it were, the two counts—the count under the custom, and the count under the general provisions of the Act on the one day, and the other chairmen put off the second count to a future sessions. It is only a question of costs, and there is no real distinction.

1665-6. Lord O'Hagan.] Do you know chairmen to exclude the second when the first has been heard?

No chairman has done so.

Chairman.] He has the power of doing it under the Act. A tenant of a holding subject to the Ulster tenant-right custom, and who claims the benefit of such custom, shall not be entitled to compensation under any other section of this Act; but a tenant of a holding subject to such custom, but not claiming under the same, shall not be barred from making a claim for compensation, with the consent of the Court, under any of the other sections.

1667. Lord O'Hagan.] Mr. Johnston has a pleading which presents the alternative aspect of the case, and failing the one, he allows the tenant to go into the other; but the chairmen of the neighbouring counties require a separate statement of the claim in one way, and then they require you on another occasion to make the claim in another way?

They all allow, as far as I am aware, the dual claim to come before them, and necessarily only one is heard at a time. They do not go into the question as to the Ulster custom and the question of disturbance and improvements together, but they all hear the Ulster custom claim first. Then Mr. Johnston, on the failure of the claimant to establish his claim under the custom, allows him to go on with the claim under the third and fourth sections immediately, whereas the other chairmen adjourn it to the next assizes. It is not two claims, but two counts of one claim. The Act and Rules distinguish between a claim and a notice of claim.

1668. Viscount Lifford.] Do any chairmen make them elect at first starting which they will proceed under?

I do not say what any chairman would do; I can only say what any chairman has done.

1669. Chairman.] Is there any appeal upon the question of the dual claim?

It has come before Mr. Justice O'Brien, and I may say in other cases, but it was so unpractical an objection that it was never entered into.

1670. Lord O'Hagan.] You know no case in which a man being obliged to elect, and, electing, has been shut out by his electing from the alternative claim?

No; and I think it would be one of the most extraordinary pieces of injustice to allow such a thing. In the first place, regarding the language of the section, your Lordship observes that the customary tenant's claims under the general provisions of the Act is to be made with the consent of the Court; that consent is not to be a blind thing; the Court must know something of the case before that consent is to be given; consent is to be reasonable. Apart from that, supposing a case did occur that a tenant, who claimed the general custom of Ulster of unlimited right to sell, failed to establish that, and that the Court found that the custom which the landlord alleged, one of, say, five years' rent, was the custom, and that the tenant's claim was dismissed; supposing he had a claim for improvements that almost amounted to his claim under the custom, would it not be a very unjust thing that the tenant in that case should not be allowed to proceed under the option with the consent of the Court? As a matter of fact, such a thing has never occurred under any chairman in Ulster.

1671. Viscount

1671. Viscount *Lifford*.] May I ask whether you were ever employed on the landlord's side?

I was employed in four or five cases; I was employed at the last sessions at Ballymena in three cases on behalf of a tenant-right landlord; he was raising the rent, and he was adjudged by the chairman of that county to be demanding an unreasonable increase. The case was most instructive. Something has been said to-day about exorbitant claims. The evidence in that case, *Thompson v. Hamilton*, on the part of the tenant was that the tenant-right compensation amounted to 350 *l.*, sworn to by a number of witnesses; on the landlord's side there was no evidence to dispute it. Several agents and landlords who were summoned refused to give evidence on the point; the only evidence of the landlord established the point, for his employed surveyor put it at 350 *l.* also, and that was the amount decreed.

Mr. R. Donnell.

24th June 1872.

1672. Lord *O'Hagan*.] You have been employed for both landlord and tenant?

I have been nearly always employed for tenants, and the reason of that is this, I believe, that I wrote a book on the Land Act, which brought me into considerable notice, especially with reference to the Ulster custom, which I had been investigating for four or five years. The tenant has the choice of counsel, and as the claims in which I have been engaged have mostly been customary claims, I have been selected. Professionally it has been a disadvantage to me, because, as a matter of fact, the high fees are paid by the landlords.

1673. Does it occur to you that the Act works fairly through the instrumentality of the courts?

I think, most fairly, most equitably. I think the chairmen are most painstaking and most anxious to find out what is the law, and to administer it fairly and strictly. I may say this also, that even in cases where I have been employed by tenants, I have had conversations with agents and others, when the court has broken up, and the general comment has been this, that they were very glad to find that these small landlords who were coming into court and disturbing the county, got something like the justice they deserved.

1674. What is the general impression as to the working of these courts in Ulster?

I believe it to be most satisfactory amongst landlords and tenants. My impression is, that though there was dissatisfaction expressed now and again, and far more frequently by tenants than by landlords, as is evidenced by the appeals, the people were satisfied on the whole. The appeals on my circuit have mostly all come from Antrim, and they have nearly all been appeals by tenants. There was some dissatisfaction in the county of Antrim, on the part of the tenants, but I am bound to say that that has gone away, for there is no more painstaking, conscientious, honest, or able judge than the chairman of that county. There was an impression that his decisions gave smaller sums than were given in the adjoining counties, and perhaps that may have been so at first, but I am bound to say now, owing to the natural working of the principle of equalisation which exists in all social matters, that that is gradually disappearing, and I believe no man could find a distinction in matters of amount in the different counties. I may say that there are distinctions which those reading newspaper reports, and not seeing the whole evidence put forward, might think were essential distinctions, but I am bound to say that to a person watching the evidence, and knowing all about the cases, they have been distinctions of fact, and just distinctions. There are some difficult points; for instance, it is a very difficult point to say how far the 18th section controls the Ulster custom; there can be no doubt that it does control it, but it may be said it only controls it so far as it would be controlled by the usage of the province, that is, the equity must be an equity under the custom that may be alleged, and the instance I would give is the denial of the right of shooting which we have heard of in Donegal; such a case has never come into court; but I have not the slightest doubt if it does that that will be held to be an equity as a matter of fact under the Ulster custom, cognisable under the 18th section, though not under the 14th.

1675. Lord *O'Hagan*.] Has there never been any question of that sort raised in any of the courts?

Never.

(136.)

Mr. R. Donnell.
24th June 1872.

1676. Either in reference to turbary or shooting?
Never in court, that I have heard

1677. Viscount *Lifford*.] You do not think the 14th clause applies to Ulster?
Certainly not.

1678. Nor the 9th or 10th?
Certainly not; but I believe the facts of the custom will be found to be very largely the same as the law of those sections.

1679. Lord *Lurgan*.] Have you any experience of the Ulster custom being concurrent with leases?

I have no practical experience. I have investigated in the best way I could the evidence given before Parliamentary Commissions, and in the Blue Books, and I say that there is not merely a preponderance, but a concurrence, of evidence as to the matter of fact that the Ulster custom obtains at the end of the lease. I have extracted the evidence of nearly 100 landlords and agents, who stated before the Devon and other Commissions that that was the matter of fact under the custom, and I have no doubt whatever that it will be found on further investigation by the chairmen that that has been the fact up to the present time.

1680. Lord *O'Hagan*.] Is there anything else you would like to suggest?

As to the suggestion that three chairmen should be joined together in order to hear special land cases, I see very grave objections to that. I think a court should have power to administer the whole matter in dispute. That is the great point recommended by the Judicature Commission. Unless these three chairmen have jurisdiction in ejectment, which is so intimately connected with the land claim, and unless they are also allowed that equity jurisdiction in Ireland which county court judges have in England, and which they are likely soon to get in Ireland, I think then to separate this question of the amount of tenant-right from those so closely connected and related, questions of ejectment and of equity jurisdiction, would be impracticable and improper, and contrary to the spirit of the recommendations of the Judicature Commission.

1681. Have you anything to say about the Landed Estates Court being the proper tribunal?

There is a great objection to any change that may be considered a change made for an object. In Ireland one of the most necessary things is to give confidence in the administration of justice. I think if it were a better tribunal than the present, the idea of disturbing the present arrangement, which has worked for so short a time, in the way proposed, would, I shall not say destroy, but would certainly shatter, very much the confidence that now obtains in the administration of the Land Act. I also think it would add greatly to the expense to have a jurisdiction such as has been proposed; two Landed Estates Court judges going special circuit for land cases: first of all, both parties would be deprived of the leading members of the Bar, who would not leave their ordinary business in Dublin in order to go the special sessions. The legal assistance would be confined to the younger members of the profession, and they would be had at much greater expense than the leading members could be had on circuit. That applies to the solicitors as well as to the Bar, and inasmuch as the tenant generally establishes his claim, that expense would fall upon the landlord principally.

[Adjourned to Wednesday, 26th June, at Eleven o'clock.

Die Veneris, 28° Junii, 1872.

LORDS PRESENT:

Marquess of SALISBURY.	Lord SOMERHILL.
Earl of BELMORE.	Lord CHARLEMONT.
Earl of BANDON.	Lord SILCHESTER.
Earl of KIMBERLEY.	Lord WENLOCK.
Earl of DARTREY.	Lord LURGAN.
Viscount LIFFORD.	Lord MEREDYTH.
LORD STEWARD.	Lord GREVILLE.
Lord DIGBY.	Lord KILDARE.
Lord BRODRICK.	Lord O'HAGAN.

THE LORD O'HAGAN IN THE CHAIR.

THE RIGHT HONOURABLE JAMES HENRY MONAHAN, LORD CHIEF JUSTICE of Her Majesty's Court of Common Pleas in Ireland, is called in; and Examined, as follows:

1682. You have had a good deal of experience in connection with the working of the Land Act in Ireland, have you not?

No, I have had very little experience of it; I have only been on one circuit since the passing of the Act on which I had any appeal under the Land Act, and on that circuit I had only two cases raising any question; and so far as I am individually concerned, I, generally speaking, confine my thoughts to what is before me, so that I really know nothing of the working of the Act, except what appeared before me in the two or three cases on that one circuit, the North-west.

1683. This Committee has mainly directed its attention, under the terms of the Reference, to the working of the Land Act, and to the question whether the present primary tribunal, viz., that of the Chairman of Quarter Sessions, is the best tribunal as regards the working of the Act; the Committee would be much obliged to your Lordship for your opinion as to whether that is the best tribunal, or whether any other should be substituted for it?

As to that I really am not competent to form an opinion; a few cases have come before me on appeal from that tribunal, precisely as the ordinary Civil Bill appeals in other cases; and in those cases which so came before me I saw nothing peculiar with which either to be satisfied or dissatisfied; the decision of the barristers, as far as they have come before me, have seemed, generally speaking, all right, and I affirmed without question the greater number of the appeals before me, there being no contest; there were two or three cases before me, involving law questions of some difficulty and importance, in which I believe I differed from the chairman, but I saw nothing in that that does not arise in other cases, and particularly in cases under a recent Act of Parliament.

1684. From your knowledge of the character (and no one knows it better) of the chairmen of Ireland, and also from your knowledge of this Act of Parliament, is it your opinion that they are competent to administer that Act of Parliament in a fair and efficient manner?

In my opinion they are perfectly competent to do so, but it is utterly impossible, if there be 35 or 36 men, that there should not occasionally be some

The Right Hon.
J. H. Monahan.

28th June 1872.

The Right Hon.
J. H. Monahan.
28th June 1872.

differences of opinion ; one man of course would be more uniform in his decisions, but 35 or 36 will have different opinions; however, they are corrected on appeal, and I see no reason whatever to doubt, that as soon as the law is settled by a little practice things will go perfectly smoothly, or at least so far as I can form an opinion.

1685. Do you form that opinion from your knowledge of the way in which they do their business generally ?

From the way in which they do their business generally, from my own knowledge of appeals in other cases, and also from the cases which have come before me on this particular Act of Parliament; I scarcely ever differed from the chairman, in point of fact; but in point of law, I differed from the chairman, from whose decision there was an appeal; I think I may say, as far as I can form an opinion, that I have no reason to doubt that the judgment which I gave has been acquiesced in.

1686. Do you think that if the law be administered by this tribunal, and appeals be had in fair cases, the general principles will soon be settled ?

Perfectly settled; Acts of Parliament, as we know, are now much more diffuse than the old Acts of Parliament were, and it is very difficult sometimes to understand them, or to know what the true construction of them is; but when the judges know the true construction, and when, upon an appeal, they decide what is the true construction, I never knew a chairman to go counter to the decision of the judge, and then the law is supposed to be settled; if there be a difficulty the judge has the power of reserving a case for the consideration of the Court of Land Cases Reserved, but that is rather a cumbersome court, and if one can do without it, so much the better.

1687. You know that in the case of an ordinary appeal to the judge of assize in the ordinary way he can make a reservation if he chooses to the Court of Land Cases Reserved; does it occur to your Lordship that any change in that respect with reference to the Appellate Tribunal would be necessary ?

Decidedly not; I think it would be monstrous, because a suitor is dissatisfied with a decision, unless there be some ground for that dissatisfaction, to send a case up to a cumbersome court, which it is difficult to get to assemble; doing so would be productive of great delay, and give no satisfaction.

1688. Then in your opinion (and no opinion is more weighty) would the ordinary tribunal of appeal, the judge of assize, be quite sufficient so far for this purpose also ?

So far as I am competent to form an opinion, the judge of assize is perfectly competent to dispose of the ordinary run of cases, and I have felt no difficulty whatever; one case, and only one, I reserved for the Court of Land Cases Reserved; and that I did really not so much, because I entertained any serious doubt myself as to how the decision ought to be, but because I thought it was a case of very frequent occurrence, and felt that my own judgment in it would probably not be considered final, and that it would be agitated in other cases; I therefore thought that in that individual case it would be right to reserve a case for the consideration of the Court of Appeal, and only in that one case did I do so

1689. The question has been raised here with reference to whether it is a right thing that the judge of assize should have discretion to reserve or not to reserve, as he pleased, or whether there should not be to either party absolute power to appeal; what is your view on that subject ?

That would be the greatest monstrosity that ever entered into the mind of man to conceive. There is no case in which the attorneys and people would not appeal, and though an appeal in the ordinary Civil Bill courts has the sanction of the oath of the attorney that there is good ground of appeal, your Lordships should know the sort of appeals which we have at assizes in ordinary cases, where the sanction of an oath is required that there is ground of appeal.

1690. Then you think that the judge of assize should have the power of reserving a question only in proper cases ?

Certainly, and I have come to that opinion because of the intimate knowledge which I have of all the judges of assize; I do not believe that there is a man on the

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the Bench who would refuse an appeal in a proper case, or even in a case where he entertained any serious doubt.

The Right Hon.
J. H. Monahan.

28th June 1872.

1691. Do you think that the existence of that discretionary power is beneficial as well to the one party as to the other; to the landlord as well as to the tenant?

I entertain no doubt of it whatever, and I think it is necessary, for this reason: that a case may arise which from its peculiarity it is advisable should be decided by a court of ultimate resort. To illustrate what I have been saying, I have brought with me a printed copy of the case which I reserved myself, which contains the question appealed from, the grounds of appeal, and everything about it. I may say as to those cases which have come before me that there were only two cases involving a question of the least importance or of the least difficulty. I rather think that there were two points in that case, one of which I would not reserve, because I thought there was nothing in it to reserve. The other is reserved because, though I myself entertained, and stated in the case, the opinion which I formed, it was a case of some little novelty and difficulty; and though if I had decided it myself I should not have had any reasonable doubt but that I should have been right in my decision, still I thought it of such general application that it was prudent to reserve it for the ultimate court.

1692. We have had the refusal to reserve in the other case stated here; but perhaps your Lordship would inform the Committee, as the matter has passed and does not now affect your judicial discretion, upon what grounds you took that course?

The only case which I am aware of, in which I refused an appeal where it was asked, was a case in which the question was, whether the Ulster Tenant Right applied to cases where the tenancy was not from year to year, but was an expired tenancy under a lease for lives or years, with the ordinary covenant to give up at the end of the term. I rather think that the attorney or the counsel pressed me to reserve that case. I thought of it for a moment, and said that I would consider it during the evening, and that I would act in the morning according to the judgment which I formed. If it is not going out of the way, I will state to your Lordships exactly what the question was, and why I came to that decision, and why I thought it would be useless to come to any other. It is the case of Austin and Scott. It is a satisfactory case to take up as explanatory of what I say. The question, as I have stated, was where there was a lease for lives or years with a covenant to quit and give up possession at the end of the term, as is the case in every lease for lives or years, the tenant-right ought, on the expiration of the lease, be applicable to such a case; because it was said that a covenant to give up at the end of the term was inconsistent with getting compensation for what you covenanted to do without compensation. That was the argument. In the first section of the Act the enactment is this: "The usages prevalent in the province of Ulster, which are known as, and in this Act intended to be included under, the denomination Ulster tenant-right custom, are hereby declared to be legal, and shall, in the case of any holding in the province of Ulster proved to be subject thereto, be enforced in manner provided by this Act." The enactment being that the usages prevalent in the province of Ulster shall be hereafter obligatory, it is a mere question of fact what are the usages heretofore prevalent in the province of Ulster, because the tenant-right custom was never legally enforceable in the province of Ulster. Notwithstanding the tenant-right and the value which was set upon it, before the passing of this Act if any landlord, in the case of a tenancy from year to year, said, "I will not be bound by it, I shall proceed by ejectment and turn you out," the tenant had no redress; he might appeal to public opinion, or the good feelings of the landlord, but he had no means whatever of staying the execution or of obtaining compensation for being turned out of the premises. Then the question is, whether there is any difference between that case and the case of a tenant who holds under a lease for years. I see none whatever in the abstract, because in the abstract every tenant who takes premises from year to year enters either into an express or implied agreement with his landlord to surrender the premises at the end of the term. It is just as binding a contract in the case of a tenant from year to year, as it is in the case of a tenant who holds for a definite term of lives or years. But if I had any doubt upon the matter in the mere abstract law, I ceased to have it upon examination of the witnesses who were before me, and who were the agents of the principal estates in the province of Ulster. One of them was a gentleman whom I happened not to know

The Right Hon.
J. H. Monahan.
 28th June 1872.

know on terms of intimacy, but whom I knew from his position, and with whom I had frequent communication, viz., Mr. Lane, the Master of the Court of Queen's Bench, who was, and had been, agent to some of the most extensive estates in the province of Ulster. He was examined as a witness, as also was my Lord Charlemont's agent, and every agent who was in court, for I investigated the matter as fully as I could; and I may mention that in those appeals, where we are sitting in court in that way, we take a little more authority upon ourselves, in calling for evidence and insisting upon evidence being given, than we should perhaps do if we were sitting at the assizes, or sitting in our own courts. Therefore I examined every witness that I could get, and every witness who was examined stated, as a matter of fact, that, to his own certain knowledge, as long as anybody could recollect anything, there was not a particle of difference, as to the usage to give compensation for the tenant-right, between cases of tenancies from year to year, and cases of leases for lives or years. In the particular case in which the question arose before me, though, when serving an adverse notice to the claim the landlord (Mr. Scott, I think) said that he disputed the claim, because, he alleged, that the custom was inconsistent with the covenants in the lease, what did that gentleman do? In the very notice disputing the claim, or rather before any dispute existed at all, he offered five years' value of the land to the tenant as the value of his tenant-right custom. I could not for one moment hesitate in forming the opinion that, therefore, in the abstract, the custom applied to the case, and that the only question was the amount of compensation to be paid. The dispute in that particular case, as to the amount of compensation, was this: the tenant put forward a claim that he was entitled to what his interest would sell for, which would be the ordinary amount. I think I stated in that case that it would amount to 250 *l.* or some such sum as that; but the landlord proved that he had established a custom or a rule on his own estate, not to allow any tenant to take more than five years' purchase, and that that rule had been in force on his estate for more than 20 years. I was of opinion that that usage for the last 20 years bound the tenant, and that all that he would be entitled to get would be the five years' purchase which was, in point of fact, what the landlord had offered to give him; but I was aware that of all the cases arising under the Act, it was the case in which there must be most dissatisfaction and most difference. I really reserved the case, not entertaining a serious doubt, nor do I now entertain a serious doubt, but that the judges, when they hear it argued, if ever they do, will decide according to my opinion, that the five years' purchase is the sum to be paid. But I thought it a matter of great importance to have that question settled; because there are several estates in which they have for a considerable period established that rule, and therefore, though my own opinion was as I stated at the time, still I thought that it was a case fit to be reserved for the consideration of the Court of Appeal.

1693. There you reserved a point with reference to the amount of compensation, and you refused to reserve a point with reference to the principle?
 Precisely.

1694. And that you did because the evidence, as I understand you, was all one way?

It was all one way. I believe I examined not only the witnesses whom they intended to examine, but every agent who was in court. I forced them to examine them, and not a single man suggested a doubt, or a question, that the right in practice (I am not talking now of legal right) applied to that case as well as to the other. "Well," said I, "that being so, I do not think that there is any law in the case at all;" and, accordingly, in some other case where, by some accident, the parties have not gone into any examination of witnesses below on a particular point, instead of deciding it I remitted it back to the barrister to ascertain what the usage of the estate was, but I am not certain whether it applied to that particular case. If I have not made myself explicit enough it will give me great satisfaction if your Lordship, or any other noble Lord, will ask me any question, which I will endeavour to answer as best I can.

1695. I wish to mention to your Lordship that there have been some alternative suggestions here as to a better system for the administration of this law, one being that the Judge of the Landed Estates Court, with the addition of
 another

another judge, might do the work for Ireland, two of the judges going circuit from time to time, and being, in fact, the land judges of the country; will you give the Committee your opinion of that suggestion?

That is not a fair question to ask me, for, as one of the judges, nothing would give me greater pleasure than to get rid of my present jurisdiction, and therefore I should have no personal objection that your Lordship should hand it over to any one else.

1696. Notwithstanding that disturbing personal motive we should still like to hear your Lordship's opinion as to whether you think that that would be a practical working system under which to manage the whole of the land business of Ireland under this Act of Parliament?

I confess that I do not know how they would do it, because I think that we going circuit have enough to do with it, and I do not see how two or three of those men will do it, or where they will do it, or whether they are to have a roving commission to go through the kingdom.

1697. The plan is, that the Court should be strengthened by an additional judge, and that two or three judges should go circuit, and dispose of the land cases?

If your Lordships approve of that I have no personal objection to it, for the reason I have mentioned; but I cannot, for the life of me, see how they would be likely to do the work better than the judges of the land in whom, at present, it is vested.

1698. The suggestion is, that the Judges of the Landed Estates Court should decide these land cases, with an appeal from them to a superior court; would that, in your opinion, be a better system than the system as worked by the chairmen of the quarter sessions?

As to that, I really never considered it, and your Lordships are just as competent, if not more competent than I, to decide it. It is a mere experiment, and I see no reason to suppose that they would do it better. I have the pleasure of knowing the Judges of the Landed Estates, who, there is no doubt, are men of considerable position, but if they were sent on a roving commission of that sort, in which the principal element would be the hearing of evidence, of which, at present, they have no experience whatever, I think that really the chairmen of counties are, to say the least of it, as competent to form an opinion on a matter of fact, because I think that every case which comes before the Court will depend altogether upon matters of fact. I think that there is very little law in any of the cases; there are a few questions which arise, but when once they are settled there is an end to them.

1699. Another suggestion was, that there should be two judges appointed *ad hoc* of the same grade with the superior judges, and that they should be deputed to the doing of this business; do you think that they would do it better than the chairmen with the control of the courts of appeal?

That is a matter upon which I am not very competent to form an opinion. I must say that, no matter what opinion the chairmen or, as we used to call them, assistant barristers, form, I never found any unwillingness on their part to conform to the decisions of the Judges of Appeal; and I confess I do not see that there would be any great advantage in the change. At the same time, from the very nature of the thing, I think it is probable that any two permanent men might produce greater uniformity, because if there be 28 or 29 men of perhaps different attainments, there may be a diversity of decision to some extent until corrected; but when it is corrected, and when the practice is settled, I see no reason to doubt that the present men will do the work satisfactorily. Another thing is, that I think that the present men, who are each settled in a county, become acquainted with the character of the witnesses who come before them, and I know that in the ordinary Civil Bill appeals I have scarcely ever found any reason to doubt the propriety of the decision of the chairmen on matters of fact. Sometimes I do take it on myself to reverse some of them on mere points of law; I am not talking of land cases, but of ordinary cases. I think, as a general rule, that they are more competent to ascertain the facts, perhaps, than I am as a judge of assize; but in mere abstract points of law, I consider that my experience might enable me to have less hesitation in differing from them.

The Right Hon.
J. H. Monahan.

28th June 1872.

The Right Hon.
J. H. Monahan.
28th June 1872.

1700. It has been said that it would be better to have a court constituted of the chairmen of three coterminous counties having a certain ambit of jurisdiction, and meeting together for deciding those cases; would you approve of that suggestion?

That is to go a little circuit. It is hard enough for a man sometimes to agree with himself, but for one to agree with two others on disputed matters of fact would be still more difficult.

1701. Then I do not understand your Lordship as much approving of that suggestion?

I think that of all the wild propositions which I have heard, that is the worst. I sometimes find great difficulty if I have a case before me, in agreeing with myself on a matter of fact and making up my mind as to what I should do; but if I had two others it would be still more difficult.

1702. Lord *Somerhill*.] Among the cases of which you have had cognisance under this Act, I presume some have been of a nature in which the original claim of the tenant was very much reduced, and in which the judgment was given so far in favour of the landlord; the claim being admitted, but the amount being reduced; have such cases been before your Lordship?

Scarcely at all; I only went one circuit in the north of Ireland, that was this time 12 months, the summer circuit. It was only in two counties that there were any appeals at all before myself individually, and there was really in those cases no substantial difference as to amount. I have a slight recollection of one pauper case, in which the rent was something very small, and in which the compensation was, I think, 10 *l.* or 12 *l.*; and I thought that the tenant was entitled to scarcely any compensation. That was the only case in which I differed from the chairman; and in that particular case, I suggested to the parties, in fact, voluntarily, Give the man a couple of pounds to get rid of him, or something of the sort.

1703. In that case, or in any other which may have come under your notice, did the landlord get any costs from the tenant on account of the extravagance of the claim?

That particular case is the only one of which I have any recollection; and in that particular case it was no use giving costs. You could not get costs from a pauper, and it was ultimately settled by arrangement. In another case, the precise facts of which I do not recollect, of Sir John Stewart, in some one of the northern counties, there was some dispute between him and one of the tenants. I have the pleasure of knowing Sir John Stewart, and also a very respectable man who is his agent, and when I heard the case opened, and ascertained the facts, I knew that I could be of more use to the parties by getting them to settle the case, and to allow the tenant to remain on reasonable terms. Both Sir John Stewart and his agent were obliged to me for my interference, and therefore it became unnecessary to consider what ultimate decision I would have made; but I can only say, that if a case came before me in which there was an unreasonable claim by the tenant, and the landlord had offered a reasonable sum, or what I considered reasonable, no doubt I would give the costs to the landlord, and I would deduct them from the sum awarded to the tenant.

1704. Viscount *Lifford*.] Your Lordship used two expressions, "Might promote uniformity," and "as soon as the law is settled"; I gather from that, and I presume the Committee may gather, that your Lordship is anxious that the law should be settled as soon as possible?

Certainly; it will give less trouble to administer it ever after.

1705. And the landlords will know what their rights are, and the tenants will know what their rights are?

Certainly.

1706. And there will be less litigation?

I hope so.

1707. Does your Lordship think that the present tribunal of 33 chairmen of counties, with an appeal to 12 judges, is likely to promote that uniformity?

Most certainly; because we judges have such an opinion of each other, that when any one of us deliberately considers and determines a case, it is to be supposed that that settles it, and the other judges adhere to those decisions.

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The chairmen always conform themselves to the decisions of the judge of appeal, and if there be a difficult question of law it will be settled by the ultimate tribunal, but I may say that as to that particular point of law which I refused to reserve, I never heard any lawyer or anyone suggest the slightest doubt that the case is now settled by my decision. Whether it be so or not, or whether it will be mooted again, I cannot say for certain; but I was under the impression that I settled it and left it there, and I hope never to hear of it again.

The Right Hon.
J. H. Monahan.
28th June 1872.

1708. I believe that upon that point, as to the effect of the Ulster tenant-right upon leases, some of the judges have the misfortune to differ from your Lordship?

Not to my knowledge, nor do I believe it is so; I never heard anyone say so. Supposing that it was the case he would reserve it, I suppose, for the Court of Appeal, and he may say that he is not bound by my decision, but I certainly would not alter it unless I had some reason to doubt the propriety of what I have already done; if once it were decided by a Court of Appeal I would consider myself bound. I may say that generally when those Courts of Appeal decide cases contrary to my opinion, I think they go wrong, but notwithstanding that I follow them and obey them.

1709. Then you think that an appeal to the Court of Land Cases Reserved is the final mode of producing uniformity of decision?

Most certainly, and I do not think that there is a judge on the Bench who, whatever his private opinion might be, would presume to differ from the decision of the final court.

1710. Yet I hope you will pardon my making this remark. Your Lordship in two cases has refused an appeal to the Court of Land Cases Reserved?

Because I did not think that the cases deserved it; I have only to give an appeal where I consider there is a question to be appealed from. Until your Lordship mentioned that you had reason to believe, or had heard that some other judge had formed a different opinion, I had never heard it, and I entertain very little doubt (that is assuming that we all do right) but that the other judge will change his opinion, and will agree with mine ultimately.

1711. *Chairman.*] Assuming the evidence upon which you act to be the same?

Yes; I acted on the evidence of a dozen men, there not being a particle of contradictory evidence; all of them stated that it had existed on those estates, and not one of them suggested a question upon the subject, but if it shall appear that this usage or custom has not prevailed on any particular estate, of course the case decided by me will not apply to that estate.

1712. *Viscount Lifford.*] Your Lordship, I am sure, considers Mr. Isaac Butt to be a lawyer of very great ability?

That is another affair; I do consider him an eminent practising barrister. But my judicial judgment would not be influenced by his opinion or that of any other practising barrister; I abide by the decisions of the judges given judicially.

1713. This is the way in which Mr. Butt expresses himself: "It is, perhaps, a matter of regret that this duty, that is, the duty of moulding the various decisions embodied in the statute into form, is left to a number of co-ordinate and varying tribunals without a full opportunity of ultimate appeal to any one tribunal by which principles of universal guidance could be authoritatively laid down." Do you agree in that?

That is wrong in fact, because there is an appeal ultimately to the Court of Land Cases Reserved, and no judge would presume, whatever his own opinion might be, to differ from the decision of an ultimate court any more than in our own courts. If the House of Lords decide cases, I am bound to consider that they are right, and of course I abide by them, no matter what I may think of them.

1714. But every judge (and a great many judges of ability and courage are in the habit of doing so) may refuse any appeal to the Court of Land Cases Reserved?

No judge, I think, would do it in a case in which he entertained any doubt as to the propriety of the decision which he made. On the contrary, I believe that when I speak for myself I give the opinion of every other judge

The Right Hon.
J. H. Monahan.

28th June 1872.

whom I know, and if I have any doubt at all, I mean any reasonable doubt whatever as to the propriety of the opinion which I form, I give the appeal if asked.

1715. But supposing that you had no doubt, and supposing that it might be still a doubtful question, and remembering what your Lordship has said just now about the difficulty of three men agreeing, I suppose there must be equal difficulty in twelve men agreeing?

To be sure there is, if they are all together, and I expect we shall have nice scenes when we have appeals to twelve of us. We shall have pretty scenes; but no matter, ultimately the majority of them will come to a decision which will bind us all.

1716. Are they more likely to agree when they are separate than when they are together?

What I said a short time since about a man not agreeing with himself arose in this way: a juror declined to be sworn, because, he said, that he could not agree with any one else, and then, when pressed with that, he said that he could not agree with himself. It was merely that to which I was referring. Notwithstanding the very strong opinion which I had in that particular case, in which I refused the appeal, if any other judge, on full consideration, reserved the appeal, very probably I would stay my hand, and reserve an appeal also; but until I hear of some judge entertaining a doubt upon the matter, which I do not expect to hear, I will act upon my own opinion.

1717. Is not the present state of the law such, that the 12 judges, supposing it comes to their courts, may give decisions without appeal upon all those different doubtful tenant-right points, the area from which the tenant-right is to be taken, the amount of tenant-right, how it affects leases, and all the other different points which are so doubtful; and may they not all give different decisions, or in different ways, or may refuse appeals?

That, I think, is highly improbable, because I think that if a judge heard that another judge had decided in a different way upon the premises, he would follow the precedent. You must recollect that the appeal is only on matters of law, it is not on matters of fact; I think that if I heard, for instance, that any other of my brother judges had entertained a different opinion from the opinion which I had already formed, it would be a reason why I would grant an appeal, though contrary to my own opinion as to the necessity of it; but when the two cases came before me, in which I refused an appeal, I believe it was the first time they had come before a judge, and I really have not heard since that they have been questioned by any one except a dissatisfied tenant, and I should be very much surprised, because it is a mere abstract legal question; I do not pretend or profess to be able to form a better opinion on that than any one else, but still I do form so strong an opinion upon what appears to me to be such clear grounds that I do not think it probable that after argument it will be ever held otherwise.

1718. Marquess of *Salisbury*.] Am I to understand your Lordship to say that the appeal is only on matters of law?

That is my recollection, though I forget for the moment the words of the Act.

1719. The words of the Act are as follows, "The judges to whom any such appeal may be made, may, where they deem it expedient, reserve any matter or question arising upon such an appeal by way of case stated for the consideration of the Court for Land Cases Reserved at Dublin"; is it your opinion that that applies only to matters of law?

I did not consider it, but my impression is that it must be on a matter of law, because if it was on a mere matter of fact, it must have been the result of the evidence, and that is not intended at all; though I differ from the chairman on evidence, that is because new witnesses are examined before me; it is not at all intended that witnesses are to be examined before the final Court of Appeal, and therefore I cannot well see how the appeal can be on anything except a matter of law, which I think implied in the words case stated.

1720. Then the Committee would understand it to be your Lordship's view of the Act, that there is only an appeal upon mere matters of law?

That certainly is my impression at the moment. I do not see how the final court could decide a question of fact without getting up the witnesses; if the matter be
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a mere matter of fact, it is absolutely necessary to have the benefit of seeing the witnesses examined, and knowing what they swear.

The Right Hon.
J. H. Monahan.

28th June 1872.

1721. Do you think that the right of appeal upon matters of fact in spite of the plain words of the statute would be shut out by the difficulty of producing witnesses ?

I have not formed any very decided opinion upon the point ; it never came before me, I never considered it ; and no one ever suggested to me that there could be an appeal on matters of fact.

1722. Earl of *Belmore*.] With regard to the case of *Austin v. Scott*, does your Lordship recollect whether the chairman's decision in that case was that the tenant-right did not attach to the holding at the expiration of a lease ; but that, because Major Scott had offered five years' purchase, in accordance with the custom of his estate in the case of tenancies of will or tenancies from year to year, he had therefore shut himself out from the benefit of what he had before held ?

Your Lordship is under a mistake. The chairman there, notwithstanding that Mr. Scott had offered 25 *l.*, thought that on a point of law the tenant-right custom could not prevail against the existence of a lease ; and, therefore, though Mr. Scott had offered 25 *l.* or a five years' purchase, as you will find stated in that printed paper which I have handed in, the chairman dismissed the case altogether. The matter then came before me, there being no evidence at all before the chairmen as to the existence of the right. I heard the case, and I came to the opinion, and I am still of opinion, that it is a mere matter of fact, because the Act legalises whatever tenant-right custom existed at the time. That, in my opinion, was not a matter of law, but was a matter of fact ; therefore I entered into the examination of it.

1723. I understood your Lordship to say that the chairman had not gone into that point at all ?

He had not gone into that point at all. The moment he came to the conclusion that, no matter what the custom was, the tenant-right could not exist consistently with the lease, he did not go into the matter at all, and he dismissed the case. Then I considered the case, and I may say that I did not decide the case as against Mr. Scott merely, because he offered a certain sum ; but I considered that the offering of the money was a corroboration of the evidence given by the witnesses that in fact the custom existed.

1724. Lord *Somerhill*.] The chairman seems to have decided upon his own view of the law, and he did not go into the facts ?

Certainly.

1725. You, taking a different view of the law, did go into the facts ?

Certainly. If his law were right it would be unnecessary to consider the facts. I, differing from him on the law, it then became necessary for me to ascertain whether the facts gave room for the law to operate.

1726. Earl of *Belmore*.] Does your Lordship recollect whether the chairman gave his decision at once, or whether he reserved it ?

I do not know, I do not think, it is stated ; but every matter which appeared before me which I considered in the least degree material, I stated in the printed case which I reserved for the consideration of the Court for Land Cases Reserved. That was on the five years' point ; but I stated in that case, for the information of the Court, that the other point had been raised before me, that the evidence had been given, and that I considered it quite clear, and decided it.

1727. Lord *Somerhill*.] Are you aware whether, or not, either in the cases before the judges or in cases before chairmen, the contrary view has been taken as to the five years' question, so to call it, in this way : that although there has been a certain custom of no tenant-right, or of a qualified or limited tenant-right on a particular estate, the case is not to be governed by that practice, as on that estate, but rather by the practice on neighbouring estates ?

I never heard so, nor do I know it ; I can only state that my own opinion was not so, and I stated in the case, which I reserved for the consideration of the Court, that such was my opinion ; but, notwithstanding its being my own opinion, it was a case of such general application that I thought it right to reserve it.

The Right Hon.
J.H. Monahan.

28th June 1872.

1728. I do not mean my question to apply particularly to this case, but are not other cases reported?

I really know nothing of other cases at all, for there are so many contradictory accounts given in different newspapers, that until a case comes judicially before myself, I think that the less I know of it the better.

1729. Marquess of *Salisbury*.] May I ask your Lordship with reference to the question of appeals, whether I understood you rightly to say, that you interpreted those words "where they deem it expedient" to be confined to cases where the judge himself has a doubt as to the rectitude of his own decision?

That is my impression; I mean a doubt of the propriety of his own decision, or the probability of others differing from him.

1730. Do you not think that the object of an appeal is to correct a judge when he is wrong?

Clearly.

1731. Do you think that those who are wrong are always the persons who have the greatest consciousness of the fact?

I think they have it as deeply as any other; I think a judge to whom a discretionary power is given of giving an appeal, would be unworthy to hold the office of judge, if he for one moment hesitated to give an appeal, if there was any reasonable doubt whatever on the subject; and I do not believe that any instance of such a kind has occurred.

1732. Do you not think that a judge may be thoroughly wrong, and yet may not in the least degree see that he is wrong?

It is very hard to answer an abstract question of that description; but I scarcely think it possible that he could be thoroughly wrong, and not see that there was a question for the consideration of somebody else.

1733. Do you not think that the power of appeal, generally, is given in order to correct any cases of liability to error on the part of a judge?

The distinction is taken in the Act itself. An appeal is given from the chairman or assistant barrister, and the parties have a right to appeal, *nolens volens*, but the right of appeal is not given in the other case; the Legislature have drawn the distinction, and I do not think that they would have drawn that distinction, unless they entertained an opinion that it was not right in every case to give an appeal from the judge, but that it was left to his own discretion whether to grant it or not.

1734. Do you not think that that discretion was rather intended to point to the importance of the case in hand, than to the state of his own mind?

You may take all the elements into consideration, but I think he may be influenced in his own mind as to granting an appeal by the importance of the matter in dispute, or by its general application. For instance, in that case in which I did grant an appeal I really would not have granted it at all if it had been an isolated case not likely to arise again, but I granted it merely because I considered it a matter of general application, and which it was right and convenient should be finally settled.

1735. Do you not think, at all events, that your interpretation of that word "expediency" would deprive a suitor of all remedy in the conceivable case of a judge being at the same time in error and obstinate?

If I am to suppose that a judge is in error and obstinate, and will not do it, no doubt it will have the effect of depriving the suitor of an appeal; but I think, on the other hand, that if every one has a right to appeal because he is dissatisfied with the decision of the Court, the result will be mischievous. The man in this case is entitled to appeal from the decision of the chairman without any check at all. He does not give security for costs, nor does his attorney make any affidavit that he has grounds of appeal, as in ordinary Civil Bill actions. If that were extended to the superior courts, bearing in mind, as I do, that in several of those land cases it is a local attorney, and not a barrister, who conducts them for the small tenants, I think you would have to establish a new court, and some two or three other judges, to hear those cases.

1736. Viscount *Lifford*.] Would your Lordship carry the principle a little further and take away the right of appeal, except where the judge doubted as to

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to his own decision in all cases, and entirely take away appeals to the House of Lords?

There is no appeal to the House of Lords in these cases.

1737. Not in this case, but I am talking of ordinary cases of property?

With respect to that, it is a very difficult question to alter a practice which has been settled for centuries; and, as a general rule, in the House of Lords, no cases are brought there in consequence of the great expense attending it, except cases in which the parties are advised and believe that they have serious grounds of appeal, and in which the matter in dispute is worth the cost of doing it. At the same time, it is not for me to say whether the decisions of the House of Lords are always satisfactory or not. I find them, and abide by them.

1738. But what I meant to ask your Lordship was, whether you think it advisable to apply that same principle now laid down, that where the judge has no doubt, there should be no appeal, to all ordinary cases other than land cases.

If I ever have the honour of being in the House of Commons or the House of Lords I will consider the question; but as a judge I do not form any opinion upon that at all. I think that, as a judge, no matter what law the Lords and Commons may pass, I am bound to administer it as best I can. That I shall always endeavour to do to the best of my humble ability; but to enter into abstract questions as to what would be right, I decline to do, not considering that my opinion would be of the least importance on the subject.

1739. We should mind it very much; we are hearing your Lordship now for the purpose of asking your opinion?

I have not considered the subject, and respectfully decline to give an opinion upon it.

1740. *Lord Steward.*] With reference to the tribunal of first instance, namely, the chairmen, I think I gather from the tenor of your Lordship's evidence, that unless there be any proved abuse owing to the decisions of chairmen, you think it would be unadvisable to change the tribunal at present?

I certainly do.

1741. It is your Lordship's opinion, that up to the present time the differences of opinion manifested by the decisions of the chairmen have been sufficient to cause a change in the present law?

As to that I know nothing upon the face of the earth about it; I make it a rule never to read the reports of law cases in newspapers; I really do not know at this moment to what decisions those chairmen have come. If I take up a newspaper to read a little politics I do not go near those decisions at all; I really and truly know nothing about them.

1742. If the decisions of the chairmen had not been in general cases according to law, or generally satisfactory (I do not mean satisfactory to the suitors, but satisfactory in point of law generally), would it not be probable that there would have been a great number of appeals?

The number of appeals of course, and particularly in those cases, depends more upon the disposition of the suitors, because there is no check at all on the appeal, and there is no doubt that in every case in which the suitor, whether landlord or tenant, is at all dissatisfied with the decision of the chairman, he has a right to appeal, and I believe that until the other day he did so at a very trifling risk, because the costs were very trifling; there has been a change made very recently, which has not yet come into operation, making the costs larger.

1743-4. I do not know whether your Lordship has seen a Paper which has been laid before the Committee, which states the number of cases, the total number of claims filed, and the total number of appeals filed?

I never saw it. I think that you will see from this Paper that the number of claims filed, as compared with the number of appeals from the chairmen to the judges, appears to be ridiculously small; I should suppose that there could not be stronger evidence than that; that the parties had been satisfied with the decision of the chairmen.

1745. Then in fact the tribunal, as far as experience enables you to judge, is a satisfactory one?

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The Right Hon.
J. E. Monahan

28th June 1872.

The Right Hon.
J. H. Monahan.
28th June 1872.

I should say so, judging merely from your Lordship's statement, which is of course accurate; I do not know what is the proportion, they are not added up, but let us say in round numbers that there are 100 claims, and 100 decisions, either by one chairman or by several; and if only two, or three, or four of those cases are appealed from I should say that would be very strong evidence indeed of the decisions being satisfactory.

1746. I think that your Lordship will see, if you look at the last column, that in the majority of counties the number of appeals is nil?

It would appear from this Paper, which your Lordship has handed to me, that the greatest number of appeals in any county is 10; there were 10 in Londonderry, three in Donegal, five in Tyrone, and three in another county; that seems to be the result; I was not at all aware of that; the judges have sent to them a great number of the Papers from the House of Commons, but we do not get the Papers from your Lordships' House.

1747. I think I understood your Lordship to say that, in your opinion, the local knowledge of the chairmen, and their knowledge of the customs and habits of the people among whom they are in the habit of going circuit four times a year, would *prima facie* give them greater facility for deciding upon those land cases?

I should say so, because they get a knowledge of the witnesses and of their veracity, and matters of that description; and therefore, unless in very clear cases where there is contradictory evidence and swearing (I am not talking of land cases, but of ordinary Civil Bill appeals), we do not feel ourselves able to differ from the decision of the court appealed from on a mere matter of fact, but on a matter of law we feel ourselves at greater liberty, because it depends on a matter of judgment, and not on a matter of fact; and therefore, speaking of myself individually, I scarcely ever am able or disposed to reverse a decision of a chairman on a mere matter of fact, though upon a mere matter of law I think myself bound to consider it just as I would a case from a superior court, and then if I had the misfortune of differing from the chairman, I throw him overboard and decide what I think right.

1748. Marquess of Salisbury.] Did I understand your Lordship to say that you would be unwilling to reverse the decision of a chairman on a matter of fact?

Yes; I am not talking at all of land cases, because none such have come before me; but anyone who knows anything of country cases in Ireland knows that one of the most frequent cases which come before a chairman is, the breach of a warranty of soundness on the sale of a cow, or of the cow being in calf and to calve at a particular time, or the number of quarts of milk she will give. Those are the cases of the most frequent occurrence before the chairmen, and there are always a number of witnesses on each side, and there seems to be an opinion that the greater number ought to carry the decision of the court. The fact is, that the chairman considers those cases upon that sort of evidence; he has the good fortune of knowing a great many of the people who are brought before him, seeing them before him, and knowing their credit and their credibility. If a chairman will decide *pro* or *con*, for or against, the cow, I find that he is more competent to do so than I am who have dropped down for the first time among a parcel of people; and, generally speaking, unless there is some clear ground of going on, I should be disposed to adopt the decision of the chairman. There is also, as your Lordship is aware, a maxim of law which I always abide by, that if there is an appeal from one court to another, you should not reverse the decision appealed from unless you are satisfied that it is wrong. If you entertain any reasonable doubt of the propriety of the decision which is come to, your duty is to affirm what has been done by the court appealed from; and putting those things together, and believing that the chairman is more competent to judge of the credibility of the witnesses, I for one, on a matter of fact, unless for some reason or other it appeared very clear, would not reverse the decision of the chairman on a matter of fact. But then on a matter of law, or on such a matter of fact, for instance, as what custom prevailed in the north, or anything of that description, where there are not a great number of witnesses; but where they are men of respectability, and where more may depend upon the issue than in the other cases which I have put, I should have less hesitation in differing from a chairman than in the case of a cow, or any similar thing.

1749. Would

1749. Would not your Lordship think that there might be some danger in giving an absolute power to chairmen upon matters of fact, because the case is conceivable, though I hope it is not frequent, where the chairman might be a partizan?

The Right Hon.
J. H. Monahan.
28th June 1872.

In matters of fact there cannot be a final jurisdiction given to chairmen, because in those cases there may be new evidence before the judge. It is not like appeals to the House of Lords, and cases of that description, where you get the written evidence which has been given before the Court below. The parties are entitled to go into new evidence. In fact it is a re-hearing of the cause, and there may be and frequently is a good deal of evidence before the judge which was not before the chairman.

1750. Do you also think that although the chairman has better opportunities of discovering the truth, he might not be the person best qualified to do so?

It is possible that that may be so from the frame of a man's mind.

1751. Earl of *Kimberley*.] Comparing an appeal to a going judge of assize on these land cases, with an appeal to the Court of Land Cases Reserved, would it not be very difficult if the appeal was direct to the Court of Land Cases Reserved, without much expense to go into the matter satisfactorily?

You could not do it at all unless you gave the people travelling charges from the country to Dublin, or adjourn the sittings of the Land Court from Dublin to the provinces, and let the judges go circuits.

1752. So that your Lordship would be of opinion, that as regards matters of fact, as distinguished from question of law, no more convenient mode of appeal could be devised than that to the going judge of assize?

It is very hard to say that nothing more convenient could be devised. I have not really considered what might be devised, but I would rather form an opinion as between it and any particular proposed plan.

1753. Marquess of *Salisbury*.] As a going judge of assize your Lordship rather shrinks from the appeal upon matters of fact?

I would rather not have anything to do with the case of appeal one way or the other, so far as I am individually concerned, but my notion on those land cases, as to matters of fact, is, that when they come to be considered there is really very little dispute as to matters of fact. I have not found a single case in which matters of fact were disputed.

1754. Is not the nature of a custom a matter of fact which is often disputed?

Not that I am aware of. In the two or three cases that arose before me there was no difference at all as to what the usage or custom was.

1755. Was everybody agreed as to what the custom was?

Everybody was agreed as to what the custom was; and the question was the applicability of the law to that particular custom. In one particular case that I sent back to the chairman, no evidence was given at all before me as to whether the tenant-right applied to a given state of facts, and the case went off in the chairman's court on another point. Then I sent that case back to the chairman to receive evidence on the point on which evidence had not been given. There were two points involved in the case; I decided one of them according to law. The other, I said, depended upon a fact, and I sent the case back for the consideration of the chairman to ascertain the matter of fact.

1756. Earl of *Kimberley*.] At all events, I understand your Lordship to be of opinion that it would be very inconvenient that those questions of fact should be reserved for the Court of Land Cases Reserved?

It would be utterly impossible on a matter of fact to be bringing people up from all parts of the country to Dublin. The only thing that would be practicable would be to send these judges of land cases, who are to hear these appeals, through the country to hear them.

1757. Viscount *Lifford*.] Supposing that no fresh evidence was admitted on the appeal, but that the old evidence were taken in shorthand and sent up, would not that obviate the difficulty?

You may as well take away appeals altogether if that be so.

The Right Hon.
J. H. Monahan.
28th June 1872.

1758. Why so?

For this reason: from the nature of the way in which business is done in the country, they are not prepared with their evidence; they do not know the necessity of it; they have not the assistance of counsel to advise them, and it is only on the discussion of the case before the chairman that the materiality of the evidence or of anything connected with it appears.

1759. Does not the evidence come out before the chairman of the quarter sessions?

Sometimes it does; for instance, there was one case which involved a curious question, and no evidence was given at all. I sent it back to the chairman. The case, according to my recollection, arose in this way: the immediate tenant of the head landlord held a considerable farm at a rent of some 40*l.* or 50*l.* a year. Holding it at 40*l.* or 50*l.* a year, this middle man (or middle woman, as she was on this occasion, I think) sub-let it to several tenants from year to year, at rents that left her a profit of some hundred pounds a year out of it. The lease expired, and then the question arose, whether the tenant-right applied to the immediate tenant not in possession of any part of the premises. When the case came before me, and that question arose, I found that no evidence had been gone into on the subject before the chairman. He decided the case on another ground, which ground, my recollection is, I did not consider tenable. But this question arising, and I having no evidence whether the custom applied to it, I sent the case back to the chairman. I do not think any one raised the point, but I said I had no evidence that the custom applied to a case of that description, and not having any evidence, and the parties being taken unawares and unprepared, and from perhaps the same reason, not being prepared to go into the case before the chairman, I thought the way to do justice between them was, to send the case back to the chairman, to ascertain, as a matter of fact, whether the custom applied to that particular case. I did not go the same circuit the next assizes, and I have no means of knowing, nor do I know how the chairman found, but I made a ruling that he was to decide according as he found that fact one way or the other.

1760. Earl of *Belmore*.] But if the appeal, instead of being to the going judge of assize, were to some other court, either the Court of Land Cases Reserved, or some new court, could not that court in the same way remit the case back again for fresh evidence?

To be sure they could; but I gave that answer which I gave in answer to a question of my Lord Lifford's, as to whether the parties could not be bound by the evidence given below, so as not to bring them up at all.

1761. But, speaking of the general question of expense, it would make no difference to the expense whether your Lordship sent them back, or whether some other judge in Dublin sent them back?

Certainly not. If the judges who hear the appeals will sit in the country where the cases have been decided, the judges would be delighted if that was done, for it is a sort of business they do not like at all.

1762. Lord *Charlemont*.] In the beginning of your statement, your Lordship said several times that there was "very little law in it." I will not refer to that now; but, with regard to the tenant-right custom of Ulster, you referred to the Act, and said that that custom or usage, though previous to the Act it had not been law, is now law. That being the case, is the finding out what is the custom of the estate or of the district, whatever it may be a matter of fact or a matter of law?

Clearly a matter of fact as to what the usage was, and that being ascertained then, this Act makes the usage law.

1763. Then, in the case of *Austin v. Scott*, where the chairman, I think, refused to admit the usage of tenant-right as applying to that estate, and heard no evidence about it whatever, when the case came before you, you heard the evidence, and discovered that there was a usage of five years admitted by Mr. Scott himself?

Certainly.

1764. That usage of five years, as admitted by Mr. Scott (and I suppose borne out by evidence), you treated as law in this special case?

No; that was the case that I reserved for the consideration of the Court.

1765. And

1765. And that never went before the Court ?

It never went before the Court. One of the parties died, so that there was an impossibility of hearing the appeal, and what became of the case I do not know ; but the case was never ultimately decided for that reason.

The Right Hon.
J. H. Monahan.
28th June 1872.

1766. *Chairman.*] Your Lordship found this : " At the close of the evidence before me there was, in reality, no dispute as to the facts ;" and then the question was an alternative question with reference to the amount to be paid ; and the way in which it was reserved was this : " If the tenant is entitled to the larger sum, the decree should be for 150 *l.* ; but if, to the smaller sum, it should be for 52 *l.* 10 *s.* ; and you left it to the Court to determine which of those two sums should be given ?

Exactly ; and that would be dependent, not upon the facts, but upon the law applicable to the state of facts found by me to exist.

1767. Lord *Silchester.*] May I ask if, in your Lordship's experience, when on circuit, it has occurred to you to receive, on the Bench, a formal address from the grand jury, in which they say, " The grand jury assembled desire on this occasion to express their confidence in the able and impartial manner in which you administer the law."

Such a thing never occurred to me ; but, as you mention it, something the reverse of it did. I once had that misfortune. On going a Northern circuit there was great disturbance in the county, and I thought it advisable to make some observations, which I thought would be well received, and would tend to promote harmony and concord in the county, and I expressed my opinion unfavourably to the display of party colours or anything of the sort. At the termination of the assizes, the grand jury of the county (I think it was Fermanagh) said, as I understood, that they had some fiscal business to dispose of, and begged that I, instead of putting an end to the assizes, would allow them half-an-hour for the determination of some point that they were discussing. I, in my simplicity, believed it was some fiscal business they were disposing of ; I adjourned, and walked about, instead of taking a pleasant drive or a sail on the lake, and then, on my return, to my great astonishment, the foreman began to read out something about the " great dissatisfaction of the grand jury " at my talking upon such a subject. The moment I was aware of what they were doing, I need not tell you that I did not listen to any more, but at once discharged the grand jury, and directed the sheriff immediately to clear the court. Accordingly they were all sent about their business ; and then they thought they had their revenge by publishing what they intended saying in a newspaper the next day. That is the only analogous case to the one your Lordship puts.

1768. You had no occasion to give such an answer as this from the bench : " Gentlemen of the grand jury, I beg to return my acknowledgments for the very flattering terms in which you have referred to my humble efforts to carry out the provisions of the law " ?

On the contrary, I told them they had no right to do what they were doing, and I told them to be off about their business.

1769. I understand that in your opinion such an address, calling for the delivery by the judge of such a formal answer, would not be a decorous proceeding ?

Your Lordship is more competent to form an opinion upon that than I am. I confine myself to my own duties and my own experience.

1770. Lord *Meredyth.*] Assize business is generally very hurried ; do you think that, generally speaking, there will be time for the judge of assize to hear these cases ?

With respect to that, we have made a rule to this effect, that we require the clerks of the peace to send us a list of all the cases before we settle the time for the assizes, and it is no doubt our duty, and we always, as far as possible, try to anticipate and allow time for them, and also if a case arises, and if upon the argument of it we entertain any little doubt as to what we ought to do, we reserve our decision to the end of the assizes, or to the next town or anywhere, and then give it ; but my own experience is that I generally allow too much time rather than too little.

The Right Hon.
J. H. Monahan.
28th June 1872.

1771. Earl of *Bandon*.] Does not your Lordship think that inconvenience arises from the constant change of chairmen?—I really do not know; I am not competent to form an opinion upon that point; your Lordships are perhaps more competent to do so than I am.

1772. Does your Lordship think that if there were fewer chairmen paid more highly and not allowed to practise, it would be an advantage?

That is really a very difficult question, and one requiring a great deal of consideration. Supposing a man gets an assistant barristership at an early period of life, and that he is not allowed to practise, and that he confines himself for a number of years, as he necessarily will, to the mere practice of his own court, a Civil Bill Court, where he has not the assistance of counsel, as generally in Ireland counsel do not attend the Civil Bill or Quarter Sessions Courts, he forgets the law that he knew when he went there, and he becomes not very efficient after some years.

1773. In reference to a question that has been put before, as to the fewness of appeals, do you not think that the expense of the appeals to the judge of assize deters the litigants in many cases?

Certainly not in the Land Cases Reserved, because they are of great importance to the parties; and if there is ground of appeal, they do it at very little risk. Up to the present time the costs recovered are very small; there is no check on the appeal. In ordinary cases, there must be an affidavit of the attorney that there is ground of appeal; but in these cases there is no affidavit required at all. Any man who feels himself aggrieved by the decision of the barrister has a right to appeal, and I must say, though perhaps I am going a little too far, that my own individual impression is, that unless a change has very recently come over them, the people of the country, both the landlords and tenants, do not entertain any suspicion at all or any unfavourable opinion of the judges going circuit, and I think the general opinion is that they decide according to the best of their judgment and ability. Of course I need not say that there may be differences of opinion among judges, as often there are, but my meaning is that the judges of assize are, to say the least of it, a satisfactory tribunal.

1774. I was not speaking of the tribunal being satisfactory; but I constantly reside in Cork; supposing there was an appeal in a suit between a landlord and tenant in Bantry, it would entail an enormous expense to bring it to the city of Cork to be tried?

That would be so, no doubt. Several years ago, I myself was instrumental in making a change in Cork which has lessened the length of the assizes very considerably. We try the county business first, and dispose of it before we go into the city business, and that we have power to do ourselves.

The Witness is directed to withdraw.

THE RIGHT HONOURABLE JAMES ANTHONY LAWSON, one of the Judges of Her Majesty's Court of Common Pleas in Ireland, is called in; and Examined, as follows:

The Right Hon.
J. A. Lawson.

1775. *Chairman*.] You have already heard that the object of this Committee is to ascertain the opinions of people of great judgment and intelligence as to the working of this Land Act, and that one main object is to ascertain whether there could be any better system of administration than that already existing. Have you considered whether the primary court, the chairman, is a suitable court for the purpose of the administration of this Act?

In my opinion, it is a very suitable court, and I cannot imagine any other court so suitable; of course, the experience of the working of the Act has been very short; since it commenced I have heard, I think, only four appeals altogether. The first appeal which I heard was from the chairman of Wexford; it was an appeal by a landlord against whom he made a decree, and when the case was being heard before me, the evidence was becoming so unfavourable to the landlord that his counsel very prudently withdrew from it, otherwise, I think I should have been disposed to increase the amount of compensation which the chairman had given; that was the first case that I heard; of course, there was an affirmation of the chairman's decree. Then I heard three cases, I think, at the last
Lifford

Lifford assizes, which were appeals from Mr. Gibson, the chairman of Donegal, and I affirmed all his decrees; in one of them, I think, I gave a small additional sum by consent; there was a mistake of some 5*l.* or 6*l.*; that is my experience as a judge of those matters. Looking at the small number of appeals, as compared with the number of cases, and looking at the result of those appeals, which as far as I know generally has been to affirm the decisions of the chairmen, I think that the tribunal is a most satisfactory one.

The Right Hon.
J. A. Lawson.
28th June 1872.

1776. It is for other purposes under the antecedent Acts, a very satisfactory and popular tribunal in Ireland among all classes, is it not?

Yes, very satisfactory; and I think that the chairmen as a body are a very high class of men; indeed, many of them are men who would adorn the bench of the superior courts of any country, and they are all of them perfectly competent to decide these cases; I think, also, that there is a great advantage in resorting to a well-known and well-established tribunal, instead of creating a new one. The chairmen associate with the magistrates of the county, and they know all the people there, and know the character of the witnesses, and of the locality; and their decisions upon questions of this kind are far more satisfactory than the decisions of any itinerating tribunal such as has been suggested could possibly be; I would also observe that, of course, when any new Act is passed, there must be at first necessarily some variety of decisions upon it, and time must be given to allow the law to form itself into a kind of code by means of decisions settling questions of principle. I have heard a great deal said about the diversity of opinions given by chairmen; but as far as I can learn, they are only just what must necessarily arise in the working of a new Act, but I am quite certain that they will disappear, and that the principles on which the construction of this Act is to be governed must very soon be settled.

1777. Do you think that the two appellate tribunals are such as should be continued for the purpose of settling differences between the chairmen if there be any?

I must say, that I think that the appellate tribunals are not in all respects satisfactory; in the first place, I think that it would be a great advantage to give chairmen a power of directly stating a case involving a question of law for the Court of Land Cases Reserved, passing over the judge of assize for that purpose altogether; that would certainly lead to many legal questions being promptly and immediately decided, and I think that would be a very proper power to give to the chairmen, it being similar to the power which the county court judges and magistrates have of stating a case for the opinion of the superior courts, but I confine that to a question of law; when the appeal involves mixed questions of law and fact, I think the appeal to the judge of assize is a very good appeal, and I cannot imagine anything better.

1778. Lord *Somerhill*.] Would you give that appeal as a right?

I would give that appeal as a right as it is at present. I am in favour of not restricting appeals at all, and I would give that as an absolute right as it is at present.

1779. I understood you to say, that you would give an appeal upon a point of law direct from the chairman to the Court of Land Cases Reserved?

I would give an appeal on a point of law direct from the chairman to the Court of Land Cases Reserved.

1780. Would you in those cases leave power to the chairman to decide whether there should be such an appeal?

It is for the judge himself when he sees a question of law arising to reserve it. I would give no right of appeal to the litigant, except to the judge of assize.

1781. *Chairman*.] At this moment, I think that the chairman has a right to reserve a question, if he pleases, for the superior court?

I would give him a similar power to reserve a question for the Court of Land Cases Reserved at his discretion, leaving the suitor, as at present, the absolute right of appeal to the judge of assize.

1782. Marquess of *Salisbury*.] Would you give him a further right of appeal to the Court of Land Cases Reserved?

(136.)

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The Right Hon.
J. A. Larson.
18th June 1872.

I would. I would give an absolute right of appeal from the judge of assize to the Court of Land Cases Reserved upon the suit or lodging any amount which was decreed against him, and lodging a sum as a security for the costs of the appeal. When there have been two decisions against a man, I would put that check upon it that he should not harass his opponent by going any further, unless he was prepared to deposit in court the sum decreed against him, and also to deposit an amount as security for costs. On his doing that, I would give him a right to appeal absolutely to the Court for Land Cases Reserved, because, I think, that it is a very disagreeable discretion to vest in a judge whether he will allow an appeal or not. I dislike it; and I think what I suggest would be much better even at the risk of, perhaps, encouraging litigation; but I would not allow a man to appeal from the judge of assize to the Court of Land Cases Reserved, unless he paid the amount decreed against him into court, and deposited a sufficient amount as security for costs.

1783. Do you interpret the discretion which is placed upon you by the Act in the same way as Lord Chief Justice Monahan did, viz., that you ought only to grant an appeal where you are in doubt?

I think that you ought not to grant an appeal unless you see that there is a fair question for the Court of Appeal.

1784. Then if you are quite certain of your own decision, you ought never to allow an appeal, supposing the discretion to be vested in you?

If I thought it a doubtful point, or I would say an arguable point, I would exercise my discretion, and give an appeal.

1785. You would give an appeal unless you thought an appeal clearly absurd? I would.

1786. *Chairman.*] Unless you thought the appeal frivolous and vexatious, as is said in regard to other matters?

Very nearly so. If I thought that it was a fairly arguable point, I would give the appeal. I think that the present provision in this Act of Parliament for calling in a second judge of assize to listen to questions of law is wrong, and in substitution for that which is now of no practical benefit or use to anyone, I would propose to give an absolute right of appeal from the single judge to the Court of Land Cases Reserved upon the terms of the appellant's lodging the amount decreed against him. Then you relieve the judge from all those questions as to whether he ought or ought not to allow an appeal, and then it would be his duty where there is an appeal, just as now on a new trial motion, to send in his notes of the evidence, and let the parties argue the case upon them. I would not allow any evidence whatever before the Court of Land Cases Reserved.

1787. It was suggested by one of the learned judges who was examined here before, with reference to the security for costs, that that might in some individual cases press hardly on the suitors; do you concur in that view?

I think that when a man has been defeated twice the chances are that he is wrong, and therefore that it is no hardship to compel him to put his opponent in a safe position if he chooses to litigate.

1788. *Viscount Lifford.*] Would not what you propose stop litigation very rapidly, by rapidly establishing precedents which would be binding?

I think it would. I was here when Lord Chief Justice Monahan gave his evidence, and I think that that point whether the tenant-right usage applies to leasehold cases, is a point which ought to be considered and decided by the Court of Land Cases Reserved. For instance, if the chairman had had the power, as I now suggest that he should have, to reserve a point of that kind, the Chairman of Londonderry, in that case to which my Lord Chief Justice referred, would probably have reserved that for the Court of Law Cases Reserved, and then there would have been an authoritative decision upon the point; that is to say, he would have stated what the facts before him were, and have let the Court decide whether in point of law that usage was a binding one or not.

1789. *Marquess of Salisbury.*] Then there is the question whether a usage is to be determined upon the custom of a district or upon the custom of an estate?

That is also a very important question which ought to be decided by the Court of

of Land Cases Reserved, and that is the question pending in *Austin v. Scott*, whether the usage of the district or the usage of the estate ought to prevail.

The Right Hon.
J. A. Lawson.

28th June 1872.

1790. Viscount *Lifford*.] It is a fact, is it not, that even the judges are not quite agreed as to the question of whether the tenant-right applies to leases?

I have formed no opinion whatever upon it, and I shall not form any opinion until I have heard it argued; but what occurred before me was this: there was one of the appeals from the Chairman of Donegal which raised that point before me; it was a case where a Mr. Mansfield was the respondent. The chairman had dismissed the claim; I heard the evidence, and the evidence did not at all satisfy me, nor had it satisfied the chairman, that there was any such usage in that district, and therefore I, of course, affirmed the chairman's decision. But in that case of Mr. Mansfield, who was the landlord, evidence was gone into as to whether in Donegal that usage did exist of tenant-right upon the expiration of a lease. I remember that Sir James Stewart's agent and two or three other agents were examined, and the result of the evidence was, in my mind, that there was no such usage to be found in that district. The chairman had been of the same opinion, and I affirmed the decision and dismissed the claim; but I stated in giving my judgment (which, of course, was extra-judicial) that if the evidence had been the other way, namely, that there was such a usage, it was a case which I should have been disposed to reserve for the Court of Land Cases Reserved. I formed no opinion upon it; I see that there could be a great deal said upon both sides, and it is a question which I should like to hear argued. It involves a large amount of property, and I think that it is a very important question, and one which it is very proper to have discussed.

1791. *Chairman*.] You were speaking of an individual case; a case has been mentioned in which, I think, you refused to reserve a question; would you desire to say anything to the Committee about that case?

It is the fashion now to call judges to account for everything they do or say, and although I think it is an objectionable practice, I am very willing to explain the case to this Committee.

1792. I do not wish you to account to this Committee, but merely to state a case to the Committee in any way which you please?

I have my notes of the case, and I shall be very happy to give them to the Committee if they wish it. I can only say in that case, in my judgment no point arose that I should have reserved for the court above; if there had been, I would have done it. The evidence was all one way; there was no question of law.

1793. Viscount *Lifford*.] In that case Lord Leitrim refused to bring forward any evidence except his own?

And his own evidence amounted to this, that he supposed, by some process going on in his own mind, he could destroy a custom which had existed on his estate.

1794. Marquess of *Salisbury*.] He did not attempt to raise a question of law?

He did not; and if he had done, and there was an arguable question, I should have been very happy to have reserved it.

1795. Viscount *Lifford*.] Everybody that knows anything about the matter knows that your decision was perfectly right, but yet it is a serious thing when an estate that might have been entailed is saddled with 41 years' purchase?

I have only to administer the law as I find it; it has been said that the chairman and I gave a very extravagant amount of money in that case; the fact was this: this was 30 acres of land that this man and his family had reclaimed from a wild mountain, I suppose, worth nothing when he got it; the description given by the bailiff was that he was sitting in the middle of the waste and he reclaimed 30 acres; he held that land at a rent of 6 *l.* a year; the valuers proved that it was now worth 19 *l.* 17 *s.* 6 *d.*, and although the chairman gave 240 *l.*, which is 40 years' purchase on the low rent of 6 *l.*, yet the property itself was worth 19 *l.* 17 *s.* 6 *d.* a year, and two men were produced before me who swore that they would give the man 280 *l.* for his tenant-right in the farm; of course I had no material for reducing the amount below what the chairman had put it; and when Lord Leitrim pays his 250 *l.*, he gets a farm which he can dispose of, discharged of any claims of tenant right, at the rent of 20 *l.* a year.

The Right Hon.

J. A. Lawson.

28th June 1872.

1796. According to the Government valuers it was worth 20 *l.* a year?
No, they were sworn valuers, all produced on the side of the tenant.

1797. Marquess of *Salisbury.*] Your decision in that case would not have the effect of laying down any principle of law that would guide any other case, because you merely decided upon the question of fact, and the law was undisputed?

Quite so. Before I leave that, having expressed my opinion as to the chairman and the single judge of assize, I come now to the Court for Land Cases Reserved: I do not think the imagination of man could suggest a worse tribunal than that; any tribunal consisting of 16 judges must be bad; it is impossible to have a case properly argued or decided before such a tribunal.

1798. Is it contemplated that 16 judges should assemble to hear every case; they have a quorum?

The only time we sat, I think we had 12 or 13 judges; it is quite impossible to have a case heard properly before 13 judges.

1799. *Chairman.*] You have only sat once?

Only once; I think no appellate tribunal ought to consist of more than three judges; there is no responsibility if there is a number of judges; I would therefore suggest that the appeal should be given to the Chancery Appeal Court, fortified by a common law judge sitting with the Lord Chancellor and the Lord Justice of Appeal appointed in rotation.

1800. Lord *Digby.*] In that case of Lord Leitrim's, in which you mention that the ground was let for 6 *l.*, and it was proved to you that it was worth 19 *l.*, was any evidence brought before you of the length of time that the tenant had had it, so as to recoup him for the improvements that he had made?

I think he proved to me that he paid 180 *l.* for the tenant-right of a part of his farm, about 16 years before.

1801. That was supposed to be the value at that time?

Yes; he paid a person going out 180 *l.* for the tenant-right of a portion of the farm, and he paid it, as he swore to me, with the approval of the agent of the property at that time.

1802. When would be the time you would suppose the landlord might raise his rent?

I am no judge of that, at all; I do not know anything about it.

1803. There was no evidence brought before you?

No evidence at all.

1804. Lord *Charlemont.*] In that case of Lord Leitrim's which has just been mentioned, the evidence was entirely on the part of the tenant?

Entirely.

1805. Lord Leitrim confined his opposition to a simple denial of ever having admitted tenant-right himself?

Quite so.

1806. He never brought any evidence at all against the claimant's case?

He never brought any evidence; he did not produce his agent to contradict the statement of the man having paid 180 *l.* with his approval.

1807. *Chairman.*] You decided according to the evidence before you?

I decided according to the evidence.

1808. Lord *Steward.*] The man brought the evidence of Lord Leitrim's agent; the tenant-right had been admitted in the neighbouring farm?

There was no controversy about that; there was ample evidence that, on that and every other estate in the district, tenant-right had always prevailed.

1809. And it was admitted by Lord Leitrim's own agent?

The agent was not produced.

1810. Marquess of *Salisbury.*] It was his own statement, that tenant-right existed?

The man said he paid 180 *l.* for the tenant-right, with the approval of the landlord's

lord's agent at the time ; that was two years before Lord Leitrim came into possession ; I said, the only question I have to decide is, is this holding subject to the Ulster tenant-right custom ? It was proved that the man, with the approval of the landlord at the time, paid 180 *l.* under the tenant-right custom ; how could I hold it was not subject to it ?

The Right Hon.
J. A. Lawson.
28th June 1872.

1811. It was not suggested that any prescription barred it ?
No, it was not.

1812. Lord *Somerhill.*] Forty-one years' purchase means 41 years' purchase of the rent that the land was supposed capable of bearing before it was improved by its tenant ?

Quite so. It was not 41 years' purchase of the letting value of the land.

1813. Was the amount given, ultimately computed as so many years' purchase of the present rent, or was it merely given *in globo* as compensation for disturbance and for improvement ?

It was given merely as the market value of what the man's tenant-right was considered to be worth.

1814. For disturbance ?

For disturbance. Yes ; that is, that had he been allowed to sell his tenant-right he would have got 240 *l.* for it.

1815. *Chairman.*] When did he pay the 180 *l.* ?

I think it was 16 years ago.

1816. Lord *Lurgan.*] You do not happen to know for what portion of the ground he paid 180 *l.* ?

Yes ; it was for about two-thirds of the holding which he then had. There was a consolidation, and he bought out another man.

1817. Lord *Charlemont.*] You mentioned that the right of appeal to the judge of assize, and a right of appeal in the case of the plaintiff to the Court of Land Cases Reserved, is, in your opinion, lessening the number of cases to be tried ?

I do not say lessening the number of cases to be tried. It would probably increase the number of appeals, not lessen them.

1818. But the number of cases that come before the courts altogether ; there would be less litigation ; cannot you conceive cases where, in the case of a large estate, a landlord having no direct interest in the case himself, and having no wish to disturb the tenant, might wish to produce a case and take it to the ultimate court of appeal, for the mere sake of having a precedent to guide himself and his tenants ; he might take the very case you mentioned yourself, of the tenant-right surviving at the expiration of a lease ; would not it be of immense importance to the estate, to the landlord, and to the tenants of that estate, to have such a question decided ?

But no case can be decided until it arises. No court can decide an abstract proposition of law ; it must arise in the progress of a case.

1819. I put all this upon your own proposition that appeals are always to be given ; that there should be a right of appeal, as at present, from the assistant barrister to the going judge of assize, and also from the assistant barrister on the point of law direct to the Court of Land Cases Reserved ?

Yes.

1820. *Chairman.*] It has been suggested, as you have heard, that the Landed Estates Court, with the addition of a judge, should do the whole work under this statute ; is it your opinion that that would be a good substitution for the existing court ?

I am sure that would be quite impracticable. In the first place, the Landed Estates judges understand about titles and conveyancing, but they are not accustomed to investigations of this kind at all, and the proposal of their going about the country with another judge to hear these cases would be very unsatisfactory.

1821. That answer would apply also to the institution of a new tribunal of two judges of equal rank with the superior judges ?

It would. It is a great advantage with respect to the chairmen, that they are

The Right Hon.
J. A. Lawson.
 28th June 1872.

a body of judges, they meet together to settle their rules, and to settle points of practice, and so on. Their decisions are controlled by the judge of assize, and where there is such a body of judges, there never can be for any time any great diversity of practice or of opinion amongst them, either upon law or practice; it must in a short time come to be a settled matter. But of course if you have another tribunal, I cannot answer for what will happen. Another suggestion was made, that three chairmen should sit together for the decision of cases. I agree with my Chief Justice upon that. I certainly think that to put three men to hear it would be very absurd; I do not approve of that at all.

1822. Lord *Silchester.*] May I ask you the same question that I put to the Lord Chief Justice, namely, whether in your experience complimentary addresses as to your conduct on the bench have been presented to you by the grand juries?

Not to me; my experience has been too short; but as a matter of history, I can tell you that such addresses have been very common in Ireland to judges of assize. I remember several judges who received addresses of that kind from grand juries all over the country.

1823. Viscount *Lifford.*] Were these aged men who had gone through long service as judges?

Very aged, indeed.

1824. Not to a judge within a couple of years of his appointment?

No.

1825. Lord *Greville.*] You have had no cases before you in which the rights of turbary or shooting were involved?

No, never.

1826. Lord *Somerhill.*] I apprehend really the litigation that has gone on hitherto under this Act has chiefly been in the province of Ulster?

Yes, chiefly.

1827. There is considerable difference upon this point and these customs in that province from the rest of Ireland?

Yes.

1828. And, therefore, what may be considered good experience on which to found an opinion as regards the province of Ulster, can hardly be said to apply, certainly not so strongly, to the other provinces, especially in the south of Ireland?

No.

1829. Are you aware that the difference between landlords and tenants in the south of Ireland are very varied in character, and do not turn so much upon the question of tenant-right and those points which are raised upon changes of tenancy as they do in other counties?

I have not had any experience with respect to controversies between landlords and tenants in the south of Ireland. The only case that ever came before me was the case in Wexford, which I have already mentioned. I have not heard of much litigation in the south at all upon the subject.

1830. I know you are very conversant with statistics in Ireland, but I do not know whether this may have come under your observation, the difference in number and the quality and the proportion of the ejections in Ulster and those in other parts of Ireland?

No.

1831. You have not seen any table of that?

No, I have not seen it; I do not remember it.

1832. Earl of *Kimberley.*] Are you of opinion that it would be desirable to diminish the number of chairmen by consolidating some of the counties and paying them higher salaries?

Yes, I am.

1833. Do you think they should be allowed to practise as at present?

I think they ought not to be allowed to practise. I have a very strong opinion upon that subject. I think it is quite inconsistent for a gentleman to be

be at one moment a judge, and the next moment perhaps making a tenant-right speech in some case or other; I think it is quite inconsistent. I think the fact that they have this jurisdiction under this Land Act, is quite sufficient, if there was not reason enough before, to make it wise, as a matter of policy, to prohibit them from practising. Then, of course, that would involve the diminution of their number and the increase of their salaries, and the giving them a jurisdiction which they ought to have, namely an equitable jurisdiction, because this very Land Act shows the necessity for giving such an equitable jurisdiction to the chairmen, because before it was passed the agent of the property used, in a rough way, to administer this tenant-right money; there is no one now to administer it unless you come to the Court of Chancery; therefore it seems to follow as a necessary corollary from the passing of this Act that chairmen ought now to have an equitable jurisdiction.

The Right Hon.
J. A. Lawson.
28th June 1871.

1834. On every account, therefore, looking to the character of the duties performed by the chairmen, you think it would be desirable that they should devote their time exclusively to them, and then that a certain number of counties should be consolidated, and the chairmen should have higher salaries?

I think so.

1835. Viscount *Lifford*.] It would be wise to delay any arrangement about the chairmen till that is considered?

That is a very large question. Lord Kimberley has asked me my abstract opinion upon it. There are various opinions about it. It does not necessarily arise out of this inquiry, perhaps.

1836. Earl of *Bandon*.] I believe the calculation made by the late Mr. Lloyd was, that if the jurisdiction was extended considering the number of tenements valued at less than 100 *l.* a year, the stamps alone would produce about 24,000 *l.* a year, which was ample to repay any increased expenditure?

I never heard that.

Mr. JOHN DINNEN, called in; and Examined.

1837. *Chairman*.] You are a Solicitor in Ireland?

Yes.

Mr. J. Dinnen.

1838. Where is your practice mainly?

Principally in the county Down and in the county Antrim.

1839. Have you had much experience in the Civil Bill Courts?

I have been practising for the last 17 years.

1840. Have you had experience in the working of this Act in the Civil Bill Courts?

Very considerable experience. I think I have had almost the one-half of the cases that have been disposed of in the northern division of County Down.

1841. Have you also had cases in Antrim?

Yes.

1842. Having had that experience can you inform the Committee whether, in your opinion, the working of this Act is satisfactory generally to the landlords and tenants in those counties?

I think the Act has not got fair play. It is a new Act, and has introduced a new policy, and up to the present, although it has given great satisfaction to the tenant farmers, for whom it principally was intended, or to a large extent was intended, yet there is an amount of dissatisfaction, or rather I would say irritation, on the part of some landlords, at the Act being passed, still I think, my Lord, that generally speaking the Act has given satisfaction with the exception of some small landlords.

1843. We have heard a good deal about conflicting decisions between the chairmen; we have heard that there is a conflict of decisions in some particulars between the chairmen of Antrim, Down, and Armagh; what have you to observe with reference to that; can you give us any assistance as to that?

I am not aware of any conflicting decision of any importance, unless in a matter

Mr. J. Dinnen.
28th June 1872.

of pleading, with the exception of the question of leasehold tenant-right, and that is the subject of appeal, and not yet decided.

1844. Is that the same question which we have had put here to-day, as to whether tenant-right attaches at the end of a lease?

Yes.

1845. Is that question pending at this moment?

It is, in the county Down, to be heard at the assizes next month.

1846. In observing the working of the Civil Bill Courts with reference to land cases, are you able to suggest to the Committee any improvement, or to make any suggestion as to any defect in that system?

I think the Act is working remarkably well considering it is a new Act, and all that it requires is a little time in order to have any disputed point decided by a court of higher jurisdiction.

1847. Are you able to say what has been the operation of this Act as to the value of land in the districts with which you are acquainted?

Oh, yes; I have many instances of sales previous to the Act, and subsequent to the Act. I have known so much as 100 *l.* an acre given for tenant-right on the Marquis of Londonderry's estate for two acres of land.

1848. Lord *Digby*.] Is that near a town?

About two miles distant.

1849. Lord *Lurgan*.] What acre are you speaking of, the statute acre, or the Cunningham acre?

The Cunningham acre; that is rather an exceptional case.

1850. Lord *Steward*.] What was the letting value of that?

Thirty-eight shillings an acre.

1851. *Chairman*.] Were there buildings upon it?

Nothing but a cotter's house.

1852. Will you tell us what you know about those two acres?

It was put up for auction; there were two farms on each side of the two acres, and there was competition, the result of that competition being that they gave more, I believe, than the real value of the land; but there is no doubt of the fact.

1853. Lord *Somerhill*.] For a lease?

No; a tenancy from year to year.

1854. Is the rent continued the same now?

The very same.

1855. *Chairman*.] That seems certainly very large, and one can account for that by the emulation of these two gentlemen; but what has been your experience of the ordinary price of tenant-right in that district?

The ordinary price of tenant-right on that estate averages from 30 *l.* to 40 *l.* an acre.

1856. Lord *Somerhill*.] Land being worth how much for fee simple?

I think that land is not affected in the slightest degree in fee simple by the tenant-right.

1857. If the tenant-right fetches from 30 *l.* to 40 *l.* an acre, what would the fee simple fetch?

I think the fee simple would not be affected at all; I think it would fetch from 40 *l.* to 50 *l.* an acre.

1858. *Chairman*.] £. 50 an acre for the fee, and 30 *l.* or 40 *l.* for the tenant-right?

Yes.

1859. Lord *Digby*.] Is it well let?

I think it is reasonably let; 36 *s.* or 38 *s.* an acre.

1860. Lord *Somerhill*.] I meant my question to apply to the general value of tenant-right throughout the county within your own knowledge?

It varies. On Lord Downshue's estate, and other large estates (there has been no case from the large estates brought into court), it is unrestricted.

Mr. J. Dinneen

28th June 1872

1861. The statistics show that there are considerable changes of tenancies; in this case, tenant-right comes into operation; what do you consider in the county of Down or Antrim is the usual number of years' purchase given for tenant right?

Well, I think that that varies very much, and it would be hard to put an exact price on it.

1862. Can you give me any idea of the relative value of tenant-right and freehold?

I will give you an instance of it in a case that came into court, a case of *Parker v. Wright*, in which I was concerned for the tenant. In that case we proved to the chairman that the value of the tenant-right averaged from 30 *l.* to 40 *l.* an acre; the chairman was rather taken aback at the price, and the result was, that he only gave a decree for 20 *l.* an acre, and in that case the tenant was willing and anxious to remain in possession of the land, and he offered his landlord 80 *l.* an acre for the land, the same land on which he said the tenant-right was worth from 35 *l.* to 40 *l.*

1863. Lord *Steward*.] £. 80 for the fee simple, or for the fee simple and the tenant-right?

For both together.

1864. *Chairman*.] Is that anything like an average of the value of tenant-right in Down?

What I have stated is an average on Lord Downshire's estate, on Lord Londonderry's estate, and on Lord Hill-Trevor's estate, and on Mr. Ker's estate; I can single those out, having had cases more or less connected with them.

1865. Having that knowledge of the county in that way, have the decrees that have been made, in point of fact, been extravagant in county Down?

On the contrary, I think they are small, considering the proof that was brought before the Court. I have been engaged in some cases for the landlords, but in the majority of cases for the tenants, and although there might be a little grumbling at the amount given, yet, in point of fact, both parties appear to be satisfied, for there are no appeals upon the amounts decreed.

1866. How many appeals are pending for the next assizes?

I think two or three. There is one appeal, where a chairman would not allow tenant-right where the lease expired. I have appealed in that case. There is another case where he held there was a forfeiture of the tenant-right by a subdivision of the land by a widow who had taken her family to reside at Belfast. With the exception of these two, and M'Nown and Beauclerk, I am not aware of any other case coming forward.

1867. Can you tell me how many there may be now from the county of Antrim?

I cannot speak with so much certainty about that.

1868. But there are only three at this moment from Down?

Three; and the one point is involved in two.

1869. You say you think these courts suitable for their purposes under the Land Act; can you give the Committee any reason for that opinion?

I believe they are the most popular courts we have. Perhaps I am a little prejudiced, being a practitioner, but they are looked upon as popular courts. You have economy, you have the tribunal at home, you have the witnesses attending without much expense, and you have an expeditious decision.

1670. Earl of *Belmore*.] Have you found since this Act has been in operation that in the majority of cases where there has been disturbance by the landlord or the tenant, that the majority of cases have been brought into court, or have been settled without coming into court?

Some cases have been settled. I had a case of some importance, where Lord

Mr. J. Dinneen.
28th June 1872.

Hill-Trevor wished to take the property into his own hands, and in that case the agent proposed that it should be left to arbitration; that was agreed to, and it was left to arbitration; the agent paid some 23 l. the English acre for the tenant-right, although it was settled by arbitration.

1871. Do you think in the majority of instances these private settlements continue, or do they go into court?

Experience up to the present is rather against the settlement out of court, but I believe it is solely attributable to a little irritation that appears to prevail, and which in a short time, I hope, will give way to a better feeling between landlord and tenant.

1872. Supposing the landlord had purchased the tenant-right under a decree of the Court, for what you have said, 30 l. or 40 l. an acre, do you think, if he wished to let that land free of tenant right, he would be able to obtain such a rent as should be equal both to the old rent and to the interest of the money he had been decreed to pay for the tenant's interest?

I have not the slightest doubt about it, because the sum allowed is the current price in the neighbourhood, which there are half-a-dozen people prepared to give. Therefore the money is available, and the value of the money ought to be equal to an increase of rent.

1873. Lord *Somerhill*.] Would the tenant agree to go in at a rent that would pay you the interest as well as the ordinary rent?

I am not aware of cases where the landlord has really purchased up the tenant-right, and then raised the rent.

1874. Earl of *Kimberley*.] Are you aware whether Lord Dufferin obtained a rent sufficient to cover the old rent, and what he might reasonably expect in shape of interest upon his purchases, when he bought up the tenant-right?

I think he did. But Lord Dufferin had a restriction more or less upon the estate, and there was not that full and free sale that exists on those other estates that I have mentioned; therefore, although the rent may have been increased, perhaps it would not be increased in the same proportion that it would be where large sums might be demanded on other estates. There was a limit on the tenant-right, as it were.

1875. You are aware, by the 2nd paragraph of the 1st section of the Act, it is provided that, where a landlord has purchased or acquired a tenant-right, such holding shall thenceforth cease to be subject to the usage. Has it ever come before you, in the course of your professional practice, to consider whether if, instead of the landlord having acquired such usage by voluntary agreement, he had been decreed to pay a sum of money, the portion of the section that I have quoted would or would not apply, so as to discharge the holding from any further liability to such usage?

I think it would, but I am not aware that any case has arisen of that nature.

1876. You have not considered the matter?

No, I have not.

1877. Lord *Charlemont*.] Do you think it would be safe for a landlord to purchase up a tenant-right, no matter what the sum was, and letting it at an increased rent to produce an interest upon the money he had expended in purchasing up that tenant-right; do you think that it would be safe for that landlord to let it to a tenant in the belief that the tenant-right would be extinguished on that farm; do you not think the tenant would still claim the right of disposing of it, and getting a tenant-right value out of it, no matter whether the landlord had paid it or not?

I have not considered that matter.

1878. Viscount *Lifford*.] You said just now you were not aware of differences of opinion between the chairmen?

Not on vital points.

1879. Are they agreed upon the question as to whether it is the estate or the large district from which the custom to tenant right is to be set up?

So far as my experience goes, there is no difference on that subject.

1880. None between the Chairman of Armagh and the Chairman of Down?

The

The Chairman of Down holds that if the usage can be proved upon an estate' that is binding; if no usage, then immediate neighbourhood.

Mr. J. Dinnen.

28th June 1872.

1881. He goes by the estates, not by the area?
Clearly; that is the first question.

1882. Are the chairmen agreed upon the question of the effect of the tenant right on Ulster as regards leases?

That is the subject of an appeal at present.

1883. Are the chairmen agreed upon it; I have not the least doubt they will yield to the ultimate appeal, but I want to know whether they are now agreed upon it?

I think there is rather a difference upon that, otherwise the appeal would not be lodged.

1884. If one chairman said in estimating the value of tenant-right of a farm, the only question was what the farm would sell for in the open market, and if another chairman said, "I should be staggered by the enormous amount, and I should be disposed to say, 'I will let you try by appeal; I cannot go so far as 30 l. or 40 l. an acre,'" would you think that they agreed?

I would think they came to a different conclusion upon the facts brought before them.

1885. These are both the conclusions of your own chairman in county Down?

The case you quoted is exactly the case in which I think he had given too small a sum to the tenant.

1886. He carries out Chief Justice Monaghan's impression, that a man does not always agree with himself; I think there was an address presented to Mr. Johnson?

Yes, two addresses.

1887. How long has he been chairman?

Ten years.

1888. You are a man of great influence in that county; did you have something to do with getting up the address?

I had nothing at all to do with getting up the address; will you allow me to state, since this question has been raised, when I came to Newton Ards on circuit from the previous town, I was waited upon by some members of the grand jury, and asked whether the chairman would receive an address from them; I said I would show the address to the chairman, and if he thought proper to allow them to present it, I could see no possible objection to it. I know well that this inquiry has created a good deal of feeling outside, and in consequence of that feeling, the grand juries took the only opportunity presented to them of expressing their opinion to the chairman; it was not by way of fulsome flattery, but with a view of showing their approval of the Act and the tribunal, and asking that this Committee should have an opportunity of hearing the voice of the tenant farmers before making their report, as the inquiry here was private, and they did not know what was going on.

1889. Supposing the chairman's decision had been different in the case of *M'Nown v. Beauclerk*, would they have presented that address?

I do not think that would have had the slightest effect.

1890. Supposing the decision had been different, supposing he had decided that there was no tenant-right on the expiration of a lease, would the grand jury of Quarter Sessions have presented an address to Mr. Johnson?

Well, my Lord, he has decided in that very way, where the usage was not proved on the estate; therefore I think that argument cannot hold good.

1891. If the decision in the *Beauclerk* case had been different, would they have presented that address?

I have not the slightest doubt of it, inasmuch as the Land Act has met with their full approval.

1892. Supposing he had decided against the tenants, and in favour of Mr. Beauclerk, would the grand jury then have presented Mr. Johnson with an address?

(136.)

E E 2

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Mr. J. Dinneen.
28th June 1872.

I do not think it would have affected them in the slightest degree.

1893. They would have addressed him just the same if he had decided against them, as if he had decided for them?

I think it was more a slap at this Committee than anything else. I don't say the feeling was well founded. You will excuse me for putting it so plainly.

1894. *Chairman.*] As I understand you, you are actually appealing against Mr. Johnson at this moment, because he refused to give you a tenant-right at the end of a lease in another case?

Quite so.

1895. Lord *Lurgan.*] Are you aware whether addresses have been presented in other counties to the chairmen?

Yes; and with your permission I will refer your Lordship to the remarks of one of the chairmen.

1896. To what address are you alluding?

I am alluding to an address to Mr. Hamilton, Chairman of Armagh. In reply to the address, he said, "Under the circumstances, therefore, I cannot but feel happy, gratified, and grateful for the very handsome expression of opinion which you have accorded to me, and if in this county, by degrees, a knowledge of the provisions of the Act has become more general, if the minds of the tenants and landlords have become more settled as to their respective rights under this Act, it is a very favourable result; it is carrying out the object which the Legislature was anxious to forward; namely, a satisfactory arrangement between landlord and tenant, to avoid the disturbance of tenants in their holdings where it was possible agreements could be made with their landlords, and, especially, to prevent the ruin and disruption of those ties which unite landlord and tenant, where it was possible to avoid it, and which it is the interest of the public, the interest of the tenants, and the interest of the landlords to uphold as long as is practicable upon reasonable and just grounds." That is the conclusion of the chairman's address, in which I fully agree, and I believe it is the sentiment that prevails largely in the North of Ireland.

1897. *Chairman.*] Is that his answer to an address from the grand jury of Quarter Sessions of Armagh?

It is. Perhaps your Lordships will allow me to refer to a public expression of opinion that has been given regarding this Land Act, and not confined to the County Down, but also prevailing throughout the whole of Ulster. I hold in my hand the result of public meetings that have been held since this inquiry sat, where they have passed resolutions. I do not wish to take up your time by reading them, but the purport of them is to express their full approval of the working of the Land Act, not only with the tribunal, but with the results arising from it, and disapproval of this Committee sitting with closed doors.

1898. Earl of *Kimberley.*] Where were these resolutions passed?

At Ballymena, Cook's Town, Downpatrick, Antrim and Down, and other places.

1899. *Chairman.*] Within what period?

Within the last fortnight.

1900. Lord *Lurgan.*] We have been told by a gentleman connected with County Down that, if an estate in the present occupation of tenants was sold, they could not get as much for it as could have been obtained prior to the passing of the Land Bill, owing to the unsettled state of things, and the decisions that have been given. Do you agree with that statement?

I do not think it has had the slightest effect among the large landlords that I have referred to. The same feeling exists, and the same prices were obtained previously to the Act as have been obtained subsequently to it. Not the slightest effect has been produced.

1901. Lord *Steward.*] Have there been many sales in the Landed Estates Court since the passing of this Act; I do not refer to Lord Waterford's?

That is the only large estate, that I am aware of, that has been sold since the passing of this Act.

1902. Have there been any small estates sold?

I could not speak for a certainty.

1903. Lord

1903. Lord *Digby*.] What is the value that has been given for tenant-right to small proprietors?

In the case of small proprietors, I should say the average to be from 15 *l.* to 20 *l.* an acre.

Mr. J. Dinnen.

28th June 1872.

1904. Why is there a difference ; is it because the rents have been more exorbitant?

It is owing to the uncertainty of the small landlord raising his rent perhaps sooner than the good and indulgent landlord will do. There is a kind of security with the noblemen and gentlemen that I have named, that does not exist with the smaller landlords.

1905. Earl of *Kimberley*.] Are you of opinion that we have sufficient knowledge of the practical working of the Act to form a just opinion as to any possible defects in it, if there be defects?

I believe not.

1906. You think it is premature to consider these points?

I do.

1907. Viscount *Lifford*.] Are you aware of questions that have been raised in some parts of the country as to game and turbary ; the tenants have been induced, by unfortunate advice, to lay claim to this?

No. Too good a feeling exists in our neighbourhood for anything of that trivial nature to arise.

1908. Are you aware that it has arisen in other counties?

I have heard that it has been started in Donegal.

1909. Do you not think it would be an unfortunate thing if the Act was still left in doubt upon this point, and these people establish these rights, as they suppose, and they were afterwards taken away from them?

No case of that kind has arisen in our district ; and I believe, if there is any objection, the chairman can dispose of it very easily ; because I should look upon it as an insuperable objection on the part of a tenant not to allow his landlord to exercise a right that he had previously enjoyed.

1910. Do you think that precedents for uniformity of decision should be established as soon as possible on these points?

I do ; but I think the movement has been precipitated. The Act has not got fair play ; there has been too much precipitancy altogether in the inquiry.

Mr. EDWARD GARDNER, called in, and Examined.

1911. *Chairman*.] You are a Solicitor and Attorney in the county of Down?

Yes.

Mr. E. Gardner.

1912. Where do you reside?

In Downpatrick.

1913. Do you practice in the Civil Bill Courts?

I do.

1914. How many years have you practised?

My experience is a little longer than my practice. During the latter period of my apprenticeship I was intimately acquainted with the working of the court for two years ; and during the following two years I acted as under-sheriff of the county of Down, and during the last eight years I have been practising.

1915. In all, you have been 12 years acquainted with the working of that court?

Yes.

1916. Do you practise in any other county?

I confine my practice to the northern division of the county of Down.

1917. Is the chairman's court a court that gives general satisfaction ; I mean

(136.)

E E 3

without

Mr. E. Gardner. without reference to the Land Act at all; is it a court which is popular with the various classes of the community?

28th June 1872.

It is. It enjoys the general confidence of the community.

1918. With reference to the Land Act, have you been engaged in land cases yourself since the Act was passed?

I have.

1919. Have you observed the general action of the Court in reference to those cases?

I have.

1920. Can you inform the Committee whether you think the working of that court is satisfactory and efficient in such cases?

I think it is of advantage, particularly to the tenant, because the Civil Bill Court is essentially, I may say, the tenants' court; and having this jurisdiction which the Land Act has given the chairman, he is able to dispose of questions between landlord and tenant with expedition and cheaply, and he has always enjoyed the confidence of the tenantry; at least, as far as my experience goes, he has enjoyed it in all the counties; the confidence of the tenantry, and also the confidence of the landlords.

1921. On the whole, since the Act was passed, you think the Court, as far as you know, has acted satisfactorily?

I do.

1922. I do not mean for a particular class, but generally, as to justice?

Generally. I have acted for both landlord and tenant, and I consider that this Act has acted fairly towards both.

1923. Can you say whether you could suggest to the Committee any improvement upon it, or any different tribunal that would be better for the purpose than this?

I cannot conceive a better primary tribunal than that court is.

1924. As to the appellate tribunal, is that satisfactory, so far as you have seen it?

I consider that it is; but I think the suggestion of Mr. Justice Lawson was a very good one, that the chairman should have power to reserve a case direct for the Court for Land Cases Reserved.

1925. You think that that would be satisfactory to the public generally?

I think it would.

1926. Perhaps you are able to tell us what appears to interest the Committee. You heard Mr. Dinnen's evidence with reference to the prices of tenant-right. Does your experience go to confirm what he has said upon this subject as to county Down?

It does, my Lord. I have known prices of 10 l., 15 l., 20 l., 25 l., 30 l., up to 38 l., given per Irish acre.

1927. Lord Lurgan.] The other witness spoke of the Cunningham acre?

Yes.

1928. Chairman.] What do you say as to that; does your evidence apply as to the Irish acre?

My evidence applies to the Irish acre. I do not know so much about the price per Cunningham acre.

1929. Do you know whether the operation of this Act has been to increase or diminish the prices of tenant-right?

I do not think that it has had any effect at present upon the prices; but if I may venture an expression of opinion, I should say that the eventual effect will be to lower the prices of tenant-right, and I would like to give my reasons. At the present time, on the larger estates where tenant-right is universally acknowledged, there is no hesitation in purchasing the tenant-right; in fact, there is a greater demand than there is a supply, and that tends to raise the price. Now, if tenant-right becomes generally recognised through the north of Ireland, the supply will become larger, and consequently the demand will be somewhat diminished. The prices will fall in consequence of that.

1930. You

1930. You mean the supply of tenant-right will be greater in proportion to the demand?

The supply will be increased.

1931. Earl of *Belmore*.] There will be more farms for sale?

Exactly, and there will be more confidence on the part of the tenantry in purchasing in various estates. At present the practice is confined to some of the larger estates. Then again, there is a difference which, I think, will take place in the value of money. At the present time the tenant's money is only worth to him about 2 per cent., because, as a matter of practice, the tenant invests his money invariably in a local bank on deposit receipt, and he does not invest it as a landlord invests his money; it is only worth, therefore, about 2 per cent. to him. But when a general security begins to pervade the farming community, the tenant will seek to invest his money as other people invest theirs, and that will also tend to decrease the prices, in my opinion, that will be given for tenant-right.

1932. *Chairman*.] Can you say there has been any greater sense of security on the part of the public, in districts with which you are conversant, by reason of this Act of Parliament?

I can speak of my own practice, particularly chamber practice, upon the subject. I find that there is a difference already in the minds of the tenantry. They seem to feel more secure, and deal with more confidence; and, for myself, I have already prepared several mortgages of the tenant-right. Some man lends the tenant a sum of 100 *l.*, of 200 *l.* or 300 *l.*, on the security of his holding.

1933. Have you known that to take place before the passing of the Act?

Oh, no, not before the passing of the Act. And I know that this has been done in other offices besides my own since the Act.

1934. *Lord Steward*.] Before the passing of the Act it was not a legal security, precisely, now it is a legal security?

It is.

1935. *Viscount Alford*.] Supposing the mortgagee forecloses, who becomes the tenant?

The mortgagee would become the tenant.

1936. Without being permitted by the landlord, or accepted as a tenant?

We have provided for that case in this way, that should it become necessary for him to realise, we have a power of attorney in the mortgage that he can use the name of the tenant in claiming in the Land Court, and then he could claim the right in the Land Court to have his name inserted by the landlord as tenant, provided, of course, there was no reasonable objection to him.

1937. So that the tenant could be forced upon the landlord against his will?

Oh, no; he has a right to object to the tenant under the custom.

1938. Who is to remain in possession of the land?

In the meantime the mortgagor would be in possession.

1939. Would the landlord come down for rent upon the mortgagor?

Clearly.

1940. I thought I understood you to say the mortgagee would foreclose the mortgage and take possession?

There is a difficulty about the foreclosure.

1941. *Chairman*.] That must be subject to the custom, or the contract of the parties. The mortgagee must take subject to the liabilities of the estate and the customs of it?

Clearly. I do not think there could be such a thing as foreclosure of the mortgage of the tenant-right.

1942. *Lord Belmore*.] Suppose the tenant, after having mortgaged his tenant-right, was disposed to act fraudulently towards his mortgagee, and by a private arrangement sold his tenant-right to the landlord, what remedy would the mortgagee have?

The landlord could not accept a surrender in that case, because we register the mortgages, and that is notice to the landlord that this transaction has taken

Mr. E. Gardner.
28th June 1872.

place. The landlord could not, therefore, accept a surrender from the tenant legally.

1943. It comes to this: a landlord, in addition to making arrangements with his tenant, if he wanted to resume his own land, would have to ascertain what debts his tenant owed, and whether there were any mortgages?

There is no difficulty in practice in the wide world in that respect, because all that he has to do is to arrange with his tenant to resume the holding from him, and then he makes a search in our Registry of Deeds Office, and everything that is against the holding, that the landlord need be concerned about, is found there, and he is able to close the matter in the course of a week.

1944. Is there any machinery by which the repayment to the mortgagee would be provided for, or would the landlord be obliged, having dealt first with the tenant, then to deal separately with the mortgagee?

I do not quite understand your Lordship.

1945. You say that the landlord could not accept a sum from the tenant who had mortgaged his tenant-right without being obliged to search for the charges against the tenant-right. Of course, in that case, the landlord would have two parties to deal with instead of one; he would have the tenant to deal with, and he would have the mortgagee of the tenant to deal with?

He would, the same as in the sale of an estate where you have to deal with all the persons who have charges upon it.

1946. Lord *Greville*.] You do not speak of any case that has happened? Not of a case that has happened.

1947. It is only a matter of opinion? Only a matter of opinion on the general law.

1948. Lord *Lurgan*.] I think you said you had prepared mortgages? Yes.

1949. Lord *Steward*.] Do you lend the money at the same rate of interest as you would upon fee simple property?

Perhaps there might be a difference of 1 per cent. in the rate of interest, especially when the sum was a small one. I have lent at 5 per cent. I do not think I have lent at 6, but I have lent at 5 per cent.

1950. Do you consider the security of the tenant-right interest in the farm equal to the security of the fee simple of the land?

I can hardly say that.

1951. Then you make a difference in the rate of interest at which the money is to be lent?

That is more the contract of the parties than my doing.

1952. They act a good deal on your advice?

Well, as to the mortgage of the tenant-right, that is generally done between themselves; the contract has been entered into between themselves, or an arrangement for it, before they come to me at all.

1953. *Chairman*.] You have expressed your opinion that the landlord must regard the mortgagee in this case. Why do you say that; it is not at all clear to me that he would have anything to do with him?

Because the legal estate is transferred to him.

1954. In what; not in the land; suppose he comes to turn out the tenant, the most the mortgagee could possibly do would be to claim under his power of attorney, and to get the compensation; would not that be the uttermost claim he would have against the landlord?

It would.

1955. Earl of *Kimberley*.] As I understand you, you say the mortgagee, in the case of an eviction of the mortgagor, would come forward and claim to be the purchaser of the tenant-right interest, and to be the tenant under the law, would he not?

But that only extends to the amount of the money due to him.

1956. I only want to understand what you said; I understood you to say, that in the event of the mortgagee wishing to obtain money, and not obtaining it from the mortgagor, he would, by the arrangement with the tenant, appear before the court under this Act as a person claiming to be the successor of the tenant, and to be admitted as tenant by the landlord?

Yes.

1957. Supposing the landlord objects to the mortgagee as tenant, what would happen, in your opinion?

If the objection is a reasonable objection the mortgagee loses that security.

1958. Then it would depend upon the decision of the court just as any other case, whether that person who happened to be the mortgagee, would or would not be accepted as a tenant?

It would; perhaps I might add that in such a case the probabilities are—it is almost certain—that some third party would be introduced who would be a proper tenant, and would meet with the approval of the landlord.

1959. Would the fact of the person coming forward as tenant being a mortgagee of the tenant-right, give him any claim whatever under the Act of Parliament, beyond the claim which any person who came forward to be recognised as a tenant would have?

None.

1960. Viscount *Lifford*.] It would give him a claim to be recognised as tenant?

Not any stronger claim than any other person.

1961. *Chairman*.] You put a power of attorney in your mortgage, enabling the man to appear in the character of a tenant and get the rights of a tenant, and nothing else?

Exactly. I may say that the draft of this mortgage was settled by counsel.

1962. What is the security?

Of course it is not a security that you would lend generally upon; one tenant lends to another, or something of that kind. What I may say about the security is this: that already there has grown up amongst the tenantry such a sense of property since this Act was passed, and such a feeling that they would not be disturbed, that they regard this as reasonably good security.

1963. That is to say, the tenant having security under this Act of Parliament, being sure of compensation for disturbance, he puts another man in his place and gives that man a power of attorney, and that man is enabled to have the value of the Act of Parliament?

So far as his money is concerned.

1964. Earl of *Belmore*.] Of course if a man lends the tenant a sum of money, he is entitled to look to the tenant for the repayment; if the tenant makes an agreement with the landlord for a surrender and receives a sum of money from the landlord, and, we will say, goes off to America with that money, would his creditors look to any property he might have left, or would they look to the land or to the landlord for the value of the claim?

Oh, clearly to the tenant himself.

1965. The landlord would not be liable to the creditors?

Not to the creditors, certainly not.

1966. *Chairman*.] Perhaps you can give us some opinion whether the effect of this Land Act has been to diminish the value of property in your district; suppose you bring a fee-simple estate into the market, would you get fewer years' purchase now than you did before?

I should say not.

1967. Have you had experience?

We have not had, I may say, any experience in our county on the subject; but about a year ago, since the Act, or about the time the Act was passed, I sold a very small estate in County Tyrone for about 40 years' purchase of the rental.

1968. What was the size of the estate?

(136.)

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It

Mr. E. Gardner.

28th June 1872.

Mr. E. Gardner.
28th June 1872.

It was a very small estate; I think the purchase money was under 2,000 *l.*: it was some neighbouring man that purchased it.

1969. A very high rate of purchase?

Yes.

1970. Viscount *Lifford*.] It would be bought by the occupying tenant?

No, by a stranger to the land altogether.

1971. *Chairman*.] We have heard about the value of the land in the market being diminished by having tenants upon it; do you think there is much in that?

I do not see how that could be at all; I think, on the contrary, it is an element of value.

1972. How do you explain that to the Committee?

Take, for example, an estate that for a number of years, 20, or 30, or 40 years, has been yielding a rental; the tenants have been paying that rent during all that number of years, and you simply take the position of the landlord when you purchase and enjoy these rents which go on being paid as before; but if you have an estate without any tenants on it at all, it will take some time for the tenants to settle down into payment of rent, and so forth. I do not think it would be so valuable an estate without tenants as an estate with tenants.

1973. With regard to your knowledge as to the value of tenant-right through Down and the neighbourhood, do you think the chairmen have, on the whole, given extravagant decisions in favour of the tenant?

I do not think they have; I think they have been founded purely upon the evidence; and, in some cases, from what I have seen, they have rather cut down what a tenant would have got if he had been selling to some other tenant.

1974. Earl of *Belmore*.] Was it the custom in Down before the Act came into operation to sell by public auction or private arrangement?

Both, my Lord.

1975. Lord *Brodric*.] What is the highest rate that you have known given by a Civil Bill Judge?

I do not know whether I know of any case above 25 *l.* an acre. The tenant always judges by the acre, because he cannot judge by the rental at all; the number of years purchase on the rent means nothing; it is no way of arriving at a price whatever. Tenant-right is the interest in the holding, not in the rent. It is by the rent the landlord's interest is measured. Assuming the rent to be a fair one, it has nothing further to do with the tenant's interest.

1976. Earl of *Belmore*.] Was it the custom in Down to take into consideration the value of buildings on the ground, or merely to say there are so many acres in the farm?

The way I would answer that question is this: a tenant going to buy a farm has regard to the buildings and suitability of the farm generally for agricultural purposes, and he says, "It is worth to me so much an acre, because it has got all these things."

1977. That is not always the case in all parts?

I am not aware.

1978. Lord *Brodric*.] What guarantee is there under the present working of the Act that the landlord may not be compelled to accept a tenant of bad character against his will; is there any such guarantee?

The Act does not contain any express guarantee upon that subject, but the practice would be the same under the Act as it has been before the Act.

1979. *Chairman*.] Are you aware of anything in the Act that would compel a landlord to take a bad tenant now who would not have been compelled before the Act to take one?

Clearly not, my Lord, quite the contrary.

1980. Lord *Brodric*.] Except that before the Act he might always have dealt with him by giving the assignee or the new tenant notice to quit, whereas if he gives him notice to quit under the present Act he runs the risk of penalties for disturbance?

I do not know that that meets the matter at all, because if a tenant insisted on

on transferring his holding to a person of bad character he would be insisting upon, if I may use the expression, a right which he never could have insisted on before, and the court would at once say that this was most unreasonable conduct, and they would refuse him compensation; he would be cutting his own throat by doing anything of the kind.

Mr. E. Gardner.
28th June 1872.

1981. That may be so; but I take it that it is clear, that whereas the notice to quit before the Act was passed, was employed by landlords in certain instances to protect tenants from quarrels with each other about turf and various other matters, that notice to quit cannot now be served without the danger of incurring penalties for disturbance; that is the point I wish to get?

That, my Lord is plain: that could not be.

1982. *Chairman.*] The landlord cannot serve notice to quit now without running the risk of paying compensation for disturbance?

No; but if a tenant has been unreasonable in his conduct, he runs the risk of losing his property. As far as the landlord settling quarrels and bringing the notice to quit to bear for the purpose is concerned, it is somewhat of the paternal form of Government that still exists in some estates, now passing away. There should be a tribunal for settling things of that kind. It has been suggested that the resident magistrate should have jurisdiction for cases like that.

1983. Lord *Greville.*] Do you know of any instances in which, since the passing of this Act, the tenants have called into question, the rights of the landlord with respect to turf and sporting which he had exercised before the passing of the Act?

I do not know, I do not see how the rights of the landlord could be questioned if they existed for any length of time.

1984. Your experience is in Down and Antrim?
Well, in Down principally.

1985. Viscount *Lifford.*] I think in Down you are too rich and too comfortable to have much turbary or many moors?

It is only one part of the County Down has turbary; there is a good deal of sport in County Down. No such questions have arisen, nor could they under the custom.

[Adjourned till Tuesday, 9th July, at Twelve o'clock.]

Die Mercurii, 10° Julii, 1872.

LORDS PRESENT:

Earl of PORTSMOUTH.
Earl of BELMORE.
Earl of BANDON.
Earl of STADBROKE.
Earl of KIMBERLEY.
Viscount LIFFORD.
LORD STEWARD.
Lord DIGBY.
Lord BRODRICK.

Lord SOMERHILL.
Lord CHARLEMONT.
Lord SILCHESTER.
Lord WENLOCK.
Lord LURGAN.
Lord CHELMSFORD.
Lord MEREDYTH.
Lord GREVILLE.
Lord O'HAGAN.

THE LORD CHELMSFORD, IN THE CHAIR.

Mr. MICHAEL HENRY, is called in ; and Examined as follows :

1986. *Chairman.*] You are a Solicitor in Derry, are you not ?
I am.

1987. Have you practised much in the Civil Bill Court ?
Pretty much.

1988. Have you had any practice under the Land Act ?
Some.

1989. We desire to ascertain whether the working of that Act is favourable or otherwise, especially with regard to uniformity of decision, and the effect of the Act upon the relations between landlord and tenant ; can you give the Committee any information upon that subject ?

As far as the tenants are concerned I am perfectly conversant with their feelings, but I must say that I have had very little experience, so far as the landlord class is concerned, as to their feelings ; as to the working of the Act, each case must, in a great measure, depend upon the facts brought out in evidence before the chairman, and it is almost impossible for any one case to be similar to another, because there are different facts which cause the decisions to vary.

1990. It is perfectly true with regard to questions of fact, that each case must depend upon its own circumstances ; but do not some very difficult questions of law arise under this Act ?

No doubt.

1991. As far as your experience goes, has there or has there not been uniformity of decision amongst the chairmen with regard to those questions of law ?

Of course there have been differences, and there must be differences, for different men nearly always take different views of the same things. Of course there must be some differences.

1992. But there is only one right way with regard to the law upon any subject ?

Of course there can be only one right way ; but we may have a difference of opinion as to what is right.

(136.)

Mr. M. Henry.
10th July 1872.

Mr. M. Henry
10th July 1872.

1993. Lord *Somerhill*] You mean the right construction of the Act?
Yes.

1994. *Chairman.*] Have any principles been established by appeal, so that the chairmen would be directed and governed in any decisions to which they come by the judgments of superior courts?

As to what would influence the chairmen, of course, I am not to be supposed to understand that at all. My duty, principally, lies in bringing forward my case in the best light possible; but as to what would influence those gentlemen, in their decisions, of course that is more a matter for themselves.

1995. I am afraid you did not understand my question, which was this: Whether any principles of law upon the construction of the Act, have been settled by an appeal to the superior courts, or whether all the questions still remain unsettled, there being no principles laid down for the guidance of the chairmen?

I believe the only principle was in a case which came before Mr. Coffey. That was the case of Austin and Scott, and the question was whether the tenant-right existed after the expiration of a lease. That, I believe, has not been finally settled, in consequence of the death of Mr. Scott. That is, in my experience, the only case.

1996. Then you know of no case in which the construction of the Act has been finally settled by appeal, so that the chairman would be governed by the decision which was, in this way, ultimately come to?

I cannot call any to memory at the present time.

1997. Do you consider that the appeal which was given by the Act of Parliament has worked well; first of all, to the going judge of assize, and then if the going judge of assize thinks proper, but only at his discretion to the Court of Land Cases Reserved?

I think it should work very well indeed, and it has given, so far as I know satisfaction to the tenants at least.

1998. Has it given satisfaction that there is no ultimate appeal except at the discretion of the judge?

Yes, it has given satisfaction to the tenants.

1999. But one likes to look at both sides. You say that the tenants have been generally perfectly well satisfied with the administration of the law upon this Statute; but what do you say with regard to the landlords?

I cannot say much because I have not had much experience of their feelings upon the subject. I principally act for the humbler classes, for the tenants. It is very seldom that I have anything to do for the landlords at all.

2000. Those who act on one side generally know something of the feelings of the other side?

Some landlords are contented, and some discontented, and of course some tenants would be discontented too.

2001. But has the contentment been generally on the side of the tenants?

The contentment is pretty general on the part of the tenants.

2002. Lord *Somerhill.*] I suppose you mean that they look upon it as a protection against vexatious evictions?

They do.

2003. And that the landlord does not think that the law as it now stands gives him sufficient protection against an error of the chairman?

I believe that that is the feeling with landlords who are desirous of retaining the despotic power they possessed.

2004. Lord *O'Hagan.*] Do you practice only in the county of Londonderry?

No, in the County Donegal also, and sometimes in the County Tyrone.

2005. In your experience of those three counties, is the chairman's court a satisfactory court to the people generally?

Perfectly so.

2006. Are the chairmen, so far as you know, trusted by the public?

They are, completely so.

2007. Have

2007. Have you heard any complaint as to the appeal to the judge of assize being unsatisfactory?

I have not heard any, so far.

2008. *Chairman.*] Have you known of appeals to the judge of assize?

Yes, there have been several appeals.

2009. In any case have they gone on to the Court of Land Cases Reserved?

Not in any of the cases in which I was engaged.

2010. *Lord Steward.*] In the appeals which you have known to be prosecuted, has the decision of the judge generally been in conformity with that of the court below or reversing it?

In all cases in which I have had any experience the decision of the chairman below has been upheld, and some cases, in fact, that were appealed, were settled before the appeal came on coinciding with the decision of the chairman below. As far as my own experience, and as far as the cases which I have had myself are concerned, the decisions of the chairmen were upheld in all of them.

2011. *Lord Somerhill.*] Are you aware of any conflicting decisions of chairmen upon any important point?

Of course there have been decisions to a certain extent conflicting, but not absolutely conflicting.

2012. In the county of Derry and the county of Tyrone have the chairmen of both counties been unanimous in their opinions upon all points of the law?

I believe as to the question of a lease, there was some conflict as to whether there was tenant-right subsisting after a lease or not, but that is the only material point upon which I can call to mind that there was any difference of opinion.

2013. Are they unanimous in a decision upon the point of how far the amount of beneficial interest which the tenant has enjoyed during the duration of his past tenancy is, upon ejection, to be counted as a set-off against the compensation which he may claim for disturbance?

We have very little of that in the north of Ireland at all; it is the Ulster custom which we have; we are peculiarly situated in respect of it, and, of course, the compensation for disturbance does not arise as in the south or west of Ireland.

2014. I believe that, according to what is commonly called the Ulster tenant-right, no allowance of that kind whatever was made, but the goodwill of the land as it stood, without any reference to the past, was the question?

Yes.

2015. *Earl of Stradbroke.*] Supposing that in Ulster a property were let upon a very long lease at a low rent, and that at the end of that long lease the property was very greatly increased in value, would that be a reason for the tenant requiring a larger indemnity, if he had had the benefit of that lease for perhaps 50 or 60 years at a very great advantage to himself?

Of course it must have been a very great advantage to himself, but if you take into consideration the plantation of Ulster and the circumstances under which it was planted, and the hardships which the settlers going there had to endure, it makes a very great difference; I should say that the tenant would be entitled to sell, if he wished to sell, at a reasonably increased rent, taking into consideration the increased value of the produce and such things as that.

2016. You do not think that the advantage would have been wiped out by his term of 60 years?

Certainly not.

2017. *Chairman.*] I do not think that you have given an answer to my question, with regard to the effect of the working of the Act upon the relations of landlord and tenant; what I meant to ask you was the working; whether the Act has not raised expectations in the minds of the tenants, which they hope may be extremely beneficial to them in their transactions with their landlords?

I do not think it has, because, even before the passing of the Act, I know as a matter of fact that tenant-right sold just as well as it does now, so that the expectations of the tenant have not been largely raised.

(136.)

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2018. I understand..

Mr. M. Henry.

10th July 1874

Mr. M. Henry.
10th July 1872.

2018. I understand that they are increased, but not materially?

They have increased as far as bad landlords are concerned, but as far as good landlords are concerned the matter remains just as it was, except that there is now certainty, instead of uncertainty as before; that is all the difference.

2019. Lord *Sulchester*.] What is a bad landlord?

We consider in the north of Ireland that a man who would turn an improving tenant out without giving him any compensation is a bad landlord.

2020. Earl of *Stradbroke*.] Have they power to do that in Ulster?

In some instances they exercised the power. Of course lately they have not that power, but generally the right to tenant-right was respected.

2021. Lord *Greville*.] But this law does not in any way alter the custom of tenant-right. Would it be possible, under what you call a bad landlord, for a tenant to obtain compensation now which he could not do before the passing of the Act; if there was no custom proved upon the estate, do you consider that a tenant would be able to obtain tenant-right?

There are very few estates on which the custom cannot be proved to have existed.

2022. I am speaking of one in which it does not exist?

I have not the experience of a single estate in the north of Ireland in which it does not exist; though of course there have been from time to time instances where landlords have refused their permission. These have been exceptional cases.

2023. Where that permission had been refused before, would it, in your opinion, be capable of being enforced now?

I do not think that solitary acts should be to the detriment of a general principle. Of course, there have been one or two, or three landlords who have infringed upon the custom; but I do not think that that should bind all the tenants upon their estate.

2024. Viscount *Lifford*.] Independently of the matter of money, have there not been expectations raised in the minds of the tenants, especially in Donegal (with which no one is more cognisant than yourself), as to other matters?

Nothing suggests itself to my mind at present.

2025. Have you heard nothing about turbary?

Yes; I have heard about turbary, certainly.

2026. Will you be kind enough to say what are the expectations of the people of Donegal as to turbary, which you, as an able lawyer, have of course stated for them?

Of course I cannot give the expectations in particular instances of what my particular clients require; but as to what I have gathered in my experience in the courts on the question, I shall be very happy to give your Lordships all the information I can. As I understand it, it was the custom in Ulster that every tenant should be entitled, along with his farm, to a portion of bog. That was the custom, I believe, and has been the custom on almost all estates.

2027. Lord *Somerhill*.] I suppose only where bogs were adjacent to the farms? There are very few portions of Ireland in which we have not bogs.

2028. Viscount *Lifford*.] Was that right of turbary unlimited?

It was limited in some particular instances. I believe on your Lordship's estate it has been limited; and so far as I can hear, there has been lately an attempt to limit it a little farther than it had been limited before.

2029. I will not go into the case of my own property; but has no other right been affected by the expectations of the tenants besides turbary?

I presume that your Lordship refers to the game question.

2030. Certainly?

I consider that that arose altogether by a dispute between two landlords, and I believe that the tenants would not have raised that question with the landlords, were it not for this; that one landlord, who lives in the vicinity in which your Lordship resides, brought about an agreement, and wished the tenants to sign it without their actually knowing what was in it. They refused to do so, after having

having consulted me upon the subject. I advised them to sign no agreement the contents of which they did not know.

Mr. M. Henry.

10th July 1872.

2031. That was perfectly right. But has it not gone far beyond declining to sign any agreement?

I heard that in one instance a tenant had gone so far as to drive a gamekeeper off; but I think that was an exceptional case altogether.

2032. On whose estate was that?

It is merely a matter of hearsay. I heard that it was the Marquis of Conyngham, but I may say that it was never under my advice that a tenant did such a thing.

2033. Did you hear of the tenants on Mr. Styles' estate sending him a letter saying that they were advised that the game was now theirs, and that they would let it, but that they would give him a day's shooting in consideration of his good character?

I never heard of such a letter at all. I read a resolution published in a newspaper stating that they would give him every permission himself, but that they did not see why he should have the letting of game which was feeding upon their crops, and all that sort of thing.

2034. But was it not that they would give him permission if he asked for it?

They said that inasmuch as he had been a good landlord, and a good magistrate, they would be happy to give him anything in their power, and that they would give him and his friends a day's shooting, but they did not see that he had any right to have the game fed upon them, and to let it to strangers.

2035. Has it come to your knowledge that the right of game, or of turbary, was never disputed in that neighbourhood until the passing of this Act?

As to the right of turbary, I believe that was never disputed, because people were of necessity bound to submit to what was imposed upon them. They had one of two alternatives; if they did not like what was offered to them, they could go about their business, and, of course, there was no use in disputing it.

2036. That applies to both game and turbary?

It applies to both game and turbary.

2037. But since the passing of the Act, and since that force has been removed, have not the rights of both game and turbary been claimed by tenants from year to year in that neighbourhood?

They have claimed, as far as turbary is concerned, the customary rights; that is to say, the rights which have been recognised by the laws of the country, and the laws of the estate. As to the game, I do not believe that the greater part of the tenants have made any move at all. In fact, I think the persons who have principally made moves in the game question, are persons who were from time to time prosecuted for trespassing in pursuit of game. But they now claim no more than the law entitles them to enjoy.

2038. Is it not the fact that those rights have been claimed?

Of course, they have been claimed in particular cases, and in particular instances; but as a general rule the tenant farmers in the north of Ireland do not lay any claim to them at all, and, in fact, are quite careless of them, and would prefer that there was no game at all.

2039. In your own district have they not been claimed on at least three large properties in Donegal?

There are individuals who have claimed the right of killing game upon their own farms, but nothing more than that.

2040. And of preventing anybody else from killing game?

No, I have not heard of such a thing at all.

2041. You mentioned just now that Mr. Styles was told that they would give him a day's shooting; that means, I suppose, that if he did not ask for it he would not have it?

As the game law stands, of course any person in possession of the land would be entitled to the game.

2042. Lord Somerhill.] You mean that he would be liable to be prosecuted for a trespass; but did you ever up to this time in the whole of your practice, hear of any tenant bringing an action against a landlord for a sporting trespass?

Certainly not.

Mr. *M. Henry*.
10th July 1872.

2043. Viscount *Lifford*.] This is the first time that there could have been an action taken?

Certainly not.

2044. Except at the peril of an eviction?

There could have been an action taken last August, or immediately after the passing of the Land Act in 1870.

2045. Lord *O'Hagan*.] Or before, at the peril of an eviction?

Certainly, and I believe that, in fact, the cause of a great deal of the ill feeling which exists is on account of a gentleman having shot a farmer's greyhound at the farmer's door; he had a sporting dog, and before the passing of the Land Act the gentleman came to his door and shot his dog, and proceedings were about to be instituted, and he had to refrain from proceedings in consequence of a notice to quit being served, or threatened to be served.

2046. Viscount *Lifford*.] That was not a Donegal landlord?

I do not like to give instances; he was not a landlord, exactly, but he was a person who had permission from the landlord; he was a licensee for shooting purposes.

2047. Lord *Wenlock*.] Was the shooting let to him?

I cannot say whether it was let, but he had permission.

2048. Earl of *Stradbroke*.] You might state the county without mentioning who it was?

It was in the county of Donegal, near my Lord *Lifford*'s place.

2049. Lord *Steward*.] How do you consider that the landlord's position is altered as regards shooting, from what it was before the passing of the Act?

The landlord was in the habit of exercising the right of shooting before the passing of the Act; two landlords disputed, and the question was raised as to the tenant in possession being entitled to the game, and the prosecution being necessarily brought in the tenant's name, inasmuch as there was no reservation, the tenants, or at least some of the tenants naturally said we have been feeding this game, and we have been harshly treated, and we do not see why we should permit those gentlemen to let the game when they treat us so harshly themselves.

2050. But that before the passing of the Act if the tenant was to refuse his landlord permission to sport he would be immediately evicted?

Some landlords would evict and others would not.

2051. How is the position of the landlord now altered; he could still eject, could he not?

He could, certainly.

2052. And according to the 14th clause, as I read it, he would not be liable to payment of compensation for disturbance?

I believe that he would not.

2053. Viscount *Lifford*.] Does that clause apply to Ulster?

That is a question upon which I am not prepared to give an opinion at the present time.

2054. You spoke just now of the harshness with which the landlord had treated the tenant; was it not the fact that the reason which these gentlemen on Mr. *Styles*' estate gave for giving him a day's shooting now and then, if he asked for it, was his goodness as a landlord?

I believe that was the reason.

2055. Lord *Somerhill*.] Do you suppose that the tenants would think it just that when the custom of the county was established in some respects which were in their favour, there ought not to be established a custom of the country which was in favour of the landowner?

The tenants, as a general rule, do not care about the game; it is only in exceptional instances that the tenants feel any interest at all in the game question, and they would be desirous of seeing the game totally extinct, that they might have the enjoyment of their lands and crops free and uninjured alike by the game and by the persons who trespass in pursuit of it.

2056. Practically, they have adopted the view which I suggest, that is to say, they have continued the custom of the country?

Certainly. On some estates the tenants are entitled to the game; in Mr. *Ogilby*'s estate, which now belongs to the *Skinner's* Company, I think the tenants

at

at all times shoot their own game, and on particular estates they have been from time to time entitled to the game; there are various customs as to game on various estates; on some estates the tenants have to send so many birds to the landlord, and things of that kind.

Mr. M. Henry.
10th July 1872.

2057. Viscount *Lifford*.] Those are tenants who hold by lease?

Even without lease, I have known them to send birds to the landlord after having shot them, but whether it was a matter of compulsion or not I do not know.

2058. Was it by covenant?

There could not be a covenant except by deed, and those were tenants from year to year.

2059. Lord *Somerhill*.] There are, I apprehend, in Ireland various customs of that kind; in some places tenants are bound to preserve foxes, are they not?

Yes, I have heard of that existing in the south and west, but not in Ulster.

2060. If the customs of the country are legalised in the matters of tenant-right, do you not think that the tenants would be quite satisfied if they were legalised in all those other matters?

Where there have been established customs, and where they do not press heavily upon the tenants, I am sure they would be quite satisfied to have them legalised, but there is a material difference in my mind between a custom and an estate rule.

2061. Lord *Meredyth*.] Did the passing of the Act make any difference in the rights of either party with regard to game?

No, not the slightest.

2062. Lord *O'Hagan*.] As I understand you, there is only a single case in which you have ever known an interference by a tenant with a landlord since the passing of the Act?

I have only heard of a single case in the county of Donegal.

2063. Viscount *Lifford*.] Surely you are aware of more cases than one; you know the cases of Lord Conyngham and Mr. Styles?

I do not know the case of Mr. Styles at all.

2064. But you have been telling us about the tenant's writing a letter, and saying that he might, in consideration of his good character, have a day's shooting?

I do not know that there was any actual force used, as in the Marquis of Conyngham's case. I heard that there was actual force made use of in the Marquis of Conyngham's case, but I never heard that they had actually prevented him, further than that they volunteered to give a right which he could not enforce at law.

2065. You heard that there was a letter, saying that they would not allow him to shoot?

I saw the letter, saying that they would permit him to do so.

2066. Lord *Meredyth*.] As regards Lord Conyngham's estate, do you only speak from hearsay?

I have only heard of the Marquis of Conyngham's estate.

2067. You know nothing yourself about it?

I know that the customs there are certainly very good, and the tenants are very well contented with them.

2068. As regards any warning to his keepers, do you only know that from hearsay, or do you know it of your own knowledge?

From hearsay only.

2069. Lord *Lurgan*.] When you say the tenants on Lord Conyngham's estate are very well satisfied with the custom, to what custom are you alluding?

The custom as to turbary and the custom as to sales, and the general management.

2070. *Chairman*.] But giving permission to have a day's shooting implies necessarily, does it not, the right to refuse to give that permission?

Certainly.

(136.)

Mr. *M. Henry*.
10th July 1872.

2071. Viscount *Lifford*.] I think that on Lord Conyngham's estate there was a case of turbary too?

There was.

2072. If I mistake not, you were engaged in it?

I was engaged in it.

2073. Will you have the kindness to tell us about that claim?

The claim was this: A tenant in possession of a large tract of bog refused a neighbouring tenant permission to cut turf; the neighbouring tenant went in pursuance of the custom, and entered upon the bog and cut his turf, having first tendered a reasonable sum for taking away the grass upon the top. The tenant in possession ordered him off, and eventually brought a summons before the magistrates, and the magistrates fined the person who had so cut the turf. It was appealed to the chairman of the Quarter Sessions, and the chairman held that every tenant was entitled to cut turf, having made reasonable compensation for the injury to the surface. He said that he was entitled also, under the custom of the estate, to cut the turf as a part of his holding, making reasonable compensation to the person in possession for the damage actually done. He held that in that case a reasonable amount had been tendered, and he reversed the decision of the magistrates, dismissing the case.

2074. Lord *Somerhill*.] With respect to the right of turf on the estates with which you are acquainted, is there in no case a small rent imposed upon the turbary, with the view to the preservation of the turf and keeping the roads leading to the bog in good condition, and such other advantages as are necessary?

There is, and that varies upon various estates; in some estates they give a shilling only; in other estates they give as high as one pound for the cutting of the turf.

2075. And in most instances, I believe, that fund goes towards keeping up the roads, and the access to the bog?

It was the intention that it should do so; I believe it goes to the bog ranger; and, in some instances, I believe, latterly, some landlords have even received that which was originally given to the bog ranger into their private pockets.

2076. In those disputes about turbary, had the tenant refused to pay those small fines?

Not at all; it is only in case of a large demand being made upon them that they refuse. They have refused my Lord Lifford, for instance; he made several claims upon them, increasing the bog rents, as they are called, from shillings to pounds. In one instance, at the very last sessions, which only occurred a few days ago, there was a claim of a guinea, and one shilling was allowed, and nine cases were dismissed on the merits, the claim being groundless.

2077. Viscount *Lifford*.] What was that shilling or guinea for?

For bog rent.

2078. Was not that for the whole amount of one year's firing?

It was, certainly, but to which the tenant is entitled as appurtenant to his holding on paying a nominal sum.

2079. Lord *Somerhill*.] In some cases I apprehend that those questions arise on the custom or the facility which the tenant may have of selling turf off the land, as distinguished from cases in which he only has it for his own consumption?

Of course, where they have the right of selling turf they would have to pay a much larger sum.

2080. And it has been the practice, I suppose, on some turf lands?

It has; they charge them a much higher rent for doing so; but, in my opinion, neither landlord nor tenant is entitled to dispose of the turf to the detriment of the general right.

2081. It is then considered, more or less, a letting separate from their holding?

It is quite different and distinct from the holding, because the bog in one instance is appurtenant to the holding, and in the other it is a separate letting altogether.

2082. Since the passing of the Act has there been any perceptible change in that custom?

I have not perceived any except the attempt on Lord Lifford's estate.

2083. Do

2083. Do you anticipate any from your own knowledge of the tenantry?
I do not anticipate any.

Mr. M. Henry.
10th July 1872.

The Witness is directed to withdraw.

The Rev. JOHN ROGERS, is called in, and Examined, as follows :

2084. *Chairman.*] I BELIEVE your attention has been called to the working of the Land Act?

Rev. J. Rogers.

A little.

2085. Would you be good enough to give the Committee the benefit of your opinion with regard to the working of the Land Act as to the relation between landlord and tenant?

My opinion is that on the whole it is satisfactory.

2086. Do you mean that it is satisfactory to both the landlord and the tenant?

Not altogether satisfactory, I presume, to the landlords, else we should not have had this Committee. At least that is my opinion. I must say that whilst I have wished what was right to both parties, I have been rather in the interests of the tenant all along.

2087. Do you consider that the original tribunal of the chairmen of sessions is a good tribunal for original jurisdiction on these matters?

I do. I think it is the best by far; and I am furnished with resolutions which, if your Lordships will permit me, I will put upon the evidence, and which have been passed at the various Tenant Right Associations upon that subject. That is the best answer, I presume, that I could give to the question.

2088. Notwithstanding the fact that there are 33 independent judges acting without concert or communication with each other, and therefore necessarily leading, occasionally at least, to a difference of opinion?

There has been difference of opinion, I am sorry to say; but I am bound to add that in those cases where a decision has been given against what I would call tenants' rights, it has not been a decision (I speak respectfully) which the facts of the case would warrant; and I am satisfied that those decisions having been reversed, or the decree amended, in several cases, the judge of assize came to the right conclusion. In the county of Antrim, for example, one or two cases occurred, I think, where the chairman of the county came to a certain conclusion upon the subject, and his decision was reversed, or amended, on appeal by the judge, and I think very properly, if I may express an opinion. I think there is also a case in the county of Donegal, which came under my notice, viz., the case of Freele against Lord Leitrim.

2089. Did any of those cases go beyond the judge of assize to the Court of Land Cases Reserved?

I believe there was one case appealed (not any of those cases to which I have referred); I think it was Austin against his landlord, but the appellant I think died.

2090. I am informed that there has been no single instance of a case being carried to the ultimate Court of Appeal, the Court of the Land Cases Reserved?

One case was appealed, but the appellant, I think, in the meantime died. I think that is the fact. Another was appealed, but not prosecuted.

2091. That is a most important question, and ought to be determined, I should suppose, speedily?

I should suppose the sooner the better.

2092. There has been great difference of opinion, has there not, upon that subject?

Yes; I think that it is perfectly undeniable that tenant-right has been recognised

Rev. J. Rogers.
10th July 1872.

nised in connection with leases. There is, in fact, I believe, in books on law, such a thing as leasehold tenant-right, and I have a number of instances of it.

2093. You are rather arguing the case before the Committee now, are you not, than expressing your opinion upon it?

I will state facts upon the subject if I am permitted.

2094. We do not want exactly to have the Act construed for us. What we want to know is your opinion as to the effect of the working of the Act upon the relation between landlord and tenant?

I do not presume to be competent to interpret the Act at all, and I did not understand that I was brought here for that purpose; but I rather think that my opinion upon this question would come legitimately under the consideration of the Committee; that is, as to the working of the Act in regard to this very important question of leases.

2095. All that you can say upon that subject, as I understand is, that a difference of opinion exists, and that it is very desirable that the question should be settled by the highest authorities?

Yes.

2096. Lord Broderick.] You are not prepared to state whether those relations have been rendered more friendly and intimate, or whether there has been a greater difference between the two parties since the passing of the Act?

I think that there is a much better state of feeling in the country, that is my impression. I think that, comparatively speaking, to a large extent, the Act is working well; that is my decided conviction.

2097. Lord Lurgan.] May I ask of what counties you are speaking?

I am from the County Down, and I speak of that and of the counties of Antrim and Derry, the latter of which is my native county.

2098. Earl of Kimberley.] Are you not in this difficulty in answering all these questions: that it is very premature to give an opinion upon the working of the Act at present?

There is no question about it, and there is not a tenant-right association in Ulster which has not come to a decision upon that point very emphatically; that so far as the Act has been in operation, it has worked comparatively satisfactorily, but that it has not been in operation so long as to enable the public to come to an absolute decision upon the subject. I think that in regard to the education question in England, one of the views put forward by Mr. Forster last year was that the Education Act had not been so long in operation as to warrant the question being opened up again by the Legislature so soon, so I think, here.

2099. Lord O'Hagan.] So far, however, as you have known of the working of the Act on the relations of classes, it has been satisfactory in the counties with which you are acquainted?

Most satisfactory.

2100. What is your opinion as to how it has operated upon the value of property?

It has enhanced the value of property, as regards the tenants' interests, in the first instance, and as regards the landlords in the second; for instance, on Lord Edwin Hill Trevor's estate there was an old man who wished to make his will; he applied to the office, which is the usual courtesy, for permission to sell; the office, exercising what is part of the tenant-right custom, availed itself of the privilege of pre-emption; Lord Edwin Hill Trevor was so generous that he allowed it to go to the arbitration of two farmers who did not live on his property at all; the result of the arbitration was, that for 15 Conyngnam acres, which was the extent of the farm, 27 *l.* 10 *s.* rent, which was very nearly 2 *l.* an acre, Lord Edwin Hill Trevor paid 450 *l.*, which is very nearly 30 *l.* an acre; that occurred very lately.

2101. Lord Somerhill.] That was given by a proprietor?
That was given by a proprietor.

2102. Lord Steward.] Was that for the tenant-right or for the fee-simple?
For the tenant-right.

2103. But

2103. But I understood my Lord O'Hagan's question to refer more to the value of the land in fee-simple than to the value of the tenant-right—

Rev. J. Rogers.
10th July 1872.

2104. Lord O'Hagan.] Have you known any case of the sale of an estate in the open market?

I can give the case which I presume is well known to all, viz., the Marquess of Waterford's property, which sold very high; and I know two or three small properties in the county of Derry and elsewhere which sold much higher; some of those changed hands before the Act, and they have changed hands since, and the value is very much enhanced.

2105. Lord Digby.] Was the tenant-right upon those properties high; upon Lord Waterford's, for instance, where you mentioned that the fee-simple had been sold for a high figure?

I speak more from recollections of conversations which I have had with parties who lived upon the property; I think the tenant-right sold usually at about from 15*l.* to 20*l.* an acre.

2106. Earl of Stradbroke.] You have stated that property has sold higher during the last few years than it did before the passing of this Act?

Yes, much higher.

2107. Do you conceive that that was the result of this Act?

I do, because it is giving the tenants what they hope and believe is security, and hence they invest.

2108. Lord Somerhill.] Have you ever made any comparison between the prices of agricultural produce now, and the prices when those lands were previously let?

No, I have not.

2109. I suppose you are generally aware that the price of beef and mutton, and sheep, and store cattle and fat cattle, and cereal produce also, has risen very considerably?

It has, but labour has risen very much too; and hence the farmers are put to much more expense than they were.

2110. That would not apply much to large farmers who had large grazing farms, would it?

Yes; but we are chiefly agricultural in the north.

2111. And I believe that the holdings are small?

The holdings are small.

2112. Do not the farmers themselves, and their families, work on those holdings?

Yes, they do.

2113. Then the price of labour in money does not affect them, does it?

But they are entitled to their wages, even though they are not servants or labourers in the ordinary sense.

2114. A man would have to pay himself if he was at work on his own land, would he not?

Well, I think he is entitled to wages; so are the members of his family. Here as in a higher field the labourer is worthy of his hire.

2115. He is entitled to his wages from the person for whom he works; but what he pays as farmer he receives as labourer; and therefore I do not see how it affects his yearly revenue?

He would have a perfect right to deduct the value of his own labour from his yearly income, unless it is expected that the farmer is to labour and not to be remunerated.

2116. But in a household, where the master or the mistress takes a share of the household work, the price of labour cannot matter, whether it is a hundred pounds or a hundred pence, if they have to receive it with their right hand and put into the pocket with the left?

But it is so much that must be deducted from the sum total before you can calculate your benefit from the high price of cattle, and the high price of farm produce.

2117. There is no doubt that it would be calculated in the rent, but not in

Rev. J. Rogers.
10th July 1872.

the labour. It cannot matter whether a man gets a hundred pounds for his calf or whether he gets a hundred pence, if the labour does not alter. Leaving that question, has the rental of land risen in proportion to the price of the goodwill or tenant-right, which I understand you to say has risen considerably.

Yes; the value has risen.

2118. Has the value of the fee-simple risen in proportion generally?

I think it has.

2119. Has the rent risen?

It was always a part of the custom that the landlord had the right (if I may so speak of landlords having a right), from time to time, to have a re-valuation; and the rent was raised, and no reasonable man ever objected to that.

2120. Do you think that the chairmen take that increase of rent by the landlord on the termination of a tenancy into consideration, in compensation of tenant-right?

I believe they take all the circumstances into account, and this is a well-known fact in Ulster. Every chairman who is competent for his duties, I presume, knows it, because tenant right is the right of continued occupancy at a fair-rent; I would add fairly increased rent, the landlord having the right of pre-emption in case the tenant wishes for any reason to realise the value of his interest. Upon a valuation, every 25 or 30 years, and according to local circumstances, or the increased value of the farm produce, the rent has been raised, and nobody objected that I know of, because that was reasonable.

2121. Then, as far as your experience and observation have gone, does the chairman take into consideration, in paying for the goodwill, the profit which the tenant may have had from the previous rent having been very low for a long time?

I do not know exactly. That is one of the elements for his consideration, but your Lordship will know better than I do. I do not know that such a thing has been specifically stated.

2122. Lord *Charlemont*] Is it your opinion that the tenants, since the passing of the Act, have really acquired rights which they had not before, or do they merely claim rights which they formerly possessed?

They have got the shield of law thrown over a great fact. They have now a legal right to property which formerly they held only by the force of a custom, which in some measure influenced the permission of the landlord. On all large well-managed properties there never were, so far as I know, any very great collisions between landlords and tenants. The truth is that there would have been little difficulty, I suppose, if we had had always to deal with the old aristocracy on the large properties. I think it is chiefly the purchases which have been made in the Landed Estates Court which have brought a great deal of evil upon us, for the purchasers have speculated in the property as they would have done in merchandise, and hence they have not treated their tenantry with that consideration, or I fear with that justice which the old aristocracy of the country showed.

2123. Earl of *Stradbroke*.] In fact they have been inclined to let the land more up to its real value than the old aristocracy did?

I am afraid they have gone far beyond the real value.

2124. How do you describe the value?

At all events they have raised it enormously, for in the case of an estate in the county of Antrim, which is well known as the Red Hall estate, a Belfast merchant bought part of it, and he raised the rent then and there 30 per cent.

2125. Earl of *Kimberley*.] You said that those estates had been raised above their value, how can you raise an estate above its value?

The predecessors of the present proprietors, I suppose, thought that they had let them to their value, but certainly a new light has been let in upon them by the *parvenu* proprietors, who have succeeded the old families.

2126. Then the event proved that the old proprietors had made a mistake?

I do not draw the inference, but I state the fact.

2127. Can you draw any other inference?

I presume that the land was at its value before and is above its value now.

2128. But

2128. But how can you let a farm above its value?

Because the farmer sometimes has no choice; in Ireland, especially, it is his business alone, and he must take such terms as are offered.

Rev. J. Rogers.

10th July 1872.

2129. Then that is the value that he is prepared to give for it?

He may be compelled to take it though he may not think it to be the value.

2130. But what do you define to be the letting value of a farm?

It depends upon the quality of the land and upon many other circumstances; it depends upon the locality; near Belfast the value of land would be greater for the same extent, than in remoter districts.

2131. Do you think that the value of a farm can be defined to be anything else than what you can get for it?

It depends upon the way in which it is sold; if, according to the custom, it was to be sold by public sale, the tenant-right was invariably advertised and not the interest held under the lease, and the public price would be a test.

2132. Lord *Charlemont*.] It is the tenant's interest that you are defining and not the landlord's interest?

I referred to the case of Lord Edwin Hill-Trevor, he put into the hands of two farmers to arbitrate.

2133. That is the tenant's interest and not the landlord's interest, which is the fee simple upon the rent of his farm. You said some time ago in defining tenant-right that the custom of the country was, that from time to time (you mentioned 30 years) the rent should be re-considered and raised; Lord Kimberley asked you, "What is the value of a rental of a farm; can a farm be let above its value"?

If a farmer lived there, and his family have lived there before him, and he does not wish to leave the place, he may give more than its value rather than leave, but I have known under re-valuations that the rent has been lowered.

2134. Lord *O'Hagan*.] You mean that if there be a competition for land, sometimes they give an excessive rent?

Yes; but in Ulster, land should be let by custom and not by competition.

2135. Viscount *Lifford*.] In short, giving a higher rent than the real value of the farm is a great fact of which we are aware in Ireland, but which perhaps may not be so well understood in other parts of the United Kingdom; is not that so?

I suppose so.

2136. Earl of *Kimberley*.] I must again ask you what is your definition of the letting value of a farm?

That is not the business of the tenant to define; he has no choice often; it would be the business of the landlord or the landlord's agent, I suppose.

2137. Does not the answer to that question depend upon what is the definition of the real value?

I suppose it does.

2138. I ask you what is the real value?

If I had a particular case I might give an idea.

2139. How would it be possible to answer that question or any one of the same kind without previously coming to an agreement as to the meaning of the words "the real letting value"?

The letting value, I presume, is the ordinary letting value of the district.

2140. But supposing that the ordinary letting value in a district is 1 *l.* an acre, and that a tenant is willing to give me 25 *s.* an acre, why is the 25 *s.* an acre which he is willing to give me, not the real value?

There may be two landlords whose properties adjoin your Lordship's estate; and the difference in the rents may help to illustrate the question; I know a case of that sort in the County Down where Lord Londonderry charges 1 *l.*, and another proprietor 1 *l.* the English acre, and a merchant bought a property which lies between them, and he charged 25 *s.*

2141. Which is the real value, the 25 *s.* or the 1 *l.*?

The 1 *l.* I believe.

(136.)

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2142. On

Rev. J. Rogers.
10th July 1872.

2142. On what ground?

I am satisfied, in the first place, that the properties to which I refer, which lie on either side of this solitary townland, are of better quality; in the first place they are wheat bearing land, and this townland will not bear wheat; those two properties would be better worth 25 s. an acre than the other would be worth 1 l., whereas it is charged 25 s.

2143. Then I understand you to say that there are three properties, A., B., and C., the lands A. and B. being let at 20 s. an acre, and the land C. being let at 25 s. an acre; but you are of opinion that the land C. is worse than the lands A. and B.; then, if the land C. lets at 25 s. an acre, is it not a necessary conclusion that the lands A. and B. are let below their value?

No; because I think that what C. represents is of worse quality by far than the properties represented by A. and B., and that the customary rent of the district is the fair rent.

2144. Lord *Somerhill*.] Am I under a correct impression that you have, in writing and upon consideration, published an opinion that all the land in Ulster, under what is called the Ulster settlement, ought to be let to the occupant for 1 l. an acre?

I do not see that that should be by any means a permanent thing.

2145. Lord *Charlemont*.] I think that what the noble Lord intended to ask you was whether you had not published your opinion that the fee simple value of the land has not increased since the time of the settlement of Ulster, but that the real value to the owner is the same as it was originally, and that any further increase belongs to the tenant occupier?

I think it has increased very much; and the progressive increase is owing mainly to the improvements effected by the tenants.

2146. Lord *Somerhill*.] I am not asking as to the fact, because we all know that the market value of land has increased, but I heard the opinion, and I understood; rightly or wrongly, that it was an opinion put forward by you, and upon your authority, that the value of land to the owner was lawfully and ought to be the same as it was at the time of the settlement of Ulster, in the days of the Stuarts?

I have never had the honour of publishing an opinion of that sort, as far as I know. On the contrary, I think that I have stated already that from time to time the value has been going up (and very properly) at every re-valuation: I know that an opinion even more extravagant was attributed to me, but it is not the fact, that is, that land should be only 1 s. an acre the Ulster plantation-rent; but I preached not such a heresy.

2147. Your opinion may be misrepresented, but your opinion now is (and perhaps always has been) that the owner in fee of the land should participate in the rise in value of the land which has taken place in the lapse of time?

Certainly, and that has been a part of the custom from time immemorial, and everybody concurred in that, so far as I know.

2148. Earl of *Stradbroke*.] Have you been in the habit of farming land yourself? I have not; I have a very small glebe.

2149. But, living in the country, you are aware that on every estate there may be lands which are very dear at 1 l. an acre, while others may be exceedingly cheap at 25 s. an acre?

Certainly.

2150. Therefore, to fix a general rule as to any particular sum of, say 1 l. an acre, is, I may say, absurd over a great extent of country?

I know land which is better worth 3 l. an acre than other land would be worth 5 s.; and I know, very near my own place of residence, a farm which is charged 2 l. an acre, when on the same property there are other farms charged only 1 l. an acre. There are 50 acres of this farm, and the tenant-right would fetch 1,500 l. to-morrow. The lease has lately expired.

2151. Would you not consider that it has been let very much under its value?

I do not say that, but it is very conveniently circumstanced. It is very near a good town, and with every advantage.

2152. Earl

2152. Earl of *Kimberley*.] I suppose where the farms are let at what you would think a reasonable value (I will use that expression), the tenant-right would be higher than where farms are let at nearer a rack-rent?
Far higher.

Rev. J. Rogers.
10th July 1872.

2153. In point of fact, the real question as to the value is as to how it shall be distributed between the landlord and the tenant?

Of course, if an incoming tenant believes that he is going into the property of an indulgent, and I may say, without disrespect, a fair landlord, where the rents are moderate, he will be disposed to give a much higher tenant-right than he would upon property differently circumstanced.

2154. But when we speak of the value of land, I suppose we have reference to what it will produce, and to the amount of rent which it will afford to bear with reference to the profit made upon it; and I take it that the question is how much of that value shall go to the tenant and how much to the landlord?

Yes; and I think that at every new valuation that is taken into consideration.

2155. In point of fact the landlord does not get the whole rent under the Ulster custom in any case. Taking the rent of the land according to its definition, the rent of the land meaning that which remains over and above the profits which a man must get from the land, that never goes where the Ulster custom prevails, entirely to the landlord?

No; because in that case the tenant would be paying away in rent the interest of his own money, spent in improvements.

2156. Do you think that rent and profits are the same thing?

No, I do not; but in proportion as the rents go up, the profits would diminish.

2157. You are under the impression that profits vary in proportion to rent?

I think that the higher the rent is, the less the profit would be to the tenant.

2158. That must depend, must it not, entirely upon what the produce of the land is?

It will depend upon a great many circumstances; on the way in which it is cultivated, I suppose.

2159. Viscount *Lifford*.] I think, to cut the matter short, that if I mistake not, this is your opinion; that the increased value of the land, over and above its original value when it was granted to the landlord, has been created by the tenant, and therefore ought to belong to him?

At all events, I think that in the great majority of cases it has been created principally by him; but under the system of valuation which has gone on in Ulster (and very properly), the increased value was not claimed. In fact the relationship between landlord and tenant being a kind of partnership, the theory is that the increase should be divided.

2160. But the real answer to my Lord *Kimberley*'s question was, that that was your opinion; and I think that you have put out that opinion more than once, have you not?

I do not know; I have said a great many things which I suppose I have forgotten, but I never preached heresy on this subject, I presume. A case came before the county court of Derry the other day, where there was an ejection, where a tenant was to be put out by one of the companies; the gentlemen coming over here from London to manage those properties do not understand Ireland very well, and sometimes there is what we should call (perhaps it is not the best name) oppression; the greatest instances of oppression are upon those properties, simply because gentlemen coming over from London do not understand the nature of land tenure in Ireland; it was given in evidence, and the agent admitted that the tenant had reclaimed the difference between nine acres in 1857 and 39 acres then; that is to say, as the turf was taken away, what are called among the people the under fields, that is what is left, were gradually reclaimed and made arable; he had paid 8*l.* for the nine acres, and he extended his farm until it became 39 acres, and then he is charged 23*l.*; then some dispute occurs between himself and the company, and he is ejected, or proposed to be ejected, and the agent comes forward and says that he considers that he has damaged the property very much; now the difference between nine acres and 39 acres in this case was entirely owing to him; he added that land to the farm,
(136.)

Rev. J. Rogers. and yet as he added it, the rent went up until where he had paid 8 l. he pays
10th July 1872. 23 l.; that would be an illustration of the general practice in Ireland.

2161. Earl of Kimberley.] Is it the case that the Ulster tenant-right represents the value of the tenants' improvements?

No, it should not do that.

2162. I always understood that Ulster tenant-right differed from the claim made in other parts of Ireland, in that it did not necessarily represent the tenant's improvements; if it be so, how do you reconcile that with your last answer?

What I should have said is that it should not do that alone. The Ulster tenant-right represents the improvements and a great deal more.

2163. Has the Ulster tenant-right custom anything to do, and, if so, what has it to do, with the improvements which the tenant has made?

It has ever recognised his right to sell the improvements. The improvements never were to be taken in in any valuation or re-valuation; other circumstances were to guide the valuers, or the landlords, or their agents, in raising the rent.

2164. Assuming that there is a tenant who does not profess to have made any improvement upon his holding, is he not, nevertheless, entitled to sell his right to the occupation under the Ulster custom?

He is; that is the first element in it.

2165. Is the fact of his having improved or not improved an element in the Ulster custom, according to your view?

The improvements add to the value. In estimating the increased rent, the improvements are not to be taken in; but if a man were selling a farm which had been very much improved, of course his tenant-right would be much more valuable to him; that is to say, it would enhance the value of the tenant-right if he sold a farm which had been very much improved instead of one that had not.

2166. Lord Steward.] Was this case which you mentioned as happening under one of the companies tried before the chairman's court?

It was; it was tried at Coleraine.

2167. What was the decision of the chairman?

The dispute turned upon six and a half acres of bog, which the tenant was holding wrongfully. He was entering upon it to cultivate while he was only really entitled, as he himself admitted, to half an acre. A dispute arose between the landlord and the tenant, and the result was that when the chairman saw the improvements that this man had made (he had built a very good house at a cost of 300 l., and he had reclaimed so much land) he recommended them to settle it. The agent was very anxious that he should give in his decision, if he did come to a decision, that the Ulster custom was not in operation upon that estate, and the chairman said he would do nothing of the sort. So the whole matter is recommended to be settled, and the tenant is expected to be retained upon the recommendation of the chairman, as he was a very valuable and improving tenant.

2168. Supposing this case had occurred before the passing of the Land Act, this tenant would have been turned out without any compensation for the improvements which he had made, would he not?

I am very much afraid that he would.

2169. Since the passing of the Land Act he comes under the compensation?

It was a tenant-right farm; it had been in the possession of his family for 50 years.

2170. He having got into a quarrel with his landlord, would he have been, before the passing of this Act, entitled to compensation on being evicted from his farm?

It would have depended very much upon the mood or spirit of the agent; but I have known parties to sell their tenant-right three months after they were evicted, showing the hold which the custom has over the public mind.

2171. He was, in fact, in the power of the landlord as to whether he would receive anything or not on being turned out of the farm?

He was. No doubt the present Act is a great legal protection.

2172. Since

2172. Since the passing of the Act he is entitled to compensation if he is turned out of his farm?

Yes.

2173. Then in that case the passing of the Act has afforded, in your opinion, a just protection to the tenant?

Very much so; and supposing that the Act is to be changed at all, I venture to say, if I may offer an opinion, that if there is to be new legislation, if the Act is to be amended, the amendments may with advantage be in a different direction from that which is contemplated. There are a great many things which require still to be introduced for the protection of the tenant.

2174. What change do you imagine is contemplated in the Act?

I do not, of course, know what may be the result of the deliberations of this Committee.

2175. Earl of *Kimberley*.] Is there anything in the working of the Act which leads you to think that alterations in it are required, and, if so, what alterations are required?

I think that if the onus of proof with regard to the Ulster custom were thrown upon the landlord, instead of where it is, that would be an improvement. With regard to the usages (that is the term in the Act of Parliament in reference to the Ulster custom) the attempt is, as far as the attempt can be carried out, to lead people to understand that the Act legalises those usages of the office, and not what are the real usages of the province. In the working of the Act those regulations of the rent offices which are innovations should be disallowed.

2176. You will bear in mind that my question had reference to the working of the Act?

Yes; there was no infringement of the old custom until after the year 1838. The attempt, of course, is in every case which comes before the county court to try to establish the local usages of the office, instead of the old usages which were public sale (that was an usage of the province), or deciding the case by arbitration, or by a valuation, or anything of that sort. Those were the usages which, if I may say so, were always practised; but the usages of the several estate offices are not usages at all; for example, in deciding the question of a claim for tenant-right upon an estate, an agent will come forward, and he will say that the usage of that estate is that the maximum or minimum value is 10 *l.* an acre; but everybody knows, who knows anything about Ulster, that that is not one of the usages of Ulster; that is the usage of an office which has been imposed; it is an infringement. An Act of Parliament even cannot create a usage. It must be the offspring of the people's consent.

2177. Earl of *Stradbroke*.] This usage to which you object has been going on for how many years?

The first infringement, so far as I know, of the ancient custom, was introduced or began to be practised after 1838, and from that time down to the present, there has always been progress, at all events in this respect, until, in many cases, the landlord would only allow 6 *l.* or 8 *l.*, whereas by public sale the tenant would get 15 *l.* or 20 *l.*

2178. I suppose the amount which they would get by public sale depended upon the rent of the particular property; if the rent was low, they would give much more; and if the rent was pretty nearly the value, they would give less?

I presume so.

2179. Earl of *Kimberley*.] Have there been any decisions of the chairmen on this point, which you think lead to doubt as to the satisfactory working of the Act?

I do not recollect at present any particular one, but I know that in the case to which I referred in the county Derry, where the chairman's decisions have been always received with very great confidence and favour, the attempt was put forward on the side of the office to limit the tenant-right value to 10 *l.* an acre; I know that estate well; I knew it before the agent knew it. I believe that usage is a thing "as to which the memory of man runneth not to the contrary." Now, my memory runs to the contrary of that, for I remember when the tenant-right was sold there at from 15 *l.* to 20 *l.* an acre.

Rev. J. Rogers.
10th July 1872.

2180. Is there any reason to suppose that the fact, whatever it be, of the usage existing, it will not be satisfactorily ascertained in those cases when they go before the court?

It is to be hoped that it will be ascertained. Several decisions have been given in the county of Down, for example, and the county of Derry, where the tenants themselves were perfectly satisfied with the justice and decision. I believe there are some cases where the full claim was awarded, and the question of usage determined by going beyond the individual property into the district.

2181. Viscount *Lifford*.] Are you aware of the number of leases which were given in the course of the last century, at low rents, with covenants for quiet surrender on condition of houses being built, drains and fences being made, and trees being planted?

I am not aware of the number, but I recollect to have seen a covenant where the tenant was required to plant cider trees in the Bog of Allen.

2182. I am talking of your own county and of the neighbouring county; were there such leases?

Yes; but it was stated before the Devon Commission that those covenants were scarcely ever enforced. Your Lordship and the other noble Lords know very well that all those leases were given at that time for political purposes; they were not given for the benefit of the tenants at all.

2183. Those are the 40*s.* freehold leases which you refer to; but I am talking of those large leases (large, I mean, for Ireland) of from 50 to 100 acres, which were granted on reclaiming terms: that the land was to be reclaimed and a house to be built, in consideration of the lowness of the rent?

I have not seen anything of that sort, but that is just one of the things as to which I would object to the Act, if there were to be any improvements, and that is the sets-off against the claim made by the tenant. One of these sets-off is that he has not properly cultivated the land, and has dilapidated the buildings. I do not think that it is a moral offence for a man to do that. The landlord had not put the buildings there, and to punish the man who had made the improvements for not taking care of his own property is most extraordinary.

2184. But, according to the terms of that lease, the man put up those buildings and planted those trees in consideration of the lowness of his rent. I could produce the leases, and I know that to be the case in a great number of leases, particularly on Lord Charlemont's property?

I am aware of the circumstances of that property; I know that one of the witnesses called before the Devon Commission stated the tenant-right sold on his Lordship's property at 23*l.* an acre.

2185. Lord *O'Hagan*.] The Earl of Kimberley's question was, whether from your knowledge of the working of the Act, you had any suggestions to make to the Committee. Will you complete your answer to that question?

I certainly would suggest some change with regard to that. The term "usages" being employed and being in the plural number, we thought, when the Act was passed, that it would be liable to misconstruction, and that the custom would be still invaded. We unlearned, not having a legal acquaintance with Acts of Parliament, should have preferred "usage;" but the very fact that "usages" has been employed is a proof, I think, of the infringement. I think when the measure was introduced by the Prime Minister, he spoke of the usage having been impaired or destroyed; but then the evidence of its existence in the district was to be taken, which has been done by Mr. Justice Lawson, I think, and Mr. Justice Fitzgerald. In two cases appealed to them, they have gone into the district for corroborative evidence.

2186. Have you any suggestion to make as to any changes in the Act having regard to the working of it?

The courts having a large equity jurisdiction, the benefits of the Act should be extended to tenements in towns, and I should like in all cases of appeal, that the appeal should be in the first place, as at present, to the going judge of assize. I do not know that I have anything more than the points to which I have now referred.

2187. Earl of *Bandon*.] In reference to a question which was put by the Earl of Kimberley some time ago, with regard to the value of land, would you allow

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me to compare a case, which would happen in the South of Ireland, and to ask you what would be the case, under similar circumstances, in the North of Ireland. Supposing the case of a lease having fallen out which was granted some 60 or 70 years ago, if that happened upon my property, we naturally should have the land revalued, and we should be entitled to whatever was the fair letting value of it at the present time. Supposing that the increased value was 50 *l.* a year in the South, do I correctly understand you that if a similar lease fell out in the North of Ireland, I, as the landlord, should not be entitled to the full increase of 50 *l.* a year, but that a portion of that would be the property of the tenant?

Rev. J. Rogers

10th July 1872.

I understood always that in the re-valuation a fair increase went to the landlord, and very properly; but the cases may not be like; your Lordship may have made the improvements, and there is no tenant-right in the south. In the north, a tenant having made the improvements would not, at least should not, be made by an increase of rent to surrender the interest of his capital as well as the capital itself sunk in those improvements.

2188. But in estimating the increased value, would you take into consideration the tenant-right; would you make any difference in the increased valuation in consequence of there being tenant-right in the one case and not in the other?

I believe that in all cases it is the tenant-right which really has been sold, and Colonel Vandeleur's steward gave it as evidence that the tenant-right was the title. So far as I understand your Lordship's question, the value of the tenant-right property has never been affected by the expiry of the lease. It has gone on as usual. I think that your Lordship has borne witness to that yourself?

2189. Lord *Greville*.] Some time ago you were about to make some suggestions with regard to the working of the Act; would you be kind enough to state to the Committee what those suggestions were?

I think I had broached the subject that if further legislation was contemplated there would require to be some improvements. For example, houses in towns are not covered by this Act, and there is an immense outlay in the town of Belfast (as everybody knows, and, I suppose, in all other towns in Ireland) upon houses which are not covered by the Act, whilst town parks are partially so. It could be improved there, I fancy, and I think that as the county courts have a large equitable jurisdiction, there would be no great harm in throwing their shield over such property as there is in a place like the town of Belfast, which the Act does not reach at all.

2190. *Chairman*.] A very erroneous idea has gone abroad, and it is a very mischievous one, that this Committee has been appointed to inquire into the provisions of the Land Act, and to suggest any amendments in that Act which they may think necessary. That is not at all the purpose for which the Committee was appointed. The Committee was appointed to inquire whether the working of the Act has been satisfactory with respect to the tribunal appointed to try the questions arising under the Act, and into the relation between landlord and tenant as to the claims to which it has given birth. We have nothing whatever to do with any defects in the Act itself, but we are bound to confine ourselves entirely to the working of the Act in the two respects which I have mentioned. The idea, however, has gone abroad that we are appointed to inquire into the policy and propriety of the Land Act itself altogether. We have nothing whatever to do with that. We take the Act as it exists; we do not touch it in the slightest degree in our inquiry, but we inquire what the working of the Act has been in respect, first of all, as I have explained, to the tribunal which has been constituted for trying questions which arise under the Act, and also with respect to the relation between landlord and tenant as to any claims which may have been originated by the provisions of the Act?

I am bound to say that, so far as I know, the decisions are giving very great satisfaction. I am aware that sometimes opinions have been modified. In some cases nearly parallel there has been something approaching to opposition in the decisions of some chairmen; but, with the exception of one county, I am bound to say that the decisions are giving immense satisfaction.

2191. Viscount *Lifford*.] Would you suggest anything for giving increased facilities for forming precedents to guide the different judges of the Land Courts by uniformity of decisions?

Rev. J. Rogers.
10th July 1872.

I think it would be desirable, certainly, if their decisions were uniform ; but I think that the decisions, so far as I know, with the exception of one county, as I have stated already, have given great satisfaction to the tenant farmers, and are tolerably uniform.

2192. Lord *O'Hagan*.] I suppose that the chairmen will follow the decision of a proper Court of Appeal whenever such decision is given ?

I think that the tenant farmers of Ulster would like very much for a case to be brought up before the ultimate Court of Appeal and decided on the Ulster custom.

2193. Lord *Lifford*.] That would decide the matter, and then there would be much fewer claims on the part of the tenant, and much fewer oppositions on the part of the landlord ?

I think it would have been very desirable if the Committee had indulged me by taking my evidence with regard to leasehold tenant-right. That comes out in the working of the Act. The other day the opinion was offered by a chairman of a northern county, that it would be monstrous that the Ulster custom should live at the expiry of the lease; I think that the reverse would be monstrous.

2194. Lord *O'Hagan*.] The object of the noble and learned Chairman was to let you know, and through you everybody else, that the Committee has really no competence to advise changes in the Land Act for landlord or for tenant, and it is a mistake to suppose that, save with reference to the mere working of the tribunal and things of that sort, this Committee has anything in the world to do ; it cannot reverse, and cannot advise the reversal of, any legislation which has taken place ?

It has been mooted that the matter should pass into the hands of two judges, but that would be a change.

2195. No doubt it would be a change, so far as the tribunal is concerned ; but what the Committee wish to convey is that, except with regard to administration as to the general provisions of the Act of Parliament, this Committee has no competence to interfere at all ?

There is an apprehension in the country that the result of the Committee's deliberations might be a change with regard to the court, and I am bound to say that there is great nervousness and great fear, because the people prefer the county courts, which are cheap and convenient, and local and fair. I do not mean to say that any other would be unfair, but they have a great many advantages which recommend them to the appreciation of the tenant farmers of Ulster, and they would deprecate very much, and I in their names would deprecate very much, that change with regard to the working. I have no doubt that in the country they were under misapprehensions to some extent with regard to the objects contemplated here, but they thought that parties representing the tenant interest should have been summoned to give evidence, and they were not satisfied on that score. I give no opinion upon that subject, but hence they called it a secret Committee. I was told to-day that it was a secret Committee, and that I was not to come into it, by one of the messengers. Those things created certain apprehensions, which were not comfortable.

2196. Will you state shortly your views as to the leasehold tenant-right ?— Leases were all but universal at the end of the last century and the beginning of this century, and my argument is this : that if the tenant-right is extinguished at the expiry of the lease there never was tenant-right, and there never could have been tenant-right, because this tenant-right property was held under lease at the end of the last century and the beginning of this. We know that during the operation of the 40 s. freehold leases everybody was a voter. In 1790, 6,000 voted at the great contested election in Down ; and we know from the evidence of a highly respectable gentleman, Mr. Wallace, of Downpatrick, that in 1825 the voters in Down were 10,000, and in 1828 they were nearly 13,000. There were 3,600 voters in 1812 upon the Marquess of Hertford's estate. The change came, of course, in 1829, and from 1835 to 1852, in all the Bills which were introduced by Mr. Sharman Craufurd, the preambles invariably referred to this property under leaseholds, as well as in the possessions of tenants-at-will ; and the Bill of 1852, recording this fact, having been read a second time in the House of Commons, and its principle consequently approved, I consider this very strong evidence

evidence in support of leasehold tenant-right. Then there are 38 witnesses, all in succession, which I counted before the Devon Commission, who bear evidence to that fact, that in no case did the expiry of the lease affect the property. For example, Mr. Stuart, from Letterkenny, says, that "Lease or no lease it is no matter, the tenant-right is the title," and when we take into account the mass of evidence which was given before the Devon Commission on this subject, I think that nothing but an extreme weakness of memory, or something approaching a want of moral sense, could dispute this fact. Then, Mr. Trench gives his evidence in 1865 with regard to property which he was representing, viz., the Marquess of Lansdowne's, and he says, "Written contracts have existed for the last 10 years, but this has not altered the position with regard to the tenant-right in the least degree;" and Lord Dufferin, the only witness from the north of Ireland examined before Mr. Maguire's Committee, says, "That the tenant-right of a farm without a lease is as high as one with a lease." When there was an attempt, at the time this measure was introduced into the House of Commons, made, I think, by a Scotch Member, to introduce something in connection with the first and second clauses, which would preclude a tenant from making any claim if he got a lease after the passing of the Act for 31 years, Mr. Fortescue stated that the custom had been that the lease and the tenant-right ran concurrently, and so with regard to others. Mr. Crawford, as I have stated, had it introduced into his Tenant-right Bills, and my Lord Lurgan bears testimony to it in this way; that the expiration of a lease does not do away with the Ulster custom. I am anxious to save your Lordships' time, and therefore I have selected just two or three cases; I am unwilling to take more as your Lordships have been very indulgent to me already, but I shall be glad to answer any questions in the way of cross-examination; in fact, on any estate in Ulster so far as I know, only three witnesses could be produced on the other side, those being the landlord, the agent, and his bailiff, who would say that the lease affected the tenant-right interest; that is to say, that when it expired the tenant-right interest ceased. I do not say that they would do it, but they are the only three persons, according to my opinion, who could by any possibility be produced; I only repeat what I have already said, that on the large estates there has been nothing but the greatest justice, and I may say indulgence, in reference to this great question of tenant-right.

Rev. J. Rogers.

10th July 1872.

2197. Lord *Wenlock*.] Is it your opinion that the purchasing by the landlord of all the tenant-right excludes the tenant from obtaining any future compensation; take the estate of Lord Dufferin, who has bought up all the tenant-right on his estate, I am told; would that prevent the tenant from claiming any compensation when he retires from the farm?

If he has bought the tenant-right, I do not see how the man could sell it again; I mean if the tenant has disposed of his entire interest, he could not sell it again.

2198. Lord *Somerhill*.] As a matter of fact, have you heard that since that time a tenant on Lord Dufferin's estate did put forward such a claim?

I know that a tenant on Lord Dufferin's estate within a short time has sold his tenant-right.

2199. Although Lord Dufferin had bought the tenant-right before?

His Lordship had not bought the tenant-right here, I believe. I may express my own opinion from what I have heard as to his Lordship's having bought the tenant-right generally; his Lordship, I know, did buy the tenant-right of some farms which lie contiguous to the sea-shore where villas are to be erected, and he also enlarged his demesne in this way; but it appears not to be the case with much of the estate.

2200. Lord *Wenlock*.] That is not an answer to my question; do you think that Lord Dufferin by that means has bought out the right of any tenant to compensation under the Ulster custom?

I think he has in the cases where he has purchased the entire interest. I do not know whether he would be able to do it, or not; that is, the tenants might not be disposed to sell, and generally they say that they have not been asked; but no blame can be attached to either party in a case like this. Lord Dufferin the other day allowed a tenant-right farm of eight acres to be sold, and it was sold at 27 l. 10 s. an acre. The farm, however, has a valuable quarry on it.

Rev. J. Rogers.
10th July 1872.

2201. Earl of *Belmore*.] Was that a farm upon which he had purchased the tenant right?

I believe not; it is only with regard to a small division of the estate, I think, that the report has gone abroad that Lord Dufferin has bought up all the tenant-right.

2202. Does it not make all the difference whether Lord Dufferin had or had not bought up the tenant-right?

But those were strangers who came in, and it was decided by arbitration.

2203. But that does not affect my question. My question is, whether supposing that Lord Dufferin had bought up the tenant-right, and let the farm to another tenant without charging him any tenant-right, in that case it is likely that he would have allowed the tenant to sell it?

I think not.

2204. But if Lord Dufferin had not purchased the right, but was simply allowing one tenant to hand over his farm to another tenant, then it would make a very wide difference?

Yes.

2205. Lord *Wenlock*.] In your opinion, if Lord Dufferin had bought the tenant-right, would that have excluded any future tenant from the right to sell?

I think that where Lord Dufferin, or any other landlord, purchased the tenant-right, the tenant coming in then would come in simply as a new tenant without any compensation to the outgoing tenant.

The Witness is directed to withdraw.

Mr. THOMAS DE MOLEYNS, Q.C., is called in; and Examined as follows:

Mr. T.
De Moleyns, Q.C.

2206. *Chairman*.] I BELIEVE you are the Chairman of Quarter Sessions for the county of Kilkenny.

I am, and previously to that I was Chairman of Sessions for the East Riding of the county of Cork.

2207. Have you had many cases before you under the Land Act?

With reference to the satisfactory working of the Act, which I think is one of the questions your Lordship has put, perhaps the best answer I can give is that I have had very few cases indeed. In Kilkenny the relations of landlord and tenant have been both before and since the Act so entirely satisfactory that ejectments are extremely few, and evictions still rarer. Only two land cases, and those of the smallest amount, and between a very small class of proprietors, have arisen, and there were no appeals from the decisions; one of the two cases I settled amicably for the parties, and in the other the amount given was extremely small.

2208. I suppose those cases involved principally questions of fact?

In almost all those cases questions of law arise as to administrations, or other collateral matters.

2209. As far as your experience goes, the working of the Act has been satisfactory?

I should say entirely so, according to the views of the framers of the Act, that there should be as little litigation as possible upon it.

2210. With regard to the original jurisdiction of the chairmen upon these matters, do you consider that that is a satisfactory tribunal for the decision of those questions which arise under the Land Act?

I need not tell your Lordships that there is very great awkwardness in one of a body answering a question which affects their own jurisdiction, but I believe that collectively and individually we have so very little wish to retain what is an invidious and a very troublesome jurisdiction, that I may probably, in the interests of the public, state what my opinion is; I certainly consider that it is the best tribunal that could have been selected for the purpose; the people are

are familiar with it, it is confined within local bounds, and it is a cheap and easily available mode of procedure.

Mr. T.
De Moleyns, &c.
10th July 1872.

2211. The first objection which has been suggested, and which lies upon the surface, is, there being so many different judges acting independently of each other, that conflicting decisions necessarily result; what are your views as to that?

It is impossible to doubt that this may be so, but I would suggest that it must have been equally patent 18 months back when the Legislature sanctioned the jurisdiction being remitted to 33 individuals; it is hardly possible to ensure entire uniformity of decision, but if I may be allowed to offer a few remarks upon the subject, I would say that with regard to every great statute that has been passed there have been differences of opinion and differences of judicial decisions for a considerable period after the passing of the Acts. The constructions of the Statute of Frauds, the Statute of Wills, and several other Statutes have only been settled after considerable periods, and it is rather early to anticipate that in 18 months uniformity of decision upon this Act could be arrived at. But in order to effect this object I would suggest that every possible means of securing the opinions of an appellate court ought to be taken, and I think one hardship of which the Chairmen have had to complain is, that being launched (if I may use such an expression) upon an unknown sea, they were denied any chart, or any mode of obtaining judicial opinions to guide them. For instance, I think they might have been safely trusted with the power (which was given by the Act itself, by the 24th section, to the judge upon appeal) of stating a case at their own discretion for the opinion of the appellate tribunal. If that had been done, those points which I have heard discussed, such as whether tenant-right can exist at the termination of a lease, or what number of years may be sufficient to modify or to abrogate the old Ulster tenant-right usage, I have no doubt would have been at once, as they arose, stated by the Chairmen for the opinion of the appellate court, and probably before this, decisions would have been obtained upon the subject. It is unfortunate, with this object, that there have been very few appeals taken by either landlords or tenants, and only one case has been partially argued before the ultimate appellate court. Of course, therefore, those points of law remain still to be decided.

2212. Then would you have the chairman, passing by the going judge of assize, state the case at once to the Court of Land Cases Reserved?

That would be my feeling. Whilst I would wish to retain the going judge of assize as the first appellate jurisdiction for the parties to resort to, I think the chairman might safely be entrusted with stating a case for the ultimate appellate court.

2213. Lord O'Hagan.] On matters of law?

It is not confined, I think, to matters of law as regards the judge of assize; "As to any matter or thing," are the words in the 24th section, and I think that the chairman might safely be trusted with stating a case, perhaps going a little beyond a mere matter of law.

2214. The case which a chairman can now state to a superior court of law is only upon a point of law; I am speaking now of the ultimate tribunal, the Court of Land Cases Reserved; would you confine your suggestions to a matter of law?

By the 24th section the judge of assize has a power, if he thinks right, to state a case for the ultimate appellate court. I do not think that is strictly confined to matters of law, the words being "as to any matter or thing."

2215. In fact, you would give to the chairman the power which is now given to the judge?

Yes.

2216. Viscount Lifford.] Would you not give the power of appeal to the parties, provided that it could be given without much increase of expense?

I would still retain the power of appeal from the chairman by the parties to the judge of assize.

2217. Would you give a further power of appeal to the Court above?

Undoubtedly. I think the power of appeal upon an Act of this sort ought to be facilitated in every possible way.

Mr. T.
De Moleyns, Q.C.
10th July 1872.

2218. Is not that power of appeal being left to the discretion of the judge one point which in fact makes the working of the Land Act so doubtful at present?

I would hardly say that; I am sure the original feeling was, in the interests of parties, perhaps, who could not afford the expense, and, except in important cases, or cases which the judge of assize thought of sufficient importance, the appeal ought not to go as a matter of course; but it is perhaps desirable that it should be otherwise.

2219. Lord *Somerhill*.] Would not that be limited satisfactorily by a stated amount?

That might be done.

2220. The jurisdiction of the Court is limited in other respects, and the right of appeal might be limited by value, might it not?

I do not understand whether your Lordship means that the Chairmen are to retain the jurisdiction only to a limited amount.

2221. My question was, whether it might not be advantageous to give an appellant the positive right of appeal from the Judge of Assize, when the matter in controversy was for a sum exceeding say, 40 *l.* or 100 *l.*?

My opinion is, that he ought to have the right of appeal.

2222. Lord *O'Hagan*.] Would you extend that generally, or would you confine it merely to a case of value?

There is always a difficulty, I think, in limitations of value. I may say, that I do not think it would practically work. These things when once conceded, often lose their importance. They are imaginary grievances, and the appeal from the judge, if conceded, would probably be seldom taken.

2223. It has been suggested here by witnesses, that upon the one side, if you require security for costs, you may press hardly upon the tenant, and that upon the other side, if you do not require security for costs, you may have very improper proceedings instituted against the landlord; how would that affect your view?

Certainly, on the second appeal there ought to be some security given for costs; at present from the Chairman (and very properly, I think), the power of appeal is unlimited. No security for costs is required; there is no formality and no preliminary. That was framed by the judges with the full assent, I think, of the Chairmen.

2224. *Chairman*.] It has been suggested that the number of tribunals of primary jurisdiction might be limited by uniting, say three contiguous counties, the chairmen of those counties sitting together to decide the cases, of course, in their respective counties which arise under this Land Act. What is your opinion as to that?

I am very much inclined to retain the present jurisdiction; I think that there are many suggested remedies which could not be carried out, or, if carried out at all, only with great difficulty, and I think the local limits of the present counties and the local knowledge which the chairmen possess is a very great advantage both to landlords and to tenants. I may also be permitted to add, with reference to any change of jurisdiction, that these land cases almost always arise out of ejectments, and that I have never heard any complaint, on the part of the landlords, of the very large jurisdiction exercised by the chairmen. For instance, their jurisdiction as to ejectments extends up to 100 *l.* a year rent. Considering the size of farms in Ireland, that practically comprises almost all the Irish ejectments. There would be an extreme inconvenience as regards the tenants, at all events, if the land jurisdiction were taken away from the chairmen, and the ejectment jurisdiction were still to continue, because by the 21st section, wherever the tenant has obtained a decree for compensation, he cannot be put out until that compensation is paid. If the landlord were to be still at liberty to resort (as he is now) to that cheap procedure, and obtain his decree at a given time, some provision must be made to prevent his being able to put out the tenant until the tenant, at all events, should have the opportunity which the Act now gives him of realising the fruits, if fruits he is to realise, of the Land Claim; and then he might have to wait the convenience of the judge, or whoever is appointed to come down to his district.

2225. Was

2225. Was either of those cases which you have had before you, a case in which the tenant could claim under a custom, and in which he would also have a right to compensation?

No, because Kilkenny is one of those counties to which the Ulster usage does not apply.

2226. But there might be another custom; there might be customs relating to a particular estate, and the tenant might have a right under the custom to claim compensation also, might he not?

Yes, under what are called "analogous customs;" but these rarely exist out of Ulster.

2227. Earl of *Stradbroke*.] I believe you have no tenant right in Kilkenny?
None.

2228. Have you any difficulty in defining what is called reclamation of waste land?

Of course it is one of those matters which, like all other matters of fact, must be inquired into by the judge upon the evidence which comes before him. It is specially a matter of fact what was originally waste land, and what constitutes its reclamation.

2229. Do you not think that is rather a difficult question to decide?

Not at all more difficult, I think, than those controverted questions of fact which arise every day in the Chairmen's Courts, with such contradictory swearing that they have to make up their minds as they best can upon all those points. At all events, I do not know what other tribunal would not have the same difficulty in determining such a matter of fact.

2230. Earl of *Belmore*.] Have you formed any opinion as to whether the present Court of Land Cases Reserved is the best court?

It is hard to say that it is the worst court, but I should say it is eminently an unpractical court. So large a body of judges brought to sit together, where there is a divided responsibility, never can constitute a good working court. I think there is a very general feeling upon that subject.

2231. Would you think it desirable that there should be a limit, in point of value, to the jurisdiction of the Chairmen, with an appeal, of course, to the tribunals as constituted by the Act, and that cases of claims for amounts above that value, should go at once to the judge of assize, exercising an original instead of an appellate jurisdiction.

I think that, considering the facility of appeal which now exists, it would be almost unnecessary to introduce a limitation of that sort. I again speak with the same delicacy upon the subject, because no one wishes to assume a jurisdiction to himself; but still, in the public interest, I think, with a facility of appeal to the next going judge of assize, the present tribunal is more practicable, and that a person trusted to decide a matter of fact under 500 *l.* in value, may be equally trusted to decide a claim beyond that amount.

2232. Lord *Steward*.] Is there not also this advantage; that the chairmen sit more frequently than the judges?

There is that advantage.

2233. If a large case had to be decided by a judge of assize, the person might have to wait eight months, might he not?

He might have to wait eight months, whereas at present he can get the decision every two months or three months.

2234. Earl of *Belmore*.] Would not the objections stated by my Lord *Steward* hold equally good with regard to ejectment for rent over 100 *l.* a year?

Of course that is an observation that applies to a certain extent, but the answer, I think, is that of late years the tendency has always been to increase the jurisdiction in every respect. The jurisdiction of the chairmen originally as to civil bills, as they were called, was 5 *l.*; from that it has been extended to 40 *l.* For rent it has been extended from 20 *l.* to 100 *l.*, and in many respects they exercise unlimited jurisdiction. In cases of insolvency, in Income Tax appeals, in the case of ejectments for deserted premises, their jurisdiction is

Mr. T.
De Moleyns, Q.C.
10th July 1872.

both unlimited and exclusive, for no other court has jurisdiction, and so under many special statutes they have jurisdiction, no matter what the amount may be. It is merely with regard to ejectments and to ordinary civil bills, that any limitation of amount is imposed upon them.

2235. *Lord Steward.*] With reference to an ejectment above 100 *l.*, it has not to go to the assizes, but it goes to the superior courts in Dublin, does it not?

It goes to what are called the superior courts, but it is tried at the assizes, if defended, the venue being local. That is one of the advantages that landlords get in those courts, at an expense of 2 *l.* 1 *s.* or 2 *l.* 2 *s.*, I believe, which is the cost of an ejectment in the Civil Bill Court, up to 100 *l.*, whereas probably 40 *l.*, 50 *l.*, or 60 *l.* would be the ordinary cost of an ejectment defended, and tried at the assizes.

2236. *Lord O'Hagan.*] It has been suggested that by way of substitution for the chairmen, there might be two judges, co-ordinate with the judges of the superior courts, who might perambulate Ireland, and hear all the cases; do you think that such a substitution would be desirable?

I have the strongest opinion that it would not be a practicable substitution. In the first place, I do not think two judges could possibly perform the business. It is not from the present amount of the business that we can form a judgment, for if bad years come, there must be undoubtedly, as time goes on, a great increase of land cases. Then your Lordships will recollect also that it is not only by counties that those cases are heard, but by divisions in each county, and that the very object of this Act is both, as regards landlords and tenants, to have the remote districts visited. I do not think that two judges could possibly do it. At the very lowest, I should say that four would be necessary, and they would come as strangers, even if it were practicable then.

2237. Then you do not think they would do the work nearly as well as the existing tribunals?

You must not press me in connection with that point. There may be great difference of opinion as to that.

2238. Another alternative has been suggested, viz, that the Landed Estates Court should be utilised for this purpose, a judge being added to the two very able judges already sitting there; what is your opinion as to that?

It appears to me that that is founded upon a misapprehension of the nature of the Landed Estates Court. It is merely founded upon the name of the court, the supposition being that the Landed Estates Court is necessarily a court for hearing land cases, whereas the duty of the Landed Estates Court is more with regard to conveyancing, in reference to sales, and in reference to the investigation of titles, and probably judges of that court would be less available in point of knowledge of farming details than the ordinary judges of assize for this purpose. It appears to me to be a misapprehension, founded upon the name of the Landed Estates Court.

2239. *Lord Somerhill.*] You are aware that various schemes have been put before the public for altering the constitution of your courts, and especially for the purpose of reducing the number and increasing the pay, and preventing the Chairmen from taking any private practice; do you think that if any such plan were carried out by the Legislature, it would necessarily affect the jurisdiction of the courts which have to deal with the land cases under this Act?

I do not think so. For one I am very much opposed to any of those schemes; I think they are hardly practicable; I may perhaps be biassed in what I say, but I think the county court is one of those institutions which works extremely well, and that nothing but the desire for change, and for suggesting remedies which probably would never be carried out, considering the difficulty which would be raised by the Chancellor of the Exchequer, has originated the suggestion. The county courts are extremely valuable and should, I think, be retained as they are.

2240. No doubt the main principle upon which they are founded works well, because it is from them that the county courts were introduced into England?

They were the precursors of the county courts in England.

2241. But at the same time you would think that there would not necessarily be an objection to improvements of detail, if those improvements were found on examination

examination to be desirable, such as reducing the number, and making the circuits more frequent?

Whatever might have been done if the thing were new, I doubt very much whether such a change could be carried into effect at present; it would involve an immediate expenditure, and various other items of detail of that sort which we know can be never carried out without great difficulty.

Mr. T.
De Moleyns, q.c.
10th July 1872.

2242. Do the Chairmen meet together now in Dublin, to consider any of those disputed points?

I believe that soon after the passing of the Act there were one or two meetings; indeed, before the passing of the Act they met constantly, for the purpose of hearing particular points of difficulty which any chairman had, and taking the opinion of the whole body upon them. In respect to practising, personally speaking, I virtually do not practice, but my own opinion is that it would be extremely injurious to the body of chairmen if they ceased to practice.

2243. *Chairman*] Do they meet for the purpose of considering questions which are likely to arise, or which have arisen under the Land Act?

They meet from time to time for the purpose of considering questions.

2244. Do they meet for the specific purpose of deciding amongst themselves the questions which arise under the Act?

At this moment I cannot bring to mind whether they have met within the last 18 months for the purpose of specifically considering questions under the Land Act, but they did meet repeatedly before that time, and my impression is that since that they have met.

2245. We have had evidence from Mr. Lefroy that there has been no such meeting?

I am quite sure then that Mr. Lefroy is right, and, as I have said, I do not exactly recollect whether since the Land Act there have been any such meetings.

2246. *Lord Steward.*] I think you did not quite finish your answer with regard to the chairmen practising?

My idea is this: that it is injurious to any body of men of that description to become what I would call, if I might use the phrase, rusty; to be taken out of the arena of public opinion afforded by practice in the Courts. They hear their own decisions discussed; they are amenable to the opinion of the Bar, and I do not think it is desirable that they should subside into country gentlemen, which they would be very likely to do if they were taken out of their profession and debarred from practising. It may be said, Why does not that apply to the Superior Judges? But the answer to that is, that they sit from day to day with a Bar before them, and become a peculiar body; but where the Chairmen have to go down into particular counties only at intervals, I think it is desirable that they should still be before the public and before their own profession, and should be amenable to their opinion.

2247. Supposing the number of chairmen to be very much reduced, and their labours to be increased by two or three counties being given to one chairman, would not their time be pretty well occupied?

Certainly that would meet the objection, because that would alter the constitution of the body altogether. Their time would be very greatly occupied, and of course they could not practice if that was the case.

2248. Does it not strike you as an anomaly, that a chairman may be called upon to decide a case in one county judicially, when he has been arguing a similar case as an advocate in an adjoining county?

Of course it is open to that objection, but I do not know that this is very generally done, or that the practice is at all general; I quite agree that if a person decides a land case in one county, it would be better that he should not take a brief to argue what would perhaps be contrary to his conviction in another; but that I think is a matter of feeling which can very easily be settled.

2249. *Lord Somerhill.*] You are aware probably, from report, that such a case has arisen?

I have heard so.

Mr. T.
De Moleyns, q.c.
10th July 1872.

2250. Lord *Greville*.] Do you think it would be well that the chairmen should be prevented from practising in land cases ?

Yes; I am very unwilling, of course, to give an opinion upon any matter of that sort. For myself I may certainly say that I should not do so. I think it is desirable that they should not take appeals from a county court, and particularly, perhaps, in land cases; but this must be taken with the reservation that I am very unwilling to give an opinion about what may affect the feelings or the views of other gentlemen who are perhaps more competent to judge than I am myself. In the interest of the public, I believe it would be better that they should not practise in such cases.

2251. Lord *Charlemont*.] You suggested that the chairman should be able to state a case for the Court of Land Cases Reserved ?

Yes, at once.

2252. It has been previously suggested here by a learned judge that the appeals should be in all cases from the barrister to the going judge of assize, with further appeal to the Court of Land Cases Reserved, instead of, as at present, that the going judge of assize may refuse further appeal. In this case a difference was made between matters of law and matters of fact; that in matters of law cases should go direct to the Land Court, but in matters of fact to the going judge of assize; would that be your opinion ?

My opinion is, that the going judges of assize are a very good primary appellate jurisdiction. I believe they exercise their duties carefully, and are aware of their importance. Having reference to the advantage of having the practitioners available who had argued the original case, I think the appeal should, at all events in the first instance, go to the judge of assize. No difficulty can arise as to their giving proper time for hearing the cases, because the appeal must be taken within one week from the termination of the sessions, and therefore the judges, when they settle the circuits, know how many appeals will have to be heard, and, of course, will give sufficient time for the purpose. That is, as to matters of law and fact. The appeal for the parties themselves should, in the first instance, be to the judge, subject to the chairman stating a case for the ultimate court of appeal.

2253. Lord *Somerhill*.] You would allow the parties, in point of fact, a re-hearing before the judge ?

Yes; I would allow the parties a re-hearing if they think proper to do it themselves, with the additional power that I have suggested for the chairman.

Mr. JAMES CHARLES COFFEY, q.c., called in; and Examined, as follows :

Mr.
J. C. Coffey, q.c.

2254. *Chairman*.] You are one of Her Majesty's Counsel ?

Yes.

2255. And you are Chairman, I believe, of Derry ?

I am.

2256. Have you had many cases before you under the Land Act ?

Unfortunately, a very considerable number.

2257. Lord *O'Hagan*.] You have had the largest number, I believe, which any chairman has had ?

I believe it is so.

2258. *Chairman*.] Could you state the number which you have had ?

I think about 93 or 94 cases.

2259. In any of those cases, have they raised questions of law ?

Undoubtedly, they have raised questions of law.

2260. Have those cases which involved questions of law been appealed from ?

Yes, they have. In a case which has given rise to a very considerable amount of discussion, I decided that at the expiration of a lease, the tenant in possession was obliged to surrender, there being a covenant in the lease to surrender in good order, repair, and condition. Unfortunately, generally speaking, we have

not

not the assistance of a bar to argue those cases of law before us. There was a subsidiary question also involved in the case referred to; and, even supposing that I was wrong in one branch of it, another question cropped up in the same case, viz., whether there was an unlimited right of sale on the estate, or whether it was limited to the extent or duration of five or ten years, I forget which. An appeal was taken from my decision on both points, and was tried before Lord Chief Justice Monahan; he came to the conclusion I must say, with a vast deal more evidence before him than I had, and very cogent and persuasive evidence. He had before him Major Beresford, the vice-lieutenant of the county, Mr. Spottiswoode, and Mr. Wiggins, who are agents over very extensive estates indeed, and Master Lane, a gentleman who had purchased some property there, and had also very extensive experience otherwise. All that evidence I had not before me, and the conclusion at which his Lordship arrived was, that in the particular case the custom overbore and dominated the covenant, and that what was a matter of privilege before, was legalised by the Act; accordingly, he came to the conclusion that the overwhelming mass of evidence was, that this custom existed irrespective of the lease altogether, and in contravention of the covenant, and that he was obliged to give it the force of law; accordingly, he did not reserve an appeal upon that particular point.

Mr.
J. C. Coffey, a.c.
10th July 1872.

2261. The appeal to the judge of assize is not solely upon the evidence which was before the chairman, but he may have additional evidence?

A complete re-hearing *de novo*, with no restriction as to additional evidence; he came to that conclusion, and he had no doubt in his own mind upon the question of law; he did me the favour afterwards to mention to me that so he thought. In his judgment he was so clear upon the question of law, that he declined to reserve the question for the Court of Land Cases Reserved. What I will call the subsidiary question, that is to say, the number of years' purchase upon the estate he did reserve, and it was argued before the Court of Land Cases Reserved; that was the only case which was ever argued before them, and unfortunately the day after the argument had concluded, intelligence arrived that the appellant in the case had died. I am told that they are trying to revive the proceedings, in order to get a decision upon that point, but there has been no case whatever determined by the ultimate Court of Appeal yet, upon any points of law. Two or three of them, I believe, are ripe for hearing, and will be heard at the fitting time.

2262. Viscount *Lifford*.] Lord Chief Justice Monahan refused an appeal on points of law?

He did; he said that his mind was so clear upon it, that he considered it his duty to refuse it.

2263. *Lord Steward*.] When this Court of Land Cases Reserved, tried this case, can you state how many judges attended to hear it.

I cannot say, but there was a very considerable attendance.

2264. *Chairman*.] In those 93 cases have there been other appeals to the judge?

Out of the 94 or '95 cases of which I have disposed, there have been five appeals; one of them has been reversed, and the others have been affirmed, or varied in trifling details.

2265. Of course, the principal questions which arise are questions of fact, and they must depend entirely upon their own circumstances?

Altogether.

2266. Therefore you cannot compare any decision of one chairman upon a question of fact with the decision of another chairman upon another question of fact also?

It would be perfectly impossible. I was present during the examination of Mr. Rogers, and he mentioned a case which was decided by the chairman of Coleraine, in which he seemed to consider that there had been a very considerable amount of hardship. I happen to be the unfortunate individual who decided the case. I turned to my note-book, and I went into the circumstances of the case, and it certainly was not a hardship upon the tenant at all, but a case of great indulgence on the part of the landlord, who resisted an unfounded claim. The tenant did not complain of the rent, but required the possession of six and

Mr.
J. C. Coffey, e.c.
10th July 1872.

one-half acres of turbarry to which I considered he had no claim; but on convincing him of this, he abandoned his contention, and the agent withdrew the ejectment at my suggestion; but the case certainly gives some interesting information as to the question which your Lordships were asking as to valuations. It was upon the Ironmongers' estate, and that estate was under lease from the year 1725 down to 1840, from the Ironmongers to a single lessee. At that period there was a fine of 21,000 *l.* paid for this estate at the annual rent of 600 *l.* I have taken the trouble to look into it, and if you add the figures it would, at 5 per cent., represent a rental of about 1,650 *l.* a year. At the present moment that state produces 6,600 *l.* per annum, increased by valuation submitted to by the tenants who consider it, as far as my experience is concerned, invariably right and just that periodical re-valuations should occur; and I do not know in my experience, a single instance where a tenant has refused a reasonable increase of rent, either at the expiration of a lease or at the end of certain periodical intervals; it is 10 years upon some estates, and 21 years upon other estates, and as low as seven years upon others.

2267. Have you had any case before you where there has been a claim under a custom attached to the estate, and at the same time a claim for compensation on the part of the tenant?

Yes, I have had that.

2268. Will you tell us how you deal with those cases; whether you allow the two claims to be put forward originally, or whether, when one claim has been put forward and decided, the other may be brought forward afterwards?

That is a matter of procedure upon which I am aware that a difference of opinion and of practice exists. It is a very common thing with us for a tenant to claim under the Ulster Tenant Right Custom, and also under the third and fourth and other sections of the Act. My practice, whether right or wrong, is to hear the evidence entirely out on both sides, and then I call upon the claimant to elect whether he will adopt one claim or the other. I ask him which of those claims he will go upon. At the close of the evidence I say, "You have heard the evidence, you cannot be taken by surprise; do you go upon the Ulster custom, or do you go upon the sections outside of it?" In practice I find no difficulty in it, and in practice I may further say that I find it convenient to both parties, and I have heard no serious objection to it.

2269. Have you had any case with regard to the representatives of a deceased tenant?

I have.

2270. Will you be kind enough to say how you deal with a case of that kind?

In that case, generally speaking, the questions arise upon what are called the London Companies' Estates, and the agents are very careful, and extremely good landlords, if I may use the expression. My experience of the London Companies is, that they are extremely indulgent, extremely reasonable, and very honourable and upright in their dealings with their tenants, and the tenants as a rule have the greatest possible confidence in them. I get great assistance from those gentlemen, because their rule generally is to have the tenant right custom money paid into the office; that affords them security for the payment of arrears of rent if there are any; it also enables them to ascertain who are the members of the family, and then they come before me after the total sum for the tenant right custom is ascertained; the brothers and sisters, and uncles and aunts, and every conceivable relation, and every conceivable claimant which you can possibly imagine, come flocking in to claim and have their portions divided. You divide according to the rules of law as to the next of kin; you make the order for the money and it is paid accordingly, and it is paid according as you have decided; I am speaking now of a deceased tenant.

2271. Earl of *Belmore*.] Have you had any difficulty in those cases in finding out who was in legal occupation of the land?

Never; you sometimes have to try a case where the rent has been received in the name of the tenant, and you find one or two brothers, or other members of a family, claiming to be entitled to the land in common with the person whose name is on the books of the estate as a single tenant, and then you are obliged to go into those equities yourself.

2272. If

2272. If you decide contrary to the decision which the landlord or the agent may have come to, of course the landlord or the agent is bound to alter his rental accordingly ?

Mr.
J. C. Coffey, a.c.

10th July 1872.

By no means; there is no legal obligation upon them to consult each other at all, but practically, we always get at what is right, because the money instead of being paid into the office would, if the parties were hostile, be paid into the bank to the credit of the contention between the parties, and it lies there until the chairman decides those collateral questions, and then he makes the order upon the bank, instead of upon the agent.

2273. Is there not this difference between the present state of affairs and that which existed before the passing of the Act; that before the passing of the Act, the landlord or the agent virtually decided who was to be in possession of the farm, and that now through the instrumentality of the chairman the law decides it ?

I think that is an error; the law is in no way altered. It does take from the landlord his right, if he has any right, to select capriciously or we will assume arbitrarily. The Act leaves things exactly as they were as to the actual rights of the landlords and the natural influence which a man in his position has.

2274. Lord *Somerhill*] Have you not had cases in which the tenant has left a will, which would really involve a sub-division of a farm ?

Perpetually; little documents that were never legally attested, but were merely the expressions of a dying man.

2275. I suppose that a few of them are really legal ?
Some are, of course.

2276. When administration is taken out for such a will, how do you practically deal with the proper divisions and rights of the people next of kin, because I should presume that the companies' agents do not admit of that sub-division in any cases; you have no jurisdiction in title, have you ?

No; but generally speaking, in the case of a will coming before us, which subdivides a wretched little tract of land into small divisions, and mortgages it and charges it, and all that sort of thing, the landlord comes and says, "This is all very well, but I will not allow this little tract of land to be sub-divided and cut up, it is of no use amongst a number, and unless you arrange what money is to be paid by whoever remains, and who are to get it, and adjust the whole matter amongst yourselves, I must eject the whole farm."

2277. Then, does the case ever come before you in that position, because that would seem to be more a matter to be decided in the landlord's agency office, than a question of tenant-right ?

It sometimes occurs that the tenants are obstinate, and will not be influenced in the slightest degree by what either landlord or agent may say. That is not an uncommon thing at all, and then the result is that the agent gives notice, and says, "Well, as you cannot agree amongst yourselves, the whole place is under ejectment."

2278. Earl of *Belmore*.] When the landlord has ejected the whole of the parties, the law then steps in to decide who is entitled to compensation ?

Certainly. In that event, if they are hostile and antagonistic, of course either the landlord or agent, instead of keeping the money will pay it into the bank, and absolve himself from all responsibility.

2279. Lord *Broderick*.] Therefore, if he ejects simply for the purpose of settling the question, the landlord runs all the risk of having to pay the penalty for disturbance ?

I do not know that it is penalty for disturbance. He clears the land, and it does not cost him a penny. He pays nothing in compensation; the incoming tenant pays the entire compensation, and the landlord receives the same rent which he had been receiving, and he can fairly raise it according to exigencies and circumstances, so that the increase is reasonable and what the circumstances of the country justify.

2280. Lord *Somerhill*.] If he takes, say, the tenant's eldest son, or the eldest daughter's husband, and recognises him by receiving rent, can the rest of the family go to law with the landlord for their share.

Mr.
J. C. Coffey, a.c.
10th July 1872.

I should say they could not go to law with the landlord.

2281. They have no remedy, then ?

I think they have, because your Lordship sees that a landlord cannot put people out who are in apparently lawful possession without resorting to the law and serving an ejectment upon them. He may name such a person as a tenant, and he may write him down in his rent-book as such, but that does not take away from the rights of those in occupation who must be disturbed by legal process, and the legal process is an ejectment.

2282. Marquess of *Cianricarde*.] But supposing the case of a man dying, leaving a wife by a second marriage, and perhaps a child or two by her ; I think you must have often found in practice that the children of a former marriage, although not living in the house, put in a claim to get a share of the farm ?

No doubt ; and they get their just rights, if they have any, in a rude, rough sort of way ; but in a practical way notwithstanding. They sue the widow in possession as the administratrix of her own wrong, *de son tort*. In that case we are obliged to ascertain the whole value of the chattel interest as if we were going through an administration suit, and then we discover the consanguinity and the next of kin, and we compel the farm to be sold for the purpose of effecting justice between the parties.

2283. But how can you turn her out, if the landlord is content to leave her in ?

I cannot turn her out, but I can make her defendant in a suit, and make her an executrix *de son tort*, and say that her husband left so much personal property ; the value of this tenant-right, being a chattel interest in the farm, is worth so much, that the brother, in some cases, is entitled to so much, that the children by the first marriage are entitled to so much, and so forth.

2284. But you could not enforce that tenant-right assessment by law before this Act passed.

Certainly there was that great difficulty in the way, and I think that is one of the great boons and advantages which has been conferred by this Act ; it enables you to do substantial justice between the families of deceased persons by different marriages, or in any other circumstances, and you have the protection and the machinery of the law, which you had not before, to resort to, and you prevent what your Lordship is perfectly familiar with as of universal occurrence, viz., close relations breaking the peace, fighting in fairs, knocking one another down, and then having to appear in the dock for the often serious consequences of those family quarrels and feuds.

2285. *Chairman*.] Have you had any case of this kind before you ; tenant noticed to quit ; subsequent bankruptcy ; claim for disturbance ?

Not since the Act ; but I had a very singular one before the Act, which I think is a fair illustration of the working of this Ulster custom ; a road contractor came before me insolvent, his assignee disputed a conveyance of his farm, the tenant-right interest in which was sold for 60 *l.* by the sheriff under a "*Fi. Fa.*," alleging that it was a juggle. Mr. Spottiswoode, the agent of the estate, was beside me on the Bench, and he stood up and said, "I do not care whether effect is given to this conveyance of the sheriff or not, I will not accept the tenant. The moment he goes into possession, I will direct an ejectment, and have him put out of his possession, because I think that is a fraud for the purpose of protecting this man's property against his creditors." When I came round next time, Mr. Spottiswoode told me that for the tenant-right interest of this farm of 30 Irish acres, subject to a rent of 30 *l.* a year, the new tenant was paying into his office 600 *l.*, which went to the creditors.

2286. Earl of *Stradbroke*.] That is nearly the value of what the property would be sold for ?

Quite so ; it is perfectly startling, but everybody, I suppose, acquainted with the north of Ireland, knows that it is almost incredible what large amounts you get for the tenant-right of a small farm ; much larger in proportion than for great farms.

2287. Lord *Somerhill*.] So large in fact, that a competition for five-acre farms is greater than for larger farms ?

Enormously greater.

2288. *Chairman*.]

2288. *Chairman.*] In your opinion, does this Act work satisfactorily, with respect to the primary jurisdiction of the chairmen of sessions?

I think it does; wonderfully so. I have before me the official return of the number of claims that have been put in. They are very considerable indeed, and you observe the amount of compensation given. Everybody will be struck with the disproportion between what is given and what is claimed, and also by the very few appeals. The Act appears to me to be worked with singular moderation and discrimination. Of course you will understand I am not speaking of my own county at all; but speaking for others, that must be the inevitable conclusion, on looking at the figures. As time goes on, whatever be the ultimate court of appeal which may be constituted, whether as now consisting of 16 members, or of five or six members, there must be uniformity of decision, because we must be governed and bound by the decrees of that court. By allowing a little time to elapse you will, upon matters of law, secure perfect uniformity of decision. Upon questions of fact, of course it is like everything else.

Mr.
J. C. Coffey, q.c.
10th July 1872.

2289. With respect to the Appellate Courts, the Judge of Assize, and the Court of Land Cases Reserved, do they work satisfactorily?

I am bound to say that I am one of those who think the Court of Land Cases Reserved is a very cumbrous court. It is too numerous, I think; it is difficult to get 16 members of a court to assemble together; and if they did assemble together, I do not think that experience shows that so large a tribunal as that is the best for the consideration of questions of law. The responsibility is divided, and you get different members sitting at different times; and it would occur to me, if I am to give an opinion upon the subject, that a tribunal more limited in point of numbers would be more satisfactory.

2290. You passed over the intermediate appeal to the judge of assizes; would you consider that desirable, or do you think that it should be got rid of?

I had the good fortune to be listening to my friend Mr. De Moleyns, when he gave his evidence, and except upon one point, I entirely endorse everything he said in respect to that; but I differ in this respect: I think that upon questions of law the case ought to go direct from the chairman to the Court of Appeal, without going through the intermediate Court of the Judge of Assize, and for this reason: you have a different member of the bench at each assize, and you have six assizes, and you run the risk of getting six decisions upon the one case at law. If you go direct to the Court of Ultimate Appeal you have always uniformity. I think that upon questions of fact, the right tribunal is the judge of assize, and for this reason, that you have the witnesses upon the spot. It involves little expense or trouble, and in some cases it would work very hardly indeed upon a litigant, who could not afford the money if he had to go up to the Court at Dublin and pay a number of witnesses to determine a question of fact, which could be very properly and well tried before the judge of assize.

2291. Do you wish the judge of assize to have original jurisdiction upon questions of fact?

No; appellate jurisdiction.

2292. Would it, in your opinion, be desirable that upon questions of fact the chairman himself should have a jurisdiction limited to a certain amount; and that upon questions above that amount the judge of assize should have unlimited jurisdiction?

I made up my mind, after considering the matter as carefully as I could, that leaving the jurisdiction where it now is, with the chairmen, would be the safer and wiser course; I think they have better opportunities, more knowledge of the people, more knowledge of the country. They can cut down and tone down the exaggeration of the witnesses and extravagant claims, by local knowledge, which cannot be possessed by any other tribunal.

2293. *Lord O'Hagan.*] You say that questions of law should go to the Supreme Court, and questions of fact to the judge of assize; but are not these questions generally of mixed law and fact, and how can you segregate one from the other?

I think that could very easily be done. I think that questions of fact are calculations as to value and amount, existence of customs and usages, and those

Mr.
J. C. Coffey, Q. C.
10th July 1872.

are matters upon which I think both the chairman of the county and the judge of assize have better opportunities of arriving at a correct conclusion than any other tribunal would have. There are questions of law as to leases, as to whether custom dominates the covenant or the covenant dominates the custom, questions as to reception or rejection of evidence. I do not understand whether any other questions can arise than the pure question of value apart from the question of law.

2294. Lord *O'Hagan*.] I can understand the suggestion of Mr. De Moleyns, that there should be power for the chairman to reserve a question of law for the ultimate tribunal, but do you not think there would be difficulties and objections in the course which you suggest?

It requires no witnesses, it requires a mere argument of counsel before the ultimate court in Dublin. I think it is of such importance to secure binding decisions and to evolve principles that I should infinitely prefer (I might be wrong, of course) to have all questions of law go up to one tribunal, so as to secure unerring uniformity.

2295. Earl of *Belmore*.] Would you prefer that the appeal upon questions of law and fact should go to a single Judge of Assize, or to both the Judges of Assize?

As the Act is framed, it is optional whether the Judges shall sit together or sit singly, and I would rather not interfere with their discretion.

2296. Would you yourself prefer that the appeal upon a question of law such as you send up to the Court above should be heard by a single judge or by the two judges?

If you compelled me to accept one alternative, I should prefer that upon a question of law the two judges of assize should sit together.

2297. Lord *O'Hagan*.] You have heard that it was suggested here that two judges co-ordinate with the superior judges in Ireland should be the Land Tribunal in the first instance; what do you think of that?

I think that it would be utterly impracticable to work it. Your Lordships will observe that, in the performance of duties under this Act of Parliament, a succession of orders have to be made, and various things have to be done, which require a constant court like ours and two judges going round, sitting only, as has been well observed, in one town in each of the counties, would be a perfectly impracticable arrangement, and it cannot be supposed that they could visit about three towns in each of the 33 counties, or 99 towns in all.

2298. What would you think of the Landed Estates Court as a substitute?
I would rather not give an opinion upon that question.

2299. Why not, if you have an opinion?

I have a very decided opinion, and if your Lordships say that I ought to give it I will give it; I think that the tribunal which exists is infinitely preferable in every respect. Everybody who knows the work which is done in a quarter sessions court, knows that some people would come up and ask for 1,000 *l.*, on whose evidence you would not place the slightest reliance, and that power of discrimination is acquired from local knowledge, and cannot be gathered in any other way, besides the court must be always accessible for making interlocutory orders, and deciding disputes as to the distribution of compensation money.

2300. You think that a local judge is better than a judge coming down from Dublin with no local knowledge?
Infinitely.

2301. Viscount *Lifford*.] But you would give an appeal in all cases from the judge of assize?

I would unquestionably, in order to promote uniformity of decision.

2302. Lord *O'Hagan*.] Would you abolish the discretion of the judge of assize in determining as to an appeal?

I think that it is very worthy of serious consideration, whether upon a question of fact, apart from a question of law, you could not safely entrust to judges of the eminence of those whom we have the honour to possess, and who are so sagacious and tried and experienced, the power of deciding whether it would be necessary to give an appeal upon a question of fact. They might come

to

to the conclusion that it was sought for the purpose of harassing the respondent, or that there was no substantial reason for giving that appeal; and I think that you might fairly trust the judges of assize with that discretion. They would, I am confident, rather err in giving it than in not giving it.

Mr. J. C. Coffey,
Q.C.
10th July 1872.

2303. Viscount *Lifford*.] Do you think that parties should claim it as a matter of right upon a question of law?

Certainly; after a time, of course, all those questions would become unnecessary.

2304. *Chairman*.] Upon a question of fact the ultimate court of appeal would be under this disadvantage, that the other courts, both the original court and the court of appeal, consisting of the judge, would have the witnesses before them, the written evidence only being sent forward to the ultimate court of appeal, which would be under the great disadvantage of having merely to look to a paper instead of hearing the witnesses?

I did not look upon it in that light, for I contemplated *viva voce* evidence; but as regards reported evidence, your Lordship knows the value of the written testimony which you get in the Court of Chancery compared with the knowledge you get by seeing the witnesses and their demeanour; it is as clear as day upon which sides lies the advantage, and the probability of getting at the truth.

2305. Lord *O'Hagan*.] You mean that you would give anybody in the Court of First Instance, in whose case in which a question of law arises, a power of appeal to the Supreme Court?

I would; having this in view, that no one would entertain a thought of appealing when once there was a question decided in the Court of ultimate Appeal. Applications for appeals will become less and less as time goes on.

2306. Lord *Somerhill*.] You would not limit the right by any question of value?

No, I would not, because a question in which a very small amount is involved may be of the very last importance as regards a principle to be decided.

2307. Lord *O'Hagan*.] Do you not suppose that an absolute right of appeal upon every question of law before the chairman might expose the parties to very great inconvenience in the case of a litigious tenant, or in the case of a pauper tenant; would there not be a danger of that?

I think that there would be, and I do not close my eyes to that inconvenience; but I think that it is an inconvenience which would endure for so short a time that it would be worth all the risk. I think the thing to attain in the administration of this Act of Parliament is certainty, and I think that you will get it the moment you get the decisions of an ultimate Court of Appeal.

2308. Lord *Somerhill*.] Would you require security for costs?

I think that would be worth consideration. I think you might fairly entrust the chairman with the power, if he saw that it was a frivolous case, such as a case, for instance, as one which had been already decided by authority, to impose some restriction of that kind. In practice I think you would find no professional man who would abuse the power; the moment he saw that the point had been decided upon above, he would not presume to ask for a re-hearing of it. Would your Lordships allow me to mention one fact as a mere illustration of the care which we ought to exercise about crediting those statements about misunderstandings, and differences, and conflict of opinion, and so forth, of which we have heard so much, and of which the newspapers are full. I have in my pocket a letter written by a gentleman in a public paper. Of course I did not blame him. It was a mistake and a misconception upon his part, I make no doubt; but it is followed by an article in the paper abusing me very roundly. It is a short letter, but it is worth reading, I think. "At the County Louth Land Sessions, April 11th last, in the case of *Maguire v. Clinton*, four years' rent was claimed as compensation for disturbance. The Chairman said, 'I will bear in mind the policy of the Act; there being no residence on the land there was no disturbance, as in cases where the tenant resided on his farm, no home or family ties were broken up.' The Chairman dismissed the claim for disturbance. At the Newtown Limavady Land Sessions, County Derry, on 23rd instant, in the case of the *Poor Law Commissioners v. Tyler*, where compensation was claimed for disturbance in respect of a field rented by the Guardians of the Union, on which there were no buildings,

Mr. J. C. Coffey,
Q.C.
10th July 1872.

buildings, 'home, or family ties,' the Chairman awarded one year's rent as compensation. These facts speak for themselves. Parties interested, both landlords and tenants, have a right to ask what is the law." The gentleman very fairly and frankly puts his name to it, as an honourable gentleman would; and I had the curiosity to write to the Chairman at Louth, and he says in his letter in answer to mine, "I never made such a decision in my life; on the contrary, the decision which I made, and which was reported in the 'Law Solicitors' Journal,' was to the contrary effect."

2309. *Lord Steward.*] Is one or both of those statements untrue?

One is true, and one is untrue. It is untrue that the Chairman said that, because there were no residents on the place, and no family ties broken up, he would give no disturbance at all. That is perfectly untrue. Of course, he took that as an element into consideration, as any honest man would do, to govern his decision; as to amount, it only shows how little reliance is to be placed on newspaper statements.

2310. *Lord Greville.*] Do you think that the chairman should continue to practice in land cases?

I have a decided opinion that they should not. There may be one exception, for it was so stated here; but as a general rule, the whole body, including myself, have declined to take briefs in connection with land cases, and I have no doubt the opinion of the general body will influence any who may now hold a different opinion. As a rule, no chairman in any one county of Ireland takes business from the county in which he acts as chairman, either from professional men or residents in it. He never connects himself directly or indirectly with any person having property or resident in the county to which he is assigned as chairman.

2311. *Lord Brodrick.*] Do you consider it desirable that the Civil Bill judges should also have private practice?

There is a difference and conflict of opinion upon that subject; I think with the limitation which I have already stated that it is very desirable that they should continue in practice; that limitation is, that no chairman of a county takes business from any professional man or attorney practising before him, neither does he take business from any residents in the county, or anyone with property in the county; the chairmen keep themselves entirely aloof from all complications of that description, and that being so, I think it is rather an advantage than otherwise that they should be trained men of professional experience.

2312. Do you, as a lawyer, think they should be called upon to take the responsibility of giving a decision in a land case in their own district, while they may be called upon to argue the clean contrary upon some other circuit before the judge of assize?

I have already stated, in answer to a noble Lord, that it would be exceedingly undesirable that the chairmen now having those duties imposed upon them by the Act of Parliament should have any professional connection with the Land Act, or should express any judgment or opinion upon it as professional advocates or advisers.

2313. *Lord Somerhill.*] Would not that a little militate against your opinion, that a chairman should practice in order to have familiarity with the law?

That is upon general questions, but I think that this peculiar and delicate duty which is imposed upon him is so important, that it is desirable that he should not practise in land cases.

2314. *Lord Brodrick.*] Would you prefer a diminution of the number of chairmen, and their being placed upon the same footing as the judges of the county courts in England, which would involve an increase of salary, and their giving up their private practice?

I do not understand the difference between the county court judges in England, and those in Ireland, except that the latter have very much larger and more responsible duties to perform.

2315. *Lord Somerhill.*] They go circuit less often, I think, than the county court judges?

They go their circuit once a month, or once in six weeks, as I understand.

The Witness is directed to withdraw.

THE REV. JOHN ROGERS is re-called, and further Examined, as follows :

2316. *Chairman.*] Do you wish to make any further statement to the Committee?

Rev. J. Rogers.

10th July 1872.

I am very sorry that something which I said should have produced an impression upon Mr. Coffey's mind which I am very anxious to remove, and I am very anxious that there should be no wrong feeling out of doors. I certainly did not wish to convey any imputation with regard to the case which I brought forward. If I complained at all, it was with regard to the non-recognition of the custom in its unlimited character. On the other hand, I expressed my great admiration of the refusal of the chairman to say that the custom was not the custom of the estate. I am bound to say, that all the decisions of the chairmen of that county, so far as I know, have given unlimited satisfaction to every reasonable man.

The Witness is directed to withdraw.

Mr. SAMUEL C. McELROY, is called in ; and Examined, as follows :

2317. *Chairman.*] I BELIEVE that you are Secretary, are you not, to the Tenants' Right Defence Association?

Mr. S. C. McElroy.

I am.

2318. Have you anything to state, from your own experience, with regard to the working of the Land Act, and especially as to its effect upon the relations of landlord and tenant?

In the part of the county from which I come, which is the northern portion of the county of Antrim, the general opinion among farmers is that the Act is working in a very satisfactory manner; I may say that there are three points about which there was considerable anxiety; those points are whether estate usages were legalised or not, whether tenant-right on town parks was legalised or not, and whether leasehold tenant-right was legalised or not; on these three points I may say that among the farming class there was very great anxiety indeed; consequently, when any expression of opinion was given in a Land Court that leasehold tenant-right was not recognised by the Act, that expression of opinion created a considerable amount of uneasiness of feeling; the reason why it created such an amount of uneasiness of feeling was this, that in my district the leasehold tenant-right amounts to a considerable sum, that is to say, we look upon it in our part of the country as a very considerable interest; in proof of that I may say that farms which are sold, and on which leases exist, sell rather above the ordinary tenant-right, and even in the concluding years of a lease those farms will sell almost equally as well as if it was merely the ordinary tenant-right which was being sold; I think that in the year 1865 or 1866 there was a farm sold for about 1,200 *l.*; the years of the lease will soon expire, and the life of the lease is in middle age; the general assumption is that certainly the tenant-right existed upon that holding, or the farmer who bought that holding would not have given 1,200 *l.*, unless on the belief that the tenant-right existed at the expiration of the lease.

2319. Is that the general opinion prevailing amongst the tenant farmers?

Yes; with regard to the town park question, I may say that a case was tried quite recently in the Land Court of the county of Antrim under Mr. Otway, who is the chairman. The contention, on the part of the landlord, was that inasmuch as this particular holding lapsed into the office during what were called the famine years, consequently the tenant-right was destroyed. The reason assigned by the counsel for the landlord for holding that opinion was that as the word "acquired" occurs in the first clause of the Act, that word "acquired" covers his contention, and that consequently when the holding lapsed into the office, tenant right existed no longer on that holding. The sum of the

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evidence

Mr. S. C. McElroy.
10th July 1872.

evidence was that tenant-right existed upon the town parks around Ballymoney, but the contention on the other side was that the tenant-right did not exist on this particular holding inasmuch as it lapsed into the office in the famine years. The reason why the tenants are so uneasy upon that particular point is that there is a very large number of farms in the country districts which passed into the hands of the office during the famine years; that is the poor farmers were really unable to keep them at the time, consequently, if it held good as to town parks it would hold good as to those small farms, and the tenant-right, according to that contention, would be destroyed upon those small country farms. The people do look upon that as a most important point, and a decision contrary to their interests would be rather a deplorable decision. Then with regard to the matter of rent there is some uneasiness of feeling. Some thought that the landlord could be prevented from increasing his rent to such an extent as would encroach upon the tenant's interest. That is a well-founded opinion existing throughout the district. A case came up in the county of Antrim, and the case was this: About three years ago, I should think, a man bought a small estate consisting of two farms. He raised the rent by a not very large amount at first, and that increase was agreed to by the tenant; but about six months ago, I should think, though I am not quite certain as to the time that he attempted another increase; but this increase was from 32*l.* to 42*l.*, and I think that there will be 30 acres in each particular holding. Mr. Otway, the Chairman of the county of Antrim, would not recognise that increase of rent at all. He considered that it would be inconsistent with the recognition of the Ulster custom which prevailed through that district, and he awarded the tenants at the rate of 10*l.* an acre for the tenant-right, or gave the landlord the option of allowing the tenants to remain on the farms at the old rent. That is a decision which has given very great satisfaction to the tenant farmers, and when I say that it has given very great satisfaction to the tenant farmers, I do not mean to imply that the farmers are opposed to what they consider a fair rent. I may say that the relations between landlord and tenant in our part of the country are of a very satisfactory character indeed, and I have never found tenants opposing a fair increase of rent; but it is only in cases of an unfair increase of rent that they are certainly inclined to stand on their rights.

2320. Earl of *Belmore*.] Are you of opinion that in case the landlord of a large estate were to re-value his estate, and was advised that there was a certain increase of rent that was fairly demandable, the tenants as a rule, from your own knowledge of that part of the country in which you reside, would be willing to retain those farms at such a moderately-increased rent as might have been decided to be fair?

My opinion is, that if the rent were moderately increased, and if a reasonable time had elapsed since the last valuation, that increase would not be objected to. It is only in cases of unfair and unreasonable increase that the tenants are disposed to make an objection.

2321. Supposing that an old lease for lives fell in, and that the old rent had been, say 10*l.*; supposing that the present Government valuation was 15*l.*, do you think that the tenant, as a rule, would be willing to pay a rent, not exactly upon that valuation, but based upon that amount of valuation?

The tenants will be quite satisfied to take the Government valuation.

2322. The Government valuation is admittedly somewhat lower than the letting value of the land, is it not?

I am aware of that.

2323. Viscount *Lifford*.] You said just now that you thought that the landlord had not a right to raise the rent to an amount which would affect the interest of the tenant; can you tell me any increase of rent which would not affect the interest of the tenant?

Yes, I can. I take it that the tenant's interest may be injuriously affected or beneficially affected; and keeping in recollection that distinction, if a landlord put on a fair increase of rent, I would not look upon that as injurious to the interest of the tenant. I think that a landlord's putting on a fair increase of rent; that is to say, a rent which is fair between man and man, would tend to perpetuate cordial relations between landlord and tenant; for I am aware that in some cases the landlord keeps the rent very low for certain considerations;

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for instance, political purposes; and we find that even when those very low rents are put on, the tenants are not at all the most contented tenants. The tenants would rather pay a fair rent, and have political liberty.

Mr. S. C. McElroy.

10th July 1872.

2324. Earl of *Stradbroke*.] Do you know the estates of the late Marquess of Hertford?

No. I live in the northern part of the county of Antrim, and the Marquess of Hertford's estates are in the southern part of the county of Antrim.

2325. Earl of *Brandon*.] But how can it make any difference for political purposes, because the franchise is not based on the rent?

The feeling on the minds of some tenants is, that when the landlord pursues a certain course to them, they ought, in consequence of pursuing that certain course, to agree with all demands which he may make of them, whether of a social or even of a political character.

2326. But you are aware that the franchise is based upon the Government valuation, not upon the rent?

I am aware of that.

2327. Earl of *Belmore*.] I think you mean that the landlord keeps the rent at a low rate in order to induce the tenant to give him his political support?

Yes, but of course those are exceptional cases; I do not wish to imply that they are general cases at all.

2328. Lord *Brodrick*.] Do you consider that land in Ireland is increasing in value?

I do; both tenant right and fee simple.

2329. Are you of opinion that the landlord is entitled to his share in the increase of the value of the land?

Most decidedly; I believe that there are certain circumstances under which a landlord can fairly come into the increased value of the land; for instance, the improved circumstances of the country and the improved circumstances of the nation at large; I think that those are all proper circumstances under which a landlord can come in for increase of rent.

2330. Viscount *Lifford*.] Then you do not agree with Mr. Rogers in his views of tenant right?

Generally I do agree with Mr. Rogers in his views of tenant right; but I am not aware that Mr. Rogers would dispute the proposition that a landlord is entitled to a fair increase of rent proportionate to the improved circumstances of the country; I think that is a proposition generally believed by tenant-right men. Perhaps Professor Rogers may have been misunderstood.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Friday next, at 12 o'clock.

Die Veneris, 12° Julii, 1872.

LORDS PRESENT:

Earl of BELMORE.
Earl of KIMBERLEY.
Viscount LIFFORD.
LORD STEWARD.
Lord DIGBY.
Lord BRODRICK.
Lord SOMERHILL.
Lord CHARLEMONT.

Lord SILCHESTER.
Lord WENLOCK.
Lord LURGAN.
Lord CHELMSFORD.
Lord MEREDYTH.
Lord GREVILLE.
Lord O'HAGAN.

THE LORD CHELMSFORD IN THE CHAIR.

Mr. ROBERT DONNELL, re-called ; and further Examined.

2331. *Chairman.*] THE Committee understand that you are desirous of adding to the evidence which you gave them the other day ; would you be kind enough to tell them in what respect you wish that addition made ?

Mr. R. Donnell.

12th July 1872.

Yes. I may say that I have here proofs of all the cases in which a question of law under the Ulster tenant-right arose, which I am getting in print for a forthcoming book ; so that, if the Committee require any information on any of the cases which have come under their cognisance, I think I am in a position to give accurate information, as I have of course taken the best sources which I could find to get accurate reports, and I have consulted with the counsel and attorneys engaged in the cases, and in many cases I have had the advantage of revision by the chairman.

2332. Lord *O'Hagan.*] There were cases which were especially discussed here with reference to the leasehold tenant-right ; perhaps you will turn your attention to that point ?

In the first place, with reference to the important question whether the 15th section applies to the Ulster custom, whether town parks are regulated by the Ulster custom, or are by that section excluded from compensation except under the 4th section of the Act, there has been perfect unanimity of decision among the chairmen who have had to consider that question. It came before the chairman of Antrim, in the case of *Fleck v. Lord O'Neill*, in reference to the town parks of Broughshane ; before the chairman of Doneghal, in the case of *Weir v. Knox*, in reference to the town park at Lifford ; and before the chairman of Tyrone, in the case of *M'Gaghey against Steward*, in the case of the town park of Omagh. They all decided that the 15th section did not control the first with reference to town parks. The case of *Fleck v. Lord O'Neill* was appealed to the going judge of assize, who happened to be Mr. Justice O'Brien, and he decided that the lands in question were not town parks, and that, therefore, he was not called upon to decide whether the 15th section referred to the first ; but he was very much inclined to agree with the chairman ; however, if it were necessary, he would reserve that point. So far as to the decision, and parenthetically I may say, that on the first day that I was here I think there was some statement that Mr. Justice O'Brien had reversed the chairman's decision ; that that was not so as to the question of law, but merely as to the question of fact.

Mr. R. Donnell
12th July 1872.

2333. Viscount *Lifford*.] You have not mentioned the case of Lord de Ros? I am much obliged to your Lordship as to that. In that case an application was made by a tenant wishing to quit his holding voluntarily. No disturbance was made by the landlord, but the custom of the Ulster tenant has been, whenever he desired to leave, to sell, substituting a respectable and solvent tenant for himself, with the approval of his landlord or his agent. Keown proceeded to act in the customary way. He issued his hand bill, "Farm for sale," which is the peculiar expression in the north to indicate the sale of the tenant-right. Lord De Ros issued a notice prohibiting the claim, and the tenant came into court to claim the benefit of the right under the Ulster custom. It was alleged by Lord de Ros that those lands were town parks, and were known as such on his estates; and that the custom of tenant-right, though it obtained on the rest of this estate, did not exist as to about 40 acres in the neighbourhood of Strangford. The chairman held that the tenant could claim the benefit of the right, provided he showed that the holding was subject to the custom; but he held that no proof was given that even from the earliest time there had been even a single tenant-right dealing with reference to what Lord de Ros called the town park of Strangford, and he dismissed the case upon that ground, not that they were town parks under the Act, but as a matter of fact that that part of Lord de Ros' estate, called the town park of Strangford, had always been strictly excepted from the operation of the custom of the estate.

2334. So that there would be two customs on one estate?

There was no tenant-right custom at all upon that portion of the estate; there was only one custom on the estate. Now I come to the leasehold tenant-right cases. I may tell your Lordships that those excite an enormous amount of interest in the north of Ireland. I find that there are 35,000 holdings subject to lease in Ulster, and, calculating the tenant-right of those at the low rate of 12½ years' purchase on the Government valuation, which I think would be about 10 years' purchase of the rental, the amount of tenant-right property involved on which wills of tenants have been made, and with which creditors on the faith of the custom have dealt, is between five-and-a-half and six millions sterling. Your Lordships can very well conceive the interest which that excites in the north of Ireland. Your Lordships have heard of the case of *M'Nown v. Beauclerk*, in which the chairman awarded 1,400 *l.* I am retained in that case; I have a brief in it; but I was not in the court below. I have made myself familiar with it by getting up the report of it, as well as for professional purposes, and I find that the valuation for improvements on that holding alone has been upwards of 900 *l.*, sworn to by the tenant, and I believe not seriously contradicted.

2335. Lord *Digby*.] How long have those improvements been in existence?

It is an old lease of, I believe, the year 1795, but it was a lease for lives, and there is not the same certainty in a lease for lives as there is in a fixed term of years. It is a sort of lottery; there is a sort of speculation or gambling in it. Therefore the tenant had not the same certainty as regarded length of time and improvements.

2336. But he began the improvements immediately the lease commenced?

I cannot say as to that. I rather think that it was much more recent, but at all events the evidence did not go so far as that.

2337. *Chairman*.] Was it a lease for lives renewable?

No; it was the ordinary political lease of those times granted, when the Catholics were enfranchised, a freehold lease.

2338. Earl of *Belmore*.] Those leases for lives were always accompanied, were they not, with a term of years, for instance, 31 years and three lives?

Very often.

2339. So that the tenant was sure of 31 years at any rate?

Very often he was; but it was a curious thing that often when the years were in existence, a life was added to determine with the years, showing clearly the political character of the transaction; and I think that the best proof of that which I could adduce to your Lordships is, a private Act of Parliament, which gives leasing powers to the guardian of the then Marquess of Abercorn.

2340. Lord

2340. Lord *Brodrick*.] Was a fine taken when they were granted?

Not at all. There was generally a tenant-right existing. A recent case before the chairman of Down was the case of *Johnstone v. Torrens*. That lease was in its inception accompanied by a tenant-right transaction. The former tenant holding from year to year, had been ejected for non-payment of rent. It is one of the commonest things under the custom, to allow a tenant under those circumstances to sell and to deduct the arrears, and the arrears and custom amounting to a very considerable sum, I think about 5 *l.* or 6 *l.* an acre, were paid into the office, and along with that a small sum was paid to the outgoing tenant, and he was supported for life by the incoming tenant. It was money's worth as well as money which was given to the tenant, and the arrears were all paid up. Then a lease was given accompanying that transaction, so that actually the granting of the lease was accompanied with a tenant-right transaction.

Mr. R. Donnell.

12th July 1872.

2341. *Chairman*.] We need not enter into all these minute details; what I understood that you wanted to inform the Committee about was, the important questions arising under the Act, which have been decided, without any reference to the details of each case?

I will do it in a more general way. I will take this illustrative case with reference to the variety of decisions under that Act. The chairman of Down decided in favour of the leasehold tenant-right in the case to which I have alluded of *M'Nown v. Beauclerk*. At the very last sessions he decided contrariwise in the cases of *Johnstone v. Torrens* and *Wallace v. McClelland*; but he did not do so on any ground of law, but on a question of proof. In the case of *Johnstone v. Torrens* there was no proof of any tenant-right at all on the estate of the Marquess of Donegal in Down, he being the head landlord. It is a very small property which he has in Down; there was no proof of its existence on any exactly contiguous estate, but proof was given from an estate about two miles distant. Mr. Johnstone was not satisfied with that evidence, and he dismissed the claim. I put that case as illustrative of how difference of opinion may seem to exist where none really exists.

2342. Has there been any contrariety of decision upon the question of law with regard to the existence of the tenant-right when there is an old lease existing?

I think that the idea on which these cases have been determined, is that the custom is legalised as to the matter of fact, and though it is repugnant to or inconsistent with the covenant, that the matter of fact must prevail. In this case the Legislature has just done what the judges did in England when they transferred the copyhold tenant-at-will, giving him an inheritable estate. That the Legislature is as competent to do now when custom has not the same force and strength as in the early history of the law; this being a thing actually less strong than what the judges did when they transferred the tenant-at-will of a copyholder who always came in on each succession at will; it was not an immemorial custom at all; they transferred him into a copyholder with an estate of inheritance.

2343. The general question upon this subject is whether the tenant's lease excludes the custom; what is your view as to that?

It has never been so held as a matter of fact in Ulster. I have examined the evidence of Committee after Committee. Mr. Stewart Trench, the agent of the Marquess of Donegal, and Mr. Russell, the only tenant-right agent, who were examined before the Marquess of Clanricarde's Committee, gave the most positive evidence upon the matter of fact. About 80 or 100 landlords' agents in every county of Ulster gave evidence to the same effect; that there is not the slightest doubt as to the matter of fact that the tenant at the end of a lease had an interest beyond his lease (to use the term of the doctrine of graft), which he could realise by sale or by arbitration.

2344. But surely that is more a question of law than a question of fact?
That is the fact which I state now.

2345. Lord *O'Hagan*.] Do you wish to add anything upon the point of leasehold tenant-right?

Unless I went into the details of the cases, I do not think it is necessary to

Mr. R. Donnell.
 12th July 1872.

go more into that. I should like to state to your Lordships the effects of the working of the Act as I have observed them in Ulster.

2346. Viscount *Lifford*.] Did you not do so on the last occasion when you were examined?

No; I am not going to repeat anything that I said before. In travelling through Ulster, which in visiting the various sessions towns I have had much occasion to do, and especially driving on the roads, the evidence of improvement since the Land Act is something startling, and especially in counties where from the first the tenants were satisfied with the administration of the Act. I have observed this most especially in the county of Tyrone, where the amount of farm buildings which are being erected is positively marvellous. Between Stratane and Newtown Stewart, in driving by road, I have observed sometimes in the course of two miles six or seven new buildings being erected. There is a peculiar reason why those improvements took this form after the Act. Actually a tenant-right farm sold for more with bad buildings than with good buildings; now that seems an economical paradox, but every land agent is aware of the reason; the tenant put on an appearance of poor circumstances to prevent his rent being raised, and the first and most obvious effect of the Act has been an improvement in the dwellings of the people. New buildings are being erected everywhere, and I am credibly informed that the amount of timber and slates which have come into the port of Derry since the Land Act came into operation has been very considerably above what come into it in previous years. Mr. M'Clellan, who is the principal merchant in Derry, who provides those materials for the country districts, had actually to import timber and slates from Newry by railway, right across the country from the east, such was the demand in that district for improved dwellings for the tenants consequent upon the administration of the Land Act. Now I think that everyone, landlord and agent, must be gratified with improvements of that sort.

2347. Lord *Charlemont*.] Are you able to inform the Committee that all those improvements which you now mention were made by the tenants without assistance from the landlords?

My information upon that point is obtained from the poor law inspectors' reports. What I have been telling your Lordships of has been entirely done by the tenants.

2348. Lord *Brodrick*.] You are speaking, I presume, with reference to the width of Ireland?

Yes, and principally with regard to the counties of Tyrone and Londonderry. I learned from the poor law inspectors that assistance had in many cases been given by landlords to tenants, in the shape of timber and slates, in many parts of Ulster.

2349. Earl of *Belmore*.] Are you aware that in Ulster generally there has been a great improvement in the dwellings of the farmers since the famine time?

Yes, it has been going on; but on one of the best estates in Tyrone, the Marquess of Abercorn, the houses of the tenants, close to Strabane, are not what you would expect. They are men in good circumstances, and able to give large fortunes to their daughters, and they live in the old thatched houses. Every land agent is perfectly aware of this desire not to build large houses for the purpose of not having an increase of rent.

2350. Do you not know that there have been considerable improvements made in the houses of the farming class beyond Omagh, since the year 1850?

I am very glad to hear it; but I do not know that district personally; I only travel by rail through it. I think that another thing which is very gratifying in the working of the Act, has been the goodwill which it has caused to prevail through the district where the Act has been put into operation; and I specially refer, as an instance, to what are called the Coolafinney cases in Londonderry. Three tenants held under a lease which was granted in excess of the leasing powers of the lessor, under a misconception as to title. The true owner was found out and brought home from Australia, and having established his rights in the superior courts, he also, as part of the proceedings, executed a *habere* upon the tenant. He proceeded to sell his estate, as he did not desire to reside

reside in the country; and his first operation (which was very common with sharp speculative sellers in the courts) was to raise the rent, so as to have a fine show of rental in the court. This the tenants would have to submit to. It was contrary to the custom; they lodged their claims under the Land Act; the landlord was brought into court, and the result of that proceeding was that the landlord, after an investigation of two days before the chairman, retired from the case, leaving the tenants on at their old rents, and at that rental the estate has lately been sold. I may tell you what was the effect of the proceedings which were being instituted, and which, but for that action, might have culminated in very deplorable consequences. It is one of the most peaceful districts of the North, or of all Ireland, within three miles of Londonderry. There is hardly a policeman in the district, and crime is scarcely known; but such was the feeling in all that peaceful district against the conclusion of this execution of this *habere* with the tenants' crops upon the land, that not a single person in the neighbourhood would bid for the crops when the landlord auctioned them, and not a single labourer could be got within miles to put a sickle in the corn. The result of the Land Act there was the restoration of the tenants to the holdings of which they had been in immemorial possession, and the restoration of confidence and goodwill in the district. The result without the Land Act would have been an immense police force quartered in the country, and paid by the general ratepayers of the country, English as well as Irish.

Mr. R. Donnell.

12th July 1872.

2351. Lord *Charlemont*.] The result of the Land Act in this case was, according to your showing, that the landlord was unable to raise his rent?

No; on the contrary, no such claim has ever been put forward since the Act. It has been cheerfully admitted by the tenant, on various estates, that the landlord has a right to raise the rent. The best answer to the question whether a thing can be done is to show that the thing has been done, and I have to state that the rents have been raised, generally, over the whole of Captain MacCartney's estate, in North Antrim, within the last nine months with the cheerful assent of the tenants. Captain MacCartney was one of the first landlords who ever came into a Land Court; 350 *l.* was awarded against him, and he wrote a letter to the "Times," when certain landed proprietors were condoling with him, to say that they had no reason to condole with him, because he could sell the interest.

2352. *Chairman*.] I must request you not to go into minute details of this kind, because they will not assist the Committee in their determination?

A great many of the tenants of this estate were members of the Tenant Farmers' Association, of which the secretary was examined on the last day. They are men who are perfectly well aware of their rights under the Act, and who are prepared to defend them; but every one of them has consented to pay an increased rent on the whole estate of, I believe, 10 or 15 per cent. I know that Mr. McCausland, in Londonderry, the brother of the eminent Queen's Counsel, has also raised his rent with the cheerful consent of the tenants. I settled the form of new letting for one of the tenants. He cheerfully admitted the Ulster tenant-right custom, and the increase was somewhat considerable, but I advised the tenant to pay a fair increase of rent, and it has been paid.

2353. Lord *O'Hagan*.] I understand you to say that, generally, the relations of landlord and tenant have been improved by the operation of this Act, in the way of kindness and good feeling?

Yes; with a great addition to good feeling and social harmony.

2354. *Chairman*.] That is the general result of your knowledge and observation throughout that district, which is what the Committee desire to have, without entering into minute details as to particular cases?

That is the general result. It has also improved political feeling. The recognition of a custom in its entirety has given great satisfaction and confidence in the justice of English statesmanship.

2355. There has been no ultimate determination upon the question of the Ulster tenant-right where there has been a lease, and therefore they may express satisfaction at the notion that it will be determined in their favour, but at present it is all *sub judice*?

Yes.

Mr. R. Donnell.
12th July 1872.

2356. Lord *O'Hagan*.] I understand you to speak irrespectively of that particular matter, as to the general operation of the law?

Just so. It is one of those general effects which is not to be overlooked. It is the effect of a recognition of the Irish custom. It has given the people confidence in the administration of English justice. They have found English law a shield over them, and they consider that in this recognition of a custom which is not defined, and therefore not restricted in the Act, they have got something for which they are extremely thankful to English statesmanship.

2357. Lord *Steward*.] Before the passing of the Land Act, was there any fear in the minds of the tenantry that the Ulster tenant-right would not be respected by the new purchasers in the Landed Estates Court, and in other ways?

It was a very frequent thing for the Landed Estates Court purchasers to raise the rent, so as to get a large interest upon their purchase-money, and in that way confiscate the tenantry; and Judge Longfield, on one occasion before a Committee, proposed that his Court should have the power of protecting the tenants against those purchasers by granting leases for 31 years.

2358. You think that the fact of there having been some decisions in the Courts recognising the legality of the Ulster tenant-right has been satisfactory to the tenantry generally?

Generally.

2359. And that without any injury to the rights which the landlords previously possessed?

Not prejudicially to the fair customary rights of the landlords, but certainly it prevents speculative landlords from raising rents beyond the customary rates. It does not affect such landlords as the Duke of Abercorn, but it does affect the small landlords; in other words, it compels them to do a good thing for themselves. Selfishness is very shortsighted, and the fact has been that the rental of the tenant-right estates has actually increased, more through the security which the tenants have, and the improvements which in consequence they make, than on estates where tenant-right has not been conceded.

2360. Lord *Lurgan*.] Are you speaking now of the period before the Act, or since the Act?

Before the Act; too short a time has elapsed since the Act. It is well known that rents in Ulster on tenant-right estates are much higher than on similar land in the north, and we know that Ulster was much more waste than the rest of the country. It is not merely that it is comparatively at a higher rent, but that that rent has been created largely by the tenants who have confidence in the tenant-right custom under which they improve; so that I believe, that though it restricts the arbitrary rights of small landowners, it will benefit their descendants ultimately.

2361. I think you said in your former examination, that the 14th section of the Land Act, dealing with the rights of the landlord, did not apply to the Ulster custom, was that so?

I said so; but my opinion, so far as I have observed and know, is that the rights under the Ulster custom are very analogous to the rights under the 14th section, and that the landlord as a matter of implied contract, has in many cases, and must continue to have until the letting is changed, the right to game, and those things; but I know that on large estates in Tyrone, the landlord never reserved the game or the turbary. The turbary in many parts of the country is of no value to the landlord, and the sooner it is cleared away in many districts the better.

2362. Lord *O'Hagan*.] My Lord Lurgan's question points to this; whether there have been any decisions upon the subject of whether the 14th section applies to the Ulster tenant-right custom?

The question has never been raised in any case before me.

2363. Has there been to your knowledge any decision by any tribunal upon that particular point?

There was a decision lately within a few days in Donegal, not under the Land Act, but under the Civil Bill jurisdiction.

2364. But

2364. But has there been any decision upon the specific point put to you by my Lord Lurgan, whether the 14th section applies to the Ulster tenant-right custom?

Mr. R. Donnell

12th July 1872.

There has been no decision.

2365. Lord *Charlemont*.] On your previous examination I think you stated it most distinctly as your opinion that the 14th clause did not apply to Ulster?

Yes. As a matter of fact, would your Lordship allow me to add that the rights as to turbary and game differ in many parts of the country, and whilst generally the landlord has reserved or has actually exercised those rights, there are other cases in which they have not been exercised.

2366. Lord *O'Hagan*.] With reference to the working of the Act, can you give the Committee any information as to the effect of it upon the value of land in Ireland as shown by sales; do you think that it has had any perceptible effect in that way?

It has increased the selling value of the land already, and it is likely to do so more hereafter. I made a calculation from the statistics of the Landed Estates Court about a year ago of sales, so far as I could discriminate, of agricultural lands in that court, and I found that the general average of the whole country was 19 years' purchase, and of Ulster, 22½ years' purchase.

2367. Viscount *Lifford*.] Do you refer to the time before or after the passing of the Act?

It was partly before, and in a few cases, after it.

2368. We are only speaking of cases under the operation of the Land Act?

So I am aware. One of the first cases which occurred was near Ballymoney, under the Landed Estates Court, and the tenant became the purchaser of his own holding at 26 years' purchase, which was considerably above the average even for Ulster. You have also heard of the Marquess of Waterford's case, where the average was 31 years, and in a great many cases it reached even 40 years' purchase.

2369. Lord *O'Hagan*.] Have you any materials, statistical or otherwise, which would enable you to say whether, since the passing of the Land Act, there has been any change in the value of the property sold in the market, as contrasted with the value before the passing of the Land Act?

It would be quite impossible at present to say. There have been very few sales indeed, but all the recent sales which I have observed have gone above the average of former years. That is, no doubt, partly attributable to the operation of the Bright clauses; the purchase clauses of the Act which have brought a new purchaser, the tenant in almost every case, into the market.

2370. You do not think that there has been experience enough yet as to the operation of the Act upon the value of the land to enable you to give an opinion as to the period since the passing of the Act, contrasted with the period before it?

I think not, and I am sure that the sale of land has been depreciated through a mistaken idea on the part of some that in Ulster the Land Act would interfere with the old customary right of a landlord raising his rent, and the natural effect to be expected is a considerable increase if that mistaken idea is shown to be a mistake.

2371. Do you know, or are you able to tell the Committee, whether the value of tenant-right interest to the tenant has increased or diminished since the passing of the Act?

I think that in some districts it has increased. It has increased naturally where the tenant-right was not so well respected before. So far as I can observe it is not affected at all, where the tenant-right always was reserved, and I am inclined to anticipate, judging on economical grounds, that the tendency will be rather to lower the value of the tenant-right, because the rush was on the part of the tenants to buy up the tenant-right on the good tenant-right estates, and now one must naturally anticipate that there will be a wider area of purchase over the country.

Mr. R. Donnell.
12th July 1872.

2372. The ordinary economic principles would of course affect this property like any other ?

I think that the security which this Act gives to the landlord as well as the tenant must increase the value of the property. Improvements will increase and are increasing, and in the customary way the added value of the farm by those improvements goes to the landlord, and I have no doubt whatever on economical grounds that the interests of the landlord will be even more benefited than the interest of the tenant. I might mention a practical matter which came before the Chairman with reference to the point to which the landlord might raise the rent under the custom which perhaps will throw more light upon the custom than a good deal of speculation. In the case of *Thompson v. Hamilton* at the Ballymena Sessions, Mr. McCartney who had been employed for about 20 years as surveyor and valuator on most of the estates of north of Antrim and North Londonderry, including the estates of Lord Antrim, Sir Edmund Macnaughton, Lady Garvagh, Captain McCartney, and a number of others, stated that the basis of his valuation of lands under the custom had always been to allow the tenant at the time of the new valuation 10 years' purchase. "If," said he, "the tenant cannot get 10 years' purchase the rent is too high." That of course might be increased by the improvements of the tenant afterwards, but that marks in north Antrim the tenant-right interest of the tenant and the corresponding right of the landlord.

2373. *Chairman.*] Have you anything further to add ?

I have mentioned that there is satisfaction with the Act. I would add that there is a certain amount of dissatisfaction with the working of the Act in Ulster, in the case of tenants who cannot claim the tenant-right custom. The tenant of a small estate, where tenant-right has not been recognised, and never was recognised, comes to claim under the 3rd and 4th sections of the Act.

2374. Are you stating a case which has occurred ?

Those cases are of constant occurrence.

2375. But are you stating now to the Committee a particular case which has occurred upon this point, or your general opinion ?

I am aware of 20 or 30 cases which have occurred on this point, where the tenants of estates adjoining tenant-right estates, have claimed compensation under the third section, and the amount awarded can never exceed seven years' rent, and may possibly be only one or two years' rent. Then in a case, say in North Antrim, the tenant would be allowed 10 years' compensation for disturbance under the custom. In other words, the non-customary tenant is naturally dissatisfied when he finds that under the Act he only gets three or four years' purchase, where his neighbours would have obtained 10 years' purchase.

2376. *Lord O'Hagan.*] That comes naturally under the question whether this Act should be amended, with which this Committee has nothing whatever to do ?

It has been stated that the operation of the Act has been found fault with, and that the operation of the Act is to produce inequality, owing to the estate usages differing in Ulster. I beg to state that that is not altogether founded on fact, because as in the case of Mr. McCartney, one valuator has often adopted one principle of valuation on a great many estates, so that so far as the fixing of the rent, and the consequence of the tenant-right are concerned, it is more a district than an estate usage ; and I may say that the landlord always appeals to the district usage when he wants to raise the rent. He must do so ; he cannot appeal to the usage of his estate only ; and I think that through the operation of the district usage, there is no doubt that uniformity will very rapidly be produced, and that as the result of the Act. The want of uniformity was because the custom was not legalised, but a contrary process will now set in, and the result will be an equalisation of the tenant-right through the district usage ; the large landholder first making a little more of it, and the small landholder a little less.

The Witness is directed to withdraw.

Mr. JAMES JOHNSTON, is called in; and Examined.

2377. *Chairman.*] I BELIEVE you are a Magistrate in the county of Donegal? Mr. J. Johnston.

I am, and I have been so for upwards of 40 years. 12th July 1872.

2378. Have you had any experience with regard to the working of the Land Act, from which you can give the Committee information?

I have.

2379. *Viscount Lifford.*] Do you agree with the last witness in thinking that the Land Act has improved the relation between landlord and tenant?

Quite the reverse.

2380. Perhaps you will state in what way?

Previously to the passing of the Land Act, the part of the county of Donegal in which I reside was exceedingly peaceful and quiet. The landlords and tenants were on the most friendly terms; landlords were performing their duties according to their judgments, and expending large sums in the improvements of the estates that belonged to them. Since the passing of the Land Act, a feeling which I will not call hostility, but certainly of very great caution on the part of the proprietors, has been the rule.

2381. *Earl of Belmore.*] Could you give any instances in your knowledge of a landlord in Donegal who used to expend a good deal of money in improving his estate, but who has now taken an opposite line of conduct?

I think it might be said to be general.

2382. Do you know the circumstances of Lord George Hill's estate?

I do.

2383. Has Lord George Hill changed his course of proceedings since the Act was passed?

I do not live immediately near his estate, but I should say that he would be very incautious, and would show a great want of judgment if, under the present circumstances, he laid out money upon improvements of tenants' property.

2384. He used to lay out a great deal of money, did he not?

He did, and made very great improvements upon a very wild district.

2385. I think it is the case in the county of Donegal that land is held in "Rundale;" will you explain to the Committee what "Rundale" means?

It would be very difficult to explain it to persons who are not accustomed to it, unless they have absolutely seen it. Your Lordship, who knows what it means, can understand that it is property held something like a gridiron, with little narrow strips running perhaps a mile or a mile and half, with other strips next to them; that is, when the holdings have been straightened, but otherwise they hold a piece in one place and a piece in another, in different quarters of the townland.

2386. I think that custom arose, did it not, from the fact of lands having been originally held in common by different persons, who in the course of time have divided the land into farms; one man having picked one field here and another there?

Quite so.

2387. It is very desirable, is it not, for the improvement of an estate, that the farms should be what are called squared, and should be divided into blocks of a certain size?

Anyone accustomed to agriculture must see that that is perfectly clear. It is impossible to cultivate properly, or on any system, unless a farm is together.

2388. Are you of opinion that it would be possible now for a landlord to effect that squaring of farms which of late years has been so common in the north of Ireland?

Unless he is prepared so re-purchase his estate at double the value, I do not think it would be. If one dissenting tenant is upon the ground it stops the entire thing.

Mr. J. Johnston.
12th July 1872.

2389. Lord *O'Hagan*.] You stated that you thought that Lord George Hill would show a great lack of wisdom if he now laid out any money upon the improvement of his estate; will you tell me upon what grounds you say that?

Unless he was prepared to buy the tenant's interest, one tenant might interfere with the straightening of the ground.

2390. I was talking of improvements not in that sense, but more with reference to improvements in the way of draining or building, or any other usual landlord's improvements?

The holdings there are so very small that I think that any landlord who laid out money in building would not be doing what would be judicious. The holdings are too small for anything like comfortable houses.

2391. But how does the Land Act affect that principle?

It affects it in this way; that if you wished to consolidate those small farms it would be necessary to buy out those tenant-right farms, which would cost more than double the value of the farms; that is the fee simple of it.

2392. Would not the position of the landlord who had laid out a large sum of money in building previous to the Land Act be exactly the same now if he wished to consolidate his land, because, in that case, he would have laid out the money, and received no benefit from it, and in the same way he now lays out the money and receives no benefit from it?

I think that if he laid out money previous to the Land Act in a judicious manner, he received benefit from it by improving the tenant's position.

2393. Is not the security of a landlord who has laid out money upon the improvement of his estate, if he takes proper means to register those improvements, equally good now as it was before the passing of the Land Act?

We have not had time to try that matter.

2394. I thought that you expressed a very strong opinion that Lord George Hill would act very unwisely if now, after the passing of the Land Act, he laid out any money in improvements?

I know the country very well, and I know the holdings to be very minute and small; and to lay out a large sum of money in building when you have a little strip of mountain land, I should consider exceedingly injudicious, and I would not do it.

2395. Would it not have been equally injudicious before the passing of the Land Act?

Equally so.

2396. Therefore you do not mean to convey that the passing of the Land Act has in any way altered Lord George Hill's position as regards improvements?

There are still large mountain tracts which are undivided of it, and if he begins to meddle with those tracts the tenants in possession would immediately interfere and ask for tenant-right, and he would have to put them out, and pay that which would be treble, or certainly double.

2397. Lord *Somerhill*.] But do you mean that hitherto Lord George Hill has turned out tenants without compensation?

I believe not; I believe that he acted in the most judicious and kindly manner in which it was possible for a proprietor to act.

2398. So I have always heard. Then what was the nature of the improvement to which you allude?

Stopping the Rundale; putting each tenant's holding together. That was the general scope of his improvements. He made roads and built a hotel there, where a person may go down and live, whereas, formerly, there was no means of doing so.

2399. Earl of *Belmore*.] Will you tell the Committee what the condition of Lord George Hill's estate was before he began to improve it?

Nothing could be more wild. The Highlands of Scotland will give you some idea of it.

2400. What is its condition now?

It is very much improved by the making of the roads, and the building of an

an hotel, by inducing tourists to come and see it, and by giving them good fishing and shooting.

Mr. J. Johnston.

12th July 1872.

2401. Do you know anything of the condition of Lord Palmerston's estate in the county of Sligo before he began to improve it?

I recollect it 50 years ago.

2402. In what sort of condition was it then?

It was a 'smuggling whisky-making country, with Rundale and all those kind of things which render an estate very valueless.

2403. What condition is it in at the present time?

Very different.

2404. The farms are squared?

The farms are squared, and every kind of improvement has been begun and carried out properly, and the tenants appear to me, as far as I can judge from passing through the country, to be very much improved as compared with what they were 50 years ago.

2405. Do you know what the condition of Lord Lifford's estate was before he began to improve it?

Very well, indeed; I live in the immediate neighbourhood.

2406. Was it in a bad condition?

Nothing could be worse.

2407. In what condition do you think it is now?

It was a perfect wilderness when Lord Lifford came there. There were bad roads; there was no house; they were a lawless set of people, whisky-makers without end; they were troublesome before magistrates, and there was fighting and all that kind of thing. Now it is fit for any nobleman to inhabit; it is planted and drained and fenced, there is a church established, and there are roads which have cost an immense sum of money. From my knowledge of it 50 years ago, and now, I venture to say that he has spent the full value of the fee simple of the estate upon it.

2408. Lord *Greville*.] By whom were the roads made; by the county or by Lord Lifford?

He in many cases got assistance from the county under the Board of Works. They grant money for roads under a grand jury presentment, and they send down their own people and carry it out. That was done in this case.

2409. Lord *Steward*.] Is the interest of that money levied upon the county cess?

It is levied upon the county cess.

2410. Viscount *Lifford*.] I think you were wrong; the grand jury granted the main road which I made with the assistance of the Government; do you remember the grant which was made on that road?

I remember that assistance was given.

2411. Do you not recollect that the amount granted was 1*s.*?

There was one road certainly on which not more than 1*s.* was granted, about two miles leading down from your own house.

2412. There was always a road there?

It was a permission to legalise it.

2413. Are you aware that 1*s.* only was granted by the county for a main road which opened up the country between Donegal and Omagh, and for the building of two small bridges?

I believe that was the case; and I believe that your Lordship and Sir Robert Fergusson made a road costing several hundred pounds, or, I might say, several thousands.

2414. *Chairman*.] I do not understand what is the difference between the position of Lord George Hill with regard to his tenants before the Act passed and his position afterwards; will you explain what your view upon that subject is?

(136.)

M M 4

I believe

Mr. J. Johnston.
12th July 1872.

I believe that there is a large portion still in Rundale on his estate ; and in order to make that like the rest of it down near the sea, it would be necessary to interfere, perhaps, with the holdings of some occupiers. If he wished to square them, he would be interfering with their rights under the Land Act, and then, if they objected, he would be obliged to put them out by ejectment and pay them their tenant-right.

2415. Viscount *Lifford*.] Was it not the fact that those three properties which the Earl of Belmore has named, viz., the large property of Lord Palmerston and the much smaller properties of Lord George Hill and myself, were held chiefly in what is called Rundale ?

It was.

2416. Is this a fair description of Rundale ; that owing to inheritance, inter-marriages, bequests, and so forth, the tenantry generally have acquired bits of fields here and there, and in all directions, separate from each other ?

That is perfectly true.

2417. Would you say from your experience that it is possible to cultivate to advantage a farm scattered in little fields, sometimes not larger than this room, there being sometimes, perhaps, as many as 10 different portions ?

Certainly not, no agriculturalist would attempt it.

2418. In order to remedy that evil, did not Lord Palmerston lay out a very large sum of money in nominally evicting them, a number of people, but really placing them in farms put together, instead of lying in separate pieces ?

I believe that is the fact.

2419. Was not the same thing done by Lord George Hill ?

I believe that is the fact ; at rents that are incredibly low, from 5 s., and even less, upwards.

2420. Was not the same thing done by myself ?

I believe so.

2421. Could we have done all this under the Land Act ?

You could.

2422. How ?

By paying soundly for it ; three times, or certainly twice the fee simple.

2423. Were not the tenants on all those three properties greatly opposed to this change, much as it was to their advantage ?

At first they were.

2424. And if the present Act had been in existence, would not every one of them have taken out defence, and gone to the sessions ?

I believe they would.

2425. Are you of opinion that any sensible man would undertake the same work that we did, under this present Land Act ?

I think it would be a very uphill work indeed to attempt it, and certainly with the prospect of being obliged to pay soundly for it.

2426. Lord *Greville*.] But there is nothing in this Act, is there, which would prevent the landlord doing it, if he was pleased to do it ?

Certainly not.

2427. Cannot the landlord under the present Act do precisely the same as he could before the Act was passed, with this difference ; that whereas before the Act was passed, the Ulster custom not being law, he could turn out the tenant without giving him any compensation for the value of his tenant-right ; under the present Act he would be obliged to pay him what was found to be the customary value of the tenant-right ?

Undoubtedly.

2428. Therefore, if a landlord wishes to improve his estate, or to consolidate the farms upon it, he must pay for it, as he would for anything else ?

Clearly ; but he pays more than twice the fee simple of it ; and no judicious landlord, or man of common sense, would do a thing of that kind. He would leave it as it is, and let it go on.

2429. But

2429. But is not that merely a matter of opinion, when you say that the landlord would pay double the fee simple of the land?

It is not only opinion, but real fact. I know it to be the case.

2430. Are you speaking of every case?

I am speaking of my own part of the country, with which I am practically acquainted.

2431. Do you know any case in which the double of the fee-simple value of the farm has been paid?

I do.

2432. *Lord Steward.*] In Lord Palmerston's, and Lord Lifford's, and Lord George Hill's estates, did the tenant-right custom exist?

I believe it did; but not having any personal interference with it, I do not know. It is the general custom all over that part of the country.

2433. Do you know, as a matter of fact, whether on Lord Palmerston's estate the tenant-right custom existed?

I do not know it as a matter of fact; but I believe that, generally speaking, in Connaught, it does not exist.

2434. Did it exist on Lord George Hill's estate?

It did exist, for I held property alongside of it. We adjoin each other.

2435. If tenant-right existed on Lord George Hill's estate, how could he remove the tenant without rendering himself liable to the payment of tenant-right?

The manner in which it was done was this, the holding of the man was valued by a competent valuator, and a very active agent, Mr. Foster. It was then divided according to the different tenants who were upon it, who each got a portion equivalent to what he had before. A head line was drawn across the top of the hills. That upper part, I believe, is still undivided. From that downwards was cut into little squares, and each got an equivalent for what he held before.

2436. *Lord Charlemont.*] Therefore, the tenant was not disturbed?

He was disturbed out of the particular portions that he had, but he was not removed from the estate.

2437. *Lord Somerhill.*] The whole number of the tenants was not diminished?

They got an equivalent for it.

2438. *Lord Greville.*] Still it was a disturbance, was it not?

It was a disturbance for his good.

2439. But the tenant might think differently, might he not?

He might, of course. I have myself had cases in which at first they gave considerable trouble. I have had half-a-dozen townlands squared, and more than that. At first they were averse to it, but they became satisfied when they got it done in a judicious and proper manner; and where it was necessary, had a house built upon any particular farm. They always got an equivalent for what they had before to the judgment of the valuator.

2440. *Lord Steward.*] You spoke very generally in saying that the landlord who wished to take any of those steps for the improvement of his estate would have to pay two or three times the value of the property. Now will you take the instance of Lord Palmerston's estate, which you have mentioned, and where you say that you think there was no tenant-right?

It is the furthest away from me; I would rather speak of what is in our own country.

2441. On an estate where there is no tenant-right, how could you expect that a landlord under the Land Act would have to pay twice or three times the value of the estate for disturbance?

That is a matter of law upon which I am not prepared to give any opinion. If there was no tenant-right before, of course it will be for the lawyers to say whether there is tenant-right now; but I speak of my own country, with which I am practically acquainted, and have been so for a great number of years.

Mr. J. Johnston.
12th July 1872.

2442. Supposing the case of there not being tenant-right, and of the landlord being anxious to make those improvements, have you looked at the section under which the landlord is liable to pay compensation for disturbance?

I have.

2443. Do you find any case there in which the landlord can be compelled to pay twice or three times the value of the estate?

I believe the entire settlement of that, as to value, is left to the chairman, upon the evidence which is produced before him.

2444. Have you looked to the third section of the Act. Will you say what is the largest amount of compensation which a landlord can have to pay for disturbance?

It is quite impossible for a plain country gentleman to give any opinion upon it, while lawyers of the greatest eminence are only learning it.

2445. The largest amount which is possible, as I read it, is under 10*l.*, seven years' rent?

The law gives them the power of claiming under one section, and under another section, and perhaps under a third section; and it is impossible for an unlearned person to say what really would be the amount. I have not had a practical case myself, and therefore I do not know, and I do not wish to go into the court.

2446. Lord *Somerhill*.] With regard to those improvements which you have mentioned (for instance, on Lord Palmerston's estate), and which I presume you naturally consider were beneficial to the country, do you think they have proved remunerative in returning fair interest for the capital which has been laid out?

It is impossible to say exactly; but undoubtedly Lord Palmerston laid out a large sum of money in different ways, and has improved the general appearance of the country, and I should say profitably. I should say that any nobleman who had a property of the kind, and who acted in a similar way, would do what was judicious.

2447. Lord George Hill, if I understand you aright, did not disturb many tenants?

I believe not; and if he had, I am sure it would have been for their good.

2448. Then I gather that there are about the same number of tenants now on his property than there were at any former time?

I should not say so, considering the number that were carried away by the famine.

2449. But of course in a better condition?

They are more comfortably off; but at the same time they would have been much better off, in my opinion, if he had removed two-thirds of them.

2450. Has more land been brought into cultivation by those improvements? Of course they are creeping up upon new ground.

2451. Viscount *Lifford*.] I think your answer to Lord Greville has led the Committee astray. On those properties which you have mentioned, and particularly of Lord George Hills, were there any tenants turned out at all; were they not all restored to farms more convenient to themselves?

I believe so; I always heard that they got an equivalent for what was taken from them.

2452. Then of course any payment to them would not be remuneration for being turned out, but clear gain to them and loss to the landlord?

Clearly.

2453. Is it not the fact that that could not be accomplished now, because every tenant would take out defence at the quarter sessions?

I have already said so.

2454. And it is the expense of that proceeding, and the risk of what might be the decision of the chairman, that would deter the landlords of any estates from doing now what was done by Lord George Hill; that is to say, their dread of what might be the decision of the chairman, and the expenses of the quarter sessions,

sessions, would prevent any man from now doing what Lord George Hill did formerly?

I have already said so.

2455. Lord *Greville*.] Would it not, in your opinion, give a feeling of security to the tenants in that district?

I do not think they can have better security than they have at present.

2456. But would not the knowledge that a landlord now would think twice before he would turn out a tenant, give the tenant great security?

They are secure enough, as far as that goes, but it would stop all improvements. Practically it would put the landlord out of court; he could not go on with improvements for the benefit of the people.

2457. Lord *Somerhill*.] Practically you have told us, as I understand, that it is your opinion that this Act will, and would from its character, stop improvements; have you practically reason to know that any landlord has stopped any improvements in consequence of it, or has hesitated even in making them on account of this Act?

I really cannot say that any particular case of the kind has occurred in my own neighbourhood, but I speak for myself, and I have been improving rough land, draining, and trenching, and all that kind of thing. I did a good deal under the Board of Works in the time of the famine, and I would be very cautious now in attempting it on tenant's ground. I would do it on ground that I was in the occupation of, but I think a proprietor who begins to improve tenant's land under the present law, would require to look very cautiously to what he is doing in order to secure a return for his outlay.

2458. Lord *Steward*.] Has it come under your observations whether, since the passing of the Land Act, there has been more improvement on the part of tenants than there was previously to the passing of the Act?

In my part of the country I do not think that there has been any great change. We have always been a tenant-right set of proprietors, in my neighbourhood, on all the large estates. The Marquess of Conyngham, is liberality and kindness itself to his tenants. Sir Edmund Hayes, my Lord Lifford, Mr. Stewart, and several others that adjoin me, have all been tenant-right people, living on the very best possible terms with their tenants, and now I am sorry to say it is not just what we would wish.

2459. Lord *Greville*.] Have you heard any complaints on the part of tenants that their landlords are not now making the improvements that they used to make before the passing of this Act?

I do not call to mind any particular case.

2460. From your knowledge of the district, would you say that they would prefer the old system when some landlords did make such improvements, to the present system, which enables them to make improvements themselves, and which secures them in the possession of those improvements?

I would say decidedly that they prefer the present law, because it gives them rights which they have never purchased, and takes from the proprietor those which he had purchased.

2461. And it gives them the opportunity of making those improvements which are necessary for their benefit?

Preventing the rent being raised; a kind of head rent.

2462. Viscount *Lifford*.] Do you see the improvements which the last witness mentioned generally on the part of the tenants?

Certainly not in our part of the county.

2463. Lord *O'Hagan*.] Do you know the county of Tyrone of which Mr. Donnell spoke?

I do. I passed through it the other day, and I know the county very well. There may be some substantial good tenants that have put up houses, and to my knowledge there are a respectable class of tenants upon the Duke of Abercorn's estate; but I do not see any great change such as to strike the eye of a traveller on a railway.

Mr. J. Johnston.
12th July 1872.

2464. Do you see any change in that direction, such as Mr. Donnell described, in the county of Tyrone?

As far as my knowledge goes, I do not; I travelled through it on Monday last.

2465. Lord *Somerhill*.] I presume that in the part of Ireland in which you live, as in other parts, the general agricultural prosperity has led tenants, if not landlords, to improve their land with more care than they have hitherto exercised?

Undoubtedly there is a very great improvement within the last 10 or 15 years, particularly since the famine.

2466. Viscount *Lifford*.] Will you state what you know about the claims of tenants for turbary since the passing of this Act?

I can say with perfect certainty that it has given rise to a great deal of unpleasant feeling in my own neighbourhood, and at the petty sessions where I attend. Landlords generally were in the habit of giving their tenants a certain portion of turbary free. By degrees, turbary is becoming scarcer and scarcer every year, and some of the proprietors have limited their tenants to a certain quantity, which they considered sufficient, and which they gave free, and beyond that the tenants pay a certain sum. Printed notices to that effect have been put up in the neighbourhood, and the tenants have rebelled against it. The landlords have brought persons who are in the habit of cutting turf upon the bogs belonging to two or three different individuals before the petty sessions, and there is one particular case now, *sub judice*, which we expect to be decided on Wednesday next under the law officers of the Crown. The effect of it has been to have days spent upon one case at the petty sessions, where we usually had our business done before four o'clock, usually.

2467. Have you had any case of your own as to turbary?

I have one case, which is a very strong case, with regard to the effect of the law as it is working. I let a mountain farm to a Scotchman about two years ago, and entered into a written agreement with him for the rent of it for a certain length of time under the new Land Act, paying the half of the county cess and the half of the poor rates, and I reserved the turbary, and the game and royalties. That was signed by each of us on the 2nd of September 1870. It is a place where I cut turf for my own particular use in that district last year, and the year before, and several years. This year he wrote me a very impertinent letter, as I considered, for daring to interfere with his farm. I wrote back to him, sending him a copy of his agreement, and he still continues to threaten me with an attorney, to bring an action against me. That is a Scotch tenant, a Dumfriesshire man. That occurred with myself, and it is the only case I have had.

2468. Lord *O'Hagan*.] Do you not think that if you had got a cross Scotchman as a tenant before the Act was passed, he might have done precisely the same thing?

I think not, if he had signed a document such as I have in my pocket. The Scotchmen are very hard and very honest, and they would not attempt to go beyond their bargain.

2469. You are a sensible man yourself: do you suppose that if there is a written agreement giving you this right, this Land Act is likely to interfere with your rights at all?

I believe not.

2470. Is not it premature to refer the whole of this trouble to the Land Act?

He refers to it. He says in his letter that the Land Act has been decided to give it to the tenant. He says that he understands that I am trespassing upon his grounds, and that by the Land Act it has been decided that the tenant need not permit it. Those are his words.

2471. Viscount *Lifford*.] It is those vague assumed rights which are keeping the county of Donegal in hot water, is it not?

As far as our part of it is concerned, undoubtedly.

2472. Do you know anything about game?

I do.

2473. Will

2473. Will you tell the Committee what you know about that?

There are mountains that I know very well that have been shot over by the proprietor for a great number of years, certainly 60, or 70, or 100 years. The tenants have now written to the proprietor to say they will not allow it to be set as he had done before, part of it being in the proprietor's hands; they have written to him to say that it must not be set to any person, but that they will give him and his agents a day's shooting if he asks for it, as he has been a liberal good gentleman, and a kind landlord; that I have seen printed.

Mr. J. Johnston.

12th July 1872.

2474. In how many cases has that occurred?

Certainly in one, and certainly in another adjoining it; certainly in two cases.

2475. *Lord Steward.*] Supposing that in your case it proceeds to a trial, and there is a decision in your favour, as from your shewing it appears likely that there will be; do you not think that will settle the question as to the right of turbary where there is a written agreement?

I should hope so.

2476. That would put an end to all that "hot water" which you say now exists in the county of Donegal upon the subject of turbary, would it not?

When once a good kindly feeling is broken through between landlord and tenant, it is not so easy just to cure it.

2477. But if there has been one legal decision in favour of the right of a landlord, where he has made the agreement to reserve the turbary, should you have any fear that the same question would again arise?

I really cannot answer that; there might be different wordings in different cases. In my case I was perfectly aware of what I was doing at the time I made the bargain, and I told him I would not have given him the sheep farm unless with a reservation of the turbary. There is fishing on it, and some of my friends like now and then to have a throw, and I would not like to have it taken away from me, and I would have refused; but with regard to turbary, the advice which has been given to the people in my presence by solicitors has been to resist the claim upon the part of the proprietor.

2478. *Lord O'Hagan.*] I think I gather, from the whole of your evidence, that you do not agree with a certain class of people in Ireland who have represented this Land Act as likely to tend to the consolidation of farms?

Not more now than it did before.

2479. But I understood you to say that the Land Act would prevent the consolidation of farms?

Undoubtedly, unless the proprietors are prepared to come down and buy the estate a second time.

2480. Then is it your opinion that the Land Act, so far from advancing the consolidation of farms and the removal of people, will tend to maintain farms as they are?

Undoubtedly.

2481. *Lord Lurgan.*] From your knowledge of the county, and your experience as a proprietor, are you aware of any cases in your neighbourhood in which leasehold tenant-right has been claimed?

I am not from my own knowledge. I have heard of no cases, but personally I am not acquainted with the particulars. It has been claimed, and it has been decided in different ways. I have read very carefully the reports in the papers, but in my own neighbourhood there has been no particular case.

2482. Did you not give evidence before the Devon Commission?

I did.

2483. Have you any objection to state to the Committee what your evidence was with regard to that point?

It is a long time since. I gave it, as I thought, there, but I have not looked over it, to tell you the truth, for a great many years.

2484. But your opinion remains the same now as it was then, does it?

Mr. J. Johnston.
12th July 1872.

We have gone through a great variety of changes since then. The famine year came. Persons that were prospering and doing well while they had potatoes and that, were put out on new ground, have almost, as a class, been extinguished by the want of food. We have had all that to go through, and it of course altered the entire state of society in the lower class of life. In former days the potatoes grew wherever they went to. They were put down on a rough mountain farm, and there they throve very well if they had a few potatoes. They were satisfied with potatoes and milk and turf, but they were, as a class, nearly extinguished when potatoes ceased to grow. Therefore there is a very great change in that class of society, and my experience then and now would be very different. As a proprietor I would not advise that men should be put out without capital upon a bare mountain side and let try to live and try to improve without doing it properly. Merely poking the land, and not draining it properly, is only, I think, leading to poverty afterwards.

2485. As I understand the nature of your evidence given before the Devon Commission, it was that it was quite the right thing for the proprietor to recognise not the middle men, but sub-tenants in the holding?

Undoubtedly, I would say that middle men did a great deal of mischief, for they exacted the utmost they could out of the occupiers, and, therefore, I think were exceedingly injurious. I think it is much better an occupier to be under a nobleman of large property who has enlarged ideas, and would endeavour to put the people into a position in which they could live comfortably and respectably, and educate their children and clothe themselves properly; whereas middle men who will exact the last shilling from them, I am of the same opinion still, ought to be done away with.

2486. In fact, recognising the sub-tenant as the tenant of the holding has a good effect?

Undoubtedly.

The Witness is directed to withdraw.

Mr. ROBERT WILSON, is called in; and Examined, as follows:

Mr. R. Wilson.

2487. *Chairman.*] I BELIEVE that you are a Guardian of the Stranorlar Union? Yes.

2488. Do you own land, or do you hold it? My own farm is freehold.

2489. Do you also farm land? Yes, I do; I farm a large farm which is freehold; I am not a tenant, and I am not a landlord.

2490. Have you had any experience of the working of the Land Act? I see a great deal of it round about me, and I am in a very good position to judge of it not being either the one thing or the other.

2491. What have you to say upon the subject of the working of the Act as regards its effect upon the relation between landlord and tenant? I believe that so far it has done a great deal of good.

2492. In what way?

It has given confidence to the people to make improvements, and I think that the landlord's property is more secure than it was before.

2493. *Viscount Lifford.*] I think you hold some property under Mr. Stewart of Ards?

No, I pay him a head rent only.

2494. And you know his dealings with his tenantry who are not so fortunate as you?

I do.

2495. He is a very liberal landlord, is he not? No doubt of it.

2496. He has assisted his tenants in building and draining, and in short wherever the tenants required his assistance, has he not?

I do

I do not say whenever they required it, but in a great many instances he has done so.

Mr. R. Wilson.

12th July 1872.

2497. Have you heard whether it is his intention still to continue his assistance?

I do not think they require it at all now.

2498. Have you heard what his intentions are?

I have not; but I know that he has given up giving slates for improvements; they do not require it now; I suppose he knows that they have encouragement to do without it.

2499. *Lord Steward.*] Why do you say they do not require it; is it with reference to the Land Act or is it with reference to their own position?

The Land Act gives them encouragement to expend money themselves now.

2500. You say that it is in consequence of the Land Act that he thinks the tenants may do it themselves, instead of his doing it for them?

There is no doubt of it, the people have encouragement now to work, and they know what they are about; they are not afraid of not getting their own, or of being ejected, or anything of that sort.

2501. *Lord O'Hagan.*] You heard what the last witness said about the bad feeling between landlord and tenant; do you think that that has resulted from the passing of the Act?

I know that there is bad feeling in our neighbourhood among my Lord Lifford's tenants and some others; but I do not think that that could be attributed to the working of the Land Act; I think that the same thing would have happened before. My experience with regard to the game laws is, that unless the tenant has a lease, the landlord had always to prosecute in the tenant's name before, but I understand from people who know a good deal, and some of my own friends who are lawyers, that there is no doubt that the right to the game is in my Lord Lifford.

2502. Are you aware that about this particular district, from the operation of the Land Act, any ill-feeling has arisen between landlords and tenants?

I do not believe that it can be attributed to the Land Act; I think it is to be attributed to some other cause.

2503. Then this withholding of assistance, in the shape of timber or slates, you do not think is attributable to the Land Act?

By no means; the best feeling possible exists between Mr. Stewart and his tenants; for instance, this very year I offered 600 *l.* for a farm of 30 acres, at 31 *l.* rent, without a lease, under Mr. Stewart.

2504. Are you aware that any depreciation in the value of property has arisen from the operation of the Land Act?

I believe, so far as raising rent is concerned, it is quite practicable. It is very soon yet to give any opinion with regard to the value of property, but I do not see how it could affect the value of property otherwise than favourably.

2505. Within your own experience, has there been any raising of rent since the passing of this Act in the county of Donegal?

There has.

2506. On what estates?

I do not like to mention names.

2507. Have the rents been raised to any extent?

Not to much extent; but the landlord has evicted the tenants, or bought their tenant-right, and relet the land again.

2508. You speak only of a particular case; but there has been no general raising of rents on any particular property, such as we have heard of from other witnesses?

I have heard of that being done; but that is not just in my immediate neighbourhood.

2509. You do not know of any sale of the fee-simple of property in Donegal since

Mr *R. Wilson*.
 12th July 1872.

since the passing of the Act, so as to enable you to state the comparative value of property before and after the passing of the Act?

I do not remember any. I have heard of many sales in the county of Derry.

2510. Lord *Charlemont*.] You said just now that the rent was increased in one case; was that upon a property which has been recently sold in the Encumbered Estates Court?

No, it was not; it was where the landlord wished to enlarge the farm; he wished to make two or three farms into one, and he bought up the tenant-right himself; the rent was 70 *l.* at first, and he doubled the rent, and relet it at 150 *l.*

2511. Lord *O'Hagan*.] We have heard a good deal about this turbary and game question in Donegal; do you know anything about it?

I have heard a good deal, but I do not know much.

2512. Do you know anything about disputes as to turbary having arisen since the passing of the Land Act?

Except the evidence about Lord Lifford, and two or three others, I did not hear of any; but even before the passing of the Act the tenant had the right of keeping the bog for a year.

2513. Before the passing of this Act, was it not a very common thing to have disputes about turbary in Donegal, as in many other counties in Ireland?

There were very often disputes, and very often after elections the bog was withdrawn altogether if the tenant did not vote in the way that the landlord wished.

2514. So far as you know, has there been any material increase in claims or disputes of that sort since the Act passed?

I have not heard of any cases except of those of Lord Lifford, and I am sure that they are not treating him well at all.

2515. As to this matter of interference with the right of game and shooting on the land, has there been any great difference since the Land Act was passed?

I never heard of a single instance of it excepting in the case of Mr. Style.

2516. Have you heard, in the county of Donegal, of any tenant refusing his landlord the right to shoot which he had before?

I have not indeed.

2517. Viscount *Lifford*.] Did you hear what had happened in the case of Mr. Hamilton, of St. Ernan's?

I did not.

2518. Is it not a fact that very extraordinary and undue expectations have been raised in the minds of some of the more ignorant tenants in Donegal by the passing of the Land Act?

If one or two cases were decided, it would clear up their minds. It is possible, and perhaps true, that such expectations have been raised, but I do not see that we can attribute them to the Land Act.

2519. Those expectations have been raised in consequence of the Land Act, have they not?

I suppose they have; but, I do not believe the Act is to blame for that, but I believe the Act will even do good to those properties. Even with reference to what the last witness was talking about, squaring farms and making ditches, the landlord would very naturally say, "Now, I want to enlarge this farm, and if you do not wish to do what is right and fair, sell your tenant-right to your neighbour." That could be done now without the slightest disturbance, and I am sure that it would be even to the landlord's advantage. I am sure that if he were a good landlord, and the tenants could see that it was for their advantage, they would not hesitate a moment.

2520. Lord *O'Hagan*.] In fact, you have had no experience of that kind since the passing of the Act?

None at all.

2521. It is all mere speculation?

It is.

2522. And

2522. And your speculation does not go in the same groove with the speculation of Mr. Johnston?

. Not at all; I differ entirely from him.

2523. Viscount *Lifford*.] Should you be surprised to hear that in the case of a farm at a rent of 2*l.* 8*s.* (if it can be called a farm), where the tenant in possession being a man of bad character, the next tenant offered 30*l.* for the tenant-right, with the consent of the landlord, but the tenant in possession, whom it was proposed to get rid of, refused to take less than 200*l.*?

I would believe it if your Lordship said it; but I have not heard of it before.

2524. Lord *O'Hagan*.] What are those extravagant anticipations about which my Lord Lifford has been examining you which the Land Act bred in the brains of these people?

They must be very extravagant, but I do not understand them.

2525. You were asked whether that had been so, and you said that it might have been; have you any notion whether it has been so?

I have no knowledge of it at all; but if my Lord Lifford says these things, of course I believe them.

2526. Viscount *Lifford*.] Are you not aware that on Mr. Style's property they positively claimed the power of letting the moor, shooting themselves, and taking it away from Mr. Styles?

I have heard that.

2527. That is an extraordinary expectation, is it not?

It is extraordinary.

2528. Lord *O'Hagan*.] Do you know whether it is the fact or not?

I do not. I have heard it; but even if it were the case, if Mr. Style protected his game, and if it was his before, I think that even if the game did partly belong to the tenant, the Act would really make it more his now.

2529. Do you think that the Act protects the landlord as well as the tenant according to the custom of Ulster?

I do.

2530. Lord *Steward*.] Have you seen much evidence of improvement in your neighbourhood since the passing of the Land Act?

I can corroborate what Mr. Donnell says to a very large extent. On the Duke of Abercorn's estate, from Strabane up to Newtown Stewart, the farmers are building splendid houses.

2531. Lord *Greville*.] Entirely at their own cost?

I believe so.

2532. Lord *Steward*.] With the exception of Mr. Stewart, who has left off giving estates to his tenants, have you heard that landlords in general have declined to improve the dwellings of their tenants, in consequence of the passing of the Land Act?

I have not, and I cannot say positively whether Mr. Stewart intends leaving off doing so or not, but he has always done so; he has been a very good landlord; but the houses are nearly all slated, and I do not think that the tenants actually require much more.

2533. You have looked, I suppose, at the provisions of the Act?

I have not, and I do not understand them at all.

2534. You are not able to say whether, supposing that a landlord wishes to improve his estate, and that he registers those improvements, his position is any worse than it was before the passing of the Land Act?

I am not in a position to go into that at all.

2535. Lord *Charlemont*.] I want you to repeat your evidence about the price of the farm which you bought; you said, I think, that you bought 30 acres, and offered 600*l.* for it?

Yes; there was about 31 acres in it.

2536. And the rent was 30*l.*?

Yes, about 1*l.* a Cunningham acre. Perhaps I might be allowed to say, as to the feeling with regard to the leasehold tenant-right, that the tenants are very

Mr. R. Wilson,
12th July 1872.

much afraid that you are going to interfere with it here, and that was the reason that I was appointed by the Tenant Right Association to come here.

2537. Lord *O'Hagan*.] The noble and learned Chairman, on Wednesday, explained clearly that this Committee was not to interfere with the legislation?

In answer to one of your Lordships, I might say that there is a little bit of property by the side of my own, the rent of which is 37 *l.*, and I have instructed my attorney to give 1,300 *l.* for the fee simple. There is about 7 *l.* of head rent and tithe, I suppose, and I would be disposed to give the tenant, if he would take it, 600 *l.* or 700 *l.* over and above that.

2538. Lord *Steward*.] Have you any reason, from anything you have heard, to suppose that the value of land has fallen in the North?

Not in the slightest. I do not know why it should, because the good feeling between landlord and tenant, to my knowledge, is greatly increased, with the exception of this unfortunate case of my Lord Lifford's.

2539. Lord *O'Hagan*.] How much would you give for this land?

I would give 1,300 *l.* for the fee simple of this land, and I should have to deal with the tenant as well; but I would give 2,000 *l.* altogether, if I could get it. It lies a little mixed up through my own, and that is the reason.

The Witness is directed to withdraw.

Mr. ROBERT DONNELL is re-called, and further Examined, as follows :

Mr. R. Donnell.

2540. *Chairman*.] Do you wish to make any explanation as to your evidence?

Mr. Johnston and I have been comparing notes about a contradiction as to improvement; I spoke of the district between Newtown Stewart and Strabane; but the road by which I drove was circuitous; it was through Dunnymanagh, about 18 or 20 miles. Mr. Johnston spoke of the more direct route between the two towns, and I believe that there is no variance between us.

The Witness is directed to withdraw.

Mr. JAMES JOHNSTON is re-called, and further Examined, as follows :

Mr. J. Johnston.

2541. *Chairman*.] Do you wish to add anything to your evidence?

Mr. Donnell has explained that in driving between Strabane and Newtown Stewart there are great improvements. The direct road from Strabane to Newtown Stewart I passed through on Monday last, and I know the country very well. Undoubtedly there are no manifest improvements at present going on. There is some other way which he speaks of from Dunnymanagh.

2542. Lord *O'Hagan*.] You spoke of lower down in the county?
Quite so. I know nothing of that.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Wednesday next,
Twelve o'clock.

A P P E N D I X.

APPENDIX A.

RETURN of the CASES brought before the Chairman of Quarter Sessions of the County of Sligo, under "The LANDLORD AND TENANT ACT (IRELAND), 1870."

Claimant's Name.	Respondent's Name.	Amount Claimed in respect of Improvements.	Amount Claimed as Compensation for Disturbance.	Amount of the Landlord's Claim for Set-off, or otherwise.	Amount Decreed.	Whether Withdrawn, or not	Whether any Appeal.	OBSERVATIONS.
		£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.		
Rev. John M'Derott, P.P.	Bruton Irwin	13 - -	42 12 6	8 8 8	10 - - and costs.	- - -	Appeal	The amount decreed was increased to 27 l., but without costs, on hearing of the appeal
Kerrigan	Abraham Martin	10 - -	21 - -	- - -	- - -	Nil.	—	
ick M'Gee	James Ormsby	20 17 4	13 11 8	- - -	- - -	Nil.	—	
erine Loughheed and William Loughheed.	Abraham Martin	80 11 6	153 - -	- - -	- - -	Nil.	—	
e - - -	Same - - -	21 18 -	140 - -	- - -	- - -	Nil.	—	
e - - -	Same - - -	332 10 10½	200 - -	- - -	- - -	Nil.	—	
ick Kerrigan	Same - - -	30 - -	42 - -	- - -	- - -	Nil	—	
ter Henry	John F. Knox	13 10 -	52 10 -	2 10 -	2 15 - and costs.	- - -	—	
George Jones Mar-	William Ormsby	153 10 10	180 - -	- - -	15 - - and costs.	- - -	Appeal	The amount decreed was increased to 60 l., on hearing of the appeal.
el Powell	Edward H. Cooper	888 19 -	108 - -	375 - -	- - -	246 - - and costs.	No appeal	Decree made, on consent of the parties.
M'Nama	Thomas Feeney	61 13 -	50 - -	- - -	- - -	- - -	- - -	The hearing stands adjourned to Hilary Land Session, 1872.
n S. Yeates	John W. Kerr	- - -	60 - -	- - -	- - -	Nil.	—	
M'Manany	James Jackson	1,013 15 7½	- - -	- - -	See Observations.	Several items in schedule were withdrawn.	Appeal	This was an application, under 6th section of statute, by Respondent, with respect to claimant's notice and schedule of improvements, and the Court ordered that an amended schedule, omitting value of improvements, should be permitted.
Torsney	Bernard Owen Cogan	256 8 10	67 15 -	- - -	130 - -	- - -	- - -	The parties agreed on this sum.
mas H. Williams	Robert Anderson	19 17 6	- - -	- - -	- - -	- - -	- - -	To be heard at Trinity Land Session, Sligo.
n Jackson	Owen Wynne, Esq.	18 2 6	21 - -	- - -	4 10 - and costs.	- - -	- - -	Claim was abandoned; quoad improvements.
Leyden	Francis Walker	20 - -	7 - -	- - -	- - -	- - -	- - -	
Normanby	John H. Knox and others.	25 - -	19 8 6	- - -	- - -	- - -	- - -	
hias Kelly	Sir Mally Crofton, Bart.	18 - -	- - -	- - -	- - -	- - -	- - -	
er M'Carrick	Wm. R. O. Gore, M.P.	498 7 3	90 - -	115 8 -	- - -	- - -	- - -	To be heard at Trinity Session, 1872
ie - - -	Same - - -	294 10 3	84 - -	305 5 -	- - -	- - -	- - -	Like.
hael Fox	Thomas Ormsby	53 - -	11 4 -	- - -	- - -	- - -	- - -	Annual rent is 1 l. 12 s.

APPENDIX B.

RETURN RELATING TO CLAIMS.

COUNTY.	Date.	Total Amount of Claims as Filed.	* Amount of Claims Settled without Trial.	Amount of Claims which went to Trial.	Amount of Claims Dismissed upon Trial.	Amount of Claims in which Decrees Granted.	Amount Established by Decree.	† Amount of Set-off ascertained by Decree.	Net Amount decreed.	Number of Appeals.	Result of Appeals.	No. of Claims.
		£.	£.	£.	£.	£.	£.	£.	£.			
Antrim - - -	-	No Return.	-	-	-	-	-	-	-	-	-	-
Armagh - - -	1870	4,719	1,900	2,819	1,028	1,790	553	198	358	Nil	-	-
Carlow - - -	1870-71	761	479	282	233	48	12	37. 10s.	81. 10s.	1	Pending.	-
Cavan - - -	1871	No Returns	-	-	-	255	145	35	110	Nil	-	-
Clare - - -	1871	1,646	1,082	564	No Return.	563	104	77	27	1	Decree increased by 88 l. -	-
Cork (East) -	1871	5,519	2,942	2,577	1,606	970	284	143	141	1	Pending	-
Cork (West) -	1871	7,959	5,433	2,526	310	2,216	772	227	544	1	Heard by O'Brien, J.; judgment not yet delivered.	-
Donegal - - -	1870	1,520	1,150	370	70	300	210	16	194	Nil	-	-
Ditto - - -	1871	10,949	3,210	7,739	1,010	2,008	600	80	520	3	Chairman's ruling in all affirmed; one increased by 6 l.	-
Dublin - - -	-	No Return.	-	-	-	-	-	-	-	-	-	-
Fermanagh -	1871	10,328	6,544	3,784	541	3,241	459	62	386	1	Pending	-
Galway - - -	1870	898	572	326	61	265	28	No Returns	28	Nil	-	-
Ditto - - -	1871	2,006	744	1,262	719	543	78	78	78	1	Chairman's ruling affirmed	-
Kerry - - -	1871	1,436	448	988	605	381	218	109	109	2	Pending	-
Kildare - - -	-	No Returns	-	-	-	-	-	-	-	-	-	-
King's - - -	-	No Returns	-	-	-	-	-	-	-	-	-	-
Kilkenny - -	1871	170	120	50	Nil.	237 10s.	8	7	1	Nil	-	-
Leitrim - - -	1870	3,055	No Returns	-	-	-	-	-	-	-	-	-
Ditto - - -	1871	15,925	581	-	2,713	223	109	51	58	1	Pending	-
Limerick - -	1871	4,311	3,047	1,264	973	291	147	46	100	Nil	-	-
Longford - -	1871	141	No Returns	-	-	-	-	-	-	Nil	-	-
Londonderry -	-	15,163	6,880	8,283	2,046	4,159	2,090	543	1,575	10	One ruling reversed; three sums altered; five affirmed; one to Court of Land Cases is reserved.	-
Louth - - -	1870	95	-	95	95	Nil	Nil	Nil	Nil	Nil	-	-
Ditto - - -	1871	840	Nil	840	Nil	840	378	195	282	Nil	-	-
Mayo - - -	1870	169	No Returns	-	-	-	-	-	-	-	-	-
Ditto - - -	1871	4,665	3,404	1,261	539	721	247	157	60	Nil	-	-
Meath - - -	1871	3,116	1,227	1,889	No Return.	-	75	Nil	75	3	Pending	-
Monaghan - -	1870	194	No Returns	-	-	-	-	-	-	1	Sum decreed varied by reduction.	-
Ditto - - -	1871	6,438	5,465	973	No Return.	973	373	12	360	Nil	-	-
Queen's - - -	-	-	-	-	-	-	-	-	-	-	-	-
Roscommon -	1870-71	1,925	582	1,343	65	1,245	45	Nil	45	1	Sum decreed increased by 19 l.	-
Sligo - - -	1871	3,109	No Returns	-	-	-	277	3	279	2	Sums decreed increased in each case; increase, 62 l.	-
Ditto - - -	6th sect.	1,013	No Returns	-	-	-	-	-	-	-	-	-
Ditto - - -	1871	55	No Returns	-	-	-	-	-	-	Nil	-	-
Tipperary - -	1870	325	No Returns	-	-	-	-	-	-	-	-	-
Ditto - - -	1871	2,136	No Returns	-	1,679	347	166	Nil	166	2	Pending	-
Tyrone - - -	1870-71	8,475	5,260	3,215	496	2,717	1,482	185	1,298	5	One varied by increase; two affirmed; two settled.	-
Waterford - -	1871	2,665	976	1,689	446	234	35	199	Nil	-	-	-
Westmeath - -	1870-71	778	No Returns	-	-	238	148	-	148	1	Sum decreed reduced by 40 l.	-
Wexford - - -	1870-71	547	No Returns	-	-	547	128	-	128	3	One decree affirmed; one reduced by 47 l.; one pending.	-
Wicklow - - -	1870-71	3,904	84	1,820	306	3,514	353	2	351	1	Ruling affirmed.	-

* This column includes all cases settled or disposed of otherwise than by decree, or dismissed on hearing.
† This column includes all sums allowed against claimant for set-off, default, or misconduct as tenant.

I N D E X.

ANALYSIS OF INDEX.

LIST of the PRINCIPAL HEADINGS in the following INDEX, with the Pages at which they will be found.

	PAGE	PAGE	
APPEALS :			
1. <i>Number of Appeals from the Chairmen of Counties, and how decided</i> - - - - -	296	<i>Disturbance of Tenancy</i> - - - - -	308
2. <i>Working of the System of Appeal to the Judges of Assize</i> - - - - -	296	<i>Dual Claims</i> - - - - -	310
3. <i>Question of Discretion in the Judges of Assize to refuse further Appeal</i> - - - - -	297	<i>Game (Shooting and Fishing Rights)</i> - - - - -	312
4. <i>Question of direct Appeal from the Primary Tribunal to the Ultimate Appeal Court</i> - - - - -	298	<i>Improvements</i> - - - - -	316
5. <i>Exceptions taken to the Constitution and Working of the Court for Land Cases Reserved</i> - - - - -	298	<i>Judges of Assize</i> - - - - -	319
6. <i>Suggestions on the Score of Evidence before the Ultimate Court</i> - - - - -	298	<i>Landed Estates Court</i> - - - - -	320
7. <i>Suggestions on the Score of Costs</i> - - - - -	298	<i>Landlords</i> - - - - -	321
8. <i>Proposed Appeal to a Superior Court in lieu of that of the Judges of Assize</i> - - - - -	299	<i>Leasehold Tenant-right</i> - - - - -	322
9. <i>Question of Ultimate Appeal to the Court of Appeal in Chancery</i> - - - - -	299	<i>Litigation</i> - - - - -	325
10. <i>Conclusions and Recommendations of the Committee</i> - - - - -	299	<i>Primary Tribunal</i> - - - - -	332
<i>Austin v. Scott</i> - - - - -	299	<i>Relations between Landlord and Tenant</i> - - - - -	333
<i>Bankrupt Tenants</i> - - - - -	300	<i>Rent</i> - - - - -	333
CHAIRMEN OF COUNTIES :			
1. <i>Generally as to the Administration of the Land Act by the Tribunal of Primary Jurisdiction</i> - - - - -	301	TENANT-RIGHT :	
2. <i>How far Conflicting Decisions are given</i> - - - - -	302	1. <i>Question of determining Tenant-right Claims with reference to the Usage of the particular Estate or Holding, or the Usage of the surrounding District</i> - - - - -	336
3. <i>Question of combining three Counties under one Chairman, as regards Land Cases</i> - - - - -	303	2. <i>Difficulties of Tenant-right Cases before the Primary Tribunal</i> - - - - -	336
4. <i>Suggested Consolidation of the smaller Counties</i> - - - - -	303	3. <i>Very large Sums claimed and paid for Tenant-right; Way in which the Value is arrived at by the Tribunal</i> - - - - -	336
5. <i>Removal or Promotion of Chairmen</i> - - - - -	303	4. <i>Effect of the Land Act as regards the Value of Tenant-right</i> - - - - -	337
6. <i>Suggestions on the Score of Salary and of Chairmen being prohibited from practising</i> - - - - -	303	5. <i>Tendency of the Act to extend Tenant-right throughout Ireland</i> - - - - -	337
7. <i>Question of limiting the Chairman's Jurisdiction in Land Claims</i> - - - - -	304	6. <i>Question of limiting the Amount payable for Tenant-right</i> - - - - -	337
8. <i>Desire of Chairmen to be relieved from Administration of the Land Act</i> - - - - -	304	7. <i>Suggested Ascertainment of the Tenant-right before Eviction</i> - - - - -	337
9. <i>Objection by the Committee to any Change of the Primary Tribunal</i> - - - - -	304	8. <i>Question of Leasehold Tenant-right</i> - - - - -	337
<i>Claims (Compensation)</i> - - - - -	304	9. <i>Other Details and Suggestions generally</i> - - - - -	338
<i>Court for Land Cases Reserved</i> - - - - -	306	<i>Turbary</i> - - - - -	339
		<i>Ulster</i> - - - - -	340
		<i>Vagueness of Act</i> - - - - -	341
		<i>Value of Land</i> - - - - -	341
		<i>Working of the Act</i> - - - - -	342

I N D E X.

[*N. B.*—In this Index the *Figures* following the Names of the Witnesses refer to the Questions in the Evidence; those following *App.* to the Pages in the Appendix; and the *Numerals* following *Rep.* to the Pages in the Report.]

A.

ADAIR, SAMUEL FREDERICK. (Analysis of his Evidence.)—Long experience of witness in Ireland as a land agent and solicitor, 994, 995. 1022—Conclusion as regards the Land Act of 1870, that it much requires amendment in several respects, in the interests both of landlord and tenant, 996—Great difficulty upon the death of a tenant holding from year to year through the landlord not knowing whom to recognise as the successor or representative, unless there is legal administration, 997–1006—Suggestion on the foregoing point, that the occupying tenant and ratepayer for a year might be acknowledged by law as the tenant, 1005–1007.

Great benefit both to landlord and tenant, if it were absolutely provided by the Act that all notices to quit should determine on the last gale day of the current year, 1007–1012—Objection of witness to bring any case before the present tribunal of chairman of quarter sessions, 1013, 1014—Statement as to some landlords having ceased to improve their land, or to assist their tenants in improving, owing to the undefined claims which a tenant may have under the Act of 1870; 1014. 1024 *et seq.*

Discouragement of investors by reason of the undefined rights of landlords and tenants respectively; grounds for this statement, 1015, 1016. 1062 *et seq.*—Immense boon if precedents were promptly established, so that the law may be well understood, and decisions may be uniform, 1016—Conclusion as to the exceedingly unsatisfactory character of the tribunal of chairmen of counties, there being thirty-three judges administering the law, and many of them not being conversant with land questions, 1017. 1098–1115. 1119–1130.

Suggestion that the Landed Estates Court might be made the tribunal of inquiry into claims under the Act; witness, however, has not fully considered this subject, 1018–1021. 1116–1118. 1137–1149—Few contested cases likely to arise if the rights of both parties were once really defined by a fixed tribunal, 1019. 1148, 1149. 1157–1161—Advantage if in all sales in the Landed Estates Court the judges were to define the relative rights of the purchasers and tenants before sale, 1020. 1023—Necessity of some definition on the subject of the grand jury cess, and the liability of the tenant, 1023.

Belief as to tenants in the north having largely improved their holdings since the passing of the Act, 1029, 1030—Great improvement in the condition of the tenants, owing to the large rise in the prices of produce, 1031—Obstacles to the preservation by landlords or their agents of satisfactory legal evidence or record of advances for improvements; suggestion that a period be fixed from which both parties should start, and should agree as to future improvements, 1032–1061.

Examination upon the question of increase or decrease in the value of land in Ireland since the Act of 1870; tendency to a decrease in the value of rented land, whilst land in possession has probably risen in value, 1062–1097. 1134—Advance offered upon the price for which Lord Derby's estate in Tipperary was sold; exceptional character of this sale, 1078–1081. 1095*—Increased value of the poorer land more especially, 1082, 1083—Statement as regards the sale of Lord Waterford's estate in Derry, that it was greatly undervalued previously, 1096.

Deservedly popular character of the tribunal of chairman of quarter sessions, although individual chairmen may be unfitted to deal with land questions, 1098–1109. 1125, 1126—Unsatisfactory character of the evidence before the chairmen of counties, upon which facts are arrived at, 1110–1115. 1127–1130—Liability to conflicting decisions further adverted to in connection with the separate sitting of thirty-three different judges, 1108–1115. 1119–1124. 1131–1133—Approval of one superior judge for the trial of land cases rather than of three chairmen sitting together, 1135, 1136.

Adair, Samuel Frederick. (Analysis of his Evidence)—continued.

Explanation that if the procedure were before the Landed Estates Court in Dublin, the evidence should be in writing instead of *viva voce*; questions of facts would not often arise, 1137-1149—Facility and economy as regards appeals, if the evidence were confined to that taken down in the first instance and on record, 1150-1154—Doubt as to the judge of assize being able to hear land cases in the first instance, in addition to his other work; probability, however, of a large diminution of cases if there were a fixed and improved tribunal, 1157-1161.

Statement showing that a tenant may, by very simple process, transfer his tenancy to a mortgagee without consulting his landlord, and without his approval; evasion thereby of the provisions of the Act, 1161*.

Letter from Mr. S. F. Adair to Lord Digby, dated 24th June 1872, showing the litigation likely to arise under the Land Act of 1870, in respect of ecclesiastical or glebe land, and suggesting an amendment of the law on this point, p. 128.

Administration (Small Tenancies). Importance of a proposal for giving to county courts the power of granting administration in small tenancies, *Lefroy* 153-168.

See also *Intestacies*.

Antrim. Dissatisfaction for some time among the tenants in Antrim; this has now disappeared, *Donnell* 1674—General opinion among the farmers in the northern part of Antrim that the Act of 1870 is working satisfactorily, *McElroy* 2318—Very satisfactory relations between landlord and tenant in the county, 2319.

Antrim, Lord. Importance of an appeal to witness, in which Lord Antrim was appellant; witness reserved a case for the Land Court, but Lord Antrim declined to proceed further, *Mr. Justice Fitzgerald* 1498, 1499, 1509-1516.

APPEALS:

1. *Number of Appeals from the Chairmen of Counties, and how decided.*
2. *Working of the System of Appeal to the Judges of Assize.*
3. *Question of Discretion in the Judges of Assize to refuse further Appeal.*
4. *Question of direct Appeal from the Primary Tribunal to the Ultimate Appeal Court.*
5. *Exceptions taken to the Constitution and Working of the Court for Land Cases Reserved.*
6. *Suggestions on the Score of Evidence before the Ultimate Court.*
7. *Suggestions on the Score of Costs.*
8. *Proposed Appeal to a Superior Court in lieu of that of the Judges of Assize.*
9. *Question of Ultimate Appeal to the Court of Appeal in Chancery.*
10. *Conclusions and Recommendations of the Committee.*

1. *Number of Appeals from the Chairmen of Counties, and how decided:*

Very few appeals from the decisions of the chairmen, *Mr. Justice Fitzgerald* 1498, 1556; *Right Hon. H. J. Monahan* 1740-1746; *Coffey* 2288—Total of about six appeals to witness; how decided, *Mr. Justice Fitzgerald* 1498—Total of only four appeals to witness from the decisions of chairmen, the original decrees having all been confirmed, *Right Hon. J. A. Lawson* 1775—Questions of law raised in some of the cases before witness, these having been five appeals, in only one of which witness's decision was reversed, *Coffey* 2259-2264.

Return showing for each county the number and the result of appeals, *App.* 292.

2. *Working of the System of Appeal to the Judges of Assize:*

Right of appeal in land cases from the chairman of quarter sessions to one of the going judges of assize, the latter having the power of calling in the second judge, *Lefroy* 10-13—Delay through the intermediate appeal to the judge of assize, *ib.* 42—Exceedingly unsatisfactory system of appeal to the judges of assize, *J. Hamilton* 336—The appeals at the assizes are necessarily hurried over very rapidly, *ib.*—Want of an efficient court of appeal. *Jones* 462.

Decided approval of the present system of appeal to the judge of assize, as being cheap and expeditious as well as efficient, *Hancock* 654, 655—Probability of some instances of great delay in the delivery of the judgment of the judge of assize in appeal cases, *Townshend* 991-993.

Grounds for the conclusion that the judges of assize are an eminently unsatisfactory tribunal for hearing appeals from the primary tribunal, *Mr. Justice Morris* 1400-1403, 1448—Statement as to the judge not knowing what appeals there may be in land cases, nor how long they may take to try, *ib.* 1400-1402—Injurious effect of long delay in respect of appeals from the chairmen of counties, *ib.* 1445-1448.

Opportunities

APPEALS—continued.

2. Working of the System of Appeal to the Judges of Assize—continued.

Opportunities of the judges of assize for ascertaining beforehand how many land appeals there will be before them, *Mr. Justice Fitzgerald* 1500-1502—Facility and economy of an appeal from the chairman of sessions, it being rather a re-hearing of the case, *ib.* 1503—Facilities, by means of appeal, for obtaining a settlement of disputed questions of law under the Act, *Mr. Justice Barry* 1573-1577. 1605-1612.

Conclusion as to the appeal from the primary tribunal being only on matters of law, and not at all on matters of fact, *Right Hon. H. J. Monahan* 1717-1721—Facilities to suitors through the right of appeal from the primary tribunal, whilst the costs are trifling, *ib.* 1742—Ample time allowed by witness, when engaged on assize business, for hearing appeals in land cases, *ib.* 1770.

Advantage of the appeal being always to the judge of assize in the first instance, *Rogers* 2186—Approval of the tribunal of the judge of assize as regards primary appellate jurisdiction, *De Moleyns* 2252—Reasons for retaining the appeal to the judge of assize upon questions of fact, *Coffey* 2290, 2291. 2293.

3. Question of Discretion in the Judges of Assize to refuse further Appeal:

Great dissatisfaction caused by the discretion in the judge of assize to refuse a further appeal, *Lefroy* 46—Disapproval of discretion in the judges to refuse an ultimate appeal, *J. Hamilton* 336. 342—Grounds for recommending that there should be an appeal on matters of fact as well as on matters of law to the ultimate court; suggestions hereon; *ib.* 342-349. 362-371—Expediency of a right of appeal upon questions of fact, or mixed questions of law and fact, *Jones* 468-470—Concurrence in the view as to the expediency of a right of appeal from the judge of assize, *Morris* 563-567; *Boyle* 698, 699. 750, 751.

Particulars of a case in which the chairman of Sligo appeared for witness as counsel on appeal before Chief Justice Monahan at Omagh Assizes from a decision of the chairman of Tyrone; hardship in the judge having affirmed the decision without reserving a case for further appeal, *Boyle* 704-706. 734-745. 752-772—Several cases showing the working of the appeal to the judge of assize; approval thereof, provided both parties had a right of further appeal to the ultimate court, *Newton* 786-791—Objection to any limit of value in cases of appeal, *Murland* 1204—Expediency of landlord and tenant having a right of appeal to the Court for Land Cases Reserved irrespectively of the discretion of the judge of assize, *ib.* 1213.

Contemplated appeal from the judges of the Landed Estates Court (as the tribunal in lieu of that of the judges of assize), save in those cases of limited amount appealed to them from the chairman, *Mr. Justice Morris* 1404-1406—Opinion that cases should be reserved for the ultimate appeal court by two judges, *ib.* 1407. 1409. 1442-1444—Expediency of any case upon which two judges of assize differ being reserved for the ultimate court of appeal, *ib.* 1420.

Refusal of witness to reserve a case for the Land Court, where the amount was very small, *Mr. Justice Fitzgerald* 1498—Expediency of two judges of assize concurring upon the question of reserving a case for the Land Court, *ib.* 1503. 1505-1508—Unequal terms upon which the parties would litigate if each had an absolute right of appeal to the Land Court, *ib.* 1504.

Further reference to the refusal by witness of an appeal in one case, the question turning upon the fact whether the occupier was the successor in title of the preceding occupier, *Mr. Justice Fitzgerald* 1557—Expediency of a discretion in the judge of assize as to reserving cases for further appeal, *Mr. Justice Barry* 1574, 1575.

Strong objection to a right of appeal in the suitors from the judge of assize to the Court for Land Cases Reserved; importance of full discretion in the judge of assize as to the reservation of questions for the ultimate court, *Right Hon. H. J. Monahan* 1687-1691—Readiness of the judges generally to abide by the decision of the ultimate court of appeal, and to reserve all cases for the court in which they have any doubt as to the propriety of their own decisions; uniformity thus secured, *ib.* 1708-1717. 1729-1735.

Examination in further defence of discretionary power in the judge, in appeal cases, upon the question of reserving any point for the ultimate court, *Right Hon. H. J. Monahan* 1729-1739—Great reluctance of witness to reserve the decision of a chairman of quarter sessions upon a matter of fact; special facilities of the chairman for deciding such questions satisfactorily, *ib.* 1747-1750—Impracticability of any satisfactory appeal to the Court for Land Cases Reserved upon matter of fact; necessity of such appeals being heard in the county where the case is first decided, *ib.* 1751, 1752. 1756-1761.

Witness would be very glad to be relieved of the discretion as to granting or refusing an appeal, *Right Hon. J. A. Lawson* 1782-1786—Grant of an appeal by witness in 403.

APPEALS—continued.

3. *Question of Discretion in the Judges of Assize, &c.*—continued.

any case where he considered the point involved to be at all doubtful or arguable, *Right Hon. J. A. Lawson* 1783-1786.

Satisfaction given generally to tenants in the counties of Londonderry and Donegal by the system of appeal to the going judge of assize, and by its being discretionary in the judge not to give a further appeal, *Henry* 1997-2001. 2007-2010—Discontent of some landlords in not having a right of appeal to the court for land cases reserved, *ib.* 1999-2003.

Expediency of the parties having power of appeal not only to the judge of assize but to the court above, *De Moleyns* 2216-2222—Propriety of appeal on questions of law to the court of ultimate appeal as a matter of right irrespective of amount, *Coffey* 2301-2307—Opinion that a discretion may well be left to the judge of assize as to allowing further appeal on matters of fact, *ib.* 2302.

4. *Question of direct Appeal from the Primary Tribunal to the Ultimate Appeal Court:*

Advantage if on questions of law the appeal were direct from the primary tribunal to the Court for Land Cases Reserved, *Lefroy* 38-48—Conclusion that, as regards matters of fact, no difficulty would arise, in respect of direct appeal, nearly all the difficulties under the Act being in respect of questions of law, *ib.* 48-54. 89—Great expense of direct appeal to the ultimate court on matters of fact; such appeal might still lie to the going judge of assize, *ib.* 87-93.

Further statement as to the expense of appeal from the first tribunal direct to the Land Court on matter of fact, *Lefroy* 121-124—Expediency of direct appeal to the Land Court on matters of law (further adverted to, *ib.* 176. 195.

Opinion that where the amount of compensation awarded is not more than 100 *l.* the appeal should be to the judge of assize, and where above that sum to the Court for Land Cases Reserved, *Morris* 563-567—Advantages of direct appeal to the Land Court under the plan proposed by witness, *Murland* 1201.

Suggestion that the primary tribunal should have power to reserve a case direct for the court of ultimate appeal, *Mr. Justice Fitzgerald* 1627. 1629, 1630—Advantage as regards appeals if the chairman of quarter sessions had power to give an appeal upon any question of law direct to the Court for Land Cases Reserved, *Right Hon. J. A. Lawson* 1777-1781. 1817-1819.

Improvement as regards appeals if the chairman had power to reserve a case direct for the Court for Land Cases Reserved, *Gardner* 1924, 1925—Great advantage if the chairman had full discretion of at once stating a case, upon matters of fact as well as of matters of law, for the ultimate court of appeal; speedy settlement of the principles of the Act thereby, *De Moleyns* 2211-2215. 2251-2253—Grounds for recommending that appeals on questions of law should go direct to the ultimate court, *Coffey* 2290. 2293, 2294.

*5. *Exceptions taken to the Constitution and Working of the Court for Land Cases Reserved:*

Strong disapproval of the Court for Land Cases Reserved, with its numerous judges, as the ultimate court of appeal, *Mr. Justice Morris* 1403. 1408, 1409; *Right Hon. J. A. Lawson* 1797-1799; *De Moleyns* 2230; *Coffey* 2289—Instances of considerable delay before judgment has been given by the ultimate court, *J. Hamilton* 339, 340—Modification desirable in the Court for Land Cases Reserved as the court of ultimate appeal, *Jones* 468. 471.

6. *Suggestions on the Score of Evidence before the Ultimate Court:*

Proposal that with a right of appeal to the ultimate court the judge should state a case, evidence being required in very rare instances, *J. Hamilton* 362-371—Suggestion for meeting the expense of appeal to the ultimate court upon matters of fact, *Morris* 563-567—Facility and economy as regards appeals if the evidence were confined to that taken down in the first instance and on record, *Adair* 1150-1154.

Suggestion that the judge should take a note of the evidence, and of any questions of law, and should make a report of the same for the Court for Land Cases Reserved in the event of appeal, *Murland* 1201—Objection to any evidence being taken before the ultimate court, *Right Hon. J. A. Lawson* 1786.

7. *Suggestions on the Score of Costs:*

Explanation of the grounds upon which witness would give a right of appeal to the ultimate court provided there were satisfactory security for costs, *Mr. Justice Morris* 1620-1626—Check to improper appeals to the land court if the appellant were required to find security for costs; objection, however, to an absolute right of appeal even with such check, *Mr. Justice Fitzgerald* 1504. 1546-1553—The tenant would appeal in almost every case, whilst in the majority he would not be able to pay costs, *ib.* 1504—
Exception

APPEALS—continued.

7. *Suggestions on the Score of Costs*—continued.

Exception taken to the proposed requirement of security for costs in connection with appeals to the ultimate court, *Mr. Justice Fitzgerald* 1628.

Approval of a right of appeal in the suitor, not only to the judge of assize but to the Court for Land Cases Reserved, provided, in the latter event, he paid the amount decreed against him into court, and lodged a sufficient sum as security for costs, *Right Hon. J. A. Lawson* 1780-1789—Necessity of some security for costs when appeals are carried to the ultimate court, *De Moleyns* 2223—Approval of discretion in the chairman to require security for costs when cases are appealed, *Coffey* 2308.

8. *Proposed Appeal to a Superior Court in lieu of that of the Judges of Assize:*

Suggested appeal to the proposed superior court of primary jurisdiction in the small cases still to be tried by the chairmen of counties, *Jones* 464, 465—Proposed appeal from the chairman to the tribunal of superior judges to be substituted for that of the judges of assize, *Mr. Justice Morris* 1403.

9. *Question of Ultimate Appeal to the Court of Appeal in Chancery:*

Proposal that the final appeal be to the Court of Appeal in Chancery is strengthened for the purpose by the addition of a common law judge, *Mr. Justice Morris* 1403, 1410—Reason for suggesting that the common law judge on the appellate court should be chosen by rotation, *ib.* 1421, 1422.

Suggestion that the ultimate appeal should be to the Chancery Appeal Court, fortified by a common law judge sitting with the Lord Chancellor and the Lord Justice of Appeal, appointed in rotation, *Right Hon. J. A. Lawson* 1799.

Approval of the present court of final appeal as compared with the Court of Appeal in Chancery with the addition of a common law judge, *Mr. Justice Fitzgerald* 1503.

10. *Conclusions and Recommendations of the Committee:*

Recommendations by the Committee that the suitor should have an absolute right of appeal to the Supreme Appellate Court, *Rep.* iii.—Necessity, in the event of the foregoing alteration being adopted, of the judge of assize being invested with power at his discretion to require security for costs, *ib.*

Conclusion that the time has not arrived for considering the question of a reform or extinction of the present court of ultimate appeal, *Rep.* iv.

Recommendation that the Chairman should be empowered, at his discretion, and on such terms as he may direct, to reserve a case on matter of law directly for the Court for Land Cases Reserved, *Rep.* iv.

See also *Antrim, Lord.* *Austin v. Scott.* *Freele v. Lord Leitrim.* *Holt v.*
Lord Harburton. *Keown v. Lord de Ros.* *M'Nown v. Beauclerk.*

Armagh. Satisfactory administration of the Act of 1870 by the chairman of Armagh, *Hancock* 633, 688, 689—Satisfaction given to the landlords in Armagh, as well as to the tenants, by the mode of administration of the Act, *ib.* 682-685, 688, 689.

Satisfaction doubtless given by the Act to tenants in Armagh County, *Boyle* 692, 778.—The landlords on the county, however, are anything but satisfied with the Act, on account of the exorbitant claims preferred by the tenants, and the difficulty of rebutting such claims, *ib.* 663-696, 723-728, 779, 780.

Arrears of Rent. Approval of the provision in the Act forbidding eviction for rent due more than three years; great abuse under the system of continuous arrears, *Morris* 581-583.

Assimilation of Usages (England and Ireland). Main policy and object of the Act of 1870 to assimilate Irish usages to English usages, *Morris* 556, 606, 607.

Assizes (Trial of Land Cases). See *Appeals.* *Judges of Assize.*

Attorneys. Dissent from the view that attorneys stimulate the tenants to make unfair claims under the Land Act, *Newton* 795-799—Opinion that attorneys are not underpaid in land cases before the courts, *ib.* 800.

Austin v. Scott. Question in the case of *Austin v. Scott* as to the Ulster tenant right being applied to a lease; the appeal to the ultimate court on this point was not heard, owing to the death of Mr. Scott, *Lefroy* 113, 117-120; *Rogers* 2089-2091—Importance of the case of *Austin v. Scott*, in which Chief Justice Monahan decided that tenant right applied on termination of a lease; dissent from this conclusion, *Mr. Justice Morris* 1409-1416—Information relative to this case, in which it was decided on appeal that tenant right existed on expiration of the lease; very sufficient evidence given to this effect before the judge of assize, *Lane* 1635, 1642-1651, 1659.

Austin v. Scott—continued.

Particulars relative to the appeal to witness in the case of *Austin v. Scott*, in which two points were involved, one of which he decided absolutely, whilst he reserved the other for the court for land cases reserved, *Rt. Hon. H. J. Monahan* 1691-1694. 1722-1727—Very general application of the question reserved by witness in the foregoing case, so that he deemed it desirable to have it settled once for all by the court of ultimate appeal, *ib.* 1691, 1692. 1727.

Explanation as to the fact having been conclusively established before witness in this appeal that there was not a particle of difference as to the usage to give compensation for tenant right between cases of tenancies from year to year, and cases of leases for lives or years; he refused, therefore, to reserve this point for the higher court, and believes that his decision has never been questioned, *Right Hon. H. J. Monahan* 1692-1694. 1707-1711. 1722-1726—Further explanation relative to the case of *Austin v. Scott*, and the question which arose as to the usage of tenant right being applicable to the estate, *ib.* 1762-1766.

Particulars relative to this case in which witness, as chairman of sessions, decided that at the expiration of a lease the tenant in possession was obliged to surrender; appeal by Mr. Scott when Chief Justice Monahan reversed witness's decision and refused a further appeal on the question of law, *Coffey* 2260-2263.

B.

Bankrupt Tenants. Prejudicial result of the Act of 1870 as regards the Bankruptcy Court interfering in the management of property and selling, without any power of intervention on the part of the landlord, *Townshend* 876. 879, 880—Examination in detail in support of the statement as to the undue power of the Bankruptcy Court to sell the interest of an insolvent tenant, and to do so field by field, without power in the landlord to prevent such sale; possession of such power, previously to the Act, by means of notice to quit, *ib.* 881-885. 892 *et seq.*

Complaint as to the disturbance of the tenant by the Bankruptcy Court, and not by the landlord, and as to the latter being liable for increased compensation for disturbance; particulars hereon relative to the case of a bankrupt tenant under witness as agent, *Townshend* 881-885. 892 *et seq.* 985-990—Statement that previously to the Act, witness never knew of any sale by the Bankruptcy Court of a tenancy from year to year, as the landlord would stop such sale by a notice to quit, *ib.* 892-898. 926-936. 951. 969. 970—Probability of the full amount of compensation being awarded under the Ulster custom in the event of a landlord objecting to a tenant purchasing under the Bankruptcy Court, *ib.* 955-961. 971-982.

Statement to the effect that the Act has made no difference as regards the interest of bankrupt tenants, holding from year to year, being vested in assignees, *Murland* 1268-1277—Equal power of the landlord since the Act, as previously, to prevent sale of the land by the sheriff at the suit of the creditors of a bankrupt tenant; liability of the landlord in such case to compensation for disturbance if he gets rid of a purchasing tenant by means of notice to quit, *Mr. Justice Fitzgerald* 1520-1530. 1569.

Barry, Mr. Justice. (Analysis of his Evidence.)—Judicial experience of witness in only two cases under the Land Act on the Munster Circuit; particulars of the claims involved in these cases, 1570-1572—Opinion that the chairmen of counties are administering the Act very satisfactorily, and are an exceedingly competent body, 1572-1579—Facilities, by means of appeal, for obtaining a settlement of disputed questions of law under the Act, 1573-1577. 1605-1612—Expediency of a discretion in the judge of assize as to reserving cases for further appeal, 1574, 1575.

Practice of chairmen of counties to meet together and discuss doubtful points; advantage thereof, 1577, 1578. 1586-1589—Exception taken to the judges of the Landed Estates Court as a tribunal for administering the Act of 1870; disapproval of any special tribunal for the purpose, 1579, 1580—Objections to the chairmen of three cotemporary counties sitting as one tribunal, 1580-1584. 1590-1592.

Advantage of uniting some of the smaller counties under one chairman, thus reducing the number of primary tribunals, 1584—About equal balance of advantages and disadvantages in the chairmen being allowed to practice; approval on the whole of their doing so, 1593-1602—Evil of the frequent change of chairman of the West Riding of York, 1603, 1604.

Opinion as to the limited conflict of decisions in Ulster upon tenant-right questions, the Ulster custom being almost impossible of definition by statute, and the primary tribunal not being responsible for the difficulties under the custom, 1605-1619.

Beauclerk, Mr. See *McNown v. Beauclerk*.

Boyle,

Report, 1872—continued.

Boyle, Hugh. (Analysis of his Evidence.)—Is a land agent at Armagh, and has had considerable experience of the working of the Land Act, 690, 691—Satisfaction doubtless given by the Act to tenants, 692. 778—The landlords, however, are anything but satisfied with the Act, on account of the exorbitant claims preferred by the tenants, and the difficulty of rebutting such claims, 693-596. 723-728. 779, 780—Belief that there are important differences of opinion among the chairmen of counties as to the construction of the Act, 697. 704-706. 729-733.

Expediency of a right of appeal from the judge of assize, 698, 699. 750, 751—Advantage of a paid valuator or assessor, as a check upon exorbitant claims, 700-703—Particulars of a case in which the chairman of Sligo appeared for witness as counsel on appeal before Chief Justice Monahan at Omagh assizes, from a decision of the chairman of Tyrone: hardship in the judge having affirmed the decision without reserving a case for further appeal, 704-706. 734-745. 752-772.

Statement as to the effect of the Act in enabling tenants to obtain from their landlords larger sums for surrender of tenant right than they previously obtained, 707-722. 773-776—Opinion that the assistant barristers' court does not operate fairly for the landlords, and encourages the tenants to make undue claims, 732. 773-778—Unlimited jurisdiction of chairmen as to the amounts awarded, 741. 744.

Vagueness of the Act upon the subject of town parks, 746, 747—Importance of the principles of the Act being promptly and definitively settled in order to remove the indisposition of tenants to accept fair and moderate terms, 748, 749—Difficulty under the Act in regard to the selection of new tenants by landlords, 773-776.

C.

CHAIRMEN OF COUNTIES:

1. *Generally as to the Administration of the Land Act by the Tribunal of Primary Jurisdiction.*
2. *How far Conflicting Decisions are given.*
3. *Question of combining three Counties under one Chairman, as regards Land Cases.*
4. *Suggested Consolidation of the smaller Counties.*
5. *Removal or Promotion of Chairmen.*
6. *Suggestions on the Score of Salary, and of Chairmen being prohibited from practising.*
7. *Question of limiting the Chairmen's Jurisdiction in Land Claims.*
8. *Desire of Chairmen to be relieved from Administration of the Land Act.*
9. *Objection by the Committee to any Change of the Primary Tribunal.*

1. *Generally as to the Administration of the Land Act by the Tribunal of Primary Jurisdiction.*

Satisfaction of the tenantry with the present tribunal of primary jurisdiction, *Lefroy* 80-83—Less satisfaction given by the chairmen, as a public tribunal, since they have had to administer the Act, *J. Hamilton* 335-352-355—Doubt as to the actual time occupied in the disposal of cases by witness and other chairmen of counties; a return has been ordered on this subject, *ib.* 376-378. 381.

Opinion that the decisions of the chairmen have been excellent, *Morris* 537—Advantage in the working of the Act of not having a competent judge to deal with the cases in a limited area, *ib.* 538—Further statement in warm approval of the tribunal of chairmen of quarter sessions for the administration of the Act, *ib.* 568.

Opinion that the assistant barrister's court does not operate fairly for the landlords, and encourages the tenant to make undue claims, *Boyle*, 732. 773-778—Uncertain decisions of the chairmen as regards the amount of compensation; impression that there is a leaning on their part towards the tenants, though exorbitant claims are largely reduced, *Townshend* 951-959. 973-984—Objection of witness to bring any land case before the present tribunal of chairmen of quarter sessions, *Adair* 1013, 1014—Conclusion as to the exceedingly unsatisfactory character of the tribunal of chairmen of counties in land cases, there being thirty-three judges administering the law, and many of them not being conversant with land questions, *ib.* 1017. 1098-1115. 1119-1130—Deservedly popular character generally of the tribunal of chairmen of quarter sessions, although individual chairmen may be unfitted to deal with land questions, *ib.* 1098-1109. 1125, 1126.

Great importance of a prompt settlement of the law, whereas the present primary tribunal is ill-suited for this purpose, *Murland* 1266, 1267.

Very few appeals to the judges of assize from the decision of the primary tribunal, *Mr. Justice Fitzgerald* 1498. 1556; *Coffey* 2288—Conclusion in favour of retaining the present primary tribunal, though there are so many different judges, *Mr. Justice Fitzgerald*

Report, 1872—continued.

CHAIRMEN OF COUNTIES—continued.

1. Generally as to the Administration of the Land Act, &c.—continued.

Fitzgerald 1536. 1548—Inference from the few appeals that the chairmen's decisions give satisfaction, *ib.* 1556.

Opinion that the chairmen of counties are administering the Act very satisfactorily, and are an exceedingly competent body, *Mr. Justice Barry* 1572. 1579—The questions which arise are chiefly questions of fact, and not of law, *Mr. Justice Barry* 1573; *Donnell* 1662—Practice of chairmen of counties to meet together and discuss doubtful points; advantage thereof, *Mr. Justice Barry* 1577, 1578. 1586–1589.

Expectation that by means of the present primary tribunal all difficulties in working the Act will in time be removed, *Lane* 1652–1654—Fair and equitable working of the Act by means of the chairmen's courts, *Donnell* 1673.

Opinion that the chairmen of quarter sessions are perfectly competent to administer the Act in a far and efficient manner, *Right Hon. H. Monahan* 1684–1686—Entire competency of the chairman of quarter sessions to conduct inquiries into matters of fact, *ib.* 1698, 1699. 1747, 1748—Satisfactory working of the existing primary tribunal, judging from the comparatively few appeals from the decisions of the chairmen of quarter sessions, *ib.* 1740–1746.

Strong testimony to the efficiency of the chairmen of quarter sessions as the tribunal for the trial of cases under the Land Act of 1870, *Right Hon. J. A. Lawson*, 1775, 1776—Facilities of the chairmen for knowing the character of the witnesses and the customs of the localities, an itinerating tribunal not having the same advantages, *ib.* 1776.

Popularity, economy, and expedition of the court of chairmen of quarter sessions for the trial of land cases, *Dinnen* 1899—General confidence of the community in the court, *Gardner* 1917—Very satisfactory working of the court in cases under the Land Act, as regards both the landlord and the tenant; witness, in fact, cannot conceive a better primary tribunal, *ib.* 1918–1923.

Confidence of the people in the chairman's court, *Henry* 2004–2006—Satisfactory decisions by the chairmen, witness not being conversant with any decisions reversed on appeal, *ib.* 2007–2010.

Approval of the tribunal of chairman of quarter sessions for administering the Act; resolutions of the various Tenant Right Associations to this effect, *Rogers* 2087—Several instances of decisions being properly reversed on appeal to the judge of assize, *ib.* 2088—Great satisfaction being given by the decisions of the chairmen, with one or two exceptions, *ib.* 2190–2193.

Opinion, that the tribunal of the chairmen of the county is, on the whole, the best that could have been selected for exercising primary jurisdiction under the Act, *De Moleyns* 2210–2224—Great value of the local knowledge possessed by the chairmen, *De Moleyns* 2224; *Coffey* 2299, 2300—Very satisfactory working of the county court as at present constituted, *De Moleyns* 2239–2241—Occasional meetings of the chairmen in Dublin to consider difficult questions which arise before them individually, *ib.* 2242–2245—Opinion that the Act works admirably as regards the primary jurisdiction of the chairmen of sessions, *Coffey* 2288. 2292. 2299.

2. How far Conflicting Decisions are given:

Diversity of decision through each chairman construing the law according to his judgment, *Lefroy* 54, 55—Further statement as to the uniformity not being so quickly secured by thirty-three tribunals as by two or three judges who should go on circuit, *ib.* 176. 194–196.

Very few conflicting decisions of the chairmen of counties on important questions under the Act, *R. Johnston* 318–320—Less conflicting decisions of chairmen than might be expected, considering the great difficulties of the Act, *J. Hamilton* 341—Necessity of conflicting opinions among so many as thirty-three judges, or chairmen of counties; much greater uniformity if there were but three or four judges, *ib.* 352–358. 372–380.

Absence of any security for uniformity of decision, independently of the revision of erroneous decisions, *Jones* 462. 482–487. 527, 528—Disadvantage, doubtless, in having so many as thirty-three tribunals, as leading necessarily to a conflict of decisions and to uncertainty, *Morris* 538, 539—Very few differences in point of law among the chairmen of counties; examination hereon showing that on some important questions different decisions have been given, *Hancock* 633–635. 639, 640. 656–671.

Belief that there are important differences of opinion among the chairmen of counties as to the construction of the Act, *Boyle* 697. 704–706. 729–733—General feeling of dissatisfaction as to the conflicting decisions of the chairmen of counties, *Townshend* 877, 878—Liability to conflicting decisions adverted to in connection with the separate sitting of thirty-three different judges, *Adair* 1108–1115. 1119–1124. 1131–1133.

Witness attributes the litigation in which he has been involved since the Act of 1870 chiefly to the uncertainty of the law as administered by thirty-three judges in the first instance;

Report, 1872—continued.

CHAIRMEN OF COUNTIES—continued.

2. *How far Conflicting Decisions are given*—continued.

instance; reference more especially to the decisions in *Donegal, Viscount Lifford* 1390, 1391.

Advantage, doubtless, if there were not so many as thirty-three judges, *Mr. Justice Fitzgerald* 1503—Absence of any serious conflict of decisions among the chairmen, *Donnell* 1664, 1674—Readiness of the chairmen of quarter sessions to conform to the decisions of the judge of appeal, so that uniformity will be soon secured, *Right Hon. H. J. Monahan* 1699, 1704-1707—Necessity at first of some diversity of decisions in the working of the new Act; these will soon disappear, *Right Hon. J. A. Lawson* 1776—Conclusion that there cannot be for any length of time any diversities of opinion or practice among the chairmen, *ib.* 1821.

Instances of differences of opinion between the chairmen, though not on vital points, *Dinnen* 1843, 1878-1885—Differences of opinion of chairmen of counties, not only in matters of fact under the Act, but in matters of law, *Henry* 1989-1996, 2011, 2012—Occurrence of conflicting decisions under other important Acts, for some time after their passing, as well as under the Land Act, *De Moleyns* 2311—Obstacle to any comparison between the decisions of chairmen on questions of fact, as the facts vary in each case; *Coffey* 2265, 2266.

3. *Question of combining three Counties under one Chairman, as regards Land Cases:*

Improvement if three chairmen of adjacent counties were to sit together for the trial of land cases, thus reducing the number of primary tribunals from thirty-three to eleven, *Lefroy* 37, 38—Statement in support of the proposal that three chairmen of coterminous counties should go on circuit for the trial of land cases, *Morris* 589—Further recommendation of a court of three chairmen; its advantages over a standing court of two judges going on circuit throughout Ireland, *ib.* 569-577.

Disapproval of a tribunal comprising three chairmen of contiguous counties, *Murland* 1205—Concurrence in the objection to combining three chairmen for each tribunal, *Mr. Justice Fitzgerald* 1534; *Mr. Justice Barry* 1580-1584, 1590-1592—Decided disapproval of combining three chairmen in each court for the trial of land cases, *Donnell* 1680; *Right Hon. J. A. Lawson* 1821—Strong objection to a court comprising the chairmen of three coterminous counties, who should decide all the cases in such counties; frequent disagreement apprehended, *Right Hon. H. J. Monahan* 1700, 1701.

4. *Suggested Consolidation of the smaller Counties:*

Proposal that some of the smaller counties might be consolidated, *Mr. Justice Morris* 1487—Approval of a consolidation of some of the smaller counties under one chairman, *Mr. Justice Fitzgerald* 1534, 1535; *Right Hon. J. A. Lawson* 1832-1835—Advantage of uniting some of the smaller counties under one chairman, thus reducing the number of primary tribunals, *Mr. Justice Barry* 1584.

5. *Removal or Promotion of Chairmen:*

Objection to which the removal or promotion of chairmen from one county to another is open, *Lefroy* 191-193—Instances of civil bill judges objecting to promotion from one county to another, *R. Johnston* 315-317—Instances of resignation of chairmen, *J. Hamilton* 457—Injurious effect of the change of local tribunal by the promotion or change of chairmen; expectation, however, that in some ten or fifteen years sufficient precedents in law will have been created under the Act of 1870, *Morris* 540—Very objectionable system of gradation and promotion of chairmen; suggested substitution of the principle of seniority, *Mr. Justice Morris* 1486-1492.

6. *Suggestions on the Score of Salary, and of Chairmen being prohibited from Practising:*

Doubt as to the efficiency, as judges, of the chairmen of quarter sessions being at all impaired by the circumstance of their practising, *Lefroy* 56-67—Advantage of prohibiting the chairmen of counties from practising, and of paying them better, *Jones* 471, 472.

Opinion that in any case the salaries of the chairmen should be increased concurrently with their being prohibited from practising at the bar, *Mr. Justice Morris* 1486—Grounds for strongly objecting to the chairmen being allowed to practice, *ib.* 1486, 1493, 1494—Balance of advantages in favour of the chairmen not practising at the bar; in such cases their salaries should be increased, *Mr. Justice Fitzgerald* 1534, 1535.

About equal balance of advantages and disadvantages in the chairmen being allowed to practise; approval on the whole of their doing so, *Mr. Justice Barry* 1593-1602—Doubt as to the tribunal of chairmen of quarter sessions being improved by having fewer chairmen, paid better, and not allowed to practice, *Right Hon. H. J. Monahan*, 1771, 1772.

Report, 1872—continued.

CHAIRMEN OF COUNTIES—continued.

6. *Suggestions on the Score of Salary, &c.*—continued.

Improvement if the chairmen generally were paid higher salaries, and were prohibited from practising, *Right Hon. J. A. Lawson* 1832-1835—Grounds for objecting to the chairmen being prohibited from practising, *De Moleyns* 2242. 2246-2250—Decided opinion that the chairmen of counties should not take private practice in land cases in their own counties; advantage, on the other hand, of their continuing in general professional training, *Coffey* 2310-2315.

7. *Question of limiting the Chairmen's Jurisdiction in Land Claims:*

Strong objection to the chairmen of quarter sessions as the tribunal for trying land claims unlimited in amount; expediency of the jurisdiction of the court in these cases being limited to the same amount as in Civil Bill cases of contract between man and man, *Jones* 462, 463. 473-481. 524-528—Various important points upon which it is in the discretion of the chairmen to award unduly large sums as compensation, *ib.* 482, 483. 490. 492, 493—Unlimited jurisdiction of chairmen as to the amounts awarded, *Boyle* 741. 744—Small jurisdiction originally of the chairmen, as compared with their unlimited jurisdiction under the Land Act, *Murland* 1201—Proposition that the chairmen of counties should still deal with land claims in the first instance, but only up to a certain limit of amount, such as 400 l. or 500 l., *Mr. Justice Morris* 1403.

Considerable jurisdiction exercised by the chairmen, irrespectively of the Land Act, *Mr. Justice Fitzgerald* 1532—Inexpediency of limiting the amount up to which primary jurisdiction should be exercised by the chairmen in land cases, *De Moleyns* 2231. 2234, 2235.

8. *Desire of Chairmen to be Relieved from Administration of the Land Act:*

Great satisfaction to be given to the chairmen of quarter sessions, by relieving them from jurisdiction under the Act of 1870, *Lefroy* 34. 67. 80. 83—Readiness of witness to be relieved from jurisdiction under the Act, *R. Johnston* 310—Anxiety of witness, and of the chairmen of counties generally, to be relieved of jurisdiction under the Act of 1870, *J. Hamilton* 335. 341.

9. *Objection by the Committee to any Change of the Primary Tribunal:*

Conclusion of the Committee that it is not expedient to make any change in the tribunal of first instance, *Rep.* iii.

See also *Appeals. Claims. Cork (West Riding). Dual Claims. Ejectments. Litigation. Primary Tribunal. Tenant-right. Uniformity.*

CLAIMS (COMPENSATION):

Exceedingly extravagant claims by tenants in respect of compensation for disturbance of possession, *Lefroy* 21-28. 68-73—Fairness generally of the claim or set-off put in by the landlord for deterioration, *ib.* 74, 75—Safeguard suggested in reference to the effect of the Act in legalising tenant-right and other local customs, and in imposing unduly heavy compensation upon the landlord under certain circumstances, *ib.* 171-174.

Very large sums comprised in some claims, the tenants not knowing what claims are legal and what illegal, *J. Hamilton* 453—Expediency of the chairman checking the ridiculous and exorbitant claims frequently made, *Jones* 490, 491—Apprehension lest in bad times the Act may operate harshly upon the landlords as regards compensation, *Morris* 552—Belief that the judges of assize would have decreed larger sums than the chairmen have decreed, *ib.*

Encouragement under the present system to undue claims by tenants, *Boyle* 732. 773-778—Importance of the principles of the Act being promptly and definitively settled, in order to remove the indisposition of tenants to accept fair and moderate terms, *ib.* 748, 749—Importance of speedy settlement of the law, the existing uncertainty causing the tenants to entertain exaggerated expectations, *Newton* 793, 794.

Large reduction of exorbitant claims by chairmen, though witness considers there is a leaning on their part towards the tenants, *Townshend* 951-959. 973-984—Suggestion that the tenant be required in the first instance to state the usage under which he claims, and that, the usage being ascertained, it be decreed and enforced as regards the holding in question, *Murland* 1168. 1184-1187—Hard-hip upon the landlord through the tenant being able to lie by until a month after he is evicted before filing his claim; amendment suggested hereon, *ib.* 1192-1199—Recent instance of a very exaggerated claim against a landlord, which was, however, disallowed, but without costs, *ib.* 1214-1216.

Particulars of a case appealed to witness in Tipperary, in which a tenant holding at 10 l. a year claimed 1,030 l. on expiration of his lease, the amount decreed, and affirmed by witness, having been 15 l. 9 s., *Mr. Justice Morris* 1458-1473—Inference as to the extravagant ideas of tenants about their rights, *ib.* 1458—Check to grossly extravagant claims

CLAIMS (COMPENSATION)—continued.

claims if those above a certain limit went to a superior court, *Mr. Justice Morris* 1478-1481—Probability of claims becoming more and more extravagant, until eventually it will be claimed to hold the land at a fixed rent, *ib.* 1481-1483.

Considerable number of extravagant claims under the Act, *Mr. Justice Fitzgerald* 1517—Great reduction by the chairmen of the amount claimed for compensation, *Coffey* 2288—Probability of some extravagant expectations or claims having been fostered by the Act; some legal decisions are required to remove this evil, *Wilson* 2518-2529.

Return showing the total amount of claims in each county, the amount decreed, the result of appeals, &c., *App.* 292.

See also *Appeals.* *Chairmen of Counties.* *Costs.* *Disturbance of Tenancy.*
Dual Claims. *Ejectments.* *Freele v. Lord Leitrim.* *Holt v. Lord Har-*
burton. *Improvements.* *Tenant right.* *Valuator or Assessor.*

Coffey, James Charles, q.c. (Analysis of his Evidence.)—Is chairman of the county of Derry; has had more than ninety cases under the Land Act of 1870; 2254-2258—Questions of law raised in some of these cases, there having been five appeals, in only one of which witness's decision was reversed, 2259-2264—Particulars relative to a case in which witness decided that at the expiration of a lease the tenant in possession was obliged to surrender; appeal in this case, when Chief Justice Monahan reversed witness's decision and refused an appeal on the question of law, 2260-2263—Obstacle to any comparison between the decisions of chairmen on questions of fact, as the facts vary in in each case, 2265, 2266.

Information in connection with a case mentioned by Mr. Rogers as having been tried by witness, in which a tenant raised a claim in respect of 6½ acres of turbary; indulgence rather than hardship to the tenant by the arrangement arrived at, 2266—Entire concurrence of tenants as to the propriety of re-valuations from time to time, *ib.*—Practice of witness, when claims are made under the Ulster custom, and under the provisions as to compensation, to hear the evidence out on both sides, and then to call upon the claimant to elect upon which claim he will go, 2267, 2268.

Evidence explanatory of the practice in dealing with the representatives of a deceased tenant in regard to tenant right; absence of difficulty in finding the legal occupant of the land, 2269-2284—Testimony to the liberal action of the London companies in the management of their estates in Ulster, 2270.

Equal right of the landlord since the Act of 1870, as previously, to select his own tenant, 2273—Means of the landlord, by a notice of ejectment, to prevent sub-division on the death of a tenant, 2274-2279—Valuable facilities and protection under the Act for doing justice to the families of deceased tenants as regards the tenant right assessment, 2280-2284—Illustration of the enormous sums given for tenant-right on small farms, 2285-2287.

Opinion that the Act works admirably as regards the primary jurisdiction of the chairman of sessions, 2288-2292. 2299—Great reduction by the chairman of the amounts claimed for compensation, 2288—Very few appeals, *ib.*—Perfect uniformity of decision to be secured in time, *ib.*—Exception taken to the Court for Land Cases Reserved with its sixteen members as too numerous and as very cumbrous, 2289.

Grounds for recommending that appeals on questions of law should go direct to the ultimate court, 2290. 2293, 2294—Reasons for retaining the appeal to the judge of assize upon questions of fact, 2290, 2291. 2293—Objection to primary jurisdiction in the judge of assize above a certain amount, 2291, 2292—Advantage of questions of law being heard by two judges of assize rather than by one judge, 2295, 2296—Objection to two superior judges going on circuit in order to hear land cases in the first instance; inferiority of such tribunal to that of the local chairman, 2297-2300.

Expediency of appeal on questions of law to the court of ultimate appeal as a matter of right irrespective of amount, 2301-2307—Opinion that a discretion may well be left in the judge of assize as to allowing further appeal in matters of fact, 2302—Very few appeals on questions of law when there shall have been decisions by the ultimate court, 2303-2305. 2307—Approval of discretion in the chairman to require security for cost, when cases are appealed, 2308.

Inaccuracy of certain newspaper statements as to the principles by which chairmen are guided in awarding or refusing compensation for disturbance, 2308, 2309—Decided opinion that the chairmen of counties should not take private practice in land cases in their own counties; advantage on the other hand of their continuing in general professional training, 2310-2315.

Compensation to Tenants. See *Claims.* *Disturbance of Tenancy.* *Improvements.*
Tenant-right.

Report, 1872—continued.

Conolly Estates (Donegal). Sale of the Conolly estates in 1868, at about thirty-three years' purchase; the purchaser would not give the same price since the Act, *Major Hamilton* 1323-1326—The estate was worth about 15,000 *l.* a year, *ib.* 1324.

Consolidation of Farms. Tendency of the Land Act to prevent the consolidation of farms, *J. Johnston* 2478-2480.

Cork (West Riding). Injurious effect of the frequent change of chairmen in the West Riding of Cork, *Jones* 462; *Mr. Justice Barry* 1603, 1604—Statement relative to the utter inefficiency of a former chairman of the West Riding of Cork; prejudicial effect of the frequent change of office, there being more work and less pay than in the East Riding, *Jones* 513-517.

Costs. Advantage if chairmen were to give costs as a check upon exorbitant claims by tenants, *Jones* 488-491—Opinion that the question of costs may well be left to the judges, *Morris* 560—Belief that the judges are altering the rules made with regard to costs, *ib.*

Payment by the landlord of all his own costs, even though the tenant has made an extravagant claim; little, if any, protection by charging the costs against the tenants in such cases, *Mr. Justice Morris* 1460-1464. 1469-1473. 1480—Statement that witness would give costs against the tenant in the event of his claim being unreasonable, and of his refusing to accept a reasonable offer by the landlord, *Right Hon. H. J. Monahan* 1702, 1703—Limited costs hitherto in the case of appeals to the judge of assize, so that suitors are not deterred thereby, *ib.* 1773, 1774.

See also *Appeals*, 7.

Counsel. Very small fees of counsel before the judge of assize, *Morris* 560.

Court for Land Cases Reserved. Instances of considerable delay before judgment has been given by the ultimate court, *J. Hamilton* 339, 340—Proposal that, with a right of appeal to the ultimate court, the judge should state a case, evidence being required in very rare instances, *ib.* 362-371—Suggestion for meeting the expense of appeal to the ultimate court upon matters of fact, *Morris* 563-567.

Facility and economy as regards appeals if the evidence were confined to that taken down in the first instance and on record, *Adair* 1150-1154—Suggestion that the judge should take a note of the evidence and of any question of law, and should make a report of the same for the Court of Land Cases Reserved in the event of appeal, *Murland* 1201—Objection to any evidence being taken before the ultimate court, *Right Hon. J. A. Lawson* 1786.

Modification desirable in the Court for Land Cases Reserved as the court of ultimate appeal, *Jones* 468-471—Disapproval of the Court as being far too numerous a tribunal, there being sixteen judges, *Mr. Justice Morris* 1403. 1408; *Right Hon. J. A. Lawson* 1797-1799; *De Moleyns* 2230; *Coffey* 2289—Circumstance of only one or two appeals having gone before the land court, as many as thirteen judges having been present, *Mr. Justice Morris* 1408, 1409.

Conclusion of the Committee that the time has not arrived for considering the question of a reform or extinction of the present court of ultimate appeal, *Rep. iv*—Decision of only one case hitherto by the court, such decision not having been questioned, *ib.*

Crops. Exception taken to the provision in the eighth section of the Act whereby the outgoing tenant is entitled to all his away going crops; expediency of his being liable to rent and taxes in respect of such crops, *Lefroy* 161-168.

Cultivation of the Soil. Statement as to the Act of 1870 giving no assistance to the landlord in the event of the tenant treating the land improperly, *R. Johnston* 303-306.

D.

De Moleyns, Thomas, Q. C. (Analysis of his Evidence.)—Is chairman of quarter sessions for the county of Kilkenny; was previously chairman for the East Riding of Cork, 2206—Has had only two land cases in Kilkenny under the Act of 1870, the relations between landlord and tenant in that county being eminently satisfactory, 2207, 2208—Considers that the Act has worked exceedingly well in Kilkenny county, there being very little litigation under it, 2209.

Opinion that the tribunal of the chairman of the county is on the whole the best that could have been selected for exercising primary jurisdiction under the Act, 2210. 2224 Occurrence of conflicting decisions under other important Acts, for some time after their passing

De Moleyns, Thomas, Q.C. (Analysis of his Evidence)—continued.

passing, as well as under the Land Act, 2211—Great advantage if the chairmen had full discretion of at once stating a case, upon matters of fact as well as of law, for the ultimate court of appeal; speedy settlement of the principles of the Act thereby, 2211-2215. 2251-2253—Expediency also of the parties having power of appeal not only to the Judge of Assize but to the court above, 2216-2222—Necessity of some security for costs when appeals are carried to the ultimate court, 2223.

Impracticable character of many of the plans proposed in lieu of the tribunal of the chairman of the county, 2224. 2236. 2239—Objection to three chairmen of contiguous counties sitting as one tribunal, 2224—Large jurisdiction exercised satisfactorily by the chairmen in the matter of ejections; inexpediency of separating such jurisdiction from the jurisdiction in land cases, 2224. 2235—Non-existence of tenant-right in Kilkenny, 2225-2227—Absence of special difficulty in defining what constitutes reclamation of waste land, 2228, 2229.

Objection to the court for land cases reserved as the appellate court, on account of the large number of judges, 2230—Disapproval of the exercise of primary jurisdiction by the judge of assize; delay as compared with the present system, 2231-2233—Inexpediency of limiting the amount up to which primary jurisdiction should be exercised by the chairmen in land cases, 2231. 2234, 2235—Disapproval of the primary jurisdiction being vested in two or four superior judges who should go on circuit throughout the country; two judges could never do the work, 2236, 2237—Unfitness of the Landed Estates Court for hearing cases under the Act of 1870; 2238.

Very satisfactory working of the county courts as at present constituted, 2239-2241—Occasional meetings of the chairmen in Dublin to consider difficult questions which arise before them individually, 2242-2245—Grounds for objecting to the chairmen being prohibited from practising, 2242. 2246-2250—Approval of the tribunal of the judge of assize as regards primary appellate jurisdiction, 2252.

Deputy Chairmen. Rare instances of the chairmen of quarter sessions being unable to hear disputes, and of deputies being appointed for the purpose, *Lefroy* 109-112—Exceptional instances of chairmen acting by deputy, *J. Hamilton* 455, 456.

Derby Estate (Tipperary). Advance offered upon the price for which Lord Derby's estate in Tipperary was sold; exceptional character of this sale, *Adair* 1078-1081. 1095*—It is well known that the estate was sold considerably under its value, *ib.* 1095*.

Dinnen, John. (Analysis of his Evidence.)—Considerable experience of witness, as a solicitor, relative to the working of the Land Act of 1870 in the counties of Down and Antrim, 1837-1841—Opinion that the Act has not yet had fair play, but that it is working remarkably well, and is giving satisfaction, except in the case of some small landlords, 1842. 1846—Instances of differences of opinion between the chairmen, though not on vital points, 1843. 1878-1885—Difference of opinion upon the question of leasehold tenant-right, an appeal being pending on this subject, 1843-1845. 1882, 1883.

Information relative to the high value of tenant-right per acre in the north of Ireland, the value of the fee-simple not being affected thereby, 1847-1864—Instance of 100 *l.* an acre having been given for tenant-right on two acres of land, this being in excess of the value of the fee, 1847-1859—Satisfaction given by the decrees in Downshire under the Land Act in respect of tenant-right, there being only two or three appeals for the next assizes, 1865-1868.

Popularity, economy, and expedition of the court of chairmen of quarter sessions for the trial of land cases, 1869—Private settlement of some cases instead of bringing them into court; check to private arrangement, through there being some temporary irritation against the Act, 1870, 1871—Willingness of tenants to pay an increase of rent equal to the interest of the money expended by the landlord in purchasing the tenant-right, 1872-1874—Opinion as to landlords being safe in buying up the tenant-right, and as to the land being in future exempt from the custom, 1875-1877.

Statement relative to an address presented by the grand jury to Mr. Johnston, chairman of Downshire, in approval of the Act of 1870, and of the primary tribunal; belief that the address would equally have been presented, if the chairman had decided differently in the case of *M'Nown v. Beauclerk*, 1886-1894—Answer of Mr. Hamilton, chairman of Armagh, to an address presented to him by the grand jury; concurrence in Mr. Hamilton's views as to the very beneficial effect likely to be produced by the Act, 1895-1897—Resolutions recently passed at various public meetings in the north of Ireland, in full approval of the working of the Act, 1897-1899.

Equal prices obtainable for land since the Act as previously, 1900-1902—Less value of tenant-right on small than on large estates, through uncertainty as to small landlords raising the rents, 1903, 1904—Opinion that it is altogether premature to draw conclusions as to the practical working of the Act, and its defects, 1905, 1906. 1910—Absence of any claims by tenants in witness's district in regard to game or turbary, such claims being easily disposed of if they arise, 1907-1910.

Distress, Law of. Very unsatisfactory protection to landlords in Ireland by means of the law of distress, which is very different from the law in England, *Morris* 552-554.

Disturbance of Tenancy. Amendment suggested in the fourteenth section of the Act, as regards eviction not being a disturbance of tenancy when there is a "persistent exercise" by the tenant of any right from which he is debarred, *Lefroy* 174, 175—Limit of witness's jurisdiction to seven years' rent, in giving compensation for disturbance, *R. Johnston* 234, 235—Entire absence of any definition of the term "disturbance" in the Act, *J. Hamilton*, 394-396.

Right of certain classes of tenants to claim for disturbance, as well as for improvements, if evicted for non-payment of rent, *Morris* 549-551, 587—Way in which the landlord may have to pay nearly the fee simple value of a holding for disturbance, *Murland* 1168—Complaint relative to a decision by the chairman of Down that disturbance was involved in notice by a landlord that his permission had not been given to the intended sale of tenant-right, *ib.* 1217-1228—Objection to the practice of giving the maximum for disturbance, except in cases of capricious eviction, *ib.* 1229, 1230—Statement as to its not being considered a disturbance when there is an ejection for non-payment of rent, unless the rent has not been got for three years, *ib.* 1235-1238, 1266-1275.

Explanation as to the question of compensation for disturbance not arising under the Ulster custom in the same way as in the rest of Ireland, *Henry* 2013, 2014—Inaccuracy of certain newspaper statements as to the principles by which chairmen are guided in awarding or refusing compensation for disturbance, *Coffey* 2308, 2309—Inaccuracy of a certain statement that the chairman of Louth decided that there was no disturbance where there was no residence on the land, *ib.*

See also *Claims. Tenant Right.*

Domain Land. Consideration of the question of claim to tenant-right in the case of a portion of domain land let to a tenant, without any charge in the first instance for tenant-right, *R. Johnston* 225, 244-246, 252-255—Difference of opinion upon the question of the tenant's claim to compensation in respect of town lands, or domain lands; expediency of domain lands being clearly excluded from the Act, *Morris* 557-559—Disputed question in Lord Antrim's case upon the subject of domain land; decision of witness in the matter, *Mr. Justice Fitzgerald* 1509-1516, 1518, 1519.

Donegal. Injurious operation of the Act in Donegal, the decisions of the primary tribunal acting as an incentive to litigation by tenants, *Viscount Lifford* 1390, 1391—Very bad effect of the Act in Donegal as regards the relations between landlord and tenant, *J. Hamilton* 401-404—Doubt as to any difference of principle between the chairman of Donegal and the chairman of Londonderry in awarding sums for tenant-right, *Lane* 1637-1641—Excellent relations between landlord and tenant in Donegal before the passing of the Act, the landlords spending large sums in improvements, whereas since the Act there is no inducement to improve, *J. Johnston* 2379 *et seq.*

See also *Game. Turbary.*

Donnell, Robert. (Analysis of his Evidence.)—Barrister-at-Law: is Professor of Political Economy in the University of Dublin, 1660—Has had a very large experience of the working of the Land Act, having been engaged professionally in more than 100 cases in Ulster, 1660, 1661.

Great difficulties of the questions of tenant-right which come before the chairmen of counties, by reason chiefly of the unsatisfactory evidence frequently adduced, 1662—Very large amount decreed to the claimant in the case of Lord Leitrim; absence of any contradictory evidence on Lord Leitrim's part as to value, 1663—Absence of any serious conflict of decisions among the chairmen, 1664, 1674—Explanation as regards the dual claim, to the effect that the conflict of decision is more apparent than real, 1664-1670.

Circumstance of witness being rarely employed professionally for the landlords, 1671, 1672—Instance at the last Ballymena sessions of a large sum having been decreed for tenant-right, there having been no rebutting evidence, 1671—Fair and equitable working of the Act by means of the chairmen's courts, 1673—Satisfaction given generally to landlords and tenants in Ulster, 1673, 1674—Dissatisfaction for some time among the tenants in Antrim; this has now disappeared, 1674.

Opinion as regards turbary and shooting rights in Ulster, that these will be held by the courts under the eighteenth section still to vest in the landlord; conclusion that the fourteenth section does not apply to Ulster, 1674-1678—General concurrence of evidence to the effect that the Ulster custom obtains at the end of the lease, 1679.

Decided objection to the union of three chairmen for hearing land cases, 1680—Disapproval of a new tribunal as tending to lessen the confidence of the people in the administration of justice under the Act, 1681—Considerable expense involved in the proposal for employing judges of the Landed Estates Court to go on circuit in land cases, *ib.*

[Second Examination.]—Unanimity of decisions to the effect that as regards town parks in Ulster, the fifteenth section of the Act does not control the first section,

Report, 1872—continued.

Donnell, Robert. (Analysis of his Evidence)—continued.

2332—Explanation that the claim in the case of *Keown v. Lord de Ros* was dismissed on the ground that the town park of Strangford had always been strictly excepted from the operation of the custom of the estate, 2333, 2334.

Immense interest excited in the north upon the question of leasehold tenant-right; enormous value represented by such right, 2334—Reference to the case of *M'Nown v. Beauclerk* in which the chairman of Down awarded 1,400 *l.* for leasehold tenant-right; total of more than 900 *l.* as the valuation for improvement in this case, the lease being a very old one, 2334-2337. 2341—Information in connection with the old leases in Ulster for lives; their political character, 2335-2340—Want of proof of the existence of tenant-right upon which the chairman of Down decided against the claim for leasehold tenant-right in the case of *Johnstone v. Torrens*, 2340, 2341—Conclusion that it is beyond all doubt that tenant-right has always existed as a fact upon expiry of a lease, 2342-2345.

Great impetus given by the Act of 1870 to tenants' improvements in the counties of Tyrone and Londonderry, 2346-2350—Very extensive erection of farm buildings by tenants in Tyrone, 2346-2348—Numerous new buildings in the district between Strabane and Newton Stewart, 2346—Objection of tenants formerly to new or improved buildings through fear of the rent being raised, 2346, 2349.

Valuable operation of the Act in promoting good will and peaceful relations between landlord and tenant; illustration of this in the Coolafinney cases in Londonderry, 2350-2354—Cheerful assent on the part of tenants in the north to reasonable increase of their rents, 2351, 2352—Increased confidence of the people in English statesmanship, since the Act of 1870, there being generally an improved political feeling, 2354-2356—Effect of the Act in preventing small and speculative landlords from unduly increasing their rents beyond the customary rates, 2358, 2359—Enhanced value and rental of tenant-right lands generally by reason of the tenants' improvements, 2359, 2360, 2372.

Further statement as to the fourteenth section of the Act not applying to the Ulster custom, 2361-2365—Instances of landlords in Ulster never having reserved or exercised rights of game or turbary, 2361, 2365—Conclusion that the Act has increased the selling value of the land, though it is difficult yet to establish this fact, 2366-2370—Increase of tenant-right value in some districts, the probability however being that on the whole the value will be reduced through the supply being larger, 2371—Belief that on the whole the interests of the landlords will be more benefited than those of the tenants, 2372.

Statement by an experienced valuator in Ulster as to the value respectively of the tenant-right interest and of the landlord's interest, 2372—Di-satisfaction with the Act on the part of those tenants in the north who cannot claim the tenant-right custom, 2373-2375—Expected uniformity of tenant-right by reason of reference being always had in future to the custom of the district and not of the estate, when rents are being raised, 2376.

[Third Examination.]—Circuitous route between Newtown Stewart and Strabane upon which witness has recently observed important improvements by tenants, 2540.

Downshire. Trial of more than forty cases before witness under the Act of 1870, about three-fourths of which were under the Ulster tenant-right, *R. Johnston* 198-200—Peculiar difficulty of administering the Act in the county on account of the fabulous prices given for tenant-right, *ib.* 228.

Occurrence of claims in the county of Down, under the Act of 1870, chiefly in respect of the Ulster custom, *Murland* 1168—Particulars of a case in Downshire in which it was decreed that the tenant was to receive 108 *l.* as compensation on quitting nine acres of land, on which tenant-right was not proved to exist; grounds for objecting to this decision, *ib.* 1168-1183. 1254-1259—Hardship upon the landlord in the foregoing case, whereas previously to the Act of 1870 possession of the land might have been obtained for nothing by means of a notice to quit, *ib.* 1172-1183—Growing system of yearly tenancies at will in Downshire, *ib.* 1285, 1286.

Satisfaction given by the decrees in Downshire under the Land Act in respect of tenant-right, there being only two or three appeals for the next assizes, *Dinnen* 1865-1868.

Statement relative to an address presented by the grand jury to Mr. Johnston, chairman of Downshire, in approval of the Act of 1870, and of the primary tribunal; belief that the address would equally have been presented if the chairman had decided differently in the case of *M'Nown v. Beauclerk*, *Dinnen* 1886-1894.

See also *Relations between Landlord and Tenant.* *Tenant-right.*

Draft Reports. Draft Report proposed by the Earl of Belmore and Viscount Lifford, *Rep.* x. xi.

Draft Report proposed by Lord O'Hagan, *Rep.* xi, xii.

Report, 1872—continued.

Dual Claims. Belief as to the tenant sometimes preferring a claim under a custom as well as a claim for compensation for disturbance; different decisions of the judges as to allowing a double claim, *Lefroy* 29-33—Practice of witness, when the same tenant claims in respect of tenant-right and of disturbance of possession, to compel him to abandon one claim or the other, different practice of chairmen in such cases, *R. Johnston* 201, 202—Differences of opinion among the chairmen as to the right of tenants to claim under the Ulster custom, and to claim also under other sections in respect of disturbance and of improvements, *Morris* 545, 546—Opinion that a tenant may claim at one sessions under the Ulster custom, and, if defeated, may bring a new claim at a subsequent sessions for compensation for improvements, &c, *ib.* 546.

Belief that the chairmen generally are agreed as to the right to make double claims, and differ only as to the mode or time of submitting them, *Hancock* 684.

Complaint as to the mode of administration of the Act by the chairman of Down with regard to dual claims under the first section; opinion that the tenant should elect to claim under the custom, or under the third clause before going into court, and should stand or fall by either, *Murland* 1207-1212. 1278-1284—Belief that in Antrim and Armagh the chairmen require the tenant to elect in the first instance whether he will claim under the custom or for disturbance, *ib.* 1210-1212.

Explanation as regards the dual claim, to the effect that the conflict of decision is more apparent than real, *Donnell* 1664-1670—Practice of witness, when claims are made under the Ulster custom and under the provisions as to compensation, to hear the evidence out on both sides, and then to call upon claimant to elect upon which claim he will go, *Coffey* 2267, 2268.

Difficulty experienced on the question whether under the first section of the Act the outgoing tenant must elect whether he will claim under the Ulster custom, or under any of the other sections of the Act, before the hearing of the case, *Rep.* iv.

E.

Ecclesiastical Property. Letter from Mr. S. F. Adair to Lord Digby, dated 24th June 1872, showing the litigation likely to arise under the Land Act of 1870 in respect of ecclesiastical property, and suggesting an amendment of the law on this point, *Ev. p.* 128.

Ejectments. Opinion that the tenant's claim should always be heard with the ejectment, by the same tribunal; hearing of nearly all the ejectment cases by the chairman, *Lefroy* 34-36. 77-79. 195—Tendency to the prevention of extravagant claims, if claims and ejectments were heard at the same time, *ib.* 35. 77—Good seasons in Ireland for several years past, so that there have not been many ejectments, nor many cases hitherto under the Act of 1870, *J. Hamilton* 375.

Importance of the chairman of sessions trying the claims for compensation as well as the ejectments, *Mr. Justice Fitzgerald* 1532—Objection to any separation of land cases from ejectment cases, *Donnell* 1680—Large jurisdiction exercised satisfactorily by the chairmen in the matter of ejectment; inexpediency of separating such jurisdiction from the jurisdiction in land cases, *De Moleyns* 2224, 2225.

See also *Notices to Quit.*

Emigration. Tendency of the Land Act to encourage emigration, by reason of the sums awarded to tenants in compensation, *J. Hamilton* 383-392—Increased emigration from Ulster on account of the operation of tenant-right, *ib.* 390, 391—Belief that the Land Act has had no appreciable effect upon emigration, *Jones* 500-510.

Entails and Settlements. Very prejudicial effect of the enormous sums paid for tenant-right upon entails and settlements, *J. Hamilton* 431-434. 440.

Equities Clause. Almost unlimited power of the judge under the equities clause of the Act; very exceptional character of this clause, *Jones* 492.

Evidence (Support of Claims). Great discretion necessary in chairmen in dealing with the evidence in support of claims, *Morris* 561. 589—Unsatisfactory character of the evidence before the chairmen of counties upon which facts are arrived at, *Adair* 1110-1115. 1127-1130.

F.

Families of Deceased Tenants. Evidence explanatory of the practice in dealing with the representatives of a deceased tenant in regard to tenant-right; absence of difficulty in finding the legal occupant of the land, *Coffey* 2269-2284—Valuable facilities and protection under the Act for doing justice to the families of deceased tenants as regards the tenant-right assessment, *ib.* 2280-2284.

Farm

Farm Buildings. Regard had by in-coming tenants in the county of Down to the farm buildings, in making an offer for tenant-right, *Gardner* 1976, 1977—Very extensive erection of farm buildings by tenants in Tyrone, *Donnell* 2346-2348—Numerous new buildings in the district between Strabane and Newtown Stewart, *ib.* 2346—Objection of tenants formerly to new or improved buildings, through fear of the rent being raised, *ib.* 2346, 2349.

Dissent from Mr. Donnell's statement relative to the extensive improvements by tenants in Tyrone since the Act of 1870, *J. Johnston* 2462-2465.

Excellent buildings being erected by the farmers between Strabane and Newtown Stewart, *Wilson* 2530, 2531.

Circuitous route between Newtown Stewart and Strabane upon which witness has recently observed important improvements by tenant-, *Donnell* 2540.

Explanation that in testifying to the absence of improvements between Strabane and Newtown Stewart, witness is not aware of what may be going on along a certain circuitous route between those places, *J. Johnston* 2541, 2542.

Fermanagh. Great difficulty in administering the Act in Fermanagh, where every estate has its own rule, *R. Johnston* 313.

Fishing Rights. See *Game*.

Fitzgerald, Mr. Justice. (Analysis of his Evidence.)—Limited experience of witness as to the working of the Land Act, his general impression being that the Act has been administered fairly and satisfactorily by the primary tribunal, 1495, 1496, 1498—Insufficient opportunities for properly judging the operation of the Act in so short a period as eighteen months or so, 1496, 1561—Improved feeling on the part both of landlords and tenants towards the Act, the alarm and distrust which it at first excited having gradually subsided, *ib.*

Greater difficulty of administering the Act in respect of questions of fact than questions of law, 1497—Very few appeals to the Judges of Assize from the decisions of the primary tribunal, 1498, 1556—Total of about six appeals to witness; how decided, 1498—Importance of an appeal to witness, in which Lord Antrim was appellant; witness reserved a case for the Land Court, but Lord Antrim declined to proceed further, 1498, 1499, 1509-1516—Refusal of witness to reserve a case for the Land Court, where the amount was very small, 1498.

Opportunities of the Judges of Assize for ascertaining beforehand how many land appeals there will be before them, 1500-1502—Facility and economy of an appeal from the chairman of sessions, it being rather a re-hearing of the case, 1503—Expediency of two Judges of Assize concurring upon the question of reserving a case for the Land Court, 1503, 1505-1508—Approval of the present Court of Appeal as compared with the Court of Appeal in Chancery, with the addition of a common law judge, 1503—Unequal terms upon which the parties would litigate, if each had an absolute right of appeal to the Land Court, 1504.

Disputed question in Lord Antrim's case upon the subject of domain land; decision of witness in the matter, 1509-1516, 1518, 1519—Considerable number of extravagant claims under the Act, 1517—Equal power of the landlord, since the Act as previously, to prevent sale of the land by the sheriff at the suit of the creditors of a bankrupt tenant; liability of the landlord, in such case, to compensation for disturbance if he gets rid of a purchasing tenant by means of a notice to quit, 1520-1530, 1569.

Grounds for objecting to the proposal that the Landed Estate Court, strengthened by an additional judge, should hear the smaller cases on appeal, and the larger cases in the first instance, 1532, 1533—Objection to any new or special tribunal for land cases exclusively, *ib.*—Want of an additional staff of three or four special judges for the purpose, *ib.*

Importance of the chairman of sessions trying the claims for compensation as well as the ejectments, 1532—Considerable jurisdiction exercised by the chairman irrespectively of the Land Act, *ib.*

Objection to combining three chairmen for each tribunal, 1534—Approval of a consolidation of some of the smaller counties under one chairman, 1534, 1535—Balance of advantages in favour of the chairmen not practising at the bar; in such case their salaries should be increased, *ib.*

Conclusion in favour of retaining the present primary tribunal, though there are so many different judges, 1536, 1543—Impression that tenants' claims to turbary and shooting rights, as in Donegal, are unfounded, 1537-1541, 1544, 1545—Facility, by means of appeal, for a speedy settlement of such questions as those of turbary and game, 1542-1544—Check to improper appeals to the Land Court, if the appellant were required to find security for costs; objection, however to an absolute right of appeal even with such check, 1546-1553.

Report, 1872—continued.

Fitzgerald, Mr. Justice. (Analysis of his Evidence)—continued.

Exceedingly large sums paid for tenant-right in Ulster, this being irrespective of the Act of 1870; 1554—Opportunity, by appeal, for correcting conflicting decisions of chairmen, as to the amount of payment for tenant-right under different circumstances, 1555, 1556—Inference from the few appeals that the chairmen's decisions give satisfaction, 1556—Further reference to the refusal by witness of an appeal in one case, the question turning upon the fact whether the occupier was the successor in title of the preceding occupier, 1557—Question considered whether as regards turbary and game in Ulster, there should not at once be some declaratory enactment to remove any doubt under the Act, 1558-1568.

[Second Examination.]—Suggestion that the primary tribunal should have power to reserve a case direct for the court of ultimate appeal, 1627, 1629, 1630—Exception taken to the proposed requirement of security of costs in connection with appeals to the ultimate court, 1628.

Freele v. Lord Leitrim. Startling character of the case of Lord Leitrim, where the claim involved forty-one years' purchase of rent, *Morris* 562—Explanation relative to the case of *Freele v. Lord Leitrim*, and the special circumstances under which compensation to the amount of 250*l.* was awarded whilst the rent had been only 6*l.* a year, *Hancock* 672-679—Extreme value allowed for the tenant-right in Lord Leitrim's case, *Newton* -85.

Concurrence in the legality of the decision in the Leitrim case that the person who bid the highest price named the tenant-right, *Major Hamilton* 1343-1348—Witness never thought Lord Leitrim's appeal would succeed, *ib.* 1348.

Reference to Lord Leitrim's case, in which it was held that tenant-right existed on the estate, though for some years he had refused to recognise it, *Mr. Justice Morris* 1417-1419—Very large amount decreed to the claimant in the case of Lord Leitrim; absence of any contradictory evidence on Lord Leitrim's part as to value, *Donnell* 1663—Information in connection with a case in which Lord Leitrim was the appellant, and in which witness upheld the decision of the chairman that the land was subject to the Ulster tenant-right custom, *Right Hon. J. A. Lawson* 1791-1797, 1800-1816.

G.

GAME (SHOOTING AND FISHING RIGHTS):

Expediency of an implied agreement in every yearly tenancy that the landlord should have the exclusive right to the game and turbary, *Lefroy* 174, 175—Evidence as to the grievance under the Act in Donegal and other counties by reason of the claim of tenants against any control or interference of the landlords in respect of shooting and fishing, *J. Hamilton* 404-429—Feeling of the tenants that their own rights being legalised, they can resist the landlord's rights in game, turbary, &c.; expediency of this grievance being corrected, *Newton* 784, 785, 812-827, 846-852—Instance of tenants on an estate assuming to themselves the exclusive rights of game though they said they would permit their landlord to shoot as being a good landlord, *ib.* 825—Universal admission of the landlords' rights as to game, &c., in former tenancies from year to year; means of landlords for enforcing these rights by notice to quit, whereas they cannot now resort to this remedy, *ib.* 846-852.

Evidence showing that since the Act the landlords' rights in Donegal as to game and turbary have been attacked, whilst they have not the power of protecting themselves by ejectment as they formerly had, *Major Hamilton* 1351-1385—Instance of tenants having notified to their landlord that they could not consent to his letting the shooting, but that he himself might shoot on the land occasionally, *ib.* 1383.

Comment upon the effect of the Act in reference to the landlord's right of shooting, turbary, &c. in the north; expediency of a section reserving such rights, *Mr. Justice Morris* 1428-1441—Impression that tenants' claims to shooting rights, as in Donegal, are unfounded, *Mr. Justice Fitzgerald* 1537-1541, 1544, 1545—Facility by means of appeal for a speedy settlement of such questions as those of turbary and game, *ib.* 1542-1544—Question considered whether as regards game in Ulster there should not at once be some declaratory enactment to remove any doubt under the Act, *ib.* 1558-1568.

Opinion as regards shooting rights in Ulster that these will be held by courts under the eighteenth section still to vest in the landlord; conclusion that the fourteenth section does not apply to Ulster, *Donnell* 1674-1678, 2361-2365—Absence of any claims by tenant in witness's district in regard to game or turbary, such claims being easily disposed of if they arise, *Dinnen* 1907-1910—Doubt as to the former rights of landlords in Down in respect of turbary and sporting being interfered with by the Act, *Gardner* 1983-1985.

Examination with reference to the question of game, and the claims of landlords and tenants respectively, as affected by the Act; denial that, save in one or two exceptional instances,

GAME (SHOOTING AND FISHING RIGHTS)—continued.

instances, the tenants have been induced by the Act to prefer exclusive claims, *Henry* 2029-2070—Instances of landlords in Ulster never having reserved or exercised rights of game, *Donnell* 2361. 2365.

Instances, in two cases, of landlords being notified that they must not let the shooting on the tenant's land, though it would be permitted to them to shoot in person, *J. Johnston* 2473. 2474.

See also *Style, Mr.*

Gardner, Edward. (Analysis of his Evidence.)—Experience of witness, as a solicitor at Downpatrick, relative to the working of the Civil Bill Court, 1911-1916—General confidence of the community in the Court, 1917—Very satisfactory working of the Court in cases under the Land Act, as regards both the landlord and tenant; witness, in fact, cannot conceive a better primary tribunal, 1918-1923—Improvement as regards appeals, if the chairman had power to reserve a case direct for the Court for Land Cases Reserved, 1924, 1925.

Very large sums given per acre for tenant-right in the northern division of the County of Down, 1926-1928—Grounds for the conclusion that the Act of 1870 will tend to reduce rather than to increase the prices given for tenant-right, 1929-1931—Greater security and confidence of tenants since the passing of the Act, 1932—Several instances of tenants raising money on the mortgage of the tenant-right; examination hereon as to the value of this security to the mortgagee, and as to the position of the landlord in the event of foreclosure, 1932-1965.

Opinion that the value of the fee-simple has been in no way prejudiced by the Act; instance of an estate having realised forty years' purchase, 1966-1970—Way in which the value of an estate is enhanced by having tenants upon it, 1971, 1972—Opinion that the chairmen have not given unduly large sums for tenant-right, 1973-1975—Regard had by incoming tenants in Down to the farm buildings in making an offer for tenant-right, 1976, 1977.

Equal power of landlords, as before the Act, to refuse bad tenants, 1978, 1979—Difficulty as to notice to quit on account of the liability to compensation for disturbance, 1980-1982—Doubt as to the former rights of landlords in Down in respect of turbary and sporting being interfered with by the Act, 1983-1985.

Glebe Land. Letter from Mr. S. F. Adair to Lord Digby, dated 24th June 1872, showing the litigation likely to arise under the Land Act of 1870, in respect of glebe land, and suggesting an amendment of the law on this point, *Ev. p.* 128.

Grand Jury Cess. Necessity of some definition in the Act on the subject of the grand jury cess, and the liability of the tenant, *Adair* 1023.

H.

Hamilton, Mr. (Armagh County).—Answer of Mr. Hamilton, Chairman of Armagh, to an address presented to him by the grand jury; concurrence in Mr. Hamilton's views as to the very beneficial effect likely to be produced by the Act of 1870, *Dinnen* 1895-1897.

Hamilton, James. (Analysis of his Evidence.)—Is Chairman of Sligo county, 329—Has tried a considerable number of cases under the Land Act, and submits a return showing the amount of claim in each case, the amount decreed, &c., 330-333—Absence of cases involving Ulster tenant-right, 334.

Anxiety of witness and of the chairmen of counties generally, to be relieved of jurisdiction under the Act of 1870; great difficulty in administering the Act, on account of its vagueness, 335. 341—Less satisfaction given by the chairmen, as a public tribunal, since they have had to administer the Act, 335. 352-355—Exceedingly unsatisfactory system of appeal to the Judges of Assize, 336—Disapproval of discretion in the judges to refuse an ultimate appeal, 336. 342—Advantage of a special tribunal, in lieu of the chairmen of counties, for dealing with land cases in the first instance, with an appeal direct to the Court for Land Cases Reserved, 337, 338.

Instances of considerable delay before judgment has been given by the ultimate court, 339, 340—Less conflicting decisions of chairmen than might be expected, considering the great difficulties of the Act, 341—Grounds for recommending that there should be an appeal on matters of fact, as well as matters of law, to the ultimate court; suggestions hereon, 342-349. 362-371—Proposition for the appointment of three or four of the most eminent practising barristers (who should no longer practice, and should be well paid) for the trial of cases in the first instance; they should sit separately, and should be compelled to allow appeals from their decisions, 342 *et seq.*

Necessity of conflicting opinions among so many as thirty-three judges, or chairmen of counties; much greater uniformity if there were but three or four judges, 352-358. 372-403.

Hamilton, James. (Analysis of his Evidence)—continued.

386—Inadequacy of a tribunal of three or four judges sitting together for dealing with all the land cases, 359, 360. 372-382 — Exceedingly satisfactory relations between landlords and tenants in Sligo; these have not been affected by the Act, 361. 382. 393 — Proposal that, with a right of appeal to the ultimate court, the judge should state a case, evidence being required in very rare instances, 362-371.

Good seasons in Ireland for several years past, so that there have not been many ejectments, nor many cases hitherto under the Act of 1870; 375—Doubt as to the actual time occupied in the disposal of cases by witnesses and other chairmen of counties; a return has been ordered on this subject, 376-378. 381—Fewer cases likely to arise on legal points when there have been more authoritative decisions under the Act, 379, 380—Tendency of the Act to encourage emigration, by reason of the sums received by tenants in compensation, 383-392—Increased emigration from Ulster on account of the operation of tenant-right, 390, 391.

Illustration of the vagueness of the Act, in the use of the word "disturbance," the term being utterly undefined; absence generally of technical expressions in the Act, 394-396 — Explanation of witness's reasons for the opinion that sections from eight to sixteen do not apply to the Ulster landlord, 397, 398. 401-404.—Claim of the Ulster tenant to tenant-right, irrespectively of disturbance by the landlord, 398—Belief as to part of the eighteenth clause applying to Ulster; expediency, as regards this clause, of a similar reservation of landlord's rights being implied in the tenancy from year to year, as in a lease, 399-403.

Very bad effect of the Act in Donegal as regards the relations between landlord and tenant, 401-404—Evidence as to the grievance under the Act in Donegal and other counties by reason of the claim of tenants against any control or interference of the landlords in respect of turbary or of shooting and fishing, 404-429—Important differences of opinion between the chairmen, as upon the question of leasehold tenant-right, 430. 451, 452—Very prejudicial effect upon entails and settlements of the enormous sums paid for tenant-right, 431-434.

Inordinate value of tenant-right, owing to its being almost the only mode of investment of tenants' money, 432—Tendency of the Land Act to check the "squaring" of farms by landlords, 436, 437—Belief as to there being no tenant-right in turbary in the Ulster counties generally, 438, 439—Opinion that estates in Ulster would not sell so well since the passing of the Act, 441-451.

Advantage of Ulster tenant-right in so far as it contributes to the peaceable character of the province, 441, 442—Very large sums comprised in some claims, the tenants not knowing what claims are legal and what illegal, 453—Exceptional instances of chairmen acting by deputy, 455, 456—Instances of resignation of chairmen, 457.

Hamilton, Major James. (Analysis of his Evidence.)—Is Receiver under the Court of Chancery for Mr. Conolly's estate in Donegal; manages also his own property, which adjoins, 1302-1305—Has not had any cases under the Land Act, and avoids the Act as much as possible, 1306—Considers that in many cases the Act practically puts the landlord out of possession of his estate, 1307, 1308.

Particulars of a case in which a widow holding under witness demands 100*l.* for half the farm, the rent of such half being only 1*l.* 17*s.* a year; necessity of witness accepting a tenant ready to pay this amount, under the custom in Donegal, 1308-1322. 1327, 1328 — Sale of the Conolly estate in 1868 at about thirty-three years' purchase: the purchaser would not give the same price since the Act, 1323-1326—Instance of 125*l.* having been given as tenant-right for six acres of mountain land held from witness at 21*s.*; liability of witness to the repayment of this amount if it should be decided that when raising the rent he has done so to an unreasonable extent, 1327-1342.

Necessity under the Ulster custom of proceeding by ejectment in order to raise the rent; liability thereby to compensation for disturbance, 1329-1342—Concurrence in the legality of the decision in the Leitrim case, that the person who bid the highest price named the tenant-right, 1343-1348—Reluctance of landlords to aid tenants in improving, since the Act of 1870, the relations between landlord and tenant being less friendly, 1349-1351.

Evidence showing that since the Act the landlords' rights in Donegal as to game and turbary have been attacked, whilst they have not the power of protecting themselves by ejectment, as they formerly had, 1351-1385—Protection of the landlord in Donegal as to turbary, if the 14th section of the Act applies to the Ulster custom, 1360-1371—Instance of tenants having notified to their landlord that they could not consent to his letting the shooting, but that he himself might shoot on the land occasionally, 1383.

Hancock, John. (Analysis of his Evidence.)—Is a land agent, and testifies to the very satisfactory working of the Act of 1870 in the counties of Down and Armagh and in part of Antrim, 629-632. 670, 671. 680-689—Very few differences in point of law among the chairmen of counties: examination hereon, showing that on some important questions different decisions have been given, 633-635. 639, 640. 656-671—Satisfactory administration

Hancock, John. (Analysis of his Evidence)—continued.

ministration of the Act by the chairman of Armagh, 633, 688, 689 — Belief that the chairmen generally are agreed as to the right to make double claims, and differ only as to the mode or time of submitting them, 634.

Expectation that in time the law will get into a more settled state, and there will be more uniformity of decisions, 635, 636 — Reference to the evidence before the Devon Commission, and the suggestion of the Commission that tenant-right should be limited to five years, 637, 638, 641-645 — Doubt as to the value of tenant-right having increased since the passing of the Act of 1870; 646 — Increasing value of land for several years past; improbability of the Act having had any marked effect upon the value, 647-649, 651.

Reference to a certain case of notice to quit, before the passing of the Act, on the ground that the tenant was disobeying the rules of the estate; claim put in by the tenant, but subsequently abandoned, 650 — Effect of the Act to legalise what was before only a custom and an uncertainty, 651-653 — Decided approval of the present system of appeal to the judge of assize, as being cheap and expeditious as well as efficient, 654, 655 — Impression that those chairmen are right who hold that tenant-right is claimable on expiry of the lease, 664, 665.

Explanation relative to the case of *Freele v. Lord Leitrim*, and the special circumstances under which compensation to the amount of 250*l.* was awarded whilst the rent had been only 6*l.* a year, 672-679 — Statement as to the letting of land in Ulster being generally done by valuation, and not by competition, 673-676 — Satisfaction given to the landlords in Armagh, as well as to the tenants, by the mode of administration of the Act, 682-685, 688, 689 — Opinion that it is, however, altogether premature to decide absolutely as to the satisfactory or unsatisfactory working of the Act, 686, 687.

Harburton, Lord. See *Holt v. Lord Harburton*.

Harrison, Mr. Statement of the mode in which witness estimated the value of the tenant-right in Mr. Harrison's case, *R. Johnston* 232.

Henry, Michael. (Analysis of his Evidence.) Solicitor at Derry; has had some practice under the Land Act, on behalf mainly of the tenants, 1986-1989 — Instances of differences of opinion of chairmen of counties, not only in matters of fact, under the Act, but in matters of law, 1989-1996, 2011, 2012 — Satisfaction given generally to the tenants in the counties of Londonderry and Donegal by the system of appeal to the going judge of assize, and by its being discretionary in the judge not to give a further appeal, 1997-2001, 2007-2010 — Discontent of some landlords in not having a right of appeal to the Court for Land Cases Reserved, 1999-2003.

Confidence of the people in the chairman's court, 2004-2006 — Satisfactory decisions of the chairmen, witness not being conversant with any decisions reversed on appeal, 2007-2010 — Important difference between chairmen upon the question whether tenant-right subsists after a lease, 2012 — Statement as to the question of compensation for disturbance not arising under the Ulster custom in the same way as in the rest of Ireland, 2013, 2014 — Rightful claim of the tenant in Ulster to compensation for tenant-right after a lease of sixty years at a low rent, 2015, 2016.

Conclusion as to the Act not having materially benefited the tenants with respect to the value of tenant-right; exceptional instances of landlords not having respected the custom before the Act, 2017-2023.

Evidence on the subject of rights of turbary in Donegal and other counties, as affected by the Act of 1870: grounds for the conclusion that the tenants have not preferred any inordinate claims in the matter by reason of the Act, 2024-2028, 2035-2037, 2071-2083. Examination also with reference to the question of game, and the claims of landlords and tenants respectively as affected by the Act; denial that save in one or two exceptional instances, the tenants have been induced by the Act to prefer exclusive claims, 2029-2070 — Dismissal of several recent claims by Lord Lifford to increase the bog rents on his farms from shillings to pounds, 2076-2078.

Hill, Lord George. Very extensive and beneficent improvements carried out on Lord George Hill's property previously to the Act, the injurious system of Rundale having been extinguished, and the land having been re-allotted to the tenants on a greatly improved plan, *J. Johnston* 2382-2384, 2397-2400, 2435-2439, 2447-2452 — Obstacle to the foregoing improvement under the Act unless the landlord were prepared to pay probably double the value of the fee in order to obtain possession, *ib.* 2383, 2388. *et seq.*

Holt v. Lord Harburton. Important precedent furnished on several points by the decision in the case of *Holt v. Lord Harburton*; affirmation of witness's decision by the judges of assize and by the Court for Land Cases Reserved, unanimously, *Lefroy* 8-15, 94-104 — Implicit adherence of the chairmen to the precedent in the case of *Holt v. Lord Harburton*, in the event of similar questions coming before them, *ib.* 14 — Very heavy expense

Holt v. Lord Harburton—continued.

expense to the parties in this appeal, *Lefroy* 15. 93.—The costs amounted, on one side, to 350 *L.*, and on the other to 400, *ib.*

Decision of witness, in the case of *Holt v. Lord Harburton*, that certain improvements made under a previous lease by a “predecessor in title” could not be taken into account; unanimous affirmation by the Land Court of this decision, *Lefroy* 18, 19. 94, 95. 99–103 — Explanation that registration has not taken place in the case of *Holt v. Lord Harburton*, but that this cannot affect the decision in any way, *ib.* 125–130.

Peculiar and difficult character of the case of *Holt v. Lord Harburton*; important principle established on the appeal in this case, *W. O'Connor Morris* 542, 543.—Reference to the case of *Holt v. Harburton* in which a claim to register improvements, amounting to 8,165 *L.*, under an old lease was disallowed, *Mr. Justice Morris* 1409.

I.

IMPROVEMENTS:

Decision of witness, which has been affirmed by the Land Court, that the cost or value of improvements was not to be gone into at once, and that there should be a registration only of the improvements, *Lefroy* 15–18. 95–103.—Comment upon the vague language in the fourth section of the Act of 1870, relative to the tenant obtaining compensation for his improvements, *ib.* 85.—Apprehension as to much litigation arising out of claims for improvements unless the Act be amended so as to give a safeguard against fraudulent claims; illustrations hereon, *ib.* 103, 104.—Great diminution of litigated claims if there were a proper registry of improvements, *ib.* 139, 149, 150.

Evidence in strong support of the view that the tenant should be compelled to give notice to the landlord of intended improvements, so that their cost might at once be ascertained and registered, *Lefroy* 131 *et seq.*—Very objectionable operation of the present system, whereby claims are sometimes preferred fifteen or twenty years after the improvements have been made, *ib.* 131. 135–137.—Valuable precedent afforded by the Act 23 & 24 Vict. c. 153, as regards the giving notice of improvements, *ib.* 131.—Explanation that though improvements should at once be registered, the claim for compensation should not arise until there was disturbance of possession, *ib.* 132–135.

Suggestion as regards past improvements, that the landlord should be empowered to require the tenant to furnish a schedule of them at once, and of their cost or value; consideration of objections to this proposal, *Lefroy* 133–140.—Opinion that the tenant should have an absolute right to make improvements, provided they were suitable to the holding and such as will add to its letting value, *ib.* 138, 144, 145.—Conclusion that in all cases where compensation or improvements is claimed, the question of exhaustion of such improvements by time should be taken into account, *ib.* 147, 148.

Great advantage if tenants were to register all improvements of which they desire to preserve evidence; difficulty as to compulsory registration, *Jones* 520–523.—Exceedingly large claims which may be made for compensation for improvements by tenants ejected for non-payment of rent, *Morris* 547, 548. 552.—Large purchases of property by witness in Ulster; great drawback through his being unable to help the tenants in improvements on account of the Act of 1870, *Newton* 810, 811.

Statement as to some landlords having ceased to improve their land, or to assist their tenants in improving, owing to the undefined claims which a tenant may have under the Act of 1870, *Adair* 1014. 1024 *et seq.*—Belief as to tenants in the north having largely improved their holdings since the passing of the Act, *ib.* 1029, 1030.—Obstacles to the preservation by landlords or their agents of satisfactory legal evidence of record of advances for improvements; suggestion that a period be fixed from which both parties should start, and should agree as to future improvements, *ib.* 1032–1061.

Assistance given by landlords in the county of Down towards improvements before the Act of 1870; great improbability of landlords' improvements in future, *Murland* 1289. 1293.—Means of record of allowances by landlords in aid of improvements; hitherto vouchers have rarely been kept, *ib.* 1289–1292.—Large number of tenants' improvements in the county of Down which have been made under old leases, *ib.* 1298–1301.

Reluctance of landlords to aid tenants in improving, since the Act of 1870, the relations between landlord and tenant being less friendly, *Major Hamilton* 1349–1351.—Very large expenditure by witness in improvements on his own property, before the Act of 1870, whereas in future he will look merely to the rental, and will leave improvements to the tenants, *Viscount Lifford* 1392–1395. 1398.—For many years witness expended in improvements double the amount of the rental, *ib.* 1392.

Case in the county of Derry of valuable reclamation of bog land by a tenant under one of the London Companies, the land having, however, been held by him wrongfully; important protection to this tenant by reason of compensation having been legalised by the Act, *Rogers* 2160. 2166–2173.—Prospect of settlement of this case, upon the recommendation of the chairman who tried it, *ib.* 2167.

IMPROVEMENTS—continued.

Information in connection with a case, mentioned by Mr. Rogers as having been tried by witness, in which a tenant has raised a claim in respect of six and a half acres of turbary; indulgence rather than hardship to the tenant by the arrangement arrived at, *Coffey* 2266.

Explanation that witness intended no reflection upon the chairman of Derry in connection with the case of the tenant where reclamation of bog land was involved, *Rogers* 2316.

Great impetus given by the Act of 1870 to tenants' improvements in the counties of Tyrone and Londonderry, *Donnell* 2346-2350.

Security of tenants under the Act, there being no such security of landlords, and the result being to stop landlords' improvements save where the land is in their own occupation, *J. Johnston* 2455-2461—Considerable improvements formerly by witness, whereas he would now be very cautious before making any outlay on his tenants' lands, *ib.* 2457—Beneficial operation of the Land Act in giving confidence to tenants to make improvements, *Wilson* 2490-2492. 2499, 2500.

See also *Appeals. Claims. Farm Buildings. Hill, Lord George. Holt v. Lord Harburton.*

Intestacies. Great difficulty created by the Act in the case of yearly tenants dying intestate and leaving several sons; amendment required on this point, *Lefroy* 153-160. 189-191—Further explanation of the amendment required in the seventh section as regards cases of intestacies, *ib.* 183, 184. 189-191.

Great difficulty upon the death of a tenant holding from year to year through the landlord not knowing whom to recognise as the successor or representative, unless there is a legal administration, *Adair* 997-1006—Suggestion on the foregoing point that the occupying tenant and ratepayer for a year might be acknowledged by law as the tenant, *ib.* 1005-1007.

See also *Administration (Small Tenancies).*

J.

Johnston, James. (Analysis of his Evidence.)—Is a magistrate of Donegal, and has had some experience of the working of the Land Act, 2377, 2378—Excellent relations between landlord and tenant in Donegal before the passing of the Act, the landlords spending large sums in improvements; whereas since the Act there is no inducement to improve, 2379 *et seq.*—Very extensive and beneficent improvements carried out on Lord George Hill's property previously to the Act, the injurious system of Rundale having been extinguished, and the land having been re-allotted to the tenants on a greatly improved plan, 2382-2384. 2397-2400. 2435-2439. 2447-2452—Obstacle to the foregoing improvement under the Act unless the landlord were prepared to pay probably double the value of the fee, in order to obtain possession from the tenants, 2383. 2388 *et seq.*

Description of the mode of cultivation of land held in Rundale, showing the importance of re-arranging and squaring the farms in order to admit of improved cultivation; removal by the Land Act of all motive for such improvement, 2385-2387. 2414-2413—Great improvements carried out before the Act on Lord Palmerston's estate in Sligo; doubt as to tenant-right existing on his property, 2401-2404. 2432. 2433.

Admirable condition into which Lord Lifford has brought his estate in Donegal, drains, fences, roads, &c., having been made at an immense outlay; that is, before the deterrent influence of the Land Act, 2405-2413—Difficulty of calculating the amount of compensation for disturbance, if the improvements in Lord Palmerston's case were effected under the Act of 1870; 2440-2446.

Security of tenants under the Act, there being no such security of landlords, and the result being to stop landlords' improvements, save where the land is in possession or their own occupation, 2455-2461—Considerable improvements formerly by witness, whereas he would now be very cautious before making any outlay on his tenants' land, 2457—Dissent from Mr. Donnell's statement relative to the extensive improvements by tenants in Tyrone since the Act of 1870; 2462-2465.

Very unpleasant feeling created in witness's district by the claims recently put forward by tenants in respect of turbary, 2466—Circumstance of a tenant of witness having threatened him with litigation for exercising the right of turbary, though there is an express stipulation, under written agreement, that the turbary is reserved, 2467-2471. 2477—Instances in two cases of landlords being notified that they must not let the shooting on the tenants' land, though it would be permitted to them to shoot in person, 2473, 2474—Doubt as to a legal decision in favour of witness respecting turbary having the effect of settling the question in the district, 2475-2477.

Johnston, James. (Analysis of his Evidence)—continued.

Tendency of the Land Act to prevent the consolidation of farms, 2478-2480—
Absence of any disputed case of leasehold tenant-right in witness's district; reference to his evidence before the Devon Commission on this point, 2481-2484—Beneficial effect of the recognition by the landlord of the sub-tenant of the holding rather than the middleman, 2485-2486.

[Second Examination.]—Explanation that in testifying to the absence of improvements between Strabane and Newtown Stewart, witness is not aware of what may be going on along a certain circuitous route between those places, 2541, 2542.

Johnston, Robert. (Analysis of his Evidence.)—Is chairman of the county of Down, 197—
—Trial of more than forty cases before witness under the Act of 1870, about three-fourths of which were under the Ulster tenant-right, 198-200—Practice of witness, when the same tenant claims in respect of tenant-right and of disturbance of possession, to compel him to abandon one claim or the other; different practice of chairmen in such cases, 201, 202—Defence of witness's decision in a certain case, that tenant-right existed on termination of the lease; previous decision of Justice Monahan to this effect, 203-216. 247, 248.

Necessity of proof of the existence of the custom on the estate, or in the district, in order to justify the decision that there was a claim to leasehold tenant-right, 209-211—
—Explanation of the practice of witness in inquiring into the usage on the estate, or in the district, before affirming a claim in regard to tenant-right attaching to a particular holding, 211 *et seq.*—Advantage if there had been a general rule in witness's county limiting tenant-right to 10 *l.* an acre, and confining it to purchase by a tenant on the estate, 219—Consideration of the question of claim to tenant-right in the case of a portion of domain land let to a tenant without any charge in the first instance for tenant-right, 225. 244-246. 252-255.

Inquiry by witness as to the current value of tenant-right on the estate or in the neighbourhood before giving any particular amount, 226-233. 277—Great difficulty in administering the Act on account of the fabulous amounts frequently given for tenant-right, as on Lord Downshire's estate; objection of witness to award as much as 30 *l.* or 40 *l.* an acre in disputed cases, but rather to recommend an appeal, 228. 236-243. 256-262. 272—Further explanation in connection with witness's decision in the case of Beauclerk, where he awarded 20 *l.* an acre for the tenant-right; misrepresentation to which witness has been subjected in this case, so that he submits his judgment in full to the Committee, 228-231. 247, 248. 265-268.

Statement of the mode in which witness estimated the value of the tenant-right in Mr. Harrison's case, 232—Limit of witness's jurisdiction to seven years' rent in giving compensation for disturbance, 234, 235.—Occurrence of disputes in the county of Down chiefly between the smaller landlords and the tenants, 237—Obligation upon the landlord to pay for tenant-right in the event only of his resuming the land himself, 238.

Further statement as to the mischievous operation of the large sums given for tenant-right in Ulster, and as to the bad effect of the Act of 1870 in legalising the custom, 255. 272—Refusal of witness to consider the tenant-right on any holding as assets unless money has been offered for it and the landlord assents to the sale, 263, 264—Foundation of the tenant-right claim partly upon the tenant's improvements and partly upon the goodwill, 269, 270—Right of the landlord to raise the rent or to object to an incoming tenant, 271.

Expediency of a limit upon the amount given for tenant-right, though this would be prejudicial to tenants who have paid large amounts, 272-275—Especial demand for small farms in the north, 276—Control exercised through the chairmen of counties, under the Act of 1870, upon unreasonable increase of rent by landlords under the Ulster custom; dissent from a certain decision of Justices O'Brien and Lawson on this subject, 278-302—Claim of the tenant in Ulster to continue in possession of his farm so long as he is willing to pay a reasonable rent, 289.

Statement as to the Act of 1870 giving no assistance to the landlord in the event of the tenant treating the land improperly, 303-306—Expected difference of opinion, and of decision, on many sections of the Act, no matter what judges are entrusted with its administration, 309—Efficient tribunal of primary jurisdiction by appointing two judges of assize to go on circuit for the hearing of land cases in the first instance, 310, 311—Readiness of witness to be relieved from jurisdiction under the Act, 310—Impracticability of so amending the Act that it shall clearly define all the various customs in Ulster; necessity of the recognition of each custom, 313-315.

Instances of Civil Bill Judges objecting to promotion from one county to another, 315-317—Very few conflicting decisions of the chairmen of counties on important questions under the Act, 318-320—Doubt as to its having been laid down authoritatively before the passing of the Act, that there was not a claim to tenant-right on termination of a lease, 321-325—Reference to the recommendation by the Devon Commission

Johnston, Robert. (Analysis of his Evidence)—continued.

sion as to limiting the leasehold tenant-right to five years; decision of Chief Justice Monahan adverted to hereon, 324. 326-328.

Johnstone v. Torrens. Want of proof of the existence of tenant-right upon which the chairman of Down decided against the claim for leasehold tenant-right in the case of *Johnstone v. Torrens, Donnell* 2340, 2341.

Jones, William Bence. (Analysis of his Evidence.)—Barrister-at-law; has long resided in Ireland, and is well conversant with the provisions and working of the Land Act, 458-461—Strong objection to the chairmen of quarter sessions as the tribunal for trying land claims unlimited in amount; expediency of the jurisdiction of the court in these cases being limited to the same amount as in Civil Bill cases of contract between man and man, 462, 463. 473-481. 524-528—Want of an efficient court of appeal, 462—Absence of any security for uniformity of decision, independently of the revision of erroneous decisions, 462. 482-487. 527, 528—Injurious effect of the change of chairmen in the West Riding of Cork, 462.

Proposition that claims beyond a certain limit (such as 100 l.) should be removable at the option of either party to a superior court of primary jurisdiction, 463-467. 474-481. 524-526—Suggested appeal to the proposed court in the small cases still to be tried by the chairmen of counties, 464, 465—Recommended appointment of two judges in connection with the Landed Estates Court as the tribunal of primary jurisdiction in important cases; special qualifications desirable in these judges, 465-467.

Modification desirable in the Court for Land Cases Reserved as the court of ultimate appeal, 468. 471—Expediency of a right of appeal upon questions of fact, or mixed questions of law and fact, 468-470—Advantage of prohibiting the chairmen of counties from practising, and of paying them better, 471, 472—Instance of very unsatisfactory decision by the primary tribunal in the matter of unexhausted manures, 482. 484-487—Various important points upon which it is in the discretion of the chairmen to award unduly large sums as compensation, 482, 483. 490. 492, 493.

Advantage if chairmen were to give costs as a check upon exorbitant claims by tenants, 488-491—Expediency of the chairmen checking the ridiculous and exorbitant claims frequently made, 490, 491—Almost unlimited power of the judge under the equities clause of the Act, 492—Great importance of a strong court of primary jurisdiction so as to bring about uniformity, 493.

Effect of the Act in causing landlords and agents to be much stricter in the way of taking legal precautions, so as to protect themselves against future litigation and against novel and exorbitant claims, 493-505. 510-512—Opinion that the Act has not been long enough in operation to affect the relations between landlord and tenant, but that it is beginning to do so, and will ultimately cause much dissatisfaction, 494-466. 503-506—Belief that the Land Act has had no appreciable effect upon emigration, 507-510.

Statement relative to the utter inefficiency of a former chairman of the West Riding of Cork; prejudicial effect of the frequent change of office, there being more work and less pay than in the East Riding, 513-517—Want of an improved appeal in such matters as unexhausted manure, 518, 519—Great advantage if tenants were to register all improvements of which they desire to preserve evidence; difficulty as to compulsory registration, 520-523.

Obstacles to the trial of all the smaller cases, as well as of the more important ones before the proposed superior court of primary jurisdiction, 529-532.

Judges of Assize. Delay through the intermediate appeal from the chairman of the county to the judge of assize, *Lefroy* 42—Exceedingly unsatisfactory system of appeal to the judges of assize, *J. Hamilton* 336—The appeals at the assizes are necessarily hurried over very rapidly, *ib.*—Probability of some instances of great delay in the judgment of the judge of assize in appeal cases, *Townshend* 991-993.

Grounds for the conclusion that the judge of assize are an eminently unsatisfactory tribunal for hearing appeals from the primary tribunal, *Mr. Justice Morris* 1400-1403. 1448—Statement as to the judge not knowing what appeals there may be in land cases, nor how long they may take to try, *ib.* 1400-1402—Injurious effect of long delay in respect of appeals from the chairmen of counties, *ib.* 1445-1448.

Decided approval of the present system of appeals to the judge of assize, as being cheap and expeditious as well as efficient, *Hancock* 654, 655—Opportunities of the judges of assize for ascertaining beforehand how many land appeals there will be before them, *Mr. Justice Fitzgerald* 1500-1502—Facility and economy of appeal to the judges of assize, it being rather a re-hearing of the case, *ib.* 1503.

Facilities, by means of appeal, for obtaining a settlement of disputed questions of law under the Act, *Mr. Justice Barry* 1573-1577. 1605-1612—Statement to the effect that

Report, 1872—continued.

Judges of Assize—continued.

that witness never received a formal address from a grand jury in praise of his administration of the law, *Right Hon. H. J. Monahan* 1767-1769—Ample time allowed by witness, when engaged on assize business, for hearing appeals in land cases, *ib.* 1770—General feeling in Ireland that the judges of assize are a satisfactory tribunal, *ib.* 1773.

Disapproval of the exercise of primary jurisdiction by the judge of assize; delay as compared with the present system, *De Moleyns* 2231-2233—Approval of the tribunal of the judge of assize as regards primary appellate jurisdiction, *ib.* 2252.

Reasons for retaining the appeal to the judge of assize upon questions of fact, *Coffey* 2290, 2291. 2293—Advantage of questions of law being heard by two judges of assize rather than by one judge, *ib.* 2295, 2296.

See also *Appeals. Primary Tribunal.*

K.

Keown v. Lord de Ros. Explanation that the claim in the case of *Keown v. Lord de Ros* was diminished on the ground that the town park of Strangford had always been strictly excepted from the operation of the custom of the estate, *Donnell* 2333, 2334.

Kildare. Absence of any claims in Kildare county in respect of Ulster Tenant-right, or any similar custom, *Lefroy* 20-22. 50, 51—Satisfactory settlement generally of differences between landlord and tenant in Kildare; disputes at law being very rare, *ib.* 26. 75.

Kilkenny. Witness has had only two land cases in Kilkenny under the Act of 1870, the relations between landlord and tenant in that county being eminently satisfactory, *De Moleyns* 2207, 2208—The Act has worked exceedingly well in the county, there being no litigation under it, *ib.* 2209—Non-existence of tenant-right in Kilkenny, *ib.* 2225-2227.

L.

Land Agents. Numerous agents and others who have expressed opinions unfavourable to the Act, *Townshend* 890, 891.

Land Sessions. There should be a separate land sessions for cases under the Act of 1870, *Morris* 539.

Land, Value of. See *Value of Land.*

Landed Estates Court. Recommended appointment of two judges in connection with the Landed Estates Court as the tribunal of primary jurisdiction in important cases; special qualifications desirable in these judges, *Jones* 465-467—Suggestion that the Landed Estates Court might be made the tribunal of inquiry into claims under the Act; witness however has not fully considered this subject, *Adair* 1018. 1021. 1116-1118. 1137-1149—Advantage if in all sales in the Landed Estates Court the judges were to define the relative rights of the purchasers and tenants before sale, *ib.* 1020, 1023—Explanation that if the procedure were before the Landed Estates Court in Dublin, the evidence should be in writing instead of *vivâ voce*; questions of fact would not often arise, *ib.* 1137-1149.

Suggestion that another judge be added to the Landed Estates Court, and that two judges of the court should go circuit for the trial of claims above 400 *l.* or 500 *l.* in the first instance, and for appeals from the chairmen under such limit, *Mr. Justice Morris* 1403, 1404. 1476. 1478, 1479—Peculiar fitness of the Landed Estates Court for dealing with cases under the Act, *ib.* 1403. 1476—Facility with which two judges of the Landed Estates Court (if there were three altogether), could deal with all the land cases above a certain limit, and with the appeals below that limit, *ib.* 1474-1476—Salary of an additional judge of the Landed Estates Court adverted to with reference to the question of an increase of the chairmen's salaries, *ib.* 1484-1486.

Grounds for objecting to the proposal that the Landed Estates Court, strengthened by an additional judge, should have the smaller cases on appeal and the larger cases in the first instance, *Mr. Justice Fitzgerald* 1532, 1533—Exception taken to the judges of the Landed Estates Court, as a tribunal for administering the Act of 1870; disapproval of any special tribunal for the purpose, *Mr. Justice Barry* 1579, 1580—Considerable expense involved in the proposal for employing judges of the Landed Estates Court to go on circuit in land cases, *Donnell* 1681.

Doubt as to any better administration of the Act of 1870 by the judges of the Landed Estates Court, strengthened for the purpose, than by the chairmen of quarter sessions,
Right

Landed Estates Court—continued.

Right Hon. H. J. Monahan 1695-1698—Unfitness of the judges of the Landed Estates Court as a tribunal in lieu of the chairmen of counties, *Right Hon. J. A. Lawson* 1820; *De Moleyns* 2238.

Landlords. Effect of the Act in causing landlords and agents to be much stricter in the way of taking legal precautions, so as to protect themselves against future litigation, and against novel and exorbitant claims, *Jones* 493-495. 510-512—Great drawback through witness, as landlord, being unable to help the tenants in improvements on account of the Act of 1870, *Newton* 810, 811—Statement as to some landlords having ceased to improve their land, or to assist their tenants in improving, owing to the undefined claims which a tenant may have under the Act of 1870, *Adair* 1014. 1024 *et seq.*

Very prejudicial operation of the Act, as regards landlords in Ulster, by reason of the great uncertainty of tenants claims and rights, and the liability incurred by landlords in resisting such claims; amendment suggested hereon, *Murland* 1168. 1183-1198—Assistance given by landlords in the County of Down towards improvements before the Act of 1870; great improbability of landlords' improvements in future, *ib.* 1289. 1293—Effect of the Act in causing landlords to think chiefly of prompt payment of their rents, the relations between landlord and tenant being harder and stricter than formerly, *ib.* 1294, 1297.

Reluctance of landlords to aid tenants in improving since the Act of 1870, the relations between landlord and tenant being less friendly, *Major Hamilton* 1349-1351—Very large expenditure by witness in improvement on his own property before the Act of 1870, whereas in future he will look merely to the rental, and will leave improvements to the tenants, *Viscount Lifford* 1392-1395. 1398.

Prejudicial effect of the Act upon good landlords by reason of the legislation of tenant-right, whilst the penalty upon bad landlords is not so great; difficulty as to increase of rent adverted to hereon, *Mr. Justice Morris* 1425-1427—Improved feeling on the part both of landlord and tenant towards the Act, the alarm and distrust which it at first excited having gradually subsided, *Mr. Justice Fitzgerald* 1496. 1561.

Inconsiderate treatment of tenants chiefly by purchasing in the Landed Estates Court, the aristocracy and large landowners having been always on good terms with their tenants, *Rogers* 2122-2124—Valuable operation of the Act in promoting good-will and peaceful relations between landlord and tenant; illustration of this in the Coolafinney cases in Londonderry, *Donnell* 2350-2354.

Security of tenants under the Act, there being no such security of landlords, and the result being to stop landlords' improvements, save where the land is in their own occupation, *J. Johnston* 2455-2461—Considerable improvements formerly by witness, whereas he would now be very cautious before making any outlay on his tenants' lands, *ib.* 2457.

Belief that on the whole the interests of the landlords will be more benefited than those of the tenants by the Act of 1870, *Donnell* 2372.

See also the Headings generally throughout the Index.

Lane, Hugh. (Analysis of his Evidence.)—Is Master of the Queen's Bench in Ireland; was formerly in large practice in the county of Londonderry as a solicitor and land agent, and is also a landlord in the county, 1631-1633. 1640—Very satisfactory working of the Act, as administered by the chairman of Londonderry; careful ascertainment of the value of tenant-right in the county, 1634-1642. 1652-1657—Information relative to the case of *Austin v. Scott*, in which it was decided on appeal that tenant right existed on expiration of the lease; very sufficient evidence given to this effect before the judge of assize, 1635. 1642-1651. 1659.

Doubt as to any difference of principle between the chairman of Donegal and the chairman of Londonderry in awarding sums for tenant-right, 1637-1641—Expectation that by means of the present primary tribunal all difficulties in working the Act will in time be removed, 1652-1654—Opinion that in Ulster generally the decisions of the chairman have generally given satisfaction, 1655-1659—Decision in the case of the Waterford estates, in Derry, that the tenants had no easement in respect of turbary, 1656.

Lawson, The Right Honourable James Anthony (*Judge of the Court of Common Pleas, Ireland.*) (Analysis of his Evidence.)—Strong testimony to the efficiency of the chairmen of quarter sessions as the tribunal for the trial of cases under the Land Act of 1870; 1775, 1776—Total of only four appeals to witness from the decisions of chairmen, the original decrees having all been confirmed, 1775—Facilities of the chairmen for knowing the character of the witnesses and the customs of the localities, an itinerating tribunal not having the same advantages, 1776—Necessity at first of some diversity of decisions in the working of a new Act; these will soon disappear, *ib.*

Report, 1872—continued.

Lawson, The Right Honourable James Anthony (Judge of the Court of the Common Pleas, Ireland. (Analysis of his Evidence)—continued.

Advantage as regards appeals if the chairmen of quarter sessions had power to give an appeal upon any question of law direct to the Court for Land Cases Reserved, 1777-1781. 1817-1819—Approval of a right of appeal in the suitor, not only to the Judge of Assize, but to the Court for Land Cases Reserved, provided that in the latter event he paid the amount decreed against him into court, and lodged a sufficient sum as security for costs, 1780-1789—Grant of an appeal by witness in any case where he considered the point involved to be at all doubtful or arguable, 1783-1786—Objection to any evidence being taken before the ultimate Court, 1786.

Explanation relative to the affirmation by witness of a decision of the chairman of Donegal that the usage of tenant-right, upon the expiration of a lease, did not exist in the district, 1790—Information in connection with a case in which Lord Leitrim was the appellant, and in which witness upheld the decision of the chairman, that the land was subject to the Ulster tenant-right custom, 1791-1797. 1800-1816.

Strong disapproval of the Court for Land Cases Reserved, with its numerous judges, as the ultimate court of appeal, 1797-1799—Suggestion that the appeal should be to the Chancery Appeal Court, fortified by a common law judge sitting with the Lord Chancellor and the Lord Justice of Appeal, appointed in rotation, 1799—Unfitness of the judges of the Landed Estates Court as a tribunal in lieu of the chairmen of counties, 1820.

Advantage of the chairmen meeting together and settling their rules, 1821—Conclusion that there cannot be for any length of time any diversities of opinion or practice among the chairmen, *ib.*—Decided disapproval of combining three chairmen in each court for the trial of land cases, *ib.*—Litigation under the Act, chiefly in Ulster, where tenant-right prevails, 1826-1831—Improvement if some counties were consolidated under one chairman, and if the chairmen generally were paid higher salaries, and were prohibited from practising, 1832-1835.

LEASEHOLD TENANT-RIGHT:

Defence of witness's decision in a certain leasehold case that tenant-right existed on termination of the lease; previous decision of Justice Monahan to this effect, *R. Johnston* 203-216. 228-231. 247, 248. 265-268—Necessity of proof of the existence of the custom on the estate, or in the district, in order to justify the decision that there was a claim to leasehold tenant-right, *ib.* 209-211—Doubt as to its having been laid down authoritatively, before the passing of the Act, that there was not a claim to tenant right on termination of a lease, *ib.* 321-325—Reference to the recommendation by the Devon Commission as to limiting the leasehold tenant-right to five years; decision of Chief Justice Monahan adverted to hereon, *ib.* 324. 326-328.

Important differences of opinion between the chairmen, as upon the question of leasehold tenant-right, *J. Hamilton* 430. 451, 452—Impression that those chairmen are right who hold that tenant-right is claimable on expiry of the lease, *Hancock* 664, 665—Grounds for the conclusion that tenant-right does not exist at the close of a lease; views of Mr. Butt to the same effect, *Newton* 802-805—General concurrence of evidence to the effect that the Ulster custom obtains at the end of the lease, *Donnell* 1679.

Explanation relative to the affirmation by witness of a decision of the chairman of Donegal that the usage of tenant-right, upon the expiration of a lease, did not exist in the district, *Right Hon. J. A. Lawson* 1790—Difference of opinion upon the question of leasehold tenant-right, an appeal being pending on this subject, *Dinnen* 1843-1845. 1882-1883—Important difference between chairmen upon the question whether tenant-right subsists after a lease, *Henry* 2012—Rightful claim of the tenant in Ulster for compensation for tenant-right, after a lease of sixty years at a low rent, *ib.* 2015, 2016.

Conclusion that before the Act tenant-right has been recognised in connection with leases, *Rogers* 2092-2095—Argument in support of the view that tenant-right exists on expiration of the lease, *ib.* 2196.

Very uneasy feeling in the north upon the question whether leasehold tenant-right has been legalised by the Act; conclusion as to the existence of such rights, *McClay* 2318, 2319—Very large sum represented by the value of leasehold tenant-right, *ib.* 2318.

Immense interest excited in the north upon the question of leasehold tenant right; enormous value represented by such right, *Donnell* 2334—Conclusion that it is beyond all doubt that tenant-right has always existed as a fact upon expiry of a lease, *ib.* 2342-2345.

Absence of any disputed case of leasehold tenant-right in witness's district; reference to his evidence before the Devon Commissioners on this point, *J. Johnston* 2481-2484—Apprehension

LEASEHOLD TENANT-RIGHT—continued.

—Apprehension of tenants in the north lest leasehold tenant-right should be interfered with, *Wilson* 2536.

Difficulties experienced on the question whether, at the expiration of a lease, the Ulster custom is to prevail over the covenant and surrender in the lease, *Rep.* 17.

See also *Austin v. Scott.* *McNown v. Beauclerk.* *Wallace v. McClelland.*

Leases. Unduly large claims for compensation which may be made by tenants holding under leases granted before the passing of the Act, *Morris* 588—Instance of the difficulty of resuming possession of land on the expiry of a lease, *Newton* 785—Refusal of tenants, since the Act, to take leases in the north, *ib.* 785. 805.

Instances of old leases at low rents, on condition of buildings being erected and drainage, &c. carried out; objection to a set-off for dilapidations in these cases, *Rogers* 2181-2184—Information in connection with the old leases in Ulster for lives; their political character, *Donnell* 2335-2340.

See also *Improvements.* *Leasehold Tenant-Right.*

Lefroy, Thomas, Q.C. (Analysis of his Evidence.)—Is chairman of magistrates for the county of Kildare, and a judge of the Civil Bill Court, 1-3—Rules of procedure under the Land Act for the guidance of the judges of the Court; there has been no meeting of the judges for the purpose of laying down rules, 4-8—Important precedent furnished on several points by the decision in the case of *Holt v. Lord Harburton*; affirmation of witness's decision by the judges of assize and by the Court for Land Cases Reserved, unanimously, 8-15. 94-104.

Right of appeal in land cases from the chairman of quarter sessions to one of the going judges of assize, the latter having the power of calling in the second judge, 10-13—Implicit adherence of the chairmen to the precedent in the case of *Holt v. Lord Harburton*, in the event of similar questions coming before them, 14—Decision of witness, which has been affirmed by the Land Court, that the cost or value of improvements was not to be gone into at once, and that there should be registration only of the improvements, 15-18. 95-99—Very heavy expense to the parties in the appeal in the case of *Holt v. Lord Harburton*, 15. 93.

Further decision of witness, in the case of *Holt v. Lord Harburton*, that certain improvements made under a previous lease by a "predecessor in title" could not be taken into account; unanimous affirmation by the Land Court of this decision, 18, 19. 94. 95-99-103.

Absence of any claims in Kildare county in respect of Ulster tenant-right or any similar custom, 20-22. 50, 51—Exceedingly extravagant claims by tenants in respect of compensation for disturbance of possession, 21-28—Great difficulty in administering the Act owing to the vagueness of the language in the third section relative to compensation on cessation of tenancy, 24, 25.

Satisfactory settlement generally of differences between landlord and tenant in Kildare, disputes at law being very rare, 26-75—Belief as to the tenant sometimes preferring a claim under a custom as well as a claim for compensation for disturbance; different decisions of the judges as to allowing a double claim, 29-33.

Great satisfaction to be given to the chairmen of quarter sessions by relieving them from jurisdiction under the Act of 1870; 34. 67. 80. 83—Delay in securing uniformity through there being so many tribunals to decide; improvement on this score if there were two or three judges for deciding in the first instance, 34. 37. 76. 84—Opinion that the tenant's claim should always be heard with the ejectment, by the same tribunal; hearing of nearly all the ejectment cases by the chairmen, 34-36. 77-79. 195—Improvement if three chairmen of adjacent counties were to sit together for the trial of land cases, thus reducing the number of primary tribunals from thirty-three to eleven, 37, 38.

Advantage if on questions of law the appeal were direct from the primary tribunal to the Court for Land Cases Reserved, 38-48—Great dissatisfaction caused by the discretion in the judge of assize to refuse a further appeal, 46—Conclusion that as regards matters of fact no difficulty would arise as regards direct appeal, nearly all the difficulties under the Act being in respect of questions of law, 48-54. 89—Diversity of decision through each chairman construing the law according to his judgment, 54, 55.

Doubt as to the efficiency, as judges, of the chairmen of quarter sessions being at all impaired by the circumstance of their practising, 56-67—Further reference to the exaggerated claims by tenants for compensation and for disturbance of possession, 68-73—Fairness generally of the claim or set-off put in by the landlord for deterioration, 74, 75—Satisfaction of the tenantry with the present tribunal of primary jurisdiction, 80-83—Difference of opinion in the legal profession upon the question of a new court for land cases in lieu of that of the chairman of quarter sessions, 84.

Lefroy, Thomas, Q.C. (Analysis of his Evidence)—continued.

Comment upon the vague language in the fourth section of the Act of 1870 relative to the tenant obtaining compensation for his improvements, 85—Great expense of direct appeal to the ultimate court on matters of fact; such appeal might still lie to the going judge of assize, 87-93—Apprehension as to much litigation arising out of claims for improvements unless the Act be amended so as to give a safeguard against fraudulent claims; illustrations hereon, 103, 104—Rare instances of the chairman of quarter sessions being unable to hear disputes, and of a deputy being appointed for the purpose, 109-112.

Question in the case of *Austin v. Scott* as to the Ulster tenant-right being applied to a lease; the appeal on this point was not heard, owing to the death of Mr. Scott, 113. 117-120—Importance of the question as to how far the usage of surrounding estates is to be applied to an estate that has in itself a different usage; there is no decision of the final court on this point, 114-116—Further statement as to the expense of appeal from the first tribunal direct to the Land Court on matters of fact, 121-124—Explanation that registration has not taken place in the case of *Holt v. Lord Harburton*, but that this cannot affect the decision in any way, 125-130.

Evidence in strong support of the view that the tenant should be compelled to give notice to the landlord of intended improvements, so that their cost might at once be ascertained and registered, 131 *et seq.*—Very objectionable operation of the present system whereby claims are sometimes preferred fifteen or twenty years after the improvements have been made, 131. 135-137—Valuable precedent afforded by the Act 23 & 24 Vict. c. 153, as regards the giving notice of improvements, 131.

Explanation that though improvements should at once be registered the claim for compensation should not arise until there was disturbance of possession, 132-135—Suggestion as regards past improvements, that the landlord should be empowered to require the tenant to furnish a schedule of them at once, and of their cost or value; consideration of objections to this proposal, 133-140.

Opinion that the tenant should have an absolute right to make improvements, provided they were suitable to the holding, and such as will add to its letting value, 138. 144, 145—Great diminution of litigated claims if there were a proper registry of improvements, 139. 149, 150—Conclusion that in all cases where compensation for improvements is claimed, the question of exhaustion of such improvements by time should be taken into account, 147, 148.

Statement as to the effect of the seventh section of the Act of 1870 in depriving the Ulster landlord of the protection intended to be given him by the second section, and in subjecting him to an unlimited amount of compensation in a new shape, 151, 152—Apprehension as to the seventh section introducing into the rest of Ireland all the evils of Ulster tenant-right, *ib.*—Great difficulty created by the Act in the case of yearly tenants dying intestate and leaving several sons; amendment required on this point, 153-160. 189-191—Importance of a proposal for giving to county courts the power of granting administration in small tenancies, 153-158.

Exception taken to the provision in the eighth section of the Act, whereby the outgoing tenant is entitled to all his away-going crops; expediency of his being liable to rent and taxes in respect of such crops, 161-168—Opinion that the fourteenth and certain other sections of the Act are not limited in their operation, and apply to Ulster landlords and tenants, 169-171—Safeguard suggested in reference to the effect of the Act in legalising tenant-right and other local customs, and in imposing unduly heavy compensation upon the landlord under certain circumstances, 171-174.

Amendment suggested in the fourteenth section as regards eviction not being a disturbance of tenancy when there is a "persistent exercise" by the tenant of any right from which he is debarred, 174, 175—Expediency of an implied agreement in every yearly tenancy that the landlord should have the exclusive right to the game and turbary, *ib.*—Further statement as to uniformity not being so quickly secured by thirty-three different tribunals as by two or three judges who should go on circuit, 176. 194-196—Expediency of direct appeal to the Land Court further adverted to, 176. 195.

Vagueness of the term "implied agreement," as in the fourteenth section of the Act; different constructions to which open, so that it would be better to substitute the words "express agreement," or "express consent," 180-188—Further explanation of the amendment required in the seventh section, as regards cases of intestacies, 183, 184. 189-191—Objection to which the removal or promotion of chairmen from one county to another is open, 191*-193.

Legal Profession. Difference of opinion in the legal profession upon the question of a new court for land cases in lieu of that of the chairman of quarter sessions, *Lefroy* 84.

Leitrim, Lord. See *Freele v. Lord Leitrim*.

Lifford,

Report, 1872—continued.

Lifford, the Right Honourable Viscount. (Analysis of his Evidence.)—Has been an Irish landlord since 1838, without having had any litigation with his tenants previously to the Land Act of 1870; 1386, 1387—Since the Act, has been constrained to take legal proceedings in numerous cases, with reference especially to the question of turbary, 1388, 1389—Attributes this litigation chiefly to the uncertainty of the law as administered by thirty-three judges in the first instance; refers more especially to the decisions in Donegal, 1390, 1391.

Very large expenditure by witness in improvements on his property before the Act of 1870, whereas in future he will look merely to the rental, and will leave improvements to the tenants, 1392-1395. 1398—Circumstance of witness having served many notices to quit before the Act of 1870; he has evicted only one tenant, and has never distrained for rent, 1396, 1397.

Lifford, Viscount. Admirable condition into which Lord Lifford has brought his estate in Donegal, drains, fences, roads, &c. having been made at an immense outlay; that is, before the deterrent influence of the Land Act, *J. Johnston* 2405-2413.

Bad feeling between Lord Lifford and his tenants, witness denying however that this is attributable to the Land Act, *Wilson* 2501, 2502. 2511-2514. 2538—Belief as to Lord Lifford's right to the game and turbary, *ib.* 2501, 2502.

Litigation. Fewer cases likely to arise on legal points when there have been more authoritative decisions under the Act, *J. Hamilton* 379, 380—Few contested cases likely to arise if the rights of both parties were once really defined by a fixed tribunal, *Adair* 1019. 1148, 1149. 1157-1161—Great importance of cases being decided by the court of ultimate appeal, so that the Act may be made clear, and extravagant expectations on the part of tenants put an end to, *Murland* 1213.

Extensive litigation forced on witness by the Act of 1870; previously thereto he never distrained for rent and never evicted but one tenant, though he served many notices to quit, *Viscount Lifford* 1388, 1389. 1396, 1397—Importance of a fixed tribunal, with a view to a speedy settlement of the law, *Mr. Justice Morris* 1424. 1440, 1441.

Expectation that the principles of the law will soon be settled under the present tribunal, with the right of appeal therefrom, *Right Hon. H. J. Monahan* 1686—Anticipation that after a time, when precedents in law are established, all the cases coming before the primary tribunal will depend altogether upon matters of fact, *ib.* 1698.

Litigation under the Act chiefly in Ulster, where tenant right prevails, *Right Hon. J. A. Lawson* 1826-1831—Advantage of a case being taken to the ultimate court of appeal as a precedent for decisions regarding the Ulster custom, *Rogers* 2192, 2193—Very few appeals on questions of law when there shall have been decisions by the ultimate court, *Coffey* 2203. 2305. 2307.

Return showing the amount of claims in each county, the appeals, and the result, *App.* 292.

<i>See also Appeals.</i>	<i>Chairman of Counties.</i>	<i>Claims.</i>	<i>Costs.</i>	<i>Game.</i>
<i>Tenant Right.</i>	<i>Turbary.</i>	<i>Uniformity.</i>		

London Companies (Ulster). Occurrence of cases of oppression through the agents of the London companies not being competent to manage the properties, *Rogers* 2160.

Testimony to the liberal action of the London companies in the management of their estates in Ulster, *Coffey* 2270.

Londonderry County. Able decisions of the chairman of Londonderry, *Newton* 799—Very satisfactory working of the Act as administered by the chairman of Londonderry; careful ascertainment of the value of tenant-right in the county, *Lane* 1634-1642. 1652-1657—General satisfaction given by the decisions of Mr. Coffey, *Rogers* 2316.

M.

MacCartney, Captain. Increase of rents over Captain MacCartney's estate in North Antrim, with the cheerful assent of the tenants, *Donnell* 2351.

McElroy, Samuel C. (Analysis of his Evidence.)—Is Secretary to the Tenants' Right Defence Association, 2317—General opinion among the farmers in the northern part of Antrim that the Act of 1870 is working satisfactorily, 2318—Anxiety amongst the farmers in the north upon the question whether estate usages are legalised by the Act, *ib.*—Considerable anxiety also upon the question of tenant-right on town parks being legalised; good grounds for this apprehension, 2318, 2319—Very uneasy feeling also upon

McElroy, Samuel C. (Analysis of his Evidence)—continued.

upon the question whether leasehold tenant-right has been legalised by the Act; conclusions as to the existence of such right, 2318, 2319.

Apprehension of farmers in the matter of unreasonable increase of rent under the Act, 2319—Instance of attempted increase of rent, unreasonably, which the chairman of Antrim refused to recognise, *ib.*—Willingness of the farmers generally in the north to submit to a fair increase of rent on re-valuation, 2319-2323—Very satisfactory relations between landlord and tenant in Antrim, 2319—Exceptional instances of rents being kept low for political purposes, 2323-2327—Increasing value both of tenant-right and of the fee simple of land in Ireland, 2328—Fair claim of landlords to share in the increased value of land; views of Mr. Rogers adverted to hereon, 2329, 2330.

M'Nown v. Beauclerk. Explanation in connection with witness's decision in the case of Beauclerk, where he awarded 20 *l.* an acre for the tenant-right; misrepresentation to which he has been subjected in this case, so that he submits his judgment in full to the Committee, *R. Johnston* 203-216. 228-231. 247, 248. 265-268.

Statement relative to Mr. Beauclerk's case, in which tenant-right was held to apply at the termination of a lease; appeal pending in this case, *Murland* 1247-1249—Reference to the case of *M'Nown v. Beauclerk*, in which the chairman of Down awarded 1,400 *l.* for leasehold tenant-right; total of more than 900 *l.* as the valuation for improvements in this case, the lease being a very old one, *Donnell* 2334-2337.

Manures. Instance of very unsatisfactory decision by the primary tribunal in the matter of unexhausted manures, *Jones* 482. 484-487—Want of an improved appeal in such matters as unexhausted manure, *ib.* 518, 519—Difficulty under the Act in respect of unexhausted manures, *Morris* 555, 556.

Meredith, Mr. Great mistake in the mode of selling Mr. Meredith's property near Downpatrick before the Act, so that it sold very cheaply, *Murland* 1241-1244.

Middlemen. Impression that in the case of an evicted tenant, holding from a middleman, there is a provision against the latter receiving the compensation, *Morris* 620, 621—Beneficial effect of the recognition by the landlord of the sub-tenant of the holding rather than of the middleman, *J. Johnston* 2485, 2486—Middlemen did great mischief in exacting the very utmost from the occupiers or sub-tenants, *ib.* 2485.

Monahan, The Right Honourable Henry James (Lord Chief Justice of the Court of Common Pleas, Ireland). (Analysis of his Evidence.)—Very little experience of witness as to the working of the Act of 1870; 1682, 1683—Opinion that the chairmen of quarter sessions are perfectly competent to administer the Act in a fair and efficient manner, 1684-1686—Expectation that the principles of the law will soon be settled under the present tribunal, with the right of appeal therefrom, 1686—Strong objection to a right of appeal in the suitors from the judge of assize to the Court of Land Cases Reserved; importance of full discretion in the judge of assize as to the reservation of questions for the ultimate court, 1687-1691.

Particulars relative to the appeal to witness in the case of *Austin v. Scott*, in which two points were involved, one of which he decided absolutely, whilst he reserved the other for the Court for Land Cases Reserved, 1691-1694. 1722-1727—Very general application of the question reserved by witness in the foregoing case, so that he deemed it advisable to have it settled once for all by the court of ultimate appeal, 1691, 1692. 1727—Explanation as to the fact having been conclusively established before witness in this appeal that there was not a particle of difference as to the usage to give compensation for tenant-right, between cases of tenancies from year to year and cases of leases for lives or years; he refused therefore to reserve this point for the higher court, and believes that his decision has never been questioned, 1692-1694. 1707-1711. 1725. 1726.

Doubt as to any better administration of the Act of 1870 by the judges of the Landed Estates Court, strengthened for the purpose, than by the chairmen of quarter sessions, 1695-1698—Expectation that after a time all the cases coming before the primary tribunal will depend altogether upon matters of fact, 1698—Entire competency of the chairmen of quarter sessions to conduct inquiries into matters of fact, 1698, 1699. 1747, 1748—Probability of uniformity being sooner produced by a tribunal of two permanent judges for the trial of all the land cases than by the present scattered tribunal, 1699—Readiness of the chairmen of quarter sessions to conform to the decisions of the judge of appeal, so that uniformity will be soon secured, 1699. 1704-1707.

Decided objection to a court comprising the chairmen of three coterminous counties, who should decide all the cases in such counties; frequent disagreement apprehended, 1700, 1701—Statement that witness would give costs against the tenant in the event of his claim being unreasonable and of his refusing to accept a reasonable offer by the landlord,

Monahan, The Right Honourable Henry James (Lord Chief Justice of the Court of Common Pleas, Ireland). (Analysis of his Evidence)—continued.

landlord, 1702, 1703—Readiness of the judges generally to abide by the decisions of the ultimate court of appeal, and to reserve all those cases for the court in which they have any doubt as to the propriety of their own decisions; uniformity thus secured, 1708-1717. 1729-1735.

Conclusion as to the appeal from the primary tribunal being only on matters of law, and not at all on matters of fact, 1717-1721—Examination in further defence of discretionary power in the judge, in appeal cases, upon the question of reserving any point for the ultimate court, 1729-1739—Satisfactory working of the existing primary tribunal, judging from the comparatively few appeals from the decisions of the chairmen of quarter sessions, 1740-1746—Right of appeal from the primary tribunal whilst the costs are trifling, 1742.

Great reluctance of witness to reverse the decision of a chairman of quarter sessions upon a matter of fact; special facilities of the chairmen for deciding such questions satisfactorily, 1747-1750—Impracticability of any satisfactory appeal to the Court for Land Cases Reserved upon matters of fact; necessity of such appeals being heard in the county where the case is first decided, 1751, 1752. 1756-1761.

Further explanation relative to the case of *Austin v. Scott*, and the question which arose as to the usage of tenant-right being applicable to the estate, 1762-1766—Statement to the effect that witness never received a formal address from a grand jury in praise of his administration of the law, 1767-1769—Ample time allowed by witness, when engaged on assize business, for hearing appeals in land cases, 1770.

Doubt as to the tribunal of chairmen of quarter sessions being improved by having fewer chairmen, paid better, and not allowed to practise, 1771, 1772—Limited costs hitherto in the case of appeals to the judge of assize, so that suitors are not deterred thereby, 1773, 1774—General feeling in Ireland that the judges of assize are a satisfactory tribunal, 1773.

*Morris, Mr Justice. (Analysis of his Evidence.)—Opinion that it is premature to judge whether the primary tribunal for dealing with cases under the Act of 1870 is satisfactory or otherwise, 1400—Dissatisfaction given in some counties of Ulster by the decision of the chairmen of the counties, as taking too liberal a view of the rights of the tenants, *ib.*—Grounds for the conclusion that the judges of assize are an eminently unsatisfactory tribunal for hearing appeals from the primary tribunal, 1400-1403, 1448—Disapproval also of the Court for Land Cases Reserved as being far too numerous a tribunal, there being sixteen judges, 1403. 1408.*

Proposition that the chairmen of counties should still deal with land claims in the first instance, up to a certain limit of amount, such as 400 *l.* or 500 *l.*, 1403—Proposed appeal from the chairmen to a tribunal to be substituted for that of the judges of assize, *ib.*—Suggestion that another judge be added to the Landed Estates Court, and that two judges of the Court should go circuit for the trial of claims above 400 *l.* or 500 *l.* in the first instance, and for appeals from the chairmen under such limit, 1403, 1404. 1476. 1478, 1479—Peculiar fitness of the Landed Estates Court for dealing with cases under the Act, 1403. 1476—Proposal that the final appeal be to the Chancery Appeal Court, strengthened for the purpose by the addition of a common law judge, 1403. 1410.

Contemplated right of appeal from the judges of the Landed Estates Court, save in those cases of limited amount appealed to them from the chairmen, 1404-1406—Opinion that cases should be reserved for the ultimate appeal court by two judges, 1407, 1409. 1442-1444—Circumstance of only two appeals having gone before the Land Court, as many as thirteen judges having been present, 1408, 1409—Reference to the case of *Holt v. Lord Harburton* in which a claim to register improvements amounting to 8,165 *l.*, under an old lease, was disallowed, 1409—Importance of the case of *Austin v. Scott*, in which Chief Justice Monahan decided that tenant right applied on termination of a lease; dissent from this conclusion, 1409-1416.

Difference of opinion upon the question whether the existence of a custom on any holding is to be established by reference to the particular estate or to the surrounding district, 1417—Reference to Lord Leirrim's case, in which it was held that tenant right existed on the estate, though for some years he had refused to recognise it, 1417-1419—Expediency of any case upon which two judges of assize differ being reserved for the ultimate court of appeal, 1420—Reason for suggesting that the common law judge on the Appellate Court should be chosen by rotation, 1421, 1422.

Very difficult and perplexing questions left unsettled by the Act in regard to the Ulster custom; responsibility thrown upon the judges in the matter, 1423-1426. 1458.—Importance of a fixed tribunal with a view to a speedy settlement of the law, 1424. 1440. 1441.

Morris, Mr. Justice. (Analysis of his Evidence)—continued.

1441—Prejudicial effect of the Act upon good landlords by reason of the legalization of tenant right, whilst the penalty upon bad landlords is not so great; difficulty as to increase of rent adverted to hereon, 1425-1427.

Comment upon the effect of the Act in reference to the landlord's right of sporting, turbarry, &c., in the north; expediency of a section reserving such rights, 1428-1441—Opinion that the fourteenth section does not apply to Ulster; similar opinion as regards the ninth and tenth sections, 1434-1439—Injurious effect of long delay in respect of appeals from the chairmen of counties, 1445-1448—Duty of the chairmen to abide by the decisions of the superior court; doubt as to there being any instances to the contrary, 1449-1452—Very good reports of the cases in the superior courts, and of the judgments, 1453-1457.

Particulars of a case appealed to witness in Tipperary in which a tenant holding at 10 *l.* a-year, claimed 1,030 *l.* on expiration of his lease; the amount decreed, and affirmed by witness, having been 15 *s.* 9 *d.*, 1458-1473—Inference as to the extravagant ideas of tenants about their rights, 1458—Payment by the landlord of his own costs, even though the tenant has made an extravagant claim; little if any protection by charging the costs against the tenants in such cases, 1460-1464. 1469-1473. 1480—Belief as to the extravagance of the tenant right claims in Ulster, 1465-1468. 1477.

Facility with which two judges of the Landed Estates Court (if there were three altogether) could deal with all the land cases above a certain limit, and with the appeals below that limit, 1474-1476—Impression that purchasers are not so readily found for land in Ulster, owing to the uncertainty about the claims which may be made under the Act of 1870; 1477—Check to grossly extravagant claims if those above a certain limit went to a superior court, 1478-1481—Probability of claims becoming more and more extravagant, until eventually it will be claimed to hold the land at a fixed rent, 1481-1483.

Salary of an additional judge of the Landed Estates Court adverted to with reference to the question of an increase of the chairmen's salaries, 1484-1486—Opinion that in any case the salaries of the chairmen should be increased concurrently with their being prohibited from practising at the bar, 1486—Grounds for strongly objecting to the chairmen being allowed to practise, 1486. 1493, 1494—Very objectionable system of gradation and promotion of chairmen; suggested substitution of the principle of seniority, 1486-1492.

[Second Examination.] Explanation of the grounds upon which witness would give a right of appeal to the ultimate court, provided there were satisfactory security for costs, 1620-1626.

Morris, William O'Connor. (Analysis of his Evidence.)—Has been recently appointed chairman of Louth; had previously tried two or three land cases as deputy for other chairmen, 533, 534—Circumstances under which in one of these cases witness granted a lease by a limited owner under the statute; there was no appeal, 534, 535—Very little experience hitherto of the working of the Land Act, 536, 552—Opinions that the decisions of the chairmen have been excellent, 537—Difficulty in working the Act in respect of the facts and evidence which come before the court rather than in respect of the law itself, 538. 541.

Advantage in the working of the Act of having a competent judge to deal with the cases in a limited area, 538—Disadvantage on the other hand in having so many as thirty-three tribunals, as leading necessarily to a conflict of decisions and to uncertainty, 538, 539—Statement in support of witness's proposal that three chairmen of coterminous counties should go on circuit for the trial of land cases, 539—Injurious effect of the change of local tribunal by the promotion or change of chairmen; expectation however that in some ten or fifteen years sufficient precedents will have been created, 540.

Obscurities and difficulties of the Act on certain points; suggestions for their correction, 541 544, *et seq.*—Peculiar and difficult character of the case of *Holt v. Lord Harburton*; important principle established on the appeal in this case, 542, 543—Differences of opinion among the chairmen as to the right of tenants to claim under the Ulster custom, and to claim also under other sections in respect of disturbance and of improvements, 545, 546—Opinion that a tenant may claim at one sessions under the Ulster custom, and, if defeated, may bring a new claim at a subsequent sessions for compensation for improvements, &c., 546.

Exceedingly large claims which may be made for compensation for improvements by tenants ejected for non-payment of rent, 547, 548. 552—Right of certain classes of tenants to claim for disturbance, as well as for improvements, if evicted for non-payment of rent, 549-551. 587—Impression that on the whole the Act of 1870 has hitherto had a beneficial tendency, 552—Apprehension lest in bad times the Act may operate harshly upon the landlords as regards compensation, *ib.*—Very unsatisfactory protection

Morris, William O'Connor. (Analysis of his Evidence)—continued.

tion to landlords by means of the law of distress, which is very different from the law in England, 552-554.

Difficulty under the Act in respect of unexhausted measures, 555, 556—Main policy and object of the Act to assimilate Irish usages to English usages, 556, 606, 607.—Difference of opinion upon the question of the tenant's claim to compensation in respect of town lands and demesne lands; expediency of demesnes being clearly excluded from the Act, 557-559—Opinion that the question of costs may well be left to the judges, 560—Intention of the Act to apply something like the tenant-right of Ulster to the whole of Ireland, 561, 604.

Great discretion necessary in chairmen in dealing with the evidence in support of claims, 561, 589—Startling character of the case of Lord Leitrim where the claim involved forty-one years' purchase of the rent, 562—Opinion that where the amount of compensation awarded is not more than 100 *l.* the appeal should be to the judge of assize, and where above that sum to the Court for Land Cases Reserved, 563-567—Expediency of every suitor having a right of appeal from the judge of assize; suggestion hereon for meeting the expense of appeal upon matters of fact, *ib.*

Further statement in warm approval of the tribunal of chairman of quarter sessions for the administration of the Act, 568-577—Belief that the Nisi Prius judges going circuit would not administer the Act so well, 568—Further recommendation of a court of three chairmen; its advantages over a standing court of two judges going on circuit throughout Ireland, 569-577—Anticipation that in bad seasons there will be a great increase of land cases, so that two judges could not do all the work, 576-580.

Approval of the provision in the Act forbidding eviction for rent due more than three years; great abuse under the system of continuous arrears, 581-583—Great difficulty under the Act upon the question of non-payment of rent being due to the exaction of exorbitant rent; suggestion for arriving at a rough standard of rent, 584-586—Approval of the provision for the protection of small tenants against exorbitant rents, 587, 588—Unduly large claims for compensation which may be made by tenants holding under leases granted before the passing of the Act, 588—Usefulness of a valuator or assessor as an assistant to the judge, 589, 590.

Consideration of the object and operation of the 7th section of the Act, the tendency of which is to extend tenant-right to the south of Ireland; fairness of the claim against the landlord under this section, 591-605—Grounds for the opinion that, in determining whether there is a legal usage affecting any holding, such usage is to be proved by showing a uniform practice over a considerable district, and not merely on a single estate, 606-614.

Continued possession by the landlord of every right of property in his land under tenant-right, and subject to such right being legalised by the Act, 609-611—Different categories in which ill-managed and well-managed estates would be placed, and would be dealt with as regards limitation of the amount payable for tenant-right, 610-614.

Opinion that the 9th, 10th, and 14th clauses do not apply to the Ulster custom, and that such custom is dealt with mainly or entirely under the 16th and 18th sections, 615—Difficulty under the Act in cases of devolution of yearly tenancy by the death of a tenant leaving a numerous family, 616-619—Impression that in the case of an evicted tenant holding from a middle-man there is a provision against the latter receiving the compensation, 620, 621—Reference to certain statistics of the cases that have arisen under the Act, 622-624—Approval of an alteration of the rule as to the serving of notices, so that the trial may take place before the tenant has quitted the farm, 625-628.

Mortgages. Statement showing that a tenant may by very simple process transfer his tenancy to a mortgagee without consulting his landlord, and without his approval; evasion thereby of the provisions of the Act, *Adair* 1161*.

Several instances of tenants raising money on the mortgage of the tenant-right; examination hereon as to the value of this security to the mortgagee, and as to the position of the landlord in the event of a foreclosure, *Gardner* 1932-1965.

Munster. Judicial experience of witness in only two cases under the Land Act on the Munster circuit; particulars of the claims involved in these cases, *Mr. Justice Barry* 1570-1572.

Murland, James. (Analysis of his Evidence.)—Is a solicitor at Downpatrick; has had considerable experience in cases at quarter sessions, and is conversant with the working of the Land Act of 1870; 1162-1167—Occurrence of claims in the county of Down under the Act of 1870, chiefly in respect of the Ulster custom, 1168—Various customs and usages in Ulster, almost every estate having its own usage, whilst some estates have had different usages within the last twenty years or so, *ib.*

Very prejudicial operation of the Act as regards landlords in Ulster by reason of the great uncertainty of tenants' claims and rights, and the liability incurred by landlords in

Murland, James. (Analysis of his Evidence)—*continued.*

resisting such claims, 1168. 1197, 1198—Way in which the landlord may have to pay nearly the fee simple value of a holding for disturbance, 1168—Suggestion that the tenant be required in the first instance to state the usage under which he claims, and that, the usage being ascertained, it be decreed and enforced as regards the holding in question, 1168. 1184-1187.

Particulars of a case in Downshire in which it was decreed that the tenant was to receive 108 *l.* as compensation on quitting nine acres of land on which tenant-right was not proved to exist; grounds for objecting to this decision, 1168-1183. 1254-1259—Hardship upon the landlord in the foregoing case, whereas previously to the Act of 1870 possession of the land might have been obtained for nothing by means of a notice to quit, 1172-1183.

Further evidence in support of the proposition that there should be an ascertainment of the tenant-right on the holding before actual eviction, in order that the landlord may know what he will have to pay for disturbance; process by which this may be effected, 1183-1196—Hardship upon the landlord through the tenant being able to lie by until a month after he is evicted before filing his claim; amendment suggested hereon, 1192-1199—Large sum in which the landlord is liable to be mulcted in the event of re-valuation of the estate, and of the chairman deciding that too much rent is asked; suggestion for obviating this hardship, 1198-1200.

Opinion that the primary jurisdiction in land cases should be taken entirely from the chairmen of counties, and that such cases should be tried before judges of the same high standing as the judges of the superior courts, 1201-1206—Small jurisdiction originally of the chairmen as compared with their unlimited jurisdiction under the Land Act, 1201—Suggestion that the judge should take a note of the evidence and of any questions of law, and should make a report of the same for the Court of Land Cases Reserved, in the event of appeal, 1201—Advantages of direct appeal to the Land Court under the plan proposed by witness, *ib.*—Objection to any limit of value in cases of appeal, 1204—Disapproval of a tribunal comprising three chairmen of contiguous counties, 1205.

Complaint as to the mode of administration of the Act by the chairman of Down with regard to dual claims under the first section; opinion that the tenant should elect to claim under the custom, or under the third clause, before going into court, and should stand or fall by either, 1207-1212. 1278-1284—Belief that in Antrim and Armagh the chairmen require the tenant to elect in the first instance whether he will claim under the custom or for disturbance, 1210-1212.

Expediency of landlord and tenant having a right of appeal to the Court for Land Cases Reserved, in respect of the discretion of the judge of assize, 1213—Great importance of cases being decided by the court of ultimate appeal, so that the Act may be made clear, and extravagant expectations on the part of tenants put an end to, 1213—Recent instance of exaggerated claim against a landlord, which was however disallowed, but without costs, 1214-1216.

Complaint relative to a decision by the chairman of Down that disturbance was involved in notice by a landlord that his permission had not been given to intended sale of tenant-right, 1217-1228—Consideration of the provisions of the Act on the subject of town parks; conclusion that Ulster tenant-right attaches to a town park provided the usage be proved, 1222-1238—Objection to the practice of giving the maximum for disturbance, except in cases of capricious eviction, 1229, 1230—Statement as to its not being considered a disturbance when there is an ejectment for non-payment of rent, unless the rent has not been got for three years, 1235-1238. 1268-1275.

Opinion that land in occupation, in Ulster, is less valuable since the passing of the Act, 1239, 1240. 1250-1253—Great mistake in the mode of selling Mr. Meredith's property near Downpatrick before the Act, so that it sold very cheaply, 1241-1244—Exception taken to the principle adopted by the chairman of Down in arriving at the value of any holding, when deciding the amount to be decreed for tenant-right, 1245-1247. 1254-1259—Statement relative to Mr. Beauclerk's case, in which tenant-right was held to apply at the termination of a lease; appeal pending in this case, 1247-1249.

Decision by the chairman of Down as to the validity of tenant-right from the practice of the estate, and not from the practice of the holding; dissent from this view, 1247. 1254-1259—Large increase in the profits of farming in recent years, 1252, 1253—Opinion that a tenant has no right to turbary unless with his landlord's permission; it would not, however, surprise witness if under the Act of 1870 the landlord's rights in this respect were neutralised, 1260-1265.

Great importance of a prompt settlement of the law, whereas the present primary tribunal is ill-suited for this purpose, 1266, 1267—Statement to the effect that the Act has made no difference as regards the interest of bankrupt tenants holding from year to year, being vested in assignees, 1258-1277—Growing system of yearly tenancies at will in Downshire,

Report, 1872—continued.

Murland, James. (Analysis of his Evidence)—continued.

shire, 1285, 1286—Objection of tenants in Ulster to have written agreements for yearly tenancies, 1287, 1288.

Assistance given by landlords in Down towards improvements before the Act of 1870: great improbability of landlords' improvements in future, 1289, 1293—Means of record of allowances by landlords in aid of improvements; hitherto vouchers have rarely been kept, 1289-1292—Effect of the Act in causing landlords to think chiefly of prompt payment of their rents, the relations between landlord and tenants being harder and stricter than formerly, 1294-1297—Regret expressed by some large tenants in Downshire that the Act was ever passed, 1295-1297—Large number of tenants' improvements in the county which have been made under old leases, 1298-1301.

N.

Newton Courtenay. (Analysis of his Evidence.)—Is a land agent and landlord; is well conversant with the working of the Land Act in the counties of Tyrone and Donegal, 781, 782—Effect of the Act to cause a growing alienation between landlord and tenant in Ulster, 783-785—Opinion that as regards the rest of Ireland the Act is an excellent one, with the exception of the clauses affecting future improvements, 784—Feeling of the tenants that their own rights being legalised, they can resist the landlord's rights in regard to game, turbary, &c., 784, 785, 812-825.

Evil effects of the uncertainty in the construction of the Act as shown by the conflicting decisions of chairmen of counties; several cases cited in illustration, 785-794—Unduly large amounts decreed by the chairmen to be given by landlords when they purchase the tenant-right, 785—Extreme value allowed for the tenant-right in Lord Leitrim's case, *ib.*—Refusal of tenants, since the Act, to take leases in the north, 785, 805—Instance of the difficulty of resuming possession of land on the expiry of a lease, 785—Several cases showing the working of the appeal to the judge of assize; approval thereof, provided both parties had a right of further appeal to the ultimate court, 786-791.

Importance of speedy settlement of the law, the existing uncertainty causing the tenants to entertain exaggerated expectations, 793, 794—Dissent from the view that attorneys stimulate the tenants to make unfair claims, 795-799—Opinion that attorneys are not underpaid in cases before the courts, 800—Grounds for the conclusion that tenant-right does not exist at the close of a lease; views of Mr. Butt to the same effect, 802-805.

Statement as to the tenants on the Powerscourt estate having proposed to give twenty or twenty-two years' purchase for it, whilst it would probably have fetched thirty years' purchase before the passing of the Land Act; belief that the latter price could not now be obtained, 807-809, 826-845, 853-855, 862, 863, 866-872—Grounds for the conclusion that the price of land in Ulster generally has much fallen since the Act, and since the inability of the landlords to raise the rents, 809, 856-861.

Large purchases of property by witness in Ulster; great drawback through his being unable to help the tenants in improvements, on account of the Act of 1870; 810, 811—Instance of a tenant of witness laying exclusive claim to the right of turbary, 812-821—Further statement as to the landlords' right in respect of turbary, &c., under the Ulster custom not having been clearly legalised by the Act; expediency of this grievance being corrected, 813-825, 846-852.

Universal admission of the landlords' rights as to turbary, game, &c., in former tenancies from year to year; means of landlords for enforcing these rights by notice to quit, whereas they cannot now resort to this remedy, 846-852—Obstacles to increase of rents by landlords under the Ulster custom since the Act of 1870; 861, 871, 872—Excellent relations heretofore between landlords and tenants in Ulster, so that land has fetched higher prices than in other parts of Ireland, 864, 865.

Notice to Quit. Approval of an alteration of the rule as to the serving of notices, so that the trial may take place before the tenant has quitted the farm, *Morris* 625—Great benefit both to landlord and tenant if it were absolutely provided by the Act that all notices to quit should determine on the last gale day of the current year, *Adair* 1007-1012—Difficulty as to notice to quit on account of the liability to compensation for disturbance, *Gardner* 1980-1982.

O.

O'Hagan, Lord. Draft Report proposed by Lord O'Hagan, *Rep.* xi., xii.—Resolution of the Committee that the Draft Report proposed by the Earl of Belmore and Viscount Lifford be read in lieu of the foregoing, *ib.* xii.—Adoption of certain paragraphs of Lord O'Hagan's Report, with amendments, *ib.* xiii.-xv.

P.

Palmerston Estate (Sligo). Great improvements carried out before the Act on Lord Palmerston's estate in Sligo; doubt as to tenant-right existing on this property, *J. Johnston* 2401-2404. 2432, 2433—Difficulty of calculating the amount of compensation for disturbance, if the improvements in Lord Palmerston's case were effected under the Act of 1870, *ib.* 2440-2446.

Political Feeling. Increased confidence of the people in English statesmanship since the Act of 1870, there being generally an improved political feeling, *Donnell* 2354-2356.

Powerscourt Estate. Statement as to the tenants of the Powerscourt estate having proposed to give twenty or twenty-two years' purchase for it, whilst it would probably have fetched thirty years' purchase before the passing of the Land Act; belief that the latter price could not now be obtained, *Newton* 807-809. 826-845. 853-855. 862, 863. 866-872—Obstacle raised by the tenants to purchase by others than themselves, *ib.* 866-872.

Resolution of tenants on the Benburb Estate (Tyrone), relative to the protection of their rights in connection with the proposed sale of the estate, *Adair* 1023.

Precedents (Legal Decisions). See *Leasehold Tenant-right.* *Litigation.*

Prices. Great improvement in the condition of the tenants owing to the large rise in the prices of produce, *Adair* 1031—Large increase in the profits of farming in recent years, *Murland* 1252, 1253—Increased price of agricultural produce and of labour adverted to in connection with the increased value of the land, *Rogers* 2108-2116.

Primary Tribunal. Efficient tribunal of primary jurisdiction by appointing two judges of assize to go on circuit for the hearing of land cases in the first instance, *R. Johnston* 310, 311—Advantage of a special tribunal, in lieu of the chairman of counties, for dealing with land cases in the first instance, with an appeal direct to the Court for Land Cases Reserved, *J. Hamilton* 337, 338—Proposition for the appointment of three or four of the most eminent practising barristers (who should no longer practice, and should be well paid) for the trial of cases in the first instance; they should sit separately, and should be compelled to allow appeals from their decisions, *ib.* 342 *et seq.*—Inadequacy of a tribunal of three or four judges sitting together for dealing with all the land cases, *ib.* 359, 360. 372-382.

Proposition that claims beyond a certain limit (such as 100 *l.*) should be removable at the option of either party to a superior court of primary jurisdiction, *Jones* 463-467. 474-481. 524-526—Obstacles to the trial of all the smaller cases, as well as of the more important ones, before the proposed superior court of primary jurisdiction, *ib.* 529-552.

Belief that the *Nisi Prius* judges going on circuit would not administer the Act so well as the chairmen of counties, *Morris* 568—Anticipation that in bad seasons there will be a great increase of land cases, so that two judges could not do all the work, *ib.* 576-580.

Approval of one superior judge for the trial of land cases rather than of three chairmen sitting together, *Adair* 1135, 1136—Doubt as to the judge of assize being able to hear land cases in the first instance, in addition to his other work; probability, however, of a large diminution of cases if there were a fixed and improved tribunal, *ib.* 1157-1161.

Opinion that the primary jurisdiction in land cases should be taken entirely from the chairmen of counties, and that such cases should be tried before judges of the same high standing as the judges of the superior court, *Murland* 1201-1206.

Disapproval of a new tribunal as tending to lessen the confidence of the people in the administration of justice under the Act, *Donnell* 1681—Impracticable character of many of the plans proposed in lieu of the tribunal of the chairman of the county, *De Moleyns* 2224. 2236. 2239—Disapproval of the primary jurisdiction being vested in two or four superior judges who should go on circuit throughout the country; two judges could never do the work, *ib.* 2236, 2237.

Objection to primary jurisdiction in the judge of assize above a certain amount, *Coffey* 2291, 2292—Objection to two superior judges going on circuit in order to hear land cases in the first instance; inferiority of such tribunal, *ib.* 2297-2300.

Disapproval by the Committee of any change in the tribunal of first instance, *Rep.* iii.

See also *Appeals.* *Chairmen of Counties.* *Ejectments.* *Landed Estates*
Court. *Special Tribunal.*

Private

Report, 1872—continued.

Private Settlement of Cases. Private settlement of some cases or claims in dispute instead of bringing them into court; check to private arrangements through there being some temporary irritation against the Act, *Dinnen* 1870, 1871.

Public, The. Resolutions recently passed at various public meetings in the north of Ireland in full approval of the working the Act, *Dinnen* 1897-1899.

Q.

Quarter Sessions (Primary Jurisdiction). See *Chairmen of Counties.*

R.

Reclamation of Waste Land. Absence of special difficulty in defining what constitutes reclamation of waste land, *De Moleyns* 2228, 2229.

Relations between Landlord and Tenant. Occurrence of disputes in the county of Down chiefly between the smaller landlords and the tenants, *R. Johnston* 237—Effect of the Act in causing landlords and agents to be much stricter in the way of taking legal precautions, so as to protect themselves against future litigation and against novel and exorbitant claims, *Jones* 493-495. 510-512—Opinion that the Act has not been long enough in operation to affect the relations between landlord and tenant, but that it is beginning to do so and will ultimately cause much dissatisfaction, *ib.* 494-496. 503-506—Effect of the Act to cause a growing alienation between landlord and tenant in Ulster, *Newton* 783-785.

Effect of the Act in causing landlords to think chiefly of prompt payment of their rents, the relations between landlord and tenants being harder and stricter than formerly, *Murland* 1294. 1297—Regret expressed by some large tenants in Downshire that the Act was ever passed, *ib.* 1295-1297.

Improved feeling on the part both of landlord and tenants towards the Act, the alarm and distrust which it at first excited having gradually subsided, *Mr. Justice Fitzgerald* 1496. 1561.

Inconsiderate treatment of tenants chiefly by purchasers in the Landed Estates Court, the aristocracy and large landowners having been always on good terms with their tenants, *Rogers* 2122-2124—Valuable operation of the Act in promoting good will and peaceful relations between landlord and tenant; illustration of this in the Coolafinney cases in Londonderry, *Donnell* 2350-2354.

See also *Antrim. Armagh. Donegal. Galway. Kildare. Kilkenny. Litigation. Sligo. Turbary.*

RENT:

Right of the landlord to raise the rent or to object to an incoming tenant under the tenant right system, *R. Johnston* 271—Control exercised through the chairmen of counties under the Act of 1870, upon unreasonable increase of rent by landlords under the Ulster custom; dissent from a certain decision of Justices O'Brien and Lawson on this subject, *ib.* 278-302—Claim of the tenant in Ulster to continue in possession of his farm so long as he is willing to pay a reasonable rent, *ib.* 289.

Great difficulty under the Act upon the question of non-payment of rent being due to the exaction of exorbitant rent; suggestion for arriving at a rough standard of rent, *Morris* 584-586—Approval of the provision for the protection of small tenants against exorbitant rents, *ib.* 587, 588—Obstacles to increase of rents by landlords under the Ulster custom, since the Act of 1870, *Newton* 861. 871. 872.

Large sum in which the landlord is liable to be mulcted in the event of re-valuation of the estate, and of the chairmen deciding that too much rent is asked; suggestion for obviating this hardship, *Murland* 1198-1200—Necessity under the Ulster custom of proceeding by ejectment in order to raise the rent; liability thereby to compensation for disturbance, *Major Hamilton* 1329-1342—Probability of the tenants eventually claiming to hold the land at a fixed rent, *Mr. Justice Morris* 1481-1483.

Willingness of tenants to pay an increase of rent equal to the interest of the money expended by the landlord in purchasing the tenant-right, *Dinnen* 1872-1874—Statement as to the landlord being entitled to a fair share of the increased value of the land on re-valuation, *Rogers* 2117-2121. 2152-2160. 2187, 2188—System of re-valuation of land in Ulster from time to time, no objection having been raised by the tenants to reasonable increase of rent, *ib.* 2117-2121. 2146. 2159, 2160—Statement as to land in the north being frequently let above its real value; grounds for this conclusion, *ib.* 2123-2126—Denial by witness that he ever contended that the land under the Ulster

Report, 1872—continued.

RENT—continued.

settlement should be let to the occupant at 1*l.* an acre; conclusion, however, that the increased value of the land is mainly due to tenants' improvements, *Rogers* 2144–2160.

Entire concurrence of tenants as to the propriety of re-valuations from time to time, *Coffey* 2266—Apprehension of farmers in the matter of unreasonable increase of rent under the Act, *M'Elroy* 2319—Instance of attempted increase of rent, unreasonably, which the chairman of Antrim refused to recognise, *ib.* 2319—Willingness of the farmers generally in the north to submit to a fair increase of rent on re-valuation, *ib.* 2319–2323—Exceptional instances of rents being kept low for political purposes, *ib.* 2323–2327—Fair claim of landlords to share in the increased value of land; views of Mr. Rogers adverted to hereon, *ib.* 2329, 2330.

Cheerful assent on the part of tenants in the north to reasonable increase of their rents, *Donnell* 2351, 2352—Effect of the Act in preventing small and speculative landlords from unduly increasing their rents beyond the customary rates, *ib.* 2358, 2359—Statement by an experienced valuator in Ulster as to the value respectively of the tenant-right interest and of the landlords' interest, *ib.* 2372—Instance of an increase of rent in Donegal since the Act, *Wilson* 2504, 2508, 2510.

Reports of Cases. Very good reports of the cases in the superior courts and of the judgments, *Mr. Justice Morris* 1453–1457.

Rogers, Rev. John. (Analysis of his Evidence.)—Opinion that in the counties of Down, Antrim, and Derry, the Land Act is working satisfactorily as regards the relations between landlord and tenant, but that it is altogether premature to come to an absolute conclusion on the subject, 2084–2087, 2086–2099—Approval of the tribunal of chairman of quarter sessions for administering the Act; resolutions of the various tenant-right associations to this effect, 2087—Several instances of decisions of the chairmen being properly reversed on appeal to the judges of assize, 2088—Death of one of the parties in the case of *Austin v. Scott*, which case was about to be carried to the ultimate appeal court, 2089–2091.

Conclusion that before the Act tenant-right has been recognised in connection with leases, 2092–2095—Instance on Lord Edwin Hill Trevor's estate of the enhanced value of tenant-right through the operation of the Act, 2100–2103—Instances also of sales of properties since the Act, much higher prices having been realised by the fee simple than were previously realised, 2104–2107—Increased prices of agricultural produce and of labour adverted to in connection with the increased value of the land, 2108–2116.

System of re-valuation of land in Ulster from time to time, no objection having been raised by the tenants to reasonable increase of rent, 2117–2121, 2146, 2159, 2160—Important advantage to tenants in having the shield of the law thrown over what was before but a custom, though a generally recognised one, 2122, 2168–2173—Inconsiderate treatment of tenants chiefly by purchasers in the Landed Estates Court, the aristocracy and large landowners having been always on good terms with their tenants, 2122–2124—Statement as to land in the north being frequently let above its real value; grounds for this conclusion, 2123–2143.

Denial by witness that he ever contended that the land under the Ulster settlement should be let to the occupant at 1*l.* an acre; conclusion, however, that the increased value of the land is mainly due to tenants' improvements, 2144–2160—Further statement as to the landlord being entitled to a fair share of the increased value of the land on re-valuation, 2152–2160, 2187, 2188—Case in the county of Derry of valuable reclamation of bog land by a tenant under one of the London companies, the land having, however, been held by him wrongfully; important protection to this tenant by reason of compensation having been legalised by the Act, 2160, 2166–2173—Claim under the Ulster custom irrespectively of the tenant's improvements, 2161–2165.

Several amendments still desirable in the law for the better protection of the tenant, 2173, 2174—Improvement if the onus of proof with regard to the Ulster custom were thrown upon the landlord, 2175—Statement relative to the infringement of the real usages of the province of Ulster, through the adoption of the local usages of the several estate offices as regards limitation of the sums paid for tenant right; exception taken to the working of the Act on this point, 2175–2185—Instances of old leases at low rents on condition of buildings being erected, and drainage, &c, carried out; objection to a set-off for dilapidations in these cases, 2181–2184.

Suggestion that the protection of the Act be extended to tenements in towns, as in Belfast, 2186, 2189—Advantage of the appeal being always to the judge of assize in the first instance, 2186—Great satisfaction being given by the decisions of the chairmen, with one or two exceptions, 2190–2193—Advantage of a case being taken to the ultimate court of appeal as a precedent for decisions regarding the Ulster custom, 2192, 2193—Decided objection of the people in the north to the appointment of two judges for dealing specially with land cases, in lieu of the chairmen of counties, 2194, 2195.

Argument in support of the view that tenant-right exists on expiration of the lease, 2196.

Report, 1872—continued.

Rogers, Rev. John. (Analysis of his Evidence)—continued.

2196—Admission that the purchase of all the tenant-right interest by the landlord would appear to exclude claim for compensation upon the retirement of the tenant from the land; illustration in the case of purchases by Lord Dufferin, 2197-2205.

[Second Examination.]—Explanation that witness intended no reflection upon the chairman of Derry, in connection with the case of the tenant where reclamation of bog land was involved, 2316—General satisfaction given by the decisions of Mr. Coffey, *ib.*

Rules. Rules of procedure under the Land Act for the guidance of the judges of the Civil Bill Court; there has been no meeting of the judges for the purpose of laying down rules, *Lefroy* 4-8—Advantage of the chairmen meeting together and settling their rules, *Right Hon. J. A. Lawson* 1821.

Rundale. Description of the mode of cultivation of land held in Rundale, showing the importance of re-arranging and squaring the farms in order to admit of improved cultivation; removal by the Land Act of all motive for such improvement, *J. Johnston* 2385-2387. 2414-2423.—See also *Hill, Lord George*.

S.

Shooting Rights. See *Game*.

Sligo County. Witness, as chairman of Sligo, has tried a considerable number of cases under the Land Act, and submits a return showing the amount of claim in each case, the amount decreed, &c., *J. Hamilton* 330-333—Disposal of thirteen cases in 1871, *ib.* 331—Absence of cases involving Ulster tenant-right, *ib.* 334—Exceedingly satisfactory relations between landlords and tenants in the county; these have not been effected by the Act, *ib.* 361. 382. 393.

Return of the cases brought before the chairman of quarter sessions of the county, under the Land Act of 1870, showing in each case the amount claimed, amount decreed, &c., *App.* 291.

Small Farms. Especial demand for small farms in the north, *R. Johnston* 276—Less value of tenant-right on small than on large estates, through uncertainty as to small landlords raising the rents, *Dinnen* 1903, 1904.

Special Tribunal. Objection to any new or special tribunal for land cases exclusively, *Mr. Justice Fitzgerald* 1532, 1533—Want of an additional staff of three or four judges for the purpose, *ib.* 1532, 1533—Disapproval of any special tribunal for administering the Act, *Mr. Justice Barry* 1579, 1580—Decided objection of the people in the north to the appointment of two judges for dealing specially with land cases, in lieu of the chairmen of counties, *Rogers* 2194, 2195.

Squaring of Farms. Tendency of the Land Act to check the "squaring" of farms by landlords, *J. Hamilton* 436, 437.

Steward, Mr. (Ards). Testimony to the liberal dealing of Mr. Stewart, of Ards, with his tenants; these are, however, placed in a position by the Act of 1870 to do without their landlord's improvements, *Wilson* 2493-2500. 2503. 2532.

Style, Mr. (Donegal). Circumstance of the tenants on Mr. Style's property having claimed the right of letting the shooting; dissent from this view, *Wilson* 2515-2517. 2526-2529.

Sub-division of Farms. Means of the landlord, by a notice of ejectment, to prevent sub-division on the death of a tenant, *Coffey* 2274-2279.

T.

TENANT-RIGHT:

1. Question of determining Tenant-right Claims with reference to the Usage of the particular Estate or Holding, or the Usage of the surrounding Districts.
2. Difficulties of Tenant-right Cases before the Primary Tribunal.
3. Very large Sums Claimed and Paid for Tenant-right; way in which the Value is arrived at by the Tribunal.
4. Effect of the Land Act as regards the Value of Tenant-right.
5. Tendency of the Act to extend Tenant-right throughout Ireland.
6. Question of limiting the Amount payable for Tenant-right
7. Suggested ascertainment of the Tenant-right before Eviction.
8. Question of Leasehold Tenant-right.
9. Other Details and Suggestions generally.

TENANT-RIGHT—continued.1. *Question of determining Tenant-right Claims with reference to the Usage of the particular Estate or Holding, or the Usage of the surrounding Districts:*

Importance of the question as to how far the usage of surrounding estates is to be applied to an estate that has in itself a different usage; there is no decision of the final court on this point, *Lefroy* 114-116—Explanation of the practice of witness in inquiring into the usage on the estate, or in the district, before affirming a claim in regard to tenant-right attaching to a particular holding, *R. Johnston* 211 *et seq.*

Grounds for the opinion that in determining whether there is a legal usage affecting any holding, such usage is to be proved by showing a uniform practice over a considerable district, and not merely on a single estate, *Morris* 606-614—Decision by the chairman of Down as to the validity of tenant-right from the practice of the estate and not from the practice of the holding; dissent from this view, *Murland* 1247. 1254-1259.

Difference of opinion upon the question whether the existence of a custom on any holding is to be established by reference to the particular estate or to the surrounding district, *Mr. Justice Morris* 1417—Anxiety among the farmers in the north upon the question whether estate usages are legalised by the Act, *M'Elroy* 2318—Expected uniformity of tenant-right by reason of reference being always had in future to the custom of the district, and not of the estate, when rents are being raised, *Donnell* 2376.

Difficulty experienced on the question whether the Ulster custom is to be determined by the practice of the estate or that of a larger area, *Rep.* iv.

2. *Difficulties of Tenant-right Cases before the Primary Tribunal:*

Opinion as to the limited conflict of decisions in Ulster upon tenant-right questions, the Ulster custom being almost impossible of definition by statute, and the primary tribunal not being responsible for the difficulties under the custom, *Mr. Justice Barry* 1605-1619—Great difficulties of the questions of tenant-right which came before the chairmen of counties, by reason chiefly of the unsatisfactory evidence frequently adduced, *Donnell* 1662.

3. *Very large Sums Claimed and Paid for Tenant-right; way in which the Value is arrived at by the Tribunal:*

Inquiry by witness as to the current value of tenant-right on the estate or in the neighbourhood before giving any particular amount, *R. Johnston* 226-228. 277—Great difficulty in administering the Act on account of the fabulous amounts frequently given for tenant-right, as on Lord Downshire's estate; objection of witness to award as much as 30 *l.* or 40 *l.* an acre in disputed cases, but rather to recommend an appeal, *ib.* 228. 236-243. 256-262. 272—Further statement as to the mischievous operation of the large sums given for tenant-right in Ulster, and as to the bad effect of the Act of 1870 in legalising the custom, *ib.* 255-272.

Inordinate value of tenant-right, owing to its being almost the only mode of investment of tenants' money, *J. Hamilton* 432—Unduly large amounts decreed by the chairmen to be given by landlords when they purchase the tenant-right, *Necton* 785.

Exception taken to the principle adopted by the chairman of Down in arriving at the value of any holding when deciding the amount to be decreed for tenant-right, *Murland* 1245-1247. 1254-1259.

Particulars of a case in which a widow holding under witness demands 100 *l.* for half the farm, the rent of such half being 1 *l.* 17 *s.* a year; necessity of witness accepting a tenant ready to pay this amount under the custom in Donegal, *Major Hamilton* 1308-1322. 1327, 1328—Instance of 125 *l.* having been given as tenant-right for six acres of mountain land held from witness at 21 *s.*; liability of witness to the repayment of this amount if it should be decided that when raising the rent he has done so to an unreasonable extent, *ib.* 1327-1342.

Dissatisfaction given in some counties of Ulster by the decision of the chairmen of the counties, as taking too liberal a view of the rights of the tenants, *Mr. Justice Morris* 1400—Belief as to the extravagance of the tenant-right claims in Ulster, *ib.* 1465-1468. 1477.

Exceedingly large sums paid for tenant-right in Ulster, this being irrespective of the Act of 1870, *Mr. Justice Fitzgerald* 1554—Instance at the last Ballymena sessions of a large sum having been decreed for tenant-right, their having been no rebutting evidence, *Donnell* 1671.

Information as to the high value of tenant-right per acre in the north of Ireland, the value of the fee-simple not being affected thereby, *Dinnen* 1847-1864—Instance of 100 *l.* an acre having been given for tenant-right on two acres of land, this being in excess of the value of the fee, *ib.* 1847-1859.

Very large sums given per acre for tenant-right in the northern division of the county of Down, *Gardner* 1926-1928—Opinion that the chairmen have not given unduly large sums for tenant-right, *ib.* 1973-1975.

TENANT-RIGHT—continued.

3. *Very large Sums Claimed and Paid for Tenant-right; &c.*—continued.

Statement relative to the infringement of the real usages of the province of Ulster, through the adoption of the local usages of the several estate offices as regards limitation of the sums paid for tenant-right; exception taken to the working of the Act on this point, *Rogers* 2175-2185—Illustration of the enormous sums given for tenant-right on small farms, *Coffey* 2285-2287.

4. *Effect of the Land Act as regards the Value of Tenant-right:*

Doubt as to the value of tenant-right having increased since the passing of the Act of 1870, *Hancock* 646—Effect of the Act to legalise what was before only a custom and an uncertainty, *ib.* 651-653—Statement as to the effect of the Act in enabling tenants to obtain from their landlords larger sums for surrender of tenant-right than they previously obtained, *Royle* 707-722. 773-776.

Grounds for the conclusion that the Act of 1870 will tend to reduce rather to increase the prices given for tenant-right, *Gardner* 1929-1931—Increased supply of tenant-right through the custom being legalised; effect thereof on reducing its value, *ib.*—Greater security and confidence of tenants since the passing of the Act, *ib.* 1932.

Important advantage to tenants in having the shield of the law thrown over that which was before but a custom, though a generally recognised one, *Rogers* 2122. 2168-2173—Increase of tenant-right value in some districts, the probability however being that on the whole the value will be reduced through the supply being larger, *Donnell* 2371—Conclusion as to the Act not having materially benefitted the tenants with respect to the value of tenant-right; exceptional instances of landlords not having respected the custom before the Act, *Henry* 2017-2023.

5. *Tendency of the Act to extend Tenant-right throughout Ireland:*

Apprehension as to the seventh section introducing into the rest of Ireland all the evils of Ulster tenant-right, *Lefroy* 151, 152—Intention of the Act to apply something the tenant-right of Ulster to the whole of Ireland, *Morris* 561. 604—Consideration of the object and operation of the seventh section of the Act, the tendency of which is to extend tenant-right to the south of Ireland; fairness of the claim against the landlord under this section, *ib.* 591-605.

6. *Question of limiting the Amount payable for Tenant-right:*

Advantage if there had been a general rule in witness's county limiting tenant-right to 10*l.* an acre, and confining it to purchase by a tenant on the estate, *R. Johnston* 219—Expediency of a limit upon the amount given for tenant-right, though this would be prejudicial to tenants who have paid large amounts, *ib.* 272-275.

Different categories in which ill-managed and well-managed estates would be placed and would be dealt with as regards limitation of the amount payable for tenant-right, *Morris* 610-614.

7. *Suggested Ascertainment of the Tenant-right before Eviction:*

Evidence in support of the proposition that there should be an ascertainment of the tenant-right on the holding, before actual eviction, in order that the landlord may know what he will have to pay for disturbance; process by which this may be effected, *Murland* 1168. 1183-1196.

8. *Question of Leasehold Tenant-right:*

Defence of witness's decision in a certain leasehold case that tenant-right existed on termination of the lease; previous decision of Justice Monahan to this effect, *R. Johnston* 203-216. 228-231. 247, 248. 265-268—Necessity of proof of the existence of the custom on the estate, or in the district, in order to justify the decision that there was a claim to leasehold tenant-right, *ib.* 209-211—Doubt as to its having been laid down, authoritatively, before the passing of the Act, that there was not a claim to tenant-right on termination of a lease, *ib.* 321-325—Reference to the recommendation by the Devon Commission as to limiting the leasehold tenant-right to five years; decision of Chief Justice Monahan adverted to hereon, *ib.* 324. 326-328.

Important differences of opinion between the chairmen upon the question of leasehold tenant-right, *J. Hamilton* 430. 451, 452; *Henry* 202—Impression that those chairmen are right who hold that tenant-right is claimable on expiry of lease, *Hancock* 664, 665—Grounds for the conclusion that tenant-right does not exist at the close of a lease; views of Mr. Butt to the same effect, *Newton* 802-805—General concurrence of evidence to the effect that the Ulster custom obtains at the end of the lease, *Donnell* 1679.

Explanation relative to the affirmation by witness of a decision of the chairman of Donegal that the usage of tenant-right upon the expiration of a lease did not exist in the district, *Right Hon. J. A. Lawson* 1790—Difference of opinion upon the question

Report, 1872—continued.

TENANT-RIGHT—continued.

8. *Question of Leasehold Tenant-right*—continued.

of leasehold tenant-right, an appeal being pending on this subject, *Dinnen* 1843-1845-1882, 1883—Rightful claim of the tenant in Ulster to compensation for tenant-right after a lease of 60 years at a low rent, *Henry* 2015, 2016.

Conclusion that before the Act tenant-right had been recognised in connection with leases, *Rogers* 2092-2095—Argument in support of the view that tenant-right exists on expiration of the lease, *ib.* 2196—Very uneasy feeling in the north upon the question whether leasehold tenant-right has been legalised by the Act; conclusion as to the existence of such rights; *M'Elroy* 2318, 2319—Very large sum represented by the value of leasehold tenant-right, *ib.* 2318.

Immense interest excited in the north upon the question of leasehold tenant-right; enormous value represented by such right, *Donnell* 2334—Conclusion that it is beyond all doubt that tenant-right has always existed as a fact upon expiry of a lease, *ib.* 2342-2345.

Absence of any disputed case of leasehold tenant-right in witness's district; reference to his evidence before the Devon Commissioners on this point, *J. Johnston* 2481-2484—Apprehension of tenants in the north lest leasehold tenant-right should be interfered with, *Wilson* 2536.

Reference by the Committee to the difficulties experienced on the question whether at the expiration of a lease the Ulster custom is to prevail over the covenant and surrender in the lease, *Rep.* iv.

9. *Other Details and Suggestions generally:*

Obligation upon the landlord to pay for tenant-right in the event only of his resuming the land himself, *R. Johnston* 238—Refusal of witness to consider the tenant-right on any holding as assets, unless money has been offered for it, and the landlord assents to the sale, *ib.* 263, 264—Foundation of the tenant-right claim partly upon the tenant's improvements, and partly upon the good-will, *ib.* 269, 270—Claim of the Ulster tenant to tenant-right, irrespectively of disturbance by the landlord, *J. Hamilton* 398.

Continued possession by the landlord of every right of property in his land, under tenant-right, and subject to such right being legalised by the Act, *Morris* 609, 611—Reference to the evidence before the Devon Commission, and the suggestion of the Commission that tenant-right should be limited to five years, *Hancock* 637, 638, 641-645—Reference to a certain case of notice to quit before the passing of the Act, on the ground that the tenant was disobeying the rules of the estate; claim put in by the tenant, but subsequently abandoned, *ib.* 650.

Difficulty under the Act in regard to the selection of new tenants by landlords, *Boyle* 773-776—Witness has not had any cases under the Land Act, and avoids the Act as much as possible, *Major Hamilton* 1306—Opinion that in many cases the Act practically puts the landlord out of the possession of his estate, *ib.* 1307, 1308.

Opportunity, by appeal, for correcting conflicting decisions of chancery as to the amount of payment for tenant-right under different circumstances, *Mr. Justice Fitzgerald* 1555, 1556—Opinion as to landlords being safe in buying up the tenant-right, and as to the land being in future exempt from the custom, *Dinnen* 1875-1877—Equal power of landlords, as before the Act, to refuse bad tenants, *Gardner* 1978, 1979; *Coffey* 2273.

Claim under the Ulster Custom, irrespectively of the tenant's improvements, *Rogers* 2161-2165—Several amendments still desirable in the law for the better protection of the tenant, *ib.* 2173, 2174—Improvement if the onus of proof with regard to the Ulster custom were thrown upon the landlord, *ib.* 2175—Admission that the purchase of all the tenant-right interest by the landlord would appear to exclude claim for compensation upon the retirement of the tenant from the land; illustration in the case of purchases by Lord Dufferin, *ib.* 2197-2205.

See also *Domain Land. Donegal. Downshire. Dual Claims. Game. Rent. Small Farms. Town Parks. Trevor, Lord Edwin Hill. Turbary. Ulster. Vagueness of Act. Value of Land.*

Tenants. See the Headings generally throughout the Index.

Town Parks. Vagueness of the Act upon the subject of town parks, *Boyle* 746, 747—Consideration of the provisions of the Act on the subject of town parks; conclusion that Ulster tenant-right attaches to a town park, provided the usage be provided, *Muirhead* 1222-1238—Considerable anxiety in the north upon the question of tenant-right on town parks being legalised; good grounds for this apprehension, *M'Elroy* 2318, 2319—Unanimity of decision to the effect that as regards town parks in Ulster the 15th section of the Act does not control the 1st section, *Donnell* 2332.

Towns. Suggestion that the protection of the Act be extended to tenements in towns, as in Belfast, *Rogers* 2186, 218g.

Townshend,

Townshend, Charles Uniacke. (Analysis of his Evidence.)—Is a land agent in Dublin, having agencies in many counties in Ireland, and being conversant with the working of the Land Act, 873-875. 886-889—Prejudicial result of the Act as regards the Bankruptcy Court interfering in the management of property, and selling, without any power of intervention on the part of the landlord, 876. 879, 880—Avoidance by witness of legal proceedings under the Act, on account of the difficulty and uncertainty of the law, 877—General feeling of dissatisfaction as to the conflicting decisions of the chairmen of counties, 877, 878.

Examination in detail in support of the statement as to the undue power of the Bankruptcy Court to sell the interest of an insolvent tenant, and to do so field by field, without power in the landlord to prevent such sale; possession of such power, previously to the Act, by means of notice to quit, 881-885. 892 *et seq.*—Complaint as to the disturbance of the tenant by the Bankruptcy Court, and not by the landlord, and as to the latter being liable for increased compensation for disturbance; particulars hereon relative to the case of a bankrupt tenant under witness as agent, 881-885. 892 *et seq.* 985-990.

Numerous agents and others who have expressed opinions unfavourable to the Act, 890, 891—Statement that previously to the Act witness never knew of any sale by the Bankruptcy Court of a tenancy from year to year, as the landlord would have stopped such sale by a notice to quit, 892-898. 929-936. 951. 969, 970—Probability of the full amount of compensation being awarded under the Ulster custom in the event of a landlord objecting to a tenant purchasing under the Bankruptcy Court, 955-961. 971-982.

Uncertain decisions of the chairmen as regards the amount of compensation; impression that there is a leaning on their part towards the tenants, though exorbitant claims are doubtless largely reduced, 957-959. 973-984—Probability of some instances of great delay in the delivery of the judgment of the judge of assize in appeal cases, 991-993.

Trevor, Lord Edwin Hill. Instance on Lord Edwin Hill Trevor's estate of the enhanced value of tenant-right through the operation of the Act, *Rogers* 2100-2103.

TURBARY:

Expediency of an implied agreement in every yearly tenancy that the landlord should have the exclusive right to the turbary, *Lefroy* 174, 175—Evidence as to the grievance under the Act in Donegal and other counties by reason of the claim of tenants against any control or interference of the landlords in respect of turbary, *J. Hamilton* 404-429—Belief as to there being no tenant-right in turbary in the Ulster counties generally, *ib.* 438, 439.

Statement as to the landlord's right in respect of turbary, &c., under the Ulster custom not having been clearly legalised by the Act; expediency of this grievance being corrected, *Newton* 812-815. 846-852—Instance of a tenant of witness laying exclusive claim to the right of turbary, *ib.* 812-821—Universal admission of the landlord's rights as to turbary, game, &c., in former tenancies from year to year; means of landlords for enforcing these rights by notice to quit, whereas they cannot now resort to this remedy, *ib.* 846-852.

Opinion that a tenant has no right to turbary unless with his landlord's permission; it would not, however, surprise witness if under the Act of 1870 the landlord's rights in this respect were neutralised, *Murland* 1260-1265—Evidence showing that since the Act, the landlords' rights in Donegal as to game and turbary have been attacked, whilst they have not the power of protecting themselves by ejectment as they formerly had, *Major Hamilton* 1351-1385—Protection of the landlord in Donegal as to turbary if the 14th section of the Act applies to the Ulster custom, *ib.* 1360-1371.

Whereas before the Act of 1870, witness had no litigation with his tenants, since the Act he has been constrained to take legal proceedings in numerous cases, with reference especially to the question of turbary, *Viscount Lifford* 1388, 1389.

Comment upon the effect of the Act in reference to the landlords' right of sporting, turbary, &c., in the north; expediency of a section reserving such rights, *Mr. Justice Morris* 1428-1441—Impression that tenants' claims to turbary and shooting rights, as in Donegal, are unbounded, *Mr. Justice Fitzgerald* 1537-1541. 1544, 1545—Facility, by means of appeal, for a speedy settlement of such questions as those of turbary and game, *ib.* 1542-1544—Question considered whether as regards turbary and game in Ulster, there should not at once be some declaratory enactment to remove any doubt under the Act, *ib.* 1558-1568.

Decision in the case of the Waterford estates in Derry that the tenants had no easement in respect of turbary, *Lane* 1656—Opinion as regards turbary in Ulster that these will be held by the courts under the 18th section still to vest in the landlord; conclusion that the 14th section does not apply to Ulster, *Donnell* 1674-1678. 2361-2365—Absence of any claims by tenants in witness's district in regard to turbary, such claims being easily disposed of if they arise, *Dinnen* 1907-1910.

TURBARY—continued.

Evidence on the subject of rights of turbary in Donegal and other counties as affected by the Act of 1870; grounds for the conclusion that the tenants have not preferred any inordinate claims in the matter by reason of the Act, *Henry* 2024-2028. 2035-2037. 2071-2083—Dismissal of several recent claims by Lord Lifford to increase the bog rents on his farms from shillings to pounds, *ib.* 2076-2078.

Very unpleasant feeling created in witness's district by the claims recently put forward by tenants in respect of turbary, *J. Johnston* 2466—Circumstance of a tenant of witness having threatened him with litigation for exercising the right of turbary, though there is an express stipulation under written agreement that the turbary is reserved, *ib.* 2467-2471. 2477—Doubt as to a legal decision in favour of witness respecting turbary having the effect of settling the question in the district, *ib.* 2475-2477—Frequent disputes about turbary in Donegal before the Act, *Wilson* 2511-2513.

Tyrone. See *Farm Buildings.*

U.

Ulster. Statement as to the effect of the 7th section of the Act of 1870 in depriving the Ulster landlord of the protection intended to be given him by the 2nd section, and in subjecting him to an unlimited amount of compensation in a new shape, *Lefroy* 151, 152—Opinion that the 14th and certain other sections of the Act are not limited in their operation, and apply to Ulster landlords and tenants, *ib.* 169-171.

Impracticability of so amending the Act that it shall clearly define all the various customs in Ulster; necessity of the recognition of each custom, *R. Johnston* 313-315—There are some counties in Ulster where, on almost every estate there is a different rule, *ib.* 313.

Explanation of witness's reasons for the opinion that sections from 8 to 16 do not apply to the Ulster landlord, *J. Hamilton* 397, 398. 401-403—Advantage of Ulster tenant-right in so far as it contributes to the peaceable character of the province, *ib.* 441, 442.

Opinion that the 9th, 10th, and 14th clauses do not apply to the Ulster custom, and that such custom is dealt with mainly or entirely under the 16th and 18th sections, *Morris* 615—Statement as to the letting of land in Ulster being generally done by valuation and not by competition, *Hancock* 673-676—Various customs and usages in Ulster; almost every estate having its own usage, whilst some estates have had different usages within the last twenty years or so, *Murland* 1168—Very prejudicial operation of the Act as regards landlords in Ulster by reason of the great uncertainty of tenants' claims and rights, and the liability incurred by landlords in resisting such claims; amendment suggested hereon, *ib.* 1168. 1183-1198—Objection of tenants in Ulster to have written agreements for yearly tenancies, *ib.* 1287, 1288.

Opinion that the 14th section does not apply to Ulster; similar opinion as regards the 9th and 10th sections, *Mr. Justice Morris* 1434-1439—Belief that in Ulster generally the decisions of the chairmen have generally given satisfaction, *Lane* 1655-1659—Satisfaction given generally to landlords and tenants in Ulster by the operation of the Act, *Donnell* 1673, 1674—Total of about 35,000 holdings subject to lease in Ulster, *ib.* 2334—Dissatisfaction with the Act on the part of those tenants in the north who cannot claim the tenant-right custom, *ib.* 2373-2375.

Difficulty experienced upon the question whether the sections 9, 10, 14, and the whole of section 18 apply to holdings affected by the usages of Ulster, *Rep.* iv.

See also *Claims. Game. Turbary. Tenant-right. Working of the Act.*

Uniformity. Delay in securing uniformity through there being so many primary tribunals to decide; improvement on this score if there were two or three judges for deciding in the first instance, *Lefroy* 34. 37. 76. 84—Great importance of a strong court of primary jurisdiction so as to bring about uniformity, *Jones* 493—Expectation that in time the law will get into a more settled state, and there will be more uniformity of decisions, *Hancock* 635, 636—Immense boon if precedents were promptly established so that the law may well be understood and decisions may be uniform, *Adair* 1016.

Duty of the chairmen to abide by the decisions of the superior court; doubt as to there being any instances to the contrary, *Mr. Justice Morris* 1449-1452—Probability of uniformity being sooner produced by a tribunal of two permanent judges for the trial of all the land cases than by the present scattered tribunal, *Right Hon. H. J. Monahan* 1499—Perfect uniformity of decision to be secured in time, *Coffey* 2288.

See also *Appeals. Chairmen of Counties, 2.*

V.

Vagueness of Act. Great difficulty in administering the Act owing to the vagueness of the language in the 3rd section relative to compensation on cessation of tenancy, *Lefroy* 24, 25—Vagueness of the term “implied agreement,” as in the 14th section of the Act; different constructions to which open, so that it would be better to substitute the words “express agreement,” or “express consent,” *ib.* 180-188—Reference to the Act as very obscurely worded and very difficult to construe, *R. Johnston* 309; *J. Hamilton* 335, 341—Expected difference of opinion and of decision on many sections of the Act, no matter what judges are entrusted with its administration, *R. Johnston* 309—Illustration of the vagueness of the Act, in the use of the word “disturbance,” the term being utterly undefined; absence generally of technical expressions in the Act, *J. Hamilton* 394-396.

Obscurities and difficulties of the Act on certain points; suggestions for their correction, *Morris* 541, 544 *et seq.*—Evil effects of the uncertainty in the construction of the Act as shown by the conflicting decisions of chairmen of counties; several cases cited in illustration, *Newton* 785-794—Avoidance by witness of legal proceedings under the Act on account of the difficulty and uncertainty of the law, *Townshend* 877.

Very difficult and perplexing questions left unsettled by the Act in regard to the Ulster custom; responsibility thrown upon the judges in the matter, *Mr. Justice Morris* 1423-1426, 1458.

Valuator or Assessor. Usefulness of a valuator or assessor as an assistant to the judge, *Morris* 589, 590—Advantage of a paid valuator or assessor as a check upon exorbitant claims, *Boyle* 700-703.

Value of Land. Opinion that estates in Ulster would not sell so well since the passing of the Act, *J. Hamilton* 441-451—Increased value of land for several years past; improbability of the Act having had any marked effect upon the value, *Hancock* 647-649, 651—Grounds for the conclusion that the price of land in Ulster generally has much fallen since the Act, and since the inability of the landlords to raise the rent, *Newton* 807-809, 826-845, 853-863, 866-872—Excellent relations heretofore between landlords in Ulster, so that the land has fetched higher prices than in other parts of Ireland, *ib.* 864, 865.

Discouragement of investors by reason of the undefined rights of landlords and tenants respectively; grounds for this statement, *Adair* 1015, 1016, 1062 *et seq.*—Examination upon the question of increase or decrease in the value of land in Ireland since the Act of 1870; tendency to a decrease in the value of rented land, whilst land in possession has probably risen in value, *ib.* 1062-1097, 1134—Increased value of the poorer land more especially, *ib.* 1082, 1083.

Opinion that land in occupation, in Ulster, is less valuable since the passing of the Act, *Murland* 1239, 1240, 1250-1253—Impression that purchasers are not so readily found for land in Ulster owing to the uncertainty about claims which may be made under the Act of 1870; *Mr. Justice Morris* 1477.

Equal prices obtainable for land since the Act as previously, *Dinnen* 1900-1902—Opinion that the value of the fee simple has been in no way prejudiced by the Act; instance of an estate having realised forty years' purchase, *Gardner* 1966-1970—Way in which the value of an estate is enhanced by having tenants upon it, *ib.* 1971, 1972.

Instances of sales of properties since the Act, much higher prices having been realised by the fee simple than were previously realised, *Rogers* 2104-2107—Increasing value both of tenant-right and of the fee simple of land in Ireland, *McElroy* 2328.

Enhanced value and rental of tenant-right lands generally by reason of the tenants' improvements, *Donnell* 2359, 2360, 2372—Conclusion that the Act has increased the selling value of the land, though it is difficult yet to establish this fact, *ib.* 2366-2370—Tendency of the Act to increase the selling value of land; large price which witness is prepared to pay for some land, *Wilson* 2504, 2509, 2535-2539.

See also *Conolly Estates.* *Derby Estates.* *Meredith, Mr.* *Powerscourt Estate.*
Rent. *Waterford Estates.*

W.

Wallace v. M^c Clelland. Want of proof upon which the chairman of Down decided against the claim for leasehold tenant-right in this case, *Donnell* 2340, 2341.

Waterford Estates (Londonderry). Exceptional character of the sale of the Waterford estates, and of the prices realised, *Newton* 859—Statement as regards the sale of Lord Waterford's estate in Derry that it was greatly underlet previously, *Adair* 1096.

Westmeath. Circumstances under which in one of the cases tried by witness under the Land Act in Westmeath he granted a lease by a limited owner under the statute; there was no appeal, *Morris* 534, 535.

Wilson, Robert. (Analysis of his Evidence.)—Is a guardian of the Stranorlar Union, and is largely engaged in farming, 2487-2489—Considers that the Land Act has done much good, more especially in giving confidence to tenants to make improvements, 2490-2492. 2499, 2500—Testifies to the liberal dealing of Mr. Stewart of Ards with his tenants; these are, however, placed in a position by the Act of 1870 to do without landlords' improvements, 2493-2500. 2503. 2532.

Bad feeling between Lord Lifford and his tenants, witness denying, however, that this is attributable to the Land Act, 2501, 2502. 2511-2514. 2538—Belief as to Lord Lifford's right to the game and turbarry, 2501. 2514—Instance of an increase of rents in Donegal since the Act, 2504-2508. 2510—Tendency of the Act to increase the selling value of land; large price which witness is prepared to pay for some land, 2504. 2509. 2535-2539—Frequent disputes about turbarry in Donegal before the Act, 2511-2513—Circumstance of the tenants on Mr. Style's property having claimed the right of letting the shooting; dissent from this view, 2515-2517. 2526-2529.

Probability of some extravagant expectations or claims having been fostered by the Act; some legal decisions are required to remove this evil, 2518-2529—Excellent buildings being erected by the farmers between Strabane and Newtown Stewart, 2530, 2531—Apprehension of tenants in the north lest leasehold tenant-right should be interfered with, 2536.

Working of the Act. Very little experience hitherto of the working of the Land Act, *Morris* 536. 552—Difficulty in working the Act in respect of the facts and evidence which come before the court rather than in respect of the law itself, *ib.* 538. 541—Impression that on the whole the Act of 1870 has hitherto had a beneficial tendency, *ib.* 552—Reference to certain statistics of the cases that have arisen under the Act, *ib.* 622-624.

Witness, who is a land agent, testifies to the very satisfactory working of the Act of 1870 in the counties of Down and Armagh, and in part of Antrim, *Hancock* 629-632. 670, 671. 680-689—Opinion that it is altogether premature to decide absolutely as to the satisfactory or unsatisfactory working of the Act, *ib.* 686, 687—Opinion that as regards all the provinces but Ulster the Act is an excellent one, with the exception of the clauses affecting future improvements, *Newton* 784.

Witness considers that the Act requires amendment in the interests both of landlord and tenant, *Adair* 996.

Opinion that it is premature to judge whether the primary tribunal for dealing with leases under the Act of 1870 is satisfactory or otherwise, *Mr. Justice Morris* 1400—Limited experience of witness as to the working of the Land Act, his general impression being that the Act has been administered fairly and satisfactorily by the primary tribunal, *Mr. Justice Fitzgerald* 1495, 1496. 1498—Insufficient opportunities for properly judging the operation of the Act in so short a period, eighteen months or so, *ib.* 1496. 1561—Greater difficulty of administering the Act in respect of questions of fact than questions of law, *ib.* 1497.

Very little experience of witness as to the working of the Act of 1870; *Right Hon. H. J. Monahan* 1682, 1683—Opinion that the Act has not yet had fair play, but that in the counties of Down and Antrim it is working remarkably well, and is giving satisfaction, except in the case of some small landlords, *Dinnen* 1842. 1846—Opinion that it is altogether premature to draw conclusions as to the practical working of the Act, and its defects, *ib.* 1905, 1906. 1910.

Conclusion that in the counties of Down, Antrim, and Derry, the Land Act is working satisfactorily as regards the relations between landlord and tenant, but that it is altogether premature to come to an absolute conclusion on the subject, *Rogers* 2084-2087. 2096-2099.

 Report, 1872—continued.

Working of the Act—continued.

Enumeration by the Committee of several points on which difficulties have arisen on the working of the Act, *Rep.* iv.

See also *Antrim. Appeals. Armagh. Chairmen of Counties. Donegal.*
Downshire. Emigration. Game. Improvements. Judges of Assize.
Londonderry County. Munster. Political Feeling. Primary Tribunal.
Relations between Landlord and Tenant. Tenant-right. Turbary. Ulster.
Uniformity. Vagueness of Act. Value of Land.

Y.

Yearly Tenancies. Belief as to part of the 18th clause of the Act applying to Ulster; expediency as regards this clause of a similar reservation of landlords' rights being implied in a tenancy from year to year as in a lease, *J. Hamilton* 399-403—Difficulty under the Act in cases of devolution of yearly tenancy by the death of a tenant leaving a numerous family, *Morris* 616-619—The large majority of the holdings in Ireland are yearly tenancies, held without agreement of any kind, *Townshend* 941.

Brought from the Lords, 8 August 1872.

R E P O R T

FROM THE

SELECT COMMITTEE OF THE HOUSE OF LORDS

ON, THE

LANDLORD AND TENANT (IRELAND)
ACT, 1870 ;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

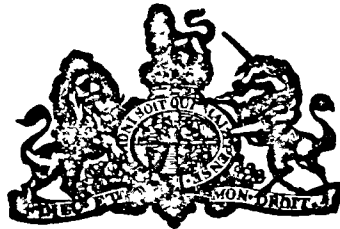
APPENDIX, AND INDEX.

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REPORT
OF
HER MAJESTY'S COMMISSIONERS OF INQUIRY
INTO
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LANDLORD AND TENANT (IRELAND) ACT, 1870,
AND THE
ACTS AMENDING THE SAME.

Presented to both Houses of Parliament by Command of Her Majesty.



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CONTENTS.

	Page
COMMISSION,	iii
REPORT,	1
Papers referred to in Report :—	
No. 1.—Circular Letter,	65
No. 2.—Heads of Inquiry,	65
No. 3.—Circular Letter,	67
No. 4.—Circular Letter,	67

THE COMMISSION.

VICTORIA REG.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to Our right Trusty and Well-beloved Cousin, **FREDERICK GEORGE BRABAZON, EARL OF BESSBOROUGH**; Our right Trusty and Well-beloved Councillor, **RICHARD DOWSE**, one of the Barons of the Exchequer Division of Our High Court of Justice in that part of Our said United Kingdom of Great Britain and Ireland called Ireland; Our Trusty and Well-beloved **CHARLES OWEN O'CONNOR, ESQUIRE** (commonly called **THE O'CONNOR DON**); Our Trusty and Well-beloved **ARTHUR MACMORROUGH KAVANAGH, ESQUIRE**; and Our Trusty and Well-beloved **WILLIAM SHAW, ESQUIRE**, Greeting :

WHEREAS WE have deemed it expedient that a Commission should forthwith issue to inquire into and report upon the working and operation of the "Landlord and Tenant (Ireland) Act, 1870," and the Acts amending the same, and whether any and what further amendments of the law are necessary or expedient with a view (firstly) to improve the relation of Landlord and Tenant in that part of Our said United Kingdom called Ireland, and (secondly) to facilitate the purchase by Tenants of their holdings.

Now KNOW YE, that We, reposing great trust and confidence in your knowledge, discretion, and ability, have authorized and appointed, and by these presents do authorize and appoint you the said **FREDERICK GEORGE BRABAZON, EARL OF BESSBOROUGH, RICHARD DOWSE, CHARLES OWEN O'CONNOR, ARTHUR MACMORROUGH KAVANAGH, and WILLIAM SHAW** to be Our Commissioners for the purposes aforesaid.

And for the better effecting the purposes of this Our Commission, We do by these presents authorize and empower you, or any two or more of you, to call before you, or any two or more of you, such persons as you may judge necessary to examine, and by whom you may be the better informed in the several matters hereby submitted for your consideration and everything connected therewith, and generally to inquire of and concerning the premises by all other lawful ways and means whatsoever.

And also to call for, have access to, and examine such books, documents, papers, writings, or records as you or any two or more of you shall judge likely to afford the fullest information concerning the several matters hereby submitted for your consideration.

AND WE also by these presents authorize and empower you, or any two or more of you, to visit and personally inspect such places as you, or any two or more of you may deem expedient for the more effectually carrying out the purposes aforesaid. And also to employ such persons as you may think fit to assist you in undertaking any inquiry which you may deem it expedient to make.

AND OUR FURTHER WILL AND PLEASURE is that you, or any two or more of you, do report to us with all convenient speed, in writing under your hands and seals, your several proceedings by virtue of this, Our Commission, and what you shall find touching or concerning the premises, together with your opinion upon the matters hereby referred for your consideration.

AND WE FURTHER WILL AND COMMAND and by these presents ordain that this, Our Commission, shall continue in full force and virtue. And that you, Our Commissioners, do from time to time proceed in the execution thereof, although the same be not continued from time to time by adjournment.

And for your further assistance in the execution of these presents, We do hereby appoint Our Trusty and Well-beloved **SIR GEORGE YOUNG, BARONET**, to be Secretary to this, Our Commission, and require you to use his services and assistance from time to time as occasion may require.

Given at Our Court at Saint James's, the Twenty-ninth day of July, 1880, in the Forty-fourth Year of Our Reign.

By Her Majesty's Command,

(Signed), W. V. HARCOURT.

The Landlord and Tenant (Ireland) Acts Inquiry Commission

HEADS OF REPORT.

	Page
I. Proceedings of the Commission,	1
II. Tenant-right in Ireland,	2
III. Conclusions from the Evidence,	7
IV. Whether it is sufficient to preserve the lines and amend the details of the Land Act of 1870,	18
V. Proposals for Legislation,	19
VI. Purchase of their Holdings by Tenants,	31
VII. The Condition of the Poor,	36
VIII. Conclusion,	37
Supplementary Report by THE O'CONNOR DON,	38
Supplementary Report by W. SHAW, ESQ., M.P.,	52
Separate Report by ARTHUR MCM. KAVANAGH, ESQ.,	55

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

N.B.—References in *italics* are to evidence disagreeing with, or qualifying the conclusions expressed.

Y IT PLEASE YOUR MAJESTY,

1. Your Majesty's Commission, bearing date the 29th of July, 1880, having directed to inquire into the working and operation of the Landlord and Tenant (Ireland) Act, 1870, and the Acts amending the same, and whether any and what further amendments of the law are necessary or expedient with a view (firstly) to improve the condition of Landlord and Tenant in Ireland, and (secondly) to facilitate the purchase of tenants of their holdings, we have to the best of our ability conducted the inquiry committed to us, and having conferred together, we have now the honour to present our report.

The Commission.

I. *Proceedings of the Commission.*

2. We met in Dublin on the 7th of August, and appointed the 1st of September to begin the examination of witnesses. In the meantime steps were taken to make known as widely as possible the existence and scope of the Commission, and evidence was tendered to us by a large number of persons. For the purpose of selecting the persons best qualified to assist us in our inquiry, the circular (No. 1), which is printed in the Appendix to our Report was sent to all persons tendering evidence, and in reply thereto we received many valuable communications. We also issued a series of questions, suggestive of the principal points on which we desired information, which were very widely distributed, and will be found reprinted in our Appendix (No. 2). These questions were accompanied by a circular (No. 3) in which the object of our inquiry for answers to such questions was explained to be, not in order to their publication, but chiefly as a guide to ourselves in the selection of witnesses.

Circulars issued by the Commission.

3. It has been impossible, in the short time at our command, to exhaust all the evidence tendered on the various subjects of inquiry, and even to take from every witness a specimen of the evidence that was offered; but it has been our endeavour to afford, in the printed evidence which forms the appendix to our Report, a fair sample of the facts and opinions which constitute the material of the Landlord and Tenant Question; and we desire to place on record our conviction that the picture so presented, when taken in its entirety, is a fairly accurate and impartial representation of the condition of the relations between Landlord and Tenant in Ireland, and of the working of the law which regulates those relations at the present day. We commenced taking evidence with the examination in Dublin of some of the judicial and official authorities concerned in the administration of the Land Act of 1870; and after hearing several other witnesses, chiefly from the counties near Dublin, of the landlord and tenant classes, we proceeded on the 21st September to Belfast, and for the remainder of that month were employed at that place and at Londonderry in hearing evidence as to the working of the Act of 1870, chiefly in so far as it affected estates and tenancies subject to the Ulster custom of tenant-right. In the course of October and November we visited in succession Sligo, Donegal, Castlebar, Roscommon, Galway, Wick, Killarney, Cork, Skibbereen, and Clonmel, taking evidence from the districts surrounding those places, and thus obtaining representative testimony from the greater part of Connaught and Munster; and in December we held a second series of sittings in Dublin, at which evidence was taken from many of the districts unavoidably passed over in our journey, especially from the counties of Leinster previously omitted, and from several persons who from their published writings or personal reputation were deemed qualified to give valuable assistance. We have held in all sixty-five sittings, sixty-one of which evidence was taken; and at these sittings we were favoured with the experience and opinions of upwards of seven hundred witnesses. Among those who were examined were eighty landowners, seventy land agents and five hundred tenant farmers, together with several clergymen of different denominations, and some barristers, solicitors, land-surveyors and professional valuers.

The evidence taken by the Commission.

Evidence in reply
to statements
affecting indi-
viduals.

4. In the course of this evidence many statements were made affecting individuals which there were no means at the time of verifying. Under these circumstances we adopted the usual course of sending to the parties affected copies of the evidence affecting them, accompanied with a circular (No. 4) which will be found printed in the Appendix, offering to them the choice of appearing before us and giving evidence in answer to those statements, or else of having printed in the Appendix to our Report statements by themselves or their agents in reply. The evidence taken in pursuance of this circular will be found printed in our Appendix (B), and the communication received from those who were unable or who did not desire to attend are also printed in their proper place (C).

Evidence from
Western Donegal.

5. Some evidence tendered us from the remoter parts of Donegal it proved impossible consistently with our arrangements, to receive at any sitting of the Commission while we were on our journey; and it was also difficult, from the great distance, to bring the witnesses to Dublin. Under these circumstances we directed our Assistant Secretary to visit these parts, and the evidence submitted to him on the spot will be found embodied in his report to us in the Appendix (D).

Answers from
County Court
Judges.

6. Of the communications we have received, we desire to call attention to a valuable series of answers from County Court Judges to questions we issued, in reference to points of difficulty in the working of the Act of 1870, which will be found printed in our Appendix (E).

II. *Tenant-Right in Ireland.*

The Irish yearly
tenancy.

7. We do not propose, after all that has been said and written on the subject, to recount at length the recent history of the Irish Land Question. A few words only are necessary by way of preface. For many generations the great bulk of the land under cultivation in Ireland has been held in small farms of under thirty acres, without leases, upon parol tenancies from year to year. In these tenancies by the common law the tenant has always had a right of property, which he might dispose of, and which was only determinable subject to conditions, the principal of which was the requirement of six months' notice to quit, recently extended by the Act of 1877 to twelve months. But this notice was too short, and the property right in consequence too evanescent, to make the tenant's condition materially better than what it is sometimes popularly called, a tenancy at the will of the landlord. The landlord might, from year to year, practically alter the future rent as he pleased; and was entitled to turn out the tenant if so minded, without assigning any reason.

Compare Report
of the Devon
Commission, p.
15; Longfield,
39800, 39843.

Tenant-right (a)
in Ulster.

8. Nevertheless, by a species of popular consent, almost universal, though without legal sanction, tenants in this position have been regarded as possessing an interest in their holdings, of which, so long as they paid their rents, it was thought unfair that they should be deprived. In Ulster this consent was embodied in the well-known Custom of Tenant-Right, which was variously defined, and has been based upon theories historical and juridical, of its origin, with which it is unnecessary here to deal. The report of the Devon Commission describes it as "a claim generally exercised by the tenant to dispose of his holding for a valuable consideration," and it is at the present day, usually stated for purposes of litigation in the following form:—"A usage whereby the tenant in occupation is entitled to sell his interest, commonly known as his tenant-right, in his holding, subject to the rent at which it is held, or such altered rent as shall not encroach upon the said interest or tenant-right, at the best rate, to any solvent tenant to whom the landlord shall not make reasonable objection; or, if about to quit the said holding, or on resumption of the said holding by the landlord, or if the landlord has indicated his intention to resume the said holding, is entitled to the value of the said interest, or tenant-right, as if so sold to a solvent tenant." Of these two statements the first makes the tenant-right to consist solely in the right to sell, the second centres it upon that right. But it would be a mistake to suppose that the general consent, or prevailing sentiment, to which we have referred, was limited to this right of sale. Without a feeling that tenants were entitled to an actual interest or right of occupancy in their holdings, larger than the legal tenancy, there could have been no prevailing sentiment in favour of their right to realize that interest. That it was a larger interest, and not the mere yearly tenancy, which the tenant sold, is obvious from the price that was paid for tenant-right, which often amounted to from twenty to thirty

M'Elroy, 4654;
Duffern, 33066;
Marum, 35830,
Blake, 39757

Devon Report, p.
14.

Townshend, 1641;
Hanna, 8890.

ers' purchase of the rent, and sometimes to a greater number of years' purchase. Moreover if the prevailing sentiment had stopped short at the question of sale, and had affected the legal right of the landlord to raise the rent at his discretion, it is not only that there would long have remained anything for the tenant to sell. The statement of one of its advocates describes the Ulster custom as consisting of "the right of sale on the part of an outgoing tenant, and continued occupancy, at a fair rent." This it must be added that, under each of these three heads limitations have been abolished, some of which are universally received as modifying elements in the custom. Upon the right of sale there is the limitation that the landlord can exercise it as to the purchaser upon "reasonable grounds." To the right of continuous occupancy there is this exception, that the landlord can terminate it, if he chooses to give the tenant the market value of his tenant-right. The right to a fair rent has never in itself defined, and therefore the limitation of it remains undefined also. It is allowed that the tenant has no claim that the landlord shall forbear to raise the rent in time to time, as circumstances may allow, and as the condition of agricultural fits may seem to justify. It is allowed on the other hand that the landlord has no right to raise it to such an extent as to destroy the tenant-right, or to absorb the benefit due to improvements made by the industry of the tenant. But no principles for the calculation of a fair rent, as distinguished from a full commercial rent, have ever been so generally received as to become a part of the custom. We postpone for the present certain questions as to the true extent of the Ulster custom of tenant-right, which will be considered in the sequel.

Patterson, 36674.
S. C. McElroy,
4654.
Statement by Dr.
James M'Knight,
p. 173 b.

Hill, 3123;
Young, 5873.

Outside Ulster something analogous to these usages has existed, though fitfully without general prevalence in any locality. Thus, a tenant who pays his rent is very seldom evicted; and even if the rent falls into arrear, it has not been the general rule that ejectment should follow as a matter of course. Farms have remained in the same families, have descended from father to son, and are considered as fully as much the family property of the tenant as the reversion of them is part of the family property of the landlord.† These tenants have not been protected by law, or by such a general acknowledgment of their interest as could be called a local custom. The protection as they had was due to the prevailing sentiment, which affected the conduct, though it could not modify the legal rights of landlords. Again, the sale of lands was a very common practice in all parts of Ireland.‡ Here and there it was effected; and even when it was effected without formal permission, the result was often justified by the easy admission of a purchaser as tenant on the recommendation of the going tenant. More often, however, strenuous efforts were made to prevent anything of the kind. Lastly, though the amount of rent was always at the discretion of the landlord, and the tenant had in reality no voice in regulating what he had to pay, nevertheless it was unusual to exact what in England would have been considered as a high or fair commercial rent. Such a rent, over many of the larger estates, the owners which were resident and took an interest in the welfare of their tenants, it has never been the custom to demand. The example has been largely followed, and is to the present day rather the rule than the exception in Ireland.

Tenant-right (b.)
outside the Ulster
Custom.

10. From one point of view it has been urged, not without show of reason, that the valuable interest which an Irish yearly tenant enjoys, and which he sometimes wishes to sell, is enjoyed by him through the forbearance of his landlord, in exacting a rent less than the commercial rent of his holding. But there is another and perhaps a juster point of view, according to which the low rent was but the recognition of an existing

Improvements by
tenants general,
and one cause of
tenant-right
existing.

Hill, 3181; Simpson, 3336; McElroy, 4413; Shallington, 4968; Young, 5888; Waring, 6919; Forde, 71; Beatty, 7319; Watson, 7468; Ker, 8079; Alexander, 8779; Sinclair, 11412; Donaldson, 11576; Bert, 11547; Brooke, 11595; Lepper, 11638; Loughrey, 12118; Baldwin, 32052, 32424; La Touche, 18.

De Moleyns, 144; Sweetman, 1137, 1206; O'Brien, 3932; Hamill, 4278; French, 19122; Daly, J. A., 20; Bailey, 20263; M'Sweeney, 25180; Townshend, 33958; Keane, 35763.
Ormsby, 617; Reeves, 1981, 2000; Meagher, 2247; Derham, 2471; Murphy, 2754; Kirkpatrick, 3856; O'Brien, 4015; Murphy, E., 10192; Cooper, 12419; Mackenzie, 13010; L'Estrange, 13090; O'Conor, 106, 13713; King-Harman, 14121; Olpherts, 14340; Stoney, 16537; Thomas, 16712; Gore, 16921; O'Connell, 17004; Clancy, 18144; Blake, 18822; Daly, W., 19026; French, 19120; O'Flaherty, 19415; O'Hara, 19; Lambert, 19519; Halliday, 19560; Robinson, 20693; Macdonnell, 21291; Hunt, 21532; O'Flaherty, 22; Barry, 21990; Morice, 23918; Spaight, 24416; Newman, 25104; O'Sullivan, 25761; Keatinge, 20; Leahy, 271202; Barry, 28741; Sanders, 29058, 29168; Fitzgerald, 29522; Nyhan, 29575; Payne, 30; Becher, 30625; Hegarty, 30681; Sherlock, 30947; Anthony, 31946; Baldwin, 32455; Roberts, 31; Townshend, 33948; Latouche, 34740; Vernon, 35254; Johnstone, 35575; Irvine, 35661, 35731; Healy, 37327; Healy, 37375; Lansdowne, 37475; Bole, 38044; Culling, 39344; Little, 39477; Adamson, 37; Rochfort Boyd, 39889.

Latouche, 930 ;
Robertson, 1426.

Kirkpatrick, 3818
Fowler, 39262.

interest, with which it would have been, though not illegal, yet inequitable to meddle. The credit is, indeed, due to Irish landlords as a class, of not exacting all that they were by law entitled to exact. But their forbearance has been the result, not merely of kindness of disposition, but also of common honesty, which forbade them to appropriate the results of their tenants' labour in improving the soil. The question how far the improvements made on the soil have been the work of landlords, and how far of tenants, is eagerly debated. But it is not denied by anyone that in Ireland it has been the general rule for tenants to do more, at all events, than the mere agricultural operations necessary to insure them such a profit as could be realized within the time which constituted the legal term of their tenancies ; and this, of itself, is enough to establish in their favour a presumption that they were morally entitled to a larger interest in their holdings than was ever recognised by law. As a fact, the removal of masses of rock and stone, which in some parts of Ireland incumber the soil, the drainage of the land and the erection of buildings, including their own dwellings, have generally been effected by tenants' labour, unassisted, or only in some instances assisted, by advances from the landlord.*

The circumstances
of Irish history
and society
another.

11. Nor is this all. That condition of society, in which the land suitable for tillage can be regarded as a mere commodity, the subject of trade, and can be let to the highest bidder in an open market, has never, except under special circumstances, existed in Ireland. Not, certainly, in the times of Irish independence, when chiefs and their septa held land under some form of common ownership ; not in the times of its disintegration, when the chiefs had become owners and dealt with their followers at pleasure, but never, we may be sure, allowed any but their own personal dependents to settle on their land ; nor yet in the later days of English settlement, when landowners were glad to invite tenants of the same race and religion to settle round them on easy terms in order to secure themselves in their estates, was there any trace of an open land market, and of land let by competition at a commercial rent. The epoch of wars closed, and the population multiplied ; but the condition of society remained the same. Manufacturing industries failed, from well-known causes. Instead of a native landowning class rooted in the soil, the landlords of Ireland were as a class alienated from the mass of the people by differences of religion, manners, and sympathy, and were many of them strangers and "absentees." Instead of a cultivating class deeply imbued with traditions of migration and of adventure, with other modes of life open to them besides agriculture, and a Poor Law to fall back upon in the last resort, Ireland swarmed with a home-keeping people, without manufactures, colonies or commerce, dependent upon tillage, and holding on, for life and living, to the soil of which they were not the owners. Not even when the numbers of the population became excessive did the commercial theory begin to regulate the letting of farms in Ireland. The economical law of supply and demand was but of casual and exceptional application. It is generally admitted that to make it applicable the demand must be what is called "effective;" in this instance it may be said that, whatever was the case with the demand, the supply was never effective. It was of little use to the landlord, who thought of rent-raising, that there were hundreds of applicants for a farm of his, when a tenant, or a swarm of tenants, already occupied it, whom the law itself was frequently not able to eject. Famine supervened, and wholesale emigration ; the pressure was lightened in some places, while in others the return of prosperity sustained it. But the Irish farmer remained, as before, faithful to the soil of his holding, and persistent in the vindication of his right to hold it. In the result, there has in general survived to him, through all vicissitudes, in despite of the seeming or real veto of the law, in apparent defiance of political economy, a living tradition of possessory right, such as belonged, in the more primitive ages of society, to the status of the man who tilled the soil.

Testimony of the
Devon Commission
to the existence
of tenant
right.

12. A high authority on the subject, an authority favourable to the policy of the law, bears weighty testimony to the fact of its failure. In the Report of the Devon Commission, though no misgiving is expressed as to the absolutely beneficial tendency of the law which refused recognition to the tenants' interest, the existence of the Ulster Tenant-right is acknowledged, and its claim to consideration is not denied. The custom of Ulster Tenant right, the Report says—

p. 14.

"Dates from a very early period, having probably sprung up as a natural consequence from the manner in which property was generally granted and dealt with in that part of the country. . . . From this

* De Moleyns, 98 ; Ferguson, 315 ; Sweetman, 1193 ; O'Connell, 3009, 3047 ; Hill, 3192 ; Hamill, 4266 ; Waring, 6929 ; Ward, 7112 ; Beatty, 7371 ; Hanna, 8918 ; Murphy, 10136, 10142, 10156 ; Sinclair, James, 11385 ; Fitzgerald, 25723 ; Walpole, 25989 ; Jones, 26908 ; Leahy, 21758 ; Colthurst, 30619 ; Allen, 1943 ; Murphy, 2822 ; O'Brien, 3937 ; Carver, 30856 ; Gouley, 33640 ; Carroll, 36217 ; Rochfort Boyd, 39894.

late of things a feeling of proprietorship appears to have grown up in the tenant, which continues in a great degree to the present day Anomalous as this custom is, if considered with reference to all ordinary notions of property, it must be admitted that the district in which it prevails has thriven and improved, in comparison with other parts of the country; and although we can foresee some danger to the just rights of property from the unlimited allowance of this tenant-right, yet we are sure that evils more immediate and of a still greater magnitude would result from any hasty or general disallowance of it, and still less can we recommend any interference with it by law."

Outside Ulster the Report recognizes the existence of general uneasiness, and of a want of harmony in the language used by landlords and tenants respectively, when speaking of their rights. It says—

"The most general, and indeed, almost universal topic of complaint brought before us in every part of Ireland, as the 'want of tenure'—to use the expression most commonly employed by the witnesses. It is well known that the want of 'fixity of tenure' has, for some time past, been put sedulously forward as one of the most prominent grievances of the Irish tenant. Some few of the witnesses before us have given to that term a meaning wholly inconsistent with any regard for the most generally admitted rights of the proprietors of the soil; but this is not common; most of them have referred to this subject in much more moderate and reasonable language. The uncertainty of tenure is, however, constantly referred to as a pressing grievance by all classes of tenants. It is said to paralyze all exertion, and to place a fatal impediment in the way of improvement."

p. 16.
Sweetman, 1086,
1155; Robertson,
1515; Murphy,
10190; Verling,
29280; Sherlock,
30969; Anthony,
31961; Baldwin,
32086.

13. The Land Law of England, a country differently situated, and in which the social system has received a different development, has been, by force of circumstances, imposed upon Ireland; and in many instances, principally in connexion with the law of descent, powers have been conferred upon the landlords in Ireland that have no existence in England. That law may have been beneficial in its operation in a country where it was merely the embodiment of existing relations, or the expression of prevailing tendencies; but when transplanted into a country where the relations between landlord and tenant were of a different character, and were being developed after a different fashion, not only did it fail to change those relations into the likeness of English traditions, but also, by its attitude of continual antagonism to the prevailing sentiment, it became detestable to tenants, and helped to bring the Courts that administered it, and the Government that enforced it, into undeserved odium. In the result, a conflict of rights, legal and traditional, has existed in Ireland for centuries. The degree of quiet which the country has enjoyed has been due quite as largely to non-enforcement of the legal right, as to the overriding by it of the traditional. Poverty and ignorance, and the absorption of political feeling by other subjects of interest, have retarded the arrival of the controversy at its present acute stage. Ireland is now richer and has fewer grievances of a social or political sort than at any previous period of her history. For this very reason the great grievance that remains as now come to the front, and demands an instant remedy. But the difficulty is no new one. A note of alarm is sounded in the introductory chapter to the Digest issued by Lord Devon of the Evidence taken before the Commission over which he presided, warning landlords of the irreconcilable difference between the rights claimed by tenants and those conceded to themselves by law, and impressing on them the extreme danger which impended over their legal position, if this conflict of right were not speedily terminated. But even here it was not proposed to extinguish the claims of tenants by legislation.

Discrepancy
between the law
and the existing
tradition.

Hamill, 4253.

"The whole of that vast mass of evidence taken by the Commission, in reference to the mutual relation existing between the proprietors and occupiers of land in Ireland, is at once conclusive, painfully interesting, and most portentous in its character. It proves that the safety of the country, and the respective interests of both those classes, call loudly for a cautious but immediate adjustment of the grave questions at issue between them. In every district of the country we find that a widely spread and daily increasing confusion as to the respective rights and claims of these classes exists; and it is impossible to reject the conviction, that unless they be distinctly defined and respected, much social disorder and national inconvenience must inevitably be the consequence. It appears, on the one hand, that the tenant claims what he calls a tenant-right in the land, irrespective of any legal claim vested in him, or of any improvement effected by him—that the value of this claim is estimated at different rates in different localities—that it is either openly admitted or silently quiesced in by the landlords in some districts, whilst it is considerably restricted or absolutely denied by others. In the north of Ireland this system is pretty generally either authorized or connived at by the landlord, and it is not uncommon for a tenant without a lease to sell the bare privilege of occupancy or possession of his farm, without any visible sign of improvement having been made by him, at from ten to sixteen, up to twenty, and even forty years' purchase of the rent, and the comparative tranquillity of that district may, perhaps, be mainly attributable to this fact. In the remaining portions of the country the evidence would lead to the conclusion that the practice, although equally claimed by the tenant as his right, is not allowed, either openly or by sufferance, by proprietors, except in rare individual instances, and then upon a very much modified scale. It is difficult to deny that the effect of this system is a practical assumption by the tenant of a right of proprietorship in the land. . . . Landowners do not appear aware of the peril which this system threatens their property, and which must increase every day that they defer to establish the rights of the tenant on a definite and equitable footing. . . . They do not perceive that . . . an established

p. 1.

practice not only may, but must, erect itself finally into law; and any one who will take the pains to analyse this growing practice, will soon perceive how inevitable that consequence must be in the present case, unless the practice itself be superseded by a substitute that shall put the whole question on a sound, equitable, and invigorating basis. This basis can only be one that shall accurately define the property of the landowner from that of his tenant, and ensure to each the full enjoyment of his own."

Leases not acceptable.

14. Many of those who have devoted thought to the settlement of the difficulty have come to the conclusion that the true remedy for all the evils of insecure tenure, and of discrepancy between law and tradition, lay in the gradual introduction and universal adoption of a system of Leases. The Report of the Devon Commission above quoted points in this direction. The tenants, however, in general refuse leases.* The offer of security in their holdings for a term of years presents no attraction to them. They see in it, not a lengthening of the legal yearly tenancy, but a shortening of the continuous traditional tenancy. ✓ A lease generally involves an immediate increase of rent: at all events, rents are found almost invariably to be raised on its termination. It has seemed better to abide by the tradition, and trust to the easiness of the landlord, and the chapter of accidents. The number of leases in Ireland does not appear to be materially increasing; and this method of settling the land question has apparently become hopeless.

Effect of the transfer of estates under the Landed Estates Court.

15. It is probable that the warning given by Lord Devon had a considerable effect in causing efforts to be made, far more systematically than before, to repress the tendency of the claims of tenants to become established in the form of local customs. Another cause which has operated in the same direction has been the extensive transfer, under the action of the Encumbered Estates Court and of the tribunals which have taken its place, ever since the famine of 1846, of ancient properties, previously managed in a more or less patriarchal fashion, to new owners.† Most of the purchasers were ignorant of the traditions of the soil; many of them were destitute of sympathy for the historic condition of things. Some purchased land merely as an investment for capital, and with the purpose—a legitimate one so far as their knowledge extended—of making all the money they could out of the tenants, by treating with them on a purely commercial footing. A semi-authoritative encouragement was given to this view of their bargains by the note which it was customary to insert in advertisements of sales under the Court—"The rental is capable of considerable increase on the falling in of leases." This hint has often been acted on, and rents greatly above the old level—in some cases probably above the full commercial value—have been demanded and enforced, with the natural result, in a few years' time, of utterly impoverishing the tenants.

Hill, 3114; Blake, 39747.

The Landlord and Tenant Law Amendment Act, 1860, 23 & 24 Vict., cap. 154, s. 3.

16. The last step in the development of what may be called the English Land Law in Ireland was the passing of the Act of 1860, whereby it was enacted that "the relation of landlord and tenant shall be deemed to be founded on the express or implied contract of the parties, and not upon tenure or service." This enactment has produced little or no effect. It may be said to have given utterance to the wishes of the Legislature that the traditional rights of tenants should cease to exist, rather than to have seriously affected the conditions of their existence.

The Land Act, 1870, 33 & 34 Vict., cap. 46

s. 1.

s. 2.

17. The Act of 1870 constituted a reversal of this policy, and the establishment of a new order of ideas. For the first time it was decided in some measure to recognize the existing state of things. The attempt was abandoned to establish by law the commercial system of dealing with tenancies of agricultural land. In Ulster, where the traditional rights of tenants had attained the consistency of a custom generally recognized, that custom was now legalized, and became a part of the law; and in the case of any holding not situated in Ulster where a usage prevailed in all essential particulars corresponding with the Ulster tenant-right custom, it also was legalized. Where the Ulster custom did not exist, a legislative sanction was given to the pre-existing sentiment that a tenant ought not to be deprived of an interest, which, nevertheless, the statute did not in terms declare him to possess. But in all cases the only weapons given by the statute for vindicating the rights of the tenants were in the nature of compensations for the

* Allen, 1901; Forde, 7019; Watson, 7478; Sinclair, J., 11355; Caskey, 12339; Knox, 16995; Mahon, 21169; Hunt, 21564; Reeves, 23371; Hussey, 25260; Crosbie, 26201; Barrett, 30551; Hegarty, 30691; Fell, 30757; Rochfort-Boyd, 39901.

† Robertson, 1538; Coleman, 2544; Everitt, 2544, 2567; Simpson, 3342; Quin, 5756; Brush, 6694, 6710, 6719; Watson, 7526; Murphy, 10115; Ashe, 11995; McIntyre, 13336; Cawley, 14076; Bourne, 15178; Barbour, 15621; Gore, 16977; O'Hara, 19505; Bailey, 20246; Seymour, 20668; Kilmartin, 21035; Joyce, 21068; Stritch, 24357; O'Sullivan, 25804; Walpole, 26187; Barry, 28729; Fitzgerald, 29544; Burdon, 31602; M'Mahon, 34398.

wrongful deprivation of his interest in his holding. Thus the tenant unprotected by the Ulster custom became entitled, on quitting his holding, to compensation, subject to many restrictions, for his improvements; to compensation, within limits, for money paid when he entered on his holding; and, more important still, to compensation subject to a scale for the mere fact of disturbance, apart from any consideration of improvements made or of money paid on entering. The remedies given to a tenant under the Ulster Custom were similar in kind. The tenant who was served with a notice to quit to determine his tenancy was to make a claim on his landlord for the value of his tenant-right. Logically speaking, such a claim ought to have justified a decree to enforce the Custom, by way of specific direction to the landlord who was found to be violating it to abstain from doing so, and to charge no more than a fair rent, if he were found to have unduly raised it. But the absence of such a provision in the Custom itself, and consequently in the law legalizing it, and the general tenor of the subsequent sections, have caused the word "claim" to have a signification, in all cases, of a claim for money representing the value of the tenant-right; in other words, for compensation for the loss of it.

Gave only indirect protection to tenants' interests,] Ss. 4, 5, 6.
S. 7.
S. 3.
S. 16.

18. The full bearing of these observations will not be appreciated, unless it be remembered that, in nearly all cases of dispute between tenant and landlord, what the aggrieved tenant wants is, not to be compensated for the loss of his farm, but to be continued in its occupancy at a fair rent. This, as the law now stands, he cannot have; and in order to raise a question before the Court, he is forced to begin by a surrender of the only thing for which he really cares. The plaintiff in a land claim, if he fails to prove his case, is turned out without the compensation that he claimed; but if he proves it, he is turned out all the same. Even the chance that he might, by consent of the landlord, be allowed to continue in possession at the higher rent, the demand of which in many cases has been the sole cause of the suit, and his refusal to pay which has led to the service of the notice to quit upon him, is lessened by the bitterness naturally engendered in a contest at law between himself and his landlord. The Act was intended to confer security upon tenants, and has to some extent succeeded in so doing; but it has in this respect introduced a new element of insecurity. It has converted ordinary disputes over the amount of rent, and over a tenant's dealings with his holding, into one-sided wagers of battle, where the prize at stake is in all cases first adjudged to the landlord, and the tenant, if successful, is obliged to put up with a substitute. In a word, once the tenant comes into court, all the law can give him is compensation in money. The very fact of his making a claim at all presupposes that he is to leave the land. It is obvious that a statute of this description, the utmost scope of which is to give compensation for the loss of a valuable interest, but no right to be protected in its enjoyment, or to have it restored when it has been taken away, fails to afford protection on the usual lines to the tenant's interest in his holding, if that interest be considered as a genuine proprietary right; and at the same time it is hard to see on what grounds such legislation is to be justified, if the existence of any proprietary right in the tenant is denied. However useful as a temporary measure, at a transitional period, it appears to us that the Land Act contained in itself the seeds of failure, as a permanent settlement. As such, now that it has been fairly tried, it is impossible to resist the conclusion that it has failed to give satisfaction to either party.

In what respects it has failed.

De Moleyns, 118;
Everitt, 2489;
M'Elroy, 4413;
Cunningham, 9438.

Hill, 3158;
Alexander, 8775.

III. *Conclusions from the Evidence.*

19. It appears from the evidence that the Land Act of 1870, notwithstanding its defects, has conferred advantages upon the tenant farmers of Ireland, especially in Ulster. It has, however, failed to afford them adequate security, particularly in protecting them against occasional and unreasonable increases of rent. The weight of evidence proves indeed that the larger estates are, in general, considerably managed; but that on some estates, and particularly on some recently acquired, rents have been raised, both before and since the Land Act, to an excessive degree, not only as compared with the value of the land, but even so as to absorb the profit of the tenant's own improvements. This process has gone far to destroy the tenant's legitimate interest in his holding. In Ulster, in some cases, it has almost "eaten up" the tenant-right. Elsewhere, where there is no tenant-right, the feeling of insecurity produced by the raising of rent has had a similar effect. The extent and mischief of this feeling of insecurity are not to be measured by the number of cases of rent-raising which have been brought into court, nor even by the number of cases where the rent has actually been unduly increased, or of estates on which the owner has been thought to

The Land Act has conferred insufficient protection on tenants in respect of rent-raising

Townshend, 1653,
Hill, 3132;
M'Elroy, 4597;
Beatty, 7538;
Marp'y, 10114;
Hamilton, 33345,
Blake, 39701.

Ferguson, 353 ;
Bailey, 20252.

Hill, 3225 ;
Simpson, 3342 ;
Baldwin, 32104.

have unduly raised the rent of one or more of his tenants. The feeling is contagious, and has spread far and wide. Even a single case, very likely misapprehended, in which a landlord, of previously good reputation in this respect, is thought to have acted unfairly by a tenant, may largely affect the condition and the good feeling of an entire neighbourhood. Since the Land Act, cases of this kind have been more fiercely canvassed and more widely known. Some landlords, who previously were content to take low rents, appear to have begun a system of rent-raising when the Land Act was passed, either because they judged that their former forbearance was not suitable to the new relations which legislation had established between themselves and their tenants, or because the profits of agriculture just then were high, or because the high price fetched by tenant-right, under the stimulus of the satisfaction engendered by the passing of the Act, made them think that they had hitherto been mistaken in letting their land so cheaply.

Illustrations from
the Evidence.

20*. Thus Mr. S. M'Elroy, Secretary of the co. Antrim Tenants' Right Defence Association, says, Q. 4489 :—

"Putting on one side the amount of rents raised on account of the misapprehension created in some landlords' minds by the Land Act, with the advantages gained by the tenant on the other side, through compensation in the Land Court, I believe the tenants have lost more by increased rents than they have gained by the compensation given in the Land Court."

Mr. Shillington, Chairman of the Armagh Tenant Farmers' Association, says, Q. 5074 :—

"You think the effect of raising rents in the north has been more or less to interfere with the tenant-right ?—The effect has been to reduce the value of the tenant-right, and it has interfered with the comfort and contentment of the farmers, and made them discontented, and producing a great deal of agitation and discontent with the existing state of things. Q. Has it affected the sense of security they feel for their interest in the land ?—Very greatly. It has produced a very general uneasiness and sense of insecurity—the gradual raising of rents. Q. Am I right in thinking that it would be possible, by increasing the rent on every farm in that way, to do away with tenant-right altogether ?—Quite so. It is a question of time whether the Ulster tenant-right, on many estates, will not disappear altogether, under the existing law. The facts of the past ten years prove that it is merely a question of time."

Mr. Joseph Alexander, of Imlick, co. Londonderry, says, Q. 8688 :—

"The Land Act of 1870 affords no protection to the tenant farmer for his improvements, nor as regards rent. Q. You mean it gives no protection against increase of rent ?—None. It gives no protection against increase of rent for improvements. Q. Improvements made by the tenant ?—Made exclusively by the tenant. . . . Q. The intention of the Act was to give the tenant security for all his rights as they existed at the time of the passing of the Act ?—Quite so. Q. You think the Act was not sufficient to secure that ?—Not sufficient, because the landlord can raise the rent to any amount he chooses. Of course the tenant has three alternatives—he either sits under the increased rent, or he sells his interest and walks out, or he delivers up the farm to the landlord, and fights him in the law court. Q. And they object to fighting ?—They do. It is something like the three alternatives that were offered to the ancient King of Israel—three months before the sword of the enemy, three years' famine, or three days' pestilence. There have been no land cases in our county court for a considerable time. Q. The tenants prefer to submit to the increase of rent rather than go to law ?—Yes. Q. Going to law means going out of your farm ?—It does ; and it also means going to a place that we don't know what will happen to us—no more than we do of a future state of existence. We never can tell what may be the result of litigation."

* See also, among others ; Ferguson, 227 ; Sweetman, 1179, 1190 ; Robertson, 1403, 1405 ; Allen, 1946, 1951 ; Coleman, 2283, 2298, 2303 ; Drew, 2726, 2740 ; O'Connell, 3023, 3031 ; Hill, 3086, 3134 ; Simpson, 3314 ; Knipe, 3639, 3646 ; Fenlon, 3715, 3760, 3766, 3772 ; M'Elroy, 4551, 4559, 4581, 4597 ; Shillington, 4987, 5079, 5114 ; Ruddell, 5271 ; Quin, 5660, 5691, 5701 ; O'Callaghan, 5824 ; Swann, 6127 ; Perry, 6246 ; Murray, 6352 ; Lennon, 7540, 7610 ; Campbell, 7656 ; Henry, 7770 ; Gault, 8388 ; Wallace, 8529 ; M'Nair, 8649 ; Alexander, 8689, 8772 ; Hanna, 8912 ; Gamble, J., 8986 ; M'Glinchy, 9151 ; Cunningham, 9404 ; Flanagan, 9639, 9654, 9675 ; Dunne, 10025 ; Norris, 10219, 10235 ; Warnock, 10312, 10324 ; Morrison, 10449 ; Caldwell, 10545 ; Coyle, 10572, 10599, 10642 ; Adams, 10605, 10633 ; Cole, 10662 ; M'Connell, 10685 ; Laughlin, 10686 ; Gregg, 10719 ; M'Intyre, 10778 ; Gamble, W., 10873, 10886, 10902 ; Loughrey, 11117 ; Sinclair, James, 11391 ; Sinclair, William, 11424 ; Brooke, 11603 ; Craig, W., 11666 ; M'Kinley, 11681 ; Ashe, 11990 ; Craig, R., 12172 ; Mannion, 12641 ; M'Donough, 12841 ; Shanley, 13237 ; Cunningham, 13396 ; M'Kenna, 13839, 13919 ; Martin, 13954, 13985 ; Cawley, 1404 ; Hanlon, 14376 ; Gallagher, 14632 ; Jackson, 14847 ; Ward, 14934 ; Flaherty, 14982 ; Fawcett, 15091, 15102 ; Moore, 15136 ; Crean, 15729 ; Heraghty, 16438, 16351 ; Gibbons, 16479 ; Hogan, 16475 ; Corcoran, 17333 ; Dowling, 18060 ; Morris, 18409 ; Kilmartin, 20944 ; Joyce, 21065 ; Bolster, W., 21675 ; O'Flaherty, 21,842 ; Casey, 21960 ; Barry, 22021 ; Cahir, 22946 ; Gubbins, 23508, 23516 ; Madden, 23522 ; Stoney, 23608 ; O'Connor, M., 24537, 24583, 24589 ; Moynahan, 24619, 24625 ; O'Connor, T., 24,650 ; Carroll, 24785 ; Allman, 24833 ; O'Donoghue, 25025 ; O'Connor, M. 25212 ; Warren, 25498 ; Clifford, 25683 ; Fitzgerald, 25715 ; Griffin, 25,885 ; Walpole, 25982 ; O'Connor, P., 26303 ; Foley, 26358 ; Lane, 26464 ; Riordan, 26722 ; Barry, 28729 ; O'Sullivan, 28942 ; Sheehan, 29017 ; Verling, 29275 ; Nyhan, 29557 ; Daly, 29903 ; M'Carty, 30249 ; Finn, 31297 ; Nugent, 31330 ; Mulcahy, 31349 ; Maher, 31362 ; Finn, 31370 ; Burdon, 31585 ; Croom, 31998 ; M'Mahon, 34361 ; Orr, 34941 ; Walsh, 35504 ; Marum, 35848 ; O'Hallofan, 35960 ; Foley, 35984, 35993, 36006 ; Murphy, 36230 ; Pringle, 36770 ; Gartland, 36954 ; M'Keogh, 37061, 37067, 37074 ; M'Govern, 37230, 37240 ; Phelan, 37275 ; Smith, 38411, 38417 ; Sproule, 38337, 38,645 ; Pringle, 38777, 38783 ; Galvin, 38833 ; Holahan, 39192. See also Appendix B, C, and Reference Table.

Mr. H. Ward, county cess collector, Ballintra, co. Donegal, says, Q. 14980 :

"A great portion of the landlords of this country are doing everything they can to put down the Land Act of 1870, to make it a useless letter in the Statute Book, for the rise of rent prevents the tenant-right being any use, and a man won't buy. . . . This great contention between the landlords and the people did not so much exist until after the Land Act. The landlords are death on the people. Q. Standing on their rights?—Yes, and saying we will not allow this Tenant-Right Bill to have effect at all, and we will put on a rent that will destroy it, and has destroyed it."

Illustrations from
the Evidence.

Edmund Langley Hunt, Esq., of Curraghbridge, Adare, co. Limerick, says, Q. 1653 :—

"On the properties you are acquainted with are there periodical valuations?—No, there are not. Q. On a change of tenancy I suppose there is a change of rent?—As I say, that is done very quietly. You see the rents raised and raised, and you find it hard to know how it has been done. The tenant must arrange it, a matter of fact."

Thomas Sanders, Esq., of Sanders Park, Charleville, co. Cork, says, Q. 29087 :—

"Do you feel any difficulty in fixing the rents with the tenants at all?—I can't say I do; on the falling out of a lease, I have had very little difficulty in increasing the rents. Q. Supposing a man is in possession of a farm and you want to increase his rent, and he disagreed, how would you settle the matter—does it end by giving your own way?—I end it by having my own way. Q. You would not call that freedom of contract—would you?—It would be perfect freedom of contract, if I were dealing with an outsider. Q. Exactly. What when a man is in possession, and has nowhere else to go to—what would you call it then?—In some instances it would be perfectly free. Q. But there are some that would not be perfectly free—what would you do when they suggested a perfectly fair commission to fix the rent?—I would do what I considered it. Q. That is fix the rent yourself?—Fix what I considered a fair rent."

Professor Baldwin, of Glasnevin Model Farm, says, Q. 32106.

"I found the action of one unwise or bad landlord brings disfavour on the whole class in the county or province, and drives actually terror into the minds of the people for miles and miles. Q. The feeling of the tenants is what has happened in one place may happen in others?—That is what is in their minds."

William Rochfort, Esq., of Burrin House, co. Carlow, says, Q. 33255 :—

"The Land Act, in my opinion, failed in protecting small holders from liability to pay exacting rents. I do not think it affords adequate protection in cases in which the landlord wishes to raise the rent, more especially on the tenants' improvements; but any legislation ought to be strictly confined to the small men who cannot protect themselves. I do not think the small holders are free agents. Q. You think the large men can protect themselves?—Yes. Q. Where would you draw the line?—Well, I cannot answer that."

J. E. Vernon, Esq., of Wilton-place, Dublin, says, Q. 35302 :—

"You have to deal with the quantity of land in Ireland at this moment that is let at rents that are too high. You must deal with that fact—you cannot shirk the question. It is a serious question in a legislative point of view, but I do not think you can shirk it. Q. Do you think that arises from frequent rises of rent since the Land Act?—Partly from that cause, there is no doubt about it. I think it began with the Incumbered Estates Court. A number of men bought land in that court on speculation, and increased the rents. I could mention estates on which, since the establishment of the Incumbered Estates Court, I have known the rents raised twice. Q. Have you known many cases of rise of rent since the Land Act?—I have. I think the passing of the Land Act has had the effect of raising the rents, for this reason, I think men have been ought much more within the lines of business. Previous to the passing of the Land Act the landlords let the thing run on; they had the feeling that whenever they thought proper they could raise the rents. The Land Act laid down a line, what you could do, and what you could not do; and that drew the attention of a great many men to their rights in that sense."

21. Under these circumstances the Act of 1870 has been vainly appealed to for an adequate remedy. It gives no regular jurisdiction over questions of rent. When rent is raised, although the rise may eat into the value of the tenant-right, although it may deprive the tenant of the benefit of his own improvements, although it may make it difficult for him to get a living on the farm, he must, as a rule, submit. The evidence shows that, under a system of gradual small increases of rent, tenants have submitted, long past the point at which they consider themselves to be unfairly rented. When at last they decide to make a stand, they refuse to pay the additional rent. If the landlord withdraws his demand, matters go on as before. If he does not, he serves a notice to quit, which at law determines the tenancy. The tenants must then file a "claim," if under the Ulster Custom for compensation for their tenant-right, if otherwise for compensation for disturbance, and for their improvements, if any. Under the Ulster Custom, the Court inquires whether the custom exists on the estate, and whether the usages applicable to the particular holding support the tenant in his claim for tenant-right on quitting his holding at the demand of the landlord. These points being decided in the tenant's favour, the Court proceeds to examine into the value of the tenant-right, and to adjudicate him a sum of money accordingly. In so doing it is necessary to take into account the amount of rent, upon which, as compared with the gross value of the holding, the value of the tenant-right in the first place depends; and in considering, as the statute authorizes, any objection or set-off which either party may urge, and any default or unreasonable conduct of either party affecting the matter in dispute, the point may arise for consideration whether the landlord was unreasonable

The remedy in the
Land Act is indi-
rect and therefore
insufficient.

How it works (a)
under the Ulster
Custom;

Blake, 39703.

s. 18.

Ferguson, 220,
41; Robertson,
478; Hill, 3323;
Lamill, 4204;
Blake, 39720.

b) Where the
Ulster Custom
does not exist.
18, end.
4, end
9.

Lamill, 4233;
Feron, 35351.

in demanding the increased rent, and whether the tenant was unreasonable in refusing it. In this way the question of rent becomes an element in the settlement of the amount to be paid by way of tenant-right. But no jurisdiction is given to the Court to adjudge or to propose a fair rent as a settlement of the dispute. However, in the exercise of their discretion, some county court judges have taken advantage of the stage of the proceedings at which the question of rent is before them to declare extra-judicially what they think would be a fair rent, and by consent to put the question in train for a settlement, upon the basis that the tenant shall be continued in his occupancy at that rent. Outside the protection of the Ulster custom, a claim for compensation is similarly inquired into and settled without any jurisdiction over the question of rent. In this case the court is expressly directed to disallow the tenant's claim to compensation for disturbance, if it appears that the landlord is willing to permit the tenant to continue in occupation upon just and reasonable terms, and that the refusal of the tenant to accept his terms is unreasonable. There is also an express provision that the amount of the old rent is to be considered by the court, in reduction of the claim of the tenant for compensation for his improvements. The only case in which the amount of rent is to be taken into account in a sense favourable to the tenant is a provision by way of exception to the enactment depriving an ejected tenant of compensation where his rent has not been paid. In the case of a holding not exceeding £15 rental, ejection for non-payment of rent may be declared a disturbance where the non-payment is found to have been due to the rent having been "exorbitant." This provision has been almost inoperative, and for the most part unnoticed. The use in it of the word "exorbitant" has contributed to this result. Thus, with the exception of the informal proceedings resorted to by some County Court judges outside the strict limits of their function, the Act provides no effectual resource accessible to a tenant against an undue increase of rent; nor does it hold out to him any benefit whatever, in cases of rent-raising, consistently with his remaining in possession of his holding.

Raising of Rent
at the time of Sale
of Tenant-right
under the Ulster
Custom, a way in
which the Act has
been rendered in-
operative
Simpson, 3390;
Knipe, 3626;
Lamill, 4261;
Strim, 11281

Mode in which
this has been
brought about.
Hill, 3136.

Warnock, 10383;
Morrison, 10483.

22. On estates subject to the Ulster custom an easy way has been found to render the Act in this respect entirely inoperative, by selecting the time when the tenant-right was in the market for announcing increases of rent. This practice appears to be comparatively a new one, since the Land Act of 1870. Before that time there was a delicacy in meddling with sales of tenant-right. The right of free sale was at once the element in the custom which least affected the landlord's action, the right to which he had established the most satisfactory limitation, namely, the veto to a purchaser on reasonable grounds, and the right most clearly established. It was, moreover, the one point in the custom from which the landlord himself derived a distinct benefit. The proceeds of a sale were his acknowledged security against arrears of rent. The discovery of the large sums that were paid for tenant-right might often suggest to landlords that the time had come for raising rents; but they did so generally at their own convenience, either at fixed periods, or on occasion of the general revaluation of an estate. After the Land Act, a demand for an increase of rent, if followed by a notice to quit, became liable to the inconvenience that a tenant might refuse to pay, and might serve a claim for compensation for his tenant right. In this way the landlord, if he persisted in his notice to quit, might be forced unexpectedly to pay down a large sum of money, when he had only calculated on receiving an increase of rent. To wait for a sale of the tenant-right, and then announce the increase, was a course which made it in the highest degree improbable that any resistance would be made to the landlord's demand. This is what happens; if the sale goes on, and the increase of rent is submitted to, the outgoing tenant generally has to bear the loss; in which case it is common to deduct £20 from the purchase-money for every £1 added to the rent. In other cases the purchaser, who is in the nature of things generally richer and more sanguine than the vendor, may be weak enough to pay the full value of the tenant-right, and the higher rent as well. No purchaser if well advised will pay the original purchase-money, and go into possession of the farm against the landlord's consent, while refusing to pay the additional rent. If he does, he will be served with a notice to quit, and will thus have bought a lawsuit. If he makes a claim under these circumstances, he will only get the diminished value of the tenant-right at the increased rent, unless he can show conclusively that the additional rent demanded is excessive. He also runs the risk, having purchased without the landlord's consent, of having his claim entirely disallowed. If no sale is concluded, as very often happens, the disappointed vendor, generally in difficulties, and eager to realize, is obliged either to begin treating again for a sale at the reduced value, or else to come to terms with the landlord under disadvantageous circumstances. The discontent resulting from these proceedings will be found reflected in the evidence.

23.* Thus Mr. S. McElroy says, Q. 4522 :—

“Very much evil has arisen with regard to the raising of rents at the change of tenancies. . . . The same principle holds good over the greater number of properties in the north of Ireland, and creates a great deal of bad feeling.”

Illustrations from
the Evidence.

Mr. James Ferguson, of Silversprings, co. Antrim, says, Q. 4838 :—

“Are the rents raised before the sales?—Yes; the parties are told that the rent will be increased, and then when the farm is bought they add something to the rent. Q. The rents are creeping up!—Creeping up by degrees.”

Mr. Shillington says, Q. 4987 :—

“There are several circumstances taken advantage of by landlords to advance rents. On one of the estates I have named it is an invariable custom, on a change of tenancy, to increase the rent. . . .

“Q. 4990. I do not know that the custom existed until the agitation took place in reference to the Land Act. I think about 1869 is the first instance I have. Q. You consider it was in connexion with the Land Act, or the proceedings before the Land Act?—Yes.”

Mr. Joseph Perry, formerly Secretary of the Down Tenant Farmers' Association, says, Q. 6228 :—

“Where tenant-right cannot be denied, in several cases since the Land Act came in, where they cannot prevent free sale they have adopted the plan of raising rent at the time of the transfer of a farm. . . .

“Q. 6232. Rents raised at the termination of a lease or on change of tenancy?—Yes; it is on change of tenancy we complain of, and it is not on the termination of the lease—that, we think, is natural. We don't object to it. . . .

“Q. 6240. At a regular fixed period I would rather have it, than at the time of a sale, because it destroys the confidence of parties.”

Mr. Joseph Beatty, of Keenan, Lurgan, says, Q. 7358 :—

“You say there is a general tendency on the part of landlords to increase the rent!—I do. Q. To “nibble it up”?—To nibble it up. Q. Is that done at stated intervals?—Generally at the fall of a lease or change of tenancy. Q. If a lease was made a long time ago, say forty or fifty years ago, and that the land was let cheap, do you think it would be wrong to raise the rent on the termination of the lease?—No; of course in such a case as that it would be right to make a change. Q. You say the rent is increased on a change of tenancy?—Yes; if a man wished to sell his farm, and another man wants to buy it, and they go into the office in order to get the purchaser accepted as the tenant, and his name put in the book, his rent is generally increased. Q. Is it unjustly increased, in your opinion?—In very many cases it is; in some cases it is not.”

Mr. Joseph Laird, of Ballyclare, co. Antrim, says, Q. 8420 :—

“Is there any fixed rule as to the times when rent may be raised?—No fixed rule. Whenever you sell a farm the rent is raised, even if it had been raised two years before. Q. There is an increase of rent upon every change of tenancy?—Yes; and in fixing the rent they never examine the subsoil or anything else; they just say it is worth so much, and the tenant must submit. I believe the landlord should get the fair value of the farm, deducting the improvements the tenants have made.”

Mr. John Donnell, of Dunnamanagh, Strabane, co. Tyrone, says, Q. 10981 :—

“Is it a fact that you have not heard of this rule of increasing rent on a sale of tenant-right being adopted upon the estates until after the Land Act?—Yes. Q. It was not adopted on the estates in your neighbourhood?—Not in any part that I heard of.”

Major James Hamilton, of Brownhall, Ballintra, co. Donegal, says, Q. 14742 :—

“But what they complain of is the introduction of the custom of a rise of rent on the change of tenancy?—That I understand has been the custom here about Donegal. I was going to try that at one time, because when prices rise, a landlord has to rise his rent at some time or other. I thought it would be a good thing to do it at the time of the sale, but I found land might be sold two or three times, and it was confusing, I had to drop it. Q. Do you have periodical rises of rent?—On one part of my property it has not been raised since 1826. Q. You think it destroys tenant-right?—Well, I think a rise on sales might deter the purchaser.”

Mr. Alexander Caruth, solicitor, Ballymena, co. Antrim, says, Q. 34643 :—

“Is the practice of increasing rent on change of tenancy a common practice?—I should not say it is common, but latterly it has grown more into practice than formerly. Q. Since the passing of the Land Act?—Yes; my attention has been more called to it. I never had occasion to think of it before.”

* See also, among others :—Simpson, 3307, 3355, 3389; Knipe, 3642; Robinson, 5321, 5338; Walker, 5381; Quinn, 5660, 5731, 5747, 5756; McGeany, 5855; Swann, 6167; Gray, 6169; Perry, 6240, 6257; Gardner, 6301; Moore, 6343; Murray, 6374; McAleena, 6380; Beatty, 7366; Lennon, 7543, 7558, 7602; McKean, 7908, 7929; Mulholland, 8345, 8352; Wilson, 8433; M'Murtry, 8460; Wallace, 8555; Alexander, 8853; McGlinchy, 9116, 9129, 9148, 9156; Hanna, J. S., 9615; Flanagan, 9733; Browne, 9783, 9928; Douglas, 10015; Dunne, 10035; Norris, 10249, 10253; Warnock, 10374; Rankin, 10504; Caldwell, 10554; Coyle, 10593; Cole, 10670; Donnell, 10969; Loughrey, 11095; McKinley, 11686; McKenna, 13780; Smollen, 14599; Gallagher, 14635; McGaharen, 14665; Kelly, 14695; Jackson, 14861; Thomas, 14990; Moore, 15142; Clarke, 15685; Crean, 15791; Hunt, 4654; O'Sullivan, 24913; Caruth, 34637; Pringle, 36701; Smollen, 36811; Phelan, 37281; Gibson, 38838; Read, 38857.

the Act has conferred inadequate security on tenants in respect of their tenure for security.

24. The question of rent thus raised appears to us to underlie every other. But, apart from increases of rent, it has been shown by the evidence that the insecurity of the present system of tenure, though diminished by the Land Act, still operates, as it has formerly operated, to cause discontent. The Act has, indeed, been successful to some extent in checking capricious and arbitrary evictions, by the imposition of a payment in the nature of a fine. But it has, as has been shown already, introduced a new element of insecurity, by intensifying the struggle in cases of dispute, and by obliging all proceedings to begin with a notice to quit, to be followed by an ejection and loss of possession, even though the tenant might be successful.*

compensation for disturbance under § 3, inadequate.

25. We have further to report that the scale of limits imposed upon the amounts recoverable, outside the Ulster custom, for disturbance, has been found inadequate. It is in evidence that it has been found possible for a landlord to evict a tenant, to pay him the full amount that could be awarded by the Court, and to recoup himself, and put money in his pocket, by the incoming payment of a new tenant at the same rent.

illustrations from Evidence.

26.† Robert Ferguson, esq., q.c., County Court Judge for the West Riding of the County of Cork, says, Q. 221 :—

“I think, with sufficient power to inflict a penal compensation where the case was unjust, I could have prevented every unjust eviction; but my powers were shorthanded altogether. Of course the compensation for disturbance is a penal character to a certain extent, but it ought to have been double. My power to make it really effective should have been double what it is, because in the cases where men were really anxious to get possession the compensation for disturbance was insufficient. They were cases where the landlord was very much of the class of the tenantry, and was prepared, at any peril, to get up his land for the purpose of possessing it himself, or giving it to some tenant who would pay him more than any compensation I could give, and I have had very strong cases to that effect. One of them is worthy of note, but the landlord there was a man of position, a gentleman resident out of the country, and he deliberately brought two evictions of a very distressing character, with a full knowledge that I would give every penny of compensation I could give, but, with the perfect knowledge also that he could get, on the same estate, a larger sum for the tenancy than anything I could give. He put out one man and paid the compensation, receiving a larger sum from another tenant whom he subsequently ejected from another farm, receiving a large fine for this farm also. Q. That was two evictions on the same estate?—On the same estate; by each of which he put into his pocket a considerable sum, more than I compelled him to pay; the case is well known, Mr. Shaw knows it. Q. That is the same holding evicted twice?—No, but two evictions on the same estate. One tenant covetous of the farm of another said to the landlord, ‘If you put that man out I will pay you so much,’ he put him out, I give compensation, but he gained considerably by the eviction. When he went to deal with the man whom he had put out he said to him, ‘You need not have done that to me, I would have paid you as much perhaps; besides that man has two farms, the one he has himself is as valuable as the one he has taken from me.’ ‘Do you say so,’ he said, ‘Would you pay the same for it?’ He agreed to do so, and proceedings were immediately taken by the landlord to get possession of this farm also.”

The Rev. Charles Davis, P.P. of Baltimore, co. Cork, mentions a case, Q. 29684 :—

“The County Judge pronounced the tenant to have been capriciously evicted, and gave him the full compensation allowed by the Act of Parliament—namely, £90; but the landlord got the man who succeeded him to double the rent and give £210 fine.”

John Chute Neligan, esq., q.c., County Court Judge for Meath, says, Q. 34875 :—

“In the paper which you sent to us, you draw attention to one of the clauses of the Land Act, which in your opinion works injuriously?—Yes—I refer to the fourth paragraph of the third section of the Act. I would suggest the repeal of that clause. I have had cases before me, where I have been compelled to put the tenant to his election and say, ‘you must either reduce the number of years’ rent you claim for disturbance, or I cannot give you anything for your improvements.’ I think that clause has worked hardly in several instances. I would repeal it *in toto*. I see no reason whatever for it, and I have known it to work unjustly. Q. Has not the tenant the power of election?—Yes, but still the result is to deprive him in some cases, either of the compensation for improvements, or of a portion of the claim for disturbance, which I would have given him. Q. Baron Dowse—I have known instances myself, where it worked hardly—I have seen it in cases that came before the Land Court on appeal?—Yes; it ought, I think, to be repealed.”

Arthur Hamill, esq., q.c., County Court Judge for Sligo, says, Q. 4197; (compare Q. 4216) :—

“I am of opinion if the third clause, which is the disturbance clause, could be enlarged, it might be done beneficially. I have taken the liberty of putting my view of this clause on paper. I think if the compensation for disturbance was increased to the extent of ten years of the annual rent, instead of the seven years, it might be beneficial.”

* De Moleyns, 15, 65; Allen, 1876; Hamill, 4225; Tute, 13986; O’Connor, 24489.

† See also, among others :—Sweetman, 1126; Robertson, 1436; O’Brien, 4052; Mahon, 21159; Bolster, 21761; Herbert, 22776; Fitzgerald, 22277; O’Connor, M., 24497; Moynihan, 24620; O’Sullivan, 24928; O’Rourke, 25091; Riordan, 26751; Cronin, 29383; Murphy, 29404; O’Halloran, 31549; Dowling, 34455, 34469; Smollen, 36901; Maher, 37209; M’Govern, 37238.

7. It has also appeared that landlords have ejected tenants holding under the tenancy custom, have paid them the amount awarded for their tenant-right, and have sold the lands at a profit.

Compensation for loss of tenant-right inadequate.

8.* Thus, Mr. John Wallace, of Alta Hammond, Carrickfergus, co. Antrim, says, 1527:—

Illustrations from the Evidence.

Mr. Biggar's father purchased a portion, and he and Mr. Raphael made the greatest rise in the rents. Q. Did they raise the rents, when they bought, on the tenants in occupation?—Mr. Biggar did not raise them for some little time, but I think he did so for this reason, he told me himself he would not settle what the rent would be till it was known what the issue of the question would be. Then afterwards he fixed the rent, when he knew the new law. The first thing he was: there was a widow who said it was impossible that she could pay the rent he had put on. He gave notice of ejectment. That was one of the first cases tried in this country. Q. Mr. SHAW—What was the result of it?—She obtained £400 on a farm of forty acres. Q. And she was put out?—She was. The next day—What did he do with the land?—He got a person to take it at the £400, and raised the rent; and it is now £2 10s. an acre, I think.

9. The feeling of insecurity has operated to check the process of improvement of the soil. The restrictions which the Act imposes on compensation for improvements have prevented the tenants outside the Ulster tenant-right from receiving a fair equivalent for the results of their industry. These restrictions bar compensation for improvements other than permanent buildings and reclamation of waste lands, if made more than twenty years before the claim for compensation. The Act allows the right to compensation to be barred by express contract, if the improvement is such as would appear to the Court to be calculated to diminish the market value of the landlord's estate, and, in all cases, if the value of the holding does not exceed £50 a year. They bar it, with certain exceptions, in the absence of an express contract, on the termination of leases, if such leases should have existed for more than twenty years before the claim. Still more important is the direction to the Court to take into consideration the time during which the tenant may have enjoyed the advantage of his improvement and the rent at which he has held his holding, in a view to the reduction of his claim. Claims for improvement arising from the proper cultivation of the soil in the course of husbandry have been held to be admissible from the benefits of the section. Most injurious of all has been the result of the provisions as to the construction to be placed on the words "Made by himself or his predecessors in title," which have been interpreted to exclude from benefit all tenants whose continuity of possession and title has been broken by any change in their legal tenancy since the improvements were made. This has opened many easy ways to evade the section altogether. A tenant remaining in possession after the expiration of a lease, so soon as he has paid rent, becomes, in law, a tenant from year to year on such terms of the lease as are applicable to that species of tenancy. If a landlord serves a notice to quit and then on its expiration arranges with his tenant for a change in the rent, a new tenancy may be created. If farms are re-arranged, by the transfer of a portion of the farm from one tenant to another, and a re-arrangement is made as to the rent, or if a change is made in the rent merely, it is considered by the County Court Judges that a new tenancy is created. In all these cases the claim of the tenant for compensation is now considered to be barred, even though he may himself have continued throughout in possession. In the result,† the Land Act seems to have stimulated tenants, especially in Ulster, to improve, while the landlords' improvements were checked by it. In proportion, however, as its defects have become apparent the returning sense of insecurity has not only checked tenants' improvements, but has, in conjunction with other causes—recent scarcity and political movement—contributed to bring about the present concerted refusal to pay rent, or to pay more than the amount of Griffith's valuation, which constitutes a grave crisis in the affairs of the country.

The Act has conferred insufficient security on tenants for compensation for their improvements. s. 4 (1). s. 4 (2). s. 12, 4, last paragraph but one. s. 4 (3). s. 4, end.

Battersby v. Darnley, 11 L. T. & Sol. J. 283.

Darragh v. Murdock, Donnell's Irish Land Act, 281.

Holt v. Harberton, Donnell's R., 175. 11.

Millican v. Hardy, D. R., 473.

Begly v. Downshire, D. R., 527.

Nolan and Kane, "The Statute Law of L. & T. in Ireland," p. 180.

Boycott, 18463; O'Connor, 24601; Baldwin, 32268.

10.† Thus Mr. Robert Ferguson says, Q. 257:—

As to the question of improvements the Act is more perfect, but still defective. I have felt hampered in the state of the law where new lettings, where new agreements were made between the tenant and the

Illustrations from the Evidence.

See also, among others:—M'Elroy, 4565; Laird, 8411; Morrison, 10470; Meek, 12293; Jackson, 14910; Moleyns, 102; Allen, 1943; M'Neill, 6091; Atkinson, 7294; Ker, 8045; Murphy, 10141; Sinclair, 11364; Lepper, 11651; Ashe, 11987; Craig, W., 11663; M'Callion, 12222; Bourne, 15230; Crean, 18177; Blake, 18723; Persse, 18869; Richardson, 18943; French, 19100; O'Hara, 19476; Martin, 20942; Joyce, 21071; Crosbie, 26224; Sherlock, 30958; Phelan, 37289.

See also, among others:—Sweetman, 1161; Robertson, 1380; Meagher, 2118; Everitt, 2503, 2536; Kelly, 3691; Fenlon, 3733; Battersby, 4384; Ferguson, 4816; Hanna, 8914; Warnock, 14104; Davys, 14275; Robb, 18636; O'Flaherty, 21890; Frost, 23313; O'Sullivan, 25031, 25044; O'Rourke, 25079; Warren, 25476; Kearney, 26100; Dorgan, 28891; Tracey, 36302.

Illustrations from
the Evidence.

landlord, such as a new lease or a new tenancy created, the result of which was, perhaps, without the attention of either party being called to it, the result of that new agreement, beneficial apparently to the tenant giving him a continuance of his title, was actually, in my view of the law, the destruction of all his claim for improvements. And that should be remedied by an enactment that no new tenancy created between the said parties should destroy the right of the tenant to compensation for his improvements in the absence of an express contract between them to that effect. Very hard cases have occurred where unconsciously the new tenancy was created, and I have had to refuse compensation for improvements made before the new tenancy. Q. 296 Referring to section 4 of the Land Act, do the cases of exception, in your opinion, work well?—I consider the exceptions are too numerous. I think the briefer legislation is upon such subjects the better. For instance, the exception of tenants holding under leases made before the passing of the Act is, I think, inadvisable. I think a tenant holding under a lease made before the Act ought to be in the same position as one who holds under a lease made after the Act. I think the right to compensation for disturbance ought to go further, and that it ought to exist independently of the length of the term—subject of course to the discretion of the Judge. I do not see why, if, at the termination of a thirty-one years' lease compensation to be given for disturbance, it should not be given at the termination of a lease for a longer period. The same harshness would arise in the one case as in the other. I do not see why the judge should be deprived the power of giving compensation in a case requiring it in point of justice. I think the limitations and exceptions are too numerous and without sufficient cause. Q. The reason for excepting the holder under a lease for so long a number of years, was, of course, that it was presumed he would have been sufficiently compensated during his long occupation for any improvements he had made?—Well, those are theories which I never find justified in practice. I think the only justice in those cases would be the discretion of the judge. I think these are troublesome limitations and too much in the landlord's interest."

John La Touche, Esq., says :—

"Q 885. Are there any special points in the Act as to which you are prepared to give some information to the Commissioners with a view to improve the relation between landlord and tenant in Ireland?—As far as my knowledge goes it works extremely well, but I should be myself inclined to extend the provisions of the Act so as to apply not only to tenants-at-will but to tenants having leases, and I should provide full compensation to tenants for the improvements they have made on their farms on leaving their holdings, whether voluntarily or not. Q. Is not that the present law?—I rather think not. Q. Are not tenants entitled to compensation for improvements no matter how they leave their farms?—Not all tenants. Tenants holding up to a certain valuation are—not tenants holding under a long lease. I would extend to all tenants the advantages and privileges of the provisions of that Act. I know some cases myself where if the landlord had not been very kind indeed improvements made by the tenants would certainly have been sacrificed. Q. That is probably the case of leases made before the passing of the Land Act?—It is."

Professor Baldwin, of Glasnevin Model Farm, says, Q. 32333 :—

"After the first year of the Land Act there was a far greater amount of work done by the tenant than had been done in the preceding six years. But the people were made to expect—they did not understand the Land Act—in a general way they got the opinion it was a good thing, and they had security, but when a number of cases came up to be tested in the Courts, the amounts awarded in compensation for improvements fell so immensely short of the expectations of the people that it practically killed all improvements, and there has been little done since."

"Q. 32335. The O'CONNOR DON.—Do you think the Court awarded less than the improvements?—I do not. Q. Have any cases of that kind come under your notice?—Yes, and it appears to me that the Act almost deprives the tenant of every little option to the County Court Judge. Q. Baron Dowse.—The Act directed the County Court Judge to take into account the length of time the tenant had enjoyed the improvements?—Exactly."

"Q 32340. You think if a property was rented very low, that ought not to have any effect in the compensation the tenant would derive from improvements?—Certainly not. I contend if a tenant really lifted the stones, as I saw them lifted on that very estate of Lord Dillon's—I actually saw the stones lifted from a field I thought it was a graveyard—and a poor man named Campbell had made an outlay there that a landlord would have had to pay £30 an acre for. Lord Powerscourt took it into his head to reclaim a little field near Glencree, to see what it would cost him. He reclaimed four acres, and it cost him £30 an acre. Yet the lordship's predecessor reclaimed fields on the Garryhill estate, and it will cost almost the same—not quite so much. Now, these improvements, when there is a permanent change in the land—the land no longer is what it was originally—and for that lasting change I consider the tenant is just as much entitled to compensation as the landlord."

The movement
against rent.

31. We desire so far as possible to keep the discussion of the rights of the case of the Irish tenantry separate from any considerations arising out of the present condition of Irish politics and society. The agitation on the land question has not hindered us, in any respect, from obtaining evidence, and will be found to have exercised upon the character of the evidence tendered to us, less influence than might have been expected. Nevertheless it is impossible to ignore circumstances which largely increase our responsibility in offering, as it is our duty to do, recommendations for legislation now to be undertaken. Tenants have been advised to withhold the rent, or to pay no rent beyond a certain standard, until a measure shall have been passed, the outlines of which have never been accurately defined.

Not a reason for
refusing to legis-
late.

32. We regard the present condition of affairs as a symptom of deep seated disorder in the body politic; and we are not blind to the difficulties of legislating for the removal of grievances, at a time when many of those who complain of the present have behaved in a manner calculated to dishearten the friends of good government. If we are right in maintaining that grievances exist, for which the present law provides no remedy, justice requires that a remedy should be provided, whatever may have

in the conduct of individuals, and however widely the example set by them may have been followed. We are not careful to answer the objection that legislation under these circumstances is legislation under the influence of panic. It is to the usual of justice, through dread of consequences, that the imputation of panic appears more appropriate. It may be said that, at a time when a part of the community are making demands beyond what is just and reasonable, to give them what is just will never satisfy them, and will only encourage them to continue agitating for more. This might have weight, if the legislature and the discontented section of the community could be regarded as two high contracting parties, and if the concession of justice on the one hand could be considered as the price for a cessation of agitation on the other. Such views are evidently subversive of the first principles of order. Let it be done, without regard to any considerations, save those which belong to the matter in debate. What should be done if, after all just grievance is removed, discontent continues, and something more is asked than justice, is not hard to say. The experience of legislation in a free community seems to prove that no such summation is to be apprehended. It is far more frequently found that even an incomplete measure of justice will succeed, for a time, in stilling the most violent agitation.

3. The gravity of the present occasion does indeed require that the remedy to be proposed, for an admitted grievance, should be complete. We wish to place on record our decided opinion that unless the measure is a full and exhaustive one, going to the root of the whole matter, and settling it permanently, it would be better not to interfere with the question at all. We are able to point to evidence in favour of a complete measure of justice, though it may not be nearly all that is demanded by the more extreme, will bear along with it a more than usually good chance of acceptance. Nothing is more noticeable, in the immense mass of evidence we have taken, than the general moderation of the tone of those who feel themselves aggrieved by the existing law, and the almost complete absence of demands for measures of confiscation, and of proposals tending to create antipathy between the rich and class. It may be said that the present state of popular excitement is not accurately reflected by such evidence. This may be true, for the moment; but the deeper feeling, the truer utterance of the tenant-farmers in all parts of Ireland will be found, we are convinced, in their own deliberate statements, made in answer to an impartial inquiry, with a view to their being placed on record, and for the express purpose of influencing legislation. If by the general consent of such men, selected in a variety of ways, some on their personal application, some as representatives of associations, some of localities, or as delegates of meetings convened for the purpose, some might be sent out and summoned by ourselves with no object but to obtain the fullest representation of their views, the tenant-farmers of Ireland declare that they do not desire the expropriation of landlords, or the confiscation for their own benefit of the property of others, but that they do desire to cultivate their farms in security, and to receive the full profits of their industry, while rendering a fair rent for the land they occupy to those whose means have been invested in it, we cannot consent to set on record such testimony for less calm, less representative and less responsible utterances.

Moderate tone of the evidence given by tenant-farmers. Bolster, 21829; Leahy, 27219.

1.* Mr. John Everitt, of the Drogheda Board of Guardians, says, Q. 2628 :—

If that is done, and the tenant holds the land and is allowed to sell it, and cannot be turned out as long as he pays the rent, you think—?—That would settle Ireland, there would be no more about anything. It would settle the whole country. I suppose I spoke to a hundred tenants since I was speaking to Mr. Ell, every man said they would be satisfied with that. Q. What do you think of buying landlords and paying out with three hundred millions of money?—Oh, nonsense. I would be sorry they would leave the country. In the first place those three gentlemen I have mentioned, they give a tone to society in the country. And there would be nobody left to grumble at if the times were bad?—Exactly. I could not get a man to give evidence here for me only three resident landlords. I could not get any tenant farmer to come forward like a man until these gentlemen came forward."

Illustrations from the Evidence.

2. Mr. James Ferguson, of Silversprings, Doagh, co. Antrim, Q. 4875 :—

The tenantry should get a right to purchase their holdings if the estate comes into the market, and the Government should assist them, and then we would have peace. Q. You would not compel a landlord to sell?—He would not. Q. A gentleman who was examined to day said that the tenants should have a right to compel a landlord to sell whether he liked it or not?—That was nonsense."

See also, among others :—Robertson, 1457; Coleman, 2391; Murphy, 2812; Fenlon, 3777; M'Elroy, 5092, 5108, 5163; Wilson, 8453; Rankin, 10529; Caldwell, 10564; Bolster, 21706; Leahy, 22613, 22637; Hogan, 23784; O'Sullivan, 24953; Walpole, 26067, 26082; Bennett, 28428; Dowling, 34294; Dowling, 34492, 34551; Smollen, 36883; Magher, 37220.

Illustrations from
the Evidence.

Mr. Henry M'Kean, of Benburb, co. Tyrone, says, Q. 7981 :—

"You are of opinion that the landlord has a right to seek a rise of rent if he thinks the land is too low?—Yes. Q. And the tenant to seek a reduction if he thinks that it is set too high?—Certainly. Q. If that system were established, do you not think there would be in the country a great deal of excitement and re-valuing?—There might be, but I have been working amongst tenant farmers for some years, and have been intimately acquainted with them, and it is only in exceptional cases that I have heard a man say that he would not pay a fair rent."

Mr. William Heron, Valuator and Tenant Farmer, of Doonamurray, Collooney, co. Sligo, says, Q. 14074 :—

"I know an estate on which the tenants acted very fair. The landlord sent a valuator, and they would not agree to that, and they named me. The landlord said, I will take him too, and I had the difficulty of acting for both, and I satisfied all the tenants except one. Q. Sometimes people won't be satisfied?—The land was, most of it, naturally good. They said, 'The land God Almighty made good we will pay the value of, but the land we made good we will pay accordingly for,' and if you take that into account, you generally please them."

Mr. James Daly, of Castlebar, co. Mayo, says, Q. 17669 :—

"If there was a bill passed giving perfect security and arranging the valuation between landlord and tenant, allowing the tenant to sell his interest whenever he likes, with provision for the creation of a peasant proprietorship, would that meet the case?—Yes, that would do. If you give facilities to create peasant proprietors you would make the peasants more conservative than the Conservatives. I am a Land Leaguer myself, and I would not be a Land Leaguer if it had anything behind it like revolution. I would fight against it. Q. You don't want to do anything of that kind, but you want to improve the country you are in?—Yes. I believe the people are misrepresented, and I very often saw myself misrepresented. Instead of bettering me it would make me more disloyal; they arrested me and brought me down to Sligo, and instead of retarding me in the work it made me a spoiled child."

Mr. James Kilmartin, of Loughrea, co. Galway, says, Q. 20958 :—

"Have you turned your attention to the promoting of peasant proprietorship?—I think that would be very desirable, but I don't think the Government would be able to pass a measure expropriating the landlords. Mr. Gladstone would not have the power, I believe, to do it. Q. Do you think Mr. Parnell could do it?—Not at all. Q. Would you not think that buying out all the landlords of Ireland and letting to the tenants would be beneficial?—I think it would be beneficial. Q. But not practicable?—No; but with absent landlords it might. I believe that peasant proprietary is the basis of a fair settlement of the land question, but I don't believe that in the present state of parties it is possible. Q. But wherever you find an industrious tenant, and the landlord willing to sell, you would offer every facility?—I would. Q. Gradually that would spread over the whole country, and become a national institution in course of time?—Yes. Q. But would you not turn out the landlords without their own consent?—I would not think it fair. Q. Nor without giving them compensation?—That would be the amount of the purchase-money. Q. You would not take anything from them?—I would not. Q. And you think the tenant should pay a fair rent for his holding?—That is the extent of the whole question. . . . If the Ulster custom were defined in this way, and extended in this way to all parts of Ireland, it would be easy to settle the land question."

"Q. 20969. Would it satisfy the people, do you think?—I think it would. . . . From my knowledge of the people and of these agitators, no one asks for the land for nothing. They distinguish between what is right and what is wrong, and want only what is fair, I think."

Mr. William Bolster, ex-president of the Limerick, Clare, and Tipperary Farmers' Club, says, Q. 21833 :—

"I think it would be a wise thing for the landlords to settle the land question, for I find every year it becomes worse. When I first became president of the Farmers' Club, I think before we had Mr. Butt in Limerick, our idea was a thirty-one years' lease; that is sixteen years ago. We crept from that to a sixty-one years' lease. Then Mr. Butt came in, and it was the three F's, and we forgot these two things which we thought at one time would be satisfactory, and now we believe we must sweep the landlords away altogether; and I believe really that if the question is not settled soon, I don't know where it will end. Q. Baron Dowse.—That is a dangerous doctrine, for if it was settled you might still keep creeping on?—No; these three F's would satisfy us. Q. Mr. Shaw.—You only state this as showing the wisdom of settling the question at once?—Yes."

Mr. Thomas O'Rourke, of Tralee, says, Q. 25080 :—

"I would prefer a peasant proprietary, if it could be established without sending the landlords out of the country. I believe the landlords of the country should be treated justly. I would not confiscate a single pennyworth of property from them; but, at the same time, I would wish to see the tenants rooted on the soil."

And by land
owners.

35. We desire to call attention, in this connexion, to the tone of similar moderation which pervades the great bulk of the evidence tendered on the side of landowners. It is a hopeful sign of the success which awaits a measure of well-considered reform, when the moderate men on either side are found coming forward to express their willingness to support it. Many of the landlords and agents who have appeared before us have given us abundant evidence of their desire to see this question settled by meeting the tenants half way; although by so doing they should concede much that has hitherto been held to be their indisputable right. Under these good auspices, though the task is arduous, there seems no reason for considering it impossible.

36.* Thus Alexander Kirkpatrick, Esq., Coolmine House, Clonsilla, Agent to Lord Starlington, Q. 3890 :—

Illustrations from
the Evidence.

' You would be in favour of giving tenants perfect security in their holdings?—I would, indeed. Q. You would not turn them out except for just cause, except, say, for non-payment of rent or dilapidating their buildings in some way?—No. Q. You would allow them to sell freely?—I would. Q. And you think that would be in favour of the landlord in the long run?—I do. I have not known, but I have heard of what opened long before my time; that in former times to show that the landlord had full power over his tenants; he would shift them about like pieces on a chess-board for his own whim, to show them that he had them in his power. I think that could not possibly be done now."

Frederick Wrench, Esq., Brookeborough, Agent for Sir Victor Brooke, Lords Rathnall and Lanesborough, &c. ; Q. 5600 :—

' If there was a Government valuation made, the valuation might stand, I think, for a period of twenty- or perhaps thirty-one years. Q. That is, a valuation for purposes of rent?—Yes. I cannot see how it is to be better arranged than by a Government valuation being made, such valuation to stand for a fixed period say twenty-one or thirty-one years, which would give the tenant a feeling of security. And I think it would be right and just to extend a defined Ulster custom all over Ireland, giving the landlord a right of selling his tenant, or a right of pre-emption at the price offered, *bond fide*, by a solvent tenant, and reserving to the landlord, in districts where the Ulster custom has not previously been in force, a right to be paid of the purchase-money the fair value of any improvements made by him and in existence at the time of sale, or the right to put a per-centage on the amount of the value of the improvements in the shape of increased rent when the custom is introduced on the estate. Q. You see no reason why that should not extend to the whole of Ireland?—No, and I believe the landlord would find it advantageous as well as the tenant."

Mark Seton Synnot, Esq., of Ballymoyer, Newtownhamilton, Q. 7266 :—

' If you could get a tribunal of practical judicious men, would it not be satisfactory?—It would be very desirable. Q. If the amount of the rent was settled in that way, the tenant to be allowed to remain as long as he paid the rent, and to be allowed to sell his interest in the way you mention, do you think it would be satisfactory?—Yes, I think it would. Landlords, as a rule, don't want to evict tenants, except in an extreme case where he owes several years rent or something of that sort. Q. The O'CONNOR DON.—Do you mean that a tenant should have the right of permanent occupancy so long as he paid his rent?—Practically it is so now—tenants remain as long as they like, and are never disturbed, as long as they pay the rent. Q. Would you consider it advisable that the law should give them a right to remain in occupation; even if the landlord wanted the land for himself?—I think it would be a hard thing if a man wanted his own land, that he should not get it, but he certainly should give the tenant compensation for it. Such cases are unknown, I may tell you, in our part of the country."

Colonel E. R. King-Harman, Rockingham, Co. Roscommon, Q. 14189 :—

' Have you considered the question of a Government court of arbitration?—I have. Q. You introduced a bill into the House of Commons in 1878 on the subject?—Yes, for settling rents. Q. What was the measure?—Providing a Government land judge whenever it was required in cases of dispute, the tenant to choose one arbitrator, and the landlord another, and if they did not agree, the Government land judge to be called in, the party against whom the decision was to pay the costs. Q. So it would not be a general revaluation, but only whenever the Government arbitrator was called in?—Whenever a dispute arose. Q. Would you extend that to every class of tenancy?—I don't see why it should not be. Q. It would be a good thing for the landlords, and prevent many disputes and cases of ill-feeling, for it would be known the rent had been fixed by an impartial person?—I think the provision to make the person against whom the award was given pay the costs, would stop a good deal of litigation. Q. Would you deprive the landlord of all capability of ever regaining possession of his land if he had it once let?—Practically I think that is the case now. Q. Would you apply this to every description of tenancy in the country—there are many cases in which the landlord lets the land for temporary purposes, and perhaps to a non-resident tenant?—I would apply it to all cases that came under the Act of 1870, all agricultural holdings, of course I exclude demesnes and townparks. But in all agricultural holdings you would give the present occupiers perpetuity?—It would practically amount to that. Q. You consider they have that on good estates?—Yes. Q. You don't mean there is to be a final settlement of rent for ever?—No. I think the rents should go up and down the same as any other commodity. Q. Periodically and not fitfully?—Yes."

Burtón Persse, Esq., Moyode Castle, Athenry, Co. Galway, Q. 18932 :—

' Supposing that any disputes took place between you and your tenants as to rent, would you have any objection to any tribunal to settle them?—I would be very glad if there was such. Q. And one that would satisfy both landlord and tenant?—Yes. Q. If the law said you were not to turn out the tenant if he paid his rent, you would be satisfied?—I would not turn him out. Q. Practically, they have fixity of tenure with them?—Quite so."

Colonel C. G. Tottenham, of Ballycurry, Ashford, Co. Wicklow, Q. 40278 :—

' What would be your opinion of the extension of fixity of tenure—would you be opposed to it?—I should be opposed to fixity of tenure, but I should be opposed to free sale. Q. How about fair rents in case of

* See also O'Brien, E. W., 3913, 4001, 4086; Brush, 6675, 6694, 6709; Winder, 6798, 6837, 6857, 6878; Waring, 6977; Murphy, E., 10123, 10129, 10194; Scott, James, 15950; Knox, 17047; Gore, 17063; Keane, 18830; Halliday, 19640; Hunt, 21574; Delmege, 23473; Crosbie, 26239; Leahy, 27191; Campion, 28121; Fitzgerald, 29541, 29551; Barrett, 30558; Ardagh, 31430; Roberts, 33563; Ventry, 35141; Dermot, 35183; Browne, 35201; Vernon, 35258, 35287, 35319, 35327, 35348; Keane, 35763, 35792; Ford, 36464; Tener, 36628; Deane, 37355; Healy, 37399; Bole, 38110; D'Arcy, 38917; Curling, 39383; O'Uglas, 39466; Adamson, 39650; Greer, 39950; King, 40346.

Illustrations from the Evidence. disputes—would you be opposed to arbitration?—I should like to see a general revaluation at a gross value, but I don't know how you could have arbitration—I don't see how you can compel the landlord to let his land. Q. You would not trammel the landlord's power of letting the land in any way?—I think the landlord's power of letting or not letting the land should be left untouched. Q. Mr. SHAW—You would keep the power of fixing any rent he pleased?—Yes, but there should be a recognised standard. Q. Of rent?—Yes. Q. How would that be?—By general valuation. Q. Mr. KAVANAGH.—You don't consider that by making fixity of tenure legal the landlord would lose any right?—Undoubtedly he would. Q. Any valuable right?—I think the landlord ought to be prepared to sacrifice whatever right he has in that for the good of the country."

IV. *Whether it is sufficient to preserve the lines and amend the details of the Land Act of 1870.*

Security against disturbance by extension of s. 3.

37. A thorough and very general change in the system of land tenure seems imperatively required; such a change as shall bring home to the tenants a sense of security, shall guard them against undue increases of rent, shall render them no longer liable to the apprehension of arbitrary disturbance, and shall give them full security for their improvements. It is natural first to consider whether this change can be effected by any modification of the Land Act of 1870, which, without varying its principle, shall supplement its deficiencies. The principle of the Land Act is, as we have stated, to increase the security of the tenant's interest in his holding by indirect means, while refusing him the direct protection which belongs to a proprietary right. It would probably be necessary, first, to abolish the limits of compensation for disturbance, for holdings not under the Ulster custom, and to remove exceptions from its operation, with a view to make arbitrary eviction so expensive, as to confer upon the tenant a security practically equivalent to fixity of tenure. If the scale of compensation be not made prohibitory, it will be of little use; whilst if it be so, the landlord will be left with but the shadow of the right which it is intended he should retain. It is a question if this could be effected without placing landlords at an unfair disadvantage in the legitimate exercise of their rights. On the side of the tenant, too, it would still be necessary for him to go out of his holding first, and trust to the chances of a lawsuit to recover what would now be, perhaps, more than the value of his interest in it. The same arguments apply to an attempt, by the removal of the present restrictions, to give the tenant full security, by indirect means, for the undisturbed enjoyment of the benefit of his improvements. In short, the plan of giving only indirect protection to a valuable interest would result, if it were extended till it became effectual, in doing equal injustice to both sides.

Security for improvements by extension of s. 4.

Security against increase of rent by extension of s. 18;

38. In order to give security on the indirect principle against undue increase of rent, whether as absorbing the value of a tenant's improvements, or that of his general interest in his holding, it would be probably necessary to make it compulsory on the landlord, instead of optional as at present, except in special cases, to offer to a disturbed tenant "reasonable terms"; and by giving a penal sum for compensation, where the landlord is found to have unreasonably omitted to offer such terms, or where the terms offered are themselves judged to be unreasonable, a jurisdiction might be secured to the court to give an indirect protection suitable to the case. Here, however, as before, the landlord who was only claiming his rights would be placed at an unfair disadvantage; and a tenant would remain subject as at present to the disadvantage of which he most grievously complains, namely, that before he can make up his mind to go out of his holding with a view to compensation, a system of gradual rent raising will by degrees have "eaten up" a great part of the value of his interest. A remedy which should proceed by way of extension of the other provision in which rent is mentioned, that which provides that ejection for non-payment of rent may be disturbance if the rent is deemed exorbitant, is open to still graver objections. In order to avail himself of this provision the tenant must cause the landlord to eject him by non-payment of his rent. If disturbance by the landlord is an objectionable way of raising the question whether the rent is fair, a refusal to pay rent with a view to provoking such disturbance is at least doubly objectionable. To invite a tenant to withhold his rent, and a landlord to serve an unnecessary ejection, by way of setting the court in motion which is to appease their differences, does not appear, in the present state of Ireland, a hopeful way of promoting harmony.

By extension of s. 9.

One Land Law for Ireland desirable.

39. In so far as the principle of the Land Act was to give protection by indirect means alone to the tenant's interest in his holding, we do not think it advisable to proceed by way of amendment and extension of its provisions. In so far as it consisted in a recognition of the actual condition of things, and in an amendment of the land law with the least possible disturbance of existing relations, we are inclined to regard it

with favour. But in one respect this recognition appears to have been mistaken, and to have introduced into the law an unnecessary variety. The relations of landlord and tenant in Ulster differed from those in the rest of Ireland rather in degree than in kind. The interest of the tenant in his holding outside the limits of the Ulster custom was analogous, though not equivalent, to an Ulster tenant-right. By legalizing the custom of Ulster as it stood, and partially recognizing a less perfect tenant-right elsewhere, a difference was established which has no sufficient justification. The Ulster custom as legalized has now proved insufficient; and the points at which it has broken down are the same as those at which the law for the rest of Ireland has broken down also. It seems desirable that in future the same land law should prevail throughout Ireland, and that the yearly tenant, in every part of the kingdom, should possess the same rights, and be subject to the same obligations. But we do not propose to effect this unity of system by means of any plan which can be legitimately described as extending the Ulster custom to the rest of Ireland. Some points indeed in the Ulster custom appear worthy of wider application. But these are not peculiar to Ulster. The scheme of the Ulster sections of the Land Act, whereby an attempt was made to give the custom as it existed a fair trial, without limitation or even definition of it, but leaving it to be established by evidence in court, is inconsistent with the extension of these sections, or anything resembling them, to counties where no general custom exists. To enact for all Ireland the Ulster custom in its most prevalent form, as stated by the best authorities, and embodied in the decisions of the courts during the last ten years, would be indeed possible, but absurd. As it stands it has failed, even in its native soil. If it were enacted in an amended form, it would no longer be, even in name, the Ulster custom. The question requires to be considered independently.

Extension of
Ulster custom not
approved.

V. Proposals for Legislation.

40. The principle which we adopt as a guide is that partially embodied in the Land Act, of giving legal recognition to the existing state of things. It appears to us that the conditions under which land has been held by yearly tenants in Ireland have been such, that the occupiers have, as a general rule, acquired rights to continuous occupancy which, in the interest of the community, it is desirable legally to recognize. We think the farmer should no longer be liable at law to the displacement of his interest in his holding, either directly by ejection, or indirectly by the raising of his rent, at the discretion of the landlord. The landlord's right to eject should, we think, be limited to certain stated cases; and some way should be provided for the determination of the fair amount of rent to be paid in cases of dispute. The legal effect of these changes may be described as amounting to the enlargement of the tenancy from year to year into a new kind of statutory tenure, defeasible only upon decree of the Land Court, for the breach of certain well ascertained conditions, and held subject to the payment of a rent, the amount of which should in the last resort be fixed, neither by the landlord nor by the tenant, but by constituted authority.

A new tenure,
with continuous
occupancy, and the
settling of rent by
impartial authority
in cases of
disputes.
Ferguson, 303;
Kirkpatrick,
3890; O'Brien,
3914; Hunt,
21574; Roche,
28802; Ardagh,
31430; Baldwin,
32571; Hamilton,
33429; Bagwell,
34430; Curling,
39386; Bruen,
40296.

41. To these two concessions, commonly spoken of under the names of Fixity of Tenure and Fair rents, that of a right of Free sale has usually been appended. This also, on the same principle of recognizing the existing condition of things, we think it expedient to establish. In a word, so far as concerns yearly holdings within the Land Act of 1870, we advocate the reform of the Land Law of Ireland upon the basis known as "The Three F's," i.e. Fixity of Tenure, Fair Rents, and Free Sale. Each of these heads requires some observations.

Fixity of Tenure,
Fair Rents, and
Free Sale.

42. The conditions of the new Tenure should, we think, be these. Subdivision or subletting, without the landlord's consent in writing, persistent waste, that is to say the dilapidation of buildings and the systematic deterioration of the soil, when persisted in after a notice in writing from the landlord to desist, conviction for any serious criminal offence, and the Acts enumerated in section 14 of the Land Act, "persisting in the exercise of any right not necessary to the due cultivation of the tenants' holding, and from which he is debarred by express or implied agreement with the landlord, unreasonably refusing to allow the landlord to enter for purposes of mining or taking minerals, quarrying or taking stone, &c., cutting or taking timber or turf, opening or making roads, drains, and watercourses, viewing the state of the holding, hunting, shooting, fishing, and taking game or fish," should authorize the landlord to serve a notice to quit for the breach of these conditions, or entitle him to compel the tenant by a decree of the Land Court to sell his holding. If the law of ejection is retained, the landlord should be entitled to maintain an ejection after two years' rent is

Fixity of Tenure.

Quinn, 6562; due; and the tenant should be entitled to sell his holding up to the expiration of
Halliday, 19648; the time allowed for redemption. r
Tener, 36550.

Readjustment of
the time allowed
for redemption

43. The present period of six months allowed for redemption, should be reckoned before, instead of after the actual eviction; thus practically respiting the execution of the writ of possession, or of the decree, for six months after the judgment in ejectment or decree to possession is pronounced.*

Alternative pro-
posed, to substi-
tute an action for
decree of sale for
proceedings in
ejectment.

Knox, 17061;
D'Arcy, 38906;
Adamson, 39645.

The Landlord
would be entitled
to arrears of rent
out of the proceeds
of sale.

Kirkpatrick,
3865, 3874,
O'Brien, 4018,
Hamill, 4274,
4299; Forde,
7085.

44. The substitution of a decree for sale of the holding in place of ejectment has also been suggested, and deserves consideration.

45. The arrears of rent, as at present under the Ulster custom, including any hanging gale, would be paid to the landlord out of the proceeds of the sale, and the tenant would be entitled to the balance. It is to this provision that we look for giving to the landlord an advantage under the new system, which would in some measure compensate him for what he loses. The amount annually lost by landlords in arrears is under the present system very large, except in Ulster. The right of being recouped out of the proceeds of a sale of the tenant's interest is in Ulster the landlord's great security. It has been of so much obvious benefit to landlords to have this reserve to draw upon, that they have looked on, for the most part, with comparative indifference, while the notion of tenant-right first grew into a custom, and was afterwards embodied in law. The tenant who gets behindhand with the world is urged by the agent to sell; he is even anxious to sell, if he sees no chance of righting his affairs, before his whole interest is swallowed up by debts and arrears of rent. He takes his money, or what remains of it, and buys a smaller farm, or emigrates, or betakes himself to a humbler calling. No "agrarian outrage" follows, and the descent, if any, in the social scale is arranged for with as little hardship and heart-burning as possible.

Landlord's right
of resumption.

McElroy, 4647,
Shillington, 5092;
Robb, 5201;
Perry, 6270;
Loughrey, 11168;
Halliday, 19640;
White, 23214,
Baldwin, 32575.

46. We propose that the landlord should retain a right to resume possession of a holding, or of any portion thereof, for special reasons, on payment of the full selling price of the tenant's interest. Such special reasons would include the occasions for which provision has already been made in the Land Act, of land being required for labourers' cottages and gardens, and would extend to the case of many exceptional lettings, but not to lettings for ordinary agricultural purposes. If any question arose as to the reason for resumption, or the amount to be paid, it should be decided by the Land Court.

How far fixity of
tenure is a change
from the present
state of things

47. Even with these limits, there is no denying that the conferring of such a tenure upon the yearly tenants of agricultural holdings, that is to say upon the great body of Irish farmers, is, from the point of view of the existing law, a very considerable change, and would confer great advantages upon tenants. But from the point of view of the existing relations of landlord and tenant, on most well ordered estates, there is already, and has been for generations, a virtual fixity of tenure,† and the change would practically be not great, after all. The control of the landlord, which is now absolute at law, but confined in fact to very narrow lines, would be legally confined, in future, to those same lines on which it is now beneficially and generally exercised. There is a certain loss to the landlord, namely, that of his legal reversion, considered as a piece of substantive property. His greatest loss, however, would be that of sentiment—of the sentiment of ownership. In so far as the tenant is made into an owner, the landlord must be less of an owner than before. The strength of attachment with which men regard their property remains often undiminished even when the shadow of property, rather than property itself, is in question. Moreover, this sentiment of ownership is the shadow of more than a mere right of property—of political influence, once exclusively attached to the ownership of land, and of old family traditions, not to say, in some cases of historic associations bound up with it. We do not under-estimate such considerations. We merely plead that all the circumstances must be taken into account, before it is decided that the interference with private right which we advocate is too great to be contemplated. It would be a far greater interference with the existing state of things to carry out in practice the theory of the existing law. A chasm

* Q 287; Fitzgerald, 22368, Hewson, 23061, Hamilton, 33449; Keane, 35779; French, 37887; Blake, 39752

† Murphy, 10120, Blake, 18816, 18830; Persse, 18935; French, 19122; O'Flaherty, 19412; Mahon, 21227, Fitzgerald, 22357, Morice, 23972, Limerick, 24397; Spaight, 24447; Mahony, 25932; Leahy, 27191; Colthurst, 30381; Townshend, 34010; Lewin, 34795; Lansdowne, 57516, Fowler, 39528; Rochfort-Boyd, 39892.

distinction, between the law and the facts, which has to be filled up somehow. In order to fill it, either the realities of society as we find them, which have existed for centuries, must at last be moved from their foundations, or the law must be altered. If the law is altered as we propose, there will be in most cases no great interference with the practical power of a landlord over his property, with his way of managing it, or with the present income he derives from it, but a good deal with his nominal rights, and with his sentiment of ownership.

48. Fixity of Tenure, without Fair Rent, is an absurdity. It would be nugatory to secure to the tenant a proprietary right, of which the value depended on the will of another. But it is highly probable that the proposal for settling disputes as to rent by arbitration, or by authority in any form, will appear to many a still greater innovation than the proposal to give yearly tenants a secure tenure. The proposal is sometimes spoken of as if it were analogous to the attempts so often made, in the middle ages, to fix the rate of wages, or the price of commodities, by legislation. It is then assailed with arguments drawn from the armoury of Free-traders, in their war against Protection. The principle is invoked of "freedom of contract"; and it is asked whether in this case alone there exists an exception to the principles which have been established by political economists, as infallible guides to legislation in promoting the wealth of a community. On this subject of freedom of contract we have a few words to say. The proposal of settling rent by authority is undoubtedly consistent with the ideal freedom of contract between landlord and tenant, which the Act of 1860 postulates, and which is by many imagined to exist. That ideal pictures the landlord as possessor, and the tenant as desirous of possession, bargaining together and coming to an agreement, by which land in the landlord's possession is transferred, under certain conditions of proper cultivation, rent-payment, and ultimate restitution, to the tenant. But what are the facts? It is, in the large majority of cases, the tenant, and not the landlord, who is, and has been for years, in possession of the holding. The process of bargaining may end, and (under the Land Act of 1870 it is bound to end) unless the tenant submits to the landlord's demands, with a dispossession of the tenant by the landlord, against which there is no resistance possible, and no appeal. An ejected farming tenant in Ireland has nothing to turn to, except the chance of purchasing another holding; the offers of which are limited, and the prices high. Not to come to terms with his landlord means, for him, to leave his home, to leave his employment, to forfeit the inheritance of his fathers, and, to some extent, the investment of his toil, and to sink at once to a lower plane of physical comfort and social rank. It is no matter to him of the chaffer of the market, but almost of life and death. The farmer bargains with his landlord, under sentence of losing his living, if the bargain goes off.

You take my life, when you do take the means
By which I live.

We grant that it would be inexpedient to interfere with freedom of contract between landlord and tenant, if freedom of contract really existed; but freedom of contract, in the case of the majority of Irish tenants, large and small, does not really exist.* —

49. In settling what is a fair rent, the present rent, or such rent as is agreed upon, under the new system, between landlord and tenant, may be assumed, in the absence of any demand for its alteration, to be the fair rent required. If a dispute arises either through the desire of the landlord to raise the rent, or of the tenant to have it lowered, to an extent which the other party will not accept, some procedure in the nature of arbitration, or of a trial at law, must be provided for its settlement.† To a new government valuation throughout Ireland to be undertaken for the purpose of fixing the rent of every separate agricultural holding, as between landlord and tenant, there appear to us to be insuperable objections, to which we shall recur further on. It is enough here to say that the economy of legislation, and the principle we follow of recognizing so far as possible the existing state of things, are in favour of the scheme

Fair Rent.

Wright, 28381,
Cornwall, 28681;
Chichester, 24576,
34588; Irvine,
35753; Kincaid,
40226.

Method of settling
a fair rent to be
by arbitration or
fair trial at law.

* O'Brien, 4011; Shillington, 4963; Brosnan, 25625; Crosbie, 26221; Lane, 26563; Sanders, 29148; Lyne, 30441; Fell, 30808; Tobin, 31682; McEnery, 31772; Roberts, 33606; Vernon, 3539; Pringle, 769.

† Ferguson, 307; Coleman, 2391; Drew, 2703; Black, 4824; Wrench, 5637; Brush, 6695; Waring, 77; Ker, 8121; Caldwell, 10533; Lepper, 11631; L'Estrange, 13152; King-Harman, 14189; Scott, 951; Knox, 17047; Gore, 17066; Persse, 18932; Richardson, 18940; French, 19126; O'Hara, 19493; Alliday, 19631; Burke, 19747; O'Flaherty, 19419; Bailey, 20214; Morice, 23952; Hussey, 25303; Leahy, 191; Sanders, 29094; Sherlock, 30962; Rochfort, 33245; Browne, 35232; Johnston, 35621; Redmond, 375; Lifford, 36466; Curling, 39382; Douglas, 39467; Little, 39510.

O'Brien, 4009 ;
M'Elroy, 4537 ;
Brush, 6694 ;
Loughrey, 11149,
Crean, 15864.

The function of
authority should
be minimized.

we advocate. There seems no reason for calling in the aid of State machinery in the large number of cases where landlord and tenant succeed in coming to an arrangement of their dispute, or in the still larger number where no dispute arises. ✓

50. An objection may be urged to the settlement of rent, under any circumstances, by authority, which deserves serious consideration. It will be said that the principles on which the tribunal proceeds in deciding what, in each case, is a fair rent, will be open to criticism, will invite objection, and will be the mark, in future times, of political agitators; that a new movement will speedily be begun to modify these principles in a popular sense; that elections will turn upon it, and a league be formed to promote an alteration of the law; in a word, that no final settlement can be effected, which depends upon the acquiescence of Irish tenants possessing political power in the decisions of constituted authority. This argument will naturally have weight with those who see no just grievance in the present condition of the Irish farmer, and who ascribe the present movement, and the inveterate discontent of the class, entirely to the wiles of agitators, and to the recent scarcity. It will not have so much weight with those who consider the present land system as responsible for the mischief, and who are believers in the healing influence of justice. But precaution is necessary. It will be wise to minimize the function of the State, to make legislation responsible for as few rules, and those as simple as possible, and to call upon authority for particular decisions only when no other resource is available. For this reason a provision for cheap arbitration appears to us indispensable; and it is our trust that in the majority of cases no further proceeding will be resorted to. ✓

Procedure by way
of arbitration.

M'Elroy, 4528 ;
Hanna, 8895,
Rankin, 10530,
Connison, 10956,
Barbour, 15637 ;
Wright, 28378.

51. If the ordinary form of arbitration is preferred, recommended by its simplicity, and by the familiarity which it derives from its employment on many estates, and from its establishment by law for such cases as the taking of lands for public purposes, the course of procedure may be as follows:—In case either party demanded that the rent of a holding should be varied, and the other refused or was unwilling to agree to the demand, it should be lawful for the party demanding to serve a notice requiring the party refusing within a given time to nominate an arbitrator, and stating in the notice the arbitrator proposed by himself. It should be open to the party receiving the notice to set up his counter claim for an increase, or reduction, as the case might be. In case both the arbitrators are nominated, they should forthwith appoint an umpire, and the award in writing of the arbitrators, or of the umpire if they disagree, should fix the rent to be paid for the holding. If the party contesting the demand refused or neglected to appoint an arbitrator, or if the arbitrators did not agree upon an umpire, the party complaining should be entitled to serve a claim before the court or tribunal designated for the purpose. The decision of the arbitrators, or in case of their disagreement, of the umpire, would be final. ✓

Alternative me-
thods of procedure
by arbitration
suggested.

M'Neill, 6080,
M'Causland, 9339;
Loughrey, J.,
12065, Hardy,
20855, Scott,
22516; Delmege,
23814, Roberts,
33595.

Synnot, 7266 ;
Murphy, 10112,
Morrison, 10452 ;
Good, 32660

52. The evidence shows that, at all events in the present state of feeling, landlords will be in many cases unwilling to submit their claims to the decision of arbitrators. The professional valuers who must in general be called in as arbitrators, though not less able or conscientious than other men, are not a sufficiently independent class to inspire confidence under the extraordinary circumstances of the present time. It is likely, therefore, that at first a large number of cases will be brought for decision before the ultimate authority. As matters become settled, and the principles of decision become better understood, the cheap and summary way of settling a dispute by arbitration will be resorted to in all ordinary cases. A scheme of arbitration has been suggested which is intended to obviate the want of confidence which might be felt in arbitrators called in for the occasion, and at the same time to increase the chances of an agreement being arrived at by way of arbitration. If a standing committee of local arbitrators could be formed, composed of men whose reputation for fairness and practical knowledge commanded the respect of a neighbourhood, it is probable that more cases would be submitted to such a tribunal, than to arbitrators selected on the usual system. In every district of Ireland such men are to be found, men who have lived on the land and studied it, who possess the confidence both of landlords and tenants, of whom it is freely allowed on all hands that they would never knowingly give an unfair decision. Such men understand, better than any others, the circumstances of the neighbourhood in which they dwell. They are acquainted not merely with the capabilities of the soil, and with the state and accessibility of markets, but also with the past history of the relations between landlord and tenant, and with all those long-established usages, which deserve respect, although they may be too partial and indefinite to admit of being erected into a custom. The opinion of such

men is, throughout the locality, of more weight than that of any person from a distance, or of any official authority. Their reputation for judgment is valuable to themselves, and they are above the suspicion of trading on it. They have an interest in peace and quietness, and are capable of looking at a question from other points of view besides their own. Many landlords and many tenant-farmers are such men (and the calling of a land agent, which forms so peculiar a feature in Irish country life, as well as that of a professional valuator, will supply representatives of the class in all neighbourhoods. Supposing two elected representatives of landlords, and two of tenants, to be appointed for a term of years, so as to constitute a standing committee of arbitrators for a given district, the agreement of any three of whom should be final; it seems likely that men would be elected, not—as is too likely to be the case when each party to a dispute nominates, and the umpire may be expected to split the difference—from their known character as extreme landlord men or tenant men, dependent for custom upon their reputation for giving a good decision for their respective employers, but from their reputation as practical men, likely to wish to settle matters without further difficulty. To compare small things with great, the institution of a standing committee of arbitrators has been tried and found satisfactory in Friendly Societies; and the device was found such favour with the legislature, that in this case alone has the unique privilege been conferred of making the reference to arbitration compulsory, and of excluding complainants, when a standing committee has previously been nominated according to law, from prosecuting their differences with the society in any court of justice. It may be that the state of feeling in Ireland is not such as to tolerate for the present even this form of local settlement. A modification in the same direction of the old form of arbitration, whereby the agreement of two at least of the three, of the arbitrators and umpire, should be required, and in default, a reference be allowed to the tribunal, may be suggested as a second alternative, calculated to strengthen confidence in resorting to arbitration.

53. If the state of public feeling should be thought to permit it, the ascertainment of a fair rent would seem to be work better suited for the decision of laymen than of lawyers, and for adjudication by a local than by an imperial tribunal. But in any case the necessity remains for a strong central court to decide the cases which are not referred to arbitration, or are not decided by it. If the County Court Judge is entrusted with the work, he must have the assistance of an assessor or assessors, practically acquainted with the value of land. Otherwise—and this view meets most favour from the witnesses who have appeared before us—it would be necessary to create an independent tribunal, consisting of persons above the suspicion of class feeling, to which official valuers might be assigned, as at present under the Lands Clauses Consolidation Act, which should hear the case of both parties, and the report of the official valuator, and decide the amount of a fair rent, in accordance with the principles laid down for its guidance.* In any case the amount of rent fixed should be recorded in the office of the Clerk of the Peace of the county in which the farm is situated, or in the office of the Petty Sessions Clerk of the district; and the party failing should pay the costs, if his demand or refusal is found to have been unreasonable.†

The ultimate tribunal.
Wright, 28380;
Hely, 31506.
Hamill, 4293;
O'Mahony, 26644;
Fell, 30810;
Neligan, 34924.

54. If it is considered desirable that some principles or general rules should be laid down by law for deciding what is a fair rent, we beg to submit the following suggestions; though persons of authority think it inadvisable that any rules should be laid down by the legislature on the subject.§ It is necessary at once to negative the idea that it means what in England is known as a full, or fair, commercial rent, but in Ireland as rack-rent.|| It is not contemplated that after deducting for the tenant, to use the language of political economy, the cost of cultivation, and the ordinary profits of his trade, the whole of the surplus receipts should be the unquestioned property of the landlord. As a fact, the Irish tenant farmer has in general possessed something more; and as a right, it is proposed to secure him in that possession. The difficulty is to settle what, in each case, is the existing fair rent. The computation should in general start with an estimate, first, of the gross annual produce, and secondly, of the full commercial rent, according to the rules observed by the best professional valuers. From

Principles for ascertainment of a fair rent.

* Murphy, 10121; Errington, 13071; Hardy, 20912; Brosnan, 25670; Crosbie, 26239; Barry, 28723; Baldwin, 32137; Dufferin, 33139; Gartlan, 36964.

† Ormsby, 589, 610.

‡ Loughrey, 11149.

§ Shillington, 5005; Morrison, 10452; Loughrey, 11158; Kilmartin, 20972; Baldwin, 32495; Rochfort, 3286; Longfield, 39809.

|| Baldwin, 32379; Townshend, 33984.

Greene, 834 ;
Baldwin, 32415.

this last should be deducted, as a rule, any portion of the annual value which is found to be due to improvements not made or acquired by the landlord. } The Act of 1870 provided that with certain exceptions all improvements on a holding should, until the contrary was proved, be deemed to have been made by the tenant or his predecessors in title. Some term must, therefore, be fixed, beyond which the presumption should be that the improvements, even if not made by the landlord, were made by tenants who were not predecessors in title of the present tenant. Otherwise the rent of an ancient farm might in many cases be liable to reduction to the value of so much waste land. We suggest a term of thirty-five years. Within this term no considerations of the length of time during which the tenant may have enjoyed a return from his improvements should exclude the tenant from the benefit of them, in so far as they are found to be actually at the present time still adding to the annual value of the holding. Within this term, moreover, no technical breach of the legal tenancy should operate to deprive him of the benefit, when he can show that he substantially claims through those who have preceded him in the occupation of the farm. With regard to landlord's improvements, either on or outside the holding, the amount of the present annual value which his expenditure might be shown to have added to the holding will be included, of course, without deduction, in the computation of the full commercial rent. Subject to the above, the arbitrators or tribunal will proceed to estimate the fair rent; in which they will have regard to any sum paid by the tenant on incoming, or to sums which have ordinarily been paid by tenants in the locality on purchasing, in so far as such sums represent an existing valuable interest in the tenant, over and above any value due to improvements made by himself or his predecessors in title; to any other reasonable way in which the value of the tenants' interest in the farm can be ascertained; and also to the rents which have commonly been paid by tenants in the locality whose rents are considered to be fair. With the addition of an Equities Clause, upon the model of the first part of the 18th section of the Land Act, whereby the court may take into consideration any claim, objection, or set off made, urged, or pleaded by the party refusing the demand, and any default or unreasonable conduct of either party which may appear to the Court to affect the matters in dispute between them, and give judgment on the case with regard to all its circumstances, this will, we think, indicate the lines on which the law should be laid down for the guidance of arbitrators and of the tribunal in estimating a fair rent.

Ferguson, 257 ;
Meagher, 2120 ;
Kelly, 3692

Limitation of the above, where rent has been acquiesced in for a considerable period

55. It must not be supposed that the whole of this process will require to be gone through in all cases. It will generally be possible to start from some time when the rent was, in the opinion of both parties, considered fair, and to confine the investigation to the circumstances alleged, on the one side, as altering the conditions then existing, or, on the other, as a set off against these circumstances. It will be expedient, further, to lay down that a rent which was paid at any time within the last twenty years and which continued for not less than ten years to be regularly paid, shall be, in all cases, taken to be such a starting point.

Commutation of increased rent due to landlords for improvements for a charge on tenant's interest
De Moleyns, 107 ;
Allen, 1961 ;
Reeves, 2036, 2110,
Loughrey, J, 12116 ;
Hussey, 25309 ;
Mahony, 25920,
Crosbie, 26222 ;
Jones, 26955,
Fell, 30781 ;
Baldwin, 32449 ;
Vernon, 35339 ;
Curling, 39384,
Bruen, 40138

56. There are holdings where the fair rent thus estimated, and however estimated, will be above the existing rent. They are not so numerous as would be supposed by a stranger, ignorant of the degree to which the improvements on farms have been made by the tenants, and of the distinctness with which the existence of an interest in the tenant has been allowed, even by landlords who would not permit it to be sold. } But there are landlords who have spent large sums in improving their estates, who had no immediate intention of raising their rents in consideration of the value thus added to the farms, but who may very naturally desire to reap some present return for their improvements, when they are deprived of the legal reversion, and of the sense of sole ownership in the soil, without which they might not have cared to make them. It would be unfair to provide these landlords with no better means of recovering the value than the necessity of demanding to have the rents raised within the specified time, thus incurring odium, and coming into conflict with their tenants, some of whom, moreover, might really be unable to pay the increased rent found to be fair under the circumstances; and it would be unfair to the tenants to make them pay an increased rent for improvements made without any immediate intention on the part of the landlord of adding to the rent. In such a case, instead of an addition to the rent, the capitalized present value of the improvements might be made a first charge on the tenant's interest in his holding, to be met and satisfied in the manner hereafter mentioned. Provision should also be made for the fining down of the increase of rent, if any, arising from a demand on the part of the landlord; to which process Government assistance might be given in the manner hereafter described. }

57. At this point it becomes necessary to consider the effect which the changes proposed in tenure of land by tenants, and in their relations with their landlords, are calculated to have upon the public interest, as concerned with the improvement of the soil. Except for main drainage and similar improvements on a large scale, which may be undertaken by landlords as a commercial speculation, the result of depriving them of the sentiment of sole ownership must inevitably be to discourage still further, if not to extinguish, their expenditure upon the soil of land not in their own occupation. Evidence has been tendered us showing that sums have been and still are being expended by landlords in works on their estates. The cessation to any extent of this expenditure will be an evil; but it will be rendered still more injurious if steps are not taken to ensure in its place a more steady and general outlay of labour and capital upon the improvement of their holdings by tenants.

Effect of Fixity of Tenure and Fair Rents upon improvement of the soil.

58. Full encouragement is not given to a man to undertake a work of any kind where the returns of his undertaking, whether ordinary or extraordinary, are not secured to him. It has been urged that Irish tenants will not have sufficient motive to improve unless they are secured against any future increase of rent, such as may seem to them, whether justly or not, to hand over to the landlord the fruits of their labour. To meet this difficulty it has been proposed that, wherever a dispute as to rent has been brought before the Land Court, the tribunal shall fairly value all just rights of the landlord, and fix a fair perpetuity rent on the holding, to which it shall be compulsory on the landlord to agree.* The effect of this would be, the conversion of yearly tenancies into a perpetual tenure, subject to a quit rent, which will in most cases slightly exceed the present rent paid. The compulsory establishment of this form of tenure is objectionable, and we do not recommend its adoption.†

Proposal for a tenure at a perpetuity rent, disapproved.

59. We return to the proposal of fair rent, liable to future revaluation. The rent as settled should remain fixed for a certain period, or for such other term as may from time to time be determined by mutual consent. The statutory period must not be made too long; for if, as some apprehend, we are now to look forward to depreciation in the profits of agriculture, it must be remembered that this depreciation would prey, during the statutory period, exclusively upon the tenant, and it is not desirable, in the interest of either party, that this process should continue too far. But some term must be fixed, before the question can be re-opened, in the interest of both parties. We propose a term of thirty-one years.

Term of settlement of a fair rent.

Ferguson, 309; Robertson, 1485; Reeves, 2085; Loughrey, 11147; Curling, 39390.

60. At the expiration of this period, or of any period that may, meantime, have been substituted by mutual agreement, any re-valuation that might be demanded for the purpose of re-ascertaining the fair rent would start with the rent previously settled, and be limited to the investigation of circumstances which might since have occurred to increase or diminish the annual value of the holding. The case of increase calls first for consideration. An increase in annual value may arise from three causes: first, from landlords' improvements; secondly, from those of tenants; thirdly, from causes independent of the action of either, constituting what the late Mr. Mill was accustomed to call the "unearned increment" of landed property. The two first of these causes occasion no difficulty.

Principles for re-valuation.

Alexander, 8720.

61. With regard to the third cause, the unearned increment arising from external circumstances, it will, we think, be necessary, in the public interest, to give the tenant a share in this source of profit, if he is allowed to be, in any sense, a part owner of his holding. The tiller of the soil will hardly have due encouragement to speculate in improvements, if his profits, unlike those of other speculators, are never to be permitted to exceed the average profits of money, skill, and labour invested in the pursuit of his calling. In the absence of first principles on which it can be settled what proportion of the chance profit should be assigned to each, we propose that the landlord and tenant should be declared, in this respect, equally entitled, and that one half of the increase or decrease, as the case may be, should be taken into account in estimating the fair rent of a holding.

"Unearned increment," and decrease caused by external causes. Cronin, 29359.

* Dowling, 2879; Simpson, 3363, 3411; O'Brien, 4039, 4097; Loughrey, 11148; Hart, 19950; Barry, 2053; Lane, 26537; Barry, 28723; Davis, 29607; Hill, 30312; Murphy, 30825; Vernon, 35373; Marum, 5928.

† M'Causland, 9314, 9321; Lane, 9575; Donnell, 11001; Ashe, 11911; Daly, 19901; Cassidy, 35553; Ferguson, 4875; Brown, 9847; Brosnan, 25655; Fell, 30847; Baldwin, 32397; Keane, 35821.

Increase due to latent capacity of the soil.

Compare Lord Devon's Digest, vol. ii, p. 5. Donaldson, 11534; King-Harman, 14229.

62. A special case remains for consideration, where the increase brought about by landlords' or tenants' improvements, as the case may be, is due not solely to the labour, skill, and capital employed, but in part to the development of latent capacity or "inherent quality" of the soil, to an extent incommensurable with the effort expended. A familiar instance of this is the case of "cut-away bog" in Ireland, where the land laid bare by the profitable removal of turf proves capable, with little further effort, of profitable cultivation; or the case where the land lends itself so kindly to the improver, that the profits of one or more crops may go far to remunerate the husbandman for the labour that was needed to adapt it for tillage. To meet this case it might be provided that a tenant demanding a decrease of rent, or objecting to its increase, should be called on, in case of objection or counter objection on this account, to put in evidence the nature of the operations which he claims to have conducted, and that the Court or arbitrators should, if they thought the objection or counter objection reasonable, take account of the resulting increase of value in the same manner as if it had arisen from external circumstances.

Limit of time for first valuation.

63. The importance of legislating for such contingencies is not to be measured by their apparent remoteness. The sentiment of ownership, in a tenant as well as in a landlord, reaches far forward. There is, moreover, a large class of probable cases in which the contingency is by no means remote. A time within which a demand for "first valuation" must be made should be specified in the statute. Demands for the increase or decrease of rent, if not made before that time, will come under the rule here laid down for re-valuation; it being assumed that the rent was, at the time of the passing of the statute, acknowledged to be "fair" by both parties. It may thus happen that within a very few years the question will arise for decision, to whom does the "unearned increment," or the excess of increase arising from "latent capacity" belong?

Griffith's valuation.

64. If anything has been clearly established on evidence during this inquiry, the fact that the present Government valuation is not a trustworthy standard for the settlement of rents has been most thoroughly demonstrated.* Fair as it may have been for the purposes of local taxation in the years when it was made, the evidence shows that even then it was considered as below the fair letting value of the land. Those who argue to the contrary ignore the fact that while there was nowhere any motive at work to cause the officials employed to value too highly, there was a universal pressure to force down the valuation, to which it was not unnatural for the valuers to yield. No injustice was done to anybody, while every body was satisfied, so long as the under-estimate was general and uniform.

Proposal for a new general valuation in order to afford a basis for the settlement of a fair rent, not approved.

65. We are however unable to agree with those who urge that a new general valuation should now be made, either by way of settling, on the authority of valuers employed by Government, what shall, in all cases, be the fair rent of a holding, or in order to ascertain the annual gross value, or the full commercial rent of each holding, as a guide to the arbitrators, or tribunal, who will have to settle the fair rent. To interfere with rent, except where a dispute arises, is to raise more difficulties than are solved.† It is objectionable to bring the authority of the central Government into direct universal and unnecessary collision with the interests of landlords and tenants. The delay that would occur before a new valuation could be completed is another serious objection.‡ If a new valuation is required for rating purposes, it should rather be made at a time when there exists no general desire to convert it to purposes of rent-settlement.

* Greene, 657, 744; Townshend, 1574, 1644, 33938; Allen, 1846, 1967; Meagher, 2148; Derham, 2441; Everitt, 2575, 2592, 2615; Kirkpatrick, 3898; M'Elroy, 4582; Shillington, 4997; Flanagan, 9658; Murphy, 10132; Loughrey, John, 12096; Cooper, 12465; O'Connor, 13724, Fawcett, 15119; Carnegie, 15413; Clarke, 15720; Larminie, 16218; Thomas, 16808; Gore, 16969; Clancy, 18165; Blake, 18767; Persse, 18860; Cooley, 19349; Hart, 19176; Bailey, 20210; Kilmartin, 20980; Graham, 21306; Leonard, 21483; Barry, 22018; Townshend, W. U., 22172, Frost, 22251; Fitzgerald, 22287; Cahir, 22981; White, 23150; Delmege, 23464; Hogan, 23798; Morice, 23945; Frost, 24094; O'Connor, 24600; O'Sullivan, 24968; O'Donoghue, 25052; M'Sweeny, 25184; O'Connor, 25216; Hussey, 25281; Mahony, 25949; Walpole, 26081; Kearney, 26115; Crosbie, 26212; Lane, 26539; O'Mahony, 26636; Jones, 26819; Leahy, 27191; Bennett, 28446; Roche, 28818; O'Sullivan, 28934; Sanders, 29085, 29144; Campion, 29264; Daly, 29996; Colthurst, 30354; Payne, 30459; Deane, 31020; Ardagh, 31447; Nugent, 31746; Anthony, 31933; Baldwin, 32411; Lewin, 34840; Irvine, 35737; Marum, 35907; Carroll, 36197; Tracey, 36316; Smollen, 36908; M'Keogh, 37130; Trench, 37866; Bole, 38097; D'Arcy, 38770; Little, 39493; Rochfort-Boyd, 39929; Bruen, 40138.

† Stoney, 23566; Hogan, 23826; Frost, 24119; Keane, 35794; Dease, 37355.

‡ Greene, 751; M'Sorley, 38510.

66. We consider that the tenant upon whom has been conferred fixity of tenure, at fair rent, will be in a position differing little from that of a legal owner of property the soil; and that he ought not to be unnecessarily deprived of any of the ordinary incidents of property. Therefore he should be at liberty to sell his interest, that is to say, his right of continuous occupancy, the improvements made by himself or his predecessors in title, and all the title he has in the land, either under the law now in force, whether common law or statute, or under the statute now to be proposed, in any way he wishes; subject, however, to some reasonable restrictions, which are suggested by the nature of the tie between himself and the landowner, and appear to be called for upon public grounds. We believe this proposal will be found beneficial, at least as much to the landowner as to the tenant; and it seems to us a necessary consequence of what has been proposed above.

Free sale.

67. To the proceeds of a sale, either voluntarily resorted to by a tenant who finds himself unable profitably to farm his holding, or ordered by the court, we look contentedly for a resource, available to landlords, for the recovery of arrears of rent. Such, as above-mentioned, the right of sale of tenant-right has proved in Ulster; and it has become a common place of observers, that landlords suffer much less from arrears, and tenants from eviction for non-payment of rent, where the right of sale exists.* It is true that the spread of this usage, although it is the part of the Ulster custom which most obviously conduces to the landlord's benefit, has outside Ulster been more opposed by landlords than any other.† It appears from the evidence that it is the opinion of many landlords that while to give legal fixity of tenure at a fair rent would not involve any great practical change as regards the majority of large landowners in their relations with their tenants, the concession of a right of free sale would be an upsetting of the rule of management most generally regarded by landlords as beneficial, and most strenuously enforced by many of them. We maintain, nevertheless, that without a right of sale in the tenant, free from unnecessary restrictions, the value of the tenant's interest will not readily be made available to satisfy a claim of the landlord for arrears. To oblige him to come upon the land for his remedy, and evict the tenant, would be to leave the old sore unhealed. It would even be worse in future than before; for, the tenant's interest being recognized at law, and having become in every sense of the word a valuable property, it would be inequitable to inflict a forfeiture for non-payment of rent without a power of sale. This would be like returning to the days of foreclosure in cases of mortgage, before the invention of the equity of redemption, and would revive hardships from which Courts of Equity stepped in to relieve the ancestors of the landowners of to-day. It is impossible in this connexion to overlook the important testimony of the benefit a landlord may derive from allowing his tenants the right of sale, which is afforded by the experience of several estates out of Ulster.‡

Free sale provides a resource for landlords against arrears of rent.

68. It appears to us further that to confer a valuable interest, and refuse the right of alienating it, will not be a judicious measure. The lack of right to convert into money the interest which the Irish cultivator really possessed in the soil of his holding has been one cause of his too great attachment to the spot where he found himself. The concession of free sale will introduce a much needed solvent.§ Men will not go away willingly if they have to leave their property behind. The money often paid to them by the landlords who have promoted emigration has been looked on, we fear, rather as bribe to go, than as the fair purchase money of their interest in their holdings. Let the sale be free and fair, and there will then be no feeling in the emigrant that he has been ousted, and no outcry at home against "ruthless exterminators."✓

Free sale will loosen the undue attachment of cultivators to the soil.

69. There is even great reason to doubt whether a prohibition of sale will be feasible under the new condition of things. It has been found difficult to prevent it from creeping in, even when the tenant had, at law, nothing but a bare yearly tenancy to hold.¶ Certainly there would be required an almost penal code of fines and forfeitures, enough to neutralize the healing influence of other concessions, to repress it.

Prohibition of sale practically impossible.

* Kirkpatrick, 3866; Forde, 7085; Steel, 9061; Houston, 7195; Loughrey, 11162.

† O'Brien, 4005; Mahony, 25955; Crosbie, 26245; Townshend, 33968; Ventry, 35141; Lansdowne, 526.

‡ Reeves, 1981; Kirkpatrick, 3793; Hunt, 21523; Townshend, W. U., 22111; Stoney, 23555; Sherlock, 949; Roberts, 33461, 33563; Vernon, 35255; Little, 39576.

§ O'Brien, 3930; Fitzgerald, 8285; Kearney, 26149; O'Donovan, 29798; Nolan, 31489; Pringle, 35785; Jamson, 39631.

¶ Kirkpatrick, 3793; Larminie, 16209; Blake, 18695, 18822; French, 19120; Jackson, 19132; Reeves, 356; Fell, 30753; Dowling, 34505; Vernon, 35292; Bole, 38114.

landlord's veto on purchaser on reasonable grounds.

70. For the restrictions which it may be right to impose on the sale of a tenant's interest it is natural to look first to the experience of those parts of Ireland where such sale has hitherto been allowed. Under the Ulster tenant-right, the condition is universal—it is even recognised as a part of the Custom itself—that the landlord shall have a veto on the purchaser as tenant, upon “reasonable grounds.” Such grounds are, that he is in insolvent circumstances, that he is of bad character, or has failed already as a farmer. This rule of restriction is well understood, is not complained of by any one and may, we think, judiciously be adopted.* The reasonableness of the exercise of the veto, if disputed, should be determined by the County Court Judge in the Land Sessions, or by the Land Tribunal.

Purchaser to reside, and to buy the entirety. Meagher, 2226 ; Kilmartin, 21010; Wright, 27300

71. We add a condition, not indeed recognized as part of the Ulster custom, but springing out of the nature of the relation between the landlord and tenant of an agricultural holding, and only not hitherto defined as usage, because the landlord's legal power has been sufficient to enforce it. The purchaser should in every case be bound to become himself the actual tenant of the farm, and to continue practically in direct occupation of it ; a breach of this condition should authorize the landlord, as in the case of subletting, to eject, or to compel a resale. Similarly, a sale of the holding to two or more should not be permitted without consent in writing, on the same principle that subdivision is prohibited, and for the same reasons.^

Objection to sale of tenant's interest by auction, not agreed to. Wrench, 5462 ; Caskey, 12344 ; Winder, 6763 ; Vernon, 35317 ; Tener, 36636.

72. Evidence has been given of objections entertained, not without some reason, to a sale of the tenant's interest by public auction. It is clear that in many cases, under the stress of excitement, and of the prevailing desire for land, sums have been bid far beyond the real value of the holding ; with the necessary consequence, that the purchaser has been unable to cultivate at a profit. This is an evil that must be left, we think, to right itself.† It is obvious that, with free sale generally allowed, there will follow a considerable easing of the land-market ; and a legal prohibition of sales by auction can so easily be evaded, that it is not worth while to insist upon it.

Estate rules limiting price of tenant's interest.

73. A controversy has raged in Ulster over the “estate rules,” whereby landlords have endeavoured to prevent the price of tenant-right from rising so high as to absorb the value of the landlord's interest.‡ By these rules it has generally been laid down that the price paid for tenant-right shall not exceed three or five years' purchase of the rent paid. They have probably been largely evaded, except where the landlord has gone further, and selected a purchaser who is willing to pay the maximum allowed.§ It seems unnecessary to enter into the question how far these rules are or are not a violation of the custom, as existing before the Land Act. They have been treated in the Land Courts as usages to be established or refuted by evidence. In future the landlord's interest would be protected by the rule of “fair rent,” and there seems to exist no sufficient reason for further interference with the selling price of the tenant's interest. The argument in favour of establishing such rules, that they have a tendency to protect the interests of members of the farmer class who may wish to buy farms, by keeping down the selling price, may easily be pressed too far.|| In this case, as in that of sales by auction, farmers will soon learn, like other people, to take care of themselves, when they have been placed in a position of security by law.¶

Pre-emption to landlord.

74. The landlord should have a right of pre-emption at the highest price offered by a *bona fide* purchaser in open market.

Discharge of charge for landlord's improvements out of proceeds. Wrench, 5603.

75. In case the value of landlord's improvements has been left, under the proposal suggested above, as an outstanding charge upon the tenant's interest, it should be either

* Robertson, 1497, Meagher, 2141 ; Hill, 3154 ; Simpson, 3581 ; O'Brien, 4016 ; M'Elroy, 4547, 4618 ; Shillington, 5026 ; Robb, 5200 ; Fitzgerald, 8286 ; Lane, 9593 ; Flanagan, 9692 ; M'Intyre, 10753 ; Boyle, 12255 ; Caskey, 12347 ; Ryan, 24251 ; Leahy, 27191 ; Hegarty, 30683 ; Ardagh, 31430 ; Baldwin, 32458 ; Roche, 34316 ; Browne, 35323.

† De Moleyns, 200 ; Baldwin, 32462 ; Beatty, 7406 ; Scott, 9461 ; Brown, 9929 ; M'Intyre, 10835 ; Longfield, 39863.

‡ Quinn, 6407 ; Ward, 7104 ; Ker, 8018, M'Causland, 9189 ; Scott, 9472 ; Simpson, 10536 ; Caskey, 12368.

§ Waring, 6899 ; Beatty, 7342 ; Ker, 8096 ; Murphy, 10087, 10167.

|| *La Touche*, 969, Davys, 14171 ; *Townshend, W. U.*, 22098 ; Jones, 26969 ; *Cornwall*, 28663 ; Q. 28697-28703 ; *Fitzgerald*, 29522 ; *Little*, 39482.

¶ De Moleyns, 137, 186 ; Simpson, 3590 ; Leahy, 27186 ; Baldwin, 32422 ; Lewin, 34840 ; Neligan, 34880 ; Vernon, 35344.

paid off in full, out of the proceeds of the first sale of the tenant's interest, or might be spread over the first and future sales, under equitable regulations for its final discharge.

76. There are cases where a landlord may, under the Land Act, have purchased or acquired the tenant-right of a farm, and have let it again to a tenant without receiving any fine, and without imposing a full commercial rent. In such a case, as in the parallel case of improvements made by landlords, the landlord may not care to have the rent raised, although he may not be receiving so much as would be adjudged a fair rent of the holding. If so, he should be entitled to serve a claim to have the value of the tenant-right which he has bought declared a charge upon the tenant's interest, as in the case of improvements made by the landlord, and to have it satisfied, after the same fashion, out of the proceeds of sales of that interest.*

Tenant-right already purchased and retained by landlord may be declared a charge upon the tenant's interest.

77. The right of free sale, even more than fixity of tenure, interferes with the landlord's right of control over his property, in respect of his power to choose the tenants by whom he is surrounded, and to surround himself with those whom he prefers. It renders him liable to the intrusion of a tenant to whom he may have a strong personal objection, unless that objection should fall within the definition, as interpreted by the tribunal, of a reasonable veto. But it is not calculated to lessen the value of his property. Compensation for such an interference has been suggested to be due, in cases where the right of sale has never been recognised. If this suggestion is ascertained, the compensation must necessarily be estimated on a basis more or less speculative.

The right of free sale a real interference with landlord's right of control.

78. The object of the legislation now to be proposed, like that of the Act of 1870, is to make better provision for the tenure of agricultural holdings. From the benefits of the Land Act were excluded all holdings which are not agricultural or pastoral in their character, or partly agricultural and partly pastoral; that is to say all lettings of houses or buildings, and practically all lettings in towns and villages.† By another section are excluded holdings held by the tenant by reason of his being a hired labourer or hired servant, lettings in con-acre and for other temporary purposes, and cottage allotments.‡ Demesne lands,§ townparks,|| grazing farms at and above £50 valuation, and non-residential grazing farms,|| are excluded from the provision for giving compensation for disturbance, but not from those giving compensation for improvements and for incoming payments. All tenancies of £50 valuation or over may be contracted out of all the benefits of the Act. We do not recommend that all these exceptions should be maintained. We think all lettings of houses or buildings, and all holdings which are not at least in part agricultural or pastoral, should not be included in any statute giving fixity of tenure at fair rents with the right of sale. Demesne lands, townparks, and all lands at present let for grazing purposes, if not residential, as defined in the Act, or above £50 rental, should, we think, be left as at present.¶ For future lettings of land now held under these descriptions, whether for purposes of tillage or otherwise, it might, we think, be lawful to bar the operation of the statute by contract. It is not desirable to place obstacles in the way of the breaking up of grass farms, if the conditions of the market should again make it profitable. Liberty to contract out of the Act should also be allowed in the case of holdings held by a tenant by reason of his being a hired labourer or servant, of lettings in con-acre, and for special temporary purposes; among which last we include the case of a letting to a new tenant during the minority of the person entitled to the land.

Tenancies excluded from the benefit of the changes proposed.

S. 71.

S. 15.

S. 3.

S. 12.

79. With these exceptions, we do not propose that tenants entitled to the benefit of the changes we contemplate should be left free to contract themselves out of the new tenure; but on the contrary, it ought to be provided that they should not. The change, if made, would not be made solely for the sake of existing tenants, but in order to confer upon the country the blessings of a settled harmony, to which it has long been entitled. There will probably be estates, among those which have been kindly

Contracting out of the benefits of the new tenure not to be permitted.

Ferguson, 312; Leahy, 27222.

O'Brien, 4171; Gamble, W., 10907; Ashe, 11974; Gairdner, 20278; Scott, 22509; Frost, 24063; Ashbie, 26184; Jones, 26937; Greer, 40055.

Kelly, 3691; Boyd, 4940; Gamble, 8956; Lapsley, 9005; M'Donnell, 18212.

Hunt, 21522; White, 23222.

Canning, 12125; Browne, 12306.

M'Elroy, 4631; Clancy, 18197; Starkey, 22642; Vernon, 35337.

Murphy, 10128.

managed, where the large allowances made to improving tenants, the materials given or sold under cost price, and the many other benefits conferred by a good landlord, would be preferred, by some at all events, to fixity of tenure and free sale. A time might come when they would change their minds, and when it would be more difficult, if not impossible, to arrange equitably the conditions on which they could be admitted to the benefits of the prevailing law. It does not follow, of course, that all these kindly offices will be withdrawn by the landlords who have been accustomed to confer them. In any case it is impossible to secure to a class the benefits at once of the patriarchal and independent conditions of tenure. The evidence shows that the amount of rent or of annual value constitutes no satisfactory ground for refusing the protection of the statutory tenure.*

Leases.

80. A case of great difficulty is that of existing leases. We have noticed the general reluctance of yearly tenants to accept leases. This reluctance has been increased by the stringent conditions usually inserted in leases, some of them due rather, it may be suspected, to the zealous ingenuity of lawyers, than to any intelligent notion of the right way to promote better cultivation. In Ulster there has been a controversy, still undecided, as to the continued existence of tenant-right on the expiration of a lease; † tenants maintaining that such survival was a part of the Ulster Custom, while the County Court Judges have held that, under the Land Act, it is necessary for each tenant to prove the allowance of tenant-right under these circumstances, as a usage applicable to his own case. In the result, tenants have generally failed to establish the usage, and great dissatisfaction is expressed in consequence. On the general use that has been made of the provision in the Land Act allowing tenancies of not under £50 value to be contracted out of its benefits, without some corresponding security by agreement, we look with regret. The fact that a lease for thirty-one years bars the tenant from claiming compensation for disturbance, and to some extent for improvements, has induced the pressing of such leases upon tenants. Much discontent appears to have arisen from this cause, and in some instances, with good foundation. Leases have been imposed on tenants against their will, which from their legally helpless condition they could not refuse; ‡ sometimes increasing the rent beyond what, to all appearance, would be held a fair rent by arbitrators, sometimes imposing unwelcome conditions, and very commonly, since the Land Act, barring or attempting to bar their claims to compensation, not merely for disturbance and incoming payments, but even for improvements made by themselves, or by their predecessors in title; and this even irrespective of the amount of the valuation. To make no provision for such cases would be to leave a portion of the work undone. In the case of all leases, whether made before or since the Land Act, the tenants should have the right, on the expiration of the lease, to continue in occupation under the same conditions as if they had been tenants from year to year; but in these cases any demand to have the fair rent settled would proceed on the conditions laid down for second or subsequent valuation, the rent reserved under the lease being taken to have been a fair rent, and the inquiry being limited to circumstances which may since have occurred to affect the value of the holding. We propose that if it should be proved by evidence that any leaseholder under a lease made since the Land Act, 1870, has been compelled to accept a lease by receiving a notice to quit or threat of eviction, and that the rent reserved by such lease is excessive, a valuation shall be ordered, and a fair rent fixed, as in the case of a yearly tenant. These provisions should not apply to the cases, comparatively few, where the English or commercial system has been effectively introduced; that is to say, where a farm was handed over at the commencement of the lease in a fit state for cultivation, and with suitable buildings, to a new tenant, not previously, by himself or any person through whom he claims, in occupation thereof, and who has given no consideration beyond the rent and covenants in the lease. For future lettings of such holdings it might be lawful to exclude the statutory tenure by contract.

§ 3. (3.)
§ 4. (3.)

Everitt 2749,
Vernon, 35341.

Muiry, 31569;
Vernon, 35380;
Longfield, 39842.

Teagher, 2239;
Colthurst, 30405.

* Patterson, 1358; Robertson, 1463; Coleman, 2293; Everitt, 2548; Frost, 24085; Walpole, 26003; Riordan, 26751; Rochfort, 33255.

† Hull, 3239; M'Elroy, 4465; Ferguson, 4750; Wrench, 5614; Young, 5736; Perry, 6233; Quinn, 6448; Alexander, 8709; Norris, 10215; Warnock, 10346; Gamble, 10862; Donaldson, 11542, Craig, 12170, Hamilton, 14767, Baldwin, 32463; Dufferin, 33050.

‡ Ferguson, 316; Patterson, 1282; Robertson, 1380; Reeves, 1989; Dowling, 2914; Fenlon, 3733; Forde, 7025; Mulholland, 8335; Gamble, 8988; Kilmartin, 21015; Hunt, 21529; Starkey, 22595; Cobbett, 23886; O'Donoghue, 25029; Walpole, 25997; Lane, 26449; M'Mahon, 28575; Sherlock, 30961; Baldwin, 32472; Walsh, 35496; Tracey, 36290; Magher, 37178.

VI. *Purchase of their Holdings by Tenants.*

81. There appears to be a general feeling of regret that the "purchase clauses" in the Act have failed. Even of those who do not believe in small proprietors, as a rule, and who expect the eventual failure of any scheme for multiplying them to any great extent, the great majority appear heartily to desire the trial of the experiment, and to expect good results from it if it should succeed.

General concurrence in approval of the experiment.

82. By the Church Disestablishment Act, 1869, the Church Temporalities Commissioners were directed, when disposing of the landed property of the Church, to give the occupying tenants the preference of purchase at a fair market value. They were empowered to assist tenants in the purchase by leaving three-fourths of the purchase-money on mortgage at 4 per cent., the whole debt, including principal and interest, being made repayable by equal half-yearly instalments spread over thirty-two years. The interest and instalments together would thus amount to a trifle over $5\frac{1}{2}$ per cent. upon the money advanced. The property, exclusive of perpetuity holdings, consisted of glebes and episcopal estates to the extent of 108,000 acres, in the occupation of 432 tenants, paying an aggregate rent of £95,430, thus giving an average for the holdings of 13 acres, and for the rent of £11 6s. $4\frac{1}{4}$ d. each. The whole of this property is now sold, except 49 chief rents, stipends, &c. Of the 8,432 holdings 6,057 have been sold to tenants for £1,674,841, an average of £276 10s. each. The price thus obtained has averaged $22\frac{2}{3}$ years' purchase of the rental, which is higher than the average of estates sold during the same period in the Landed Estates Court. A fair price has also been obtained for the residue, of 2,326 holdings, which have been sold to the general public. Owing to the expectation that the powers of the Commissioners would shortly lapse, their sales have been, at the last, effected for somewhat less than might otherwise have been obtained; and some regret is expressed that a further opportunity has not been afforded to the occupying tenants to purchase, by delaying the sales of the residue to the general public.

Purchasers under the Church Disestablishment Act.

Bernard, 1665; O'Brien, M., 32728.

Heffernan, 31199; Townshend, 34052.

83. It appears that the new purchasers have paid the interest and instalments of capital with commendable regularity.* Out of the whole number of 6,057 only 388 were in arrear, according to the last returns available, to an aggregate amount of £5,914, and it is not expected that any portion will eventually be lost.† When this state of things compared with that of the arrears now outstanding on most of the estates occupied by small holders, it will be seen that the "experiment" has successfully stood a test of more than usual severity.

The purchasers have paid up regularly

84. It is not denied that a portion of the tenant purchasers have assigned their right, or the most part as security for the balance of the purchase-money, to others; or that several of the original purchasers have succumbed to the pressure of recent bad harvests, and have parted with their holdings, as well as with their proprietary right. The fact remains that these transactions have led to no breaches of the law, and produced no concerted refusal to pay what the purchasers, from old habit, still call the rent."

Some have succumbed

85. Some complaints have, indeed, been made to us that the charges upon glebe lands, so purchased by tenants, are too high to allow the purchasers to live. We find that at this is not due to their having more now to pay than formerly, but to the recent stress. It is not, therefore, a complaint specifically arising from the experiment of purchase by tenants. It may be difficult, in the case of such a tenant, to suggest a feasible remedy for his grievance; but in the last resort, if he is compelled to leave his holding, he will do so peaceably, by an ordinary process of sale, and will probably carry away with him more salvage from the wreck of his fortunes than he could have obtained under the old system by the sale of his tenant-right, where such right existed.

Some are in distress, but owing to recent bad seasons rather than to their having purchased.

86. The success of this experiment is attributable, first, to the care that was taken to make the process easy to an illiterate man, and the comparatively low cost at which the

Causes of success of the experiment.

* Knipe, 3609; Shillington, 4998; Ruddell, 5223; Walker, 5359; Wrench, 5530; Quin, 5777; Quinn, 58; Synnott, 7251; Fitzgerald, 8309; M'Intyre, 10774; Connison, 10920; Loughrey, 11140; Sinclair, 11436, 11593; Haslett, 11821; Henry, 11865; M'Kenna, 13851; Olpherts, F. M., 14368; Baldwin, 516; O'Brien, 32739.
† O'Brien, 3977; Olpherts, W., 11569; O'Brien, M., 32738; Townshend, 34052, 34087; Roche, 34300; Cronin, 35481; Greer, 40003.

legal part of the business was done for him: secondly, to the advantageous terms on which the purchase could be made, including not merely the advance of three-fourths of the purchase-money, but also the absence of stipulations binding down the purchaser to any conditions except those of abstaining from sub-division and of paying regularly an annual sum not exceeding the amount of his original rent. There is no prohibition of alienation, of sub-letting, or of charging the holding with a second incumbrance; but the purchaser is treated, except in regard to sub-division, as a full proprietor from the commencement.

Purchasers under the Land Act, 1870, part ii.

37. By the Land Act of 1870 two methods were proposed to effect the same purpose of facilitating the acquisition by tenants of their holdings. The first was by giving inducements and facilities to landlords, whether limited owners or owners in fee, to agree with their tenants for the sale or purchase of their holdings through the medium of the Landed Estates Court. The Board of Works of Ireland was authorized to advance, by way of mortgage on the land thus sold to tenants, two-thirds of the price of the land, repayable by equal half-yearly instalments spread over a period of 35 years, at the rate of £5 for every £100 so advanced, a rate which makes the interest three and a-half per cent. The terms, therefore, were, in respect of the rate of interest, more favourable than those of the Church Commissioners, namely, three and a-half per cent. in lieu of four per cent., but the proportion to be advanced on mortgage was less—namely, two-thirds in lieu of three-fourths of the purchase-money. There were also stringent provisions against the purchasing tenants mortgaging, alienating, assigning, charging, sub-dividing, or sub-letting their holdings, without the consent of the Board of Works, while any part of the annuities remained unpaid; any such act was to operate as an absolute forfeiture of the land to the Board of Works. Complaint has been made in evidence that the Board of Works extend the construction of these forfeitures to include the case of an assignment by will. Under the first process contemplated by the Act, where the vendors are tenants for life, or limited owners, the Landed Estates Court was empowered to distribute the purchase-money in repayment of charges upon the land, in accordance with priorities, or the purchase-money might be lodged in court for investment in other land, subject to the same trusts, and, pending such purchase, might be invested in consols. The land sold to the tenants under this part of the Act was to be free from incumbrances, except rights of way, and other matters specified in the Act. The Treasury was directed to prescribe the fees to be charged in respect of such sales, and the Court was empowered to apportion rents, charges and covenants, &c., in respect of land thus sold.

The Amending Act of 1872, 35 & 36 Vict., cap 32, s. 1. (3.)

Brennan, 10044.

S. 1. (1.)

Greene, 759, 765; Derham, 2448; Boyd, 4948; Baldwin, 33508.

S. 2.

88. This first process having totally failed of effect, through the fact that the purchase-money of single holdings would not bear the cost of the investigation of title for the purpose of a sale in the Estates Court, an amending Act was passed in 1872 whereby the Board of Works was enabled to make advances to tenants purchasing by agreement from their landlords, upon being satisfied as to the title, without passing the property through the Landed Estates Court. The sum to be advanced was now fixed at two-thirds of the value of the holding, instead of the price, as in the principal Act; and this apparently led to the adoption of a rule, dictated by the Treasury to the Board of Works, of never advancing more than twenty years' purchase at the tenement valuation, except after special valuation at the expense of the purchasing tenant. A power was given to the Board to commute the forfeitures of the principal Act for a sale, and to pay the balance of the proceeds to the original purchaser. The amending Act has had no better success than the principal Act. The Board of Works proved unequal to the task of satisfying itself as to the titles of estates submitted to it.

Purchasers under s. 46.

S. 47.

Boyle, 12241.

Ferguson, 4833, Jay, 7439.

89. The second method proposed under the Land Act for facilitating the acquisition by tenants of their holdings was by directing the Landed Estates Court, in the course of the sale of landed property in the usual course in the Court, to afford, by the formation of lots for sale, or otherwise, all reasonable facilities to occupying tenants desirous of purchasing their holdings, so far as should be consistent with the interests of the owners of the properties thus dealt with. The clause for advance of two-thirds of the purchase-money applied also to these sales, and there was a further provision, that when four-fifths of the tenants of an estate were willing to purchase, and other purchasers could be found to buy the residue of the estate, one-half the purchase-money of the residue might be advanced to such other purchasers collectively, on the security of the residue. The failure of this method has not been so signal as that of Part II. Some sales have been effected, and the purchasers are well satisfied

with their bargains.* But it has been a failure, nevertheless. The number of sales has been decreasing of late years, and few are now effected. The principal reason has been the general refusal of the authorities of the Landed Estates Court, acting in the interest of owners and incumbrancers, to arrange lots so as to suit the convenience of purchasing tenants. It may seem strange that it should have been found to be for the interest of owners or incumbrancers so to arrange the lots as to exclude one description of purchaser altogether, and that a purchaser, as has been shown by the experience of the Church Temporalities Commissioners, generally ready to give as high a price as any man.† But the dread of being left with unsaleable residues on hand has had, perhaps, a somewhat excessive influence in this respect.‡ Other causes have also operated. There has been a total absence of any direct means of bringing home to the tenants a knowledge of their rights, such as were employed with success by the Church Temporalities Commissioners, and of cheapening their law costs, and putting them generally in the way of making their bargain. The interference of the Treasury above noticed, and the mistake, as we cannot but consider it, of introducing the Poor Law valuation as a measure of the value of an estate, has operated to cut down the two-thirds of the purchase-money which it was intended by the Legislature should be advanced, and to put obstacles in the way of obtaining the full amount. Complexities have arisen in cases where a portion of the holding was not let, or where the estate was incumbered, or where easements existed, causing either delay, or expense, or both. The restraints on alienation, and on charging with a second incumbrance, have caused the Board of Works' advances to be regarded with less favour; and that prohibiting assignment by will, if, indeed, imposed by the Act, appears to be oppressive.

Coleman, 2334 ;
Little, 3955.2.

90. These causes of failure were thoroughly investigated by the Committee of the House of Commons of 1877-1878 ; and in the conclusions of the Report presented by that Committee, which were ratified by a resolution of the House of Commons during the last Parliament, we desire to express a general concurrence. The principal paragraphs of this Report are as follows :—

Report of the
House of Com-
mons Committee
of 1877-1878,

"Your Committee are of opinion that it is very desirable that further facilities should be given for the purchase by tenants of the fee-simple of their holdings. Your Committee find that, when estates are offered for sale, there is a general desire on the part of the tenantry to become absolute owners of their farms ; and they believe that a substantial increase in this way in the number of small proprietors would give stability to the social system, and would tend to spread contentment, and promote industry and thrift amongst the Irish peasantry. . . . That a large proportion of the estates offered for sale in the Landed Estates Court are held under fee-farm grants and leases for long terms.

Sweetman, 1151,
1224 ; Robertson,
1516 ; Bernard,
1684 ; Allen,
1882 ; Reeves,
2013 ; Alexander,
8805 ; Brown,
9805 ; Norris,
10283 ; Murphy,
10158 ; Scott,
15959 ; Richard-
son, 19005 ;
Daly, 19050 ;
Hussey, 25634 ;
Crosbie, 26229 ;
Jones, 26944 ;
Colthurst, 30390 ;
Becher, 30662 ;
Baldwin, 32510 ;
Dufferin, 33168 ,
Healy, 37436.

"That the apportionment of the rents reserved by these grants and the leases, and the conditions of sale as to the indemnities consequent thereon, have increased the inconvenience of dividing such estates into small lots.

"That many estates are subject to annuities and jointures, and the effect of the charging orders in respect of loans to tenants is to displace the priority of such annuities, and, in the case of sale or forfeiture, to destroy them. Obstacles have arisen in the making of advances to tenants upon such estates, inasmuch as these advances in some cases prejudice the security of such annuitants.

"That the existing state of the law in respect of rights of turbary and pasturage, rights of way, and other easements affecting estates sold in the Landed Estates Court, has enhanced the expense of carrying out sales to tenants in that Court.

"That the cost of investigating the titles of estates, both of landlord and tenant, and the impediments to the application of the purchase money in the cases of settled estates, or estates subject to incumbrances, have seriously impeded the working of the second part of the Act.

"That on some estates the tenants hold their farms in rundale, and in detached plots, and in such cases the difficulties in lotting have been much increased.

"That your Committee have no doubt that many tenants have failed to make use of the advantages offered them by the Act for want of information as to the terms upon, and the amounts for which loans could be obtained by them, and that the strictness of the prescribed conditions, especially the clauses against alienation and mortgage, have prevented others from endeavouring to acquire the fee-simple of their holdings.

"That, for the purpose of effectually promoting the purchase of land by occupying tenants, your Committee are of opinion that, with respect to the sale of estates by the Land Judges of the High Court of Justice—and lands are usually thus sold in Ireland—some provision must be made to meet what the evidence shows to be the fundamental difficulty of the present system ; that is to say, the difficulty, if not impossibility (save in rare instances), of forming the lands into lots to suit the tenant purchasers, and at the same time paying due regard to the interests of those whose property is being sold through the Court. So long as these practically inconsistent duties continue to be imposed on one and the same functionary, your Committee believe that no substantial results can reasonably be expected from the clauses of the Irish Land Act to which their inquiry has been directed. They therefore think that, whilst leaving to one body the function of selling to the best advantage such estates as may be offered for sale, another distinct and equally independent body should be constituted, specially charged with the duty of superintending and facilitating the purchase of their several farms by the occupying tenants. Your Committee, accordingly beg to recommend that some properly

* M'Causland, 9271 ; Cunningham, 9412 ; Lane, 9566 ; Brown, 9805 ; Brennan, 10068 ; Murphy, 10158 ; Varnock, 10345, 10354 ; Morrison, 10385 ; Gamble, 10895 ; Caskey, 12369 ; Cooper, 12525 ; Blake, 18749 ; Baldwin, 32505.

† Meagher, 2267 ; Morrison, 10485 ; White, 23167 ; O'Connor, 24551.

‡ Booth, 14326 ; Jones, 26941.

eigson, 362 ;
'Brien, 4141 ;
rost, 24128 ;
ewin, 34813 ;
ernon, 3544 ;
reer, 40028.

constituted body should be entrusted with sufficient funds to enable them to purchase suitable estates, or parts of estates, when offered for sale, with the view of afterwards selling to as many of the tenants as, with the aid of advances through the Board of Works, may be able and willing to buy, and disposing of the residues (if any), at such times, and in such manner as they may think will be most productive.

"Your Committee are of opinion that the body thus constituted should put themselves into communication with the tenants of properties offered for sale in the Landed Estates Court, should explain to them the facilities offered by the Act; should represent their interests before the Court in the lotting of properties or otherwise; and should only purchase and re-sell properties in lots as aforesaid, when satisfied that such a proportion of the tenants are prepared to buy as will prevent any loss to the funds at their disposal."

removal of
advances to
access.

91. We agree with the Committee in thinking that a larger proportion than two-thirds of the purchase-money, say four-fifths, might, as a rule, be safely advanced. We agree further that when tenants comprising one-half in value of a lot, instead of four-fifths in value of the whole estate, are willing to purchase, and other purchasers can be found for the residue of the lot, the advances under the 47th-section might be made to such other purchasers; and that the benefit of these advances should be extended to sales under the third part of the Act, that is, to sales not made under agreements between landlord and tenant, but in open Court; also that the restrictions against alienations and assignments should be repealed. We add that a sale should be substituted for forfeiture in all cases, and that purchasers should be entitled to pay off at any time parts of the debt due, so as to give them encouragement to save for that object. There may be conveniences in joining the functions of the Commission to be appointed for this purpose with those of the Court or Commission to be appointed as an ultimate tribunal in disputes as to rent; but their functions are distinct, and the consolidation of the two is rather, perhaps, to be recommended on grounds of sentiment and convenience, than of any very strong expediency.

rmsby, 624 ;
lexander, 8820 ;
ussey, 25391

rrington, 13074.

payments not to
exceed original
rents.
reene, 877 ;
arnard, 1804.
aldwin, 32526 ;

92. In selling to tenants, it would be well to arrange that the annual payments should not exceed the former yearly rent. That this might be effected, even where the tenant provides no part of the original purchase-money, has been shown in the sale of tithe rent-charge to landowners, and it might certainly be effected where he finds one-fifth of it, unless (which ought never to be the case) the purchase was effected at an exorbitant price. For instance, if a holding of which the rent was £100 a-year were bought for £2,500, the tenant providing £500, and the remaining £2,000 were advanced him by the Board of Works, a payment of £5 per cent. upon that advance, or £100 a-year, would be equal to the original rent, and would discharge the amount of the debt, with interest at $3\frac{1}{2}$ per cent., in 35 years. If the whole were advanced, 4 per cent. would equal the original rent, and this would discharge the debt, with interest at $3\frac{1}{2}$ per cent., in 55 years. It is obvious that the principle of these clauses will admit of an almost indefinite extension, if, at the highest rate at which sales of land are ordinarily effected in Ireland, it is possible so to adjust the loan and its repayment that the whole of the purchase-money may be advanced to a tenant, and repaid by him in the course of half a century, without adding a penny to his former rent.

rmsby, 515 ;
urphy, 2812 ;
alliday, 19622.

proposal to give
landlords the
power to compel
the State to
purchase,
approved.

93. It is true that if the land question is now peacefully settled, the value of land may be expected to rise.* But at first it may rather be apprehended that a considerable number of estates will be thrown on the market, from the inevitable distaste with which some landlords will regard the changes which we have found it our duty to recommend. This dislike is indeed so strongly expressed, as to have caused an expression of opinion, that it would be unjust to oblige landlords to concede fixity of tenure at fair rents, with, above all, the right of free sale, without providing that those who prefer it should be entitled to sell their estates to the State at a value to be settled by arbitration.† We agree so far with this view, that we desire to see every facility given for such sales, short of an actual compulsion on the State to take over all the land offered them, especially without retaining any adequate control over the rate at which the process of conversion of tenants into freeholders is to be urged forward, or over the fancy prices which would inevitably be imposed. It is necessary not to incumber the State with large numbers of tenants who are not willing or perhaps able to purchase.

'Brien, 3950 ;
hichester, 34575 ;
ernon, 35436.

purchases of
perpetuities by
tenants.

94. Another proposal has been made, especially as being the best way of disposing of the residues which may remain on hand after the purchase of an estate, and the sale of portions to the tenants. It is that perpetuities should be granted to the tenants of estates thus purchased, either upon payment of a fine, or at such increased rent as may be reasonable. To this we see no objection. It has also been proposed that tenants

* Hunt, 21612; Jones, 26940.

† Fowler, 3906.

should be assisted to purchase perpetuity leases from their landlords.* We are of opinion that where an agreement between landlord and tenant has been entered into to that effect, facilities should be afforded to the tenant to purchase a perpetuity, and to fine down the perpetuity rent when settled, by advances of the same kind, and to the same extent, as in the case of purchases of the fee.

95. By providing funds liberally for the purpose of purchase, by judicious arrangements for the conduct of sales, and by energetically pushing the work, through the agency of a body specially constituted to do it, we consider that means may be provided for satisfying all, or nearly all, that landlords in this respect have a right to demand; and at the same time for rendering the experiment of proprietor-cultivators a real factor in the social and political life of Ireland. But when all is done that can be done in this direction, the tardiness of the process, and the many inevitable drawbacks, will still prevent the "purchase clauses" from being the main feature in any future land system.† There will still remain the great mass of tenants and the great mass of landlords. The settlement of their mutual relation must still be the most important part of the task before the legislature, and the substitution of other conditions for that relation will be but secondary after all.

Purchases by tenants, how far they can be carried.

96. If we look forward a little, to the time when a large number of peasant proprietors will have been constituted, either as owners in fee, or as perpetuity tenants, it becomes evident that the purchase clauses cannot by themselves afford a settlement. Some, probably many, of the new owners will fail. They will borrow on their holdings, and will only quit them, when the mortgage has practically swallowed up the value. The new owner will be, in many cases, a creditor; a man who does not himself farm. He will perhaps sell, but will most likely let the holding. The relation of landlord and tenant will be reconstituted. Similarly many peasant proprietors and many perpetuity tenants will become lessors. Unless the protection of a statutory tenure is afforded to the new tenant, the land question will speedily revive.

The necessity for a statutory tenure will recur. Ormsby, 547; Latouche, 984; Robertson, 1519; O'Brien, 3968; Waring, 6955; Little, 39580.

97. For the purpose of aiding landowners who may wish to sell, we think the time has come when it will be necessary to provide a remedy for the condition of settled estates, by enacting that a limited owner, whose interest is not less than an estate for life, shall in all cases have the same power to sell settled land in open market for the best price, and to require the holders of the legal estate to make a title thereto, as if he were the owner in fee; all limitations under the settlement and all incumbrances being thenceforward transferred to the purchase-money, which should be invested on securities authorized by the Court of Chancery, in the name of the Accountant-General, for the benefit of those entitled. The money arising from the sale of perpetuities to tenants, or from fining down of rents as above recommended, should be subject to the same provisions as to investment for the benefit of those interested in the estate. A similar provision should be made to facilitate sales by Corporations. The Irish Society, the London Companies, and certain charitable corporations own a large quantity of land in Ireland. It does not appear that they compare unfavourably with other landlords.‡ There must inevitably be a want of that intelligent sympathy with the circumstances of individual tenants which is shown by a good resident landlord, or even by a good agent, but they appear in many cases to spend money freely, and not to be exacting in matters of rent.

Power to limited owners and corporations to sell land. Barry, 22051; Newman, 25144; Hussey, 25378.

Lefroy, 39210.

98. The power to advance money under the Land Act for purposes of reclamation should be extended to enable advances to be made to landowners for the purchase of quit-rents, tithe rent-charge, and other permanent charges on their estates, and for effecting permanent improvements and drainage; and the benefit of the section should be extended to tenants equally with landlords. If the landlord and tenant should join in an application, their joint security might entitle them to a larger advance, proportioned to the combined value of the landlords' and tenants' interests.

Extended powers to advance money to landlords and tenants. S. 43. O'Brien, 4060; Keane, 35818.

* Meagher, 2268; Derham, 2477; O'Brien, 3989, 4042; Perry, 6289; Brown, 9886; Donnell, 11000; Barry, 22053; Fitzgerald, 22323; O'Mahony, 26575; Vernon, 35437; Keane, 35793; Healy, 37443; Little, 39540; Longfield, 39876.

† Ferguson, 320; Robertson, 1534; Meagher, 2269; Hill, 3260; O'Brien, 3944; Brush, 6680; Waring, 3950; Gamble, 10896; Heron, 14051; O'Flaherty, 19433; Lambert, 19529; Daly, 19885; Robinson, 20748; Kilmartin, 20990; O'Donoghue, 25055; Brosnan, 25655; Crosbie, 26232; Jones, 26944; Leahy, 27203; Bennett, 28034; Cronin, 29346; Davis, 29739; Daly, 30048; Ardagh, 31454; Nolan, 31483; Baldwin, 32166, 32505; Vernon, 35434; Johnston, 35595; Rochfort-Boyd, 39906.

‡ Shillington, 4998; Osborne, 9036; Lane, 9507; Hanna, 9606; Brown, 9847; Dunne, 10018; Morrison, 10443; Cather, 10707; M'Intyre, 10763, 10802; Meek, 12266; Brown, 12294; Hart, 20031; Brosnan, 25590, 25674; Pringle, 36786; Pyne, 38988; Longfield, 39828.

Simplification of
land-transfer.

99. The transfer of land should be simplified, and the expense lessened; and local Registry courts should be established, at the offices of the Clerks of the Peace or elsewhere, for recording cheaply and quickly all dealings either by a landlord or a tenant with his interest in land.

VII. *The Condition of the Poor.*

Poor tenants.

100. The condition of the poorer tenants in numerous parts of Ireland, where it is said they are not able, if they had their land gratis, to live by cultivating it, is, by some, thought to be an almost insoluble problem.* Frequently however among this class high rents appear to be paid; and we may hope that in this respect a full investigation, followed by reduction where necessary, will do something to improve the condition of a depressed class. The solvent of free sale will do something also. It is said, indeed, that where all are so poor there might be none to buy; but this we doubt. Money is generally forthcoming whenever there is a single farm in the market. Free sale will bring a wealthier order of tenants to the soil that needs them; fixity of tenure and fair rents will give them a chance to thrive on it.

Ferguson, 399;
Leitrim, 11316;
Baldwin, 32262.

Emigration and
waste lands.

101. We are unable to see that any special need has been proved by the recent scarcity for a great State aided emigration. Whether Ireland is capable of maintaining her present population or not, we think that emigration may be well left to the operation of natural causes. Voluntary emigration, in the future as in the past, will be found sufficient. We should be unwilling to encourage the idea that by pressure from without the Irish people were induced to leave their native land. Neither can we strongly support the schemes, most energetically advocated, for a system of State-aided planting of the poorer tenants and labourers upon the waste lands of Ireland.† Lands which are pure waste will never repay the outlay for reclamation;‡ and those of a better class are held for grazing purposes, and are highly prized by those tenants who have privileges on them.§ Experience seems to show that the reclamation of these inferior soils, left till the last in the settlement of the country, can only be profitably undertaken by the employment of capital which can be watched over and administered by the colonist himself.|| The State is, of all agencies, the least fitted to direct or supervise the work of reclamation. Lands suitable for reclamation, which shall fall into the hands of the State by the operation of the purchase clauses, may be made use of to try the experiment, under the administration of the Commission if desired, or as we should prefer, under the management of private individuals or companies possessing capital, with provisions for giving a fair chance to the cultivating tenant, and for his obtaining either the fee, or a perpetuity, or the statutory tenure in the land he might reclaim.¶ The offer of these privileges should not be confined to the actual tenants of holdings, but should be open to the applications of industrious sons of tenants, or labourers, who could show sufficient capital to embark in the work of reclamation. It is, however, rather in the improvement of lands already cultivated, and in the full reclamation of those already half reclaimed that we expect the capital of the tenant class to find, for years to come, its most profitable employment.** If the Government saw its way to adopt such a scheme as that suggested in the Pamphlet quoted in the Appendix F to this Report, a great body of public opinion would be gratified by even its partial adoption.

Agricultural
labourers.

102. The bearing of the questions committed to us for inquiry upon the condition and welfare of the agricultural labourer, a point suggested by references in the Land Act, engaged our attention early, and we have taken a large mass of evidence respecting it.†† The subject appears to demand speedy consideration for the sake of the country, as

* Greene, 753, Allen, 1921; Meagher, 2159; Brooke, 11604; Hamilton, 14719, Clarke, 15708; Thomas, 16720, Waters, 16850; Lyons, 17077; Jackson, 19132; O'Flaherty, 19421; Gairdner, 20304; Joyce, 21094; Cronin, 29350; Baldwin, 32142; Lewin, 34811; Dease, 37,347.

† *Daly*, 17689; *Stephens*, 17709, *Brosnan*, 25660; *Murphy*, 26173; *Baldwin*, 32182.

‡ O'Donnell, 17683; Clancy, 18192; Colthurst, 30397; Baldwin, 32250; Lifford, 36419.

§ Leitrim, 11228; Sinclair, W., 11432; Brooke, 11612; Crean, 15845; Mahon, 21207; Fitzgerald, 29533; Hegarty, 30718; Baldwin, 32188; Lifford, 36431.

|| Cooper, 12522; Gore, 16963; M'Mahon, 28548, Baldwin, 32209, 32292, 32300.

¶ Reeves, 2028; Baldwin, 32214; Sayers, 37456.

** Hussey, 25336.

†† Robertson, 1560; Butler, 4301; Shillington, 5397; Swann, 6160; Hanna, 8918; Flanagan, 9661; Murphy, 10168; Sinclair, W., 11486, 11593, Haslett, 11837; Ashe, 12004; King-Harman, 14258, Hamilton, 14778; Blake, 18764; Gairdner, 20348; Hardy, 20890; Hunt, 21546; Bolster, 21727; Hewson, 23073; O'Shaughnessy, 23386; Newman, 25147, Walpole, 26006; Kearney, 26142; Lane, 26540; Jones, 26897; Johnson, 26979; Leahy, 27215; Bennett, 28439; Cronin, 29387; Davis, 29654; Hegarty, 20730; Loffan, 31525; Roche, 34346; Johnston, 35632, Curling, 39422.

all as for that of the labourers themselves. We do not think that in the proposals we have made there is anything calculated to intensify the poverty of the poor. The English agricultural labourer and the Irish farmer are not two classes, but one. The labourer is a farmer who is without a farm. Wild and subversive proposals, which tend to shake confidence in the public sobriety and drive the capital of the wealthy out of the country, must injure most of all the man who lives by daily wages. It does not fall to us to make suggestions for legislation for the improvement of the dwellings of labourers, for securing them gardens, or for facilitating, except in a general way, the acquisition of farms; but we trust that the tranquillity which will follow on a well-considered measure of Land Tenure Reform will be a blessing alike to all classes, and especially to the poorest.

VIII. Conclusion.

103. The Land Act of 1870 will be so materially affected by the adoption of the changes we have recommended that it may be necessary to repeal it, and to re-enact some of its provisions as it is deemed advisable to retain. The advantage of having only one statute dealing with the subject is obvious. Simplicity and conciseness are essential in legislating on the Irish Land Question. We have found ignorance of the Act, as it now stands, in places where it might least have been expected. If it is thought better to have a new statute, dealing with the proposed changes only, a consolidating Act, to embody in an intelligible form the provisions remaining unrepealed of the statutes of 1860 and 1870, which will for the most part constitute the law of the landlord and tenant outside the statutory tenure, will be almost as necessary as the present statute.

The form of the land law in future.

104. The question will be asked—if all that is here proposed were now enacted, will the tenants be satisfied, and will Ireland be pacified? Upon this head it is well to use strong or sweeping language of anticipation. The habit of agitation, to which the existence of just grievances has given a plea, is not unlearned in a day. There are many to whom the concession of justice, as we deem it, will seem only the extortion of an instalment, from the fears of the legislature, of what may yet be obtained by violence; and such, no doubt, will endeavour to continue agitating, some in the conviction that they are acting patriotically, some from less worthy motives; but the great mass of cultivating tenants, we believe, will be satisfied with the concession of the statutory tenure here proposed. There is a familiar saying, “That it is better to give than the whole of what he ought to have, than the half of what he asks for.” We have endeavoured to put forward a scheme which shall avoid the error of making for giving one man too little by giving another of the same class too much. We are aware that many circumstances, many rights, and many grievances, some of them, no doubt, all-important to particular individuals, must have been overlooked. We have attempted to offer suggestions for the solution of all the difficulties that may arise. It will have been enough if we succeed in strengthening the argument for attempting a solution, in all cases, upon these two principles—to do equal justice patiently between man and man, and to recognize by legislation the abiding and prevailing traditional sentiment that the cultivator has a property in the soil he cultivates, to which, in past times, legal recognition has so unfortunately been denied.

Prospects for the future.

(Signed),

BESSBOROUGH
R. DOWSE
*O'CONNOR DON
*W. SHAW

January 4th, 1881.

SUPPLEMENTARY REPORT BY THE O'CONNOR DON.

The inquiry which we have been conducting during the last few months has been by the very terms of our Commission divided into two branches: the one relating to the working and operation of the existing land laws of Ireland; the other dealing with alterations and amendments in these laws. Upon the first branch of the inquiry I quite concur with my colleagues in the foregoing report; I also agree in several of the recommendations relating to the second branch; and although I differ on what may be considered, and what I myself consider very essential points in regard to the remedy proposed for existing evils, I have not felt myself debarred from signing the report with most of the views expressed in which I agree. In signing it I feel bound to state as distinctly and clearly as I can the points on which I differ, and in doing so it will be impossible for me to avoid entering into something like a criticism of the recommendations from which I dissent.

The first point to which I must allude, and which has not received, I think, the prominence it deserves is this—that not only is the ordinary occupying tenure of land in Ireland insecure, but the ownership of land is confined to a few. So far as the mere occupation of land is concerned I do not know that the position of affairs is worse in Ireland than in other countries; on the contrary, I believe it would be found that regarding the occupier as a mere hirer of the land, his legal rights are superior, and his security greater, than in most other countries in Europe, whilst his practical rights—those recognised by the majority of landlords, and enjoyed by the majority of tenants—are in excess of the rights or the security ordinarily given elsewhere.

Ireland is peculiarly a land of numerous occupiers and a very restricted class of owners—hundreds of thousands of tenants and a mere handful of landlords; and this in a country where not only are the tenants very numerous as compared with the owners, but numerous as compared with the entire population.

It is estimated that there are about 500,000 tenants occupying land in Ireland—that is to say, 500,000 families—and setting down an average of five individuals for each family, this would give us at once 2,500,000 persons, or about half the population directly connected with the land, as occupiers of the soil; and if to these we add all the outside relatives of these families and all persons dependent on them, such as the small country traders and dealers, it will at once appear that the strength of this class is irresistible; that their views and opinions must be the views and opinions of the country; and that no matter what the law may lay down, no matter what right it may give against them, such rights, if not acquiesced in by them, can never be universally enforced without giving rise to a revolution.

We must also bear in mind that these people are now educated, that they practically possess the highest political power, that they are all able to take an intelligent view of their own position, and that the view they are likely to take will not be one disadvantageous to themselves. If Ireland were not united with England, if she were left to herself, there can be little doubt, I think, that with or without compensation, the existing rights connected with the ownership of land would be swept away or greatly restricted whilst, on the other hand, if we had some hundreds of thousands of owners replacing the existing 10,000 landlords, instead of restriction on transactions relating to land, we should have a demand for the most perfect freedom of contract. From this it seems to me to follow that if we are to get to the bottom of the real difficulty of Irish land tenure, and if we are to settle it on any real permanent basis, it is not merely the relations between landlord and tenant that have to be considered and adjusted, but whether these relations should be continued to the same extent as they now exist, and therefore, I fear that any Act based merely or mainly on proposals to modify the condition under which the occupier is brought into relation with the owner, will be only like the Act of 1870, a mere temporary expedient, fit for a transition period, but containing within itself the seeds of failure as a permanent settlement. Another slice, and a very large slice of what is now recognised as the legal property of the owner, will be taken away without satisfying the occupiers, and above all without establishing any just principles on which this transference of property should take place. Under these circumstances, I am obliged to dissent from the recommendation which places compulsory fixity of tenure in the first rank, and merely deals with occupying ownership as a slow and very secondary alternative. The establishment of a peasant proprietary or occupying ownership, first, with facilities for voluntary arrangements for fixity of tenure in certain cases as a subsidiary measure, and compulsory fixity of tenure and adjustment of rents as a last resort, would be my remedy. Before stating how I would propose to carry this out, I must deal with

at I consider the serious objections to the scheme from which I differ, and in doing I desire to deal with it generally, as submitted to us by the witnesses, and not rely as recommended in the report—

1st. I believe it would be extremely difficult, if not impossible, justly to carry it out.

2nd. Even, if established, it would not give a satisfactory tenure.

3rd. If made the general rule of the country it would be but the starting point of a new and most formidable agitation.

4th and lastly. If extended to future lettings it could not be maintained or upheld without the most disastrous legal interference with, and legal restrictions on, matters of everyday life which I could never approve of.

Obviously fixity of tenure would be an absurdity without some control over rent-raising. To give the occupier the right to fixity of tenure and, at the same time, to allow the owner to charge what rent he pleased, would be to do nothing effective, as, in the words of the Report, it would be nugatory and absurd to confer on a tenant a proprietary right of which the value depended on the will of the landlord. Freedom of control over rent is what has been most called for by the witnesses who came before us, and rent-raising, rather than eviction, has been the great grievance complained of. Although we might have "fair rents" without "fixity of tenure," we cannot establish "fixity of tenure" without "fair rents;" and it is in arriving at fair rents that I think the greatest difficulty will be found.

Fixity of tenure at fair rents has, no doubt, received the sanction of the majority of the witnesses who appeared before us, and the principle involved in it has been supported by many landlords as well as tenants. In short, a sort of general consensus of public opinion in its favour has been claimed for it by its adherents. Unanimity of opinion which is based on such general terms as "fair" and "reasonable" may not, however, be so very real when we come to test the meaning placed on these words by the different persons using them. Can it, for instance, be truly said that there is any unanimity of opinion between the landlord who upholds fair rents, and the advocate of tenants' cause who holds the same ostensible doctrine, but who thinks that the fair value of land, which a hundred years ago was reclaimable waste land, should be calculated on the assumption that it was still in an unreclaimed condition, unless the landlord could prove that all the improvements that had been made in it, had been executed at his expense or that of his predecessors? A large proportion of the witnesses on the tenants' side have told us that they consider Griffith's Valuation, as it is called, quite an inefficiently high standard for a "fair" rent, and numbers of them told us that they considered it far too high, although that valuation was made on a standard of rents exceptionally low, and under circumstances in which it was the interest of everybody, both landlords as well as tenants, to keep it as low as possible.* Again, rents that have not been increased for twenty, thirty, or even forty years, have been protested against as rack rents, and even where large sums have been paid for the tenants' interest at those rents, they have still been represented as far above the standard of fair rents.† Is it likely that this is the meaning placed on the same term "fair" by the landlords who have advocated it, and is it not pretty certain that "fair rents" if established must disappoint one side or the other?

It is of course proposed by every advocate of the system, that arbitrators, or a court of some sort, should be established for settling all disputes as to rent, and it is expected and hoped that the cases which would be brought forward for settlement would be few and far between, that disputes as to rent would only gradually arise, and so arising, the decision of the arbitrators or courts would become precedents, and the principles of these decisions becoming generally known, some cheap and summary method of settling disputes as to rent would be resorted to in all ordinary cases. Were we dealing with the land question in ordinary and quiet times, when the prices of farming produce were up to their ordinary standard, and farming profits were in their normal position, there might be some foundation for these expectations, although, even then, I doubt whether the passing of such a law would not lead to a general commotion, but in the present state of affairs, the making of an offer to all the tenants of Ireland to have their rents fixed by arbitration must, I apprehend, lead to a general demand for arbitration.

If this arose, where could the competent and trustworthy valuers or umpires be found? To estimate correctly even the fair commercial letting value of land is not an easy task. The valuator, or in case of arbitration, the umpire, to be competent would have to be a local man, having local knowledge of the particular land he is asked to

Morton, 4684-6,
4731, M'Kenley,
11762; Doherty,
40129; Norris,
10262-7.

Everitt, 2575-2615; Flanagan, 9658; Leonard, 21483; Hogan, 23798; O'Connor, 24600; O'Sullivan, 24600; Lane, 26539; Carnegie, 15413; Corbett, 23893; Clements, 38643; Marum, 35907; Tracy, 36316; Ely, 36054; Smollen, 36908; Higgins, 13330; O'Sullivan, 28987; M'Elroy, 4582; O'Donoghue, 25052; O'Sullivan, 22716; M'Loughlin, 15483-5; Healy, 15460-3; Flynn, 13468; Higgins, 13319.

Roche, 28803 ;
M'Cormick,
36127 ;
Coriscaddan,
38295.

Hill, 3126-30 ;
Caldwell,
10551-2 ;
Ashe, 12007-8,
Clements, 38609 ;
M'Crea, 38462 ;
Lord Ventry,
35169.

Derham, 2462-3,
Hill, 3144 ;
Alexander, 8722,
Hanna, 8940.

value, of its past history, and its capacity for production as tested by experience, and if he be a local man he can scarcely be free from local prejudices, local feelings, and above all, from local suspicions. With this local knowledge, he must possess thorough independence of all classes, and must be placed above the range of either bribery or intimidation ; and one of the first and great difficulties will be to find a sufficient number of men possessing these qualifications. Supposing a sufficient number of these men were got they cannot be left without some general principles to guide their decisions, if they were, there would be no end to the dissimilarity in their judgments. Already, the greatest complaints are made in regard to the decisions of the County Court Judges on the ground that different Judges take different views, and that there is nothing like similarity amongst them ; but the differences of opinion between men as to the value of land, if left altogether to themselves to decide it, would be tenfold greater.

Arbitration or reference to a court for settling rent may work very well where it is entered into voluntarily, where both sides know that it is voluntary, and where, consequently, there is no temptation to make any exaggerated demands on either side, but compulsory arbitration would almost always mean settlement by the umpire. The fact that compulsory arbitration for settling the value of land already takes place and works on the whole, satisfactorily, may be quoted as a proof that the system might easily be extended, but there is a most essential difference between these arbitrations and arbitrations for settling rent. Where compulsory arbitration now exists the whole feeling of the community is in favour of the person, whose property is being taken away getting not only the value, but something more than the value for that property, and this is recognised by the public company or other body that is purchasing. In the question of rent the exact converse would be the case, and there the general public feeling would be against the person compulsorily dealt with.

The ordinary difficulties of estimating the value of land are also enhanced by the proposal, sanctioned by most of the witnesses, that the improvements, effected at any time by landlord or tenant, and any payment made for the tenants' interest should be taken into consideration. Any one of these questions in itself may lead to no end of trouble. Take for instance the question of improvements. We know that this question has given rise to an immense amount of dispute and litigation even under the present Land Act ; but this can scarcely give us any idea of the disputes that may, and I think must arise, if from the valuation of the land is to be excluded any value added to it by the occupier. How it will be possible to estimate this I am at a loss to conceive and the justice of its universal application seems to me more than doubtful. The records of the land courts show the extravagant character of the claims made for improvements ; but if we are to go back to an indefinite period as recommended by some witnesses, or even for thirty-five years, as mentioned in the Report, the field for dispute and litigation, and doubt and difficulty, will be immensely enlarged.

With respect to some land, no one could really tell except by a guess, what its value ought to be with all these deductions. Whether the improvements are to be calculated at what they cost, or on their results, or on both ; whether they have been made by the landlord or by the tenant, are all questions on which difficulties must arise. It seems to me it will be impossible to separate into two distinct classes the value of land arising out of its inherent qualities, and value added to it by works executed thirty or forty years ago, and the effect on particular farms of such general improvements as road making, main drainage, &c., will be most difficult to determine. Even taking such an ordinary, well defined improvement as building a tenant's house, a question may arise whether the letting value of the farm is increased in proportion to the cost of the house. Then there are other classes of improvements, such as those executed by loans under the Board of Works, where the tenants have paid all the instalments which will certainly give rise to contention unless their ownership be clearly defined by law. It has been held by many witnesses that these ought to belong to the tenants—although it was to the landlord the money was lent—although he undertook all the risk, and although, if properly carried out, the land itself, by its improved value, should have more than repaid the annual instalments.

I will not dwell upon the difficulties arising out of payments made to previous occupiers for their tenant-right. These payments have, in some cases, exceeded the full value of the interest of the owner in fee, and they cannot be justly excluded from the calculation of rent, but how far they should be allowed will be a matter of no little difficulty to determine.

We have next to consider at what standard is the fair rent to be calculated. I do not think we should be justified in recommending a general compulsory system of valuation of rents unless we were agreed as to the principles on which it should be conducted. It would not be worthy of our position to recommend it in the same loose and general way in which it has been recommended to ourselves. This would be but shifting the

difficulty which we ought really to face, and would render our Report on this point most worthless. There is no paragraph in the Report in which I more thoroughly concur, than that which states that a fair rent, as understood in Ireland, means a very different thing from a full, fair, commercial rent, as understood in England. It is well clearly to understand the full force of this admission. The fair rent must be something less—I am bound to express my own opinion—it must be something considerably less than the fair commercial full letting value of the land. To impose the adoption of this rent upon every owner would, in most cases, mean, not the deprivation of a mere sentimental right, but the deprivation of very tangible property, the safe enjoyment of which had, in some cases, been lately guaranteed by law. Private rights, I know, must give way to public necessities, but in all cases where clearly recognised rights have been taken away, rights which were given or purchased without any qualification, the withdrawal of the rights or the valuable property they represented has been accompanied with compensation.

Can it then be said that a landowner in Ireland, who has let his land up to the full and fair commercial value, or who purchased the land when let at that standard, and has since upheld it, has committed any moral wrong, or that his rent is an unjust one? The class of owners of land have, I may say, been almost wholly unrepresented in the evidence given to us, not through any fault of the Commission, for we were ready to hear them if they came forward, but through their own abstention. I refer to the small and new purchasers in the Landed Estates Court. They are not a very popular class, probably not a very deserving class, they may have kept away because they might not have been able to defend all their actions, but they represent, very often, industrious, hard-working, Irishmen, who have, by dint of hard work, laid by a competence which they have invested in land in their own country, and to many of these men such an enactment as lowering their rents to the standard at which an easy-going, affluent, and old proprietor was satisfied to let his land, would mean absolute ruin.

Keane, 35799.

Whether this would be just or unjust, and whether it should consequently be accompanied with or left without compensation really depends on the question whether a full fair commercial rent is in itself an injustice, and it requires a stronger argument to prove this than a statement of the fact that large and wealthy proprietors have been content to do with less. Again, what would be a fair rent at one time would be unfair at another. Had rents been adjusted four or five years ago, when the times were prosperous and farming profits were high, there can be little doubt such rents could not now be kept up, whilst if they had been adjusted in a time of depression, no matter how low, they could not be raised. The bargain would thus not be an equal one, the very same forces which now exist to control landlords from exercising their full legal rights could control the exercise of any new ones, but it certainly could not be beneficial to the country, and I cannot think it would be satisfactory to the occupiers to have to look forward to periodical strikes against rent, or demands for abatements in the future as in the past. Such a system is degrading to the tenant, injurious to the landlord, and demoralizing to the country, and, therefore, I believe that wherever the relations of landlord and tenant are to be maintained at valued rents, these rents must be low, and they are to be variable, some self-acting principle such as is involved in the Longfield case would be preferable to periodical revisions.

It must not either be too confidently expected that those who are known as good landlords will not take advantage of any rights left to them under the proposed new law. There is scarcely any proprietor who will not find if he takes the rents over all his property and strikes an average that some rents should be raised and others lowered, and if it be the right of individual tenants to claim this average it can scarcely be doubted the landlord in the other instances will claim it also.

One necessary effect of such legislation as is now proposed and of all attempts to regulate by law matters which had heretofore been left to voluntary arrangement must be to make every one assert more vigorously and carefully the rights and privileges which are either left to him or conferred on him.

This has already been one of the effects of the Land Act of 1870, and that the same effect will follow from further legislation we can scarcely doubt. Give the tenant compulsory fixity of tenure at rents valued by law with the right of free sale and the race between good landlords as well as of bad landlords is gone, and in place of both there will be the statutory landlord until such time as he becomes so obnoxious that every well-thinking man, including himself, will desire his extinction.

These are some of the difficulties which will arise if universal compulsory valuation of rents be determined on, and they are by no means imaginary difficulties. Examples of them all have been brought before us. That they have not been overlooked in framing the recommendations in the Report from which I dissent, I frankly admit. An

Marmion, 12655;
Hart, 12815,
M'Goldrick,
15285; Sullivan,
22716; M'Lough-
lin, 15483.

endeavour is there made to take the existing state of things as far as possible as a starting point, and the recommendation that rents, which have been regularly paid during ten years out of the last twenty, should be regarded as fair, and should not be subject to immediate revaluation, except under special circumstances, would go a long way in meeting many of the difficulties I have suggested. Remembering that many of the rents objected to before us, were rents arranged more than twenty years ago, I fear that the adoption of this principle will itself give rise to new difficulties and inequalities; but, nevertheless, if the scheme of fixity of tenure, and valuation rents be made general and compulsory, I believe some such principle must be accepted. Indeed, if I believed the tenure itself a satisfactory one, I would not feel bound to urge the difficulties against its adoption as strongly as I have done, and where it is necessary to have recourse to compulsory valuation of rent, I believe the scheme embodied in the Report as good a one as can be suggested.

Lefroy, 39210;
Browne, 35193.

This brings me to my second objection, namely, that the proposed tenure would not be at all a satisfactory one. It has been suggested to us in a twofold character. It may be a perpetuity at a fixed rent, or a perpetuity at a variable rent. If the former, the landlord is changed into a mere annuitant or rentcharge owner. He will no longer have any interest in or power over his property, his sole connexion with it will be to draw out of it a certain fixed payment each year. The nominal owners having no other connexion with their property, absenteeism will most certainly increase, and in a very short time this payment to the landlords will be regarded as a huge tax paid by the multitude for the benefit of a few, whose names will, in many instances, be scarcely known to the occupiers of the soil. If, on the other hand, the perpetuity be at a variable rent, and that certain general rights are preserved to the landlord, the property may be of more value to the owner, but it will equally be very precarious in its character. In its origin it may not correspond to a copyhold, but if all the occupiers of land in Ireland who now hold as tenants from year to year held under this tenure, there can be little doubt that before long they would all combine to have it changed into a copyhold, and if they did so combine, it would be impossible to resist the combination. Perpetuities at variable rents wherever they have been tried have failed to give satisfaction. The Trinity College leases form a notable example of this. There the tenants having fixity of tenure and free sale with variable rents, adjusted according to the prices of agricultural produce, are wholly dissatisfied with their position. The tenure has not led to improvements, and is regarded as so objectionable that a private Bill is about being promoted in Parliament to change the variable rent into a fixed one.

Divided ownership cannot, I think, be a desirable tenure universally to create, although where it is in existence or entered into voluntarily it may not be desirable to interfere with it. That it would be an improvement on the present system and a stimulant to exertion on the part of the occupier, I admit, although it would not be so great a stimulant as actual ownership, but so far as the landlord was concerned it would be a bar to his doing anything for the land. The owner would be deprived under this system of the real position of an owner, whilst the occupier would not have gained that position. The magic influence of ownership would be taken away from both parties, no one would feel that he was owner, and one of the strongest incentives to exertion would be done away with.

What would be the value of the perpetual or variable rent to the owner, is also a matter which has to be considered, and unless it were adjusted at a low standard, I fear it would be almost unsaleable. A perpetuity rent, even of the most secure description, where the rent is low and what is known as the margin of security very considerable, does not now sell, and never has sold, at anything like the same rate of purchase as higher rents accompanied with absolute ownership. A perpetuity rent near the fair letting value of the land would, in reality, be subject to all the variations and fluctuations of the times, so far as they told against the owner, whilst he would be debarred from any corresponding advantage when they told in his favour, as his hands would be absolutely tied for ever, or during the continuance of the first term of the tenure.

Warnock, 10348;
Roberts, 33578.

This is not mere theory, it has been practically developed and proved by what has lately taken place in Ireland. By the free will of the landlords, on several estates a practical perpetuity tenure at moderate rents has been established, and yet, to the tenants holding at these moderate rents, abatements have had to be made just as in other cases. If a perpetuity rent of any sort is to be established, I therefore hold that it must be at a very low standard.

In the next place this system if universally, or even generally, established, would be but the stand point for a new and most formidable agitation—this follows almost necessarily from what I have already written. If the tenure would not give satisfaction to the occupiers, it certainly would not have diminished or decreased their strength. If

the same relationship as to numbers between owners and occupiers were to exist in the future as they now exist, the struggle for absolute ownership would continue all the same. The variable rent would, most certainly, have to be changed into a perpetuity which, in its turn, would have to give way to ownership. Having gained so much at a time when comparatively weak, can it be imagined that when strengthened with more than half ownership, they would desist in the efforts to get the whole, or that the whole could be kept from them? What would be left to the landlords, even if the rents were to be variable, would be very little worth fighting for. The first assault would be to turn them into perpetuities and this being done, their extinction would be but a matter of time.

Lastly, such a system could not possibly be kept up with regard to future lettings without legal restrictions and interference which would be mischievous to all parties concerned, useless for the purposes for which they were created, and, in the end, intolerable to every one. Whether just or unjust it would be quite possible at once to make all the occupiers of farms in Ireland hold by a fixed tenure, and at a rent arranged by valuation, but, to extend this to future lettings, would be quite a different thing. If a man has now a holding of land in his own possession, and if he be free to sell it or to let it, it will be found in practice impossible to prevent his getting its full market value when he lets it. Just as the landlords in the north of Ireland who have tried to limit the price of the tenant-right have failed to do so, money being paid outside the office in excess of that given in presence of the agent or landlord, so would the law fail which attempted to fix the price to be paid for the hire or use of the land. Just as the usury laws failed, so would this law fail, and, instead of benefiting the persons intended to be benefited, the result would be just the reverse. Applied to future lettings the establishment of these restrictions would be a step backward instead of forward—instead of freeing the transfer of land from difficulties, they would create new ones, and the system could not possibly last.

Even still more objectionable would be the proposal of fixity or perpetuity of tenure as applied to new lettings. I cannot justify the principle that a man should either keep land in his own possession or part with its occupation for ever. This, in practice, would be found intolerable. In the words of Judge Longfield, the public would not long bear a law which prevented two men from making a bargain, just in itself, useful to the public, and profitable to both parties. A. holds a farm which he wishes to let for a short period; for this purpose he is willing to let it at a lower rent than if he let it for ever. B. just wants such a farm, and it suits him better than paying a higher rent or a large fine for a longer tenure. Will it be tolerated that the law should step in and say this cannot be permitted, and either A must continue to work his farm in person at a loss or give it up for ever, and B must do without its temporary use or pay a heavy fine which he is unable to raise. The scheme of fixity of tenure and valued rents must be applied only to existing tenancies. Its application to them may be necessary and justifiable, but with this its existence must cease, and once it has established a large number of the occupiers in secure occupation of their farms it must give place again to freedom of contract.

For these reasons I have felt obliged to dissent from some of the most important recommendations in the Report. They seem to me to fail in having any lasting basis to stand upon; but mere dissent from them does not solve the problem. The difficulty we have really to face is this: we want to confer on the tenants of Ireland valuable rights which they do not now possess—rights possessing a considerable intrinsic and money value, which the occupiers are not able fully or immediately to buy, and which cannot be justly taken from the existing owners without some option or compensation. Is it possible to reconcile these two interests without injustice? It seems to me to be so, but not without the interference of the State, and the very considerable interference of the State, in the way of advancing money. I believe that with a combined system of voluntary arrangement between landlord and tenant for fixity of tenure, at either perpetuity rents or variable rents and compulsory sales, the problem can be met.

The objections I have urged against the compulsory and universal extension of the principle of fixity of tenure with valuation rents do not apply with so much force to cases in which this is a matter of arrangement between the owner and the occupier. When the owner and the occupier mutually agree as to the terms on which perpetuities or any other form of tenure are to be granted, or when they agree to refer the decision to any court, tribunal, or arbitration, I think the difficulty of settling a fair rent is greatly got over. I have already stated that the rent must be a low rent; and as I believe it would be desirable in many cases to promote arrangements between landlords and tenants, I think that money might be advanced by the State on the security of the land to

enable tenants to purchase perpetuities at low rents from the owners; and I recommend this not as a secondary or subsidiary proposal, but as the chief means of establishing fixity of tenure at fair rents in such cases as it is desirable to establish it. Another means would be to provide that where the rents are already low, if the landlord and tenant agree to a long term at that rent, the landlord should be entitled to be paid a certain proportion of the purchase money of the tenant's interest on the occasion of its first sale. It would, I think, be manifestly unjust, taking as an example the Province of Ulster, to give to tenants on estates there, where sales had not been previously allowed, the same rights and privileges as where they had been allowed. The present occupier on one estate may have paid 20 years' purchase for the good-will of the farm, the occupier on another nothing, or he may have been limited to three or four years' rent; the landlord on one estate may have had all old arrears and bad debts paid off through the tenant-right, the landlord on the other may have forgiven these debts in order to have a tenant with capital coming into his farm; and it would not be fair to treat the one man in the same way as the other, and to allow both, without increase of rent, to sell their farms to the highest bidder. At the same time, any immediate raising of the rent on the farm where the tenant had not paid for tenant-right would be productive of mischief and dissatisfaction; and as it is desirable to have rents kept at a low standard, this could be accomplished better by entitling the landlord to a portion of the purchase-money on the first sale of the tenant's interest.

Perpetuity of tenure at low rents, rents considerably under the full letting value; may be sufficient in a number of cases to meet the wants of the country, and where the landlord was willing to grant these, he should be encouraged to do so; first, by advances to the tenant to enable the tenant at once to purchase it; secondly, if the tenant did not purchase at once, by entitling the landlord to receive payment for it on the occasion of the first sale of the tenant's interest; thirdly, by securing the landlord in all pre-existing arrears, and by giving very quick, sharp, and decisive remedies for the recovery of rent, or possession of the land where the rent was not paid.

But this, after all, I would consider but a very small portion of the scheme that would be required. Absolute ownership is what must be looked to as the essential element of any really effective proposal, and I do not think that in order to bring this about it would be necessary to have universal or even general compulsory expropriation of landlords. If landlords were given merely the alternative of granting the perpetuities proposed in the report, or submitting their estates for sale, I believe it would be found there would be ample field for creating occupying ownership. To every tenant of an agricultural holding, with certain exceptions to which I shall refer hereafter, I would give the right to demand the fixity of tenure and fair rents suggested in the Report, and if the landlord refused to grant it, I would compel him to sell to the State. The State having purchased, should then if possible, sell outright to the occupier and establish absolute ownership at once, or should create a tenancy convertible into absolute ownership at the earliest possible date. I believe this could be done without any loss to the State, without the assumption of any undue responsibility, and without sacrificing those private rights, which without some such system, will and must be sacrificed.

Except in this indirect way, I do not propose any compulsory sales. Compulsory sales in certain cases have been advocated by some of those who have appeared before us, but it strikes me it is not so much compulsory sales as compulsory purchasers that would be required. No one, I presume, would say it would be just to compel any proprietor, whether individual or corporation, to sell, unless he or they were secured in the full value of their property.

In every proposal that has been mooted in regard to compulsory sale, it is always presumed that the State, which for the good of the public, compels sale, will step in and purchase on behalf of the public, and that the seller will get the full value of the property. If this be secured to the seller I do not see any unwarrantable interference with his right in compelling him to sell, especially if this be accompanied with the alternative of granting to his tenants that security of tenure, which looking to the general good of the country seems to be required. Certainly an owner with this option presented to him is not at least in a worse position than if he were compelled without an option to give the tenure above referred to, and therefore, so far as the owner is concerned, he would have far less reason to complain of unjust interference with his rights than if he had forced on him, without any alternative, the granting of the perpetuities.

There is, no doubt, involved in this a very much larger question than the rights or interests of the owner, and that is the responsibility of the State; and the question arises, whether if all the owners of land in Ireland were willing to sell their estates

their fair value, the State ought to become even the intermediary purchaser, and buy them up with the view of selling them to the occupiers, or making these occupiers tenants on tenures that would be more conducive to the good of the public at large. There is also involved in this the ascertainment of what would be the real fair selling value of the property; and it may be urged it would be as difficult to ascertain the fair selling value as the fair letting value, that the one hangs upon the other, and that all the difficulties I have enumerated, in regard to settling the fair rent, would have to be encountered in settling the fair selling value.

With regard to the first question—the responsibility of the State—I think it is to be regarded in two aspects. First, Is it a just responsibility? is it one that the State ought justly to undertake? Secondly, Is it likely to be of an overwhelming character? With regard to the first point it seems to me to be a most just responsibility. The position of affairs is this:—Under the existing law certain persons, called landlords, have the ownership of the land of the country guaranteed to them. They have certain rights in that land, as owners, which it is considered expedient for the public good to do away with; and if the deprivation of these rights depreciates the value of their property, it is in accordance with all the practice of British legislation to give compensation to the persons deprived of these legal rights, or to take up from them their property at its pre-existing value.

If the granting of the new tenure would not depreciate the value of the landlord's property, there could be no great risk involved in taking it off his hands, granting it for a term of years, and then re-selling to the outside public. Until the last year or eighteen months there was no lack of purchasers for Irish landed property when put up for sale; and if the new tenure gave satisfaction, and that it did not materially depreciate the value of the owner's property, there would be no great responsibility or loss involved in buying up all the property offered for sale under such circumstances. In any case it seems to me that the change in the position of landlord and tenant being effected for the public good, and not for the good of the individual owner, any loss, should be borne by the public; and that therefore the responsibility is one that might justly be accepted by the State.

It has been suggested that this responsibility would be of enormous magnitude. I cannot join in this apprehension. I do not believe that all or the great majority of the landlords of Ireland, sooner than grant fixity of tenure at valued rents, would rush in and demand that their estates should be purchased. But if there were grounds for this apprehension, nothing could more clearly show the adverse opinion entertained by these owners to the effect which the new compulsory tenure would have on their relations with their tenants. It must also be remembered that the utmost responsibility accepted by the State, even in such a case, would be an obligation to grant this very same tenure to the occupiers; and if the tenure did not depreciate the value of the property there would be no great risk in the transaction, as the State, having granted the tenure for a term of years, could at once re-sell to the highest bidder.

We have had a great number of landowners before us, and very many of them have expressed themselves most decidedly hostile to anything like compulsory sales, but quite satisfied to give fixity of tenure. A landlord committee has been formed in Dublin, and has formulated a scheme for the settlement of the land question; and it is based on fixity of tenure, and compulsory sale recommended only in regard to particular estates belonging to corporations.

I cannot suppose that all this is mere idle talk, and that if the owners had the various options presented to them they would all prefer that which they have openly pronounced rather than what they have advocated. There are, moreover, a large number of landlords who could not sell without seriously diminishing their incomes. The owners of life estates, for instance, who would have to invest the money arising out of the sale in some Government securities at some low rate of interest; and to such as these granting of perpetuities, at either fixed or variable rents, would be preferable. But whilst I do not think the granting of the alternative would lead to universal or very general sales, I am certainly of opinion that it would bring a very large quantity of land at once into the market. If I did not think so I would not defend its being tried; and it is mainly because I feel convinced that it would at once render the experiment of occupying ownership or peasant proprietary to be tried on a very large scale that I recommend it. The experiment, so far as it has been tried in Ireland, has, I think, been a great success. Evidence was given to us, showing that the vast majority of the owners created under the Church Act and the Land Act have been prospering, and are contented; and the year which we have lately passed

is one which must have severely tried the system. On all sides tenants, holding at the most moderate rents, were receiving abatements, arrears were growing apace, and

M'Intyre, 10774 ;
 Connison, 10922 ;
 Loughrey, 11130.
 Haslett, 11823 ;
 Clements, 38633 ;
 O'Brien, 32734 ,
 Smith, 38458 ,
 M'Causland, 9271,
 Cunningham,
 9436 ;
 Brown, 9825 ;
 Brennan, 10068 ,
 Warnock, 10345,
 10354 ;
 Morrison, 10388 ;
 Gamble, 10895 ;
 Fitzgerald, 24296 ,
 Roche, 34300-3 ;
 Tener, 36579 ,
 Pringle, 36776 ,

rent-paying in many cases had altogether ceased ; yet no abatements were made to these purchasers, and the remarkable fact remains, that out of a rental, largely paid by very small occupiers, only 10 per cent. of arrears appeared to be due to the Church Commissioners at the end of the year 1879, and the whole of this they expected to recover. In some individual cases the purchasers have failed, some have sold their purchases, others are in debt, and will have to sell. This was to have been expected ; but these cases are the rare exceptions, and that they should be so few after such trying times, and that those few should leave their holdings quietly when they found themselves unable to retain them, are the strongest arguments in favour of the system.

I consider the option of sale, or offer to purchase on the part of the State, the most important portion of my proposal, and by itself I think it would accomplish much of what is wanted. Quite apart from the disadvantages arising out of insecurity of tenure on the part of the occupiers, I believe the disadvantages of having the ownership of land held by a mere handful of the population are in themselves most serious. Security of tenure has long been the demand of the occupiers ; it will soon be the turn of the owners to cry out for the security of their tenure, and their security will be most unsafe unless it be largely participated in by the mass of the population which now really governs the country.

In undertaking such a purchase, the State must of course be secured against having to pay more than the real value of the land, and one of the first conditions ought to be that the purchase-money should not be of a character to tempt the owner to part with his property mainly with the view of getting a fancy price for it. In arriving at the value of an estate offered for sale it would not be fair to proceed altogether on the basis of the existing rental, and, therefore, it would be necessary in some cases to have a valuation of the land irrespective of that rental, and here we may have to meet with the same difficulty as would arise in valuing for a fair rent. The difficulty is undoubtedly of the same nature, but not at all to the same extent. The valuation of a rent for the purpose of purchase will be found much more easy than a calculation of rent for the purpose of an annual payment. One of the greatest difficulties in arriving at a fair rent as between landlord and tenant, on a uniform scale all over Ireland, will be that such uniform scale would necessarily result in many raisings of rents. This difficulty certainly will not exist to the same extent, and it may not exist at all in regard to lands purchased by the State, and that because the State can afford to take much lower rents than anyone else, and to do this without any loss. The difference in the rate of interest at which the State can raise loans and that required by any private individual being the explanation.

This may be illustrated by an example : Let us take the cases of two holdings on different estates of really the same value—the one let at £90 a year, the other at £110—the true letting or fair rent of each let us suppose to be £100 a year. If perpetuity of tenure at fair rents were to be established, the one tenant's rent would have to be raised £10 a year, whilst the other would be lowered £10, and even if this gave satisfaction to the one man the other would be certain to be dissatisfied ; but if instead of this the State were to purchase the two holdings at 22½ years' purchase of the fair rent, and to charge interest say at four per cent., there would not be the same dissatisfaction. Each holding would cost £2,250, and four per cent. on this would equal £90, so that the one tenant would have his holding for the future at the same low rent as before, and the other would have a very considerable reduction—from £110 to £90.

M'Grath, 20147 ;
 Davoren, 21386-9 ;
 O'Neill, 38574-6 ;
 Sproule, 38393 ;
 Kilmartin,
 20990-2.

I believe that in order to become the actual owner of his holding, the occupier would be willing to pay a larger sum than for a perpetuity lease, and that there would be less dissatisfaction at the rents being fixed at their fair value in such cases, than where the occupiers were still to continue as tenants. Again, there is something in the very certainty of the amount which has to be paid or received which renders it much more easy to determine than if it is a recurring payment in the future. A lump sum paid down at once as the price of a commodity is much more easily arrived at by arbitration or valuation than a periodical payment for the use of that commodity. Averages also could be taken more easily into account in the one case than in the other. The selling value of land should be ascertained by taking into account its average value over a certain number of years. It would not be fair either to the seller or the purchaser to calculate on an exceptionally high year or an exceptionally low one. The same principle ought to apply in calculating the rent at which the land ought to let ; but it would be far more difficult to apply it. In estimating the present rent to be paid it would be impossible to give satisfaction by arranging it on the basis of an average of years, as such rent, at the present time, would appear too high, and, on the other hand, it would be unjust to fix it at the low standard of an exceptional period. If it be

ranted that the land question in Ireland cannot be settled except on the basis of low rents or low annual payments, payments under the real letting value; and if this basis cannot be taken without loss to the owners, I think the interference of the State is absolutely necessary. It does not appear to me that the credit of the State would be injured even if a considerable sum of money should be lost in these transactions. Millions of money have been scattered broadcast in upholding the dignity of England in Abyssinia, in trying to teach the Turk a lesson of good government in Cyprus, and in attaining a scientific frontier in India, and yet the credit of Great Britain has not been impaired, and I am bold enough to believe that even if some millions were lost in pacifying Ireland the money would not be thrown away, nor the credit of the Empire lessened.

What I therefore suggest is, that a commission should be appointed, with ample funds guaranteed by the State, to purchase up, at a fair selling value, all the estates offered for sale by the existing owners; that, having purchased these lands, they should be resold to the occupiers wherever the occupiers could pay down in cash one-fifth of the purchase-money, four-fifths being advanced at annual payments, such payments would extinguish the principal and interest in a given number of years, which I would suggest to be thirty-five.

Where the occupiers are not able to provide one-fifth of the purchase-money, they could either have perpetuity grants made to them of the lands at a fair rent, and these perpetuities should be sold to the public, or the perpetuity grants should be made to them at an annual payment which would repay four-fifths of the purchase-money, interest and principal, in thirty-five years; that this should be paid to the Commission simply as interest or rent, until such time as the first sale of the tenants' interest took place, when, out of the purchase-money, realized by such sale, the original one-fifth could be paid to the Commission, and that from that date the re-payment of principal should commence. I propose this mode of repayment because I believe that although many occupiers could not now, or at once, advance any portion of the purchase-money; yet, on the first sale of their interest in the land, ample funds would be forthcoming. In proof of this I refer to the enormous sums now paid for the tenants' interest in Ulster. Under this proposal, taking the example I have already given, if a holding worth £100 a year were purchased for £2,250, and the tenant was not able to pay one-fifth of the purchase-money, or £450, his annual payment should be fixed at five per cent. on £1,800, or £90, which should be regarded simply as interest or rent, until such time as the £450 was paid to the Commission, after which time the re-payment of principal should commence, the payment of the £450, if not previously made, being obligatory on the first sale of the occupier's interest.

The probable immediate results I would anticipate for this scheme are the following:—First, that a very large quantity of land would be at once brought into the market, and rendered available for peasant proprietary. Secondly, that the land so brought into the market would to a great extent be the property which it would be most desirable to take from its present owners. Thirdly, that these operations would not be confined to any particular district or portion of Ireland, but would be general, and make its influence felt everywhere. And lastly, that the absolute ownership thus transferred on such a large number of proprietors would have such a general wholesome effect, that even the relations between the occupiers and owners where these did not take place would be greatly benefited. That a large quantity of land would, at once come into the market for sale, and that on very reasonable terms, cannot, I think, be doubted. But if, by any chance, this turned out not to be the case, I would be quite prepared to go further and compel sales. Where a property was valued at a certain proportion of its absolute value, I would compel its sale, and then the requisite amount of land for peasant proprietary could be easily got, but before having resort to this compulsion, the offer of general purchase should be first tried, and I cannot doubt it would be found quite sufficient.

In the next place the estates that would be offered for sale would be just those which it would be most desirable to have sold. Most probably if the alternative of granting perpetuities at fixed or variable rents to the tenants, or of selling to the State, were offered to all proprietors, the old established residential owners, between whom and their tenants, feelings of good-will had always existed, and who had always asked for only low rents and permitted practically fixity of tenure to exist, would agree to an arrangement voluntarily, with their tenants, and would grant legally what they had previously been in the habit of allowing. Neither landlords nor tenants in such cases would like to part company. Some general rights of ownership, such as rights of shooting, rights over bogs, quarries and minerals could be reserved to the

owner, which would give him an incentive to retain his land even on the altered conditions. Lowness of rent and fixity of tenure being secured to the tenant, he, too, would be satisfied to remain in his present position.

The case would be different with the new purchasers; the men known as the rack-renters. Those who had no interest in the possession of the land, beyond that of getting the most they could out of it. They would be almost certain to sell even if they had to sell at a loss compared with the prices which they themselves had paid. The first loss to them would be better than a perpetual loss in getting only a low rate of interest for their money, and having all the expense and perplexities of collecting an unwillingly paid rent. Again, where estates were heavily incumbered, most probably an amount sufficient to pay off the incumbrances would be sold, and one of the greatest disadvantages of the present system where land is nominally owned by one man, and is in reality the property of another would be done away with. Outlying townlands, distant from the residence of the owner, and the estates of absentee proprietors who took no interest in their property, would probably be amongst the first to be sold.

This would also take place all over Ireland; it would not be confined to any particular district or county, and everywhere throughout the length and breadth of the land, occupying owners would be established, influenced by every feeling that actuates the human breast to maintain and to uphold the rights of property, a state of things which could not but affect even the relations between landlord and tenant where these relations still continued.

Of course in opposition to this the financial difficulties of carrying it out have to be considered. For the State all at once to become as it were the landlord of the majority of the tenants in Ireland would be a most serious responsibility, and if the occupiers were to refuse to pay the Government a very serious state of affairs might arise.

This is really not to be apprehended and it could be met effectually, if apprehended, by placing a limit on the price beyond which the State would not go in purchasing property. Assuming, however, as we are bound to assume, that a very large amount of property would be sold, where is the money to come from, and how is the repayment of interest and principal to be secured? I believe a great deal of the money could be found in Ireland itself. A large amount of money is now lodged on deposit at very low interest at the banks, and if land debentures were created, guaranteed by the Government, and bearing interest say at three and a half per cent., and issued for very small sums, I believe they would be largely taken up through the country.

In order to secure this it might also be provided that the landowners selling their property should take a considerable portion of the purchase-money in these debentures. What is wanted is not so much a large amount of money as the guarantee of the State, and if this were once given there would be little difficulty in finding capital.

The next question which arises is, Whether this could be safely given? If it were necessary that the Government should directly stand in the position of landlord to a vast number of occupiers, I think the objection would be a serious one, but here again I think local machinery might be introduced. The example of other countries might be imitated in this respect. In the evidence given to us by Lord Dufferin, the course pursued by Russia under somewhat similar circumstances was quoted to us, and by making some such local unit as the poor law union responsible for the payment of the annual instalment, I think this difficulty could be got rid of.

Dufferin, 33168.

The course which should have to be provided would be to transfer to the union authorities the duties of collecting the annual payment from the occupiers, and in default of payment by any individual occupier, to make the rateable property within the poor law union responsible, giving of course to the authorities the most summary powers of seizing and selling the interest of any defaulter.

The result of this proceeding would be, to make every occupier of land within the district, and every man who had paid his own instalment, interested in having the payments punctually made; and, instead of public sympathy running in favour of the defaulter, it would run in exactly the opposite direction. Moreover, every man who had invested his capital in any of the debentures, would also have a stake in the country, and become little desirous to see any revolutionary changes.

When once these perpetuity holders or occupying owners are established, other difficulties will still have to be met. Every one interested in the well-being of Ireland, must desire that some check should be placed on subdivision or subletting. Excessive subdivision of land has been in many instances one of the greatest curses of the country; yet it will be extremely difficult to prevent it unless the habits of the people change, and that greater intelligence and foresight is produced by the new position in which they will find themselves. Subletting might possibly be prevented during the time

that any instalment of purchase money was due to the State; and both it and subdivision should be strictly prohibited.

Theoretically, I am opposed to any unnecessary interference with the rights of the new owners; in disposing of their property, and practically I fear it will be next to impossible to prevent subdivision so long as the people themselves look to it as a means of providing for their families, and to a change in their habits and views we must look, in the long run, for a remedy.

One of the curious anomalies of the present state of affairs is, that whilst the Land Act places penalties upon subdivision and subletting, the common law of the country seems to encourage subdivision. The Land Act makes subdivision penal, and yet it has created a property, which, by the common law of the country, is divisible, in case of intestacy amongst all the children of a deceased tenant. When a tenant dies intestate, the land be not divided amongst all the family, it must be sold and the profits of the sale divided amongst them, so that either division of the land, which is subject to penalties, or sale of the holding, to which the tenant has no right, should legally be resorted to in many cases. The difficulties arising out of this have been adverted to by many witnesses, and these difficulties will exist with regard both to perpetuities and leaseholdships, unless by law one person is made to inherit the whole.

This brings prominently forward a fact which is well worth noting, and that is— that with a perpetuity tenure and free sale, and a prohibition against subdivision, the value of the country, unless the law of primogeniture prevents it, will in a very short time be held at its full market competitive value. Landlordism, with its full rights, is the only system under which, in the long run, land, without subdivision, can be held by the occupiers at a less rate than its full competitive value. With free sale replacing the landlord's control, on the death of every occupier, where no will is made, either the holding must be subdivided, or it must be put for sale, or one of the family may get it, paying to the other members of the family its full market value.

As a check against sub-division it has been proposed that power should be left to the landlord to prevent it, either by ejecting the tenant or compelling a sale. It is worthy of notice, I think, that this very provision may have the opposite effect to that which is intended. It is intended as a check against sub-division, yet it gives to the landlord what may turn out to be an inducement to permit it. To him is still left the privilege of prohibiting sub-division on the part of the tenant, but this is a privilege which of course could be waived, in consideration of a money payment, and it may turn out that it will be the only real means left to a landlord of getting an increased payment for his land under a perpetuity at either variable or fixed rent. There can be little doubt that in many cases the tenant, anxious to sub-divide, would be willing to make a payment for it; and, under the nominal prohibition, there is, therefore, so far as a landlord is concerned, a sort of premium on sub-division.

Sub-division or sub-letting, where the State either directly or indirectly stands in the position of the landlords, will, I admit, be very difficult to prevent. It would probably be most effectively prevented by giving a legal right to the sub-tenant or persons with whom the land is divided, to claim the whole holding, but whether such a severe remedy as this would be thought just or expedient I do not undertake to determine.

If any of the proposals which I have recommended be adopted, it is scarcely necessary to add that very enlarged powers of sale must be given to limited owners, that the interests of remaindermen and mortgagees, will have to be carefully looked after, and that all the proposed proceedings will have to be carried out through

Court specially provided for the purpose. Even the establishment of these occupying owners will not be nearly sufficient if the laws relating to the charging and transfer of land remain as complicated and expensive as they are, and no reform of the Land Question in Ireland can be complete without a very great simplification of the law relating to land transfer. This in itself is such a large question, and it has occupied the attention of so many special commissions, that it would be impossible to deal with it properly here, although it is by no means one of the least important questions which have to be dealt with.

To recapitulate, then. The scheme which seems to me most likely to meet the present wants of the country is one, first, securing occupying owners on a large scale throughout every part of the country; secondly, securing a certain class of tenants fixity of tenure at low rents, with the right of free sale; thirdly, simplifying as far as possible the dealings in connexion with the transfer of land.

It remains now to be considered what class of occupiers in Ireland should be entitled to claim these rights. I do not think they should be granted at once to every accidental occupier of the land. I cannot recognise any claim founded on justice or even expediency coming from a man who hired the use of land a few years ago

on certain conditions, and who has done nothing since to improve it in any way, or to alter the conditions on which he hired it. His sole connexion with the land is that he entered into a bargain with the owner to hold the land for a certain short time, and at, perhaps, a high rent; and I cannot recognise that he has any right to have the short tenure turned into a perpetuity and the rent reduced. But, fortunately, or unfortunately, instances such as these are exceptions. As a rule, the occupiers have claims for continuous occupancy which no outsider could have. In one part of Ireland (Ulster), where the tenant-right custom prevails, and where it has been legalized, the occupier's claim for continuous occupancy is clear, and there could be no great difficulty, at least in the majority of cases, to distinguish who are and who are not entitled to the right. On every tenant-right estate, not only in the north of Ireland, but elsewhere, there practically exists at the present moment joint ownerships between landlord and tenant, and in many cases tenants have paid for their ownership as much as the landlords have paid for theirs. Leaving Ulster and tenant-right estates, it will, I think, also be found that, generally speaking, the holdings on which the occupiers are resident, and which they hold as tenants from year to year, may be regarded as holdings on which, according to the custom of the country, they will be allowed to remain as occupiers whilst they pay their rents.

In settling such a difficult and complex question as the Irish land tenure on a broad and lasting basis it will be impossible to deal separately with every little peculiar interest, and, therefore, I would say, taking it broadly, that every residential occupier of a holding, unless held by him under some special agreement, should come under the rule of having a claim to continuous occupancy at fair rent. I propose to draw the line at residence rather than fix it at any money figure or value. Most of the evidence we have received shows that a broad distinction is recognised between the case of a man who resides on his land and lives by it, and the man who hires perhaps ten or a dozen farms in different localities, and who works them purely on commercial principles, and unless the non-resident farmer has some other claim besides accidental occupation, I don't think he should get the same privileges as others. Next: any occupier who had spent a considerable sum of money in substantial and real improvements, any one who had reclaimed either the whole or great portion of the land from barrenness, whether non-resident or not, should have the right to the continuous occupancy. If it be remembered that the justification of this claim mainly depends on the assumption that the occupier has done something to earn it, either through improving the land, building upon it, or having paid something to the landlord for it, I think the distinction between those entitled to receive the right and those non-entitled will become pretty clear, and with regard to those distinctions I do not differ much from the recommendation in the Report.

Keane, 35823.

The case of leaseholders is far more difficult to deal with, and here I cannot concur with my colleagues. On the one side it would seem unreasonable that a man who had entered into a specific contract to surrender the land at a given time, and who, in consideration of that contract, had received the land and had perhaps held it on most favourable terms, should have the right to demand that the terminable tenure should be changed into a perpetuity, and that whilst he had secured to himself and enjoyed all the benefits of the contract in lowness of rent, he should now get rid of the consideration on account of which he received these benefits. On the other side it may appear equally unreasonable that the man who has no tenure at all beyond that limited by twelve months' notice to quit, should have perpetuity secured to him, whilst the owner of far larger interest in the land should be deprived of this.

This shows one of the great difficulties which seems to me inherent in trying to settle the question on the basis of compulsory fixity of tenure. I acknowledge myself wholly unable satisfactorily to get over this difficulty. It seems to me that the one condition of the lease that the lands should be surrendered at the end of a certain term is, or ought to be, just as binding as the other condition, that no more rent shall be asked for it than the tenant has contracted to pay, and I would be unable to defend the proposition that a tenant who perhaps held the land under lease for the last forty years at a rent extremely below the equitable price of the day, should have a right whilst having enjoyed the advantages of one part of the contract to get rid of the other, and to demand that the terminable interest should be converted into a perpetuity.

The principle which I prefer to compulsory fixity of tenure would here come in to help us, and get us out of the difficulty. The owner's interest in a terminable lease is something which could be accurately valued, and if a sale of the owner's interest took place, and the sum paid were the full value of such interest he would have no ground of complaint. In such cases the leaseholder should have no claim for perpetuity of tenure, unless he were himself willing to purchase the fee.

If this principle of sale be not adopted I think all leaseholders must be excluded from the operation of the statute, unless in such cases as we hear of in the north of Ireland, where leases were given not as determining the tenure during which the land was to be held, but determining the rent for the period. Wherever, in fact, it could be shown that the existing leases had been given subject to the right of tenant-right, there, the occupier should have the right to come under the operation of the new Act, but other leaseholders, I think, must be left to the protection of the existing law, unless it could be shown that the leases had been made at a rack-rent, or forced upon the occupiers at the threat of eviction.

I have now dealt with the general question of land tenure in Ireland, and with the remedies which I think necessary, in order to put things into proper condition, but something still remains. There are parts of Ireland in which the condition of things is such that alteration in the tenure of land or the amount of rent could really accomplish any lasting benefit. There are portions of Ireland in which the land is so bad, and is so thickly populated, that the question of tenure and rent are mere trifles. If the present occupiers had the land for ever, and for nothing, they could not in the best of years live decently, and in a few years they must be in a state of starvation. Here we have a totally different problem to meet from that which prevails elsewhere. From these districts there must be either emigration or migration. A very large proportion of the population must go to foreign lands more fertile countries, or they must be removed to other portions of this island.

One alternative to meet this over population on the bad land is reclamation of land on a large scale. I wish I could believe in the success of this, but I feel bound to say I do not. That there is much reclaimable waste land in Ireland I quite believe; that most of what is called reclaimable land could be reclaimed I admit, but the real question is whether it can be reclaimed at a profit, and on a large scale. What is far more wanted than reclamation of waste land is the proper cultivation of land already under cultivation; and it would be far more profitable to undertake to put the land now under cultivation on a proper state than to commence operations on what is commonly called waste land. Tenants have waste land let into their holdings, and are able, year by year, to reclaim the patches, and let them into their holdings, that I believe to be effective and profitable; but I do not believe that if the Government were to take up large tracts of waste lands in Galway, or Mayo, or Clare, or Kerry, and plant down upon them some of the surplus population of these counties, that they would succeed. I am not a believer in Government work being done more economically or better than work done by private individuals or companies, and I have come to the conclusion at which I have arrived in regard to waste land from experience of previous efforts in this direction. We have had brought before us several cases of large reclamation schemes, and none of them appear to have been crowned with success. At the same time I sympathize very much with the desire of those who see in the reclamation of waste lands a means of keeping our people in their own country; and as I may be wrong in the gloomy views I take of the proposal, I will be very glad to see the experiment tried, and I quite concur in saying, that I believe, even its partial adoption, would gratify a large body of public opinion in Ireland. Voluntary emigration is the only other remedy which has been suggested to us, and the sort of voluntary emigration that has of late years been going on is not what a well-wisher of the country would like to see. The strong, and active, and intelligent youth of the country have been leaving, and if State-aided emigration be thought of at all it should be conducted on a system under which whole families should be taken out and all preparations made beforehand to receive them.

That some remedy is wanted to prevent the recurrence of periodical distress in certain parts of Ireland, I very strongly feel. We have had abundant evidence to show that the rents in these localities have had really little or nothing to do with the destitution. Evidence on the subject is scarcely necessary. The simple fact that the rents in many localities average £3 and £4 a year, and that the lowest annual amount which an average family would require to support themselves is £60 or £70 must be a convincing proof that the doubling of the rent or its total abolition could not make the difference between even moderate prosperity and destitution. The loss of a small pig or one rood of potatoes would be a greater loss to one of these tenants than even the doubling of his rent, whilst the production and good sale of one firkin of butter would be worth more to many of them than the forgiveness of a whole year's rent.

These men, in the majority of cases, are not really tenant farmers at all; they are labourers who give the greater part of their labour in England or other parts of the country and who have merely residences and patches of poor land in some of the western counties. In good years, when the potato crop succeeds and wages are high they get on fairly well, but in bad seasons they are in utter destitution, and except by sending them out of their present wretched holdings, in some way or another, there does not seem to me much chance of their improving their condition.

Greene, 753,
Brooke, 11604;
Thomas, 16720;
Waters, 16880,
Lyons, 17077;
Jackson, 19135,
O'Flaherty,
19421; Gairdner,
20304; Cronin,
29350-52; Baldwin,
32150;
Lewin, 34811,
Dease, 37347;
Doherty, 40316-
20.

Cooper, 12483;
M'Mahon, 28548;
Baldwin, 32209-
292-300; Lifford,
36431; Mahon,
21202.

Trench, 37888.

In the conclusion of the Report I most cordially join, and although I may differ in some points as to what the Irish occupier most wants, no one is more desirous than I am that he should receive everything to which he is justly entitled, and no one is more decidedly of the opinion expressed in the Report, that unless the expected new Land Bill is a full and exhaustive one, going to the root of the whole matter, and settling it permanently, it would be better not to interfere with it at all.

O'CONNOR DON.

10th January, 1881.

SUPPLEMENTARY REPORT BY W. SHAW, ESQ., M.P.

Owing to the early meeting of, and the important business that engages the attention of Parliament, I have not been able to attend the recent meetings of the Commissioners, to discuss the clauses of the report in detail. I think it necessary, therefore, to reprint the first suggestions I made as a basis for a report, with explanation. Had I been able to attend, I would have moved the omission of some clauses in the report, and the alteration of others; viz. :—clauses 31 and 32; the clauses dealing with the question of rent, clauses 48 to 56, inclusive; and several minor statements, arguments, and implications, scattered through it. But agreeing, as I do, with the main recommendation of the report, that is, the legalizing of the three F's, and a large scheme for establishing tenant proprietors, I sign the report.

I propose :

A. Land Tenure.

1. That no tenant of an agricultural holding in Ireland shall be disturbed in his holding by his landlord so long as he fulfils the conditions of his tenancy, viz., pays the rent, does not waste or dilapidate, does not unreasonably divide or sublet.

[This should extend to the whole of Ireland, and to all classes of agricultural holdings. I am opposed to the exceptions in the report and in the Land Act. Such exceptions are sure to work injustice, as with townparks in Ulster, which, before the Land Act, were subject to tenant-right. So with grass farms; in many cases they have been brought to their present state of fertility by the outlay of the tenant. The Land Commissioners (to be constituted under the Act now to be proposed), should have power to decide on any particular case or class of cases, such as natural grass lands and temporary lettings, whether or not they should be excepted. The Commissioners should also decide in cases where the landlord sought to resume possession. He should state distinctly the grounds, but in no case should it be allowed for the purpose of re-letting for agricultural purposes. In case the Commissioners decide in favour of resumption, they should award the tenant full compensation for his loss.]

2. That when a dispute arises between the landlord and the tenant of an agricultural holding as to rent, in case it is not settled by agreement or arbitration, the question shall be referred to the Land Commissioners who shall have at their disposal a staff of competent and experienced assistants.

3. That, in ascertaining what is a fair rent, they shall take into consideration the natural qualities of the land, the average prices for the last seven years of the articles principally produced on the farm, the cost of production, and any other circumstance that may affect its rent-paying power; also any outlay made by the landlord within ten years calculated to increase the productive power of the holding, and for which he has not been recouped in rent or otherwise, but shall not take into consideration any improvement made by the tenant in or on the farm; and that, as periodical valuations impede improvements, the Commissioners shall fairly value all just rights of the landlord, and fix a fair perpetual rent on the holding.

[It is clear from the evidence that the question of rent is the great grievance and difficulty with the tenant farmer, and there is a remarkable concurrence of opinion in favour of having some outside tribunal to arbitrate on the subject between landlord and tenant, when a difference arises. It is evident that Griffith's valuation could not be taken as a fair measure of rent all over Ireland without great injustice, both to landlord and tenant. Neither is it possible, if it were desirable, to make a new general valuation available for rent purposes. After giving the subject the most mature consideration, I am compelled to differ from the recommendation in the report, and, instead of periodical valuation, would fix the rent at once and perpetually. Periodical revision will leave the question still unsettled. We shall have periodical excitement; we should have tenants allowing the farm to run down at the end of the term; we should have improvements discouraged, and a strong feeling in the minds of the people, ignorant and suspicious, that in their revaluations the landlords would manage to manipulate matters in their own favour. There would be, moreover, a great and increasing difficulty for any valuers to disentangle and separate the separate interests and

lements of value. By fixing the rent, you give the strongest motive possible to improvement. All doubt and uncertainty are taken away from both landlord and tenant. The one has a fixed income and fixed security, much preferable from any point of view, to a variable one; and the other can throw all his energy and capital into his farm, with the feeling of absolute security. It is objected that in fixing the rent thus you must value the landlord's prospective rights to an increase, and that this will lead to an advance on the present rent—this is not my opinion. Are rents likely to continue high, or to increase, as long as free trade legislation is not reversed, and in face of the immense and increasing imports from America? The sooner landlords realize the facts and necessities of their position, the better.

If, as I propose, the tenant is enabled to fine down the rent by money advanced to him at a low rate of interest, the landlord will be relieved, and the tenant's annual payments will be lessened.

Again, it is objected, you reduce the landlord to the position of a rent-charger by fixing his income; you remove all motive to exertion in the improvement of his estate. There are exceptions, but as a class landlords have in the past contributed but little to the improvement of the country. The land of Ulster has been won, by the indomitable energy and industry of its people, from the mountain and the bog; and the rental of Ulster has enormously increased within the century. So with the rest of Ireland. Notwithstanding the outlay of the landlords, even on their own showing, has been small. They have taken their share of, but have contributed little to national prosperity. In fact they have not been and are not able to do much; they are largely encumbered. You are not cutting off a class of improving capitalists from interest in their property; and they still have a strong motive of self-interest, to induce them to assist in general and local improvement. They have a fixed preference share, and can make it, instead of a doubtful, a first-class security. Looked at, then, from the point of view of the landlord, the tenant, and the general interests of society, I have no hesitation in strongly advocating the settlement of the rent at once and for ever.

It may seem unjust to force the fixing of rent on landlords and tenants against their will; and of course, if they agree to remain under the system of periodical valuation, they should be allowed to do so. But, in the general interests of society, the State should encourage the fixing of rents; and where the perpetuity rent had been fixed by agreement, by arbitration, or by the Commission, money should be advanced, on very easy terms, to bring the rent to a moderate figure, making it, in fact, a head-rent; the landlord still retaining his ownership in fee, and his connexion with the property.]

4. That any leaseholder of an agricultural holding, the lease of which has been made since the passing of the Land Act, may claim a reduction of the rent reserved on his lease, and shall lay before the Commissioners the grounds on which he claims the reduction, and if they consider the grounds as stated sufficient to justify an inquiry, they shall give notice to the landlord, who may lodge a counterclaim, and the Commissioners, after inquiry, may, if they think fit, vary the rent reserved.

All agricultural holdings now held under lease should, on termination of the lease, come under the Act.

All clauses and conditions in leases and agreements inconsistent with the Act should have no effect.

5. That all agricultural tenants shall have the right of selling their holdings to the best advantage, the landlord to have the right of reasonable objection to the incoming tenant.

B. Land Purchase.

1. That to carry out the provisions of this Act a Land Commission shall be constituted, consisting of _____, with a staff of Assistant Commissioners, and all questions and disputes arising between landlord and tenant shall be referred to them for settlement.

2. That as it is desirable to give greater facilities to enable tenants to become owners of land, a sum of _____ l. shall be placed at the disposal of the Commissioners, with power to issue debentures for any further sum that may be required.

[The Report does not give any distinct recommendation as to the machinery by which the Act is to be worked. I think the evidence proves clearly that the non-success of the Act of 1870 arose very much from the unfitness of the County Courts and the Board of Works to perform the duties assigned them. The Judges of the County Courts had, with few exceptions, no knowledge of the questions affecting land. Their decisions were varied. The expenses were heavy, especially on small holdings, and the results uncertain; and no machinery more unsuitable could be named than the Board of Works to carry out the purchase clauses. I fully believe that the success of any new legislation will depend in a great measure on the establishment of a high-class commission with ample power, who shall have the settlement of all questions and disputes relating to land

The land of Ireland is not half drained or half cultivated. The general resources of the country are undeveloped. There has not been and there is not any accumulation of capital available, or any class to undertake these matters; and the prevailing poverty will become denser, unless there is some central body with power to initiate and carry on general improvements.]

The surplus population of the West must be looked to; if they are left in their present position, you will have the constant presence of want and the periodical recurrence of famine. If agricultural improvement is stimulated on a large scale, as I expect it will be, there will be employment in Ireland for every man in Ireland. Waste and semi-waste land should be purchased and prepared for the reception of immigrants. I don't think anything should be done to encourage emigration; but I am strongly of opinion, where families or groups of families determine to emigrate, that they should be helped, and sent out in communities with their spiritual guides.

The other duties which I entrust to the Commission may seem outside the terms of reference; but they are the necessary completion of the new state of things which we hope to see in Ireland. The work of improvement and development must be looked on as a whole; hence the central authority should have large resources and large powers, and there should be unity in all its operations.

I am also strongly of opinion that the Commission should be appointed at once, with the duties entrusted to it of settling questions in dispute between landlord and tenant as to rent, and other matters.

3. That the Commissioners shall be empowered to purchase from the landlords estates suitable for re-sale in lots to occupiers, or estates capable of improvement and reclamation:

To re-sell in fee to occupying tenants:

To grant perpetuities to others at fixed rents:

To make general reclamation and improvements, and prepare farms for the reception of tenants who may remove from more thickly-populated districts.

4. That the Commissioners shall be empowered to make advances to tenants who may agree with their landlords, with the sanction of the Commissioners, to fine down the rent.

I propose that they have power, further,

5. To make loans to farmers direct for permanent agricultural improvements, the money to be expended under direction of the Inspectors of the Commissioners.

6. That, for the above objects, the Commissioners may make advances of the whole or such portion of the advance as they may think desirable, and for which they may consider they have full security. That repayment may be made by instalments of the whole sum advanced with interest, or of part thereof, leaving the remainder a permanent charge on the land, or arranging that a portion of the sum shall be provided for by life insurance. The Commissioners to have full discretion as to advances and repayments in each particular case.

7. That Corporations and public bodies be required to sell such estates as are suitable for re-sale to agricultural tenants.

8. That the Commissioners be empowered to make advances to landowners for the purchase of quit-rent, tithe rent-charge, and other permanent charges.

9. That landowners shall not be prevented from selling their estates by entails or settlements, and that, where such exist, the purchase-money shall follow the trusts.

10. That the transfer of land be simplified and the expense lessened, and that there be established local Registry Courts for recording cheaply and quickly all dealings with land.

11. That the Commissioners have power to promote agricultural education and improvement, to carry out arterial and main drainage, and to direct the expenditure of all moneys now advanced through the Board of Works for land improvement and other reproductive works.

12. To arrange with county authorities and others for the extension of railways and tramways to remote districts; to carry on in such cases the preliminary inquiries now entrusted to Parliamentary Committees; Government to promote Bills founded on such inquiries and recommendations.

13. To take the necessary steps for improving the condition of agricultural labourers, by securing for them healthful houses and allotments of land.

14. I propose that in all cases absentee landowners should pay the entire of the poor rate charged on their estates; but I am strongly of opinion that where absentees or others have systematically neglected their duties as landlords, or have not the means of performing them, they should be required to sell; but I believe, at the same time, that though this power should be given to the Commissioners it need only very rarely, if at all, be exercised, as these classes will be only too glad to sell if freed from restrictions, and knowing that there is a purchaser ready.

SEPARATE REPORT BY A. McM. KAVANAGH, Esq.

I cannot agree in the draft report submitted by the Chairman, as I dissent from some of its propositions and the manner in which they are presented. I have therefore endeavoured to draw out a short statement of my views upon the evidence we have heard, in a more satisfactory mode of proceeding than by attempting to move amendments to those portions of their report with which I do not agree. I do not attempt to put this statement forward as being at all exhaustive of all the different questions brought under our notice, but as enabling me more explicitly to express my opinion upon those points which appear to me to be of the greatest moment.

The weight of evidence* has, in my opinion, undoubtedly proved—that the properties of the majority of extensive landowners—which comprise the largest portion of agricultural and pastoral land in Ireland, have been well and humanely managed.

That on them the lands are let low, and the rents rarely raised.†

That evictions on title have been very rare, and, although in many cases the power of ejectment has had to be used for the purpose of obtaining the payment of rent, in comparatively few instances have they resulted in the ultimate displacement of the occupiers. ‡

On the other hand it has shown that the Land Act of 1870, while conferring considerable advantages upon the tenant farmers of Ireland, has not been altogether successful in affording them such adequate security as was expected, particularly in protecting them in all cases against occasional and unreasonable increases of rents. E. De Moleyns, 5.

Evidence has been given§ that on several properties—some purchased as speculations, others belonging to owners who have had no real tie to either the land or the people, and yet that of deriving their income from it—rents have been unduly raised to what has been described, in some instances as an exorbitant extent, not only upon the value of the lands themselves, but upon the improvements effected by the tenants on them. And it is contended that in districts where such cases of injustice have occurred, the feeling of fear and apprehension has spread, even among those not likely to be affected by them. In the North and those districts where tenant-right usages prevail, this raising of rent has been stated in several cases to have almost destroyed the value of the tenant-right, and I believe a careful study of the evidence will show that one of the defects of the Act of 1870, has been on the whole more prejudicial than beneficial to the tenants on several of the properties subject to these usages in this particular respect.

In the other districts of the country not subject to clauses 1 and 2 of the Land Act, the evidence has, I believe, proved that the beneficial effect of the Act has been much more generally felt. Evictions on title—a power seldom used and never unwarrantably used on the great majority of large and well-managed estates—has been most materially checked, where before it was unjustly exercised, although instances of it still remain; and of the great number of complaints of raising of rents which have been made during the course of our inquiry, some of which have been simply childish and others arising upon their face their own refutation, the majority—as the evidence will, I believe, show—date previous to its passing; but sufficient instances have been shown to have occurred of what would appear to be the unjust exercise of both these powers, since 1870, to prove that even in these districts the Act has failed to be altogether effectual in preventing abuses.

The weight of evidence has, however, proved that the question of rent is at the bottom of every other, and is really, whether in the North or South, the gist of the grievances which have caused much of the present dissatisfaction. I think that the evidence suggests the conclusion that the Land Act, as now in force, does not afford sufficient protection to the tenants against the unjust exercise of the power to raise

* E. De Moleyns, q.c., 154; R. Ferguson, q.c., 264-5; Rev. S. Patterson, 1335; R. E. Reeves, Esq., 1930; R. J. Everett, 2544; A. Hamill, q.c., 4469; Mr. J. Morton, 4667; Mr. J. Young, 5926.

† R. Ferguson, q.c., 240; R. Reeves, Esq., 1929, 1945; A. Hamill, q.c., 4233.

‡ E. De Moleyns, 150-154; Mr. Harvey, 20365; Rev. S. Paterson, 1347; R. E. Reeves, 1331; Mr. J. Connell, 3041; Mr. A. Kirkpatrick, 3790 and 3825; Mr. E. O'Brien, 4156-7; A. Hamill, q.c., 4126, 404; Bernard Coleman, 2296; Mr. J. Young, 6021-2; Mr. J. Hegarty, 30694; Mr. B. Stokes, 30914-17; Rev. Thos. Finn, F.P., 31230-1.

§ E. De Moleyns, q.c., 155; R. Ferguson, q.c., 266; R. Reeves, Esq., 1933, 1932, 2000; Mr. J. Everett, 444, 2573; Mr. Dowling, 2369; A. Hamill, q.c., 4244, 4250; Col. O'Hara, 19503; Mr. Halliday, 19632; R. R. Bourne, 15131; Mr. F. Barbour, 15621; Professor Baldwin, 32275, 33.

Mr. J. Hegarty,
30746; Mr. R. L.
Fell, 30208; Mr.
Vernon, 35330.

Professor
Baldwin, 32411-
21; J. Hegarty,
30695-99.

rents in unscrupulous hands; and, although I admit that in adopting the suggestion of a system of arbitration for the settlement of disputes as to rents and other matters of valuation, I am endorsing an interference with rights of property and freedom of contract, open to grave economical objections, and which to the great majority of landowners who have not abused their powers, will, I have no doubt, appear unwarrantable, yet, having regard to the mischief which the unjust exercise of the power has occasioned, I can come to no other conclusion than that, in any proposed alteration of present rents, whether at the instance of landlord or tenant, when the two parties cannot agree, the question should be left to arbitration, with final reference, in the event of the arbitrators being unable to agree upon an umpire, to a Land Court, or Commission, which should be appointed for that and other purposes. It will, I think, be apparent that, if the Government see fit to interfere in the question of rents, they are bound to substitute for the landlord's power which they displace an impartial tribunal which will command the confidence of the public and that they are further bound, as essential to the fair settlement of the rent question, to have a new general valuation of the country. If anything has been clearly established on evidence during this inquiry, the fact that the present Government valuation is not a dependable standard for the settlement of rents, has been most thoroughly demonstrated. Fair as it may have been for the purposes of taxation in the years when it was made, the evidence shows that even then it was considered as below the fair letting value of the land; and this fact is corroborated by the written testimony of the late Sir Richard Griffith, who was head of the Commission, as well as by the evidence of many other trustworthy and independent witnesses.

I must add that I am opposed to the attempt to draw out any rules for the guidance of arbitrators in their task of determining what a fair rent may be, further than the general instructions which are in justice too apparent to require mention, that the improvements effected by the tenants should be fully credited to them, as well as that any expenditure made by the landlord for a like purpose should be put to his account.

The evidence has, as might be expected, proved that the great desire of the tenant farmers is for fixity of tenure and free sale. It is urged in favour of these that the first exists in practice on all the large well-managed estates, and that the second is only a logical sequence of it, that in fact the Land Act in clause 3 gives an interest, and that a vendable interest, and that therefore no very great practical change in the circumstances now existing on the largest portion of the lands in Ireland would be the result of the concession. It is further urged, on the grounds of the importance of giving to the tenants full security in the enjoyment of, and compensation for, the improvements they have made, and this argument is, in my mind, the only one of real weight in this matter, backed up as it is by instances of hardship, and oppressive action on the part of some of the small proprietors, to whom I have already alluded. In the shibboleth of agitation, "Fixity of Tenure" and "Free Sale" are coupled together as if they were one term, but I cannot regard them in that light. The Land Act, while giving compensation for disturbance which some call an interest, leaves the sale of that interest subject to the landlord's power of eviction, and it is idle to assert, that because a landlord from right feeling gives to his tenants the right of continuous occupation, so long as they discharge their obligations towards him, he thereby conveys to them the right to sell their holdings. To give fixity of tenure by law, although a very considerable and arbitrary interference with landlords' rights, would not it is true involve any great practical change as regards the majority of large landowners (provided it was given to the tenant under certain approved conditions) in their present relations with their tenants; but to extend at once to all parts of the country the right of free sale would be in those districts not now subject to clauses 1 and 2 of the Land Act, a very important change, and a very material and practical interference with the rights of property, and, therefore, it appears to me simpler to try to deal with two questions separately.

First as to fixity of tenure—It is contended, that the Land Act in clause 3, admits the principle in the case of certain holdings by giving the occupiers a claim for disturbance if turned out by the act of the landlord for any other cause than non-payment of rent, the fact is clear that it does so within a certain limit of duration. But it does not give interminable fixity of tenure, and the proof of this is to be found in the Act itself. A lease of thirty years is made the equivalent of a disturbance claim, and the landlord by giving that can free himself at its expiration from the penalty on the recovery of the possession of his own land. It is therefore I think clear, that any Act of the Legislature giving to the tenant perpetual fixity of tenure would be foreign to the principle of the Act of 1870; those who advocate its extension as an existing principle would be in my opinion much more logically correct in adducing as their

example, or warrant for this argument, the numerous cases on the old estates where the tenants are never turned out so long as they pay their rents, but whether it is right or just to deprive good landlords of a right which from good feeling they seldom if ever exercise, because some bad ones abuse it, is a question I must leave Parliament to answer. However that may be, the change would not be one, as I have shown, which would practically interfere with rights often used—this has been in fact admitted by the majority of large landowners, who have given evidence before us, and the advisability of the general extension of the principle has been endorsed by not a few of them, as also by many agents of great experience on behalf of others, as well as by County Court Judges and other independent witnesses; in short there has been much less disagreement on this point than I was at all prepared for, and if I was only acting for myself, and if my own interests were alone at stake, I should have no hesitation in agreeing to their recommendations. But on the other hand we have a number of the largest landowners whose estates have been always managed on the very best principles, whose opinions are fairly represented by the evidence of Lords Lansdowne and Dufferin, who while never arbitrarily exercising their power entertain the strongest objection to legislative interference with it. In this view they are supported by the evidence of Mr. Ferguson, q.c., County Court Judge, who while wishing to extend the principle considers it would be destructive of ownership and difficult to compensate the landlords for it, and although my own opinion is what I have stated, I can not disregard the unmistakable weight and truth of such evidence, and what I believe to be the fact, that had it been possible to receive further evidence on the subject many landlords would have come forward to endorse it—the circumstance that they had not that opportunity I regret the more, as I may naturally enough perhaps be held responsible for it.

Under all these circumstances, I am not prepared to recommend the general extension of fixity of tenure. My opinion on the most material point remains unchanged—that the Land Act, as it now stands, does not give sufficient security to the tenant, and that it is both just and expedient that this security should be increased. But it seems to me that there is another mode of attaining the same end and of giving practical security of tenure to the tenant, without such a direct and sweeping interference with the rights of property as the first would involve; and that mode is to stand by the principles laid down in the Act of 1870. By some of the County Court Judges it was recommended to increase the penalties on eviction in clause 3, and by others to abolish all limit, leaving the amount of the penalty to be inflicted altogether to the discretion of the court, and where they deemed the justice of the case required it, to refuse to give a decree for possession. This, it was asserted, would have the effect of giving practical security of tenure to all tenancies coming within the provisions of that clause. Some substantial extension of this power I am quite prepared to recommend, so far as residential occupiers are concerned, believing that, without conveying to the tenants a direct share in the property of the landlords, which, granting “fixity of tenure,” undoubtedly would do, it would confer upon them that practical security to which the majority, from the peculiar circumstances of their positions, are fairly entitled to. But I am bound to add that, although I recommend its application only to existing residential tenancies and not to *bona fide* new lettings, there is no concealing the fact that the recommendation, if successful, will practically deprive the landlord class of the rights of both reversion in and control over the majority of holdings on many properties. For the arbitrary interference with which by the State it is only just that they should receive fair compensation.

As to the extension of free sale, although the majority of the evidence of tenant-farmers has been in favour of it, there has not been the same unanimity of opinion on this as on the former point. Some—few, I allow—looking farther than the present, have objected to the tax which the universal extension of free sale would impose upon those anxious to obtain land in the future, and in this view they have been supported by the evidence of both the landlords and agents who have had the most experience in the working of the different phases of the Ulster custom; so that even in the North, where the custom of sale exists already, the wisdom of removing such limitations as are now in force is not unquestioned; and when we come to the proposal to make the extension universal—to create it *de novo* in districts where no trace of it has ever existed—the difficulty, if justice or fair play is to be considered, is most materially increased. It is further shown by those whose views are not solely limited to the benefit of the present occupiers, but who consider the prospects of the future, that such a general extension would not only limit the future possession of land to those who have capital, and thereby preclude a very considerable portion of the population, whose only capital is their labour, from the possible chance of its acquisition, but would saddle all future

Mr. Neligan,
34398.

Mr. J. La Touche,
930-945; Mr. J.
Young, 6078;
Mr. P. Quinn,
6525-7; Rev. C.
Quinn, 5737.

Mr. R. L. Fell,
3315; Professor
Baldwin, 32422-
3.
Mr. J. La Touche,
16.

tenancies with a rack-rent—no matter how liberal or indulgent the landlord might be, as the rent reserved to him would only be a portion—and it might be only a small portion—of the true annual charge to which the holding would be subject, as the interest on the sum paid for its acquisition, although a voluntary imposition on the tenant's part, must necessarily be added. I am bound, therefore, to say that, having regard to the future, I fail to see that its general extension must necessarily convey the unmixed blessing to the commonwealth which some anticipate. That the general evidence of the tenant-farmers is in favour of it is only natural, as they are in the status of present occupiers, whose position would necessarily be much improved, and cannot therefore cause surprise. Evidence was given by one or two labourers and by some other witnesses on their behalf, and the tenor of it was, if I remember right, opposed to the farmers' claims, with whom they seemed to have no great common interest; but to pursue this subject now would be to go into the great question of the overpopulated and poverty-stricken districts, which I must reserve for another part.

On the other hand, the evidence in favour of its extension has been based upon the assertion, which is I believe a fact, that on the majority of holdings, the improvements, if such they can be called, if not altogether have been chiefly made by the tenants, and that without the right of sale, in the event of their leaving they would not adequately be compensated for them.

It was further urged in favour of its extension,* that the custom already exists on many estates outside of Ulster, those of Lord Devon, Lord Portsmouth, and Lord Portarlington, were specially named, and on them it was proved, that it worked admirably, stimulating improvements, producing contentment, and rendering ejections almost unnecessary for the recovery of rent—some landlords and not a few agents believing that these results would be the natural consequences of its further development advocated it, and in this they were supported by the evidence of many of the County Court Judges†—other landlords regarding it chiefly from the point of view of affording to them increased security for their rent, and as a possible temporary sop to agitation were inclined to acquiesce, yielding more perhaps to the present pressure than to what they deemed the justice of the case; but with very rare exceptions all classes of witnesses‡ agreed that where no payment had been made, either by the occupying tenant or his predecessors, for the acquisition of the good-will or improvements, the landlord should receive adequate compensation for the transference of the right, and it was as generally admitted that the landlord should have a right of veto to protect himself against the intrusion of objectionable characters upon his estate. Except by some few graziers themselves, the extension was not advocated to those kinds of holdings, as regards them it was asserted that a man's capital was all required to stock his farm, and that it was not desirable that it should be absorbed in the purchase of the good-will, and as to improvements on them it was asserted that in the real permanent sense of the term, there could be and were none, and it was further stated that even if the right was extended to those, or indeed to any very large class of farms, the price they would fetch would be small, as the competition was limited.

Mr. S. J. Allen,
355; J. E. Vernon,
Esq., 35259.

I have now, as shortly, as fairly, and as clearly as I can, given the *pros* and *cons* which were adduced by either side on this great question, for I regard it as about the gravest and most difficult that was submitted to us; for my own part I must say that I entertain no disinclination whatever to extend this right to the majority of holdings on my own property, although I have spent very large sums myself in the improvement of them, and I must confess that strongly as I was opposed to its general extension before I entered upon this inquiry, the evidence I have heard, and done my best to sift, has convinced me that doing so would confer more advantages on the present occupiers than disadvantages on me. I can say, moreover, that I would be glad to see its application made general, if it could be justly done, believing that it is the simplest and most efficacious way of giving that perfect security to the tenants which I do think, where the improvements are all or mainly their own, they ought to have, and giving that would, I am of opinion, be such general advantage to the country, that

* Mr. J. Sweetman, 1160; Mr. R. Reeves, 1903-9; Mr. A. Kirkpatrick, 3793, 3356-7, 364-7.

† E. De Moleyns, q.c., 132-140; R. Ferguson, q.c., 331, 332, 333, 392-395; A. Hamill, q.c., 4262-3, 4300; Mr. E. O'Brien, 3933, 4018, 4032; Mr. F. Wrench, 5601; Mr. S. J. Allen, 1351-4; Mr. T. Robertson, 1430; Mr. R. C. Brush, 6675; Mr. J. E. Barrett, 30566; Mr. J. K. Sherlock, 30947; J. C. Neligan, q.c., 34378

‡ Mr. T. Shillington, 5151, 5165; Mr. E. O'Brien, 4110, 4170-3-4; Mr. S. J. Allen, 1361-2; Mr. W. Simpson, 3343, 3350; A. Hamill, q.c., 4267; Mr. F. Wrench, 5603-4; Mr. J. E. Barrett, 30566; Professor Baldwin, 32444; J. C. Neligan, q.c., 34378; Rev. Canon Smollen p.p., 38363; Mr. H. Robb, 5200, 5210; Mr. F. Wrench, 5421; Rev. C. Quinn, 5738; Mr. J. Young, 5335; Mr. T. Shillington, 5026; Mr. T. Robertson, 1497; Mr. P. Quinn, 6415; Mr. R. G. Hill, 31546; Mr. W. Simpson, 3562-3; Mr. E. Fenlon, 3691; Mr. S. C. McElroy, 4546-7; Mr. E. O'Brien, 4030; Mr. J. Ferguson, 4914.

the landlords might be content to make some sacrifice to attain it—in those districts where the improvements have all been made by the tenants the difficulty or injustice, so far as the landlord's rights are concerned, is not so glaringly apparent, provided the power of using a veto on their part is preserved against an objectionable incoming tenant, but in other districts where enormous sums have been spent by the landlords in improving their properties—on some few properties it has been proved that the English system exists in its purity, the landlord having made all the improvements—and on holdings where tenant-right formerly existed, and has been brought up by the landlord, instances of which have been proved, its extension or re-establishment would, in my opinion, be simple confiscation, and an unwarrantable and arbitrary interference with rights of property which the circumstances could in no sense justify. I am, therefore, on these grounds not prepared to recommend its absolutely general, or universal extension, so far as those special districts to which I have referred are concerned, without the free consent of the landlords themselves. The majority of the witnesses who advocated its extension to those districts where it did not already exist, coupled their recommendation with the condition, as I have already stated, that the landlord should receive adequate compensation for the transference of the right. This principle I maintain is strictly a just one, and it is only subject to it, that I am prepared to recommend the extension of the right of sale to those holdings now coming under the provisions of the Land Act, where the tenants have made all or the chief part of the improvements.

Professor
Baldwin, 32448
55.

With these three safeguards which I have now recommended, *i.e.*, the check upon raising rents—giving increased power to the court in reference to evictions, where such apply to residential occupiers—extending to all holdings now under the Land Act, upon which the improvements have been made by the tenant, the right of sale, I believe the position of the present occupiers, or their representatives, would be such that they would have nothing to fear from the action of any landlord, no matter how harsh or unscrupulous he might be; but, on the other hand, I am bound to add that, although in weighing the evidence I have endeavoured to eliminate all revolutionary proposals, my three recommendations do involve very arbitrary and material interference with the rights of landlords to which many would entertain, and with every reason, the strongest objection, and that if the Government see fit to adopt them, or to propose legislation in their direction, that proposal should be accompanied in fair justice by an offer of purchase at a fair price guaranteed by the State from those landlords, of either the whole or such portions of their estates, as they objected to have such made applicable to. And I think it will be admitted that my position in urging this is much strengthened by the fact—which in my opinion is proved in the evidence—that so far as the management of the large estates is concerned, and it is of importance to remember that they comprise the greatest agricultural and pastoral area in the country, no change in the present law would appear to be called for.

On the subject of the "North," and the different customs existing there, much evidence was given, as distinct from the question of the extension of the right of sale to those districts where such does not now exist. In my opinion it was shown, as I have already stated, that the exercise of the power of raising rent on the part of the landlords, where unduly used, was the grievance most severely felt, and that I would hope the proposal for the settlement of disputes with regard to rents, by means of arbitration, would fully meet; but still, as is only natural in a system so complex, there were other points brought under our notice, such as office rules, which, although distinct from the present question, affected more or less directly the value of the interests involved. The most important named was the custom existing on many large and well-managed estates, of limiting the price to be paid for the tenant-right. On this point there was a great conflict of opinion, those in favour of it asserting that it afforded most material and salutary protection to the incoming man, keeping the price to be paid from reaching the exorbitant amount which it was often proved to do on account of the reckless competition (especially in the case of the smaller holdings) for the acquisition of land. Instances of almost incredible sums thus paid were freely given; the natural consequence was also dwelt on with much force—that in the absence of some limitation a purchaser had often not only to spend all his own capital, but had to borrow largely, thus starting with a load of debt about his neck. To my mind the economic principle is indisputable, and the rule a most salutary one. But on the other hand I am bound to admit that the weight of evidence was clearly in favour of its abolition, and by the weight of evidence do not refer to numbers—some landlords and many agents of the greatest practical experience, admitting the wisdom of the principle, condemned its working as almost impossible. It was asserted, indeed I might say proved, that where a limit was

attempted to be enforced, sums of money were invariably paid outside the office in an underhand way, and the limit utterly disregarded. It was further shown that the attempt to enforce a limit was a source of an immense amount of soreness and discontent among the tenant class. It was contended on their behalf that a man could only sell what he had, and that any attempt to lessen or limit the value of that was most unjust. On Colonel Forde's estate especially, and on some others, what would appear to be a most satisfactory system of settling this point by means of arbitration, was shown to exist, and, perhaps, the proposal for settling disputed rents might be found applicable generally in this case also. If it did command the confidence of the parties interested, it would certainly appear to me to be the wisest course, in the interest of the tenants themselves, to adopt; but if it did not, and the feeling of discontent and soreness was likely to be continued, I think, in the interests of the landlords, it would be better that the rule should be abolished.

The question of the method of sale, "public auctions *v.* private sales," was also one upon which there was a good deal of difference of opinion, and on this I think the weight of evidence, even in the tenants' interest, was more against than for the public sale. It was urged, and I think with great force, that the excitement of public competition, sometimes increased by fictitious offers, often induced buyers to make bids which in their cooler moments they would never have done, and recklessly to incur liabilities which most materially embarrassed their future, and it was further shown that the highest *bona fide* price could always be obtained by either private sale, or what is termed a private auction—a species of sale which it appears is customary among them, neither of which are open to the objections urged against the other. On these grounds I am clearly of opinion that the landlord's right to forbid public sales by auction should be retained. Another point was as to the landlord's right of selection of the incoming tenant. By all sides it was admitted that he should have the right of veto, to protect himself against the introduction of objectionable characters or insolvent tenants upon his property. But it was further urged that he should have the power of giving the preference, if so inclined, to a tenant on his estate. This would appear to me to be a very reasonable and natural discretion to give him, and provided, but only on that condition, that the value of the tenant-right was not lessened thereby, I would be in favour of the preservation of that right. There may have been other points referred to in the course of the evidence relating to the Ulster Custom, but as I do not pretend to make my report an exhaustive one, I have only attempted to touch upon those which appeared to me to be of real importance, and of those there is, I believe, only one more that I need mention, and that is securing to the Northern tenant resident on his holding the continuous occupancy, or security of tenure, which I propose to give to tenants under the same condition in the other districts, and that I believe would be achieved by the Act as it stands, with the extension of power that I suggest should be given to the Court under clause 3. The Act, in clauses 1 and 2, gives to the tenants under them the right to claim under any of the other sections of the Act, which would clearly allow them, in the event of an eviction, to come before the Court under the extended powers in clause 3, when the Court could leave them in possession by refusing to grant a decree.

Having by these recommendations, as I believe, thoroughly protected the interests of all the present occupiers now coming under the provisions of the Act of 1870, and their representatives, I am most decidedly of opinion that for the future all *bona fide* new lettings, whether within or beyond the same scope, should be subject to entire and absolute freedom of contract.

Powerful evidence was given to show that in the present lawless state of affairs, the fairest and justest landowners were not sufficiently protected in the enforcement of their most obvious rights, and in any change of the law, increased facilities should be given for the assertion of just rights, and for the summary punishment of those who by terror or otherwise interfere therewith, or retake the possession of lands which have been legally given up to the landowner. If the evidence shows that under the existing land code, tenants were not sufficiently protected from some hardships, it also demonstrates that under the same law, landlords have been unable during the past few months to assert any rights whatever.

I do not feel called upon to discuss the present agitation, or the proper mode of dealing with the prevailing anarchy, or whether it should affect the selection of a period for legislation in reference to land, or to speculate upon the effect which any such legislation might have upon the present critical estate of affairs. These grave topics demand the earnest consideration of Parliament, but appear to be outside the scope of our reference. It must be borne in mind that the present development of the agitation is not reflected by the evidence given by tenant-farmers some little time ago before us,

and that the proceedings of the Land League meetings give a representation of opinion in favour of the most extreme communistic and revolutionary views which no legislature can fulfil or satisfy.

To every one who has either heard or read the evidence it must be apparent that there are circumstances existing in some parts of the country requiring both stringent and immediate remedies, which satisfying the popular cry for the "Three F's," would not do much. Evidence of the strongest nature was given during the inquiry of a condition of affairs existing in the West and other over-populated districts, which the establishment of fixity of tenure, even coupled with free sale would, in my opinion, only perpetuate, without alleviating. It is contended that by the granting of the right of free sale these small holdings would be ultimately absorbed, and so the present evil would be removed. But inasmuch as the whole population of these districts are paupers, I fail to see who would be the purchasers, unless the purchase by outsiders is contemplated, which would only have the effect of making a change in, not lessening, the population, or establishing a class of middlemen which has been unanimously condemned; but, even if there was this local absorption assumed, the process would be so slow that the country would have to undergo many of its past trials before the remedy could be efficacious. In my opinion, the circumstances of these over-populated districts can only be dealt with by State interference, in the way of a liberal and humane scheme of emigration, by sending some people out in charge of their ministers to the large and fertile districts of unpopulated land in Western Canada, where homes and the means of acquiring their living could be provided for them, such as they could never have in this country, and opportunities would be afforded to enlarge the holdings of those who remain behind.

A scheme was proposed, and strongly advocated by some witnesses, that these crowded districts should be relieved of the surplus population by transplanting the people to the tracts of waste land in different parts of the country, where they should be aided as labourers by the State until these lands were sufficiently reclaimed to support them; but I must say it is a recommendation that I could not take upon myself the responsibility of endorsing. I believe, if they are to be moved (and I can see no other cure for such cases), emigrating them to good lands is a much wiser course than migrating them to lands as bad, if not worse, than those they left.

Much evidence was also given as to the labouring class, and the condition of many of them shown to be bad, both in respect of their dwellings and means of support; but no practical suggestion that I can call to mind was offered for their amelioration. The giving to them gardens and dwellings, which some suggested the Church Surplus Fund could be devoted to, would only be planting them on plots insufficient for their support, without placing any more certain means for earning or gaining their subsistence within their reach. They (the labourers) are not incorrectly described as small farmers without farms; and I fear a change in the present land law, which makes the possession of a certain amount of capital a "*sine qua non*" for the possession of a farm, will not do much to improve either their present position or their future prospects. In my opinion, the reason of their poverty and want in many districts where small holdings are in the preponderance is the fact that small farmers are simply labourers with farms, who do not require extraneous aid to till their farms, and, therefore, save in the seasons of seed-time and harvest, in such districts, the labouring classes who depend on labour only for their support must always suffer more or less acutely from the want of employment. One of the effects of the Land Act of 1870, as shown by the evidence before us, was that it had stopped many landlords from spending money in improvements on their estates, and I greatly fear that the further interference with their rights now suggested must, if adopted, have a much more marked effect in that direction, and, inasmuch as it has, the future prospects of the labouring classes in the way of obtaining employment must be injuriously affected. It is only another, although a less extreme, phase of over-population, and I can only see relief in the same, although a less extensive, application of the emigration scheme.

PEASANT PROPRIETORS.

This subject has been touched upon by almost every witness, and the evidence has been as conflicting as voluminous. While originally in favour of it when I entered upon the inquiry, believing that in the common sense view of the matter an owner of property of sufficient size to afford to him an adequate subsistence, would be opposed to revolution, and anxious to preserve what he had, and that by creating such a class in Ireland, we should be adding to the ranks of those interested in the support of law and order, and diminishing the numbers who are now at the beck of every agitator, no matter how wild his theory or communistic his principles, I must admit that considerations

Mr. L. Bernard,
1585; Mr.
O'Connell, 3061;
Mr. T. Knipe,
3645; Mr.
Sweetman, 1154,
1224-30; Mr.
O'Flaherty,
19448; Professor
Baldwin, 32510;

Mr. Ashe's evidence of the state of the Vintners' property.

Mr. St. George Johnston, 35595.

Mr. Ashe.
Mr. La Touche, 1054-5; R. Ferguson, q.c., 333-4; Mr. Allen, 1322-24; Mr. Boyd, 4937, 4953-59; Mr. J. Hegarty, 30723, *et seq.*

Mr. Sinclair; Mr. J. Everitt, 2578; Mr. A. Derham, 2368; Mr. Young, 5973; Mr. Wrench, 1530-3.

Mr. Bernard, 1573-9; Mr. Allen, 1736-90; Mr. T. Knipe, 3609, 13; Mr. F. Dowling, 2904-6; Mr. M'Murrough O'Brien, 32744 and 32789.

Mr. Quinn, 5769,

Mr. Robertson, 1522-3.
Mr. Everitt, 2629; Mr. Murphy, 2815; Mr. Wrench, 5540; Mr. O'Brien, 3948 to 59; Mr. S.

M'Elroy, 4647; Mr. O'Connell, 3061; Mr. Blake, 18757.
R. Ferguson, q.c., 334; Judge Ormsby, 547; J. La Touche, 932-37; Mr. J. Hegarty, 30723, *et seq.*

Mr. La Touche, 999.

Mr. Wrench, 5596.

of a very weighty nature have been urged against the scheme by those who view it from the point of its possible, if not probable, results, and their opinions, it is only fair to say, are formed from the experiences of the past. As illustrations of their views the examples of the old perpetuity leases have been given us in evidence, where the lessees holding on grants for ever at a nominal rent, have been, so far as the question is practically concerned, in the same position as owners in fee; and the condition of those properties now have been cited as exemplifying what the result of peasant proprietors would be, and if they can be taken as a fair example of what the result of a future experiment in that direction would result in, I think that even the most ardent advocate of that scheme would not consider it as encouraging. By the evidence it is shown that very few of the representatives of the original lessees are now in possession; ruined by idleness and extravagance, their grants soon passed into the hands of mortgagees, who, looking only to gain, let and sublet, divided and subdivided their lands, till over population with its consequent ills of never ceasing want and periodical famine, were stereotyped in those districts, and even in the few instances which remain of the representatives of the original lessees still continuing in possession, the condition is no better. It is shown that as occasion arose for each owner to make provision for his family, the same course was adopted, till the successive increase of each generation reduced the holdings to a size utterly inadequate to the support of those depending on them for even a bare subsistence. The difficulty, almost impossibility of preventing subdivision under such a system has been dwelt upon by many witnesses, while the danger of it has been admitted by almost all.

The condition of those who have already become purchasers of their holdings under the Church Commissioners, and the Bright clauses of the Land Act, has also been the subject of very conflicting evidence; by some the present position of many is described as worse than before they bought—the late bad seasons—the small area and bad land of some of the holdings—the high prices which were paid, the large amount of costs, especially of purchases made under the Bright clauses—the high amount of interest charged when the amount to be paid down by the purchaser had to be all, or partly, borrowed, being, among other causes, given as the reasons, and it certainly does seem a reasonable assumption, that when a purchaser has to borrow all, his position can not be improved by the change.

On the other hand, it has been shown that many have prospered well, and that in such cases the sense of contentment and security has resulted in a very marked degree, in the great improvements of their allotments. As might naturally be supposed, this satisfactory condition is almost entirely limited to those, who having money of their own, were saved from the necessity of going to the money lenders to provide the amount required by the Acts to be paid down and their success would clearly seem to be due in a greater degree to their own thrift and industry, which enabled them to save this money than to the fact that they were saved the high rate of interest to which others had to submit.

Varied however as the opinions have been upon the subject, the weight of evidence has most unmistakably gone in favour of, subject to certain safeguards and limitations, what may be termed a gradual scheme for the establishment of tenant proprietors in suitable localities throughout the country. The proposal which some very few I admit—advocated, for the Government to buy out all the landlords in Ireland, in order to resell the lands to the tenants, was one which was almost unanimously condemned, not only as unpracticable, but in the highest degree injurious, and is in my opinion altogether too wild, even to admit of discussion.

The suggestions as to limitations and safeguards in carrying out the gradual scheme were many, but may I think be summarized under a few heads. First, subdivision was admitted by almost all to be the great danger to be guarded against; the great difficulty almost impossibility of its prevention was urged as an insuperable objection against the scheme at all, and it must be apparent that great difficulty does exist in the future. So long as any of the instalments of the purchase-money advanced by the State remain unpaid, the provisions of the Acts are stringent and cogent enough to prevent it, and it is only after that, when under the present law, all State control would cease, that the danger would arise; on this point it was suggested that the difficulty would be met by making these sales to the occupiers, grants from the Crown subject to a nominal perpetuity rent (which would warrant a small reduction in the first cost to the purchaser), and to a condition against subdivision or subletting, in fact against alienation of any part less than the whole; it was further suggested on this point, and I think wisely, that the purchaser should not be prevented from mortgaging or selling his interest, so long as he dealt with the whole; interference with either of these rights, would certainly appear to me to be both unjust to the purchaser, and in

way necessary for the security of the State; if mortgaged before the instalments had been paid off, their priority would not be interfered with, and if sold the same conditions that were binding on the original purchaser, would continue so on his successor.

2nd. As to fixing a minimum limit to holdings that were to be sold to occupiers, considerable amount of evidence was given, and varied opinions expressed as to the smallest quantity of land upon which a family could subsist—some witnesses were of opinion that ten acres was sufficient, but the majority named the minimum as between twenty and forty acres; others maintained that sales should not be made to holders less than fifty acres, and others named 100. The question is a difficult one, but of the less importance to the well-being of the country, if the scheme of a peasant proprietary should be seriously entertained by the Government. It would, in my opinion, be worse than a dangerous experiment to establish owners on plots of ground which were not of either sufficient size or quality to support them, it would only be tending to perpetuate the misery and want which now exists in many districts, its only recommendation is the chance that in the future these small owners would be obliged to sell, and that gradual consolidation would ultimately remedy the evil; but to establish a system the only recommendation for which is the chance that it might come out, is hardly a commendable policy. As to the other class of holdings, of from twenty to forty acres, I certainly would be in favour—where thrifty industrious men could be found able to provide the necessary proportion of the purchase-money themselves—of affording them facilities to purchase their holdings, subject to the safeguards have mentioned—when estates were brought into the market provided the sale of the remainder was not thereby prejudiced—or where landlords of themselves were willing to sell; but while I would afford facilities to them, I must confess that it is the establishment of the larger class of holders, of from 100 acres upwards, that I would most strongly approve of, and it is from men of that class that I think the most material benefits to the community would be derived.

A modified scheme of establishing a peasant proprietary was dwelt on with much force by some witnesses, in which they recommended that the State should advance money to tenants to purchase long leases or perpetuities from the landlords at the present or reduced rents, and in favour of it I must admit there is a good deal to be said; it would facilitate and encourage a lasting agreement between landlords and tenants which would remove their relations out of arena of dispute, and would contribute to the peace of the country. Many landlords, I have no doubt, would be willing (where they had the power) to grant long leases or perpetuities, at reduced rents if they received any in consideration for doing so, and others whose rents are admittedly now much below the value, would be ready on a like condition to do the same—the case of limited owners would be easily dealt with, and the interests of remaindermen secured by law. It might moreover be found to be a very valuable alternative to offer to landlords who do not wish to sell their properties objected to the other interferences with them which have been suggested. The suggestions on other points were many as might have been expected from the number of witnesses examined—such as to the further facilities which would be advisable to afford to those desirous of purchasing their holdings, as to the removal of limitations and restraints existing under the present law, or under rules made by the Board of Works and other matters.

As to the first, it was contended by many that the larger proportion of the purchase money recommended in the Report of Mr. Shaw Lefevre's Select Committee, might safely be advanced by the State, more especially in the North, where there would be the additional security of the value of the tenant-right.

By others it was submitted that thrift and industry should be made a necessary qualification to entitle would-be purchasers to aid from the State, and that no advance could be made to those who could not provide out of their own resources the amount required to be paid down, and, although it is not easy in a case of this kind to devise a hard and fast rule which would not be subject to objections, it does seem to me that some test or qualification of this sort would be of use.

A considerable amount of evidence was given as to the different systems of purchase under the Church Temporalities Commissioners, and the Bright Clauses of the Land Act, carried out under the direction of the Board of Works, and the latter was shown to contrast most unfavourably with the former, which was stated to be much cheaper and simpler in its method. It was further asserted that many who were most anxious to purchase were debarred from doing so by the expense, complications, and delay, which purchases under the Bright clauses entailed; these with other suggestions, which I do not touch upon, are minor points of detail with which the Legislature can have no great difficulty in dealing. To me it would appear as hardly admissible, that if the main principle and

Rev. Tho.
Meagher, 2103-7.

Mr. Robb, 5407.

Mr. A. Derham,
2365; Mr. Knox,
17045; Mr. B.
Deane, 31034.

Mr. O'Flaherty,
19452-3; Mr.
Halliday, 19637;
Mr. J. Gardner,
20323.

Mr. A. Derham,
2372-3.
Mr. R. Reeves,
1920.

Mr. E. O'Brien,
3990-4000; Mr.
George Hely,
37442; Col. G.
Dease, 37362.

Judge Ormsby,
514; Mr. E.
O'Brien, 3939;
Mr. O'Connell,
3059; Mr. T.
Dowling, 2353;
Rev. T. Meagher,
2168-70; Rev.
Quin, 5774.

Rev. C. Quin,
5775.

object of the proposal is right and sound, and I believe it is, a fault in the machinery should be allowed to prevent its success.

I am, however, of opinion that to carry out a peasant proprietary scheme successfully to any extent, the appointment of a Royal Commission or a Special Board, would be absolutely necessary.

I have thought it right, in referring to this proposal for creating peasant proprietors, to place the objections which have been urged against it plainly in the foreground. As being myself still strongly in favour of it, I wished to guard myself against the charge of prejudice, and I have therefore, perhaps, given more than due prominence to its possible dangers. But to me the proposal appears to possess the advantage of being far more free from that arbitrary interference with the rights of property which the other proposals involve, and as I have already stated, that I regard the adoption of the suggestions as to rents, tenure, and sale, as only in justice admissible where accompanied with fair compensation ; or, if they preferred it, the offer of sale to the landlords at a reasonable price ; the extension of this principle (the Bright clauses of the Land Act), would afford to the State the means of disposing of estates, which would in this way come upon its hands with only a very trivial and quite possibly without any loss, and on this ground, as well as on its own merits, I am prepared most strongly to recommend its favourable consideration.

ARTHUR McM. KAVANAGH.

January 10th, 1881.

APPENDIX TO REPORT.

PAPERS REFERRED TO IN REPORT.

No. 1.

Royal Commission on Landlord and Tenant Act, 1870,
5, Ely-place, Dublin.

DEAR SIR,—In reply to your communication, dated _____, offering to assist this Commission in its inquiry, I am directed to ask you kindly to send me a brief statement of the Heads of the Evidence you would wish to give, or of the points which you desire to bring to the notice of the Commissioners, for their information, and in order to guide them in examination, should they decide to require your evidence.

I have the honour to be, faithfully yours,

GEORGE YOUNG, Secretary.

No. 2.

LANDLORD AND TENANT (IRELAND) ACTS INQUIRY COMMISSION.

HEADS OF INQUIRY as to the *Actual Condition, Customs, and Circumstances* of particular *Districts* or *Estates*.

- | | |
|---|---|
| 1. PERSONAL. | 4. RENTS. |
| 2a. ULSTER TENANT-RIGHT. | 5. IMPROVEMENTS. |
| 2b. SALE AND DISPOSITION OF HOLDINGS OUTSIDE
ULSTER. | 6. PURCHASE BY TENANTS OF THEIR HOLDINGS. |
| 3. LEASES. | 7. WASTE LAND. |
| | 8. LAND ACT, 1870. |

I.—PERSONAL.

1. Name and address.
2. Occupation and nature of connexion (if any) with the land, as owner, agent, tenant-farmer, &c.
3. Acreage of estate, agency, or holding with which you are connected.
4. For what district or estate are you prepared to give evidence?

on the expiration of their leases? Has any change taken place in this respect?

8. Are there many or any cases where from the size of the farm, the length of the lease, the fact of the landlord making the improvements, or other circumstances, the Ulster Tenant-right custom does not apply?

9. Do you suggest any alterations in or amendments of the existing law as it affects holdings under the Ulster custom?

II a.—ULSTER TENANT-RIGHT.

1. Does the Ulster Tenant-right custom exist in your district? State whether universally, generally, or on some estates only.
2. What do you understand by the Ulster custom?
3. What is the usual selling rate of the tenant-right, per year's purchase of the rent, or per acre?
4. What are the causes which generally influence the selling rate?
5. Are there any "office rules or local regulations" affecting the Ulster custom on any of the estates in your district? If so, state them, and say how long they have been in existence.
6. When the price of the tenant-right is limited, is it common for money to pass, beyond the limit fixed?
7. Was it usual before the Land Act, 1870, for leaseholders to obtain the benefit of the Ulster custom

II. b.—SALE AND DISPOSITION OF HOLDINGS.

(For districts and estates outside Ulster.)

1. Do outgoing tenants sell their holdings in your district? State whether universally, generally, or here and there only?
2. Are such sales increasing or decreasing in frequency?
3. On quitting voluntarily, in ordinary times, how many years' purchase of the rent can a selling tenant generally obtain?
4. Does the landlord recognise sales?
5. Does he forbid them? If so, does he make an allowance to the outgoing tenant?
6. Does he claim a right of pre-emption?
7. Does he insist on choosing the purchaser?

8. Does he exercise a veto on the purchaser, and on what grounds is it generally exercised?

9. Does he fix a limit on the purchase-money, and to what extent?

10. Is it common for money to pass, beyond the limit fixed?

11. Is the rent generally raised on the occasion of a purchase?

12. Does the landlord recognise a right in the tenants to charge their holdings, or to dispose of them by will?

13. Are there many or any cases where from the size of the farm, the length of the lease, the fact of the landlord making or contributing to the improvements, or other circumstances, the absence of the power to sell is completely established, and accepted as satisfactory by the tenants?

14. Is the recognition by landlords of the right of sale on the increase?

15. Are rents generally higher or lower when the right of sale exists?

16. What have been the effects of the section in the Act of 1870 (s. 7), which gives compensation in respect of incoming payments?

17. Has its operation been neutralized or evaded in any way?

18. How far has the section in the Act of 1870 (s. 3), which gives compensation for disturbance been effectual to check evictions in your district?

19. Has its operation been neutralized or evaded in any way?

20. Are the limits of the scale of compensation reasonable?

21. Has this section led tenants to mortgage or charge their holdings, in order to secure money they have borrowed?

III.—LEASES.

1. Do leases exist in your district? State whether universally, generally, or here and there only?

2. Are leases increasing or decreasing since the Land Act?

3. For what term are leases usually given?

4. Are leases generally held at reduced or advanced rents, as compared with yearly tenancies?

5. Is any fine paid on taking a lease?

6. Is it common to re-value the rent on the expiration of a lease?

7. Were the conditions of leases before the Land Act generally the same as of those given by the same landlord at present, or in what respects different?

8. Are leases to any extent being introduced which bar the operation of the Land Act, 1870, or any of its provisions?

9. Do tenants readily accept leases?

10. Is the condition of the leaseholders, and their farming, superior or the contrary to that of the yearly tenants?

IV.—RENTS.

1. What proportion does the Tenement Valuation generally bear in your district to a fair rent?

2. Has raising of rent been on the increase since the Act of 1870?

3. At what intervals is it usual for rents to be re-valued?

4. Is arbitration ever or often resorted to as a means of settling the rent?

5. Is distress for rent often resorted to?

V.—IMPROVEMENTS.

1. What improvements are generally made by landlords in your district?

2. What improvements are generally made by tenant?

3. In case of co-operation in improvement, what is the part usually undertaken by each?

4. Has the Act of 1870 encouraged or checked tenants' improvements?

5. Has it encouraged or checked improvements by landlords?

6. Have many or any cases occurred in your district where an outgoing tenant has obtained insufficient compensation for his improvements?

7. Have the provisions of the Act of 1870 in respect of compensation for improvements been neutralized or evaded in any way?

VI.—PURCHASE BY TENANTS OF THEIR HOLDINGS

1. Have there been in your district any sales to tenants of their holdings by agreement out of court?

2. Have there been any such sales in the Landed Estates Court?

3. Have any difficulties been experienced in carrying out such sales?

4. Have there been any difficulties in obtaining the statutory advances from the Board of Works?

5. What is the present condition of any such purchasing tenants as compared with the yearly tenants about them?

6. To what extent (if any) have they mortgaged or incumbered their holdings since purchase?

7. To what extent (if any) have they subdivided?

8. Can you suggest any measures for amending these clauses and rendering them more effectual?

9. Is it desirable that further legislative measures should now be taken (beyond those contained in the Land Act, with any suggested amendments) for the establishment of tenants as owners in fee of farms? Give reasons.

10. If so, in what manner should such establishment be attempted? and on what terms, either of payment by tenants, compensation to landlords, or otherwise?

11. Should waste land or land already reclaimed be selected for such establishment?

12. Should any such regulations as those of the Land Act which forbid alienation, assignment, sub-letting, or subdividing, or any of them, either temporarily or in permanence, be enforced upon purchasing tenants?

VII.—WASTE LAND

1. What do you understand by waste land?

2. To what extent has waste land been reclaimed by tenants in your district within living memory?

3. Is the reclamation of waste land now progressing or decreasing?

4. Is there much land still waste which is capable of profitable reclamation?

VIII.—LAND ACT, 1870.

1. Has any unfairness resulted in your district from the exception in the Land Act, 1870, of (a) Demesne Land (b) Town Parks and (c) large pasture farms from the holdings in respect of which compensation may be claimed?

2. Are there any and what descriptions of holdings in your district, now excepted, to which it is desirable to extend the benefit of the Act of 1870?

3. Has the section in the Act of 1870 which divides the Grand Jury Cess between landlord and tenant (65) been effectual to any extent in your district?

4. Are express contracts common for payment by the tenant of the entire Cess?

5. Has the section (68) which excuses the payment of rent for land covered by a public road been effectual to any extent in your district?

6. Do you suggest any alterations in or amendments of the existing law regulating the relation of landlord and tenant?

No. 3.

Royal Commission on Landlord and Tenant Act, 1870,
5, Ely-place, Dublin.

SIR,—The inclosed Forms suggest the principal points on which the Commissioners desire information. Witnesses desiring to give evidence are requested to communicate in writing to the Commissioners the subjects on which they feel best qualified to give information, either in the form of answers to these questions or in any other form they please.

It must be understood that the Commissioners will not confine themselves in the examination of witnesses to the contents of these papers, which are not intended as exhaustive of the topics of inquiry.

Communications in writing will not be published, and are chiefly sought for as a guide to the Commissioners in the selection of witnesses. Further copies of the Forms may be had on application to me at 5, Ely-place, Dublin.

I am, yours faithfully,

GEORGE YOUNG, Secretary.

No. 4.

Royal Commission on Landlord and Tenant Act, 1870,
5, Ely-place, Dublin

SIR,—I am directed by the Commissioners to transmit to you the inclosed statements given in evidence before them. It is a rule with the Commissioners, whenever a statement is made by a witness which may appear prejudicial to any person, to make the party affected aware of the fact, and of the nature of the statement. The Commissioners will be ready to hear your evidence in reference to these statements, if desired, or to print with the evidence a statement from yourself in reply thereto. If you prefer to attend the Commission for this purpose, you are requested to bring with you a statement in writing of the reply or explanation you wish to make, which may be embodied in the evidence. An answer is requested at your earliest convenience.

I have the honour to be, faithfully yours,

GEORGE YOUNG, Secretary

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FOR HER MAJESTY'S STATIONERY OFFICE.

REPORT

OF

HER MAJESTY'S COMMISSIONERS OF INQUIRY

INTO

THE WORKING OF THE

LANDLORD AND TENANT (IRELAND) ACT, 1870,

AND THE

ACTS AMENDING THE SAME.

Presented to both Houses of Parliament by Command of Her Majesty.



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